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STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable R. Knox McMahon, Circuit Court Judge

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SC Court of Appeals

THE STATE,

V.

RESPONDENT,

NATHAN DANIEL MARTINEZ

APPELLANT

APPELLATE CASE NO 2016-002494

RECORD ON APPEAL

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# INDEX

|                                                                 |     |
|-----------------------------------------------------------------|-----|
| INDEX .....                                                     | i   |
| TRIAL TRANSCRIPT DATED NOVEMBER 28, 2016-DECEMBER 8, 2016 ..... | 1   |
| PRE-TRIAL MOTIONS .....                                         | 20  |
| MOTION FOR CONTINUANCE .....                                    | 20  |
| BRADY MOTION .....                                              | 31  |
| MOTIONS IN LIMINE .....                                         | 42  |
| MOTION TO RECUSE .....                                          | 44  |
| MOTION FOR CHANGE OF VENUE .....                                | 49  |
| MOTION TO DISMISS INDICTMENTS .....                             | 51  |
| MOTION TO SEVER .....                                           | 51  |
| MOTION FOR TAINT HEARING .....                                  | 52  |
| <u>NEAL V. BIGGERS</u> HEARING .....                            | 107 |
| TESTIMONY                                                       |     |
| JERRY RUSSELL (IN-CAMERA) .....                                 | 107 |
| CHARLISA MCRAE (IN-CAMERA) .....                                | 116 |
| RUSSELL SHUMARD (IN-CAMERA) .....                               | 127 |
| GABRIEL DENIZARD (IN-CAMERA) .....                              | 133 |
| KENDALL DECKER (IN-CAMERA) .....                                | 142 |
| GABRIEL DENIZARD (IN-CAMERA) .....                              | 147 |
| LYLE MOTION .....                                               | 159 |

## TESTIMONY

|                                   |     |
|-----------------------------------|-----|
| ELEXIA TUCKER (IN-CAMERA).....    | 159 |
| BRIONA HURSHMAN (IN-CAMERA).....  | 199 |
| RUSSELL SHUMARD (IN-CAMERA).....  | 248 |
| COLIN BAILEY (IN-CAMERA) .....    | 284 |
| COLBI SUTTON (IN-CAMERA) .....    | 311 |
| CHARLES MORRISON (IN-CAMERA)..... | 324 |
| HOLLY WAGENER (IN-CAMERA).....    | 335 |
| HEIDI JACKSON (IN-CAMERA) .....   | 344 |
| RUSSELL SHUMARD (IN-CAMERA).....  | 354 |

## TESTIMONY

|                                        |     |
|----------------------------------------|-----|
| DR. JOSE CHAVEZ (IN-CAMERA) .....      | 366 |
| NATHAN MARTINEZ (IN-CAMERA).....       | 371 |
| WARREN CAVANAUGH (IN-CAMERA) .....     | 381 |
| PRE-TRIAL MOTION ARGUMENTS .....       | 390 |
| OPENING STATEMENT BY MS. GODWIN .....  | 430 |
| OPENING STATEMENT BY MR. MARTINEZ..... | 443 |

## TESTIMONY

|                                    |     |
|------------------------------------|-----|
| BRIONA HURSHMAN .....              | 448 |
| CHARLIE MCRAE .....                | 508 |
| L.H. ....                          | 520 |
| ASHLEY CULPEPPER (IN-CAMERA) ..... | 557 |
| RUSSELL SHUMARD (IN-CAMERA).....   | 567 |

|                                       |      |
|---------------------------------------|------|
| MELISSA RONE.....                     | 605  |
| ASHLEY CULPEPPER.....                 | 609  |
| DEBORAH GOFF .....                    | 631  |
| KEVIN ISENHOWARD .....                | 640  |
| KENDALL DECKER.....                   | 683  |
| MOTION HEARING.....                   | 701  |
| TESTIMONY                             |      |
| MARK BERUBE (IN-CAMERA) .....         | 702  |
| WARREN CAVANAUGH (IN-CAMERA) .....    | 710  |
| RUSSELL SHUMARD (IN-CAMERA).....      | 713  |
| GAYLE BROADNAX (IN-CAMERA).....       | 718  |
| BRIDGETT DE GUZMAN .....              | 744  |
| CHARLES MORRISON .....                | 801  |
| ELEXIA TUCKER .....                   | 899  |
| KENDALL DECKER.....                   | 940  |
| RACHEL GRANT.....                     | 951  |
| DR. ROZANNA TROSS .....               | 975  |
| COLIN BAILEY .....                    | 1000 |
| RUSSELL SHUMARD .....                 | 1073 |
| <u>JACKSON V. DENNO HEARING</u> ..... | 1088 |
| TESTIMONY                             |      |
| RUSSELL SHUMARD (IN-CAMERA).....      | 1088 |
| COLIN D. BAILEY (IN-CAMERA) .....     | 1103 |



|                                        |      |
|----------------------------------------|------|
| RUSSELL SHUMARD .....                  | 1121 |
| MID-TRIAL MOTIONS .....                | 1159 |
| CHARLOTTE J. WORD .....                | 1165 |
| MOTION FOR MISTRIAL .....              | 1238 |
| TESTIMONY                              |      |
| JAMES ABRAHAM .....                    | 1242 |
| HEIDI JACKSON .....                    | 1250 |
| DR. JOSE CHAVEZ .....                  | 1260 |
| GABRIEL DENIZARD .....                 | 1270 |
| WARREN CAVANAUGH .....                 | 1280 |
| MARK BERUBE .....                      | 1294 |
| GAYLE BROADNAX .....                   | 1306 |
| CHRISTOPHER TUCKER .....               | 1315 |
| MOTIONS .....                          | 1337 |
| REPLY TESTIMONY FROM THE STATE         |      |
| TESTIMONY                              |      |
| DR. ROZANNA TROSS .....                | 1344 |
| DR. AMICK .....                        | 1400 |
| DR. ROZANNA TROSS .....                | 1480 |
| SURREPLY TESTIMONY                     |      |
| LIR PATRICK DERIEG .....               | 1543 |
| NATHAN DANIEL MARTINEZ .....           | 1550 |
| CLOSING ARGUMENT BY MS. CAMPBELL ..... | 1623 |

|                                         |      |
|-----------------------------------------|------|
| CLOSING ARGUMENT BY MR. MARTINEZ .....  | 1654 |
| CLOSING ARGUMENT BY MS. WALKER .....    | 1714 |
| VERDICT .....                           | 1767 |
| POST-TRIAL MOTIONS .....                | 1771 |
| SENTENCING .....                        | 1773 |
| INDICTMENTS AND SENTENCING SHEETS ..... | 1783 |
| CERTIFICATE OF COUNSEL .....            | 1806 |

**Briona Hurshman - Redirect Examination by Ms. Walker**

1 evidence.)

2 THE COURT: All right. You may ask your next  
3 question, Mr. Martinez.

4 BY MR. MARTINEZ:

5 Q Is that photographic lineup they showed you?

6 A I think so, yes.

7 Q And did you pick anyone out of that?

8 A No.

9 Q You didn't pick no one out?

10 THE COURT: She just answered that. She just said  
11 no.

12 MR. MARTINEZ: I -- okay.

13 THE COURT: You ask a question, you get an answer,  
14 you ask the next question.

15 MR. MARTINEZ: Nothing further, Your Honor.

16 THE COURT: All right. Solicitor?

17 MS. WALKER: Thank you, Your Honor.

18 **REDIRECT EXAMINATION**

19 BY MS. WALKER:

20 Q He asked you a lot of questions about a condom.

21 Did you ever see a condom on your rapist?

22 A No.

23 Q Did you feel what felt like a condom at one point?

24 A I thought so. I thought it like -- I heard a  
25 noise. Not like the wrapper, but like --

**Briona Hurshman - Redirect Examination by Ms. Walker**

1 Q Take your time.

2 A As he was rubbing up against me, it sounded weird.  
3 It doesn't sound normal. So I thought it must have been a  
4 condom on him.

5 Q Okay.

6 A But I didn't see it.

7 Q And the photo lineup that was just introduced into  
8 evidence, you didn't pick anyone out of Defendant's Exhibit  
9 Number 1, but once you saw the picture in Defendant's  
10 Exhibit 90, were you able to recognize the person?

11 THE COURT: State's 90?

12 BY MS. WALKER:

13 Q I'm sorry State's Exhibit 90. Were you able to  
14 recognize the person?

15 A Yes.

16 Q The rings that are in State's Exhibit Number 10, do  
17 those belong to your family?

18 A Yes.

19 Q Were they stolen from you by your rapist?

20 A Yes.

21 Q And is he in the courtroom?

22 A Yes, he is.

23 Q Where is he?

24 A He's sitting at the defense table.

25 MS. WALKER: Thank you, Your Honor. I have no

## Briona Hurshman - Recross-Examination by Mr. Martinez

1 further questions.

2 THE COURT: Recross-examination, Mr. Martinez?

3 MR. MARTINEZ: Yes.

4 RECCROSS EXAMINATION

5 BY MR. MARTINEZ:

6 Q When did you come forward with this Facebook  
7 discovery?

8 A I didn't.

9 Q You didn't come and tell the State the date of our  
10 last trial that you did a Google search?

11 A I thought -- I thought you meant if I came to the  
12 police like you were asking me earlier. I did let the  
13 State know that I -- I had identified you through --  
14 through Facebook.

15 Q And that was the day of trial? Of our last trial,  
16 right?

17 A It could have been the day of or the day before. I  
18 can't tell you the exact date.

19 Q And was -- did the suspect rape you?

20 A Yes.

21 Q He put his penis inside of you?

22 MS. WALKER: I would object to the  
23 mischaracterization of the definition, Your Honor.

24 THE COURT: Mr. Martinez, I have previously advised  
25 you of the law as far as sexual battery is concerned.

1 MR. MARTINEZ: Your Honor, they're getting to use  
2 the word rape.

3 THE COURT: You can use the word rape, but at the  
4 same time, I have advised you of the definition of sexual  
5 battery in criminal sexual conduct. A crime of rape still  
6 exists in South Carolina in the common law. The criminal  
7 sexual conduct was passed in late 60's, early 70's. And  
8 very few people -- it's a statutory crime, although there's  
9 not a statute of limitations on them, but statutory or  
10 common law rape, so it still exists. But you ask your  
11 question, Mr. Martinez.

12 MR. MARTINEZ: Okay.

13 BY MR. MARTINEZ:

14 Q So you're saying that a penis entered your vagina?

15 A No. I'm saying your fingers did and I asked you to  
16 stop. As I begged you to stop, you kept touching an me  
17 putting your fingers inside of me. That's what you did.  
18 That's rape.

19 Q Okay.

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

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

22 Thank you, Ms. Hurshman. You may step down.

23 All right. Madame Forelady, ladies and gentlemen  
24 of the jury, I realize y'all's personal and professional  
25 lives have been inconvenienced by your jury service this

1 week and the timing today, specific, has been very  
2 inconvenient. The parties have been working in the  
3 courtroom since 9 o'clock this morning, so I think we'll  
4 take -- I don't know if you'd call it lunch -- I don't know  
5 what you call it. But we're going to take a recess for  
6 about -- I'm going to say about 45 minutes. So about  
7 quarter to four. I realize we'll be getting started later  
8 in the afternoon, but I'd like to see if we've got some  
9 witnesses we can put up this afternoon.

10 Please remember do not discuss the case with anyone  
11 during this recess. Do not watch, read, or listen to any  
12 news reports. Do not do any independent research or any  
13 research on the internet. Keep an open mind. Do not begin  
14 your deliberations until you've heard all the evidence, all  
15 the testimony, closing arguments by the attorneys, charge  
16 by the Court and instructed by the Court to begin your  
17 deliberations.

18 Thank you, thank you very much, see you about  
19 quarter to four. I hope you have a pleasant break.

20 (The jury left the courtroom at 3 o'clock p.m.)

21 THE COURT: Anything from the State before we take  
22 our recess, Solicitor?

23 MS. WALKER: No, sir, Your Honor.

24 THE COURT: Defense, Mr. Martinez? Anything from  
25 the defense?

1 MR. MARTINEZ: Your Honor, can I see the ring right  
2 quick, please.

3 THE COURT: Can you what?

4 MR. MARTINEZ: Can I see the ring, the ring  
5 evidence.

6 THE COURT: Any objection, Solicitor?

7 MS. WALKER: As long as we're watching him so he  
8 doesn't tamper with it.

9 THE COURT: All right. Anything else?

10 MS. WALKER: Your Honor, the only other thing, he's  
11 already referring to the prior trial and we would ask that  
12 he just refer to it as previous testimony.

13 THE COURT: Do what?

14 MS. WALKER: He's been referring to what was said  
15 during the prior trial and we'd ask that he refer to it as  
16 previous testimony.

17 THE COURT: All right. Mr. Martinez, you  
18 understand that?

19 MR. MARTINEZ: Yes, sir.

20 THE COURT: All right. Don't refer to prior  
21 testimony as being from a prior trial, just as testimony.

22 All right. Anything further, Solicitor?

23 MS. WALKER: No, sir.

24 THE COURT: Mr. Martinez?

25 MR. MARTINEZ: Yes, Your Honor, when are we going



1 to hold that hearing for the illegal, tainted evidence.

2 THE COURT: I haven't decided.

3 Court will be in recess 45 minutes. Thank you.

4 (A recess was observed.)

5 THE COURT: Anything from the defense before we  
6 bring in our jury, Mr. Martinez?

7 MR. MARTINEZ: No, sir.

8 THE COURT: Anything from the State, Solicitor?

9 MS. WALKER: No, Your Honor.

10 (The jury entered the courtroom at 4:01 p.m.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Thank you, thank you, Mr. Bailiff.

13 Welcome back, ladies and gentlemen. I hope you had  
14 a pleasant break. We're continuing the trial of the case  
15 by the presentation of evidence and testimony by the State  
16 in its case in chief. If you would please to give the  
17 parties your complete and undivided attention.

18 Solicitor, you may call your next witness.

19 MS. WALKER: Thank you, Your Honor, the State calls  
20 Charlisa McRae.

21 THE COURT: All right, Ms. McRae if you would come  
22 around and be sworn for us, please.

23 CHARLISA MCRAE,

24 having been duly sworn, testified as follows:

25 THE CLERK: Please have a seat. State your full

**Charlisa McRae - Direct Examination by Ms. Walker**

1 name for the record, please.

2 THE WITNESS: Charlisa McRae.

3 **DIRECT EXAMINATION**

4 BY MS. WALKER:

5 Q Ms. McRae, what city do you currently live in?

6 A Columbia.

7 Q And in 2014, where were you living?

8 A In Forest Acres.

9 Q In Forest Acres?

10 A Uh-huh.

11 Q What -- I guess what part of Forest Acres?

12 A There at [REDACTED].

13 THE COURT: You can back off of that microphone  
14 just a little bit for us Ms. McRae.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you.

17 BY MS. WALKER:

18 Q And who lived with you at that point?

19 A Me and my daughters.

20 Q How many girls do you have?

21 A Four.

22 Q And kind of describe for us your morning routine  
23 with your girls?

24 A Well, on March 27th, I was on my way to the bus  
25 stop. And we normally leave out of the house about 6:40

**Charlisa McRae - Direct Examination by Ms. Walker**

1 for the bus. So when I walked up there, I was standing up  
2 at the bus stop and I noticed Mr. Martinez walking into the  
3 neighborhood.

4 Q At that point in time, did you know what the  
5 person's name was?

6 A No.

7 Q You later found it was Nathan Martinez?

8 A Yes.

9 Q Would you -- okay. So you said that you walked  
10 your girls up to the bus stop?

11 A Yes.

12 Q And tell us what happened.

13 A Well, as I was standing there waiting for the bus,  
14 he walked into the neighborhood and I spoke to him. I said  
15 hello and he spoke back. And he continued to walk into my  
16 condominiums.

17 Q Describe the person you saw?

18 A Well, he was wearing a red hat with a red hoodie.  
19 He had glasses on while smoking a cigarette with a bookbag  
20 on.

21 Q Did he have any characteristics that stood out to  
22 you?

23 A Yes, the distinctive tattoo around his neck. I was  
24 able to see that.

25 Q And did you speak to him?

**Charlisa McRae - Direct Examination by Ms. Walker**

1 A I did say hello when he saw me.

2 Q Did he respond?

3 A He said hello.

4 Q About how close did this person get to you? Tell  
5 me when to stop?

6 (The solicitor walked toward the witness.)

7 THE WITNESS: Stop right there. Go back a little,  
8 just a little bit. Right there.

9 BY MS. WALKER:

10 Q Right here?

11 A Yes.

12 Q And describe the lighting one more time for me.

13 A We're in the condo complex that I had. There's --  
14 during that time, there are mailboxes here and here  
15 (indicating). There's also like light posts maybe put for  
16 the people to see, so it was a well lit area where I did  
17 see him. I had gotten very close.

18 Q Was the sun beginning to rise at this point?

19 A Not at this point, but it was between that time for  
20 it to rise. It was still dark.

21 Q And had you seen that person in your complex  
22 before?

23 A No.

24 Q Were you familiar with a lot of people from your  
25 complex?

## Charlisa McRae - Direct Examination by Ms. Walker

- 1 A Not really.
- 2 Q Did he stand out?
- 3 A Yes, he did.
- 4 Q Did you ever see this person again?
- 5 A No, I saw a face of a sketch of him on the news the  
6 next day. Well, the very next morning, I was watching the  
7 news. I immediately recognized him from the tattoo there.  
8 I called my mom and I told my mom that I did see him in our  
9 neighborhood. And I said that's the guy, that's the guy.  
10 She told me to call the police, so I called Forest Acres.
- 11 Q And did you meet with Forest Acres Police  
12 Department?
- 13 A Yes.
- 14 Q And did you give a statement?
- 15 A I did.
- 16 Q Did they show you a photo lineup?
- 17 A They did.
- 18 Q I want to show you State's Exhibit Number 8 for  
19 identification.
- 20 A Number 5.
- 21 Q Let me ask you this, first. Do you recognize  
22 State's Exhibit Number 8?
- 23 A Yes.
- 24 Q Is this the photo lineup that they showed you?
- 25 A Correct.

**Charlisa McRae - Direct Examination by Ms. Walker**

1 MS. WALKER: Your Honor, at this point, the State  
2 seeks to issue Number 8 into evidence.

3 MR. MARTINEZ: Objection to her identification  
4 because of impermissible suggestive --

5 THE COURT: Yes, sir, I've had that in a pretrial  
6 hearing. I would overrule your objection. State's 8 is  
7 evidence, subject to your objection.

8 (State's Exhibit Number 8 was entered into  
9 evidence.)

10 BY MS. WALKER:

11 Q And when they showed you this photo lineup, was any  
12 of this writing, blue writing on it?

13 A No.

14 Q And, of course, it didn't have the sticker?

15 A No.

16 Q Then when they showed you this lineup, did they  
17 tell you who to pick?

18 A No.

19 Q Did they suggest to you in any way who to pick?

20 A No, ma'am.

21 Q Did they tell you that the person was definitely in  
22 this photograph?

23 A No.

24 Q And at some point, did you indicate the person you  
25 saw walking through your complex?

## Charlisa McRae - Direct Examination by Ms. Walker

1 A I did.

2 Q And how did you do that?

3 A By circling it and initialling and dating it.

4 Q And what time of the morning was this?

5 A It was about 6:40 in the morning.

6 Q And the name was [REDACTED] Condos?

7 A Yes.

8 Q The man you saw walking through your condo at 6:40  
9 in the morning on March 27th of 2014, do you see him here  
10 in the courtroom?

11 A Yes, ma'am.

12 Q Can you point him out for me?

13 A Right here.

14 MR. MARTINEZ: Objection, Your Honor. Same.

15 THE COURT: All right. That objection is overruled  
16 subject to my previous pretrial motions.

17 BY MS. WALKER:

18 Q Are you pointing at that man that just stood up and  
19 objected?

20 A Correct.

21 Q Thank you, ma'am.

22 MS. WALKER: Your Honor, I don't have any other  
23 questions.

24 THE COURT: Thank you, Solicitor.

25 Mr. Martinez?

## Charlisa McRae - Cross-Examination by Mr. Martinez

## CROSS-EXAMINATION

1  
2 BY MR. MARTINEZ:

3 Q Ms. McRae, you said you saw the individual from  
4 what distance? Yesterday when you testified it was a  
5 little --

6 A When she was on this side, the same distance she  
7 was at, that's about the same distance I saw you.

8 Q Okay. And you said the person was wearing a red  
9 beanie with a red shirt, is that -- a red jacket, red  
10 hoodie?

11 A Red hat, red hoodie, bookbag.

12 Q And --

13 A -- and glasses.

14 Q Was there anything written on the hoodie?

15 A I wasn't familiar with any writing. I didn't pay  
16 any attention to writing, but I did pay attention to the --  
17 to what you were wearing.

18 Q So at that distance, do you think you would have  
19 noticed South Carolina across the front of the --

20 A I'm not sure.

21 Q Okay. And you said -- you said it was still dark?

22 A It was 6:40 in the morning. It was becoming to be  
23 light.

24 Q And which direction did this person come -- let's  
25 say you're standing at your mailbox. Where -- what street



## Charlisa McRae - Cross-Examination by Mr. Martinez

1 would be right in front of you?

2 A That's [REDACTED]. That's the street I  
3 lived on at that time.

4 Q Okay. So which direction did this person come  
5 from?

6 A You came in -- into like you're walking towards the  
7 -- if my mailbox is here --

8 Q Yeah.

9 A -- this is my mailbox (indicating).

10 Q Yeah.

11 A This is the entrance of my condo complex that I  
12 lived in. You came in. I was standing on this side right  
13 here (indicating).

14 Q Which direction though?

15 A What do you mean which direction?

16 Q Okay. You said it's -- it would be a T; is that  
17 right?

18 A I'm not sure.

19 Q Okay. Let's say this is the road right here  
20 (indicating). You're standing at your mailbox; is that  
21 correct?

22 A This is the road (indicating).

23 Q Yes.

24 A One side is the complex.

25 Q Yes.

**Charlisa McRae - Cross-Examination by Mr. Martinez**

- 1 A You're coming in here (indicating).
- 2 Q Okay. From which direction did -- did this person
- 3 enter --
- 4 A You're coming from the road.
- 5 Q Which -- well, which side?
- 6 A There's entrances on [REDACTED] Condo complex.
- 7 You came in the entrance that I used to live in.
- 8 Q Okay. This is the road right here (indicating).
- 9 This is the entrance into -- into your condo area, correct?
- 10 A Correct.
- 11 Q Which -- did I come from this side or this side
- 12 (indicating)?
- 13 A I saw you walking straight in. I don't know
- 14 whether you came from left or if you came from right. By
- 15 the time I noticed you in the neighborhood, you were coming
- 16 in. You're already in. You had done passed the brick
- 17 wall. You had already passed that brick wall.
- 18 Q Okay. And was you the only person -- only parent
- 19 at this school bus waiting for --
- 20 A There was other people out there catching the bus
- 21 as well. I'm not sure if they noticed you, but I noticed
- 22 you so that's what prompted me the call the police.
- 23 Q How close were these people to you?
- 24 A Not that close.
- 25 Q Was they maybe -- this -- how -- what would the

## Charlisa McRae - Cross-Examination by Mr. Martinez

1 distance be?

2 A I'm not sure. In fact, they were sitting in cars.

3 I'm not sure.

4 Q So they was lined up on the street --

5 A They were not on the street.

6 Q -- or in the entrance way, waiting for the school

7 bus?

8 A Inside the apartment complex, yes.

9 Q How many people do you think would be sitting out  
10 there?

11 A I'm not sure.

12 Q You stated that there was one lady that you  
13 remembered seeing things?

14 A I do remember seeing that other mom out there. I'm  
15 not sure if she was paying attention to you or not, but --

16 Q But you said -- you told the police that there was  
17 another lady out there that could have seen --

18 A I did not say she could have saw you. I did tell  
19 the police there was another woman out there. I did not  
20 say she could have saw you.

21 Q But you told the police though, correct?

22 A I did tell them that there was another lady out  
23 there.

24 Q And you didn't notice a South Carolina --

25 MS. WALKER: Objection, Your Honor, asked and

## Charlisa McRae - Cross-Examination by Mr. Martinez

1 answered.

2 THE COURT: Yes, sir. That has been asked. Ask  
3 your next question.

4 BY MR. MARTINEZ:

5 Q You said that -- well you've changed -- where was  
6 the -- where's the lighting at?

7 A There's a pole here (indicating); we have a pole  
8 here (indicating). There's a complex at this unit here.  
9 There's a pole here (indicating) and there's a pole here  
10 near the clubhouse. There's a whole bunch of lighting for  
11 me to see you. I saw you. You spoke to me.

12 Q Could you describe me to the Court?

13 A I did. You were wearing a red hat, a red jacket, a  
14 bookbag, headphones. You were in glasses. You were  
15 listening to your music, smoking a cigarette.

16 Q Okay. Well -- how tall was I?

17 A I'm not sure how tall you were.

18 Q How -- what was my build?

19 A I did not describe that, but I described everything  
20 you were wearing. I described your tattoo.

21 Q You described a tattoo, right?

22 A It was you, your tattoo. It was just turning light  
23 now. I saw it.

24 Q Describe it how?

25 A I described the tattoo that was around your neck.

## Charlisa McRae - Cross-Examination by Mr. Martinez

1 Q How did you describe it?

2 A I described it. It's green. Isn't it green?

3 Q It's --

4 A I know there were letters. I know you had a tattoo  
5 around your neck. And when I was presented with the photo  
6 lineup, I automatically knew it was you.

7 Q So it's not black?

8 A Well, you know what, it was green. It was you that  
9 I saw.

10 Q So when did you describe this tattoo?

11 A The very next day when I saw your sketch on the  
12 news.

13 Q Because in your statement, you just said he had a  
14 tattoo around his neck that stood out.

15 A It was not the first day, it was the second day.  
16 It was the second day I saw your face on the news. That's  
17 when I called the police and gave them a statement and I  
18 described you then.

19 Q Okay. So -- there was other people around,  
20 correct?

21 MS. WALKER: Objection --

22 THE COURT: Been asked and answered.

23 MR. MARTINEZ: No further questions.

24 THE COURT: Redirect, Solicitor?

25 MS. WALKER: No, sir, Your Honor.

L.H. - Direct Examination by Ms. Campbell

1 THE COURT: Thank you. Thank you very much,  
2 Ms. McRae. You may step down.

3 All right. Solicitor, you may call your next  
4 witness.

5 MS. CAMPBELL: Please the Court. The State calls  
6 L.H.

7 THE COURT: All right. If you'd come around  
8 Ms. L.H.

9 L.H.  
10 having been duly sworn, testified as follows:

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

13 THE WITNESS: L.H.

14 **DIRECT EXAMINATION**

15 BY MS. CAMPBELL:

16 Q Hay L.H., you're kind of soft spoken so if you'll  
17 get a little -- can you pull that microphone kind of closer  
18 to you?

19 L.H., how old are you?

20 A 14.

21 Q And do you currently live in South Carolina?

22 A No.

23 THE COURT: Can you have her speak up a little bit  
24 more for me, please, Solicitor.

25 MS. CAMPBELL: I'm sorry, Your Honor.

L.H.

- Direct Examination by Ms. Campbell

1 BY MS. CAMPBELL:

2 Q You're going to have to talk a little loud, okay?

3 You nervous here today?

4 A (Witness nodded head.)

5 Q Do you currently live in South Carolina?

6 A No.

7 Q Who do you live with now?

8 A My mom, my dad and my sister.

9 Q Your mom, your dad, and your sister?

10 A Yes.

11 Q Can you even talk louder for me?

12 A Yes.

13 Q What's your mom's name?

14 A Briona.

15 Q And what's your dad's name?

16 A Heath.

17 Q And your sister?

18 A D.H.

19 Q And how old is she?

20 A She's 7.

21 Q I want to turn your attention back to when you  
22 lived here in Columbia, okay?

23 A (Witness nodded head.)

24 Q Was there a time when you moved into a condo  
25 complex in Forest Acres?

L.H.

- Direct Examination by Ms. Campbell

- 1 A Yes.
- 2 Q Do you remember the name of the complex?
- 3 A [REDACTED]
- 4 Q [REDACTED]
- 5 A Uh-huh.
- 6 Q And who all was living in that condo back in August
- 7 -- I mean, excuse me, in March of 2014?
- 8 A Me, my mom, and my sister and my dad.
- 9 Q When this happened, how long had y'all been living
- 10 in that condo?
- 11 A Not even a week.
- 12 Q Can you tell a little bit about how the condo was
- 13 set up?
- 14 A There was three floors.
- 15 Q Three floors?
- 16 A Uh-huh.
- 17 Q Okay.
- 18 A The first floor was a guest room and the living
- 19 room and the kitchen.
- 20 Q Uh-huh.
- 21 A The second floor was my room and my sister's room
- 22 and a bathroom. Then on the third floor was my mom's room
- 23 and a bathroom.
- 24 Q And was your room set up fully?
- 25 A No. I hadn't even got my bed together yet.



L.H.

- Direct Examination by Ms. Campbell

- 1 Q So where were you sleeping at the time?
- 2 A It was just like a mattress on the ground.
- 3 Q Say that again.
- 4 A A mattress on the ground.
- 5 Q So you didn't have the bed frame up yet?
- 6 A No.
- 7 Q And you mentioned that your sister's room was on
- 8 the same floor as yours?
- 9 A Yes.
- 10 Q And to get from one story to the other -- this is a
- 11 stupid question -- were there stairs?
- 12 A Yes.
- 13 Q I want to turn your attention to the morning that
- 14 all this happened. What were you doing that morning?
- 15 A I was getting ready for school.
- 16 Q Getting ready for school?
- 17 A Uh-huh.
- 18 Q And do you remember about what time it was when you
- 19 were getting ready for school?
- 20 A It was -- it was really early. It was like six
- 21 something.
- 22 Q Six something?
- 23 A Yeah.
- 24 Q You don't know the exact time?
- 25 A (Witness shook head.)

L.H.

- Direct Examination by Ms. Campbell

1 Q Was your dad still there at the house that morning?

2 A No, he had just left for work.

3 Q And what kind of work does your dad do?

4 A I think he was -- I don't know. I think he was  
5 working with like cell towers or something.

6 Q Okay. And did you're mom work too?

7 A Yes.

8 Q What kind of work did your mom do?

9 A She worked at a salon in Camden.

10 Q In Camden, South Carolina?

11 A Uh-huh.

12 Q And what were you supposed to be doing that day?

13 What were you getting ready for?

14 A School.

15 Q And where was your school?

16 A It was -- I had just moved schools, so it was W.G.  
17 Sanders.

18 Q And how old were you then?

19 A 11.

20 Q And how would you typically get to school in the  
21 morning?

22 A I think at the time we had just started riding the  
23 bus.

24 Q Okay. And as far as your sister D.H. , how old  
25 was she?

L.H.

- Direct Examination by Ms. Campbell

- 1 A She was 5.
- 2 Q So where would she have been going that day?
- 3 A Daycare.
- 4 Q Tell the jury -- you said you were in your room?
- 5 A Yes.
- 6 Q And you were getting ready for school?
- 7 A Yes.
- 8 Q Tell the jury what you were doing specifically and
- 9 what you first noticed.
- 10 A I was putting away some stuff that was on the
- 11 ground and I heard something like the stairs and I looked
- 12 over and I saw somebody coming up the stairs.
- 13 Q So you said you heard something first?
- 14 A Yes.
- 15 Q What did you hear? Do you remember?
- 16 A I think -- I think it was just the stairs creaking.
- 17 One of them.
- 18 Q And you said you looked over and were you still in
- 19 your room at this point?
- 20 A Yes.
- 21 Q And when you looked over where the stairs were,
- 22 what did you see?
- 23 A I saw somebody, a man came.
- 24 Q Did you recognize the person?
- 25 A At first I thought it was my neighbor.

L.H. - Direct Examination by Ms. Campbell

- 1 Q Your neighbor?
- 2 A Uh-huh.
- 3 Q Why did you think that?
- 4 A Because the jacket looked similar, but I then
- 5 realized that it wasn't him because I saw a gun in his
- 6 hands.
- 7 Q You saw a gun in his hand?
- 8 A Yes.
- 9 Q Where was he when you first saw him? Was he --
- 10 where was he?
- 11 A He was almost at the top of the stairs.
- 12 Q And once he got to the top of the stairs, where did
- 13 he go? I mean on your floor?
- 14 A Into my room.
- 15 Q He came directly in there?
- 16 A Yes.
- 17 Q And at what point did you actually see the gun in
- 18 he has hand?
- 19 A When he held it up.
- 20 Q When he held et up?
- 21 A Uh-huh.
- 22 Q Was that -- when? Was he walking in your room when
- 23 you saw that?
- 24 A Yes.
- 25 Q And how did he hold it up?

L.H.

- Direct Examination by Ms. Campbell

- 1 A Pointing at me.
- 2 Q Like this (indicating)?
- 3 A (Witness nodded head.)
- 4 Q Pointed at you?
- 5 A (Witness nodded head.)
- 6 Q And how far away from you was he when he first
- 7 pointed the gun in your face?
- 8 A He wasn't -- he wasn't that close to me. It was --
- 9 it was at the door and I was by like, by my wall.
- 10 Q So he was in the doorway?
- 11 A (Witness nodded head.)
- 12 Q So were you able to leave your room at that point?
- 13 A No.
- 14 Q When he was at your doorway and pointed the gun at
- 15 you, what if anything happened?
- 16 A What?
- 17 Q What happened next?
- 18 A He told me to shut up.
- 19 Q Had you said anything at that point?
- 20 A No.
- 21 Q Why not?
- 22 A Because I didn't -- I didn't know what to do.
- 23 Q Why didn't you know what to do?
- 24 A Because I was just really scared. I had never been
- 25 in that kind of thing.

## L.H. - Direct Examination by Ms. Campbell

- 1 Q You were scared?
- 2 A Yes.
- 3 Q An when he told you to shut up, did you shut up?
- 4 A Yes.
- 5 Q What happened next, L.H. ?
- 6 A He came towards me and started asking me questions.
- 7 He -- while he was tying me up.
- 8 Q Can I slow you down. I know you're nervous, okay.
- 9 Can I slow you down a little bit?
- 10 You said he came towards you?
- 11 A Yes.
- 12 Q And then you mentioned that he was tying you up.
- 13 So he could actually be able to touch you?
- 14 A Yeah.
- 15 Q Where was the gun?
- 16 A He had kind of put it down, I think. I don't know,
- 17 I was -- I wasn't paying attention. I was just scared.
- 18 Q Were you scared?
- 19 A (Witness nodded head.)
- 20 Q At any point, did you ever notice he had anything
- 21 else in his hand at that point?
- 22 A Yeah. He had my dad's hammer that was downstairs
- 23 in his hand.
- 24 Q And the last time you had seen that hammer was
- 25 where?

L.H.

- Direct Examination by Ms. Campbell

- 1 A It was by the front door on a desk because we were  
2 using it because we had just moved in.
- 3 Q You had just moved in?
- 4 A Yeah.
- 5 Q You said that he started asking you questions. Was  
6 that before or after he started tying you up?
- 7 A I think it was like while he was.
- 8 Q Okay. And when he was tying you up, how was he  
9 tying you up? What was he using?
- 10 A I had a shirt on the ground.
- 11 Q You had a shirt on the ground?
- 12 A Yeah. And he had picked it up and started tying me  
13 up with it.
- 14 Q And was he tying -- how was he tying your hands up?  
15 In front of you or behind you or beside you or what?
- 16 A In front of me.
- 17 Q In front of you. And did he have them put  
18 together? Or what?
- 19 A It was really loose. It was like I -- if I could  
20 have just moved my hands a little bit they would have fell  
21 off.
- 22 Q Did you?
- 23 A No.
- 24 Q Why not?
- 25 A I -- I was just really scared. I didn't -- I

L.H.

- Direct Examination by Ms. Campbell

1 didn't want to do anything that would make him angry or  
2 anything.

3 Q And as he was tying you up, you said he was asking  
4 you questions?

5 A Yes.

6 Q What questions was he asking you?

7 A He asked me if anybody else was in the house.

8 Q Did you tell him?

9 A Yes. I said that my mom was here and then he said,  
10 was -- is there any men in the house.

11 Q Any men in the house?

12 A Yes.

13 Q And what did you tell him?

14 A I told him no. And then he asked again and I said  
15 no.

16 Q Okay. Where were you when he was tying you up and  
17 asking you these questions? Were you still in the room?

18 A Yes, but he had laid me kind of down on the bed a  
19 little bit.

20 Q You said he laid you down on your bed a little bit?

21 A Yeah. My -- my legs were still on the ground, but  
22 everything else was laid like sideways on the bed.

23 Q And how did he get you on the bed?

24 A He just -- he was like -- I don't know.

25 Q He got you down on the bed?



L.H.

- Direct Examination by Ms. Campbell

- 1 A Yeah.
- 2 Q And your hands are tied at this point, loosely?
- 3 A Yeah.
- 4 Q And then what did he do?
- 5 A Then he started going upstairs.
- 6 Q Did he leave your feet untied?
- 7 A He tied them a little bit with my pants that were
- 8 on the ground.
- 9 Q Did he do that before he left the room?
- 10 A Yes.
- 11 Q So you're kind of halfway on and off the bed,
- 12 right?
- 13 A Yes.
- 14 Q And your hands, he's tied together. Did he say
- 15 anything to you when he left the room?
- 16 A No.
- 17 Q What was going through your mind at this point?
- 18 A Well, I just didn't know what he was going to do
- 19 upstairs, if he was going to hurt my mom or my little
- 20 sister.
- 21 Q Once he got out of your room, could you see him
- 22 actually go towards the stairwell to go upstairs?
- 23 A Yes, kind of. But all the lights were off in the
- 24 hallway, I think.
- 25 Q Okay. Once he disappeared from sight, could you

L.H.

- Direct Examination by Ms. Campbell

1 hear anything?

2 A I heard my mom scream a little bit after. And then  
3 I heard him say something that I couldn't really understand  
4 what he was saying.

5 Q Okay.

6 A And then a little bit later he came back  
7 downstairs.

8 Q One thing I forgot to ask you, L.H., when he left,  
9 did he leave the gun or the hammer with you?

10 A I don't think so, no.

11 Q He took them with him?

12 A Yes.

13 Q When he came back down, you said a few minutes  
14 later after you heard your mom scream, did he have anything  
15 with him?

16 A I think he only had the hammer. I wasn't really  
17 sure.

18 Q And at that point when he came back downstairs, was  
19 he by himself?

20 A Yes.

21 Q And what happened next?

22 A He -- he told me to come on.

23 Q He told you to come on?

24 A Yes. And he -- and then I got up and I kind of

25 tripped a little bit because my legs were wrapped up and I

L.H.

- Direct Examination by Ms. Campbell

1 got them apart and I started going up the stairs.

2 Q Up the stairs? Where was he?

3 A I think he was behind me.

4 Q Behind you? And at that point when you went up the  
5 stairs, what happened next?

6 A I say my mom on the ground?

7 Q In what room?

8 A Her bedroom.

9 Q Okay.

10 A And -- and then he told me to go in the bathroom  
11 and my sister was in there and then he shut the door.

12 Q He told you to go to the bathroom?

13 A He kind of pushed me in there a little bit.

14 Q And when you said you got inside, that's where your  
15 sister was?

16 A Yes.

17 Q What was your sister doing in the bathroom when you  
18 went in there?

19 A I think she was just standing in there, just --  
20 there's -- she was just standing there.

21 Q Standing there?

22 A Yeah.

23 Q Did you say anything to your mom when you went  
24 through the bedroom?

25 A No, because I didn't -- I didn't say anything

L.H. - Direct Examination by Ms. Campbell

1 because I thought if I did something bad would happen.

2 Q Did he say anything to you when he put you into the  
3 bathroom before he closed the door on you?

4 A No, I don't think so.

5 Q And so where was your mom when you last saw her  
6 before he put you in the bathroom?

7 A She was on the ground away from the -- the other  
8 side of the room, away from her bed. By the closets I  
9 think.

10 Q Could you tell what she had on at this point? Or  
11 if she was constrained?

12 A She was -- she had her hands and feet tied up and  
13 something in her mouth.

14 Q Once you got into the bathroom with your little  
15 sister, what did you do?

16 A I grabbed her hand the best I could because I  
17 didn't want to take the stuff off of my arms.

18 Q So your stuff is still on your arms?

19 A Yes.

20 Q And you said you grabbed her hand the best you  
21 could? Why did you grab her hand?

22 A Because she -- I didn't want her to make any noise  
23 or anything. I was just trying to make her feel better.

24 Q Make her feel better?

25 A Yeah.

L.H.

- Direct Examination by Ms. Campbell

1 Q What did you hear or see while you were in the  
2 bathroom?

3 A I couldn't see anything because the door was  
4 closed. But I heard -- I heard him telling my mom to shut  
5 up and I heard my mom keep saying no, please don't and --  
6 and then I heard -- it was a little bit later and I heard  
7 him ask her what we are PIN number was or something.

8 Q What her PIN number was?

9 A Yeah. And she told him and then he asked again and  
10 then he took me and my sister out of the bathroom.

11 Q Do you remember how long you were in the bathroom?

12 A It -- it felt like so long. But it had to be like  
13 5, 10 minutes.

14 Q While you were in the bathroom, did you scream or  
15 say anything?

16 A No.

17 Q Did your little sister scream or say anything?

18 A No.

19 Q Once he opened up the door, did he let you back out  
20 of the bathroom?

21 A (Witness nodded head.)

22 Q What was he doing then?

23 A He told us to get up against the wall and then he  
24 opened the -- he was looking around and he opened my mom's  
25 jewelry box and started taking stuff from in there. And I

L.H.

- Direct Examination by Ms. Campbell

1 saw him put something in his pocket and then he told us to  
2 start going downstairs.

3 Q Where was your mom once you came out of the  
4 bathroom?

5 A She was by a wall -- she was tied up still, but she  
6 didn't -- she didn't have any pants on or --

7 THE COURT REPORTER: I'm sorry, I can't hear you.

8 THE WITNESS: She had her -- she had her shirt on,  
9 but she didn't have any pants on.

10 BY MS. CAMPBELL:

11 Q But she was still tied up?

12 A Yes.

13 Q And how long were y'all in the room with him while  
14 he was going through the jewelry box?

15 A Like -- like one or two minutes and then he -- then  
16 he started -- he took the sheet off of my mom's bed --

17 Q Uh-huh.

18 A -- and he put it around her mouth and she said, I  
19 can't breathe. And he said, yes, you can. And she  
20 couldn't really speak that well and it was all muffled and  
21 she was like, I can't -- I can't breathe and then he just  
22 told us to go down the stairs.

23 Q And did you do what he told you?

24 A Yes.

25 Q Did you take your sister with you?

L.H.

- Direct Examination by Ms. Campbell

- 1 A Yes.
- 2 Q Did you still have the stuff around your hands?
- 3 A Yeah.
- 4 Q Were you still trying to hold her hand?
- 5 A No.
- 6 Q Did she follow you?
- 7 A Yes.
- 8 Q When you went downstairs, what happened?
- 9 A He put us in my -- the bathroom on the second floor
- 10 and he did something to try to lock the door, even though
- 11 we were already -- we were on the inside and we could, you
- 12 know, lock it. But he tried to lock us in there. And then
- 13 he left.
- 14 Q And could you hear where he went?
- 15 A I -- my -- I heard that he was going on the stairs,
- 16 but I thought he was going back upstairs.
- 17 Q What happened next?
- 18 A And then I heard somebody on the stairs again and
- 19 then my mom opened the door.
- 20 Q Once your mom opened the door, what did you do?
- 21 A I was -- she told us to stay there and then -- she
- 22 just kept saying stay here, stay here and then I looked at
- 23 D.H. and I said, you stay here, I'm going. And she was
- 24 like -- and she just shook her head no and she started to
- 25 follow my mom downstairs.

L.H.

## - Direct Examination by Ms. Campbell

- 1 Q Why did you want to go with your mama?
- 2 A Because I didn't want her alone down there.
- 3 Q So y'all both went after her?
- 4 A Yes.
- 5 Q What happened when you got downstairs? And this
- 6 will be from the second floor down to the first floor?
- 7 A Yes. We went downstairs and she was trying to find
- 8 her phone and D.H. was with her and then I went around
- 9 and started locking the doors and she gets on the phone
- 10 with somebody and it was my dad an then she called the
- 11 police.
- 12 Q Was one of the doors you locked, the front door?
- 13 A Yes.
- 14 Q And did y'all usually leave that one locked while
- 15 y'all are home?
- 16 A Yes.
- 17 Q You said that she called your dad first?
- 18 A Yes.
- 19 Q And then did she call the police?
- 20 A Yes.
- 21 Q Okay. Did anybody ever come to the house?
- 22 A I think my dad was there first and then the police
- 23 came.
- 24 Q The person that came in your home, do you remember
- 25 what he looked like?



L.H.

- Direct Examination by Ms. Campbell

- 1 A Yes.
- 2 Q Can you describe him to the jury?
- 3 A He had a tattoo around his neck and there was
- 4 lettering. He had -- he looked Hispanic. He had a red
- 5 sweatshirt with lettering on it and a beanie on. When he
- 6 came into my room at first he had a bandanna I think around
- 7 his mouth, but he later took it off.
- 8 Q So he had a bandanna around his mouth at first, but
- 9 then he took it off, right?
- 10 A Yes.
- 11 Q Do you remember if he was wearing any kind of eye
- 12 stuff?
- 13 A He had glasses on.
- 14 Q You mentioned that you noticed some tattoos on him?
- 15 A Yes.
- 16 Q And where were those?
- 17 A I saw -- I saw one around his neck.
- 18 Q Around his neck?
- 19 A Yes.
- 20 Q Did you see tattoos anywhere else?
- 21 A No, I don't think so.
- 22 Q You don't remember?
- 23 A I don't know.
- 24 Q But you remember the ones around his neck?
- 25 A Yes.

L.H. - Direct Examination by Ms. Campbell

1 Q You said that you saw him go into the jewelry box  
2 of your moms.

3 A Yes.

4 Q When you were up on the third floor before he  
5 brought you down to the second?

6 A Yes.

7 Q And I show you what's been marked as State's  
8 Exhibit Number 9. Do you recognize that?

9 A Yes.

10 Q And what is that?

11 A That's the jewelry box.

12 Q And you said you saw him do what from the jewelry  
13 box?

14 A He was taking stuff from it.

15 Q When you were in the room, you heard your mom, do  
16 you remember what she was saying?

17 A She was just saying please stop.

18 Q Please stop?

19 A Yes.

20 MR. MARTINEZ: Objection, she's already answered  
21 that.

22 THE COURT: Overruled.

23 BY MS. CAMPBELL:

24 Q Do you remember being with some people at a  
25 children's center talking about what had happened to you?

L.H. - Cross-Examination by Mr. Martinez

1 A Yes.

2 Q Did you remember also giving a statement to the  
3 police about what you saw that day?

4 A Yes.

5 Q You described the man. Do you remember anything  
6 that you noticed about any odor or anything about him?

7 A He -- he smelled --

8 THE COURT: Speak up for me a little bit again,  
9 miss Hurshman.

10 THE WITNESS: He smelled like he had cologne on,  
11 but also like cigarettes.

12 BY MS. CAMPBELL:

13 Q Cigarettes? L.H. when all this was going on, was  
14 it still dark outside?

15 A It was still dark at first, but then when we went  
16 downstairs and my mom was on the phone --

17 Q After everything?

18 A Yeah. It was -- like the sun was just rising.

19 Q Thank you. I appreciate it.

20 THE COURT: Thank you, Solicitor.

21 Mr. Martinez?

22 MR. MARTINEZ: Yes.

23 **CROSS-EXAMINATION**

24 BY MR. MARTINEZ:

25 Q Ms. Hurshman, do you remember giving a statement?

L.H.

- Cross-Examination by Mr. Martinez

- 1 A Yes.
- 2 Q To Mr. Shumard?
- 3 A (Witness nodded head.)
- 4 Q Do you remember what you said?
- 5 A Not word by word, no.
- 6 Q Can you describe the suspect? The description that
- 7 you gave to the police?
- 8 A Hispanic, he -- you -- I said he was the same
- 9 height of my mother maybe, maybe taller, and a tattoo on
- 10 it's neck.
- 11 Q What about his build?
- 12 A I don't recall saying anything about that.
- 13 Q Didn't you say that he was medium build?
- 14 A I don't know.
- 15 Q Did you -- now, when this person came up to you and
- 16 -- you said he tied your hands up, correct?
- 17 A Yes.
- 18 Q And did you see his hands?
- 19 A Yes -- I don't know. I was trying to look at your
- 20 face so I could tell the police.
- 21 Q Okay. With that being said did you say that you
- 22 saw a tattoo on the person's -- inside of their wrist?
- 23 Huh?
- 24 A I guess so, yeah.
- 25 Q And so you seen the person's hand when he was tying

## L.H. - Cross-Examination by Mr. Martinez

1 you up; is that correct?

2 A I don't know. I was really scared.

3 Q Was the person wearing gloves?

4 A No. I don't think so.

5 Q So you didn't notice any tattoos on the person's  
6 hands that you would have been able to identify?

7 A What?

8 Q When the person was tying you up, it would have  
9 been -- if it was in front part --

10 A Yes.

11 Q -- it would have been like this (indicating)?

12 A Yes.

13 Q When the person was tying you up, you didn't notice  
14 anything about the hands?

15 A No.

16 Q And you said that --

17 A The -- yes, the tattoo on the wrist.

18 Q And you said --

19 A I don't remember that now.

20 Q And you said that it looks unprofessional, that  
21 there was like a little piece that might have looked  
22 unprofessional?

23 A Yes.

24 Q Does it look like that?

25 A From here, yes.

L.H.

- Cross-Examination by Mr. Martinez

1 Q That looks -- looks familiar?

2 A Yes.

3 Q Yeah? Okay. You testified that -- that you were  
4 tied up correct? And that you continued to be tied up the  
5 whole -- the whole time; is that correct?

6 A Yes.

7 Q Okay. But when you testified last time, you stated  
8 that you just opened your arms up and it just came right  
9 off.

10 A No, I didn't. I said that if I did it would have  
11 just come right off.

12 Q You stated -- and I can state what you said. It  
13 said: How did you get untied that day? I just opened my  
14 arms a little bit. It was really loose.

15 A Yeah, probably after you left or I was following my  
16 mother down the stairs.

17 Q So you're saying that you -- you're saying that you  
18 stayed tied up the whole way through and that this is --

19 MS. CAMPBELL: Objection, Your Honor. I think  
20 she's answered this question.

21 THE COURT: State your question, Mr. Martinez.

22 BY MR. MARTINEZ:

23 Q So what you testified previously is not correct or  
24 today is not correct? Or which is correct?

25 MS. CAMPBELL: Objection, Your Honor.

L.H. - Cross-Examination by Mr. Martinez

1 THE COURT: Can you answer that question,

2 Ms. Hurshman? Do you understand the question?

3 THE WITNESS: No. I don't understand.

4 THE COURT: Restate your question, Mr. Martinez.

5 BY MR. MARTINEZ:

6 Q Okay. It said, I ask you previously --

7 THE COURT: What did you say?

8 MR. MARTINEZ: I asked her previously.

9 BY MR. MARTINEZ:

10 Q Do you remember the articles that were used to tie  
11 you up and you stated it was a t-shirt and it was green and  
12 it was California across it. I don't remember the house  
13 coat. And I said, okay. But you said that you were able  
14 to just pull the articles right off and you said yes.

15 I asked you and did the person retie you back up.  
16 You stated no. He never retied me back up. You said no, I  
17 and said they never retied you back up? And you said no?

18 A Because you didn't have to. Because I -- because  
19 you were already gone when I untied myself. I never said  
20 that you -- that I had untied myself while you were there.

21 Q You just -- you stated that previously. I said --

22 THE COURT: Tell me what you're referring to.

23 MR. MARTINEZ: Page 245 of the transcript, Your  
24 Honor.

25 THE COURT: I don't have a transcript.

L.H.

- Cross-Examination by Mr. Martinez

1 MR. MARTINEZ: I was under the impression that they  
2 they gave you a copy of it.

3 THE COURT: Actually, there is a transcript over  
4 there. But I start with an open mind and I don't look at  
5 it. So if you want me to use the transcript, hand me up  
6 what your referring to.

7 (The documents were handed to the Court.)

8 THE COURT: Hand me also pages 244 and 246.

9 (The documents were handed to the Court.)

10 (There was a pause in the proceedings.)

11 THE COURT: All right. Thank you. You may return  
12 these to Mr. Martinez, Sheriff.

13 (The documents were returned to Mr. Martinez.)

14 THE COURT: Go ahead and ask your question, Mr.  
15 Martinez.

16 BY MR. MARTINEZ:

17 Q So -- so you stated today to the solicitor just in  
18 front of the jury that you stayed tied up the whole time;  
19 is that correct?

20 A Yes.

21 Q Previously and in your original statement to the  
22 police and your statement to the Dickerson Center when you  
23 went, you told them a different story; is that correct?

24 A I don't know. I haven't seen that in a while. But  
25 it was two-and-a-half years ago. I can't remember



L.H.

- Cross-Examination by Mr. Martinez

1 everything just off the top of my head.

2 Q So how are you remembering that you were still tied  
3 up then?

4 A Because that's just -- that's just what I -- that's  
5 just what I remember right now. Maybe it's wrong, I don't  
6 know.

7 Q Okay. You said -- you stated today that you saw  
8 the individual going through the jewelry box?

9 A Yes.

10 Q And that you saw him -- you didn't see what he was  
11 taking, but you saw him put something in his pocket?

12 A Yes.

13 Q And at the Dickerson Center, the day you went --  
14 the next day, correct? After the incident happened?

15 A Yes.

16 Q And you made the statement to some lady named  
17 Laurie Caldwell?

18 A Yes.

19 Q You told her that -- well, she said -- you could  
20 hear him stealing jewelry?

21 A I was standing there while you were taking it,  
22 while I was up against the wall and I could hear you taking  
23 it. That's how I knew that you put it in your pocket. And  
24 -- I saw you put it in your pocket and I also heard it in  
25 your pocket. And then you -- in the jewelry box with all

L.H.

- Cross-Examination by Mr. Martinez

1 the jewelry.

2 Q So you heard it in the pocket and you saw it being  
3 taken?

4 A Yes.

5 Q But when you told Mr. Dickerson -- no, I mean  
6 Ms. Caldwell the following day, which is in her statement,  
7 you never said that you saw anything like that but that you  
8 had heard it?

9 A Uh-huh.

10 Q So which statement --

11 MS. CAMPBELL: Objection, Your Honor.

12 MR. MARTINEZ: Which --

13 MS. CAMPBELL: He's asked and answered.

14 THE COURT: Ma'am.

15 MS. CAMPBELL: Asked and answered.

16 THE COURT: You may ask the question. Which  
17 statement is true?

18 BY MR. MARTINEZ:

19 Q Which statement is true?

20 THE COURT: No, sir. That's an improper question.

21 Step up here, please, Mr. Kata, Solicitor.

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

24 THE COURT: Thank you, Mr. Kata.

25 Thank you, Solicitor.

L.H.

- Cross-Examination by Mr. Martinez

1 MS. CAMPBELL: Thank you, sir.

2 (There was a pause in the proceedings.)

3 BY MR. MARTINEZ:

4 Q Okay. The next day when you went to the Dicker --  
5 yeah, the Dickerson Center, Mr. Shumard came and showed you  
6 a photographic lineup; is that correct?

7 A Yes.

8 Q And when he showed you that photographic lineup did  
9 you -- was you able to pick somebody out of that  
10 photographic lineup?

11 A No, because I didn't want to pick the wrong person.

12 Q Is it because you didn't see the person that you  
13 said just supposedly attacked you?

14 A No, I did. At first when you came in -- when you  
15 came in my room, you had the bandana on to cover your face.  
16 But then you took it off and I got to see you more. So I  
17 did see you, but most of the people look similar. But I  
18 didn't want to pick the wrong person.

19 Q Okay. Which photographic lineup did he show you?

20 A I don't know. I didn't know there was more than  
21 just one.

22 Q Oh. Well, last time that you testified, you did.

23 MR. MARTINEZ: I beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 (There was a pause in the proceedings.)

L.H.

- Cross-Examination by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q I asked you -- when they showed you a photo lineup,  
3 were you able to identify me. You said no because you  
4 didn't have your glasses on and the picture wasn't face to  
5 face, so they showed --

6 MR. MARTINEZ: Would you please show her the  
7 photographic lineup, Your Honor?

8 THE COURT: You're asking me to? What photographic  
9 lineup?

10 MR. MARTINEZ: The photographic lineup with me with  
11 glasses.

12 THE COURT: Defense 1?

13 MR. MARTINEZ: Yes.

14 THE COURT: Do you have that Madam Court Reporter?

15 THE COURT REPORTER: It's up here on the table.

16 THE COURT: Hand that to her, please, Sheriff.

17 (The document was given to the solicitor.)

18 THE COURT: All right. What's your question, Mr.  
19 Martinez?

20 BY MR. MARTINEZ:

21 Q Is that the photographic lineup they showed you?

22 A I can't really remember. It was a long time ago,  
23 but I'm pretty sure it looked something like that.

24 Q Does that resemble me, number 5?

25 A Yes.

L.H.

- Cross-Examination by Mr. Martinez

1 Q Do I look different today than supposedly when you  
2 claim that you saw me?

3 A I don't -- a bit.

4 THE COURT: Speak up for me -- I apologize,  
5 Ms. Hurshman. Speak up for me a little bit, please.

6 THE WITNESS: I'm sorry. A bit. I mean it -- like  
7 I can't really see your neck in the picture at all, so --

8 BY MR. MARTINEZ:

9 Q You said you saw the person's neck; is that  
10 correct?

11 A Yes, but it was like barely any time I saw your  
12 face. It...

13 Q When you seen the person -- how close were you when  
14 they were tying -- how -- when they were tying you --

15 A When you were tying me up, you had a bandanna  
16 around your face, like your mouth and stuff.

17 Q You said he took it down?

18 A When you were tying me up, when you came in, you  
19 had the bandanna around your face. When you came back  
20 down, you didn't tie me up again and the bandanna was off  
21 of your face.

22 Q So then you saw the person, is that correct? When  
23 they came back down you witnessed the person with the  
24 bandanna off their face?

25 A Yes.

L.H.

## - Cross-Examination by Mr. Martinez

1 Q And as you said, they didn't tie you back up,  
2 correct?

3 A Uh-huh.

4 Q So when you told the solicitor that you were tied  
5 up the whole time, that was incorrect, correct?

6 MS. CAMPBELL: Objection, Your Honor. We've been  
7 over this. And he's misquoting things.

8 MR. MARTINEZ: She just said that she --

9 THE COURT: Ask your question. Don't repeat what  
10 you think the witness says. That's for the jury to decide.

11 BY MR. MARTINEZ:

12 Q So are you now saying that that's the photographic  
13 lineup that Mr. Shumard showed you?

14 MS. CAMPBELL: Objection, Your Honor. Asked and  
15 answered.

16 THE COURT: I thought her answer was I don't  
17 remember. When an answer of don't remember is -- I don't  
18 remember --

19 BY MR. MARTINEZ:

20 Q How can you -- how can someone --

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

22 THE COURT: Mr. Martinez, you can ask any other  
23 questions that you need to continue your cross-examination.

24 MR. MARTINEZ: I just don't -- I --

25 THE COURT: Step out, please, ladies and gentlemen.

L.H.

- Cross-Examination by Mr. Martinez

1 Do not discuss the case while you're out.

2 (The jury left the courtroom at 4:59 p.m.)

3 THE COURT: All right. Mr. Martinez, you appear to  
4 be frustrated.

5 MR. MARTINEZ: It just seems like that's the -- the  
6 questions they don't know, but when the solicitor's  
7 questioning them, they know everything.

8 THE COURT: And you may argue that in your closing  
9 argument. I don't know the answer to that. I mean, the  
10 witness has answered the question. I can -- I don't recall  
11 if the solicitor asked her anything about photographic  
12 lineup, number one.

13 Number two, I don't know that she would know how  
14 many photographic lineups the Forest Acres Police  
15 Department had developed.

16 Number three, even if she did, I don't know that  
17 she would know which one they showed her because she didn't  
18 pick you out. And both of them had you in it, just in  
19 different views. She didn't pick you out of a photographic  
20 lineup in Defense 1. And you're asking this witness which  
21 one they showed you and then she doesn't know. I don't  
22 remember. And then you turn around and try to ask --  
23 you're not saying that that's not the one they showed you.  
24 That's a double negative. I don't know if we end up with  
25 an affirmative there or not. But people's memories change

L.H.

## - Cross-Examination by Mr. Martinez

1 with time and, of course, not only the time from the event,  
2 to the time of the trial, but as people age, their memory  
3 changes. I don't know that they change much between 11 and  
4 14.

5 THE WITNESS: 14.

6 THE COURT: 14. And if a witness doesn't remember,  
7 they don't remember.

8 Now, what do you want -- do you want to ask her  
9 more questions? Don't stop presenting your defense because  
10 of your frustration. If you want to ask the witness other  
11 questions and they are appropriate questions, I'll allow  
12 you to ask her. You understand?

13 MR. MARTINEZ: Yes, sir.

14 THE COURT: Do you have other questions for  
15 Ms. Hurshman?

16 MR. MARTINEZ: No, sir.

17 THE COURT: All right. Thank you. I want to give  
18 you the opportunity to fully and completely confront the  
19 witnesses that the State calls against you. You understand  
20 that, Mr. Martinez?

21 MR. MARTINEZ: Yes, sir.

22 THE COURT: All right. Thank you.

23 Are you going to have another witness for the day,  
24 Solicitor?

25 MS. CAMPBELL: We could possibly -- we've got to



1 call witnesses sometime -- it's probably a short one -- for  
2 the Bigger's Hearing after and we could let the jury go?

3 THE COURT: Say again.

4 MS. CAMPBELL: Could we do the hearing for the ID,  
5 the last ID we have outside the presence of the jury,  
6 today?

7 THE COURT: Do you want to call another witness  
8 though, in front of the jury.

9 MS. CAMPBELL: No, sir, we don't need to call a  
10 witness in front of the jury.

11 THE COURT: Well, let me release the jury. I'll  
12 release her from the witness stand in front of the jury.

13 MS. CAMPBELL: Perfect. Thank you.

14 (The jury entered the courtroom at 5:05 p.m.)

15 THE BAILIFF: The jury is seated, Your Honor.

16 THE COURT: Thank you, Mr. Bailiff.

17 Any additional cross-examination, Mr. Martinez?

18 MR. MARTINEZ: No, sir.

19 THE COURT: Redirect, Solicitor?

20 MS. CAMPBELL: No, sir.

21 THE COURT: Thank you. Ms. Hurshman, you may step  
22 down.

23 Madame Forelady, ladies and gentlemen of the jury,  
24 I have another pretrial matter to take up outside of your  
25 presence and we're going to press on with that and resolve

1 that this evening. So at this time, I'm going to release  
2 you for the remainder of the evening.

3 I would ask you, advise you, you're not to discuss  
4 this case with others, fellow jurors, family, friends,  
5 anyone else. Anyone tries to talk with you about the case,  
6 please report that to me.

7 Do not read, watch, listen, to any news accounts of  
8 the case, should there be any. Do not do any independent  
9 investigation on the internet, specifically do not do any  
10 -- obtain or disclose any information about the case; which  
11 would include, but is not limited to the following  
12 information about a party; an attorney; a witness or court  
13 officer; news accounts about the case, past or present, if  
14 any; any information collected through juror research on  
15 any topic raised or testimony offered by any witness; or  
16 information collected for juror research on any other topic  
17 the juror might think would be helpful in deciding the  
18 case.

19 I know you take your oath very seriously and will  
20 fulfill your jury service in an exemplary manner.

21 With that being said, you're released for the day,  
22 the evening. I'm going to ask you to report back promptly  
23 at 9:30 in the morning; 9:30 in the morning. I hope you  
24 have a pleasant evening. Thank you, thank you very much.

25 (The jury left the courtroom at 5:08 p.m.)

**Ashley Culpepper - Direct Examination In Camera by Ms. Godwin**

1 THE COURT: All right. Solicitor, you may call  
2 your witness.

3 MS. GODWIN: State calls Ashley Culpepper.

4 THE COURT: All right. Ms. Culpepper, if you'd  
5 come around and join us, please.

6 ASHLEY CULPEPPER,  
7 having been duly sworn, testified as follows:

8 THE CLERK: Please have a seat. State your full  
9 name for the record.

10 THE WITNESS: Ashley Culpepper.

11 **DIRECT EXAMINATION IN CAMERA**

12 **BY MS. GODWIN:**

13 Q Good evening, Ms. Culpepper. I want to take you  
14 back to -- well, first of all, where do you live now?

15 A In Forest Acres.

16 Q And back in 2014, where did you live?

17 A Forest Acres.

18 Q And I want to go back to March of 2014,  
19 specifically March 17th. Do you remember that morning?

20 A Yes, ma'am.

21 Q And what were you doing?

22 A I was on the way the take my children to my mother  
23 and run to daycare on my way the work.

24 Q And did anything happen on your way to work?

25 A Yes, ma'am. As soon as I turned down Pinestraw on

## Ashley Culpepper - Direct Examination In Camera by Ms. Godwin

1 my regular route there's a man that just appears out of the  
2 bushes right in front of my truck and it was just really  
3 strange.

4 Q So you said a man just appeared out of the bushes?

5 A Yes, ma'am.

6 Q Can you explain that a little more? Where were  
7 these bushes?

8 A He -- there's like an open grove area of weeds and  
9 trees. I don't know. To me he was walking the road and  
10 just came out from out of nowhere out of the bushes.

11 Q And when that person came out of the bushes, did  
12 you have a chance to see that person?

13 A Yes, ma'am.

14 Q And what did that person look like.

15 A He's tall, Hispanic, 30/35, had glasses, tattoos  
16 everywhere, dressed in all black; just didn't look like a  
17 good man.

18 Q So when you say tattoos everywhere, what was he  
19 wearing? Could you see the tattoos? Where did you see  
20 those?

21 A On his neck, his arms, his hands, and he's covered.

22 Q And so about -- about how far was he from your car?

23 A Like right here -- like this is my church from here  
24 to here. We were really close.

25 Q So a few feet?

**Ashley Culpepper - Direct Examination In Camera by Ms. Godwin**

1 A Yes, ma'am.

2 Q Okay. And what was the lighting when you saw that  
3 man come out of the bushes?

4 A It was 7:30 in the morning, so I would say it was  
5 daylight.

6 Q About how long did you look at him?

7 A A minute.

8 Q Long enough to remember?

9 A Yes, ma'am.

10 Q And where exactly -- I know you said on Pinestraw.  
11 Can you give me a little more detail about exactly where  
12 this was at?

13 A Yes, ma'am. Right down Pinestraw between --  
14 there's a Nazarene church and a Magnolia Park Subdivision.

15 Q And it was on Pinestraw Road?

16 A Yes, ma'am.

17 Q Okay. Whenever you saw him, you said it was odd  
18 and that caught your attention?

19 A Correct.

20 Q After you saw him what did you do?

21 A Well, when I dropped my daughter off at my mothers  
22 and expressed my concern to my mom just because who I am.  
23 I always over analyze and worry about everything. And she  
24 told me not to worry about it and go on about your day.

25 Q And you expressed concern over the man you had

## Ashley Cúlpepper - Direct Examination In Camera by Ms. Godwin

1 seen?

2 A I did. Even to my employees when I got to work.  
3 And they were like, Ashley, it's okay. I really just don't  
4 feel right, like it's really weird. And they said, Well,  
5 you know, I'm sure if something's wrong, you'll find out.  
6 And sure enough I found out that evening on the news.

7 Q What did you see on the news?

8 A A sketch of the man I saw.

9 Q And what did you do?

10 A Well, I called my mom and she said, Well, you need  
11 to Crime Stoppers in Forest Acres. And I called Crime  
12 Stoppers first and I believe they dispatched me to Forest  
13 Acres.

14 Q And did you eventually meet with anyone from Forest  
15 Acres.

16 A Yes, ma'am. Detective Shumard.

17 Q And when you met with Lieutenant Shumard, did he --  
18 what did you do with him?

19 A I provided a statement at the Forest Acres Police  
20 Department.

21 Q And did he have you look at anything?

22 A Not that day. A couple -- I believe the next day  
23 or the day after, he came to my home and showed me a  
24 lineup.

25 Q I want to hand you what's been marked as State's

**Ashley Culpepper - Direct Examination In Camera by Ms. Godwin**

1 Exhibit 2. Do you recognize that?

2 A Yes, ma'am.

3 Q What is that?

4 A The lineup that Lieutenant Shumard showed me of the  
5 person that I saw.

6 Q And when he showed you that lineup, did you  
7 recognize anyone in it?

8 A Yes, ma'am. Immediately.

9 Q And who did you recognize?

10 A Nathan Martinez.

11 Q And which number is he?

12 A Number 5.

13 Q And did you indicate on that paper in any way that  
14 he was the one?

15 A Yes, ma'am. I initialled it.

16 Q You initialled Number 5?

17 A Yes, ma'am.

18 Q And the man that you saw that day come out of the  
19 bushes is the one that you picked? Is Number 5?

20 A Correct.

21 Q And do you see him here today?

22 A Yes, ma'am.

23 Q And where is he?

24 A He's right there (pointing).

25 MR. MARTINEZ: Objection, Your Honor. Same.

## Ashley Culpepper - Direct Examination In Camera by Ms. Godwin

1 THE COURT: Overruled.

2 BY MS. GODWIN:

3 Q And when you said -- the man who just stood up --

4 THE COURT: Well, let me -- what's your objection.

5 MR. MARTINEZ: My objection is this identification  
6 does seem to be permissive suggestive --

7 THE COURT: I'm having a hearing on that now. If  
8 you recall, we had a hearing on that with Mr. Grey, with  
9 Ms. Hurshman. I heard evidence and testimony from the  
10 State; evidence and testimony and cross-examination of the  
11 witnesses by you.

12 I can't rule on an objection until I've heard all  
13 of the evidence and all of the testimony in an in-camera  
14 hearing. But I've got to have -- hear from Ms. Culpepper,  
15 you cross-examine Ms. Culpepper and any other witnesses the  
16 State wants to call, any witnesses you want to call; and  
17 then I will -- I will make my ruling. I assumed we were  
18 having this hearing because you wanted to test the  
19 eyewitness testimony under Neal versus Biggers.

20 MR. MARTINEZ: Yes, sir.

21 THE COURT: Thank you.

22 Go right ahead, Ms. Godwin.

23 MS. GODWIN: Thank you, Your Honor.

24 BY MS. GODWIN:

25 Q And you said that you were able to pick it out



**Ashley Culpepper - Cross-Examination In Camera by Mr. Martinez**

1 immediately. Prior to that when they were presenting you  
2 with this lineup, did they suggest at all any of these for  
3 you to pick?

4 A No.

5 Q Did they tell you that you had to pick somebody?

6 A No.

7 Q Did they tell you that he would definitely be in  
8 there?

9 A No.

10 Q Did they suggest in any way which photograph to  
11 pick?

12 A No, ma'am.

13 Q No further, questions. Thank you.

14 THE COURT: Thank you.

15 Mr. Martinez?

16 **CROSS-EXAMINATION IN CAMERA**

17 **BY MR. MARTINEZ:**

18 Q Yes, Ms. Culpepper, what time did you say that you  
19 saw this person?

20 A About 7:30, 7:35 because I was running late.

21 Q And where exactly did you see him?

22 A On Pinestraw Road.

23 Q And do you know exactly --

24 A Correct.

25 Q -- do you know exactly where now?

## Ashley Culpepper - Cross-Examination In Camera by Mr. Martinez

1 A Yeah.

2 Q Could you tell us -- could you tell me the exact  
3 location?

4 A You're going -- well, I'm not there, but if we were  
5 on the road I could show you, but you're coming from a  
6 certain area of the bushes out there on Pinestraw Road  
7 right before you get to the church and a subdivision.

8 Q Is there a park right there?

9 A No, the name of the subdivision, Martinez, is  
10 called Magnolia Park. But there is no park.

11 Q Okay. I'm just saying that that's what you called  
12 it?

13 A Yeah, because the name of that subdivision is  
14 called Magnolia Park, just like the name of the apartment  
15 complex, that you broke into is called [REDACTED] apartments  
16 or [REDACTED]. This is Magnolia Park on Pinestraw  
17 Road.

18 Q Did the solicitors tell you to say that?

19 A No, sir.

20 Q Okay. You said you saw the person -- well, right  
21 there to that railing right there, right?

22 A Yeah.

23 Q And what were your description of him?

24 A You were tall, you weren't white, you were  
25 Hispanic, probably between 30 and 35 to -- I think I told

**Ashley Culpepper - Cross-Examination In Camera by Mr. Martinez**

1 175 to 200; and I was correct.

2 Q You was correct?

3 A Yeah. How old are you?

4 Q 38.

5 A You're 38.

6 Q So I would have been about 37.

7 A Yeah. So two years ago you were --

8 THE COURT: The question is how old were you back  
9 in --

10 THE WITNESS: -- 2014.

11 THE COURT: -- but to protocol is, you ask the  
12 questions, Mr. Martinez.

13 Ask your next question.

14 BY MR. MARTINEZ:

15 Q Do I fit that size?

16 A Yeah. You've lost weight though.

17 Q I've lost weight now?

18 A You look like it.

19 Q So you're saying that I'm less than 190 right now.

20 A I don't know, Mr. Martinez.

21 Q I don't know either. That's why I'm asking you.

22 THE COURT: And her answer was -- what did you say  
23 about her answer, Mr. Martinez?

24 MR. MARTINEZ: Your Honor, she's the one that made  
25 the statement.

**Ashley Culpepper - Cross-Examination In Camera by Mr. Martinez**

1 THE WITNESS: I did.

2 THE COURT: Yes, sir.

3 What do we know about answering when the witness is  
4 asked a question and the witness doesn't know the answer?  
5 What should her answer be.

6 MR. MARTINEZ: Her answer is she doesn't know.

7 THE COURT: That's what she said. I don't know.

8 Do you want the witnesses to make it up and say, oh, he has  
9 -- if they don't know, they don't know.

10 BY MR. MARTINEZ:

11 Q Did this person seem like they was sweating?

12 A Yeah. You actually took a pause and you were  
13 wiping your face and putting on cologne and then you were  
14 right there by my truck, which is why when you  
15 cross-examined me in prior testimony, you said that I said  
16 you looked relieved and you looked -- I don't know, I guess  
17 relieved would have been the answer in my statement.

18 Q Okay.

19 A In --

20 Q You said anxious. So you seen -- you told that you  
21 seen sweat running off of this person's face?

22 A You were wiping sweat when you put your glasses on,  
23 back on your face after you come out of the bushes.

24 Q So the person looked anxious and relieved, like  
25 wipe your face, adjusting glasses.

**Russell Shumard - Direct Examination In Camera by Ms. Campbell**

1 A Yeah. That's exactly what you did.

2 Q That's exactly what I did?

3 A Correct. And I looked in my rear-view mirror and  
4 you crossed over and you got on the sidewalk walking up Two  
5 Notch -- up to Two Notch.

6 Q And which -- towards Two Notch?

7 A Correct.

8 Q Okay.

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

10 THE COURT: Redirect, Solicitor?

11 MS. GODWIN: None, Your Honor.

12 THE COURT: Thank you, Ms. Culpepper, you may step  
13 down.

14 Next witness, please.

15 MS. CAMPBELL: State would call Lieutenant Shumard.

16 THE COURT: All right. Lieutenant if you'd come  
17 around. You're still under oath.

18 **DIRECT EXAMINATION IN CAMERA**

19 **BY MS. CAMPBELL:**

20 Q Lieutenant Shumard, during the course of your  
21 investigation, did you have an opportunity to show a photo  
22 lineup to Ashley Culpepper?

23 A Yes, ma'am.

24 Q And with where did that take place, sir?

25 A I can't remember if I was at headquarters or at her

## Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 house.

2 Q When you showed her the lineup -- I'm going to show  
3 you State's Exhibit Number 2 -- do you recognize that?

4 A Yes, ma'am.

5 Q And is that the lineup you showed her?

6 A Yes, it is.

7 Q And when you showed her the lineup, what, if  
8 anything, did you say to her?

9 A That -- that the suspect wasn't necessarily in the  
10 lineup, to take her time and to take a good look at it.

11 Q Did you do anything to influence her opinion in any  
12 way?

13 A I did not.

14 Q Did you tell her who to pick?

15 A I did not.

16 Q Did anyone else tell her who to pick?

17 A No, ma'am.

18 Q When she viewed the lineup, what was her reaction?

19 A She immediately picked Number 5, Mr. Nathan  
20 Martinez.

21 Q And she indicated that to you?

22 A Yes, she did.

23 Q And once she indicated that to you, what did you  
24 have her do?

25 A I asked her to put her initials somewhere on the

**Russell Shumard - Direct Examination In Camera by Ms. Campbell**

1 image and she did so right there in the left-hand corner.

2 Q So Number 5 is the one she picked?

3 A Yes, ma'am.

4 Q And no one had an opportunity to influence her  
5 during the time you were showing her this lineup?

6 A No, ma'am.

7 MS. CAMPBELL: I don't have anything further.

8 THE COURT: All right. Mr. Martinez?

9 **REDIRECT EXAMINATION IN CAMERA**

10 BY MR. MARTINEZ:

11 Q Mr. Shumard, are you the one who -- was it you or  
12 Investigator Morrison who contacted Bob Hickman?

13 MS. CAMPBELL: Objection, Your Honor.

14 THE COURT: What are you questioning him about, Mr.  
15 Martinez?

16 MR. MARTINEZ: Bob Hickman.

17 THE COURT: I'm not sure who that is.

18 MR. MARTINEZ: That was a witness that I called  
19 that they -- there's a certain area that has camera's that  
20 would have caught at that area, it would have caught me or  
21 whenever walked past there and they called this person to  
22 see if they could see the suspect walking down the street  
23 or walking this area.

24 THE COURT: This is a Neal versus Bigger's hearing  
25 on the identification by Ms. Culpepper.

## Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 MR. MARTINEZ: Yeah, that's -- this is to verify  
2 that nobody was seen in that area.

3 THE COURT: Where is this location of Mr. --  
4 where's this location.

5 MR. MARTINEZ: That's what I'm asking because she  
6 took them -- she took the police to a specific area.

7 THE COURT: And that specific area was on Pinestraw  
8 Road; is that correct?

9 MR. MARTINEZ: Yeah, she took them -- she met the  
10 police and then she took them to the specific area.

11 THE COURT: In Marshall Park Subdivision; correct.

12 MR. MARTINEZ: Yeah.

13 THE COURT: There was specific areas she took them  
14 to where -- Marshall park subdivision; is that correct.

15 MR. MARTINEZ: Magnolia Park.

16 THE COURT: Magnolia Park Subdivision. Okay.  
17 Thank you.

18 So she took them to the Magnolia Park subdivision.

19 MR. MARTINEZ: Yeah. Or it was somewhere. I'm not  
20 sure of the exact location, but she took them to the exact  
21 location and they called Parks -- Mr. Hickman and asked  
22 them to check their video survey to see if the suspect was  
23 seen.

24 THE COURT: Where is -- it was Mr. Hickman?

25 MR. MARTINEZ: Yes, sir.



## Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 THE COURT: Where is Magnolia Park in relation to  
2 Mr. Hickman? Is --

3 THE WITNESS: I can elaborate.

4 THE COURT: I'm trying to figure out the relevance  
5 here. I can't figure it out. It was suggested in this  
6 hearing why we're talking about a third party. I'm not  
7 tracking it, Mr. Martinez.

8 MR. MARTINEZ: She said she saw somebody in a  
9 certain area.

10 THE COURT: Pinestraw Road; is that correct?

11 MR. MARTINEZ: She took the detective to --

12 THE COURT: Magnolia Park.

13 MR. MARTINEZ: She took these detectives to the  
14 area.

15 THE COURT: Okay.

16 MR. MARTINEZ: They have a big surveillance of that  
17 area around or somewhere near that -- that would have seen  
18 the suspect come by there in the area where she's saying.

19 THE COURT: Okay.

20 MR. MARTINEZ: They notified Ben Hickman to check  
21 their cameras to see if anybody matching that description  
22 that was given and there was nobody.

23 THE COURT: Okay. So what does that have to do  
24 with the suggestiveness of the identification by  
25 Ms. Culpepper.

## Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 MR. MARTINEZ: I feel it's got a lot to do with it.

2 THE COURT: It may have to do with her credibility,  
3 but that's not the purpose of this hearing. This is a Neal  
4 versus Bigger's Hearing.

5 The jury's not in here, this is in-camera.

6 BY MR. MARTINEZ:

7 Q So is that the photograph you guys use on your  
8 cases?

9 A You're referring to this exhibit?

10 Q Yes, sir.

11 A Yes, sir.

12 Q Throughout your case, that's the photographic  
13 lineup that you used?

14 A This is one of two photographic lineups that were  
15 used.

16 Q And when did you use the other one?

17 A I can't recall.

18 Q But you did though?

19 A Did what?

20 Q You did use the other traffic lineup?

21 A I can't recall.

22 MR. MARTINEZ: No further questions.

23 THE COURT: Redirect, Solicitor?

24 MS. CAMPBELL: No, sir.

25 THE COURT: Thank you, Lieutenant.

## Russell Shumard - Direct Examination In Camera by Ms. Campbell

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: You may call your next witness.

3 MS. CAMPBELL: That's all from the State, Your  
4 Honor.

5 THE COURT: All right. Mr. Martinez, you have any  
6 evidence and testimony you intend to present on this issue.

7 MR. MARTINEZ: I guess my issue was with Bob  
8 Hickman, but I guess I'll just use that in my defense.

9 THE COURT: All right. Solicitor, I'll be glad to  
10 hear from you.

11 (There was a pause in the proceedings.)

12 THE COURT: All right. Solicitor, I'll be glad  
13 when you're ready.

14 MS. CAMPBELL: Your Honor, we feel like the  
15 testimony presented to you today, there's been no  
16 suggestiveness as far as even showing this lineup and we  
17 would ask that it be admitted.

18 THE COURT: Thank you.

19 Mr. Martinez.

20 MR. MARTINEZ: Your Honor, my objection is still is  
21 same. It's suggestive. The photographic lineup is  
22 produced against the SLED photo lineup policy and  
23 procedure. I'm the only one with a tattoo on as I said,  
24 it's the same argument. It's a violation of my due process  
25 and I'll be able to prove that I've been targeted by SLED

1 as well as by the police with their own evidence.

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

3 All right. Well, I have reviewed -- hand me  
4 State's Exhibit Number 2, please.

5 I have reviewed this photographic lineup of various  
6 -- labeled State's Exhibit Number 4 and State's Exhibit  
7 Number 8 with other witnesses. The photographs are all in  
8 the same location on State's 2 as they were on 4 and 8, the  
9 photographs are all the same. It appears to be six males,  
10 general age, general hair, facial hair, some more balding  
11 than others, perhaps all wearing glasses.

12 I do see that there appears to be -- only because I  
13 have seen Mr. Martinez in person as to his tattoo, where I  
14 would not know that that was a tattoo but for having first  
15 having seen him in person. I do not see any other tattoos.  
16 On Number 3, it's left eyebrow is such -- very bushy and  
17 appears to be of the same relevancy as Number 5, as Mr.  
18 Martinez.

19 There's clearly no suggestiveness in the factors as  
20 far as eyewitness identification have been met by the  
21 testimony of Ms. Culpepper and my ruling would be  
22 consistent with my previous ruling that it is admissible  
23 under Neil versus Biggers. There's no suggestiveness and  
24 also the factors as to the witness identification under  
25 State versus Moore.

1 All right. Anything further, Solicitor?

2 MS. CAMPBELL: No, sir.

3 THE COURT: Mr. Martinez, you have addressed the  
4 Court several times concerning the Court order of the  
5 Honorable James R Barber. Would you hand me up -- would  
6 you have someone hand me up that court order, please, to  
7 refer to.

8 MR. MARTINEZ: Your Honor, they haven't gave us the  
9 clocked copies as well.

10 THE COURT: Just hand up the order.

11 (The document was handed to the Court.)

12 THE COURT: All right. This is an order. It  
13 appears to a copy. It has not been clocked by the clerk.  
14 Case Number SC-14-03361 as to phone number [REDACTED]-2894.

15 What is your motion, Mr. Martinez?

16 MR. MARTINEZ: That was -- they asked it on the  
17 first of March, which is prior to my -- these allegations.  
18 They was tracking my phone and said that there was an  
19 investigation, ongoing investigation from SLED as well  
20 as --

21 THE COURT: This was signed by the judge, 1 April,  
22 2014.

23 MR. MARTINEZ: Yeah, that's what I'm saying --

24 THE COURT: You said the first of March.

25 MR. MARTINEZ: They wanted it -- they started the

1 first of March. It wasn't signed until April.

2 THE COURT: An order is not an order until it's  
3 signed.

4 MR. MARTINEZ: Exactly.

5 THE COURT: Court doesn't start until the judge is  
6 on the bench.

7 MR. MARTINEZ: That's what I'm -- that's what I'm  
8 saying and there's evidence from Mr. Shumard that they was  
9 already tracking my phone prior to -- that they was  
10 tracking my phone prior to getting in contact with them.  
11 That even says that it's Richland County that was tapping  
12 my phone beforehand, not the Forest Acres. It was from  
13 Richland County and SLED. They had an ongoing  
14 investigation on me. And it goes to show that they were  
15 tracking me and targeting me, waiting before any of these  
16 allegations came about.

17 THE COURT: So let me make sure I'm tracking this  
18 right. You're saying this order was issued -- the dates on  
19 it -- the date the judge signed it dealt with 1 April. But  
20 it has been applied for all of them before by an  
21 investigation an ongoing investigation by SLED and Richland  
22 County Sheriff's Department; is that what you're saying.

23 MR. MARTINEZ: That's what the -- that reflects --

24 THE COURT: That's what?

25 MR. MARTINEZ: That's what that states.

1 THE COURT: All right. So -- all right. So  
2 technically the next step of your reasoning, assume there  
3 is an investigation ongoing by SLED and the Richland County  
4 Sheriff's Department --

5 MR. MARTINEZ: It is.

6 THE COURT: -- prior to 27 March '14. Assume that  
7 and then tell me where that goes.

8 MR. MARTINEZ: It is because of the first  
9 allegation had -- from Richland County Sheriff's  
10 Department.

11 THE COURT: All right. The allegations, assuming  
12 then it occurred from Ms. Vasser's February 2014  
13 allegation, then tell me where it goes.

14 MR. MARTINEZ: And then they apply for this --

15 THE COURT: I understand that. I already said  
16 that. If I have already applied for it for Ms. Vasser in  
17 February --

18 MR. MARTINEZ: Now they're tracking --

19 THE COURT: It goes to the judge, they got an  
20 ongoing investigation and the judge didn't sign it until 1,  
21 March, 2014.

22 MR. MARTINEZ: Yeah, so that would make it -- if  
23 they was using it prior to that, it would make everything  
24 they obtained illegal because as you said, it wouldn't  
25 become effective until it was signed.

1 THE COURT: So whatever they obtained prior to 1  
2 April 2014 -- correct?

3 MR. MARTINEZ: Yes.

4 THE COURT: Would not be admissible?

5 MR. MARTINEZ: Yes.

6 THE COURT: Tell me what they have obtained prior  
7 to 1 of April 14.

8 MR. MARTINEZ: Well, I'm hoping -- what I'm hoping  
9 for is that they was tracking the phone -- I'm hoping they  
10 was tracking that phone so then we could see -- we could  
11 see exactly just like Shumard came down and wanted to see  
12 exactly where the phone was at at this time. That's what  
13 I'm asking, if the Court will --

14 THE COURT: How can they be tracking it, even  
15 though they've applied for it if the judge hasn't signed an  
16 order prior to 1 April, 2014? That's what I'm not  
17 tracking.

18 MR. MARTINEZ: Okay. Because an officer, Officer  
19 Cavanaugh told Officer Shumard that they was already  
20 tracking the phone, but there was no minutes on it and this  
21 was prior to the 1st, before it was signed.

22 THE COURT: Tell me the time frames. You're  
23 telling me -- you're representing to the Court that  
24 officers were tracking that phone without a court order?

25 MR. MARTINEZ: That's what they're stating.



**Russell Shumard - Direct Examination In Camera by Mr. Martinez**

1 THE COURT: No, that's what you're saying. You're  
2 representing to this Court that there were officers  
3 tracking this phone number without a court order signed.

4 MR. MARTINEZ: Yes.

5 THE COURT: That's what you're saying.

6 MR. MARTINEZ: Yes.

7 THE COURT: All right. Call your first witness.

8 MR. MARTINEZ: I'd call Mr. Shumard.

9 THE COURT: All right. Mr. Shumard, if you would  
10 come around, you're still under oath.

11 **DIRECT EXAMINATION IN CAMERA**

12 **BY MR. MARTINEZ:**

13 Q Mr. Shumard, when was you contacted by Officer  
14 Cavanaugh and told that they was tracking my phone? Do you  
15 recall?

16 A I first reached out to Mr. Cavanaugh on March 31st  
17 2014. He said that he would get all the -- he would get on  
18 procedure and would give me reports from time to time.  
19 According to my notes, later in that day, or sometime  
20 during that same day he called me to advise that he  
21 discovered your mother -- discovered a phone number and it  
22 was a government issue phone number that was coming out of  
23 minutes. And at the next day he should load up and once  
24 that takes place, they were going to start monitoring,  
25 tracking, pinging the phone.

## Russell Shumard - Direct Examination In Camera by Mr. Martinez

1 Q Okay. And then I was arrested? Not that -- not  
2 that day, but that night up in the early morning on the  
3 2nd, correct?

4 A You were apprehended on the 2nd, yes.  
5 Mr. Cavanaugh had called me approximately at six in the  
6 evening on the first to advise me that they were currently  
7 tracking, pinging, and they did believe they would have you  
8 in custody soon. And then early morning on the 2nd he  
9 called to report the apprehension.

10 Q And at that time, he told you that -- when he  
11 talked to you on the 1st, he told you if they could see  
12 where the pings were, that they could track to see where  
13 I've been at?

14 A On the 31st according to my notes, the only thing  
15 that I can recall is that I asked for his help in  
16 apprehending you.

17 Q So you're saying he was aware that there was a  
18 tracking device on my phone on the 31st, correct?

19 A I don't recall anything about that conversation. I  
20 simply stated to him that I needed assistance in  
21 apprehending a violent fugitive; gave him your name, date  
22 of birth, other particulars. He asked me, Does he have a  
23 phone. And I replied to him that I didn't know, not that I  
24 recall. And that was the extent of your conversation. In  
25 fact, I'd asked him, I said what else do I need to do and

**Russell Shumard - Redirect Examination In Camera by Mr. Martinez**

1 he said nothing.

2 Q Okay. But on the 31st, he stated that -- that I  
3 had a government phone and that they was going to tack it;  
4 is that correct?

5 A Correct.

6 Q Okay.

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

8 THE COURT: Solicitor?

9 **CROSS-EXAMINATION IN CAMERA**

10 BY MS. CAMPBELL:

11 Q And they indicated that they were going to start  
12 tracking it on the 1st?

13 A Correct. According to my recollection and my  
14 notes, he discovered the phone number, determined it was  
15 out of minutes, that it was a government phone, however,  
16 the next day it should start to load up again and at that  
17 time he would start to monitor the phone, pinging or  
18 tracking it or whatever the term they use.

19 Q Okay.

20 MS. CAMPBELL: Thank you, Your Honor.

21 THE COURT: All right. Redirect, Mr. Martinez?

22 **REDIRECT EXAMINATION IN CAMERA**

23 BY MR. MARTINEZ:

24 Q He was aware that there was a phone that was being  
25 tracked correct?

## Russell Shumard - Redirect Examination In Camera by Mr. Martinez

1 A I don't know.

2 Q So when he told you that he was going to start back  
3 up tomorrow that meant that he was assuming that he knew  
4 about the phone, he had gotten a recollection of  
5 information about a phone?

6 A He said he found out your phone number -- like I  
7 said, I'm referring to my notes. He discovered you had a  
8 phone number, that it was a government issue, it was out of  
9 minutes. The next day it would load up on the first and  
10 that he would start to monitor the phone.

11 Now, as far as his telling me, well, we've already  
12 checked it and we've been pinging it, he didn't mention  
13 that. He didn't say that.

14 Q But he said that -- you said coming like -- or did  
15 he say something like that or did you say something like  
16 you wanted to see -- you mentioned something about being  
17 able to ping it to see where it's been in the past week  
18 before that -- prior to that?

19 A No, sir.

20 MR. MARTINEZ: I beg the Court's indulgence.

21 THE COURT: Yes, sir.

22 BY MR. MARTINEZ:

23 Q Right here in your notes, you stated that  
24 Cavanaugh, minutes on government Verizon, something  
25 government, use 03/29, 3:56 p.m., Killian Road -- okay.

## Russell Shumard - Redirect Examination In Camera by Mr. Martinez

1 Minutes on government Verizon something. It says use  
2 03/29, 3:56 p.m., I-77 Killian Road, Mom, 3:18 tried to  
3 call last week to see where he's been.

4 This is your notes -- it says that the phone was  
5 used that Detective Cavanaugh told you the minutes on  
6 government Verizon, it says government, GOVT and it says  
7 there was use on the 29th at 2:56 p.m. on I-77 Killian  
8 Road, Mom, 2:18, tried to call.

9 THE COURT: Isn't the question not if it was used  
10 -- not used prior to the warrant, but when the officer  
11 received that information that you use from the officers.

12 MR. MARTINEZ: This is Mr. Shumard's notes from --

13 THE COURT: I understand.

14 MR. MARTINEZ: -- Cavanaugh. And from these notes  
15 right here, it states that the order, my phone was being  
16 tracked prior to April 4th -- or April 1st.

17 THE COURT: Let me see the notes.

18 (The sheriff handed the document to the Court.)

19 THE COURT: When did you receive this information  
20 that's on these notes, Lieutenant?

21 THE WITNESS: If I could look at the document, Your  
22 Honor?

23 THE COURT: You don't have it?

24 THE WITNESS: I have it in my case file.

25 THE COURT: That's why I was going to look at it.

1 I thought you had it. I thought you were reading from your  
2 notes.

3 THE WITNESS: No, these are investigative notes  
4 that I typed up.

5 (The witness was given the notes.)

6 THE WITNESS: These are my notes as to the exact  
7 date that I recorded this information. I did -- I do stand  
8 corrected about the information. I did make this note. I  
9 do remember this conversation with Mr. Cavanaugh as to what  
10 date this was that he was giving me this information. I  
11 can't revise. I think I've got six pages -- you know a few  
12 pages of this handwritten stuff throughout the case.

13 THE COURT: All right.

14 You can hand them back to Mr. Cavanaugh -- excuse  
15 me, Mr. Martinez.

16 All right. Mr. Shumard.

17 MR. MARTINEZ: Nothing further from this witness,  
18 Your Honor.

19 THE COURT: Solicitor?

20 MS. CAMPBELL: Nothing further.

21 THE COURT: Thank you, Lieutenant.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: All right. Next witness.

24 MR. MARTINEZ: Your Honor, I'd like to call -- I'd  
25 like to call, his name is Berube, The officer that issued

1 that? Or the one that issued that.

2 THE COURT: I don't know how to pronounce it yet  
3 either, B-E-R-U-B-E.

4 MR. MARTINEZ: Yeah.

5 THE COURT: Is he available?

6 MS. CAMPBELL: We don't have him here, but we can  
7 get him.

8 THE COURT: All right. Let's have him here in the  
9 morning, along with the clocked, sealed file.

10 All right. Other witnesses.

11 MR. MARTINEZ: I'd like to have Cavanaugh present  
12 too to testify to that as well as I'd like a court order to  
13 request all the information that they gathered, that way we  
14 can see -- I'd like to request it and see exactly where the  
15 phone was at, if it was -- I'd like to show that it wasn't  
16 at these areas that they was tracking at that time. It  
17 doesn't show there that it wasn't at the areas at the time  
18 that they're saying that these occurred.

19 MS. CAMPBELL: By his own admission, it's his  
20 mother's phone.

21 MR. MARTINEZ: If it's my mother's phone, it would  
22 be at her job the whole time. It wouldn't be moving around  
23 because my mom has to work. She works at the -- it would  
24 have stayed at her job, it wouldn't be moving around. But  
25 my mom --

1 THE COURT: So they tracked you by your mother's  
2 phone?

3 MR. MARTINEZ: It's my mother's phone that I used.  
4 My mother had her own phone. I used this phone and that's  
5 how they got the number because of Heidi Jackson. She knew  
6 that I was using the phone.

7 THE COURT: Okay.

8 MR. MARTINEZ: And it's --

9 THE COURT: So it wasn't -- it was in your mother's  
10 -- it was a government issue to your mother that was then  
11 provided to you.

12 MR. MARTINEZ: Yes.

13 THE COURT: And this was your phone?

14 MR. MARTINEZ: Yes.

15 THE COURT: Your phone as far as de facto, it was  
16 in your pocket.

17 MR. MARTINEZ: Yes, sir. That's why that thing  
18 says call from mom because they have a -- as the thing  
19 says, it says they have a GPS -- they got everything that  
20 was -- text messages, they were getting everything from my  
21 phone. They was tracking prior to everything -- I'm hoping  
22 they have all the information to -- because they were -- as  
23 they said because they were GPS'ing me. I'm not sure if it  
24 was -- I want to be able to show my exact location on these  
25 dates and times that they're claiming these incidents



1 happened.

2 THE COURT: Do y'all have that information,  
3 Solicitor?

4 MS. CAMPBELL: Your Honor, we do not have that  
5 information. And I guess this is the first I heard that he  
6 had a -- is this an alibi?

7 THE COURT: Well, I think, the way I'm tracking, is  
8 that the assumption is made that he has this phone in his  
9 pocket and he can be tracked by that phone in his pocket.  
10 And during the offenses, his phone, if it's -- I don't know  
11 about that at all -- I mean, if the phone's used and it was  
12 dialed from another location at the time of the event, it  
13 could be in the nature of alibi, but it also could be in  
14 the nature of Brady. I don't know the answer to that  
15 question.

16 But -- and I've never -- I've issued these orders  
17 in the past, but I don't get the returns as far as what  
18 information may have been --

19 MS. CAMPBELL: And you understand too, I mean,  
20 because it was sealed, of course, we don't have that  
21 information either.

22 THE COURT: I'm not sure what information is  
23 actually sealed, if it's only the order and an affidavit  
24 because as a circuit judge, I've never had an officer come  
25 back to me with the information. It's only that we see

1 this and it would be on the return. But I don't file  
2 anything. I think just the order and the affidavit of  
3 Mr. B, I don't know how to pronounce it, would be sealed.  
4 And that file number should be located in the clerk's  
5 office.

6 MS. CAMPBELL: Yes, sir, we've been attempting to  
7 locate that file in the clerk's office and the clerk's  
8 office can't find it.

9 THE COURT: I'm not complaining about either the  
10 solicitor's office nor Mr. Martinez whatsoever. I'm not  
11 blaming or -- either party, it's one of -- I don't mean it  
12 like that.

13 MS. CAMPBELL: I will have those two officers here  
14 tomorrow morning with whatever information --

15 THE COURT: Let's see Detective Cavanaugh and  
16 detective -- however you pronounce it, B-E-R-U-B -- I don't  
17 know how to pronounce it. And any and all information in  
18 the file they have on the tracking because this order,  
19 although issued 1 April, if there's -- if there's -- this  
20 is a different issue, but this order authorizes the agency  
21 to -- the provider to provide information and signal  
22 various following information for a period of 30 days prior  
23 to the entering of the order.

24 So I don't know what they have or have not seized.

25 MS. CAMPBELL: I'll find out.

1 THE COURT: All right. And they should have  
2 Detective Cavanaugh and --

3 Any other witnesses that are present this  
4 afternoon, Mr. Martinez, that you would like to call.

5 MR. MARTINEZ: No, Your Honor.

6 THE COURT: All right. You let me know what  
7 matters you want me to address before we recess for the  
8 day.

9 MR. MARTINEZ: I want to discuss the issue with the  
10 redoing the DNA.

11 THE COURT: That evidence is not before me.  
12 What do you mean you want to discuss the issue on  
13 it.

14 MR. MARTINEZ: They -- I would ask -- I was asked  
15 about redoing the DNA.

16 THE COURT: That's not up to the Court.

17 MR. MARTINEZ: All right.

18 THE COURT: I mean you and the solicitors may  
19 discuss it -- you through your -- you may discuss it with  
20 them -- they may discuss it with you, but that's not up to  
21 the Court. I'm not -- I don't know nothing --

22 MS. CAMPBELL: I think --

23 THE COURT: That's just not a matter before the  
24 Court. Not at this time.

25 MR. MARTINEZ: Okay. Thank you.

1 THE COURT: All right. Anything further,  
2 Solicitor?

3 MS. CAMPBELL: No, Your Honor.

4 THE COURT: Okay. Court will be in recess until  
5 9:30. Thank you.

6 THURSDAY, DECEMBER 1, 2017

7 THE COURT: Good morning, Mr. Martinez.

8 MR. MARTINEZ: Good morning.

9 THE COURT: Solicitor, Madam Clerk.

10 MS. CAMPBELL: Good morning.

11 THE COURT: Sheriffs, Mr. Bailiff.

12 All right. Just a matter of -- an administrative  
13 matter, I know at the end of the day yesterday, Mr.  
14 Martinez requested Detective Cavanaugh, and I apologize to  
15 the agent, SLED agent, I -- every time I have pronounced  
16 your name, I still don't think I got it right. Would you  
17 tell me the pronunciation of your name, please.

18 THE OFFICER: It's Berube, sir.

19 THE COURT: Berube?

20 THE OFFICER: Yes, sir.

21 THE COURT: I wanted to say Berube. You know, just  
22 like it reads. All right.

23 They're here, however, I would like to press on  
24 with the jury and set a time rather than have these  
25 officers sit here while witnesses are being called for --

1 for them to return, perhaps sometime around lunchtime, then  
2 I can give the jury a little bit of an extended lunch --  
3 well, in fact, Madam Clerk, order the jury's lunch today.

4 THE CLERK: Yes, sir.

5 THE COURT: All right. And that will take care of  
6 that and like I say, rather than have the officers just sit  
7 here and the jury be held captive back there also. So  
8 maybe I'll have the officers come back at 1 o'clock. I  
9 realize that's disruptive to y'all's schedule. I also  
10 realize y'all are similar to just about everybody in this  
11 courtroom. None of us were drafted. I actually asked for  
12 this job. So will that suit you, Solicitor?

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: Would that -- you got any objections to  
15 that, Mr. Martinez.

16 MR. MARTINEZ: I would just ask if they could turn  
17 over the original copy or the original clocked warrant with  
18 the --

19 THE COURT: These officers are not the custodians  
20 of the original. The original would be filed with the  
21 clerk of court's office and I can, of course, have the --  
22 subpoena the -- and I don't have to subpoena, I can call  
23 the clerk's office and have one of the clerks or deputy  
24 clerks appear before the Court as far as the file copy.  
25 These officers are not the custodian of the records of the

1 original affidavit or warrants. Those are filed with the  
2 clerk's office. So...

3 MR. MARTINEZ: The officers had a copy of the --

4 THE COURT: That's not what you asked me. You know  
5 I pay attention to detail. I respond to the questions  
6 asked. You said you'd like to have clocked copy.

7 MR. MARTINEZ: Yes, sir.

8 THE COURT: Clocked copies are filed with the  
9 clerk's office. So ask me your next question.

10 MR. MARTINEZ: Can they turn over the information  
11 that they have?

12 THE COURT: Do you have any additional information  
13 from the officers, Solicitor?

14 MS. CAMPBELL: No, sir.

15 THE COURT: All right.

16 MR. MARTINEZ: All right. Thank you.

17 THE COURT: And I'll have the clerk -- in fact,  
18 have one of the clerks or deputy clerks available during  
19 that, that hearing.

20 I also received a note from the jury that I will  
21 respond to: December 1st, 2016. We, the jury have a few  
22 questions. Number one: Is it okay to take notes in the  
23 courtroom. My answer to that is yes.

24 A few jurors would like to do this. I will allow  
25 that. I give them a charge on that.

1           Based on some questioning, they want to know if  
2 this is a retrial. A lot of testimony refers to either  
3 pretrial or maybe a different trial itself. When reference  
4 is made to a previous statement in a previous trial, is  
5 this part of the facts as well. I can certainly respond to  
6 that.

7           Is this a retrial -- if this is a retrial, can we  
8 have knowledge of why it did not come to completion.

9           The fourth question refers to a factual matter that  
10 would -- I would not share with either the solicitor nor  
11 the defendant because the manner in which y'all try the  
12 case is up to the attorneys or up to Mr. Martinez as to  
13 what evidence you choose to present or not to present.

14           So I'll address those issues.

15           Madam Clerk, would you -- do have you paper and  
16 pencil for the jury?

17           THE COURT REPORTER: She stepped out, Judge.

18           THE COURT: I'm sorry.

19           THE COURT REPORTER: She left to go get lunch  
20 orders.

21           THE COURT: I got you. All right. Well, when she  
22 completes that, we'll do that.

23           All right. Upon our return or before our clerk  
24 returns, anything further you would have before the jury  
25 comes in, Solicitor?

1 MS. CAMPBELL: Just two things, Your Honor. I can  
2 release these two officers until one o'clock?

3 THE COURT: Yes, release them until one o'clock and  
4 also have a clerk or a deputy clerk, custodian of the  
5 records for the County -- I take it Richland County in  
6 which the document is filed, available also.

7 MS. CAMPBELL: And then, just, Your Honor, you said  
8 that you would respond about this trial and the prior  
9 trial, their question about that. As you know, of course,  
10 it was absolutely no fault -- it never got to a jury.

11 THE COURT: Correct.

12 MS. CAMPBELL: A mistrial was declared by you based  
13 on standby counsel's --

14 THE COURT: Extraneous matters, correct.

15 MS. CAMPBELL: Extraneous matter. And we would  
16 just inquire, Your Honor, that you address the jury,  
17 exactly how you would attend because -- and just because  
18 I've, you know, been watching the news and everything  
19 there's been mistrials and things of that nature and, of  
20 course, it never got to a jury and I didn't know how you  
21 were going to respond to that and I would just ask.  
22 Because I don't know.

23 THE COURT: And I guess you think I do, Solicitor.

24 MS. CAMPBELL: Sir?

25 THE COURT: I guess you think I do know how I'm



1 going to respond?

2 MS. CAMPBELL: I assume, you do, yes, sir.

3 THE COURT: Thank you.

4 Mr. Martinez?

5 MR. MARTINEZ: I just ask that you tell them the  
6 truth, the truth of why there was a mistrial.

7 THE COURT: I never not tell the truth to a jury,  
8 Mr. Martinez. But, that's well taken. There's certain  
9 things within the limits of the law that I would not and  
10 could not say because of ethical consideration concerning  
11 the reasoning of why I declared a mistrial.

12 And the issue actually came up because of, in my  
13 memory, questioning by you, cross-examination referencing a  
14 previous trial. Typically when there has been a trial and  
15 it has mis tried or it has either gone to verdict, been  
16 reversed and had to be retried or it has been mis tried,  
17 typically the questioning by the attorneys, and in this  
18 case, the attorney and the pro se defendant, the questions  
19 should be formed, In a previous proceeding, because as you  
20 know there are different proceedings during the course of a  
21 trial both preliminary hearings, motion hearings,  
22 competency hearings, Schmerber hearings perhaps. And  
23 therefore, there is recorded testimony in some cases that  
24 -- that result in the ability of attorneys -- pro se  
25 defendants to cross-examine witnesses or examine witnesses

1 on their previous testimony and previous proceedings. I  
2 assume when you say you want me to tell them the truth --  
3 step up here, please, Mr. Kata.

4 Just Mr. Kata, Solicitor.

5 You have any objections to that?

6 MS. CAMPBELL: No, sir.

7 (There was a bench conference with Mr. Kata out of  
8 the hearing of the jury and the Court Reporter.)

9 (Mr. Kata conferred with Mr. Martinez.)

10 MR. KATA: May I approach, Your Honor?

11 THE COURT: Yes, sir, of course.

12 No objection, Solicitor?

13 MS. CAMPBELL: No, sir.

14 (There was a bench conference with Mr. Kata out of  
15 the hearing of the jury and the Court Reporter.)

16 THE COURT: All right. We still have a few moments  
17 of time waiting on our clerk.

18 Anything further, Solicitor?

19 MS. CAMPBELL: No, Your Honor, were you going to  
20 tell us what you were going to say to the jury about the  
21 mistrial? My concern is I don't want them to think it went  
22 to the jury and that there was a deadlock or something of  
23 that nature because that didn't happen.

24 THE COURT: Right. I will probably tell them  
25 something along the lines that there have been previous

1 hearings in this case and in those hearings there has been  
2 sworn testimony taken, that, again, the questioning by the  
3 attorneys or by Mr. Martinez is not evidence. It's the  
4 responses by the witnesses that in those previous  
5 proceedings, based on matters that have arose extraneous to  
6 the presentation of the case by the State or the defense, I  
7 declared a mistrial. That I declared it and the case never  
8 went to completion by the -- of even the State's case and  
9 that they should not consider in any manner the fact that a  
10 mistrial had been previously declared. Then I would  
11 probably go into, again, you recall that questioning by the  
12 attorneys or by Mr. Martinez is not evidence. The evidence  
13 is the responses from the witnesses sworn under oath and  
14 that is what they should consider along with any physical  
15 items of evidence.

16 And, of course, I'm trying to think, it's -- I  
17 think Defense 20, maybe and 21 are statements that was  
18 offered by Mr. Martinez; 20 and 21, one of them being the  
19 statement of Ms. Briona Hurshman and the other one being --  
20 the second statement from Ms. Hurshman -- and a second  
21 statement. And, of course, that's in evidence, you may  
22 consider that and give it whatever weight and value you  
23 think you deem appropriate and then I'll, of course,  
24 respond to the factual question that that's -- the  
25 presentation of evidence is up to the parties.

1 MS. CAMPBELL: Yes, Your Honor, we were just -- as  
2 long as you're going to put the language that you had to  
3 declare a mistrial prior to the completion of the State's  
4 case.

5 THE COURT: Yes.

6 All right. Madam Clerk? We ready?

7 THE CLERK: Yes -- I'll have to get my note pads.

8 (There was a pause in the proceedings.)

9 THE COURT: Anything further, Solicitor?

10 MS. CAMPBELL: No, sir.

11 THE COURT: Mr. Martinez?

12 MR. MARTINEZ: No, sir.

13 THE COURT: All right. Thank you.

14 (There was a pause in the proceedings.)

15 THE COURT: All right. Madam Clerk?

16 THE CLERK: They have them now.

17 THE COURT: They what?

18 THE CLERK: They have their pencils and pads.

19 THE COURT: Anything before we bring in the jury?

20 Last call? Solicitor, Mr. Martinez?

21 (No response.)

22 (The jury entered the courtroom at 10:27 a.m.)

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

24 THE COURT: Thank you.

25 Good morning. As you can see, I am still operating

1 on judicial daylight time as opposed to light savings time.  
2 I -- I have -- as an initial matter, I have reviewed the  
3 note that I received from the jury and I will respond to  
4 these questions.

5 As far as note taking, you may take notes during  
6 the trial of this case, however, please remember that some  
7 people are better note takers than others. Jurors notes  
8 should not be given any greater weight than the  
9 recollection of other jurors. The recollections of  
10 individual jurors should be considered as reliable as notes  
11 taken by other jurors.

12 I would also advise you that when you're taking  
13 notes, you may not notice body language, the demeanor, you  
14 know, just looking down and writing, of a particular  
15 witness and, of course, those factors, the demeanor, the  
16 body language, the way a person testifies could be used by  
17 you as one factor in deciding -- among many others -- in  
18 deciding the credibility of a particular witness. I would  
19 also advise that during the course of the trial, you may  
20 not take your notes to your jury room. They would be  
21 secured by the clerk's office during breaks and during  
22 luncheon recesses and overnight recesses. Those notes  
23 would not be available to you until the case was sub --  
24 available to you in your jury room until the case was  
25 submitted to you for your deliberations.

1 Just administratively, if you would just write your  
2 number, your juror number, on the note when you go out, if  
3 you would just turn them upside down on your chair. No one  
4 would have access to them except for security purposes by  
5 the clerk's office. I hope that responds adequately to  
6 your note taking request. And does everyone that wishes to  
7 take notes have pen and pencil? If anyone doesn't, just  
8 raise your hand.

9 (No response)

10 THE COURT: All right. Thank you. The next  
11 question, Is this a retrial? A lot of testimony refers to  
12 pretrial or maybe a different trial itself. When reference  
13 is made to a previous statement in a previous trial, is  
14 this part of the facts as well?

15 And kind of coupled with that, hand in hand to  
16 question 3, if this is a retrial, can we have knowledge of  
17 why it did not come to completion.

18 In answering that and kind of blending those two  
19 questions, the case was previously called for trial.  
20 During that trial, I declared a mistrial before the --  
21 before the completion of the case. That had nothing to do  
22 with the parties. In fact, the stage of the trial, the  
23 State had not yet completed presentation of its case in its  
24 case in chief. So it did not -- as I say, the case never  
25 was completed, was never submitted to that trial jury.

1       When a mistrial is declared, parties go back to  
2 their original position. Of course, as you know, I have my  
3 fine court reporter and she takes down everything that is  
4 said whether by me, the attorneys, Mr. Martinez, the  
5 witnesses, what have you. So a transcription is available.  
6 It is available to the parties. So you could have prior  
7 sworn testimony and, of course, that can be used by the  
8 parties in the formulation of questioning, proper  
9 questioning.

10       The fact that there was a mistrial, that was solely  
11 my decision based on the law of -- I follow -- not I  
12 follow, the law as it is and my interpretation of the law  
13 was warranted. Again for no fault of the parties  
14 whatsoever and everybody goes back to the position they  
15 were in prior to that -- prior to the mistrial.

16       Generally, questions post mistrial in the next  
17 trial or whatever it may be, are generally formed along the  
18 line, in a prior hearing. So the fact there was a prior  
19 trial that I declared a mistrial in that never went to  
20 completion, is really not relevant. It's not relevant to  
21 whether or not the State proves its case beyond a  
22 reasonable doubt, not relevant to the presumption of  
23 innocence of Mr. Martinez. Y'all are selected as a fair  
24 and impartial jury to determine the facts of this case from  
25 the evidence you hear in this courtroom, reasonable

1 inferences you think may properly be drawn and the law as I  
2 tell you the law is.

3 Kind of a bootstrap to that, as you recall in my  
4 opening to you or in my initial remarks, the questioning by  
5 the State or the defense, the questions themselves are not  
6 evidence. The responses of the sworn witnesses is the  
7 evidence in the case and that, of course, the questions are  
8 the framework by which the evidence is extracted, testified  
9 to from the witnesses who have been sworn before you under  
10 oath before you.

11 So that -- that would be -- that would be my  
12 response. It was a judicial decision based on my  
13 interpretation of the law. The fault of none of the  
14 parties whatsoever, fault of none of the witnesses  
15 whatsoever that have or may yet to be called to testify.

16 As to your fourth question, Madame Forelady, ladies  
17 and gentlemen jury, I cannot respond to a factual question.  
18 The presentation is up to the parties as they choose to  
19 present it whether it be the State or the defense. That's  
20 entirely up to them. I rule on the admissibility of  
21 evidence. I rule on objections and such like that, but  
22 what may be admissible -- but I don't share with the  
23 parties factual questions. I don't determine for the  
24 parties what they should or should not attempt to present  
25 into evidence. So that's entirely up to you. As a wise



1 judge once said, you don't prove a case on a pencil point,  
2 a pinpoint. So you've got certain testimony before you.  
3 You do with it what you deem fit and appropriate.

4 But remember keep an open mind. You don't know  
5 what the witness or the next witness or the next witness or  
6 the next witness may testify to you that is then presented  
7 to you.

8 But I have no opinion about the facts. The law  
9 does not allow me to have an opinion about the facts of the  
10 case. I'm a gate keeper of the evidence and based on my  
11 understanding of the rules of evidence, the case law, the  
12 parties present what they deem is appropriate. I determine  
13 if it is admissible and you determine the weight and the  
14 value and the credibility to be given to it in determining  
15 what the true facts are and applying those facts to the law  
16 that I will tell you.

17 So I hope that responded fully an completely and  
18 appropriately, Madame Forelady, ladies and gentlemen.

19 Thank you again for your patience with the Court;  
20 nothing to do with the parties. They weren't here on time,  
21 they were here early. And I -- as you know, I'm not -- my  
22 time management skills should be sharpened, but we'll  
23 attempt to continue to move the case forward. Thank you,  
24 thank you very much.

25 Any objection to anything I've told the jury,

1 Solicitor? If either party has, I'll be delighted to have  
2 the jury step out. I'm not sure the jury will be  
3 delighted, but they can blame it on me.

4 MR. MARTINEZ: No, sir.

5 MS. GODWIN: No, sir.

6 THE COURT: All right. Thank you very much.

7 Ladies and gentlemen, please continue to give the  
8 parties your complete and undivided attention as you have  
9 done throughout the trial of this case.

10 Solicitor, you may call your next witness.

11 MS. GODWIN: State calls Melissa Rone.

12 THE COURT: And I have -- some of the witnesses are  
13 outside of the courtroom because of my ruling, again, on  
14 sequestration. I have a number of witnesses who are  
15 allowed to stay, a number are not under my interpretation  
16 of the law. I tell you that so that you don't think  
17 they're being disrespectful to you or the Court. They're  
18 following my court order.

19 THE COURT: All right. Yes, ma'am, if you would  
20 come around to our bailiff, this gentleman here, to be  
21 sworn.

22 MELISSA RONE,

23 having been duly sworn, testified as follows:

24 THE CLERK: Please have a seat. State your full  
25 name for the record.

## Melissa Rone - Direct Examination by Ms. Godwin

## DIRECT EXAMINATION

1  
2 BY MS. GODWIN:

3 Q If you could, state your name?

4 A Melissa Rone.

5 THE COURT: And would you speak up for me a little  
6 bit, please, Ms. Rone.

7 THE WITNESS: Okay.

8 THE COURT: If you can pull the microphone a little  
9 bit closer perhaps.

10 THE WITNESS: Melissa Rone.

11 THE COURT: Thank you.

12 BY MS. GODWIN:

13 Q Thank you, Ms. Rone.

14 Will you please tell the jury where you live. We  
15 don't need the exact street address, but just generally.

16 A Where I live?

17 Q Uh-huh.

18 A [REDACTED] Hunter's Drive, Camden.

19 Q Okay. And what do you do in Camden?

20 A I'm a cosmetologist.

21 Q Cosmetologist?

22 A Uh-huh.

23 Q And where do you work?

24 A New Dimensions.

25 Q And New Dimensions is what?

## Melissa Rone - Direct Examination by Ms. Godwin

1 A It's a beauty salon.

2 THE COURT: I apologize, Solicitor, I cannot hear.

3 BY MS. GODWIN:

4 Q Just speak up a little bit --

5 A Okay.

6 Q -- so the jury can hear you?

7 MR. MARTINEZ: Your Honor --

8 THE COURT: Yes, sir, I was going to address you.

9 Yes, sir, Mr. Martinez?

10 MR. MARTINEZ: I object. This is under rule 402;  
11 this is irrelevant inadmissible hearsay. It's evidence --

12 THE COURT: I haven't even heard a question yet  
13 except this young lady works in Camden as a cosmetologist.

14 MR. MARTINEZ: It has no -- she has nothing to  
15 offer to the case, actual --

16 THE COURT: The solicitor hasn't asked a question  
17 yet. I can't rule on a question that hasn't been asked as  
18 yet, Mr. Martinez.

19 MR. MARTINEZ: All right.

20 THE COURT: All right. And that was 402?

21 MR. MARTINEZ: Yes, sir.

22 THE COURT: Okay. Thank you.

23 Solicitor, you may ask your next question.

24 MS. GODWIN: Thank you, Your Honor.

25 BY MS. GODWIN:

## Melissa Rone - Direct Examination by Ms. Godwin

- 1 Q So you said you worked at a beauty salon?
- 2 A Yes, ma'am.
- 3 Q Were you working there in 2014?
- 4 A Yes, ma'am.
- 5 Q During that time, did you have an employee by the  
6 name of Briona Hurshman?
- 7 A Yes, ma'am, yes, I did.
- 8 Q And I want to turn your attention back to March  
9 27th of 2014. Do you remember that morning?
- 10 A Yes, ma'am.
- 11 Q Were you working?
- 12 A Yes, ma'am.
- 13 Q And at any point did you have any contact with  
14 Ms. Hurshman?
- 15 A Yes, ma'am, I did.
- 16 Q Can you please tell the jury about that?
- 17 A Yes, ma'am. She called that morning while I was  
18 getting my son ready for school and she told me she was not  
19 going to be at work, that she wasn't going to be there.  
20 And I asked was everything okay. And she said no, she  
21 wouldn't be there.
- 22 Q And was that usual for her to do?
- 23 A No, ma'am. She'd never missed a day of work.
- 24 Q So after you received that call, did you do  
25 anything?

**Melissa Rone - Cross-Examination by Mr. Martinez**

1 A Yes, ma'am. I did. I called a friend of mine that  
2 worked with her husband, and I called and asked him could  
3 he talk to her husband and see if everybody was okay and he  
4 said, yes, he's here right now. He said everything's fine.  
5 I said, no, everything's not fine.

6 Q Okay. And why did you call that person?

7 A Because I was worried about her because that wasn't  
8 typical of Briona.

9 Q Okay.

10 MS. GODWIN: I don't have any other questions for  
11 you.

12 THE COURT: Thank you, Solicitor.

13 Mr. Martinez?

14 **CROSS-EXAMINATION**

15 **BY MR. MARTINEZ:**

16 Q So she just called you and told you that she was  
17 not coming to work?

18 A Yes, sir, she did.

19 Q Did you hear anybody else's voice or any reason why  
20 she wasn't coming to work?

21 A No, sir, I didn't.

22 MR. MARTINEZ: Nothing further, Your Honor.

23 THE COURT: Redirect, Solicitor?

24 MS. GODWIN: Nothing, Your Honor.

25 THE COURT: Thank you, Solicitor.

**Ashley Culpepper - Direct Examination by Ms. Godwin**

1 Thank you, Ms. Rone, you may step down. You may be  
2 excused.

3 All right. Solicitor, you may call your next  
4 witness.

5 MS. GODWIN: The State calls Ashley Culpepper.

6 THE COURT: All right. Ms. Culpepper, if you'd  
7 come around and join us, please.

8 THE WITNESS: Yes, sir.

9 ASHLEY CULPEPPER,  
10 having been duly sworn, testified as follows:

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

13 THE WITNESS: Ashley Culpepper.

14 THE COURT: All right. Solicitor.

15 MS. GODWIN: Thank you, Your Honor.

16 **DIRECT EXAMINATION**

17 BY MS. GODWIN:

18 Q Good morning Ms. Culpepper.

19 A Good morning.

20 Q Can you tell the jury where you live?

21 A In Forest Acres.

22 Q And how long have you lived there?

23 A For 23 years.

24 Q Okay. So in 2014, you were living there?

25 A Yes, ma'am.

**Ashley Culpepper - Direct Examination by Ms. Godwin**

1 Q I want to take your attention back to March 27th of  
2 2014. Do you remember that day?

3 A Yes, ma'am.

4 Q What were you doing that day?

5 A That morning I did our normal routine. My children  
6 and I got up and ready for us to go to school and as I'm  
7 driving down Pinestraw Road, this man just appeared right  
8 in front of my truck.

9 Q Okay. I want to show you -- so you said -- I want  
10 to back up just a second. You said you were taking your  
11 daughters to school. So y'all had gotten ready --

12 A Yes, ma'am. I had to take my daughter to my mother  
13 and then my son to his daycare on Bethel Church Road.

14 Q Okay. About what time in the morning was that?

15 A It was about 7:30, 7:35.

16 MS. GODWIN: Beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 (State's Exhibit Number 93 was entered into  
19 evidence.)

20 THE COURT REPORTER: This is State's 93.

21 THE COURT: Say again?

22 THE COURT REPORTER: 93.

23 THE COURT: Okay.

24 MS. GODWIN: May the witness step down?

25 THE COURT: Yes, ma'am, she may, just keep your



**Ashley Culpepper - Direct Examination by Ms. Godwin**

1 voice up when you're away from the microphone.

2 Mr. Kata you can move around if you like.

3 BY MS. GODWIN:

4 Q If you'll hold this so you can show the jury  
5 exactly where you were.

6 All right. First I want to ask, do you recognize  
7 this?

8 A Yes, ma'am.

9 Q And what is this?

10 A It's a map of Forest Acres.

11 Q And this is where you were that day?

12 A Yes, ma'am.

13 Q Okay. If you could use that just so the jury -- so  
14 we're not in the way, would you just show the jury exactly  
15 where you were?

16 A Yes, ma'am. He's right about -- right in here.

17 THE COURT: How about turn to the side so her voice  
18 is going toward the court reporter.

19 MS. GODWIN: Okay.

20 THE COURT: Thank you.

21 BY MS. GODWIN:

22 Q So which route were you traveling, if you could  
23 just kind of show them that?

24 A I am coming down Pinestraw Road to get on circle  
25 where my parents live and he's right about -- right in

## Ashley Culpepper - Direct Examination by Ms. Godwin

1 here.

2 Q Okay. I don't want to get there yet.

3 And are you familiar with where Bethel Church Road  
4 is on this map?

5 A Yes, ma'am because my children's daycare is right  
6 on Bethel Church Road.

7 Q So where is Bethel Church?

8 A This is Bethel Church Road.

9 Q And that --

10 A It goes all the way up here.

11 Q Okay. And that connects to the area where you  
12 were?

13 A Yes, ma'am.

14 Q Okay. You can have a seat back up in the witness  
15 stand.

16 When you were driving your children to school that  
17 morning, did anything out of the ordinary happen?

18 A Yes, ma'am.

19 Q And what was that?

20 A There was just a man that just -- he just come from  
21 underneath the debris -- the bushes right there right  
22 beside my truck. I mean I was scared he was so close.

23 Q Well, you say he came out of the bushes. Can you  
24 describe that area to the jury?

25 A Yeah. There's an area that runs along there.

## Ashley Culpepper - Direct Examination by Ms. Godwin

1 There's a fence and there's just overgrown bushes and weeds  
2 and he could have been walking on the road, but he was not,  
3 he just came, all of a sudden he just appeared from the  
4 debris and then started walking on the road.

5 Q And this person who came from the debris, can you  
6 describe what he looked like?

7 A Yes, ma'am. He was tall, Hispanic. I -- I would  
8 guess about 30, 35 years of age and glasses on, a beanie,  
9 he was wearing all black and at 7:30, 7:35 in the morning,  
10 you just don't see people crawling out of bushes dressed in  
11 all black. It just seemed suspicious to me and I was  
12 worried.

13 Q And do you remember what the weather was that day?

14 A Yes, ma'am, I mean it was warm, I mean early spring  
15 for us in the morning.

16 Q Okay. And what, if anything, did you observe --  
17 did you see him do anything else?

18 A Yeah, he was sweaty. He wiped himself a lot with  
19 his glasses on. I could tell that he -- he just looked in  
20 distress like he had been running or coming from where he  
21 had slept all night maybe, I don't know. He just didn't  
22 look right to me.

23 Q And so tell me a little bit how exactly -- I know  
24 you said he was close, but how close to you was he when you  
25 saw him?

## Ashley Culpepper - Direct Examination by Ms. Godwin

1 A From about me to the jury box.

2 Q So a few feet?

3 A Yes, ma'am.

4 Q And did you have a good opportunity to view this  
5 person?

6 A Yes, ma'am. Because I thought that he was going  
7 the come in front of my car or he obviously made eye to eye  
8 for a couple of minutes.

9 Q And what was the lighting at that point?

10 A It was daylight, the sun was out. It was morning.

11 Q And what did you do after you saw him?

12 A I took my daughter to my mom, and of course, I told  
13 my mom about it. I overanalyze. I told my mom about this  
14 man. She said, Well, Ash don't worry about it, you know,  
15 I'm sure everything is fine. I was no, Mom, this didn't  
16 look normal. And she said well, just go to the daycare and  
17 go to work and if something -- if there's something wrong,  
18 we'll hear about it.

19 Q After you took your children to daycare and left  
20 your mom's, what did you do?

21 A I go to work and I tell them the same story. Oh my  
22 God, you won't believe, I saw this man come out of nowhere.  
23 He's dressed in all black. Should I call the police, what  
24 should I do and they're like, Ash, just don't worry about  
25 it. You know if something happens, I'm sure you'll hear

## Ashley Culpepper - Direct Examination by Ms. Godwin

1 about it.

2 Q And I want to go back just a little. You said he  
3 was dressed in all black. Did you notice anything else  
4 about his appearance?

5 A Yes, he was covered in tattoos.

6 Q What -- did you see --

7 A They covered his head, his arms, his hands, I mean  
8 they were from the neck down.

9 Q Okay. And he -- you said that he was wearing a  
10 tank top, so --

11 A Yes, ma'am.

12 Q -- all of that was exposed?

13 A Yes, ma'am.

14 Q Okay. After work that day, did you ever see this  
15 man again?

16 A Yes, on the news that night, there was a sketch of  
17 -- of him.

18 Q And what did you do?

19 A I first called my mom and I said, I told so. And  
20 then she said, Well, you need to call Crime Stoppers. And  
21 I felt silly, I felt like I should have called that  
22 morning, but they said, it's okay. Just tell us everything  
23 that you know and they dispatched me through to Forest  
24 Acres.

25 Q Okay. And did you eventually speak with someone

## Ashley Culpepper - Direct Examination by Ms. Godwin

1 from Forest Acres Police Department?

2 A Yes, ma'am. And then you scheduled an interview  
3 for the next day for me to do my statement.

4 Q So the next day did you meet with officers?

5 A Yes, ma'am. I met with Lieutenant Shumard.

6 Q Okay. And when you met with Lieutenant Shumard,  
7 what did you do with him?

8 A I -- we talked and I told him everything I saw and  
9 I had to write it down on my paper, on the statement.

10 Q And what you wrote on your statement, that's  
11 basically what you've told the jury?

12 A Correct.

13 Q What you saw that morning?

14 A Yes, ma'am.

15 Q Did you do anything else?

16 A Like the next days Lieutenant Shumard came to my  
17 home and showed me a lineup.

18 Q Okay. I want to show you -- hand you what's been  
19 marked as States 2. Do you recognize that?

20 A Yes, ma'am.

21 Q And what is that?

22 A This is a lineup that Lieutenant Shumard showed me  
23 at my house.

24 Q Okay. And did you select anyone from that lineup?

25 A Yes, ma'am.

**Ashley Culpepper - Direct Examination by Ms. Godwin**

1 Q And who -- what did you select?

2 A Nathan Martinez, Number 5.

3 Q And at that point did you know his name?

4 A No.

5 Q How long did it take you to pick out Number 5?

6 A 30 seconds.

7 Q How fast -- did you know immediately?

8 A Yeah.

9 Q Okay. And did you do anything to that piece of  
10 paper to indicate that --

11 A Yes, ma'am, I signed my initials on the one that I  
12 chose.

13 Q Okay.

14 MS. GODWIN: Your Honor, at this time, State would  
15 move State's 2 into evidence.

16 THE COURT: Mr. Martinez?

17 MR. MARTINEZ: As to the --

18 THE COURT: State's 2.

19 Show it to him, Solicitor.

20 MR. MARTINEZ: I object, Your Honor, on the same  
21 14th Amendment, due process.

22 THE COURT: Subject to previous objections -- my  
23 previous rulings, State's 2 is in evidence.

24 (State's Exhibit Number 2 was entered into  
25 evidence.)

## Ashley Culpepper - Direct Examination by Ms. Godwin

1 BY MS. GODWIN:

2 Q And when they showed you this, did investigator  
3 Shumard tell you that you had to pick anybody?

4 A No.

5 Q Did he indicate to you who to pick?

6 A No.

7 Q Did he tell you that the person was definitely in  
8 there?

9 A No, ma'am.

10 Q Did he suggest in any manner whatsoever for you to  
11 pick any of these?

12 A No.

13 Q Why did you pick Number 5?

14 A Because that was the man that I saw, that I almost  
15 hit.

16 MS. GODWIN: Your Honor, may I publish?

17 THE COURT: Yes, ma'am, you may publish.

18 (Showing the document to the jury.)

19 BY MS. GODWIN:

20 Q I want to go back just a little bit. You said he  
21 was wiping his face when he came out of the bushes?

22 A Yes, ma'am.

23 Q Do you know why that was?

24 A Probably be --

25 MR. MARTINEZ: Objection, Your Honor, speculation.



**Ashley Culpepper - Direct Examination by Ms. Godwin**

1 THE COURT: Yes, I would sustain that objection,  
2 Solicitor.

3 BY MS. GODWIN:

4 Q Can you explain his appearance?

5 A Yes, he looked rough. He had a rough night or a  
6 rough morning.

7 Q And you said he was coming out of the woods?

8 A Yes, ma'am.

9 Q The man that you saw coming out of the woods that  
10 morning who came in front of your car, do you see him in  
11 the courtroom today?

12 A Yes, ma'am.

13 Q Can you point him out for the jury?

14 A Yes, ma'am, in the striped shirt (pointing).

15 MR. MARTINEZ: Objection, Your Honor, 14th  
16 Amendment.

17 THE COURT: Subject to previous objections, it's  
18 overruled.

19 You may continue, Ms. Culpepper.

20 MS. GODWIN: Your Honor, may the record reflect  
21 that she's identified the defendant.

22 THE COURT: So reflected.

23 MS. GODWIN: I don't have any other questions for  
24 you, Ms. Culpepper.

25 THE WITNESS: Yes, ma'am.

**Ashley Culpepper - Cross-Examination by Mr. Martinez**

1 THE COURT: Thank you, Solicitor.

2 Mr. Martinez?

3 **CROSS-EXAMINATION**

4 BY MR. MARTINEZ:

5 Q Yes, Ms. Culpepper, you called Crime Stoppers that  
6 same night that you claim to have saw someone; is that  
7 correct?

8 A I called Crime Stoppers after I saw the sketch on  
9 WIS because on the sketch it said if you've seen this man  
10 or know of his whereabouts to please call Crime Stoppers.

11 Q Okay. You told them there was -- you seen a white  
12 man?

13 A I mean, I said -- not white, Hispanic male, uh-huh.

14 Q Crime Stoppers said that you saw a white man  
15 fitting the description?

16 A I mean, you look white, but you are Hispanic.

17 Q You just told them that you saw a Hispanic?

18 A That he looked to have been Hispanic.

19 Q You told Crime Stoppers that night that you saw a  
20 white man.

21 THE COURT: That's three times you've asked that  
22 question.

23 BY MR. MARTINEZ:

24 Q At 7:37, walking down Pinestraw Road near Magnolia  
25 Park park; is that correct?

**Ashley Culpepper - Cross-Examination by Mr. Martinez**

1 A That is correct.

2 Q And you told them that I was wearing -- or the  
3 person was wearing what?

4 A That you were dressed in all black, whatever my  
5 police statement says. I believe you had on a navy shirt,  
6 black Dickie like pants, a black beanie, glasses, and that  
7 you had tattoos.

8 Q So, so you just told the State that it was a tank  
9 top?

10 A Yeah, a navy wife beater like tank top.

11 Q Okay. So is it a tank top or a wife beater?

12 A It's the same thing, sir. A wife beater is a tank  
13 top.

14 Q A t-shirt --

15 THE COURT: A wife beater she said.

16 THE WITNESS: A wife beater is a tank top.

17 BY MR. MARTINEZ:

18 Q Okay. So was it a t-shirt?

19 A No.

20 MS. GODWIN: Objection.

21 THE COURT: He can ask that question. I'll  
22 overrule the objection.

23 BY MR. MARTINEZ:

24 Q Okay. When you called the Crime Stoppers, you told  
25 them that he was coming out of the bushes -- tipsters said

## Ashley Culpepper - Cross-Examination by Mr. Martinez

1 he was wearing a navy blue t-shirt with tattoos on his arms  
2 no further?

3 A This is first time I've ever had to call the  
4 police. I was just giving a quick description. When I  
5 wrote my police statement, I had to be more detailed and  
6 wrote down specifically.

7 Q Okay. The next day, you went and made a statement;  
8 is that correct?

9 A I did.

10 Q Okay. And you said in your statement that --

11 A If -- go ahead.

12 Q You said that I was wearing a navy t-shirt?

13 A Okay. Maybe it was a t-shirt not a wife beater,  
14 but I could still see your tattoo -- I could still see your  
15 tattoos. It doesn't matter, I saw you. No matter what you  
16 had on.

17 Q Well, it makes a difference if you saw --

18 A I saw you, sir.

19 Q Okay. You said that the person had -- that the  
20 person was not that heavy though; is that correct?

21 A No, you looked pretty fit.

22 Q Pretty thick?

23 A Fit. You didn't look real heavy, fat, no.

24 Q I, I estimate around 175 pounds to 190 pounds?

25 A Yeah.

**Ashley Culpepper - Cross-Examination by Mr. Martinez**

1 Q His face is a little skinnier than the sketches?

2 A Correct.

3 Q And what time was that?

4 A Between 7:30 -- I was running late, so normally we  
5 leave the house at 7:30, it was 7:35, 7:37, I was late.

6 Q So let's just say -- we'll say -- what time was it?

7 A Between 7:35 and 7:40 in the morning.

8 Q 7:35, 7:40?

9 A 7:30, 7:35, I don't -- sir, this was two years ago.  
10 I'm not sure. Whatever I wrote in my statement is what my  
11 answer is still today.

12 Q Okay. Ma'am, it seems like when the State asked  
13 you, you was clear.

14 THE COURT: No, sir, that's --

15 THE WITNESS: I'm clear now.

16 THE COURT: Wait just a minute Ms. Culpepper.

17 Don't characterize the testimony, Mr. Martinez.

18 Ask your questions.

19 MR. MARTINEZ: Okay.

20 BY MR. MARTINEZ:

21 Q You was clear -- you was close enough to see this  
22 guy wipe the sweat off his face?

23 A I sure was.

24 Q When you first -- you never stated that in your  
25 original statement.

## Ashley Culpepper - Cross-Examination by Mr. Martinez

1 A Which original statement, sir?

2 Q The original statement the following day when you  
3 went to Forest Acres Police Department and you gave a  
4 report to the police. I think it was Mr. Shumard.

5 A Lieutenant Shumard.

6 Q Lieutenant Shumard. You seem to recall that. Do  
7 you remember what you -- what you stated?

8 A I do.

9 Q So how come you never told them that the guy was  
10 sweating?

11 A I mean, we talked and I wrote down -- I mean, I  
12 might not have exact -- exactly wrote down word for word in  
13 my conversation, I was left alone to write my statement.  
14 I've never had to write a written police statement and I  
15 never thought that I'd ever be in a courtroom either. But  
16 I wrote down as best as I could of what I saw that day.

17 Q Okay. So like I said, you lived there 23 years,  
18 Forest Acres?

19 A Since I was five years old, I sure do.

20 Q How come you couldn't tell -- in previous testimony  
21 you could not tell exactly where the location was that you  
22 saw the person at?

23 A I did. I even took detectives there from Forest  
24 Acres Police Department and we walked -- I mean, I showed  
25 them. We walked to the church from exactly where you came

**Ashley Culpepper - Cross-Examination by Mr. Martinez**

1 from. I know exactly where you came from, sir.

2 Q So in your testimony last time, you couldn't show  
3 me on a map like that one?

4 A I did show on the map.

5 Q You showed a general area?

6 A I just showed on the map the exact spot that you  
7 were.

8 Q Can you show me, please?

9 MR. MARTINEZ: Is there any way she can show me  
10 exactly the location, Your Honor, please. I wasn't allowed  
11 to see it. The jury was. I would like to be able to see.

12 THE WITNESS: You know where you came from.

13 THE COURT: Wait just a minute. Ain't but one  
14 person is going to be in control of this courtroom and  
15 that's me.

16 Mr. Kata.

17 (There was a bench conference with Mr. Kata out of  
18 the hearing of the jury and the Court Reporter.)

19 THE COURT: All right. All right. Would you  
20 please assist the sheriff to set up the tripod.

21 (Setting up the map for Mr. Martinez to see.)

22 THE COURT: Madame Forelady, ladies and gentlemen,  
23 can you see the map?

24 THE JUROR: (Jurors nodded heads.)

25 THE COURT: Ms. Culpepper, would you mind stepping

**Ashley Culpepper - Cross-Examination by Mr. Martinez**

1 down to about where the microphone is where you can see the  
2 map and you can take that pointer with you.

3 (The witness stepped down from the witness box.)

4 THE WITNESS: About right in here --

5 THE COURT: Speak up for me a little bit for the  
6 jury to hear.

7 THE WITNESS: You were right about here on  
8 Pinestraw Road. This is Bethel Church. This is the  
9 daycare. This is the -- near the apartment that you broke  
10 into. You either broke into -- it's not funny. You either  
11 walked all the way down Bethel Church Road and you made a  
12 left on Circle or Pinestraw and you wound right back around  
13 to Pinestraw. I saw you come out over the debris down here  
14 on Pinestraw Road. And if you keep going up, that's Two  
15 Notch where you went to go pawn your stuff.

16 Q Where exactly did you saw him?

17 A Right here. You're on Pinestraw Road. This is  
18 Pinestraw. This is Old Forest and you came walking out of  
19 all these bushes and debris. I don't know if you were  
20 trying to get them off of you or what, but you were  
21 crawling out of the bushes right here on Pinestraw Road.

22 Q You said you just drove past that?

23 A I did. I'm coming down Pinestraw going to my  
24 parent's house on Circle Drive. You were coming out of the  
25 bushes.



## Ashley Culpepper - Cross-Examination by Mr. Martinez

1 Q So --

2 A I can't.

3 THE OFFICER: Calm down, calm down.

4 THE WITNESS: I mean what else do you want from me.

5 BY MR. MARTINEZ:

6 Q I just want to understand where you saw the person  
7 at?

8 A I just pointed to you.

9 Q You gave a generalized area.

10 A Sir, this isn't -- this is Google Earth, I can't  
11 show you exactly what bushes you came from. This is  
12 Pinestraw Road. You came from trees off of Pinestraw Road.  
13 What else do you need me to say?

14 THE COURT: Ms. Culpepper return to the witness  
15 stand, please.

16 (The witness returned to the witness box.)

17 THE COURT: Thank you.

18 All right. Mr. Martinez, you may ask your next  
19 question.

20 BY MR. MARTINEZ:

21 Q So how long -- how long is that distance right  
22 there?

23 A Mile and a half, maybe two.

24 Q Mile and a half, maybe two?

25 A Yeah, it could be less than that, it only takes me

**Ashley Culpepper - Cross-Examination by Mr. Martinez**

1 three minutes from my home to get to the daycare.

2 Q That's driving, correct?

3 A Correct.

4 Q So if a person was to run at their hardest --

5 MS. GODWIN: Objection. Calls for speculation.

6 THE WITNESS: I don't know what time you left her  
7 apartment.

8 THE COURT: Wait just a minute, Ms. Culpepper,  
9 please. Thank you, thank you, Ms. Culpepper.

10 Let me hear your question, Mr. Martinez.

11 BY MR. MARTINEZ:

12 Q So for someone to run that area right there, how  
13 long do you think it would take them?

14 A I don't know, you looked exhausted --

15 THE COURT: Wait just a minute. Let me rule on the  
16 solicitor's objection.

17 I would sustain that objection. That would be  
18 speculation. You know, there's just so many variables and  
19 factors in there.

20 BY MR. MARTINEZ:

21 Q Okay. But you're sure about the time?

22 A Sure enough.

23 Q Positive that you saw me --

24 A Positive because I was running late and I looked  
25 down exactly on my clock.

**Ashley Culpepper - Redirect Examination by Ms. Godwin**

1 Q Okay. Thank you.

2 MR. MARTINEZ: No further questions.

3 THE WITNESS: You're welcome.

4 THE COURT: Redirect, Solicitor?

5 MS. GODWIN: Just a few, Your Honor.

6 **REDIRECT EXAMINATION**

7 BY MS. GODWIN:

8 Q Ms. Culpepper, it's been a while since you gave  
9 that statement to the police, right?

10 A Yes, ma'am.

11 Q Would it help you to look at that statement?

12 A Yes, ma'am.

13 Q I'd like to turn your attention to the last --

14 A Yes.

15 Q In the last part, Lieutenant Shumard said what was  
16 his expression, facial, when you saw him or when he saw  
17 you?

18 A I think he was anxious, almost looked relieved like  
19 wiping face, adjusting glasses and proceeded to cross over  
20 Pinestraw onto sidewalk. So I didn't say you were wiping  
21 sweat, but you were wiping your face and putting your  
22 glasses back on. It's in my statement.

23 Q No other questions.

24 A Thank you.

25 MS. GODWIN: Nothing further, Your Honor.

## Ashley Culpepper - Recross-Examination by Mr. Martinez

1 THE COURT: Mr. Martinez, recross?

2 RECROSS EXAMINATION

3 BY MR. MARTINEZ:

4 Q But you did say wiping sweat when they asked you  
5 though, correct?

6 A I did.

7 Q Okay. And you also said that the guy was coming  
8 out of the bushes and you almost hit him because you didn't  
9 see him?

10 A No, I did see you. I said that you were so close  
11 to my car that I could have hit you.

12 Q You said that he came out of the bushes and you was  
13 scared you was going to hit him; is that correct?

14 A No.

15 Q So the guy did not come out of the bushes and you  
16 seen this guy long enough to witness him wiping all this --  
17 doing all this stuff when you said you came around the  
18 corner and you almost hit him?

19 A Sure did. Long enough to know you weren't a good  
20 man. And sure enough that night your sketch came on the  
21 news; long enough to know that that person was you, yeah.

22 Q All right. You're sure about the time though,  
23 right?

24 THE COURT: That's been asked and answered, those  
25 precise words.

**Deborah Goff - Direct Examination by Ms. Godwin**

1 MR. MARTINEZ: Thank you.

2 THE COURT: Thank you thank you, Ms. Culpepper.  
3 Thank you for being with us this morning.

4 THE WITNESS: Thank you.

5 MS. GODWIN: State calls Deb Goff.

6 Deborah Goff,  
7 having been duly sworn, testified as follows:

8 THE CLERK: Please have a seat. State your full  
9 name for the record.

10 THE WITNESS: Deborah Goff, D-E-B-O-R-A-H, G-O-F-F.

11 **DIRECT EXAMINATION**

12 BY MS. GODWIN:

13 Q Good morning Ms. Goff?

14 A Good morning.

15 Q Could you please tell the jury where you work?

16 A I work for the South Carolina Law Enforcement  
17 Division.

18 Q And what are your duties there?

19 A I'm a special agent assigned to the forensic art  
20 unit, I'm a full-time forensic artist.

21 Q And how long have you been employed as a forensic  
22 artist?

23 A I've been with SLED almost 11 years.

24 Q And do you have to have certain qualifications to  
25 become a forensic artist?

**Deborah Goff - Direct Examination by Ms. Godwin**

1 A Yes.

2 Q What are those?

3 A My qualifications are, I have a bachelor of fine  
4 arts with a major in all stations from Georgia State  
5 university. I've attended the Federal Bureau of  
6 Investigations Forensic Facial Imaging Course in Quantico  
7 Virginia. I've attended numerous conferences on composite  
8 drawings, trainings and how to interview. I'm a certified  
9 forensic artist through the National Association of  
10 Identification and there's more on my curriculum vitae if  
11 it's needed?

12 Q In your role as a composite artist, how --  
13 approximately how many sketches have you done?

14 A In my career at SLED, I've done approximately 800  
15 composite sketches and images.

16 Q And how -- how do you use these composite sketches?  
17 Could you explain that to the jury?

18 A A composite sketch is used when a crime occurs and  
19 the suspect is unknown. We use a composite sketch as a  
20 plea to the public to help generate leads to get that  
21 person identified.

22 Q And I know this might seem like a silly question,  
23 but what exactly is a composite sketch?

24 A A composite sketch is an image made of component  
25 parts that's based on an eyewitness's memory of what the

**Deborah Goff - Direct Examination by Ms. Godwin**

1 person looked like at the time of the crime.

2 Q Could you explain to the jury a little bit the  
3 process by which you are able to create a composite sketch?

4 A Yes. Usually when an incident occurs, the  
5 investigator will call me and I'll try to meet with the  
6 witness as soon as possible because we're dealing with  
7 their memory. Memory isn't 100 percent to start with, so  
8 we try to get to them as soon as possible.

9 In this case I was able to interview Ms. Hurshman  
10 on the same day that it happened after the incident. And I  
11 will sit down with the witness one on one in an interview  
12 room just me and her and I'll begin by asking open-ended  
13 questions. I'll ask her to briefly tell me the  
14 circumstances that she saw the person and then I ask open  
15 ended questions for them to scribe to me what the person  
16 looked like and as I start sketching and begin taking  
17 notes, there's more interaction between the two of us.

18 The sketch is directed by the witness and I'm  
19 drawing what the witness is directing me to draw until we  
20 come to a certain point where we've got the sketch as close  
21 as possible to what she remembers.

22 Q And in creating this sketch, I know you said you  
23 get the description and features from the witness; do you  
24 have a method you follow or is it more -- who leads this?

25 A Well, the -- the witness leads -- the witness

**Deborah Goff - Direct Examination by Ms. Godwin**

1 directs the sketch. I'm there to draw what she's trying to  
2 describe to me. So that's why it's open-ended questions.  
3 I ask -- I show her the sketch and ask her what's -- what's  
4 right and what's wrong. What needs to be adjusted and we  
5 continue to go back and forth. The sketch is hand drawn  
6 and as we try to get more specific to certain features, I  
7 do have a photo records catalog book that it's easier for  
8 the witness to point it and say his eyes were like his eyes  
9 or his nose was like his nose. It just makes it easier to  
10 communicate to me what he looked like.

11 Q So you may use those references in conjunction with  
12 the description given by the witness?

13 A Yes.

14 Q And I want to turn your attention to this case.  
15 Did you -- I know you said briefly you had an opportunity  
16 to meet with Ms. Hurshman?

17 A Yes, ma'am.

18 Q And do you remember when that was?

19 A It was on March 27th at 1:30 in the afternoon.

20 Q Okay. And where did you meet with Ms. Hurshman?

21 A I met with her at the Forest Acres Police  
22 Department.

23 Q Okay. And who was present when y'all met?

24 A I was greeted by Lieutenant Shumard, but the  
25 interview with Ms. Hurshman was only me and Ms. Hurshman.



**Deborah Goff - Direct Examination by Ms. Godwin**

1 Q Okay. And I want to hand you what's been marked as  
2 State's Exhibit 89. Can you tell me if you recognize that?

3 A Yes, that's the original sketch.

4 Q And how do you recognize that?

5 A It has my initials and date at the bottom and  
6 Ms. Hurshman's signature and date on the back.

7 MS. GODWIN: Your Honor, at this time, I would like  
8 to offer State's 89 into evidence.

9 THE COURT: Mr. Martinez?

10 MR. MARTINEZ: No objection.

11 THE COURT: State's 89 is in evidence without  
12 objection.

13 (State's Exhibit Number 89 was entered into  
14 evidence.)

15 BY MS. GODWIN:

16 Q So this is the sketch that was ultimately the  
17 result of your meeting with Ms. Hurshman?

18 A Yes, ma'am.

19 Q And this is the sketch that you would have given to  
20 law enforcement?

21 A Yes, ma'am.

22 Q And you said -- I know you said this was produced  
23 solely at the direction of Ms. Hurshman based on her  
24 memory?

25 A Yes, ma'am.

**Deborah Goff - Direct Examination by Ms. Godwin**

1 Q Okay. What information did Ms. Hurshman give you  
2 when you were coming up with this sketch? I'd like to walk  
3 through kind of all the features you went through with her.

4 A Well, I mean, I have my notes.

5 Q You can refer to your notes. Did she describe a  
6 head shape?

7 A She said -- what I have in my notes is a rounder  
8 top, rectangular bottom. Sometimes I have my notes, but  
9 sometimes a lot of the changes deal with making changes on  
10 the sketch. Like erase and redraw.

11 Q And so this was the shape that y'all --

12 A That we ultimately came up with, yes.

13 Q And what was her description, if any, about the  
14 eyes?

15 A Let me see. That they were brown and there's an  
16 indication of eyes that she picked out of my reference book  
17 really.

18 Q Do you remember what, if anything, that she told  
19 you about the hair?

20 A Hold on. For hair, I have dark facial hairs, he  
21 might have sideburns, still short four to five days of not  
22 shaving, unshaven look.

23 Q Do you go over when you're making sketches  
24 distinguishing characteristics such as tattoos or piercing?

25 A Yeah, we'll ask, is there anything that stood out

**Deborah Goff - Direct Examination by Ms. Godwin**

1 or usually when I ask -- when I start to interview and ask  
2 the open-ended question, what can you tell me about what he  
3 looked like, whatever they describe to me first is what  
4 stands out and in this case he had a large neck tattoo.

5 Q And that was reflected in your drawing?

6 A In the sketch, yes.

7 Q Can you point that out?

8 A Yeah. She described it as -- hold on a second,  
9 with writing heavily filled in, but she wasn't exactly  
10 clear on exactly what the writing was, so in my sketch I'll  
11 give an indication that it could be lettering, but not  
12 specific lettering because we don't know exactly what  
13 letters.

14 Q What other features did she describe on his face?

15 A The glasses.

16 Q You can --

17 A I have a copy.

18 Q Okay.

19 A The thin-rimmed glasses. She described him as  
20 having full cheeks, nose not broad, but a little high.  
21 These are certain little things that she points out as  
22 we're working on the sketch.

23 Q Okay. Any -- and does she go into clothing at all?

24 A Yes. The clothing, I have a dark beanie, woven,  
25 faded black charcoal grey white shirt, red-hooded

**Deborah Goff - Cross-Examination by Mr. Martinez**

1   sweatshirt, jeans, question mark. She wasn't sure about  
2   the jeans.

3   Q       Okay. Any other information that she gave you that  
4   you found helpful in creating this sketch?

5   A       Not specifically that I can think of. It's an over  
6   all look at the person. We're trying to get as strong a  
7   resemblance of what he looked like to generate leads.

8   Q       And is a composite sketch intended to be an exact  
9   likeness of the person?

10   A       A composite sketch is not expected to be an exact  
11   portrait because we know we're working from somebody's  
12   memory and usually under difficult circumstances or a brief  
13   encounter with the person. So law enforcement knows that  
14   what we hope we can get is a good enough likeness or a good  
15   enough resemblance of the person to help generate leads to  
16   get this person identified. So it's not expected to be an  
17   exact portrait.

18   Q       I don't have any other questions for you, thank  
19   you.

20           THE COURT: Thank you, Solicitor.

21           Mr. Martinez?

22                           **CROSS-EXAMINATION**

23   BY MR. MARTINEZ:

24   Q       Ms. Goff, you stated that the witness leads the --  
25   leads your little sketch telling you exactly what she saw?

**Deborah Goff - Cross-Examination by Mr. Martinez**

1 A The sketch is directed by the witness describing to  
2 me what she recalls.

3 Q And she recalled -- she stated that the height was  
4 5'9", 5'11"?

5 A In my notes it says approximate height because she  
6 doesn't know exactly what the height of the person. So in  
7 my notes I do have that she estimated approximate height  
8 5'9" to 5'11".

9 Q And what about the overall build?

10 A The overall build, she describes as not little, not  
11 heavy.

12 Q You said that she didn't -- she didn't know exactly  
13 what the tattoos looked like?

14 A She indicated that there was a very large neck  
15 tattoo with some lettering filled in, but she couldn't  
16 recall exactly what the lettering said.

17 Q Did -- what about her -- the skin color? What did  
18 she say about the skin color of the guy?

19 A I have skin tone was darker than mine. Let me see  
20 if I wrote anything else. That's what I have is skin tone  
21 was darker than mine.

22 Q And she said she got a really good look at this  
23 guy, correct?

24 A She got a good enough look to give enough  
25 information to produce an effective composite sketch.

**Kevin Isenhoward - Direct Examination by Ms. Campbell**

1 Q Okay. Thank you. No further questions.

2 THE COURT: Redirect, Solicitor?

3 MS. GODWIN: Nothing from the State.

4 THE COURT: All right. Thank you. Thank you for  
5 with us today.

6 THE WITNESS: Thank you.

7 THE COURT: You may step down.

8 All right. Solicitor, you may call your next  
9 witness.

10 MS. CAMPBELL: State calls Kevin Isenhoward.

11 KEVIN ISENHOWARD,

12 having been duly sworn, testified as follows:

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

15 THE WITNESS: My name is Kevin Isenhoward.

16 **DIRECT EXAMINATION**

17 BY MS. CAMPBELL:

18 Q Lieutenant, where are you employed?

19 A Richland County Sheriff's Department here in  
20 Columbia.

21 Q What do you do there, sir?

22 A I'm a lieutenant of the major crimes unit.

23 Q What are your responsibilities as a lieutenant over  
24 the major crime unit?

25 A I supervise a group of sergeants who are in the

## Kevin Isenhoward - Direct Examination by Ms. Campbell

1 investigative division. We handle assaults -- any major  
2 crimes, assaults, shootings, robberies, murders, and  
3 questionable deaths.

4 Q In the course of your investigations -- and do  
5 actively participate in those investigations?

6 A I do.

7 Q In the course of your duties, do you also  
8 communicate with other agencies in an effort to apprehend  
9 criminals?

10 A Absolutely, often.

11 Q And is that sometimes done through information  
12 exchanged between the agencies?

13 A Yeah, we typically exchange bulletins, BOLO's,  
14 be-on-the-look-out for cases that we're -- each agency is  
15 investigating. We try and share those with the agents in  
16 the area so we can tell if we have the same suspect or same  
17 crimes going on.

18 Q And are you familiar with what's called a composite  
19 sketch?

20 A I am.

21 Q And are those also shared with -- in between  
22 agencies, as well as through the press?

23 A They are.

24 Q And what's the purpose of sharing that information,  
25 sir?

## Kevin Isenhoward - Direct Examination by Ms. Campbell

1 A We try and -- when we send them out, we're trying  
2 to see if anybody else recognizes someone and has a  
3 potential suspect or has any additional information about  
4 the crime.

5 Q I want to turn your attention back to March 27th, I  
6 believe, that -- the 27th. That evening, were you working?

7 A I was.

8 Q Do you remember what shift you were working that  
9 evening?

10 A I was working in the evenings -- I know it was in  
11 evening so I was either working an evening night shift or  
12 was working late that night.

13 Q And did you receive any information that caught  
14 your attention that night?

15 A I did. Lieutenant Shumard, I believe, from the  
16 Forest Acres Police Department sent out one of those  
17 composite sketches we talked about and it was e-mailed out  
18 and I saw it on my computer and I thought I recognized the  
19 person or at least had someone that needed to be looked at.

20 Q You said you recognized -- or you thought you  
21 recognized the person?

22 A Yes.

23 Q And with the composite, it that an exact drawing?

24 A It -- no, it's a drawing, so there's, you know,  
25 it's not a photograph, it takes further investigation.



## Kevin Isenhoward - Direct Examination by Ms. Campbell

1 Q I want to show you what's been marked as State's  
2 Exhibit Number 89. Do you recognize that?

3 A I do.

4 Q And is that the composite that was sent to you on  
5 the evening of March 27th, that you recognized?

6 A I believe it is.

7 Q And let me -- had you seen this person before?

8 A I did. I encountered who I believed to be that  
9 person sometime before, I believe on the 19th of February  
10 at the sheriff's office.

11 Q And did you get a good look --

12 MR. MARTINEZ: Objection, Your Honor, unfair  
13 prejudice.

14 THE COURT: Ladies and gentlemen, please step to  
15 your jury room momentarily, leave your notes upside down on  
16 your seats, please. Do not discuss the case during this  
17 brief recess.

18 (The jury left the courtroom at 11:26 a.m.)

19 THE COURT: All right.

20 MS. CAMPBELL: If -- I'd like might just put on  
21 what I advised. I did advise this witness, Your Honor,  
22 prior to him taking the stand not the mention that he was  
23 under investigation for a third rape, not the mention that  
24 he was there for a polygraph on that matter and not to  
25 mention anything about any other sexual assault at all.

**Kevin Isenhoward - Direct Examination by Ms. Campbell**

1 And we went to the extent I was going to go into that he  
2 just saw him at the sheriff's department in February.

3 THE COURT: All right. Thank you.

4 MS. CAMPBELL: And to make sure that his rights  
5 were protected.

6 THE COURT: All right. Mr. Martinez?

7 MR. MARTINEZ: I've been caused unfair prejudice.  
8 The jury's heard that I was at a police station. It's  
9 going to be left for them to assume whether they wish to  
10 assume. It's going to cause me unfair prejudice as to why  
11 am I at the police station. And especially if they're not  
12 going to get to elaborate. It's going to cause unfair  
13 prejudice that I'm at the police station for some other  
14 reason and especially for them to assume that I'm a suspect  
15 in another case.

16 THE COURT: All right. Thank you. Under State  
17 versus Council, a death penalty case out of Aiken County, a  
18 SLED agent, Chuck Counts, testified to the fact that he had  
19 received a print from the sheriff's department of the  
20 suspect in that case and that he walked two doors over to  
21 the SLED fingerprint lab and retrieved prints of  
22 Mr. Council to compare. At that time, given the fact that  
23 the prints, the testimony of Mr. Counts was retrieved from  
24 files at the State Law Enforcement Division, there was an  
25 objection. The Court ruled and the South Carolina Supreme

**Kevin Isenhoward - Direct Examination by Ms. Campbell**

1 Court confirmed that -- that the -- there was no  
2 implication to the jury in that particular -- in that  
3 particular case, in that particular setting.

4 Here we have a lieutenant from the major crimes  
5 division who testified that he saw the BOLO from  
6 Mr. Shumard and that, that he recognized that individual  
7 having seen that individual before at the sheriff's  
8 department. It would be a huge leap for the jury to then  
9 decide that just because a major crimes lieutenant at the  
10 sheriff's department had seen an individual before at the  
11 sheriff's department that he was a suspect in a crime.

12 He could have been a victim of a crime, he could  
13 have been down there to provide information of a crime by  
14 another. It's just pure speculation in that regard. So I  
15 think as long as the testimony is very focused and  
16 succinct, everybody that goes to the Richland County  
17 Sheriff's Department is not a crime suspect.

18 MR. MARTINEZ: Mr. Isenhoward is the sole reason  
19 I'm a suspect in all of these cases.

20 THE COURT: That's not in evidence, that's not in  
21 the testimony.

22 MR. MARTINEZ: Yes, sir.

23 THE COURT: That has not been addressed by the  
24 solicitor's office. And, of course, as I understand from  
25 the solicitor, that will not be addressed. It's what's in

## Kevin Isenhoward - Direct Examination by Ms. Campbell

1 the record that is important.

2 MR. MARTINEZ: Mr. Shumard already testified to  
3 that.

4 THE COURT: Mr. Shumard has not testified before  
5 the jury in this case. That's not in the record before the  
6 jury in this case. It may be testimony in the record  
7 in-camera. All testimony in the record in-camera is not  
8 necessarily admissible in the trial of this case. For  
9 example, the fact that you were a suspect in the February  
10 2014 incident, is not and would not be before this jury.

11 MR. MARTINEZ: So, what is your ruling.

12 THE COURT: I overrule your objection.

13 MR. MARTINEZ: I move for a mistrial.

14 THE COURT: In the Council case, they did move for  
15 a mistrial. Well, it was, of course, denied. And as I say  
16 that was a death penalty case that has been affirmed by the  
17 South Carolina Supreme Court, the decisions to grant or  
18 deny a motion for a mistrial is a matter within the sound  
19 discretion of the trial judge. So I don't think it's  
20 error. But assume it's error, you tell me your position as  
21 to prejudice.

22 MR. MARTINEZ: Well, it's unfair prejudice. As I  
23 stated, I just --

24 THE COURT: Just saying those two words is of no  
25 moment to me. Tell me why your of the opinion that it is

## Kevin Isenhoward - Direct Examination by Ms. Campbell

1 unfair prejudice.

2 MR. MARTINEZ: Because as I said, the jury is not  
3 going to know the whole story. They're going to be left to  
4 speculate as to what happened. Why I was -- why I was at  
5 the police station and then again why I became  
6 automatically a suspect just because -- solely because --  
7 it's going to have to be part of my case now. I'm going to  
8 have to further implement myself and throw myself out there  
9 and then throw myself out for attack. And then I'm going  
10 to have to explain why I was at the -- what I was doing at  
11 the sheriff's department so that they will understand  
12 exactly what happened.

13 THE COURT: Your trial tactics are solely and  
14 exclusively up to you, Mr. Martinez.

15 MR. MARTINEZ: Yeah, but his testimony has caused  
16 me unfair prejudice.

17 THE COURT: I deny it.  
18 Solicitor.

19 MS. CAMPBELL: Your Honor, respectfully, though we  
20 have made sure there is no prejudice to this defendant and  
21 we would caution this witness that on direct examination,  
22 we will not be going into the fact that he was a suspect in  
23 the February 4th sexual assault. The reason --

24 THE COURT: Or there was -- if even, if there was a  
25 February 2014.

**Kevin Isenhoward - Direct Examination by Ms. Campbell**

1 MS. CAMPBELL: That's nowhere in front of this  
2 jury. He knows not to go into that, that this was on an  
3 unrelated matter. Your Honor, I wasn't going any further  
4 as to why he was there, other than he recognized him.  
5 There was a call back later where he did give that  
6 information to the police, but I wasn't going to go into  
7 that either unless he wants me to that he was a suspect in  
8 a third rape.

9 THE COURT: Well, I don't think it's evidence. I  
10 think it's a passing statement that he had seen you at the  
11 Richland County Sheriff's Department. Number two, there  
12 isn't error, it's not prejudice to you. Number 3, I will  
13 give any curative instruction that you would like for me to  
14 give to the jury. If you want me to tell the jury that  
15 this officer recognizes you from being at the Richland  
16 County Sheriff's Department, you should not speculate as to  
17 why or why not the officer observed the individual at the  
18 Richland County Sheriff's Department.

19 Now, I think in that case the cure is worse than  
20 whatever disease that is injected to the trial. I do not  
21 think it's objective to any decision of the trial.

22 MR. MARTINEZ: Yes, that's my standpoint --

23 THE COURT: Sir?

24 MR. MARTINEZ: I said that's my standpoint. It's  
25 going to be damaging either way, if you say something.

## Kevin Isenhoward - Direct Examination by Ms. Campbell

1 THE COURT: I said I will give any curative  
2 instruction you want to compose, I will look at it and give  
3 it to the jury panel. The cure is worse than the disease  
4 in my opinion, but further, there is no disease whatsoever.  
5 I don't find error, I don't find prejudice.

6 MR. MARTINEZ: It's not a harmless error.

7 THE COURT: I don't deal with harmless errors. The  
8 appellate courts deal with harmless error and I can predict  
9 anything but the future.

10 MR. MARTINEZ: So that's a denial?

11 THE COURT: I deny your motion. I'm giving you an  
12 opportunity to present whatever curative instruction you  
13 would like for me to consider to advise the jury panel.

14 MR. MARTINEZ: So there's no -- there's rule, no  
15 curative to give them. I'm going to have to give them --  
16 but I'm going to have to give you a curative just to I  
17 can --

18 THE COURT: Mr. Martinez, I'm not telling you what  
19 to do. I'm giving you the opportunity to present to me any  
20 curative instruction that you would like me to give the  
21 jury. I deny the mistrial, it's not manifest necessity.  
22 As I stated, it's not error. If it is error, the answer  
23 and response by Lieutenant Isenhoward is not prejudice.

24 MR. MARTINEZ: Okay.

25 THE COURT: Okay. Anything before we bring in the

## Kevin Isenhoward - Direct Examination by Ms. Campbell

1 jury?

2 MS. CAMPBELL: Yes, sir, just make sure I don't --  
3 he then gave them his name and date of birth and then he  
4 e-mailed him a mug shot. I have instructed him to refer to  
5 that as a photograph only.

6 THE COURT: All right.

7 MS. CAMPBELL: To make sure there's no prejudice to  
8 Mr. Martinez.

9 THE COURT: Anything before we bring in the jury,  
10 Mr. Martinez?

11 MR. MARTINEZ: I'm going to have to incriminate  
12 myself. I'm going to have to incriminate myself because  
13 I'm going to have to clean all this up. I'm going to have  
14 to show exactly how he called Mr. Shumard and Mr. Shumard  
15 -- it's already in the record, it's going to have to be  
16 part of my defense that I -- I'm a suspect as Mr. Shumard  
17 testified solely because of Mr. Isenhoward.

18 THE COURT: Mr. Martinez, your defense is a  
19 decision you have to make based on trial tactics that you  
20 want to present and where you want to present your  
21 opinions. Again, I don't make anticipatory rulings. I  
22 don't predict the future.

23 MR. MARTINEZ: All right.

24 THE COURT: How much longer do you think the  
25 lieutenant will be, Solicitor?



**Kevin Isenhoward - Direct Examination by Ms. Campbell**

1 MS. CAMPBELL: I plan to be brief because again,  
2 I'm not planning to go into that whole conversation about  
3 the underlying sexual assault issue.

4 THE COURT: What time will the jury's lunch be  
5 here, Madam Clerk?

6 THE CLERK: I scheduled for it to be picked up at  
7 12:45.

8 THE COURT: All right. We'll probably take a  
9 break, a quick break before then because the parties in the  
10 courtroom haven't had a break.

11 (The jury entered the courtroom at 11:40 a.m.)

12 THE BAILIFF: Your Honor, the jury's present.

13 THE COURT: Are y'all chilly in here, some of the  
14 jurors?

15 (Several jurors made comments about the temperature  
16 in the room.)

17 THE COURT: All right. Our jury is back. Thank  
18 you, thank you, Mr. Martinez.

19 Solicitor, you may ask your next question.

20 BY MS. CAMPBELL:

21 Q We were talking, you were sent the composite that  
22 we mentioned?

23 A Yes, ma'am.

24 Q And then you recognized that?

25 A I did.

## Kevin Isenhoward - Direct Examination by Ms. Campbell

1 Q From having seen him on a prior occasion?

2 A Yes, ma'am.

3 Q Once you got that composite that evening on the  
4 27th and you recognized it, did you then make a phone call?

5 A I did.

6 Q Who did you call?

7 A Lieutenant Shumard, Forest Acres Police Department.

8 Q What information did you give him at that time?

9 A I give him the name of Nathan Martinez. I believe  
10 I shared some photographs and other information.

11 Q Specifically did you also give him a date of birth?

12 A I did.

13 Q And you said you shared some photographs, did you  
14 send those to him?

15 A I believe I e-mailed them to him.

16 Q The person that you recognized and you said his  
17 name was what?

18 A Nathan Martinez.

19 Q And that you provided the date of birth and the  
20 photograph, do you see him in the courtroom?

21 A Yes.

22 Q Would you identify him for the jury?

23 A He's sitting right to my left (indicating).

24 MR. MARTINEZ: Objection, 14th Amendment.

25 THE COURT: Overruled.

## Kevin Isenhoward - Cross-Examination by Mr. Martinez

1 BY MS. CAMPBELL:

2 Q I'm sorry, you can continue.

3 A He's sitting to my left at the defense table with  
4 the black and grey shirt on.

5 Q The person who just made the objection?

6 A Yes.

7 Q Thank you. I have nothing further.

8 THE COURT: Thank you, thank you, Solicitor.  
9 Mr. Martinez?

10 **CROSS-EXAMINATION**

11 BY MR. MARTINEZ:

12 Q Mr. Isenhoward?

13 A Yes, sir.

14 Q Do you recall what time you called Mr. Shumard?

15 A I don't recall exactly what time. It was in the  
16 evening.

17 Q Was it about six or seven that same night?

18 A It could have been.

19 Q And what did you tell him?

20 A Well, I gave him your name and your information  
21 because I believed you matched the sketch.

22 Q And you sent him some e-mails; is that correct?

23 A Yeah, I sent him an e-mail with the attachments.

24 Q Do you remember your conversation with him?

25 THE COURT: All right. Let me stop you there a

**Kevin Isenhoward - Proffer by Mr. Martinez**

1 minute, Mr. Martinez..

2 Step out again, ladies and gentlemen. I apologize.

3 Thank you, thank you very much.

4 (The jury left the courtroom at 11:42 a.m.)

5 THE COURT: What was that last question, Madam  
6 Court Reporter?

7 THE COURT REPORTER: Do you remember your  
8 conversation with him.

9 THE COURT: All right. What is your response,  
10 Lieutenant?

11 THE WITNESS: That I don't remember it specifically  
12 to the word, but I provided information to him.

13 THE COURT: All right. What's your next question,  
14 Mr. Martinez?

15 **PROFFER TESTIMONY**

16 **BY MR. MARTINEZ:**

17 Q Do you remember telling him about my mental health  
18 condition.

19 A I remember discussing -- I don't know if it was in  
20 an e-mail or over the phone, but I had overheard a previous  
21 conversation you had with another officer where you talked  
22 about a police department implanting something in your  
23 head.

24 Q To the line of I was crazy.

25 A I don't know the exact words I used, but it might

## Kevin Isenhoward - Proffer by Mr. Martinez

1 have been something like that. I'm not a doctor. That  
2 conversation was a little strange.

3 Q And you told Mr. Shumard that my weight and height  
4 doesn't match up with the character?

5 A I don't recall that. I don't know. If it's in the  
6 documents somewhere then maybe.

7 Q What about a companion case?

8 A I did discuss it with him, yes. I gave him the  
9 investigating officer.

10 Q And that was, you was talking about running a  
11 companion case without no evidence, without no -- you had  
12 me -- you and him already had me as the suspect that same  
13 night with no evidence.

14 A No, in reality, Mr. Martinez, I had little  
15 involvement with this case. I simply observed you that day  
16 and I did after seeing the sketch speak with the  
17 investigating officer to see if details of what she was  
18 investigating matched his and it did. And so I just shared  
19 the information. I had very little involvement in either  
20 case to be honest with you. I'm not -- the major crimes  
21 unit doesn't supervise sexual assaults.

22 Q Have you had any prior history with him before  
23 this?

24 A Just that conversation I spoke of.

25 Q What about the night of Ms. Vasser's case was you

## Kevin Isenhoward - Proffer by Mr. Martinez

1 the officer they talked to -- spoke with about that?

2 A No, I don't believe so. The night of? Which case?

3 Q Ms. Vasser.

4 A I don't know.

5 Q The officers said they went and reported to you.

6 A Okay. You I mean, I don't even recall that name to  
7 be honest with you. If I was the on call supervisor, it  
8 could be possible that they did.

9 Q Okay.

10 A I won't dispute anything that's in the police  
11 reports, but it's been a while.

12 Q Okay. So you know the reasoning, as you said, I  
13 was at the -- I was there to take a lie detector test,  
14 right.

15 A I do know that, yes, I have heard it. You know, I  
16 don't know if I got that information ahead of time, but I  
17 know after the fact I spoke with Holly Wagner about it, so  
18 I was aware at some point why you were there, yes.

19 Q Okay. So as I was saying, at 10:13 that night, you  
20 sent an e-mail to Mr. Shumard that you guys were doing a  
21 companion case and you guys would run the base for them.

22 A I did send an e-mail, yes.

23 Q And then you also had Heidi Scott or Heidi Jackson  
24 contact him as well.

25 A I believe I probably contacted Holly Wagner. 'I

**Kevin Isenhoward - Proffer by Mr. Martinez**

1 understand at some point you had been in contact with Heidi  
2 Scott, I think, for something else still good law.

3 Q So your e-mail you sent her, Mr. Shumard's  
4 information.

5 A If you let me see it, I can verify what I sent to  
6 him.

7 (The witness was looking at the document.)

8 THE WITNESS: Okay. Yes, yes, sir.

9 BY MR. MARTINEZ:

10 Q And with Ms. Wagner's case, what was the result of  
11 that.

12 A I don't believe any charges were brought forth.

13 Q And why was that?

14 A I don't know.

15 Q Even with the no corroboration rule, there were no  
16 charges filed.

17 A Again, I don't supervise sexual assaults. When I'm  
18 on call, sometimes they ask me questions about them and  
19 I've been an investigator for a while. On the day-to-day  
20 operations of the sexual assault cases, they report to  
21 another supervisor, so I don't know, sir.

22 Q Okay, so why was you trying to get involved with  
23 this other case?

24 A Because I'm trying to help the community. I'm  
25 trying to solve crime, no matter where it happened.

**Kevin Isenhoward - Proffer by Mr. Martinez**

1 Q I understand that, but why would you talk about  
2 running a case and we'll run it for you?

3 A Try to be helpful to another police station.

4 Q But you just stated you're not part of that?

5 A Now, you asked me why the outcome was what it was.  
6 I don't know that. I was helping on the front end and then  
7 I have other cases I investigate, so I help as best as I  
8 can, give people the information, other agencies, other  
9 investigators, and then I have my own cases to investigate,  
10 so I moved on, honestly.

11 Q So you do understand that I'm a suspect solely  
12 because of your testimony -- well, since you were talking  
13 to Mr. Shumard that night?

14 A That's a mischaracterization of the evidence.

15 MR. MARTINEZ: That's the truth.

16 THE COURT: Sir.

17 MR. MARTINEZ: That's NOT a mischaracterization,  
18 that's from evidence.

19 THE COURT: No, sir. You have other items already  
20 in evidence. He is not the sole reason you are the  
21 suspect.

22 Don't argue with me about that issue. That's a  
23 mischaracterization. That may be your recollection and you  
24 may be -- you may -- to you it may be chiseled in stone,  
25 but we're not going to debate that. But that is not a



## Kevin Isenhoward - Proffer by Mr. Martinez

1 proper question.

2 MR. MARTINEZ: All right.

3 BY MR. MARTINEZ:

4 Q So you told -- you told Mr. Shumard that you knew  
5 that I was -- had issues and I was told I could jump in  
6 front of cars and jump off bridges and stuff like that?

7 A I mean, I don't recall specifically, but I think I  
8 told him about what I understood you had said to other  
9 investigators and to other law enforcement. I overheard a  
10 conversation you had on a speakerphone sometime before that  
11 when you talked about some of these things as well.

12 Q Who was that conversation with?

13 A Chief Smith.

14 Q Chief Smith?

15 A I believe maybe a captain or a major at the time,  
16 Stan Smith.

17 Q And he recorded my phone call?

18 A All calls are recorded coming into the sheriff's  
19 office, but I was present in his office when he was speaking  
20 with you. I overheard the conversation.

21 Q And that was in January?

22 A I don't -- it was sometime before all that.

23 Because I was aware of your -- things you had said.

24 Q All right. Thank you.

25 THE COURT: And this is what you intend to ask and

## Kevin Isenhoward - Proffer by Mr. Martinez

1 perhaps other questions of Lieutenant Isenhoward in front  
2 of the jury panel?

3 MR. MARTINEZ: Yeah, yes, sir.

4 THE COURT: All right.

5 MS. CAMPBELL: We have no problem with any of that,  
6 other than we would object to him mentioning any  
7 polygraphs.

8 THE COURT: Object to what?

9 MS. CAMPBELL: Object to his -- any mention of  
10 polygraphs and also at this point, Your Honor, I don't know  
11 the purpose of getting into his mental state through this  
12 witness.

13 MR. MARTINEZ: This is the history. Police know  
14 about my history.

15 THE COURT: Well, what about the polygraph.

16 MR. MARTINEZ: I don't have nothing --

17 THE COURT: I mean you want to present that in  
18 front of the jury?

19 MR. MARTINEZ: There's really no purpose to, but I  
20 can.

21 THE COURT: Well, prior to 1993 South Carolina  
22 followed the United States versus Frye case as to the  
23 admissibility of or inadmissibility of the results of  
24 polygraph and they were generally inadmissible. After the  
25 United States Supreme Court decision in Daubert versus

1 Merrill Dow Pharmaceuticals, the test was changed to the  
2 general standards to the four factors of the South Carolina  
3 law.

4 Under that same case, as a matter of fact, I cited  
5 a few minutes ago, State versus Council. So there may be  
6 situations in which polygraph testimony would be  
7 admissible.

8 Do you understand having taken a polygraph for the  
9 Vasser case could open the door to the Vasser case, none of  
10 which the State intends to present? You understand that?

11 MR. MARTINEZ: Yes, sir.

12 THE COURT: Is that what you want? Do you want  
13 this jury to know that you are a suspect and as far as I  
14 know have been charged and indicted in the Vasser case.

15 MR. MARTINEZ: There was no probable cause.

16 THE COURT: You want them to know that you've been  
17 charged and indicted with what is alleged to be a third  
18 rape, alleged to be a third rape? A third criminal sexual  
19 conduct.

20 MR. MARTINEZ: That's what I might have to now that  
21 I've already been implemented and indicated that there's  
22 some type of reason why I have to go down to the police  
23 station to talk to the police. I have to further  
24 incriminate myself because I've already been incriminated.

25 THE COURT: Not in Vasser.

1 MR. MARTINEZ: Why else --

2 THE COURT: Not in Vasser.

3 MR. MARTINEZ: Why else would I be at the police  
4 station prior to any of these allegations?

5 THE COURT: I've gone through that laundry list.  
6 Every person that goes to the Richland County Sheriff's  
7 Department is not a suspect in a crime and is not being --  
8 being there for criminal investigation. You went to the  
9 Richland County Sheriff's Department, according to  
10 testimony in the in-camera record to seek mental health  
11 treatment with -- in talking with Ms. Jackson.

12 MR. MARTINEZ: That's misrepresenting the facts.

13 THE COURT: Sir?

14 MR. MARTINEZ: That's misrepresentation of the  
15 facts.

16 THE COURT: That's what.

17 MR. MARTINEZ: That's a misrepresentation of the  
18 facts.

19 THE COURT: I'm misrepresenting the facts? You did  
20 not go to the Richland County Sheriff's Department seeking  
21 mental health treatment for the chip put in your head by  
22 the Ogden Utah Police Department.

23 MR. MARTINEZ: Not when he was there.

24 THE COURT: I didn't ask you that. I'm giving you  
25 an example that people go to the sheriff's offices

1 throughout this state, throughout this country that aren't  
2 there to be interrogated and they're not suspects in crime.  
3 You did that yourself, Mr. Martinez.

4 MR. MARTINEZ: The State knew what they was doing.

5 THE COURT: They did know what they were doing --

6 MR. MARTINEZ: Yeah.

7 THE COURT: -- in this regard because they  
8 feathered and limited this officer's full knowledge. This  
9 officer's full knowledge, not misrepresenting the facts.  
10 But they tailored it to where the other case wouldn't come  
11 in and that other case wouldn't -- because that would be  
12 prejudicial. And that's what I -- Mr. Martinez, that's  
13 what I'm trying to explain to you.

14 MR. MARTINEZ: They don't need the other case to  
15 come in. All they needed was him to say something about --  
16 about him knowing me and him having prior history with me.  
17 That's all they need.

18 THE COURT: I'm not saying what they did or did not  
19 need, but they did not -- they tailored it, they limited it  
20 to where, oh yeah, I saw him and he was a suspect in  
21 another crime. It's pristine right now, Mr. Martinez.

22 Now, if we go forward, I can't predict the future,  
23 like I said, but any wound that you inflict, that is  
24 self-inflicted will not be a grounds for this Court to  
25 declare a mistrial. If you have any questions you'd like

1 the ask me about it, Mr. Martinez.

2 MR. MARTINEZ: The grounds have already been  
3 established for a mistrial.

4 THE COURT: I've already denied that.

5 MR. MARTINEZ: I know that's what I'm just  
6 saying --

7 THE COURT: Because you objected to what the  
8 solicitor did. I'm trying to convey to you my limited  
9 ability to do so. Self-inflicting wounds aren't grounds  
10 for mistrial. It's just like going back to when I  
11 questioned you about the dangers of self-representation.  
12 The dangers of self-representation. I wouldn't -- I  
13 wouldn't advise anybody in this courtroom, lawyers,  
14 non-lawyers, experienced, inexperienced to represent  
15 themselves. But I have to follow the standard of Ferrata  
16 versus California.

17 You understand that if you get into a part of a  
18 conversation, if you look at the rule of completeness under  
19 the South Carolina Rules of Evidence, I'm trying to think,  
20 I think it's 106, I'm not sure, I think it's 106. If part  
21 of a conversation comes in, there are times when the  
22 remaining part of that conversation comes in. You  
23 understand that?

24 MR. MARTINEZ: Yes.

25 THE COURT: Well, ponder that.

1 Let's take a 10 minute recess. Thank you.

2 Lieutenant, you may step down and refresh yourself  
3 during this brief recess. Do not discuss your testimony.

4 (A brief recess was observed.)

5 THE COURT: Anything from the defense, Mr.  
6 Martinez, before we bring in our jury.

7 MR. MARTINEZ: When should I have that curative  
8 ready?

9 THE COURT: Excuse me?

10 MR. MARTINEZ: When should I have that curative  
11 instruction ready?

12 THE COURT: I took a break. Typically I give those  
13 jury instructions during the testimony of the witness. Do  
14 you have an instruction you would like for me to give.

15 MR. MARTINEZ: I took a break, I wasn't able to  
16 have time to write it down.

17 THE COURT: Well, tell me what you want me the tell  
18 them.

19 MR. MARTINEZ: I don't know what there -- I've  
20 asked Mr. Kata. He -- I don't know what type of curative  
21 there is for that. It would appear to me just to say that  
22 a person is not guilty just because they go to the Richland  
23 -- the sheriff's department or those multiple reasons why  
24 people go to the sheriff's department.

25 THE COURT: Is that's what your requesting me to

1 give?

2 MR. MARTINEZ: Well...

3 THE COURT: Is that what you're requesting me to  
4 do?

5 MR. MARTINEZ: Yeah, I'm asking you to give a  
6 curative.

7 THE COURT: You know there's a balance there. You  
8 understand?

9 MR. MARTINEZ: Yeah, I understand. The balance has  
10 already been -- the scale's already been tipped.

11 THE COURT: No, sir, the scales have not been  
12 tipped by my ruling or by that testimony. I'll restate it  
13 again. It is not error, if it's error, it's not prejudice.  
14 I denied the mistrial and I have given you the opportunity  
15 -- if you want, I will give a curative instruction. I have  
16 said there is still that balance that are uneasy on the pro  
17 se defendant. You have to weigh it and decide it and  
18 decide if a curative instruction highlights it, the  
19 non-erroneous, non-prejudicial testimony, which I think it  
20 is more than not saying anything about it.

21 As I say, sometimes the cure is worse than the  
22 disease. I think there is no disease. So you tell me if  
23 you want a curative instruction.

24 MR. MARTINEZ: Yes, sir, I need the curative  
25 instruction.



1 THE COURT: All right. Solicitor?

2 MS. CAMPBELL: Your Honor, I have another issue on  
3 behalf of the polygraph. Is he planning on going into that  
4 or does the curative instruction take care of that?

5 THE COURT: Are you going into the polygraph, the  
6 lie detector test on the February, Richland County  
7 Sheriff's Department case?

8 MR. MARTINEZ: No, the only thing I'm going to ask  
9 him about is how he spoke with Mr. Shumard about my mental  
10 health issues.

11 THE COURT: All right, All right.

12 MS. CAMPBELL: Okay.

13 THE COURT: Anything else?

14 MS. CAMPBELL: No, sir.

15 (There was a pause in the proceedings.)

16 MR. MARTINEZ: Your Honor?

17 THE COURT: Yes, sir.

18 MR. MARTINEZ: Could you tell me exactly what the  
19 curative instruction is going to be?

20 THE COURT: It's up here right now (pointing.)

21 Hold the jury up a minute, please.

22 I will probably -- I will probably tell them to the  
23 effect that there was one question and one response of the  
24 witness by the solicitor whereby he said that he had seen  
25 Mr. Martinez in the past at the Richland County Sheriff's

1 Department. You are to take no inference whatsoever from  
2 the fact that he was seen by this officer at the Richland  
3 County Sheriff's Department and that not in any way should  
4 that be used against him in any manner, that people go to  
5 the Richland County Sheriff's Department for numerous,  
6 numerous reasons, none of which are -- most of those people  
7 are not there as far as being under investigation or  
8 wanting to be questioned about any crime or crimes that may  
9 or may not have been committed.

10 Something along those lines, Mr. Martinez. Of  
11 course, I have asked you to provide me with a curative  
12 instruction if you were to request; and thereafter, I could  
13 determine if that is what I would give.

14 MR. MARTINEZ: Okay. Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 (There was a pause in the proceedings.)

17 MR. MARTINEZ: Your Honor, am -- in my personal  
18 opinion, I don't believe that there is a cure for this and  
19 I want to be able to exercise my right for this to be able  
20 to use this on my appeal if need be because as I've stated,  
21 it's not a harmless error and it's highly prejudicial for  
22 the State strategically did that, called him as a witness  
23 and he stated that prior history of him meeting me as he  
24 stated, he knew who I was. He knew that I had a history --  
25 he knows my history and --

1 THE COURT: There's no testimony to that effect  
2 that he knew your history.

3 MR. MARTINEZ: Yeah, but --

4 THE COURT: There's no testimony to the effect that  
5 he knew your history. Do not put incorrect facts in the  
6 record.

7 But you go right ahead with your argument.

8 MR. MARTINEZ: After the fact, when the jury left  
9 when -- that's when he stated that he knew about me and  
10 that he knew -- he knew about my history --

11 THE COURT: All of which was outside the presence  
12 of the jury and would have no basis whatsoever for a  
13 mistrial.

14 MR. MARTINEZ: Okay. But as I said, I want to  
15 reserve this right for my appeal. As I said, there's --

16 THE COURT: Well, I guess you can predict the  
17 future and I can't because I don't know if there will be an  
18 appeal.

19 MR. MARTINEZ: I'm just saying if there is, I would  
20 like to be able to preserve this right because that is not  
21 harmless error. That is very prejudicial to me.

22 THE COURT: I've ruled on that. The question is do  
23 you want a curative instruction or not. That's the  
24 question.

25 MR. MARTINEZ: That's what I'm saying. If I say

1 yes, then --

2 THE COURT: I don't care what you say, it's your  
3 choice. Do you want a curative instruction or do you not  
4 want a curative instruction?

5 MR. MARTINEZ: And that's the issue. If I say yes,  
6 then I've cured that -- that's a curative. If I say no,  
7 then I'm waiving my right.

8 THE COURT: All right. Mr. Martinez. So you do  
9 not want a curative instruction? Yes or no?

10 MR. MARTINEZ: Yes, I do.

11 THE COURT: You want a curative instruction.

12 MR. MARTINEZ: Yes, sir.

13 THE COURT: And you heard what I said a few minutes  
14 ago --

15 MR. MARTINEZ: Yes.

16 THE COURT: -- along those lines.

17 MR. MARTINEZ: Yes.

18 THE COURT: All right. I will give a curative  
19 instruction.

20 MR. MARTINEZ: Okay.

21 THE COURT: And I would further note in his  
22 argument the State's potentially called Lieutenant  
23 Isenhoward to the stand, but I will further note for the  
24 record that Lieutenant Isenhoward was the sixth listed  
25 potential witness on the defendant's witness list.

1 All right. Thank you, thank you very much.

2 Anything else before I bring in the jury, Mr.  
3 Martinez?

4 (The jury entered the courtroom at 12:23 p.m.)

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

6 THE COURT: Thank you. Thank you, Mr. Whittle.

7 Madame Forelady, ladies and gentlemen of the jury,  
8 there was a question and response during the direct  
9 examination by the solicitor of Lieutenant Isenhoward and I  
10 make no judgment, I have no opinion whatsoever as to the  
11 credibility of this or any other witness. But basically  
12 without recalling verbatim, the lieutenant had seen Mr.  
13 Martinez at a time earlier than 27, March, 2016 at the  
14 Richland County Sheriff's Department.

15 Do not -- do not speculate -- do not infer  
16 whatsoever that Mr. Martinez was at the Richland County  
17 Sheriff's Department other than as a citizen, other than as  
18 a citizen. Don't infer, don't question why he was there,  
19 that, that may be -- that is not relevant in your  
20 consideration and your deliberations and your verdict of  
21 guilty or not guilty as to these charges.

22 Again, you determine the weight and credibility of  
23 this and any and all other witnesses. And I will instruct  
24 you further in the case on down the road that you may  
25 believe all, part, or none of what a witness says. It's

1 solely in the discretion of you the jury using your good  
2 judgment and your common sense.

3 Thank you, thank you very much.

4 Thank you, Mr. Martinez.

5 Solicitor, may -- you have any further questioning?

6 I believe we were on cross-examination by Mr.  
7 Martinez.

8 Mr. Martinez, you may ask your next question.

9 MR. MARTINEZ: Your Honor, I would just like to  
10 read in my former objection for the jury.

11 THE COURT: You've made a number of objections. I  
12 don't know what you're referring to.

13 MR. MARTINEZ: For the curative, I object to the  
14 curative.

15 THE COURT: Step out, ladies and gentlemen. Thank  
16 you. Do not discuss the case during this brief recess.

17 (The jury left the courtroom at 12:24 p.m.)

18 THE COURT: All right. Mr. Martinez.

19 MR. MARTINEZ: I'm reserving my objection like I  
20 said.

21 THE COURT: What is your objection, Mr. Martinez.

22 MR. MARTINEZ: My objection is the same as I said  
23 before. It's prejudicial, it's undue prejudice.

24 THE COURT: Specifically, what are you objecting to  
25 about the curative instruction that I just gave to jury.

1 MR. KATA: Your Honor, may I approach for a minute?

2 THE COURT: Yes, sir.

3 (There was a bench conference with Mr. Kata out of  
4 the hearing of the jury and the Court Reporter.)

5 THE COURT: If I understand, Mr. Martinez, you  
6 requested I give a curative instruction, which I did and  
7 you're not objecting to the curative instruction I gave,  
8 you're objecting that I gave a curative instruction. Is  
9 that -- am I tracking that right.

10 MR. MARTINEZ: As I stated, Your Honor, I'm  
11 preserving my right for my objection to -- for my appeal,  
12 in case -- because if I don't get these rulings, I'm not  
13 going to be able to bring it up in my appeal.

14 THE COURT: I'm going to repeat my question. You  
15 requested that I give a curative instruction. At your  
16 request I did so.

17 MR. MARTINEZ: Yes.

18 THE COURT: Are you objecting to the specific  
19 curative instruction that I gave.

20 MR. MARTINEZ: Yes, sir.

21 THE COURT: The specific one.

22 MR. MARTINEZ: Yes, sir.

23 THE COURT: I discussed with you the curative  
24 instruction I was going to give. I informed the jury  
25 consistent to what I said outside of the jury's presence.

1 So what is your objection to the specific words that I  
2 used.

3 MR. MARTINEZ: The specific wording was just like I  
4 said before and it's only going to -- as you said it's only  
5 going to cause more alertness to the situation than what it  
6 is and that's -- that's the whole thing, it did. It  
7 alerted them to another situation or to a situation or to  
8 something that I had to go to the application station.

9 THE COURT: Yes, sir.

10 MR. MARTINEZ: And --

11 THE COURT: Go ahead. I didn't mean to interrupt  
12 you, I apologize.

13 MR. MARTINEZ: And -- I'm sorry. But you went into  
14 it. You said that Mr. Martinez is not supposed to be, you  
15 know what I'm saying, because he went to the police station  
16 and this, but --

17 THE COURT: And I did that at your request.

18 MR. MARTINEZ: Yes, sir, and I --

19 THE COURT: I did that at your request.

20 MR. MARTINEZ: Yes.

21 THE COURT: And after you did that, you objected.

22 MR. MARTINEZ: I do, because I feel like I have to  
23 preserve my right on appeal.

24 THE COURT: All right. Mr. Martinez. Thank you,  
25 thank you very much.



**Kevin Isenhoward - Cross-Examination Continued by Mr. Martinez**

1 MR. MARTINEZ: What was your ruling, Your Honor?

2 Denied?

3 (The jury entered the courtroom at 12:30 p.m.)

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

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

6 Ladies and gentlemen, welcome back. Thank you very  
7 much for your patience with the Court.

8 Mr. Martinez?

9 **CROSS-EXAMINATION CONTINUED**

10 BY MR. MARTINEZ:

11 Q Mr. Isenhoward, do you remember your conversations  
12 with Mr. Shumard?

13 A I don't recall the -- specifically every word, but  
14 I know that I talked to him and provided him with  
15 information.

16 Q And do you remember -- you remember telling him  
17 about the mental health issues that I suffer from?

18 A I believe I shared with him in an e-mail some  
19 statements that you'd said that were concerning in nature.  
20 I'm not a physician. I don't determine mental state.

21 Q You're not a physician?

22 A No.

23 Q So why would you tell him that I was crazy?

24 A Because of the words that you used, the statements  
25 about somebody tracking you, putting something in your head

## Kevin Isenhoward - Cross-Examination Continued by Mr. Martinez

1 and tracking your whereabouts at another police department.

2 Q You just stated you're not a doctor?

3 A No, I just observed what you said.

4 Q So in your observations then, you said that I'm  
5 crazy, right?

6 A Those are the words I used. They're common --  
7 normal people use those words to describe abnormal  
8 behavior. It was an e-mail shared with Lieutenant Shumard  
9 just to give him an understanding of some of the thoughts  
10 going through your head. Only a doctor can determine your  
11 mental state. And I'm not trying to make any judgment on  
12 that. I did use those words.

13 Q What --- so you're not a doctor, but you was just  
14 trying to give him something that goes through my head?

15 A I'm just telling him what I heard you say.

16 Q You heard that I said or that you heard me say?

17 A I heard you say it over a telephone conversation.

18 Q And other people have told you that as well,  
19 correct?

20 A No, I don't --

21 MS. CAMPBELL: Objection, Your Honor, as to what  
22 other people told him.

23 THE COURT: Restate your question, Mr. Martinez,  
24 please.

25 BY MR. MARTINEZ:

## Kevin Isenhoward - Cross-Examination Continued by Mr. Martinez

1 Q Did other officers tell you the same thing of what  
2 you're saying?

3 A I don't believe so. I was present with other  
4 officers when I heard your words.

5 Q So you're saying that no other officers have  
6 supported that -- those --

7 A I can't -- I'm just telling you what I recall.

8 Q What about lieutenant Heidi Jackson?

9 A It's my understanding that you had contact with her  
10 that I learned at a later date. She typically meets with  
11 people who display concerning behavior and tries to get  
12 them assistance.

13 Q And she told you what I needed assistance for; is  
14 that correct?

15 MS. CAMPBELL: Objection, Your Honor, hearsay.

16 THE COURT: Say that a little bit louder for me,  
17 Mr. Martinez.

18 BY MR. MARTINEZ:

19 Q Did she tell you why she was getting me assistance?

20 A I don't recall any of that. My -- like I said, my  
21 involvement was very small in this case, just basically  
22 sharing some information. I didn't examine you --

23 Q So she never sent an e-mail through you to  
24 Lieutenant Shumard stating those issues?

25 A If you want me -- if you want to share with me

**Kevin Isenhoward - Cross-Examination Continued by Mr. Martinez**

1 something, I'm willing to read it and I will verify if it's  
2 something that I sent.

3 (There was a pause in the proceedings.)

4 (The witness was handed a document.)

5 THE WITNESS: Okay. I did share an e-mail exchange  
6 with Heidi Jackson in regards to you.

7 BY MR. MARTINEZ:

8 Q And you forwarded that information to Mr. Shumard?

9 A I believe so.

10 Q So she -- so -- so you was aware from another  
11 officer that I have mental health issues?

12 A I mean, I can read it if you want me to.

13 Q If you will --

14 THE COURT: May I see it first, if you will,  
15 Lieutenant.

16 (The document was handed to the Court.)

17 THE COURT: All right. Solicitor.

18 MS. CAMPBELL: Your Honor, we have absolutely no  
19 problem with this coming in if that's where he wants to go,  
20 but based on -- maybe a matter we need to take up outside  
21 of the presence of the jury.

22 THE COURT: State's -- excuse me Defense for  
23 Identification 22 is for ID only at this time.

24 (Defense Exhibit Number 22 was marked for  
25 identification.)

## Kevin Isenhoward - Cross-Examination Continued by Mr. Martinez

1 Do you want to ask other questions concerning this  
2 e-mail, Defense 22.

3 MR. MARTINEZ: As far as Holly -- I mean Heidi  
4 Jackson?

5 THE COURT: Just tell me if you do, yes or no.  
6 Don't tell me what the questions are. Are you going to ask  
7 other questions of this officer about the e-mail that's  
8 been handed up and now marked defense 22 for  
9 identification.

10 MR. MARTINEZ: Yeah, I'm going to ask him more  
11 questions.

12 THE COURT: Y'all --- y'all are starting to read my  
13 sign language.

14 (The jury left the courtroom at 12:39 p.m.)

15 THE COURT: All right. Mr. Martinez, as part of  
16 this e-mail, of course, Ms. Jackson appears to agree, but  
17 the inference is, it very well could be him. I think that  
18 is in reference to the Forest Acres Police Department, as  
19 he meets the description. I think he is closer to 5'11" or  
20 taller. He is accused of sexual assault. I think that in  
21 context of this e-mail refers to an incident separate and  
22 distinct from Ms. Hurshman. He hates police in general  
23 because he believes the police in Utah implanted a device  
24 in him. Nathan cut his own head with a knife last week to  
25 get the device out. He has schizophrenia. He used to be a

**Kevin Isenhoward - Cross-Examination Continued by Mr. Martinez**

1 Crip, C-R-I-P, in Utah. I've never seen him violent, but  
2 it could be him.

3 You want this in evidence?

4 MR. MARTINEZ: It's like -- it's like you said, I'm  
5 already --

6 No, Your Honor.

7 THE COURT: Are you offering this into evidence?  
8 The solicitor has no objection.

9 MR. MARTINEZ: I know it's --

10 THE COURT: You're conveying to the jury -- by this  
11 e-mail, you're conveying to the jury that you're a member  
12 of -- they may not know what the CRIP's is. I imagine  
13 somebody on that jury does, it's a violent, violent street  
14 gang. Somebody on that jury will know that and believe  
15 that. They will also believe that because you believe you  
16 were implanted in Utah he hates police in general because  
17 he believes the police in Utah implanted a device in him.  
18 They would also know that you have had interactions with  
19 police in other states.

20 MR. MARTINEZ: Yeah, but you already forced me  
21 into --

22 THE COURT: No, sir, I haven't forced you into  
23 anything, Mr. Martinez. In fact, I sent the jury out to  
24 protect you as opposed to having this officer read this in  
25 the presence of the jury and this information. I'm not

## Kevin Isenhoward - Cross-Examination Continued by Mr. Martinez

1 forcing you, I'm trying to protect you and your rights and  
2 I'm going to continue to do so throughout the trial of this  
3 case.

4 MR. MARTINEZ: Okay. Well --

5 THE COURT: I don't force people.

6 MR. MARTINEZ: I have to defend myself from the  
7 statement that you allowed in. It states the same thing --

8 THE COURT: How does this defend yourself. It's  
9 stating that I let in which was not error, not prejudice,  
10 which I have ruled on and repeated my ruling.

11 Are you offering this into evidence?

12 MR. MARTINEZ: No, sir.

13 THE COURT: And is that your choice? And your  
14 decision?

15 MR. MARTINEZ: Yes, sir.

16 THE COURT: Do you want this officer to read this  
17 to the jury?

18 MR. MARTINEZ: No, sir.

19 THE COURT: Thank you. I will mark it State's 22  
20 for identification purposes only.

21 MS. CAMPBELL: To be sure, you're not going any  
22 further into this matter?

23 THE COURT: To be sure what?

24 MS. CAMPBELL: I just want to make sure we weren't  
25 going any further into this matter or we may be offering

## Kevin Isenhoward - Cross-Examination Continued by Mr. Martinez

1 it.

2 THE COURT: And Lieutenant, if you're asked a  
3 question that, that edges over my ruling, please indicate  
4 to me so I can hear it outside the presence of the jury in  
5 some manner.

6 THE WITNESS: Yes, sir.

7 THE COURT: I don't know. I don't know.

8 THE WITNESS: I got you.

9 THE COURT: Anything else before we bring in the  
10 jury, Mr. Martinez?

11 MR. MARTINEZ: Yes, Your Honor, you never gave me a  
12 ruling on my objection.

13 THE COURT: I ruled on that several times.  
14 Anything else before we bring in our jury.

15 MR. MARTINEZ: No, sir, thank you.

16 (The jury entered the courtroom at 12:45 p.m.)

17 THE BAILIFF: The jury is present, Your Honor.

18 THE COURT: Thank you.

19 Our jury is back, Mr. Martinez. You may continue.

20 BY MR. MARTINEZ:

21 Q So another officer did communicate to you about my  
22 mental health issues?

23 A Among other things, yes, sir.

24 Q Is that the only officer that talked to you  
25 about --



**Kendall Decker - Direct Examination by Ms. Walker**

1 A I believe so.

2 Q All right. Thank you.

3 MR. MARTINEZ: No further question, Your Honor.

4 THE COURT: Redirect, Solicitor?

5 MS. CAMPBELL: No, sir.

6 THE COURT: Thank you, thank you very much,  
7 Lieutenant, you may step down.

8 All right. How long is your next witness,  
9 Solicitor?

10 MS. WALKER: I think very -- direct examination,  
11 Your Honor, would not be very long.

12 THE COURT: All right. Call your next witness.

13 MS. WALKER: Your Honor, the State calls Kendall  
14 Decker.

15 THE COURT: All right. Mr. Decker.

16 KENDALL DECKER,  
17 having been duly sworn, testified as follows:

18 THE CLERK: Please have a seat. State your full  
19 name for the record.

20 THE WITNESS: My name the Kendall Decker.

21 MS. WALKER: Thank you, Your Honor.

22 **DIRECT EXAMINATION**

23 BY MS. WALKER:

24 Q Sir, can you tell me -- do you currently live here  
25 in Columbia?

## Kendall Decker - Direct Examination by Ms. Walker

1 A I do.

2 Q In 2014, where did you live?

3 A In Columbia.

4 Q Where were you employed in 2014?

5 A Quick Cash.

6 Q Tell the jury what Quick Cash is.

7 A Quick Cash is a pawnshop, located on Decker  
8 Boulevard, 1906.

9 Q Is that near Two Notch Road?

10 A It is.

11 Q I want to take your attention back to March 27th of  
12 2014. What was your role at the pawnshop at that point?

13 A I was the manager.

14 Q And was your -- was part of your duties actually  
15 opening the store?

16 A Yep.

17 Q On March 27, 2014, when you opened your store, who  
18 was your first customer?

19 A Mr. Martinez.

20 Q Can you tell me what he was doing in your store?

21 A Mr. Martinez came in with the couple of rings.

22 Q And what did he want to do with those rings?

23 A He wanted to sell them.

24 Q I want to show you what's been marked as State's  
25 Exhibits 43 through 45 and ask you if you recognize this?

## Kendall Decker - Direct Examination by Ms. Walker

1 A It's a band and two rings -- actually there are two  
2 rings that were in that one picture that had been pawned.

3 Q These are the pawns -- the rings that were pawned  
4 that day?

5 MS. WALKER: Your Honor, the State seeks to move  
6 State's Exhibit Number 43 --

7 THE COURT: Restate that question again. These  
8 were the rings that were what?

9 MS. WALKER: That were pawned by Mr. Martinez that  
10 day.

11 THE COURT: Okay.

12 MS. WALKER: Your Honor, the State seeks to move  
13 Exhibits 43 through 45 into evidence.

14 THE COURT: All right. Mr. Martinez?

15 MR. MARTINEZ: No objection.

16 THE COURT: State's 43, 44, and 45 are in evidence  
17 without objection.

18 (State's Exhibit Number 43, Number 44, and Number  
19 45 was entered into evidence.)

20 (The photographs were published to the jury.)

21 BY MS. WALKER:

22 Q And then there are individual pictures of these  
23 rings as well?

24 A Yes, ma'am.

25 Q Can you describe what Mr. Martinez was wearing that

## Kendall Decker - Direct Examination by Ms. Walker

1 day?

2 A He was wearing a hoodie and a skull cap.

3 Q And do you -- were you able to see his arms at any  
4 point?

5 A Yes, ma'am.

6 Q Was there anything remarkable about his arms?

7 A He had tattoos down both sides. He had a couple of  
8 fresh scratches on his arms.

9 Q At that point when someone is pawning something or  
10 specifically jewelry, do you take certain information from  
11 them?

12 A Yes, ma'am. It's required by law that you give a  
13 state issued ID.

14 Q And he provided that ID?

15 A He provided his ID and I implemented all that into  
16 the computer.

17 Q I want to show you what's been marked as State's  
18 Exhibit Number 8 -- 86 and ask you if you recognize this.

19 A It's a pawn slip from our pawnshop.

20 Q For Mr. Martinez?

21 A Yes, ma'am.

22 MS. WALKER: Your Honor, at this point the State  
23 seeks to move Exhibit Number 86 into evidence.

24 MR. MARTINEZ: No objection.

25 THE COURT: State's 86 in evidence without

## Kendall Decker - Direct Examination by Ms. Walker

1 objection.

2 (State's Exhibit Number 86 was entered into  
3 evidence.)

4 BY MS. WALKER:

5 Q And this pawn -- this pawn slip that the jury will  
6 have back in the jury room with them, does it have certain  
7 identifying information on it?

8 A Yes, it does. Everything from his driver's license  
9 is on there.

10 Q And do you also --

11 A You even include the driver's license number.

12 Q Does it also have the time of day?

13 A Yes, ma'am.

14 Q And you remember what time of day Mr. Martinez came  
15 in?

16 A I believe it was approximately 9:04.

17 Q At some point, did you make -- or did law  
18 enforcement make contact with you?

19 A Yes, they did.

20 Q And did you provide a statement to them?

21 A I sure did.

22 Q And did they also show you a series of photos?

23 A They did.

24 Q I want to show you what's been marked as State's  
25 Exhibit Number 4. You recognize that?

**Kendall Decker - Direct Examination by Ms. Walker**

1 A Yes, ma'am.

2 Q And how do you recognize that?

3 A Because I initialled Number 5.

4 Q Okay. When they were showing these photos to you,  
5 did they tell you who to pick?

6 A No, ma'am, they even stated that they might -- that  
7 the individual might not even be on there.

8 Q But did you recognize the person who pawned those  
9 rings?

10 A I did.

11 Q And did you indicate that?

12 A Yes, ma'am.

13 Q How did you indicate that?

14 A I put my initials and circled them.

15 MS. WALKER: Your Honor, State seeks to move  
16 Exhibit 4 into evidence.

17 THE COURT: Mr. Martinez?

18 MR. MARTINEZ: No objection.

19 THE COURT: Subject to previous objections, State's  
20 4 is in evidence.

21 (State's Exhibit Number 4 was entered into  
22 evidence.)

23 BY MS. WALKER:

24 Q The man who came into your store, the first  
25 customer on March 27, do you recognize him?

**Kendall Decker - Cross-Examination by Mr. Martinez**

1 A Yes, ma'am.

2 Q And can you point him out for the jury?

3 A The gentleman in the black striped shirt.

4 Q And did you give those rings to law enforcement?

5 A I did.

6 Q I want to show you State's Exhibit Number 10. Is  
7 this the envelope and the rings that you gave law  
8 enforcement?

9 A Yes, ma'am.

10 Q Thank you, Mr. Decker. I don't have any further  
11 questions?

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

13 Mr. Martinez.

14 MR. MARTINEZ: Yes.

15 **CROSS-EXAMINATION**

16 BY MR. MARTINEZ:

17 Q Mr. Decker, you testified -- you said that -- what  
18 was I wearing?

19 A A hoodie and a skull cap.

20 Q Was it a long sleeve hoodie or short sleeve hoodie?

21 A I don't recall. It was two and a half years ago,  
22 sir.

23 Q You just testified yesterday, or the day -- this  
24 week that it was a long sleeve hoodie?

25 A No, I didn't.

**Kendall Decker - Cross-Examination by Mr. Martinez**

1 Q Yes, you did.

2 A No, I didn't.

3 MS. WALKER: Objection, Your Honor. Mr. Martinez  
4 is being argumentative.

5 THE COURT: I couldn't hear that last part,  
6 Solicitor.

7 MS. WALKER: I said Mr. Martinez is being  
8 argumentative.

9 THE WITNESS: I told you I don't recall when you  
10 asked me that same question the other day, sir.

11 MR. MARTINEZ: Your Honor, is there any way we can  
12 look up his testimony, please.

13 THE COURT: Not at this time, however, I will take  
14 another approach to it for you, Mr. Martinez and discuss  
15 that with my court reporter and have Mr. Decker if he would  
16 be so kind to be subject to recall.

17 Do you object to that, Mr. Decker?

18 THE WITNESS: No, sir.

19 THE COURT: I like to try not to order people, but  
20 at any rate, I would appreciate it if you would do that for  
21 the Court. Thank you very much.

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

23 BY MR. MARTINEZ:

24 Q When I went in there, I gave you my ID; is that  
25 correct?



## Kendall Decker - Cross-Examination by Mr. Martinez

- 1 A Yes, sir.
- 2 Q And was I -- how did I -- how did I come to your
- 3 store?
- 4 A What do you mean, sir?
- 5 Q Was I driving or walking?
- 6 A You were driving a red minivan, sir.
- 7 Q Okay. And how long -- how long did this
- 8 transaction take?
- 9 A Approximately 5 minutes.
- 10 Q And during that time was I acting nervous or --
- 11 A No, sir.
- 12 Q -- paranoid? Relieved? It was just a normal
- 13 transaction?
- 14 A Yes, sir.
- 15 Q And they showed you them rings, correct? A
- 16 photograph of the rings?
- 17 A Yes, sir.
- 18 Q And how long have you been a jeweler for?
- 19 A How long have I been employed there? I was
- 20 employed there 18 years, sir.
- 21 Q You know about jewelry?
- 22 A I do.
- 23 Q Is -- those rings were stuck in a vice, is that
- 24 correct?
- 25 A Those rings were stuck in a what?

**Kendall Decker - Cross-Examination by Mr. Martinez**

1 Q The rings were stuck in a -- who placed them in  
2 this vice? You?

3 A What vice?

4 Q This vice right here and you clamp it down?

5 A I have no idea, sir.

6 Q That wasn't your --

7 A No, sir.

8 Q When you gave -- when -- when -- when you wrote out  
9 your ticket, what was the description of the rings -- of  
10 the male's gold band, gold wedding band? What was the  
11 description of that?

12 A I have no recall at this time, sir. That was two  
13 and a half years ago.

14 Q Do you remember my -- when you entered -- when you  
15 entered -- entered your information onto the -- it goes  
16 online for the police; is that correct?

17 A It goes online every evening.

18 Q Okay.

19 MR. MARTINEZ: I'd like to enter this into  
20 evidence, Your Honor.

21 THE COURT: All right. Yes, sir.

22 MR. MARTINEZ: It's the Leads Online.

23 MS. WALKER: No objection, Your Honor.

24 THE COURT: State's 23 -- excuse me, Defense 23?

25 THE COURT REPORTER: Defendant's 23.

**Kendall Decker - Cross-Examination by Mr. Martinez**

1 THE COURT: In evidence without objection.

2 (Defense Exhibit Number 23 was marked for  
3 identification.)

4 THE WITNESS: I wouldn't even know what it looks  
5 like. It's produced by the computer. I just hit the enter  
6 button and it goes where it goes, sir. I've never seen it  
7 in my life.

8 MS. WALKER: Your Honor, I guess it's problematic  
9 if he can't identify it.

10 THE COURT: Let me see it, please.

11 Hold on just a second, Mr. Martinez.

12 (There was a pause in the proceedings.)

13 THE COURT: Mark it for identification at this  
14 time.

15 As I say mark it as State's, excuse me, Defense 23  
16 for identification purposes only at this time.

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

18 BY MR. MARTINEZ:

19 Q All right. So you enter information that you get  
20 from the -- from the stuff that you receive right? Stuff  
21 that you buy, stuff that you pawn? You put in that  
22 information into the computer and; therefore, it goes to  
23 Leads Online; is that correct?

24 A No, sir. What happens, you come in, you do a  
25 transaction, your transaction is a single transaction and

**Kendall Decker - Cross-Examination by Mr. Martinez**

1 at the end of the evening, we hit the enter button on leads  
2 on line and every transaction that was transpired on that  
3 day goes to the Leads Online.

4 Q So where did they get this descriptions from?

5 A Descriptions come from those pawn tickets. They  
6 match the pawn tickets.

7 Q So who made the pawn ticket?

8 A Me and you.

9 Q So therefore, the information would match what you  
10 gave them, correct?

11 A Correct.

12 Q So when -- so your statement -- okay. The police  
13 came by the next day?

14 A True.

15 Q Right?

16 A Yes, sir.

17 Q And did they take pictures of the rings?

18 A At the pawnshop? No, sir. I don't know what they  
19 did after they left the pawnshop with the rings, sir.

20 Q They just took the rings?

21 A Yes, sir.

22 Q They didn't give you a receipt or nothing like  
23 that?

24 A No, sir. It's not required by law. They come and  
25 confiscated it. All I'm entitled to do is give up the

**Kendall Decker - Cross-Examination by Mr. Martinez**

1 items to the police.

2 Q So you don't remember what -- exactly what the  
3 rings looked like?

4 A To this day? No.

5 Q The pictures, do they -- the pictures that -- and  
6 you guys -- and your store did not put these rings in --

7 MS. WALKER: Objection, Your Honor, asked and  
8 answered.

9 THE COURT: Mr. Martinez, Mr. Decker has answered  
10 that question, that's on I believe they're State's 43, 44,  
11 or 45, I'm not sure which one you're referring to, but  
12 that's been answered.

13 BY MR. MARTINEZ:

14 Q So you state that there was marks on my arm?

15 A I did, in my statement.

16 Q And what type of marks were they?

17 A They were scratches.

18 Q Like one scratch, or --

19 A I believe there were two scratches, I recall.

20 Q So you can recall a scratch, but you can't recall a  
21 ring?

22 A Sir, I read my statement, same way you did.

23 Q When -- when did you read your statement?

24 A When the police subpoenaed me.

25 Q Did the police give you your statement to read?

## Kendall Decker - Cross-Examination by Mr. Martinez

1 A Yes.

2 Q Did they do that when you -- when you testified  
3 previously did they do that before?

4 A Yes. When I got subpoenaed, I seen everything that  
5 I provided.

6 Q When -- when we had the previous hearings and you  
7 were sitting up with the victims and stuff like that, what  
8 was the atmosphere like?

9 THE COURT: What was the atmosphere like?

10 THE WITNESS: I wouldn't know, sir.

11 THE COURT: Wait -- that's not relevant.

12 MR. MARTINEZ: You wouldn't know?

13 THE COURT: He's not a weather man.

14 BY MR. MARTINEZ:

15 Q Okay. What was the moods? How was they -- how was  
16 they acting?

17 A I have no idea, sir.

18 Q You were sitting right there.

19 A And?

20 THE COURT: And that's argumentative.

21 BY MR. MARTINEZ:

22 Q Okay. So -- if you were sitting right there and  
23 there was a group of people sitting right next to you --

24 MS. WALKER: Your Honor, I would object to the  
25 relevancy of this question.

**Kendall Decker - Redirect Examination by Ms. Walker**

1 THE COURT: Ask your question, Mr. Martinez.

2 BY MR. MARTINEZ:

3 Q What was the mood of the witnesses and the alleged  
4 victims during the previous hearings?

5 A I have no idea, sir. I don't know how people were  
6 feeling.

7 Q You wasn't watch them?

8 A I wasn't paying any attention to anybody. To be  
9 honest with you, I didn't even want to be here. I sat to  
10 myself.

11 Q So do you think you would have noticed them if they  
12 were laughing hysterically?

13 MS. WALKER: Your Honor --

14 THE WITNESS: I think I would have noticed that.

15 BY MR. MARTINEZ:

16 Q Did you?

17 A No, sir.

18 MR. MARTINEZ: Nothing further.

19 THE COURT: Redirect?

20 **REDIRECT EXAMINATION**

21 BY MS. WALKER:

22 Q He's asked you about the mood of the victims in  
23 this case. Have you seen the victim in this case before?

24 A Not until the last court hearing.

25 Q Have you seen -- he's asked you hysterically crying

1 as they were cross-examined by him about what he did to  
2 them, have you seen them laughing at this point?

3 A No, ma'am.

4 MS. WALKER: I don't have any further questions.

5 THE COURT: Recross, Mr. Martinez?

6 **RECROSS EXAMINATION**

7 BY MR. MARTINEZ:

8 Q Was you sitting there the whole time when we had  
9 previous hearings?

10 MS. WALKER: Your Honor, this has been asked and  
11 answered.

12 MR. MARTINEZ: Not in this manner.

13 THE COURT: It has been asked and answered. Ask  
14 your next question.

15 BY MR. MARTINEZ:

16 Q Has it been proven that what I did to these people,  
17 I was questioning them and they was hysterically crying on  
18 that?

19 THE COURT: That's a question that the jury, those  
20 citizens of Richland County would answer, not the gallery.  
21 Not Mr. Decker. Citizens of Richland County will answer  
22 that question. You can ask your next question, Mr.  
23 Martinez.

24 MR. MARTINEZ: I'll just wait until we can replay  
25 the --



1 THE COURT: Do you have any other questions?

2 MR. MARTINEZ: No, sir.

3 THE COURT: Thank you. Thank you very much.

4 All right. Ladies and gentlemen, I understand your  
5 lunch is here, so we'll take our luncheon recess. Do not  
6 discuss the case during this recess. Do not read, watch,  
7 listen to any news reports. Do not do any independent  
8 research or any research on the internet.

9 What I'm going to do, we'll start back in one hour  
10 2:05 and y'all know judicial time by now. We'll attempt to  
11 start back at no later than 2:05.

12 If during your luncheon recess any of you want to  
13 go walk or outside, what have you, you don't have to stay  
14 in your jury room. You can stay there and eat, what have  
15 you, but we'll try for 2:05.

16 Thank you thank you very much. Hope y'all have a  
17 pleasant lunch.

18 (The jury left the courtroom at 1:05 p.m.)

19 THE COURT: Thank you, thank you, Mr. Decker.

20 THE WITNESS: You're welcome, sir.

21 THE COURT: If you would be subject to recall by  
22 the Court, you don't have to stay here. I'm going to find  
23 that information through my court reporter.

24 All right. Why don't we -- I realize our officers  
25 are back. Why don't we take about 30 minutes and we'll

1 come back with a hearing on the -- on the motion that's  
2 still pending on the telephone numbers.

3 Anything before we take our 30 minute recess, Mr.  
4 Martinez?

5 MR. MARTINEZ: No, Your Honor.

6 THE COURT: Solicitor?

7 MS. WALKER: No, sir.

8 THE COURT: Thank you very much, we'll be back in  
9 30 minutes.

10 (A recess for lunch was observed.)

11 THE COURT: Mr. Martinez, as an initial matter, I  
12 had my court reporter review the cross-examination of  
13 Mr. Decker from the pretrial hearing and whatever day he  
14 testified during this proceeding and there's no question  
15 about the length of the hoodie, whether it was short sleeve  
16 or long sleeve. Of course, your standby counsel can review  
17 that transcript with my court reporter, but there is not  
18 even a question about that. If it's in the previous trial  
19 that was mis-tried, you have that transcript. I have not  
20 looked at the transcript, I've not looked at the transcript  
21 unless I've requested parts of it that you handed up when  
22 you were cross-examining. But, Mr. Kata, you can certainly  
23 at the appropriate time look at that with my court reporter  
24 as long as she gets the appropriate breaks.

25 MR. KATA: Yes, Your Honor.

1 THE COURT: And I apologize we're a few minutes  
2 late, I was a few mens late. Obviously. Doesn't matter  
3 what I do nobody cares.

4 Well, be that as it may.

5 MS. GODWIN: Judge, Mr. Decker has been waiting.  
6 He wanted to know if he's free to leave.

7 THE COURT: Mr. Decker, can you just be on call for  
8 the Court?

9 THE WITNESS: I can, sir.

10 THE COURT: If you would just do that for me please  
11 where I would have time for Mr. Kata to review that  
12 transcript also. I appreciate your time. Y'all have  
13 contact information for him?

14 MS. GODWIN: Yes, Your Honor.

15 THE COURT: And if you -- there's a lot of moving  
16 parts in trying to manage, but I would appreciate it if you  
17 would be on call with the Court. You don't have to sit,  
18 okay?

19 THE WITNESS: Thank you, sir.

20 THE COURT: All right. Thank you, thank you very  
21 much, Mr. Decker.

22 All right. Mr. Martinez, we're in your hearing on  
23 the order. Is there a witness you would like the call.

24 MOTION HEARING

25 MR. MARTINEZ: Yes, one second, please, Your Honor.

**Mark Berube - Direct Examination In Camera by Mr. Martinez**

1 Mark Berube.

2 THE COURT: Yes, sir, if you'd come around and be  
3 sworn for us, please.

4 MARK BERUBE,

5 having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat. State your full  
7 name for the record.

8 **DIRECT EXAMINATION IN CAMERA**

9 **BY MR. MARTINEZ:**

10 Q How do you pronounce your name?

11 A It's Berube.

12 Q Berube? Mr. Berube, when was this track and trace  
13 device put onto my phone that I was using?

14 A Can I see what you're holding in your hand there,  
15 please.

16 Q It's the information that you gave to the judge.

17 A Okay. That was initiated on March 31st of 2014.

18 Q Is there a page 1 to that?

19 A Let me see. Page 1 would have been the fax cover  
20 sheet that had to T Mobile from SLED.

21 Q So that was faxed, correct?

22 A Yes, that's correct.

23 Q Okay how was it faxed in January of 2014?

24 A Okay. The way this day is written is the day of  
25 the month, then the 340, then the year, so on this fax, it

## Mark Berube - Direct Examination In Camera by Mr. Martinez

1 says 01042014, which is the first day of April 2014.

2 Q Okay. And you guys -- is there a clocked copy as  
3 the judge asked for?

4 A The copy was filed with the clerk's office. Now  
5 once I put that in a bin with all the other orders we get,  
6 it goes to our admin people at SLED and so at that point,  
7 after it left my hand, I cannot account for its  
8 whereabouts.

9 Q The clerk of court didn't give you guys a copy of  
10 the clocked one that they have?

11 A No, they did not.

12 Q So where would the clocked copy be at that?

13 A That is a question I do not know where it is.

14 Q So you guys received information from the carrier;  
15 is that correct?

16 A That's correct.

17 Q What information did you guys receive?

18 A We received realtime GPS location on that device.

19 Q So you guys knew exactly where that phone was the  
20 whole -- for the whole month?

21 A I don't know if I would say exactly because there's  
22 a level of uncertainty with a GPS track. Sometimes it  
23 tells you exactly, sometimes you get a larger area for  
24 where that device is located.

25 Q What was the area that it was in on the 25th of

## Mark Berube - Direct Examination In Camera by Mr. Martinez

1 March?

2 A I didn't have it on the 25th of March.

3 Q You guys requested it for the full month?

4 A No, I requested this on the 20 -- I mean the 31st  
5 of March as an exigent emergency GPS locator.

6 Q You guys can request a month prior to that  
7 information?

8 A No.

9 Q On the first it says -- on the first paper there it  
10 says, we requested from March 1st until present records?

11 A That's correct. Now, on the -- on these orders --  
12 let me explain this. On an emergency order or an emergency  
13 situation, we will get the GPS locate of the phone to the  
14 emergent situation and then we will send an order, the same  
15 order to the phone company that everything that's on this  
16 order is not necessarily what we request at that time.

17 This is what the request is covering in case we  
18 need to -- as for your phone, it was a GPS locator as of  
19 March 31st, no records, no phone log and no subscriber  
20 information.

21 Q Okay. So with that being said, so you're saying  
22 you started activating on the 31st?

23 A That's correct.

24 Q And where was my location?

25 A I could not recall where you were on the 31st when

## Mark Berube - Direct Examination In Camera by Mr. Martinez

1 I first -- I've worked probably 1,200 cases since then. I  
2 cannot say with any certainty where exactly you were when  
3 it came up.

4 Q So how could Cavanaugh know -- how would there be  
5 information from that phone exactly where it was at on the  
6 29th of March?

7 A There were probably some locations that came up  
8 that day. If I remember correctly, we were out that day  
9 looking. I think one of them was Wal-Mart, possibly. I  
10 seem to remember that. The one location I'm sure of is an  
11 area where you were actually apprehended at your, I believe  
12 it was your brother's house out there in Hopkins or  
13 wherever it was.

14 Q Where was it before that, do you know?

15 A The only thing that I can recall, is I know it was  
16 around the Wal-Mart. I can't remember which Wal-Mart it  
17 was. I remember going to a Wal-Mart. Other than that, I  
18 couldn't recall with any certainty where we went that day.  
19 Again, that was two and a half years ago.

20 Q So you're saying that you guys started monitoring  
21 the phone on the 31st?

22 MS. WALKER: I would object, Your Honor, this  
23 question has been asked and answered about when they  
24 started monitoring the phone.

25 THE COURT: Let me hear the question.

## Mark Berube - Direct Examination In Camera by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q You started tracking and tracing the phone on the  
3 31st of March?

4 THE COURT: There's monitoring and there's tracks  
5 and tracing; is that different?

6 THE WITNESS: Those are two different things, yes  
7 Your Honor.

8 THE COURT: Is either one of those what y'all do.

9 THE WITNESS: In this particular case, it was  
10 tracking, Your Honor.

11 THE COURT: All right.

12 THE WITNESS: No, weren't monitoring any phone  
13 calls or any in-going or out-going or anything like that.

14 BY MR. MARTINEZ:

15 Q Because you guys wasn't monitoring any in-going or  
16 out-going calls?

17 A That is correct.

18 Q So how would the information -- okay. So how would  
19 the information be passed along to another officer how the  
20 phone was -- there was in-coming and out-going calls?

21 A I don't have any information on in-coming or  
22 out-going calls.

23 Q So you guys -- so, the 31st, correct? The 31st is  
24 when you guys started watching the phone?

25 MS. WALKER: Objection, Your Honor. This question



## Mark Berube - Direct Examination In Camera by Mr. Martinez

1 has been asked and answered.

2 MR. MARTINEZ: The warrant didn't get signed until  
3 the first.

4 THE WITNESS: It's still good --

5 THE COURT: What warrant are you referring to.

6 MR. MARTINEZ: The warrant that --

7 THE COURT: The Court ordered.

8 MR. MARTINEZ: The Court ordered.

9 THE WITNESS: Okay. As I explained to you a moment  
10 ago. This is a court order and in exigent circumstances,  
11 an emergency situation, we can get the -- we can get a GPS  
12 track locator on the phone without an order, which is why  
13 we do the order the next day. If it's an emergency  
14 situation.

15 BY MR. MARTINEZ:

16 Q What was the emergency situation?

17 A The fact that I had a wanted person who was wanted  
18 for CSC and kidnapping. It was a very high profile case  
19 and you needed to be captured immediately.

20 Q So that means to break the law?

21 THE COURT: Excuse me? That means to break the  
22 law?

23 THE WITNESS: I don't understand.

24 THE COURT: For him -- who the break the law.

25 MR. MARTINEZ: For their division.

## Mark Berube - Direct Examination In Camera by Mr. Martinez

1 THE COURT: No, sir. That doesn't mean that at  
2 all. Read some of the cases on exigent circumstances like  
3 York versus Belcher in the United States Supreme Court and  
4 that line of cases.

5 BY MR. MARTINEZ:

6 Q It's illegal to put a track or tracing device  
7 without a court order according to statute. It didn't say  
8 nothing about exigent --

9 THE COURT: All right. Well, you can argue that  
10 with me. You're not going to argue with this officer.

11 Ask your next question, Mr. Martinez?

12 BY MR. MARTINEZ:

13 Q Okay. So there was no information that was  
14 gathered from my -- either previously or after --

15 THE COURT: That's been asked and answered. He  
16 said they had a GPS locator on it, no phone log, no  
17 subscriber information; and listened to no telephone calls.

18 MR. MARTINEZ: Your Honor, they have a four page  
19 warrant asking for specifics: GPS. They're asking for --

20 THE COURT: That's a court order. It's not a  
21 warrant.

22 MR. MARTINEZ: A court order.

23 THE COURT: I see that and he's explained that  
24 also.

25 MR. MARTINEZ: Well, I have information from

## Mark Berube - Direct Examination In Camera by Mr. Martinez

1 officers that contradicts --

2 THE COURT: From this officer?

3 MR. MARTINEZ: No from another officer.

4 THE COURT: All right. Well, then ask your next  
5 question of this officer. That other information is  
6 hearsay as to this officer. Ask your next question.

7 BY MR. MARTINEZ:

8 Q Was -- was you present when they arrested me?

9 A I was present when you were arrested, yes.

10 Q Where was you at?

11 THE COURT: That's not a part of this hearing.  
12 This hearing has to do with the tracking of a phone,  
13 period.

14 MR. MARTINEZ: That's -- he came and tracked me to  
15 the phone.

16 THE COURT: He came and tracked you to the phone.  
17 Ask your next question.

18 MR. MARTINEZ: No further questions.

19 THE COURT: Solicitor.

20 MS. CAMPBELL: None.

21 MS. WALKER: None, Your Honor.

22 THE COURT: Call your next witness.

23 MR. MARTINEZ: I'd call Warren Cavanaugh.

24 THE COURT: Mr. Cavanaugh, if you would come around  
25 and be sworn for us, please.

## Warren Cavanaugh - Direct Examination In Camera 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: Warren Cavanaugh, Richland County  
6 Sheriff's Department.

7 DIRECT EXAMINATION IN CAMERA

8 BY MR. MARTINEZ:

9 Q Mr. Cavanaugh, will you tell me how you was able to  
10 give Mr. Shumard information regarding minutes on a  
11 government Verizon phone that was issued to my mother that  
12 I was using?

13 A Can I see what you're reading off of so I know what  
14 you're referencing?

15 (The document was handed to the witness.)

16 THE WITNESS: Can you -- this is a little hard for  
17 me to read. Where are you actually talking about here?

18 BY MR. MARTINEZ:

19 Q The highlighted areas there at the bottom.

20 A Okay. Go ahead with your question. Say that  
21 again.

22 Q How would Mr. Shumard, quoting what you said, get  
23 information off of my mother's phone that had government  
24 minutes from March 29th?

25 A I'm not sure about March 29th because I didn't

**Warren Cavanaugh - Direct Examination In Camera by Mr. Martinez**

1 receive a phone call from Investigator Shumard until the  
2 31st asking for my assistance.

3 Q Okay.

4 MR. MARTINEZ: Beg the Court's indulgence.

5 THE COURT: Yes, sir.

6 (There was a pause in the proceedings.)

7 BY MR. MARTINEZ:

8 Q Okay. So you called him -- he called you on the  
9 31st, is that correct?

10 A 31st of March, yes, sir.

11 Q So how would you be able to provide him that  
12 information from the 29th about a phone being used  
13 previously at Killian Road and then mom called?

14 A I'm going to be honest with you, I'm reading what  
15 you handed me. I don't remember any of this information  
16 here. What I can tell you is that on the 31st that we  
17 asked the assistance from SLED and the phone request and  
18 everything that you're speaking of was turned over to them  
19 and I don't -- I don't -- that's not anything that I  
20 personally can testify for or against because I didn't have  
21 anything to do with anything that you're asking.

22 Q So Shumard wrote those -- he didn't have -- okay.  
23 Did you tell Mr. Shumard that you guys have the access and  
24 ability to be able to track the pings the week prior?

25 A No, not the week prior. When I was called, it was

1 on the 31st and you were apprehended early morning of the  
2 2nd, less than 24 hours from when I got the call to assist  
3 in your apprehension.

4 Q So you never told Mr. Shumard about tracking the  
5 phone through the pings?

6 A If I -- if I relayed any information to Mr. Shumard  
7 referencing the telephone, it would be information that I  
8 was receiving from SLED who was handling that portion.

9 Q And you also, as well, don't know where the  
10 original clocked -- clocked -- clocked court -- court order  
11 is?

12 A Sir, I just told you, I don't have anything to do  
13 as the Richland County Fugitive Team with the clocked copy  
14 or any other copy of any paperwork regarding the phone  
15 itself.

16 Q All right. Thank you.

17 A You're welcome.

18 THE COURT: Questions solicitor?

19 MS. WALKER: No, Your Honor.

20 THE COURT: Thank you, again, Detective Cavanaugh.

21 I'm going to release these two officers from their  
22 subpoenas, Mr. Martinez. Any objection?

23 MR. MARTINEZ: No, sir.

24 THE COURT: Thank you. You may be released.

25 THE WITNESS: Thank you, Your Honor.

**Russell Shumard - Direct Examination In Camera by Mr. Martinez**

1 THE COURT: All right. Do you have another  
2 witness, Mr. Martinez?

3 MR. MARTINEZ: Yes, I do. I need to call  
4 Mr. Shumard and then I've got to find something he stated.

5 MS. WALKER: Your Honor, I would object to that,  
6 he's already called Mr. Shumard for purposes of this  
7 hearing.

8 THE COURT: All right. Come around Mr. Shumard and  
9 be sworn.

10 RUSSELL SHUMARD,  
11 having been duly sworn, testified as follows:

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

14 THE WITNESS: Lieutenant Shumard, S-H-U-M-A-R-D.

15 **DIRECT EXAMINATION IN CAMERA**

16 **BY MR. MARTINEZ:**

17 Q Mr. Shumard, do you recall that you wrote Cavanaugh  
18 minutes on government Verizon, I can't read what this says,  
19 but government? The paper that I showed you before that  
20 you wrote?

21 A Are you referring to my handwritten notes?

22 Q Yes, sir.

23 A Yes, sir, I reviewed those yesterday.

24 Q And you received this information from  
25 Mr. Cavanaugh; is that correct?

**Russell Shumard - Direct Examination In Camera by Mr. Martinez**

1 A Could I have a copy of that to review while I'm --

2 MR. MARTINEZ: This is the only one I have, Your  
3 Honor.

4 THE COURT: Well, if you read Rule 613, I believe  
5 it says if a witness requests copies of that for the  
6 lieutenant so Mr. Martinez will have his copy.

7 Thank you, thank you, Solicitor.

8 (A copy of the document was handed to the witness.)

9 BY MR. MARTINEZ:

10 Q Okay. And you wrote this, correct?

11 A Yes, sir.

12 Q And where did you get this information?

13 A In a phone conversation sometime after the 31st  
14 with Mr. Cavanaugh.

15 Q So he told you the use 03/29, at 3:56 p.m. I-77  
16 Killian Road?

17 A That's what I wrote down?

18 Q And then, Mom, 3:18, tried to call.

19 A That's what I wrote down.

20 Q And then map last week to see where he's been?

21 A That's what I wrote down. But as to the content of  
22 what was said and what all that meant, I don't know. I  
23 simply jotted this down as a tool to help me to further  
24 investigate this incident.

25 Q You testified before that you wanted to see -- you



**Russell Shumard - Direct Examination In Camera by Mr. Martinez**

1 told him you wanted to get a ping of the phone to see where  
2 it's been in the last week?

3 A I don't believe -- that's not my recollection of  
4 what I requested for them to do.

5 Q So who said -- so who said that? Map last week to  
6 see where he's been? Did they say that or did you say  
7 that?

8 A I wrote that down. I don't know if that's  
9 something Mr. Cavanaugh said or I said as a request.  
10 Typically my -- at that point in time, my main focus was to  
11 have their assistance to apprehend you.

12 Q How would that become a topic?

13 A I don't know.

14 Q How would -- if they -- if they just started  
15 tracking the phone on the 31st. How would they know to use  
16 on the 29th?

17 A I don't know, sir.

18 Q If they testified that they didn't have no caller  
19 ID or no type of way to tell, no way of certain issues, how  
20 would they know that my mom tried to call at 3:18?

21 MS. WALKER: Objection, Your Honor, calls for  
22 speculation.

23 MR. MARTINEZ: That 's not speculation, it's --

24 THE COURT: Don't argue.

25 If you know the answer to that question,

**Russell Shumard - Cross-Examination by Ms. Walker**

1 Lieutenant, you can answer it.

2 THE WITNESS: I don't know, sir. I don't know the  
3 tactics they used. I simply asked for their assistance and  
4 that's what they did.

5 BY MR. MARTINEZ:

6 Q So -- but this right here, this information, it  
7 would clearly see that they had use to know where the phone  
8 was on the 29th, that it was used and that -- who was  
9 calling; is that correct?

10 A I don't know if it was used or not or tracked, but  
11 that's simply what I wrote down.

12 Q But you just -- like you said, you just stated what  
13 they told you?

14 A That's what I wrote down, yes, sir.

15 Q Okay. Thank you.

16 MR. MARTINEZ: No further questions.

17 THE COURT: Solicitor?

18 **CROSS-EXAMINATION IN CAMERA**

19 BY MS. WALKER:

20 Q Did you ever have anyone track his whereabouts for  
21 -- through a data point of his whereabouts using the cell  
22 phone information?

23 A No, ma'am.

24 MS. WALKER: Thank you, sir, I have no further  
25 questions.

## Russell Shumard - Cross-Examination by Ms. Walker

1 THE COURT: Would you hand -- you may step --

2 Recross Mr. Martinez? Or excuse me, redirect.

3 MR. MARTINEZ: No, sir.

4 THE COURT: Thank you. You may step down.

5 THE WITNESS: Thank you, Your Honor.

6 THE COURT: All right. Call your next witness, Mr.  
7 Martinez.

8 MR. MARTINEZ: I was under the impression that you  
9 was going to get the clocked copy of the --

10 THE COURT: I asked somebody else. I'm not a  
11 runner. I give orders and I asked someone else to go check  
12 on the clocked copy and have someone from the clerk's  
13 office up here to testify. So we need to get our job  
14 titles straight. You got me?

15 MR. MARTINEZ: Yeah, I got you.

16 THE COURT: Yeah, you better have me. You got me?

17 MR. MARTINEZ: Yeah, I got you.

18 THE COURT: Yeah? You got me?

19 MR. MARTINEZ: Yes, sir.

20 THE COURT: Thank you. You want to call your next  
21 witness?

22 MR. MARTINEZ: I'd like to call the clerk of court.

23 THE COURT: All right. You may do so. Come  
24 around, please, Madam Clerk, and be sworn.

25 GAYLE BROADNAX,

**Gayle Broadnax - Direct Examination In Camera by Mr. Martinez**

1       having been duly sworn, testified as follows:

2               THE CLERK: Please have a seat. State your full  
3 name for the record.

4               THE COURT: All right. Mr. Martinez?

5                       **DIRECT EXAMINATION IN CAMERA**

6       BY MR. MARTINEZ:

7       Q       Ma'am, do you -- is there a clocked copy of an  
8 order that was clocked on the very first of March 2014 by  
9 the --

10      A       I would have to see a copy of what you have in your  
11 hands, sir, please.

12               (The document was handed to the witness.)

13               THE WITNESS: No, sir.

14       BY MR. MARTINEZ:

15      Q       You don't have a clocked copy?

16      A       No, sir. Someone from the solicitor's office came  
17 down to actually get a copy of that and we proceeded to go  
18 through our files. We actually just house them. We  
19 receive them over from the agency and our office just  
20 basically we just put the judges name on there, a date that  
21 we receive the information, sealed on the information and  
22 then we keep them just in our office in a certain section  
23 that's sealed off in our office.

24               It's not something that we would clock or anything.

25      Q       So you're saying a court order doesn't get clocked?

**Gayle Broadnax - Direct Examination In Camera by Mr. Martinez**

1 A Not if it's in a sealed case. When it comes down  
2 from the agency, what we do is, it's already enveloped and  
3 we put the judge's name on the envelope as well as the date  
4 on that envelope and we just keep it in our office. We  
5 house it in our office until someone from the solicitor's  
6 office or someone comes in and says that they need it in  
7 court. And the -- we called SLED pertaining to that  
8 document and we were told they didn't receive it and we  
9 never got that in our office.

10 Q They never got what?

11 A We never got that envelope with the information in  
12 our office.

13 Q Information for -- for the phone or --

14 A For this particular case number.

15 Q So your office never received that -- a copy of  
16 that? Is that what you're saying?

17 A No, I don't know what would have been in it because  
18 we wouldn't have opened it. We never received an envelope  
19 for the case number.

20 Q So the clerk of court never received a copy of that  
21 right there to file and put away as you guys usually do?

22 A I can't say that it was this right here, sir  
23 because like I said once we get this information, the only  
24 thing we are is we just house the information. We would  
25 have put the judge's name on the outside of the envelope,

**Gayle Broadnax - Direct Examination In Camera by Mr. Martinez**

1 all the information that's in the envelope and then we  
2 would date it and then what we do is we have a special  
3 place in your office that we keep all of this information  
4 until someone comes down to pull the information.

5 So we would have gone in the room to see exactly  
6 what would have been in the actual folder itself and  
7 clocked it, no.

8 Q But you have a folder with the judge's name that  
9 has a specific date?

10 A Yes, we have several folders from that specific  
11 date, but we didn't have any information for this file  
12 number for this case. And we called over to SLED and SLED  
13 said they never received it and it was never sent to us.

14 Q So that would make it unofficial?

15 A I can't answer that, sir. I'm not legally  
16 qualified to answer those kind of questions.

17 Q All right. Thank you, ma'am.

18 THE COURT: Solicitor, any questions?

19 **CROSS-EXAMINATION IN CAMERA**

20 **BY MS. WALKER:**

21 Q So you searched the area where y'all house the  
22 sealed court orders?

23 A That's correct.

24 Q And you couldn't find it?

25 A That's correct.

1 Q Thank you.

2 THE COURT: Redirect, Mr. Martinez?

3 MR. MARTINEZ: No, sir.

4 THE COURT: Thank you, thank you very much, Madam  
5 Clerk.

6 All right. Your next witness, Mr. Martinez?

7 MR. MARTINEZ: I don't have anymore witnesses, Your  
8 Honor.

9 THE COURT: Solicitor, any witnesses?

10 MS. WALKER: No, sir, Your Honor.

11 THE COURT: All right. Mr. Martinez, I'll be  
12 delighted to hear from you.

13 MR. MARTINEZ: Your Honor, as I told you, well, as  
14 I said before and as you said there's procedures this has  
15 to go through to make it official, which it did not. The  
16 clerk of court testified to that. There's conflicting  
17 testimony from the officers who dealt with this saying that  
18 there was no track and that they tried -- saying that they  
19 started their tracking on the 31st, yet they have their  
20 information from the 29th they passed it onto another  
21 officer.

22 Another officer testified to that, which shows that  
23 this track and this trace was on my mother's phone prior to  
24 even this thing being signed -- even to this being signed  
25 and --

1           The only thing that made this as they said like a  
2   special circumstance or what they're trying to say it is,  
3   is because they don't have no probable cause other than the  
4   officers stating that I was a suspect. So they illegally,  
5   against their own -- against the statute for the track and  
6   trace on it was tracking my phone, as well as me and I wish  
7   that they had the evidence from that GPS they had installed  
8   on the phone too; therefore we could use that and see  
9   exactly where the phone was at at these times.

10           But, they obviously don't recall, they obviously  
11   don't remember, or they -- as usual they just don't know.

12           It was so long ago, but there's no way that  
13   Mr. Shumard would know this information without their being  
14   a track and trace device on it.

15           As well as the timing, their stating the 31st.  
16   Mr. Shumard has evidence and information from the 29th,  
17   which goes to show that they are further trying to suppress  
18   evidence that's beneficial and favorable to me and to my  
19   defense. Because it would be able to prove exactly where  
20   the phone was at the time of these alleged incidents, which  
21   violates my 4th Amendment to illegal search and seizure.

22           THE COURT: All right. Solicitor?

23           MS. WALKER: Your Honor, I'm not sure if I  
24   understand everything that Mr. Martinez was trying to  
25   articulate. But I think what he was saying is that his 4th



1 Amendment rights were being violated because of the order  
2 that was signed by Judge Barber. First of all, Your Honor,  
3 it's not his phone, it's his mother's phone. I don't know  
4 if he has a standing to argue that. There is a valid order  
5 that was signed that Your Honor has seen, by Judge Barber.  
6 If the clerk's office lost it or whoever lost it, does not  
7 make that order any less valid.

8 They got the order. The testimony has been, Your  
9 Honor, that they didn't ask for any mapping of the previous  
10 locations of -- of his mother's cell phone and that when he  
11 was found he was with his mother and his mother's cell  
12 phone and they went up on a live GPS track of that phone.

13 So I'm not quite sure what he's asking anyone to do  
14 about his complaints. But the State's position, Your  
15 Honor, is that his complaints are invalid, that he doesn't  
16 have the standing to make them, and there is an order that  
17 has been signed by Judge Barber.

18 THE COURT: Thank you, Solicitor.

19 Mr. Martinez?

20 MR. MARTINEZ: As you stated, Your Honor, the --  
21 this has to be valid. It has a procedure. It has to go  
22 through proper procedurally, just like the clerk of court  
23 stated that it has to go through a process, they get it,  
24 they seal it, they put it away. This one, for some reason,  
25 they have everyone else's that went through that day but

1 this one. So that makes it unofficial.

2 But not only that, as she stated and as I've  
3 testified to, and as the officers know, this is how they  
4 found me was through this phone. And according to law, the  
5 statute is a person, as they stated on the warrant, and  
6 used by Nathan Martinez. It says they can install a track  
7 or tracing device by anyone who uses the phone. And if  
8 they don't do that, then it's against the law. They don't  
9 have this Court order, it's against the law for them to  
10 track and trace and to gather the information, which they  
11 did not have and which the proper procedures are  
12 articulated clearly by the testimony that they didn't file  
13 it and they didn't receive it.

14 THE COURT: What statute were you referring the  
15 previously, Mr. Martinez?

16 MR. MARTINEZ: Well, for the installation, it's  
17 17-29-20.

18 THE COURT: 29-20.

19 MR. MARTINEZ: Yes, sir.

20 THE COURT: And what is your position as to that  
21 statute?

22 MR. MARTINEZ: Well, that -- this is the actual --  
23 it says that it's prohibited. The installation is  
24 prohibited without court order, without obtaining a court  
25 order for this Section 17-29-40. And 17-29-40 states that

1 they have to have -- to go through procedures in order to  
2 obtain this and they have to have a reason, but they also  
3 -- it also has to be -- as you know it has to be  
4 authorized.

5 THE COURT: All right. Would someone please hand  
6 me up a copy of the order.

7 (The Court received a copy of the document.)

8 THE COURT: What handed this up to me?

9 MR. KATA: I gave you a copy.

10 THE COURT: Do you have another copy? I just don't  
11 want to highlight something on a document that is not an  
12 official copy.

13 MR. MARTINEZ: I don't, Your Honor.

14 THE COURT: Do you have a copy I can have,  
15 Solicitor, so that Mr. Martinez can have his back.

16 MS. CAMPBELL: Your Honor, we'll make one very  
17 quickly.

18 THE COURT: All right.

19 (There was a pause in the proceedings.)

20 MS. CAMPBELL: This is for you, Your Honor.

21 MR. MARTINEZ: Your Honor, I'm missing one -- I'm  
22 missing page 3.

23 THE COURT: Sheriff, will you give that to Mr.  
24 Martinez.

25 MS. CAMPBELL: Your Honor, we would need the make a

1 copy of that page two because we just had the three pages  
2 for you and I apologize.

3 THE COURT: I do not have a copy of page 2.

4 MS. CAMPBELL: Yes, sir, we're getting that. I  
5 didn't notice that when I handed it to her.

6 (There was a pause in the proceedings.)

7 (The Court was given the rest of the document.)

8 (There was a pause in the proceedings.)

9 THE COURT: Based on the record before me, I have  
10 an order, a four-page order sign by the Honorable James R  
11 Barber, 1st day of April 2014 for a specific telephone  
12 number. And the record indicates that it was the number of  
13 the defendant's telephone and the number of the defendant's  
14 mother.

15 The first question is whether or not a person  
16 carrying a telephone that is not his or her phone, phone  
17 number, has an expectation of privacy and the phone number  
18 and telephone of another and it's location.

19 It would be my -- this Court's opinion that he  
20 would not have any expectation of privacy. However, if he  
21 were to have an expectation of privacy, the record before  
22 the Court and the testimony of the officers, Officer  
23 Cavanaugh indicates he doesn't have anything to do with the  
24 request or the issuance of the order. He is a member of  
25 the Fugitive Task Force.

1 And the SLED officer indicates that the first time  
2 there was any tracking was never any records, phone logs or  
3 subscription information. The first time it went up as far  
4 as tracking was 31 March 2014.

5 Under the 17-30-10(A)1, there is a code section  
6 that authorizes law enforcement to get an order to record  
7 or intercept conversations 48 hours prior to the issuance  
8 of the order. The order has to be issued within 48 hours.  
9 However, you have a court of competent jurisdiction signing  
10 an order on 1 April 2014, and in that order it authorizes  
11 that the provider shall supply to SLED the following  
12 information for a 30-day period of time prior to the entry  
13 of the order. And/or 60 days, including the following:  
14 Incoming and outgoing call detail to include text message  
15 context without geographical link; GPS location.

16 The testimony before the Court is that there were  
17 GPS locations and this application -- this order is on page  
18 1, is in an ongoing fugitive subject which resides within  
19 the State of South Carolina.

20 So as to the order itself, it was issued by a court  
21 of competent jurisdiction for GPS locations and not for any  
22 other information. I take into account the notes that were  
23 presented by Mr. Martinez as to Lieutenant Shumard.  
24 There's about one, two, three, four, five pages. One  
25 appears to be Cavanaugh minutes on government Verizon

1 wireless, government, period.

2 And then I'll -- I will mark it as a court's  
3 exhibit.

4 One of them has a dash map last week to see where  
5 he's been -- he has been. The testimony is that that was  
6 never done. So whether or not that was a to do list or  
7 not, I don't know.

8 And the last looks like brother four doors from  
9 victim 233 and 213 victim brother. I don't know what that  
10 means. It has nothing to do with -- that I can tell --  
11 with this order.

12 As far as the fact of the original order, as I  
13 understand from Madam Clerk, when a sealed order comes in,  
14 it is not unsealed, so they would not know what was in the  
15 document. It was then placed in an envelope with the  
16 judge's name, date and the -- the date I would take it that  
17 the order came into the clerk's office filed in a specific  
18 secure location, cannot be located.

19 With that proposition, I would make it akin of less  
20 than a smoking gun so to speak, State versus Cheeseboro,  
21 where the murder weapon was melted prior to calling of the  
22 trial. And yet all that testimony was presented during the  
23 course of that trial. We have a valid order, signed by a  
24 circuit court judge pursuant to the statute. Although  
25 there may have been ministerial issues as far as

1 transporting the order from SLED to the clerk, wherever  
2 that may be does not defeat the substance of the order.

3 So as to the 4h Amendment, I do not think you have  
4 a 4h Amendment expectation on the telephone. If he does, I  
5 think the order is valid. The other terms and conditions  
6 of the statute are ministerial and any evidence obtained  
7 from the result thereof would be admissible, unless there  
8 are other exceptions, of course.

9 Further, I think it's pretty narrow -- it's an item  
10 of discovery.

11 All right. Anything further before we bring in our  
12 jury, Mr. Martinez?

13 MR. MARTINEZ: Yes, sir. You didn't read where  
14 Mr. Shumard wrote that it was used on the 29th.

15 THE COURT: I did. I said I'm going to mark it as  
16 a court's exhibit. It's in the record. I've read it  
17 several times up here. What do you think I've been doing  
18 for the last 30 minutes.

19 MR. MARTINEZ: I think that you've been finding a  
20 way to deny me my rights.

21 THE COURT: I'm following the law as I understand  
22 the law.

23 MR. MARTINEZ: You told me today when I brought  
24 this to your attention that there had to be a clocked copy  
25 and that it was a --

1 THE COURT: And that's ministerial.

2 MR. MARTINEZ: That hasn't been provided to me  
3 because Ms. -- the clerk stated to you that they have a  
4 procedure that same date all the orders, just like this  
5 one, was filed and they got that one.

6 THE COURT: Mr. Martinez, I've ruled.

7 MR. MARTINEZ: Your Honor, I'd like to file a  
8 mistrial for you clearly abusing your discretion  
9 repeatedly, repeatedly violating my rights. I'm not  
10 receiving a fair trial. I'm -- all my rights, my equal  
11 protection, my due process, my 5th, my 14th Amendment, your  
12 attitude towards me, it's on the personal level. You came  
13 yesterday or the day before yesterday and made a comment,  
14 open statement to the Court referring to me as to what the  
15 officer told you as to an incident and --

16 THE COURT: I'm not sure what you're referring to,  
17 Mr. Martinez. Refresh my memory.

18 Yes, sir, you came and made a statement, a blanket  
19 statement talking about everyone to watch their conduct.

20 And that was directed to each and every person in  
21 this -- however many walls there are in this courtroom.

22 MR. MARTINEZ: And --

23 THE COURT: Each and every person. That's not just  
24 directed to you.

25 MR. MARTINEZ: There was a reason why you said



1 that.

2 THE COURT: What would that reason be, Mr.  
3 Martinez.

4 That would be because the State and the officer  
5 came and told you there was an incident between us.

6 Nobody's told me about any incident between whoever  
7 you call us.

8 MR. MARTINEZ: So why would the State -- I have  
9 other grounds, as well, Your Honor.

10 THE COURT: Well, I'm not sure why you're saying I  
11 made a blanket statement and then it would be directed  
12 towards you. It's a blanket statement, it appears to be  
13 inconsistent. It's in the record now.

14 MR. MARTINEZ: It's not inconsistent because you  
15 came in and made a statement, but I know you're referring  
16 to an incident that happened the night prior between me and  
17 a couple of officers and they came to me personally told me  
18 they would not use this against me in this case.

19 THE COURT: I have no knowledge of an incident the  
20 night prior. I have a life outside of the courtroom. It  
21 may be for a limited period of time after the hours of  
22 darkness and before the hours of sunlight, but I have no  
23 knowledge of any incident that occurs between you and  
24 anyone else outside of this courtroom.

25 MR. MARTINEZ: So why would you come and say that

1 -- why would you come in that following day and just happen  
2 to make that blanket statement saying that it was brought  
3 to your attention that there was something -- something  
4 happened and it's my job to correct it. But either way --

5 THE COURT: Don't speak for a moment, please. I  
6 want to put something on the record. Give me a moment.

7 (There was a pause in the proceedings.)

8 THE COURT: Cannon 3 of the Appellate Court Rule  
9 401, Judicial Conduct. A judge shall perform the duties of  
10 the judicial office impartially and diligently. If the  
11 performance of these duties is following standards Apply B  
12 3: A judge shall require order and decorum in the  
13 proceedings before the judge. I have warned -- my warnings  
14 apply to everyone in the courtroom.

15 Further, I have advised the bailiffs and the  
16 deputies that individuals are prohibited unless it's an  
17 emergency from going in or out of the courtroom while an  
18 attorney or you, Mr. Martinez, are examining or  
19 cross-examining a witness. That goes back to Cannon 3(B)3:  
20 A judge shall require order and decorum in the proceedings  
21 before the judge.

22 I'm not going to discipline anyone for breaking the  
23 rule when they don't know the rules. And that's why I say  
24 that. So it is consistent for each and every individual in  
25 this courtroom; whether it be you, whether it be an

1 officer, whether it be a solicitor, or a spectator. That  
2 is part of my judicial responsibility because you don't  
3 want a disruption in the courtroom. I want the jury to be  
4 able to hear the evidence as it's being presented whether  
5 by you or by the State.

6 I know nothing of your conduct outside of when  
7 you're present before me. Do you have other grounds?

8 MR. MARTINEZ: Yes, sir.

9 THE COURT: All right. What is your next ground.

10 MR. MARTINEZ: Like I said, you're violating my due  
11 process, 5th and 14th Amendment, my 8th Amendment right for  
12 cruel and unusual punishment. I haven't been able --

13 THE COURT: For what.

14 MR. MARTINEZ: Cruel and unusual punishment. I've  
15 been -- I asked you for -- prior to obtaining medical -- to  
16 see my neurologist. You told me you was going to rule on  
17 it but you never did. I haven't been able to prepare my  
18 defense if I planned to go that route. You said you was  
19 going to take it under advisement. You never advised me  
20 after it.

21 THE COURT: And what is that that I took under  
22 advisement? I took under advisement the motion to dismiss.

23 MR. MARTINEZ: This was a month -- like the 9th,  
24 the 9th of last month.

25 THE COURT: That's not the trial we're in.

1 MR. MARTINEZ: It was pretrial.

2 THE COURT: I don't know what you're talking about.

3 MR. MARTINEZ: I gave you an exhibit which was a  
4 picture of a CAT scan of my head and you said you was going  
5 to take it into account and see if you would allow me to be  
6 seen by a neurologist.

7 THE COURT: And I believe I discussed that with  
8 your standby counsel.

9 MR. MARTINEZ: He never told me about that, Your  
10 Honor.

11 THE COURT: I don't know what he says or doesn't  
12 say.

13 MR. MARTINEZ: All right. You are clearly abusing  
14 your discretion. You have ruled against me in everything,  
15 according to law. You've said these things are clear an  
16 convincing that are not --

17 THE COURT: Well, Mr. Martinez, if there was an  
18 adverse decision against you, whether I have or have not  
19 used my discretion would be a question for the appellate  
20 courts.

21 MR. MARTINEZ: And I'm not trying to get to that  
22 extent. As I stated, I want a fair trial. I just want to  
23 have a fair trial by a fair tribunal, which I'm not  
24 receiving that because of my rights being violated. My  
25 state and my federal rights. And it's apparent. It's

1 obviously in the way to conduct that the Court's going, the  
2 way that your comments -- the way it's referring to me, the  
3 way you're talking to me.

4 THE COURT: I call you Mr. Martinez. I never call  
5 a defendant, a defendant, not even in my instructions to  
6 the jury. I call them either by a monicker being Mr. or  
7 Ms. and never the defendant. And I address you like that  
8 each and every time. But at any rate, you put in what you  
9 want. You put in what you want, Mr. Martinez.

10 MR. MARTINEZ: You're -- as I said before, you're  
11 bias, you're partial, you're clearly ruling with the State  
12 every time and it's obvious that you want -- that your part  
13 of this -- you know what I'm saying, just like the  
14 photographic lineup your job -- you said your job is to  
15 talk about the law. You're looking at the photographic  
16 lineup giving the opinion, Oh, it just looks like you have  
17 a bushy eyebrow.

18 THE COURT: Yes, sir, because I have that -- that  
19 is based on the law where there's a presumption of --  
20 excuse me, it's actually a preponderance of the evidence  
21 and I actually passed that as my gate keeper function as to  
22 the admissibility of the evidence. As to the jury, they  
23 have to determine by a higher standard.

24 I'm sorry you don't understand, Mr. Martinez and --

25 MR. MARTINEZ: I --

1 THE COURT: -- and quite frankly, there really is  
2 no more I can do to explain it to you.

3 MR. MARTINEZ: I understand the law. I understand  
4 what you're saying. I have plenty of case law that will  
5 explain exactly how the suggestiveness and the  
6 unconstitutionality of their legal procedure. I can show  
7 you their -- I can show you the SLED's policy and  
8 procedures that was provided to me from them.

9 THE COURT: I think you cross-examined one of the  
10 witnesses on that, Mr. Martinez. I had them provide that  
11 to you in preparation of your cross-examination of the  
12 officers.

13 MR. MARTINEZ: And they clearly went against that.

14 THE COURT: And you can present that -- you can do  
15 with that information whatever you want to choose to do  
16 with it.

17 MR. MARTINEZ: You have allowed me to be prejudiced  
18 as such as like with the Colbi Sutton was being  
19 interrogated and every piece of information is supposed to  
20 be shown to me what is being allowed in. I didn't see  
21 that.

22 THE COURT: You're held to the standard as an  
23 officer of the Court. You would have to make your  
24 objection contemporaneous. I can't deal on non-objections.  
25 I can't do that. I can't try this case for you. I've

1    tried to protect you from Defendant's 23. That why I sent  
2    the jury out, Mr. Martinez because it indicates one officer  
3    telling another officer that you're a member of the CRIP's.

4           MR. MARTINEZ: The solicitor already told the  
5    newspaper that.

6           THE COURT: I'm not trying this case in the  
7    newspaper. I'm trying it through this courtroom.

8           MR. MARTINEZ: No --

9           THE COURT: They have ethical rules that they also  
10   follow. I don't read the newspaper. I don't read the  
11   newspaper.

12           MR. MARTINEZ: Okay. Can you tell me the -- that  
13   -- that article should have never been allowed in through  
14   Colbi Sutton -- Colbi Sutton was being questioned and they  
15   introduced Rozanna Tross's.

16           THE COURT: And you did not object?

17           MR. MARTINEZ: I didn't know that it was being  
18   granted in until --

19           THE COURT: Well, you were sitting -- you were  
20   sitting right there. You chose to represent yourself.  
21   I've advised you of the dangers of self-representation.  
22   You have made your decision based on -- a valid decision in  
23   your opinion and I granted it based on the dignity in which  
24   our society holds an individual to self-determination.

25           MR. MARTINEZ: Yes, sir, and I do want to represent

1 myself.

2 THE COURT: And you are.

3 MR. MARTINEZ: But my understanding is though, is  
4 every time that they enter evidence, they're supposed to  
5 notify me of what they're entering just like I do to them.  
6 Just like officer -- they show it to them.

7 THE COURT: I'm not in a position where I tell you  
8 each and every time what to or not the object to.

9 MR. MARTINEZ: I didn't know that it was there to  
10 be able to object to it when it was done.

11 THE COURT: You were in the courtroom. It was done  
12 in open court without the jury present.

13 MR. MARTINEZ: It wasn't done -- I didn't see it  
14 being done.

15 THE COURT: It was done -- well then, I don't know  
16 what your demeanor was then. You were sitting here. I  
17 assumed you were following the testimony. It was testimony  
18 from a witness that you called and had subpoenaed; not that  
19 the State called and subpoenaed.

20 MR. MARTINEZ: Okay. But is it not -- is it not --  
21 do they not have to show me what they're entering into  
22 evidence?

23 THE COURT: Actually, that particular document --  
24 I'm not sure they do. Number one, it's your duty and  
25 responsibility to track the evidence, but I think that



1 particular document -- I don't know. You didn't object.

2 They offer an item of evidence, you don't object...

3 MR. MARTINEZ: Well, like I said, that caused me  
4 unfair prejudice. Your rulings, I have to now -- like as I  
5 said before, I have to now defend myself from three  
6 different charges -- from charges that should have never  
7 been here, never been allowed, a statement that should have  
8 never been allowed. You've heard testimony from officers  
9 that contradicted each other.

10 They was all in the same room. They all said  
11 different things pertaining to different evidence and you  
12 know that the voluntariness of the statement depends on the  
13 voluntariness, it depends on the knowingly, intelligently,  
14 and the --

15 THE COURT: It depends on the totality of the  
16 circumstances, which I will charge the jury all those  
17 factors.

18 MR. MARTINEZ: And you also know the highly  
19 prejudicial effect of all this stuff that's occurring. And  
20 you know how the effect it's going to have to the jury on  
21 me. Especially the comments that they're being allowed to  
22 say. The things that they're being able to do. The  
23 State's been able -- allowed to -- they're calling  
24 witnesses, Oh, no, don't say this. All they need to do is  
25 plant that seed. That, Oh, he's been down to the Richland

1 County so they can assume that I'm a defendant in a  
2 criminal case.

3 Well, he's going to the police station, so that  
4 automatically assumes guilt of other charges, other cases  
5 other investigations. It just incriminates me to the bad.  
6 It makes me look -- as I said it's highly prejudicial.

7 THE COURT: Is there anything else you would like  
8 the put in the record.

9 MR. MARTINEZ: Yes, you clearly in saying that  
10 Ms. Tucker's case is clear and convincing when she perjured  
11 herself on the stand.

12 THE COURT: I've ruled on that.

13 MR. MARTINEZ: And as I said --

14 THE COURT: I don't want to revisit my rulings.  
15 All this is in the record. You are protected on the  
16 record. I put that in the record. You've objected to it.  
17 I'm not going to keep re plowing the same ground, Mr.  
18 Martinez.

19 MR. MARTINEZ: It's just the cumulative effect that  
20 all this stuff is having on me.

21 THE COURT: All right. The cumulative effect, at  
22 the appropriate time can be argued also.

23 MR. MARTINEZ: Well, you've already ruled on this  
24 too and it's --

25 THE COURT: Yes, sir, I have ruled. Anything

1 further?

2 MR. MARTINEZ: Yeah. I want to say yesterday I was  
3 approached by the State, it's another unconstitutional,  
4 it's caused me unfair prejudice that they -- there's  
5 constant meetings between Mr. Kata and the State and it's  
6 outside of my presence.

7 THE COURT: There's not constant meetings between  
8 the State, Mr. Kata, and myself.

9 MR. MARTINEZ: At least one a day there is.

10 THE COURT: No, sir, it's not at least once a day.  
11 I actually met with Mr. Kata more on ex parte issues  
12 signing documents on your behalf; on your behalf.

13 MR. MARTINEZ: For witnesses?

14 THE COURT: I don't know that you want to disclose  
15 in open court the documents that I'm authorized to sign ex  
16 parte for the State to know, Mr. Martinez.

17 MR. MARTINEZ: Okay. Well, yesterday, I was  
18 approached by Ms. Walker. She asked me if I wanted the DNA  
19 test to be run again.

20 THE COURT: Wanted what?

21 MR. MARTINEZ: The DNA test to be run again.

22 THE COURT: That's not before me.

23 MR. MARTINEZ: Okay. Well, if you'll let me  
24 explain -- they came and approached me and asked me and I  
25 said why would you guys -- and she was like I came to ask

1 Mr. Kata and she said I don't think he should be asked this  
2 and she went over there and told counsel and she was like  
3 no, come on Justin, you're not supposed to answer his  
4 question and you was coming and they went out there and  
5 they was talking --

6 THE COURT: What are you asking me that for. Who  
7 are you complaining about? The State --

8 MR. MARTINEZ: I'm complaining about everybody.

9 THE COURT: It's everybody but you.

10 MR. MARTINEZ: I -- I'm --

11 THE COURT: I rule on the evidence before me.

12 All right. Anything further?

13 MR. MARTINEZ: Yeah, that's what I'm saying.

14 They're going out --

15 THE COURT: What are you asking me to do? That's  
16 all I want to do.

17 MR. MARTINEZ: I want a fair trial.

18 THE COURT: And that's what I'm providing for you.  
19 You have a fair and impartial jury. You have a fair and  
20 impartial judge.

21 MR. MARTINEZ: I don't have a fair and impartial  
22 jury. I don't have a fair and impartial judge, I don't  
23 have -- as far as me.

24 THE COURT: Mr. Martinez, I respectfully disagree.  
25 Anything further before we bring in the jury?

1 MR. MARTINEZ: No, sir.

2 THE COURT: Thank you.

3 Anything from the State?

4 MS. CAMPBELL: No, sir.

5 (The jury entered the courtroom at 3:21 p.m.)

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

7 THE COURT: All right. Thank you.

8 Of course, y'all all know what this means. At  
9 least I'm consistent. I apologize again for the delay. It  
10 had nothing to do with the parties whatsoever. They were  
11 back not on time, but early. I hope y'all had a pleasant  
12 lunch. We're continuing the trial by the presentation of  
13 the evidence and the testimony by the State in it's case in  
14 chief.

15 Please continue to give the parties your complete  
16 and undivided attention. Thank you.

17 Solicitor, you may call your next witness.

18 MS. CAMPBELL: At this point, the State calls  
19 Bridgette de Guzman.

20 THE COURT: All right. If you would come around  
21 and join us, please.

22 BRIDGETTE DE GUZMAN,

23 having been duly sworn, testified as follows:

24 THE CLERK: Please have a seat. State your full  
25 name for the record.

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 THE WITNESS: Bridgette de Guzman.

2 **DIRECT EXAMINATION**

3 BY MS. CAMPBELL:

4 Q Ms. De Guzman, where are you employed?

5 A I work at Palmetto Health Richland.

6 Q And what do you do there?

7 A I am a sexual assault nurse examiner.

8 Q And can you tell the jury what your duties as a  
9 sexual assault nurse examiner?

10 A When a patient presents to the hospital and they  
11 have been sexually assaulted, they call me after she's been  
12 -- he or she has been medically cleared and I take them to  
13 our examination room and we both -- I perform a medical and  
14 forensic examination on the patient.

15 Q Can you tell the jury a little bit about your  
16 education and training in this field?

17 A Yes. I received my nursing degree at the  
18 University of South Carolina. I'm a registered nurse.  
19 I've been a registered nurse for about 13 years; and then  
20 after that I became a sexual assault nurse examiner. I  
21 received or I go to a class, a 40 hour didactic course and  
22 then after that I also have to complete clinical  
23 requirements such as watching exams from other sexual  
24 assault nurse examiners, practicing pelvic exams, following  
25 law enforcement just to get an idea of what they do. We

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 also observe courts -- courtroom interactions just to  
2 familiarize yourself with that.

3 And then I also have to watch actual sexual assault  
4 nurse examiner for full exams, probably like five. And  
5 then I have to provide my own, on my own, being observed.  
6 And once they -- the nurse feels I'm competent then I can  
7 do the work.

8 Q And approximately how long have you been a sexual  
9 assault nurse examiner?

10 A It will be six years in March.

11 Q And over the six year period, approximately how  
12 many, or if you know, how many sexual assault exams have  
13 you done?

14 A I've probably done about 375.

15 Q 375?

16 A Uh-huh. Both adults and children.

17 MS. CAMPBELL: Your Honor, at this time we would  
18 offer her as an expert as a sexual assault nurse examiner.

19 THE COURT: Mr. Martinez.

20 MR. MARTINEZ: What's that?

21 THE COURT: They have offered this young lady as an  
22 expert.

23 MR. MARTINEZ: No objection.

24 THE COURT: A SANE nurse. No objection?

25 MR. MARTINEZ: No, sir.

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 THE COURT: All right. Ladies and gentlemen of the  
2 jury normally a person cannot give opinion testimony.  
3 Normally when a person testifies, they must testify as to  
4 what they saw, heard, sensed by smell or something of that  
5 nature. However, there is an exception when someone is  
6 qualified because of education, experience in a particular  
7 art, science, craft or profession. They are permitted to  
8 give their opinion in certain areas if the Court qualifies  
9 them that way. This witness --

10 And her full name, please, Solicitor?

11 MS. CAMPBELL: Bridgette de Guzman.

12 THE COURT: -- will be qualified in the area of --

13 MS. CAMPBELL: As a sexual assault nurse examiner.

14 THE COURT: -- to give opinion testimony in that  
15 area. That does not mean that you must accept the opinion,  
16 but it is evidence for you the jury to use in any way you  
17 deem fit and appropriate.

18 Thank you solicitor, you may continue.

19 MS. CAMPBELL: Thank you, Your Honor.

20 BY MS. CAMPBELL:

21 Q I want to turn your attention back to March 27th,  
22 2014. Did you come in contact with a young woman named  
23 Briona Hurshman?

24 A Yes, ma'am.

25 Q And can you tell the jury how that happened?



**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 A The emergency department notified me that a patient  
2 had been sexually assaulted and according to my notes I  
3 received the call around 9:40 on 3/27/14. And once they  
4 call me, I respond within an hour, which typically it's no  
5 longer than an hour. I go to the hospital. I make sure  
6 she's been medically cleared, which means there's nothing  
7 life threatening or no broken bones, anything that the  
8 doctor has to repair or get x-rays of or anything like  
9 that. So once she's stable, medically stable, then I'm  
10 able to take her to the examination room.

11 And from there, I explain the process to her. And  
12 I always have to get consent before I go over anything. So  
13 she consented to the whole exam which includes: First we  
14 just talk about medical history, demographics. Then we go  
15 into the assault history itself. She tells me what  
16 happened. That helps guide me as to where I may or may not  
17 find some DNA evidence or may recover DNA evidence. She  
18 also let's me know if there are any injuries so I can make  
19 sure that I can either address them as needed or photograph  
20 them, document them, that sort of thing. In addition to  
21 evidence collection though, we also offer medical  
22 treatment, such as sexual assault medication, a prophylaxis  
23 is needed or emergency contraceptive and also after care if  
24 they feel like they need counseling or -- we do refer them  
25 to sexual trauma services for advocacy, which they're

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 normally present there as well. So we address both medical  
2 evidence collection and even psychological evidence.

3 Q When you first came in contact with Ms. Hurshman.  
4 How can you describe her demeanor?

5 A She was -- when she recalled -- during the  
6 examination when she would recall or when I asked  
7 questions, she would be tearful at times. And at times she  
8 was calm. But she was cooperative throughout the exam and  
9 she was able to provide me with the history and able to  
10 complete the exam.

11 Q And limiting your recitation of what you talked  
12 about, what would be the medical -- are there certain  
13 things that you try to find out what's happened kind of  
14 between the actual assault itself and when you actually  
15 come in contact with them?

16 A Could you say that again?

17 Q Are there certain things, hygiene activity that you  
18 actually check into prior to doing your exam?

19 A Yes. So when a victim presents, sometimes it's  
20 immediately, sometimes it's two days after. There's  
21 different reasons as the why. So part of the exam, I asked  
22 about post-hygiene activity after the assault or even  
23 pre-assault activity. So after the assault, what we call  
24 post-hygiene activity is like, how many times did you  
25 urinate, did you defecate. I'm just going to look at my

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 notes here so I won't miss anything. Did you change  
2 clothing, that type of thing. Post-types of activities  
3 because it helps guide me as to where evidence may have  
4 been degraded or lost just if they shower, or if they say  
5 somebody licked them on a certain part, if they showered  
6 two or three times, it would be awfully hard for me to get  
7 saliva off of someone with it being a certain body part.  
8 So I ask different hygiene activities just to help guide  
9 me.

10 Q Okay. And had she performed any of the activities  
11 she was talking about?

12 A She urinated once or she urinated. I didn't  
13 qualify how many times. She said she defecated. She did  
14 not use any type of genital or body wipes, which I always  
15 ask about chemicals or baby wipes that sort of stuff. She  
16 did not douche, she did not have a tampon or a diaphragm to  
17 remove. She did brush her teeth. She did not use  
18 mouthwash. She did not bathe, shower, or wash. She did  
19 have some water to drink and she did change her clothing.  
20 I indicated jeans and underwear she was wearing at the time  
21 of the assault placed in fire hazard bag prior to my  
22 arrival, bagged by LE Richland's Law Enforcement, so it was  
23 bagged by law enforcement and the bag is currently in the  
24 hospital room floor. That's where I initially saw it.

25 And then she -- she did not smoke.

## Bridgette de Guzman - Direct Examination by Ms. Campbell

1 Q Once you've gotten that information, do you then  
2 proceed to get what's known as a history of what had  
3 happened?

4 A Yes, I asked about the assault history and I  
5 usually just let them tell me and I try to type everything  
6 that they tell me verbatim. If they talk really fast, I  
7 ask them to slow down so I can make sure I get it down  
8 correctly. And so she told me happened.

9 Q And you can't say what she said to you necessarily,  
10 but did she indicate when and where the assault occurred?

11 A She said it happened around 7 o'clock. The  
12 location was in bedroom of [REDACTED], unit  
13 [REDACTED], in Columbia, South Carolina. She indicated that there  
14 were witnesses. And I asked her to identify the witnesses  
15 and she said her daughters.

16 Q And then did she give you an account of what  
17 happened?

18 A Yes.

19 Q She -- and you can't say what she told you, but did  
20 she also give you a description of the person who assaulted  
21 her? You cannot say what she said, but did she give you  
22 one.

23 A Yes, she did.

24 Q During the course of getting her history, do you  
25 also find out if there were any type of weapons that were

## Bridgette de Guzman - Direct Examination by Ms. Campbell

1 used?

2 A Yes.

3 Q And did she indicate what type of weapons used?

4 A Yes, she did.

5 Q Do you also for purposes of medical treatment or  
6 gathering evidence, do you also find out if there are any  
7 physical restraints involved?

8 A Yes.

9 Q And did she indicate whether or not there were?

10 A Yes.

11 Q Do you also question her about whether or not there  
12 were any verbal threats of harm?

13 A Yes, I did.

14 Q And did she give you information about that?

15 A Yes.

16 Q Specifically before your exam, do you try to find  
17 out what type of assault occurred?

18 A Yes, I do.

19 Q And was she able to give you information about  
20 that?

21 A Yes.

22 Q Specifically as to penetration in certain areas?

23 A Yes, ma'am.

24 Q What information did she give you?

25 A She -- I specifically asked penetration of vagina

## Bridgette de Guzman - Direct Examination by Ms. Campbell

1 by a penis, finger or objects; asked and she said that --  
2 her vagina was attempted penetration by his penis. She  
3 says he was attempting to enter her vagina but was only  
4 able to rub on it. She did say that he did penetrate her  
5 vagina with his finger.

6 Q Did she indicate whether or not he fondled any  
7 areas of the body?

8 A Yes.

9 Q And what area did she indicate?

10 A Her right breast and her vagina.

11 Q Do you also inquire about possible ejaculation?

12 A I do.

13 Q And what does she indicate?

14 A She said I don't think he did.

15 Q Did you also ask about any kind of contraceptive or  
16 lubricants that may have been used?

17 A Yes.

18 Q What did she indicate to you?

19 A I asked about foam, jelly lubricant. She said no  
20 to those. And then that the condom -- if a condom was used  
21 and she said yes. But she said she didn't, in quotes, I  
22 didn't see it, end quote. And then she said she could hear  
23 it but it didn't sound like a normal condom, almost like a  
24 paper bag and then she said like it wasn't fitted.

25 Q I want to turn your attention to your actual

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 examination, once you get that history as well as the  
2 specifics. Did you do an external examination on her?

3 A Yes, ma'am.

4 Q What are you looking for when you just do the  
5 external examination of her body?

6 A I look for any injuries. I start from the head  
7 down to her toes and I also keep in mind of that assault  
8 history that she told me and where the pain is and so I  
9 just go head to toe and then as I see things, I ask her, do  
10 you know how this happened. And so I look for any obvious  
11 injuries and sometimes they're not obvious so I'll palpate  
12 the body and ask her if it feels tender and then I realize  
13 that they're hurting there.

14 Q And walking the jury through it, can you tell what  
15 your observations were and what you saw --

16 A Uh-huh.

17 Q -- as far as external physical. This is just a  
18 full body, if anything?

19 A Okay. So on her right forearm, there was some  
20 redness, about two centimeter area of minimal redness to  
21 the lower right forearm. On the left wrist there was  
22 redness, about 3 to 4 centimeter, linear redness, and then  
23 on the right ankle there was about a one centimeter of area  
24 of minimal redness to the anterior part of the right ankle  
25 or the -- more to the front part of the right ankle.

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1           She had abrasions, about a three millimeter  
2 abrasion on her right cheek. I asked her if she knew if  
3 she had that before or how she got that and she states it  
4 wasn't there before her assault. She wasn't sure how it  
5 happened. On her left wrist, she had wounds, 3 to 4  
6 centimeter, linear redness on her left wrist and on her --  
7 she also had linear area of redness below the location of  
8 the wound. All these locations were numbered.

9           So from the, lateral left wrist extending to the  
10 bottom of the left thumb, so there was another area of  
11 redness on her left wrist.

12 Q       Once you performed your external exam, do you also  
13 photograph this in order to memorialize your findings?

14 A       Yes, ma'am.

15 Q       And I want to show you what's been marked as  
16 State's Exhibit's 46 through 69 and first ask you to look  
17 at those and see if you recognize them.

18       (The witness was looking through the exhibits.)

19 BY MS. CAMPBELL:

20 Q       Now, are those all photographs that were taken of  
21 her that day during the course of your examination?

22 A       Yes, ma'am.

23       MS. CAMPBELL: Your Honor, at this time we'd offer  
24 these into evidence, 46 through 69.

25       MR. MARTINEZ: I object, Your Honor, under 403.



**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 THE COURT: Have you reviewed them?

2 (Mr. Martinez is looking through the photographs.)

3 MR. MARTINEZ: Your Honor, I object, Rule 403.

4 THE COURT: How many photographs is it, Solicitor?

5 MS. CAMPBELL: Your Honor, I believe the numbers  
6 are 46 through 69.

7 THE COURT: Is that 23.

8 MS. CAMPBELL: Yes, sir.

9 THE COURT: Thank you, Ms. Campbell. Can you hand  
10 them up, please.

11 MS. CAMPBELL: Yes, sir, Your Honor, they're  
12 backwards now.

13 (The Court was looking at the exhibits.)

14 THE COURT: Step to your jury room, please, ladies  
15 and gentlemen. Do not discuss the case.

16 (The jury left the courtroom at 3:41 p.m.)

17 THE COURT: All right. Mr. Martinez, as to State's  
18 Exhibit Number 46, what is your specific objection as to  
19 State's Exhibit Number 46.

20 MR. MARTINEZ: Undue prejudice.

21 THE COURT: Yes, sir. And what are your grounds  
22 for alleging undue prejudice to a photograph of, it appears  
23 to be Ms. Hurshman in a sitting position.

24 MR. MARTINEZ: That atmosphere of trying to inflame  
25 them --

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 THE COURT: As to this specific photograph.

2 MR. MARTINEZ: They're trying to show -- they're  
3 trying to show the jury there's a crime that happened, but  
4 yet there's no evidence that I'm the one that done it.

5 THE COURT: All right. As to State's Exhibit  
6 Number 46, I find that the probative value is substantially  
7 outweighed by any danger of any unfair prejudice. Further,  
8 I make that analysis under State versus Collins.

9 THE COURT: As to State's Exhibit Number 47? It  
10 appears to be a photograph of part of the body of Ms. -- I  
11 take it the victim, Ms. Hurshman. What is your objection  
12 as to that?

13 MR. MARTINEZ: Unfair prejudice.

14 THE COURT: Specifically.

15 MR. MARTINEZ: Yes, sir.

16 THE COURT: Specifically why is it unfair  
17 prejudice?

18 MR. MARTINEZ: Specifically because it's -- they're  
19 trying to inflame the jury with these -- with the -- the  
20 incident that happened with Ms. Hurshman, they're trying to  
21 -- it's prejudicial to me.

22 MS. CAMPBELL: Your Honor, I believe that shows the  
23 injury that she's testified to and would be relevant to  
24 that reason.

25 THE COURT: Anything further, Mr. Martinez?

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 MR. MARTINEZ: No, sir.

2 THE COURT: All right. It just appears to be a  
3 very minor bruises. I've seen worse injuries. I do not  
4 see any unfair prejudice therein under either 403 or State  
5 versus Collins. Further the State has the requirement to  
6 prove the elements of which -- both criminal sexual conduct  
7 in the first degree, kidnapping, and it may be -- it  
8 further may be corroborative as far as restraint.

9 All right. As to State's Exhibit 48? It appears  
10 to be, again, a photograph of the wrist of an individual.

11 MR. MARTINEZ: Rule 403, for unfair prejudice.

12 THE COURT: How specifically is that unfair and  
13 prejudice?

14 MR. MARTINEZ: Because, as I said they're trying to  
15 show them that Ms. Hurshman suffered that injury. There's  
16 no saying how she suffered that injury. They can't prove  
17 it. It's obvious she suffered injury because of the  
18 pictures, but there's no proof how she did that.

19 THE COURT: All right. Solicitor?

20 MS. CAMPBELL: That would corroborate her being  
21 tied up by the man she described and also corroborates the  
22 medical expert's testimony.

23 THE COURT: Mr. Martinez.

24 MR. MARTINEZ: Medical expert testimony is only  
25 that she seen a red mark. In her testimony, she hasn't

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 said that she had seen Ms. Hurshman tied up.

2 THE COURT: I agree with that. The medical expert  
3 testimony is opinion testimony. She's been qualified as an  
4 expert, SANE nurse. She can give her opinions and the  
5 basis for her opinions under both Rule 703, 702 and State  
6 versus Collins.

7 Anything further, Mr. Martinez?

8 MR. MARTINEZ: No, sir.

9 THE COURT: State's 48's in evidence subject to a  
10 previous objection.

11 All right. State's 49 appears to be a photograph.

12 MR. MARTINEZ: Same. My right to a fair trial, due  
13 process --

14 THE COURT: Well, will you cite me the case please  
15 on the introduction of photographs which would deny you a  
16 fair trial and due process.

17 MR. MARTINEZ: I can't cite it, but I know it's  
18 inflammatory to the jury and the -- photographs --  
19 photographs --

20 THE COURT: Solicitor?

21 MS. CAMPBELL: I would rely on State versus  
22 Collins, Your Honor. This corroborates, again, the  
23 restraints, as well as the medical testimony.

24 THE COURT: I do not see this photograph as being  
25 inflammatory to you now. And further I would advise the

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 jury they're not to base their verdict or verdicts on  
2 passion, prejudice, sympathy, bias, any arbitrary motive  
3 not in evidence in the case.

4 So State's 49, as to probative value does no -- it  
5 does not substantially outweigh the danger of unfair  
6 prejudice.

7 Again, State's 50 -- what's the difference between,  
8 Solicitor State's 50, and 47 and 48.

9 MS. CAMPBELL: Just --

10 THE COURT: Is it the same location?

11 MS. CAMPBELL: Yes, Your Honor, we'll withdraw  
12 that.

13 THE COURT: State's 50, is withdrawn. So there's  
14 46, 47, 48, 49. State's 50 is withdrawn.

15 Now it's State's 51.

16 Again, Solicitor?

17 MS. CAMPBELL: We can withdraw that as well.

18 THE COURT: Also 52?

19 MS. CAMPBELL: I'll withdraw that one.

20 THE COURT: All right. State's 53 appears to be  
21 the left hand of the victim. You can see a ring on the --  
22 on one of her fingers and a bracelet.

23 53, Mr. Martinez.

24 MR. MARTINEZ: Rule 403, unfair prejudice, as I  
25 said. Same.

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 THE COURT: Specifically what to you see in this  
2 photograph that indicates it's unduly prejudicial.

3 MR. MARTINEZ: Well, the prejudice is the -- the  
4 totality of the circumstances. The alleged victim is in  
5 the hospital showing marks to a --

6 THE COURT: How do you know the photograph is in  
7 this photograph.

8 MR. MARTINEZ: Because they're saying it was taken.

9 THE COURT: From this photograph? In this  
10 photograph how do you know that he's -- only in the  
11 testimony.

12 MR. MARTINEZ: Yeah, the testimony, mainly.

13 THE COURT: All right. Well it shows out stretched  
14 hands with a -- well, tell me about it, Solicitor.

15 MS. CAMPBELL: Your Honor, I believe it shows the  
16 other side of the hand where she injury occurred.

17 THE COURT: I do not find a 403 analysis. Based on  
18 State versus Collins, I find the probative value is not  
19 substantially outweighed by the danger of outweighed  
20 prejudice.

21 I find 54 appears to be duplicitous.

22 55, Solicitor? 55, Solicitor.

23 MS. CAMPBELL: Your Honor, I believe that's an  
24 ankle area.

25 THE COURT: All right. And what is it depicting.

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 MS. CAMPBELL: A red spot on that area.

2 THE COURT: Show me.

3 MS. CAMPBELL: (Indicating).

4 THE COURT: All right. Mr. Martinez, 55.

5 MR. MARTINEZ: Same thing, Your Honor, Rule 403,  
6 unfair prejudice. It's -- it could have been her sock.  
7 Get red marks from my socks.

8 THE COURT: Well, that would go to the weight, not  
9 the admissibility, but it would survive the 403 standard  
10 and it would be corroborative of her testimony. 55 is in,  
11 subject to examination, of course.

12 All right. 56 showing, it appears to be the feet  
13 of the victim. Mr. --

14 MR. MARTINEZ: Same, Rule 403.

15 THE COURT: All right. Solicitor.

16 MS. CAMPBELL: Your Honor, I think it's to  
17 corroborate her testimony as to where she found injuries.

18 THE COURT: Can you point to that for me.

19 MS. CAMPBELL: Your Honor the redness is right  
20 here.

21 THE COURT: All right. It would be -- it's very  
22 difficult, quite frankly for me to see the redness. I do  
23 not think it inflames or impassions anyone and would be  
24 corroborative of the testimony of the SANE nurse. 56 will  
25 be admitted subject to cross-examination you may have, Mr.

## Bridgette de Guzman - Direct Examination by Ms. Campbell

1 Martinez.

2 .57, Mr. Martinez?

3 MR. MARTINEZ: Same, Your Honor, 403. They're  
4 trying --

5 THE COURT: Excuse me, I didn't quite hear.

6 MR. MARTINEZ: They're trying to suggest on an  
7 improper basis.

8 THE COURT: And what would that impartial basis be.

9 MR. MARTINEZ: Exactly as I said, they're trying to  
10 say that something happened, but they don't have the  
11 evidence to corroborate the -- they have some marks, but  
12 they don't have anything else to go with it.

13 THE COURT: All right. Solicitor.

14 MS. CAMPBELL: He just said it was exculpatory to  
15 him. So -- we're just trying to show how she appeared, how  
16 she appeared, pretty much in the areas of the -- in the  
17 ankle areas, the arm areas and the face area.

18 THE COURT: Mr. Martinez.

19 MR. MARTINEZ: Like I said it's 403, unfair  
20 prejudice.

21 THE COURT: All right. And what would be the  
22 corroborative value to this, Solicitor.

23 MS. CAMPBELL: It corroborates the medical  
24 findings.

25 THE COURT: And show me.



**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 MS. CAMPBELL: Specifically, Your Honor, the red is  
2 right hear.

3 THE COURT: All right. According to my review, it  
4 does not rise to the standard of 403. It's not --  
5 suggestive does not inflame the passions. It's not  
6 gruesome and it would be corroborative, 57 is in, subject  
7 to the cross-examination.

8 58, again this would be the left foot.

9 MR. MARTINEZ: Same, Your Honor.

10 MS. CAMPBELL: We'll withdraw that one, Your Honor.

11 THE COURT: All right. 58 is being withdrawn.

12 59 is on the ankle area of the left ankle. It  
13 appears State's 59 -- Solicitor?

14 MS. CAMPBELL: We can withdraw that one.

15 THE COURT: 59 is withdrawn, Mr. Martinez.

16 60, looks like --

17 MS. CAMPBELL: Same, we'll withdrawal that one,  
18 Your Honor.

19 THE COURT: 60 is withdrawn.

20 61, facial photograph.

21 MR. MARTINEZ: Objection 403.

22 THE COURT: What is the value of this one.

23 MS. CAMPBELL: Your Honor, if you'll get me 69,  
24 I'll compare it to one of those two.

25 THE COURT: All right. 69.

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 MS. CAMPBELL: Your Honor, we'll withdraw 61 and go  
2 with 69.

3 THE COURT: All right. 61 is then withdrawn. I  
4 will delay exhibit 69.

5 This looks like -- 62 appears to be the left --  
6 left leg of the victim.

7 MS. CAMPBELL: Yes, Your Honor, we need that one.

8 THE COURT: All right. Mr. Martinez?

9 MR. MARTINEZ: 403, Your Honor.

10 THE COURT: All right. Solicitor? 62?

11 MS. CAMPBELL: Your Honor, I believe that shows the  
12 right ankle that had been --

13 THE COURT: All right. It does and it is not  
14 gruesome or it does not inflame one to reach a verdict on  
15 an improper motion. It will be corroborative provided the  
16 proper foundation is laid. 62.

17 63 appears to be some location on Ms. Hurshman's  
18 body as showing an area of redness and the top showing a  
19 partial tattoo.

20 MS. CAMPBELL: That would be her other arm.

21 MR. MARTINEZ: Same, Your Honor. Rule 403.

22 THE COURT: All right. Solicitor? 64.

23 MS. CAMPBELL: 64, I believe, corroborates the  
24 testimony of the witness as well as the restraints.

25 THE COURT: I would allow that. It does not reach

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 the threshold of unduly prejudicial. The probative value  
2 is corroborative if the proper foundation is laid.

3 65 -- 65, Solicitor, what is the purpose of 65?

4 MS. CAMPBELL: Your Honor, that just shows  
5 generally her legs.

6 THE COURT: I think it's -- I think it's --  
7 somewhat duplicatus and I would not allow that one.

8 All right. That was 63, not 65.

9 All right. Now 65, I'm sure there's another one of  
10 this, Solicitor?

11 MS. CAMPBELL: Yes, Your Honor, I believe.

12 We'll withdraw 65.

13 THE COURT: 65 is withdrawn Mr. Martinez.

14 66 that appears similar also, Solicitor. 66  
15 appears similar to 65 and 64.

16 MS. CAMPBELL: 66 actually shows a little bit more  
17 of the entire area.

18 THE COURT: In comparison to?

19 All right. Between 64 and 66, you'd have the same  
20 objections, Mr. Martinez?

21 MR. MARTINEZ: Yes, sir.

22 THE COURT: All right. Solicitor. I will allow  
23 one or the other of these in evidence. 64 or 66.

24 MS. CAMPBELL: Yes, sir.

25 THE COURT: I had already ruled on 64. 66 is

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 duplicitious. 67 appears to show the hands of the victim.

2 MS. CAMPBELL: We can withdraw that one, Your  
3 Honor.

4 THE COURT: 67 is withdrawn.

5 68 is the same in somewhat different lighting.

6 MS. CAMPBELL: We'll withdraw that one, Your Honor.

7 THE COURT: And --

8 MS. CAMPBELL: 68 is withdrawn.

9 THE COURT: The other one is withdrawn, so tell me  
10 about 69, Mr. Martinez.

11 MR. MARTINEZ: Same thing, Rule 403.

12 THE COURT: And what is the purpose of 69,  
13 Solicitor.

14 MS. CAMPBELL: Your Honor, there is testimony about  
15 an abrasion on her cheek. If you look there, you can see  
16 the red spot on her cheek.

17 THE COURT: All right. I do see that. And what is  
18 the relevance, or the link to that?

19 MS. CAMPBELL: The link is that she said in her  
20 testimony was that she told the SANE nurse that it wasn't  
21 there before the assault. She didn't know how it happened.  
22 But it was there afterwards.

23 THE COURT: Mr. Martinez.

24 MR. MARTINEZ: Like she said, Your Honor, she  
25 doesn't know how it got there, but it's going to imply or

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 it's going to imply unfair prejudice.

2 THE COURT: All right. Well, as far as under the  
3 prejudicial, I find these photographs meet the standard.  
4 They have -- the probative value is not substantially  
5 outweighed by the danger of unfair prejudice, and State  
6 versus Collins, coupled with the victim's statement that it  
7 was not there before and it was there after. I think that  
8 goes to the weight and the admissibility provided a proper  
9 foundation is laid between this witness that is probative  
10 with her and the victims.

11 Anything further, Mr. Martinez? I think I have  
12 ruled on 46 through 69. That's all in the record.  
13 Anything further?

14 MR. MARTINEZ: No, sir.

15 THE COURT: Let's take about 10 minutes.

16 MS. CAMPBELL: Well, there are like 3 more pictures  
17 I need marked that while they're out, we might take up.

18 THE COURT: Well, let me rule on them now.

19 MS. CAMPBELL: I just thought that while the jury  
20 is out --

21 THE COURT: Ma'am?

22 MS. CAMPBELL: While the jury is out, it might be  
23 expeditious.

24 Your Honor, there were also photographs taken while  
25 the actual vaginal examination was done. There are

**Bridgette de Guzman - Direct Examination by Ms. Campbell**

1 pictures that were taken of injuries in those areas noted  
2 by this nurse. I can represent to the Court from proper  
3 testimony as to what her findings were and how these  
4 documented. But I thought we might take these up at least  
5 preliminarily.

6 MR. MARTINEZ: I don't want to see them.

7 THE COURT: You do not want to see them?

8 MR. MARTINEZ: No, sir, I object to those. Those  
9 are highly -- Rule 403 and due process.

10 THE COURT: You're objecting to an item of evidence  
11 -- you're stating for this record that you don't want to  
12 see and you're not going to look at them; is that correct.

13 MR. MARTINEZ: What's that?

14 THE COURT: You're objecting to photographs being  
15 offered into evidence that you are not going to look at and  
16 don't want to see; is that correct?

17 MR. MARTINEZ: She said what they was. I don't  
18 want the look at them --

19 THE COURT: I don't want you to look at them. I  
20 just wanted the record to reflect that.

21 If you would hand them up, Solicitor.

22 MS. CAMPBELL: And 99 and 100 are photographs of  
23 the injury before she applies the dye that then illuminates  
24 the actual laceration or cut, Your Honor, in 101.

25 THE COURT: And this is the result of the SANE

**Bridgette de Guzman - Proffer Examination by Ms. Campbell**

1 nurse's examination?

2 MS. CAMPBELL: Yes, sir, she took the pictures.

3 THE COURT: Question her about these, 99, 100 and  
4 101.

5 PROFFER

6 BY MS. CAMPBELL:

7 Q Ms. De Guzman, jumping ahead, once you finished  
8 your external examination, do you then do an examination of  
9 the actual genitalia?

10 A Yes, ma'am.

11 Q And based on this, was there any penetration that  
12 had been explained the you?

13 A Yes.

14 Q And where was that penetration?

15 A She said that he attempted to penetrate her vagina  
16 with his penis, but he did penetrate her vagina and her  
17 external structures with his fingers.

18 Q With his fingers? And I'm going to show you  
19 State's Exhibits 99 and 100 and first ask you -- tell the  
20 judge what those are.

21 A These are pictures of her external genitalia, her  
22 vulva. This part right here is her labia majora or the  
23 vaginal lips. And that's a laceration that she sustained.

24 This is her labia minora.

25 This is just another picture of the same, just

**Bridgette de Guzman - Proffer Examination by Ms. Campbell**

1 showing where the laceration is.

2 And then when there's open ends of skin or what  
3 appears to be abrasions or cuts, we apply the dye. We call  
4 it Toluidine, blue dye. We apply it to that area and then  
5 let it dry for 30 seconds to a minute and then we wash it  
6 off with a vinegar water solution and any dye that sticks  
7 to the injured area, the dye will only stick to an injured  
8 area, any open area of skin. If it's intact, it won't  
9 stick to it when I try to wash it off. And it lights the  
10 injury so it is easier to see and also lets you see the  
11 extent of the injury. Sometimes it can be a minor abrasion  
12 that you can't see readily with a naked eye, but once you  
13 apply the dye, it's highly exhibited.

14 MS. CAMPBELL: There would be no other questions as  
15 to those, Your Honor.

16 THE COURT: Mr. Martinez? As to this chart, do you  
17 have any objection? Or diagram.

18 MR. MARTINEZ: No. No.

19 THE COURT: And what is that -- that's subject to  
20 proper foundation when the jury comes back in.

21 MS. CAMPBELL: Proper foundation. I just wanted to  
22 let --

23 THE COURT: All right. Subject to 403 analysis and  
24 the standard under State versus Collins, the in-camera  
25 testimony of the SANE nurse, I will allow 99 into evidence.



**Bridgette de Guzman - Proffer Examination by Ms. Campbell**

1 Further given -- I find that is -- it would not sway the  
2 jury to reach a verdict based on passion, prejudice, or any  
3 other emotions not in evidence in the case; that it's  
4 probative value are both corroborative of the victim and of  
5 assistance to the witness.

6 However, I find 99 is admissible, subject to a  
7 proper foundation and given the testimony again of the  
8 nurse; that 101, which is post-dye treatment would be  
9 admissible under that same standard.

10 And 100 would be duplicitous.

11 MS. CAMPBELL: Thank you, Your Honor.

12 THE COURT: All right. Anything further before we  
13 take about a 10 minute recess, Solicitor?

14 MS. CAMPBELL: No, sir.

15 THE COURT: Anything further, Mr. Martinez before  
16 we take a 10 minute recess?

17 MR. MARTINEZ: No, sir.

18 THE COURT: If the jury is willing to work late,  
19 y'all plan on it.

20 Thank you. Thank you very much.. You may step down  
21 during this recess and refresh yourself. Do not discuss  
22 your testimony with anyone.

23 (A brief recess was observed.)

24 MS. CAMPBELL: Okay, Your Honor, I have gone  
25 through them with the court reporter and we've got the

## Bridgette de Guzman - Proffer Examination by Ms. Campbell

1 right ones.

2 Mr. Martinez, are you okay with that?

3 MR. MARTINEZ: Yeah, that's -- I mean...

4 MS. CAMPBELL: Your Honor, I additionally told him  
5 about some photographs from the next two witnesses so  
6 they'll be aware of what's coming up.

7 THE COURT: All right. Bring us our jury, please.

8 (The jury entered the courtroom at 4:21 p.m.)

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

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

11 Welcome back, ladies and gentlemen, I intend to  
12 work a little late tonight. However, I do understand that  
13 many times members of the jury have time frames in which  
14 they have childcare issues and such like that. If you do  
15 and you need to leave by a certain time, let me know now.  
16 I'm not offended if we don't work late, but at the same  
17 time I do intend to work late; but I don't want anybody to  
18 miss any commitment that they have for childcare or  
19 otherwise in the late afternoon.

20 I'm always happy -- of course, my children are all  
21 grown and out of the house and off the payroll, but I know  
22 everybody's not like that yet. If there are no issues  
23 working late tonight, I would like to do so. Any problems?

24 (A juror raised their hand.)

25 THE COURT: What time do you need to leave by?

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 THE JUROR: 6:30.

2 THE COURT: All right. I will -- I know you don't  
3 trust me on time, but I'll make that happen.

4 THE JUROR: Okay.

5 THE COURT: All right. Thank you, thank you very  
6 much, we'll continue the trial of the case by direct  
7 examination by the solicitor of Ms. De Guzman.

8 All right. Solicitor, you may continue.

9 MS. CAMPBELL: Your Honor, may the witness step  
10 down?

11 THE COURT: Yes.

12 (The witness left the witness stand to show the  
13 jury pictures during testimony.)

14 **DIRECT EXAMINATION CONTINUED**

15 BY MS. CAMPBELL:

16 Q I want to show you what's been marked as State's  
17 Exhibit Number 46 which has been entered into evidence.  
18 What does that show?

19 MR. MARTINEZ: Your Honor, I object, the same as  
20 before.

21 THE COURT: All right. And, Solicitor, also all of  
22 those are subject the proper foundation.

23 MS. CAMPBELL: Yes, Your Honor, she already  
24 identified it, but I'll have her do it again.

25 Looking through the photographs that I'm handing

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 you --

2 THE COURT: Excuse me one more time --

3 Subject to your previous objection, of course --

4 MR. MARTINEZ: Yes, sir.

5 THE COURT: -- Mr. Martinez. And you make that  
6 objection as to all of these photographs; is that correct?

7 MR. MARTINEZ: Yes, sir.

8 THE COURT: I never know what to advise an attorney  
9 or pro se defendant to do, so I'm not sure I can waive you  
10 having to object each and every one, but perhaps you should  
11 do so if it's incumbent. All right.

12 MR. MARTINEZ: Okay.

13 THE COURT: Thank you, Mr. Martinez.

14 BY MS. CAMPBELL:

15 Q I'm showing you State's Exhibit Number 46. Is this  
16 a photograph you took that day of the victim?

17 A Yes, ma'am.

18 Q And is this how she appeared?

19 A Yes.

20 MS. CAMPBELL: Your Honor, at this time, we'd offer  
21 State's Exhibit 46.

22 MR. MARTINEZ: Objection, Your Honor. Same as  
23 before.

24 THE COURT: Subject to previous objection and my  
25 previous ruling.

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 (State's Exhibit Number 46 was entered into  
2 evidence.)

3 THE COURT REPORTER: Excuse me. Could you turn her  
4 when you talk to her so I can -- she can talk toward me.

5 MS. CAMPBELL: Yes. If you would come on this  
6 side, I'm loud enough.

7 BY MS. CAMPBELL:

8 Q I'm going to show you State's Exhibit Number 46.  
9 What does this show?

10 A It shows a picture of my patient that day.

11 Q And you -- and these are just some of the photos  
12 that you took that day?

13 A Yes, ma'am.

14 Q And does this show her general condition, as far as  
15 how she looked?

16 A Yes.

17 (The solicitor was showing the paragraph to the  
18 jurors.)

19 BY MS. CAMPBELL:

20 Q I'm going to show you State's Exhibit Number 47 and  
21 48. What does this show? First of all, is this a picture  
22 that you took that day?

23 A Yes.

24 Q And --

25 MR. MARTINEZ: Objection, Your Honor. Same.

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 THE COURT: Subject to previous objection.

2 MR. MARTINEZ: On both of them pictures.

3 THE COURT: Sir?

4 MR. MARTINEZ: On both -- I object to both of them  
5 pictures.

6 THE COURT: What are the numbers, Solicitor?

7 MS. CAMPBELL: 47 and 48, Your Honor.

8 THE COURT: All right. Subject to previous  
9 objections, State's 47 and 48 will in..

10 MS. CAMPBELL: Thank you, Your Honor.

11 (State's Exhibit Number 47 and Number 48 were  
12 entered into evidence.)

13 BY MS. CAMPBELL:

14 Q What do these show?

15 A Those appear to be part of her wrist and foreman  
16 and there are the linear redness that I mentioned earlier.

17 Q And was that consistent with the history she had  
18 given to you about restraints?

19 A Yes, ma'am.

20 Q And then approximately what time is it when you're  
21 taking these pictures?

22 A It's -- she arrived -- my physical exam started --  
23 my exam started at 11:50 in the morning on the 27th.

24 Q And what time did she indicate the assault  
25 occurred?

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 A Around seven, I believe.

2 Q I'm going to show you State's Exhibit 49 first. Do  
3 you recognize that?

4 A Yes.

5 Q And is that another picture of her arm area?

6 A Yes.

7 Q And does that fairly and accurately depict how she  
8 look it had that day?

9 A Yes, ma'am.

10 MS. CAMPBELL: Your Honor, at this time, Your  
11 Honor, State's Exhibit 49.

12 MR. MARTINEZ: Objection, Your Honor, same.

13 THE COURT: 49 is in evidence subject to my  
14 previous -- subject to Mr. Martinez previous objection.

15 (State's Exhibit Number 49 was entered into  
16 evidence.)

17 BY MS. CAMPBELL:

18 Q And what does this photograph show to them?

19 A This one, it shows redness as well around his wrist  
20 area.

21 Q Around her wrist area?

22 A Yes.

23 Q In this area?

24 A Uh-huh.

25 Q And again, this is almost noon when these pictures

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 are taken, after the assault?

2 A (Witness nodded head.)

3 Q I'm going to show you State's Exhibit Number 53.

4 Do you recognize that picture?

5 A Yes, ma'am.

6 Q Is that a picture you took that day as well?

7 A Yes.

8 Q And does that fairly and accurately depict her  
9 story that day?

10 A Yes.

11 Q And what is this?

12 A This is of her inner wrist.

13 Q On the same arm?

14 MR. MARTINEZ: Objection, Your Honor.

15 THE COURT: Number please again, Solicitor.

16 MS. CAMPBELL: I'm sorry, Your Honor, 53.

17 THE COURT: 53 is in evidence subject to defense  
18 previous objections.

19 (State's Exhibit Number 53 was entered into  
20 evidence.)

21 MS. CAMPBELL: So this one is the linear area of  
22 redness in the lateral aspect or the side aspect of her  
23 left wrist extending to the bottom of her left thumb.

24 Q And is that shown on this picture?

25 A It's hard to tell in this picture.



## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 Q In this picture?

2 A Yeah, but it would be in this general area over  
3 here.

4 Q Kind of on the side?

5 A Yeah.

6 Q Moving onto State's Exhibit Number 55, do you  
7 recognize this?

8 A Yes.

9 Q And is that a photograph you also took that day?

10 A Yes, ma'am.

11 Q And does that fairly and accurately depict the area  
12 it shows?

13 A Yes.

14 MS. CAMPBELL: Your Honor, at this time, State's  
15 Exhibit Number 55.

16 MR. MARTINEZ: Objection, Your Honor.

17 THE COURT: State's 55 is in evidence subject to  
18 defense previous objections.

19 (State's Exhibit Number 55 was entered into  
20 evidence.)

21 BY MS. CAMPBELL:

22 Q In what area in State's Exhibit 55 are of interest  
23 in the photograph?

24 A Here is the left foot.

25 Q And were there any physical --

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 A Here I did not document anything. Sometimes I  
2 document both to show the difference between them.

3 Q And we'll move onto State's Exhibit Number 56.

4 A She had a one --

5 MR. MARTINEZ: Objection, Your Honor.

6 BY MS. CAMPBELL:

7 Q First of all, you recognize this.

8 MS. CAMPBELL: Your Honor, I'm sorry I messed up.

9 BY MS. CAMPBELL:

10 Q You recognize this?

11 A Yes, ma'am.

12 MR. MARTINEZ: Objection, same, 403.

13 THE COURT: State's 56 in evidence subject to  
14 previous objection.

15 (State's Exhibit Number 56 was entered into  
16 evidence.)

17 BY MS. CAMPBELL:

18 Q And specifically on State's Exhibits 62, do you  
19 recognize that?

20 A Yes, ma'am.

21 Q And does that fairly and accurately depict how she  
22 appeared for part of her body that day?

23 A Yes.

24 MS. CAMPBELL: Your Honor, we also offer 62.

25 MR. MARTINEZ: Objection, Your Honor, same.

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 THE COURT: State's?

2 MS. CAMPBELL: 62.

3 THE COURT: 62 is in evidence subject to defense  
4 objection.

5 (State's Exhibit Number 62 was entered into  
6 evidence.)

7 BY MS. CAMPBELL:

8 Q And what areas were pertinent to you in the  
9 examination that day?

10 A So there's a one centimeter of minimal redness to  
11 the anterior part of the front part of her right ankle.  
12 So, again, it's hard to see, but there was some redness  
13 there.

14 Q And again, you're just documenting what you see?

15 A Yes, ma'am.

16 Q And then attempting to photograph?

17 A (No verbal response.)

18 Q Attempting to photograph?

19 A Uh-huh.

20 Q I show you State's Exhibit 57. First, do you  
21 recognize that?

22 A Yes.

23 Q And does that show same foot as you said?

24 A Yes.

25 Q And does that fairly and accurately depict what it

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 looked like?

2 A Uh-huh.

3 MS. CAMPBELL: We'd offer State's 57.

4 MR. MARTINEZ: Objection, Your Honor, same.

5 MS. CAMPBELL: We'd offer --

6 THE COURT: Number?

7 MS. CAMPBELL: -- 57.

8 THE COURT: State's 57 is in evidence subject to  
9 previous objection.

10 (State's Exhibit Number 57 was entered into  
11 evidence.)

12 BY MS. CAMPBELL:

13 Q Does this show the area where the redness is?

14 A This one is a little bit more prominent where the  
15 redness is.

16 Q Right in here?

17 A Uh-huh.

18 Q State's Exhibit 63, does this fairly and accurately  
19 depict how she appeared that day?

20 A Yes, ma'am.

21 MS. CAMPBELL: Your Honor, at this time I'd move  
22 State's 63.

23 MR. MARTINEZ: Objection, Your Honor.

24 THE COURT: State's 63 is in evidence subject to  
25 previous objection.

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 (State's Exhibit Number 63 was entered into  
2 evidence.)

3 BY MS. CAMPBELL:

4 Q We move now to State's Exhibit Number 64, what did  
5 you note on this -- or does this fairly and accurately  
6 depict how she appeared that day?

7 A Uh-huh.

8 Q And what part of the body is this?

9 A I'm not able to tell.

10 MS. CAMPBELL: Your Honor, may she refer to the  
11 ones that have been marked for ID?

12 THE COURT: Yes, ma'am.

13 MS. CAMPBELL: Thank you, so much.

14 BY MS. CAMPBELL:

15 Q To orient, can you look at State's 67? What's  
16 State's Exhibit 64 show?

17 A That shows her right -- it shows her wrist and then  
18 there is 3 to 4 centimeter linear redness.

19 Q Right there half way down?

20 A Uh-huh.

21 Q And again, did this corroborate the history she'd  
22 given you?

23 A Yes, ma'am.

24 Q Now, you mentioned an injury to her face. I'm  
25 going to show you State's Exhibit Number 69. Do you

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 recognize that?

2 A Yes, ma'am.

3 Q Does that fairly and accurately depict her face as  
4 it appeared that day?

5 A Yes.

6 MS. CAMPBELL: Your Honor, at this time, we'd offer  
7 State's Exhibit Number 69.

8 MR. MARTINEZ: Objection, Your Honor.

9 THE COURT: State's number please?

10 MS. CAMPBELL: 69.

11 THE COURT: In evidence subject to previous  
12 objection.

13 (State's Exhibit Number 69 was entered into  
14 evidence.)

15 BY MS. CAMPBELL:

16 Q And what do we see in this paragraph?

17 A There's an abrasion under her right eye.

18 Q When you talk about an abrasion, what does that  
19 mean?

20 A It's just part of her skin that was broken, I  
21 believe due to friction, some sort of friction.

22 (The witness returned to the stand.)

23 BY MS. CAMPBELL:

24 Q Okay! Once you had done your external examination,  
25 do you then do a more, I guess, invasive examination?

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 A Yes, ma'am.

2 Q And what was that in this case?

3 A I performed genital and rectal exam which also  
4 included a speculum exam where I entered a specula into her  
5 vagina to make sure she doesn't have any injuries to her  
6 vaginal wall and to her cervix.

7 Q Taking the -- you said vaginal and anal exam?

8 A Uh-huh.

9 Q Were there any injuries noted to be in the anal --  
10 in your anal exam?

11 A No.

12 Q And based on the history she gave you, did you  
13 expect to find any?

14 A No.

15 Q Moving onto the vaginal or genital examination.  
16 Tell the jury how you do that?

17 A So first I look externally from the top of her  
18 vulva to the mans pubis and then I just kind of go down and  
19 just look externally first and then I start examining it,  
20 and so I can't just look at it, I have to apply traction  
21 and look at all the structures. Sometimes I have to tug to  
22 look at the hymen, the tissue that's right before the  
23 vaginal openings and apply traction or open it so I can  
24 look at all the structures. I also look at all the  
25 structures on the outside.

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 Q And what type of information are you trying to get  
2 from your visual examination?

3 A I'm trying to look for any injuries that are  
4 consistent with a sexual assault, such as tears, bruising,  
5 redness, abrasions, lacerations, bleeding, anything that is  
6 abnormal from the patient's normal body.

7 Q Let me ask you this: Whenever there's any type of  
8 penetration to the vaginal area, even if it's forcible or  
9 not, are you necessarily going to have injuries?

10 A No.

11 Q And, in fact, in most cases, what are your results?

12 A In most sexual assaults that I have performed and  
13 even in the literature, most sexual assaults do not sustain  
14 injuries. Some literature, they say it's about 20 percent  
15 and they're not necessarily major injuries. So the  
16 majority of the cases do not have any injuries.

17 Q Any injury at all?

18 A Correct.

19 Q And especially in a woman who is -- had children,  
20 even if it's a forcible sexual assault situation, that  
21 remains true?

22 A Correct.

23 Q But in this case what did you find?

24 A I did find some injuries to her labia majora. I  
25 did observe two lacerations to her labia majora.



## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 Q And where is the labia majora?

2 A The labia majora is on the outside. The vulva is  
3 all the external structures and then the labia majora is on  
4 the outside of the vagina.

5 Q And did you use or basically indicate where these  
6 injuries were on the diagram?

7 A Yes, ma'am.

8 Q Is that what you did?

9 A (Witness nodded head.)

10 Q And I'm going to show you State's Exhibit Number  
11 102 and ask, first of all, do you recognize this?

12 A Yes, ma'am.

13 Q And is this part of your report that shows the  
14 areas that you observed the injuries to her vulva --

15 A Yes, ma'am.

16 Q -- area?

17 MS. CAMPBELL: Your Honor, at this time, we offer  
18 Exhibit Number 102 into evidence, I believe without  
19 objection.

20 MR. MARTINEZ: Yeah, without.

21 THE COURT: 102 is in evidence without objection.

22 (State's Exhibit Number 102 was entered into  
23 evidence.)

24 MS. CAMPBELL: Your Honor, may the witness step  
25 down one more time.

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 THE COURT: Yes, ma'am, keep your voice up when  
2 you're away from the microphone, please. Thank you.

3 (The witness stepped down to show the jury.)

4 BY MS. CAMPBELL:

5 Q If you'd come over on this side so she can hear you  
6 better. Thank you.

7 What are these diagrams of, first of all?

8 A So this is a diagram of the external genitalia.  
9 This would be her -- or a woman's labia majora on both  
10 sides, bilaterally labia majora. Then her minora. The  
11 center here is the opening and that's the hymen. This is a  
12 close up -- the hymen, labia minora, labia majora. This is  
13 a picture of a speculum and then this is a the cervix.  
14 These are just ridges of the vaginal canal and that --

15 THE COURT REPORTER: I didn't get that last part.

16 THE WITNESS: The last picture is of her anus or a  
17 diagram of the anus.

18 THE COURT REPORTER: I'm sorry, thank you.

19 BY MS. CAMPBELL:

20 Q And where did you -- in starting the farthest out  
21 with the one that shows this one, is this before you  
22 actually look inside at all?

23 A Yes, ma'am.

24 Q And in this, your first exam with her, what did you  
25 note just in the external examination of her vaginal area?

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 A I observed two lacerations right here, in that  
2 area.

3 Q And how do they appear?

4 A There was bright red blood that I observed. It  
5 wasn't actively bleeding like dripping blood, but there was  
6 fresh, bright, red blood.

7 Q And was that consistent with the time that she had  
8 given you of the assault?

9 A Yes, ma'am.

10 Q And upon further examination, you said that in some  
11 examinations, you actually have to start opening, or  
12 pulling back certain areas in the vaginal area?

13 A Yes, ma'am.

14 Q And when you did that, did you find any further or  
15 did those get illuminated better?

16 A When I -- her -- I didn't see any injuries to her  
17 hymen. There was a short black hair that I saw and  
18 collected.

19 Q Did you also photograph these injuries as well?

20 A Yes, ma'am.

21 Q And once you photograph the injuries that you  
22 noted, after photographing them, did you do any further  
23 testing or do any further procedures to illuminate the  
24 actual injury itself?

25 A Yes. So any time there is an injury that I can see

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 with the naked eye, I apply this blue stain. This stain  
2 helps highlight any injured areas or if there's something  
3 that's not clearly visible to the naked eye, it just  
4 highlights that area as well. So I applied the dye to the  
5 possible injured areas or the injured areas and let it dry  
6 for about 30 seconds to a minute.

7 And then I wash it off with a vinegar water  
8 solution and I spray, spray, spray. It's not just one  
9 spray, to try the wash off as much as I can. Any of the  
10 dye that sticks to the injured area -- or sticks, stays on  
11 there and then you can see the injured area, a broken area  
12 of skin and it highlights that injury.

13 Q And on your report there, I see that you noted the  
14 areas where you actually found an injury in this case in  
15 your findings?

16 A Yes, ma'am.

17 Q And the labia majora here, is this finding here,  
18 the lacerations?

19 A Yes, ma'am.

20 Q I want to show you what's been marked as State's  
21 Exhibit Number 99 and this is -- do you recognize that  
22 photograph?

23 A Yes, ma'am.

24 Q And is that a fair and accurate depiction of the  
25 injury or laceration we're talking about in this diagram?

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 A Yes.

2 MS. CAMPBELL: Your Honor, at this time, we'd offer  
3 State's Exhibit Number 99 into evidence.

4 MR. MARTINEZ: Objection, Your Honor. Ms. Campbell  
5 already showed them -- showed the jury the picture before  
6 she was able to establish it and it's also under 403 and  
7 also 14th Amendment due process, right to a fair trial.

8 THE COURT: State's 99 is in evidence subject to  
9 current and previous objections and I reaffirm my previous  
10 rulings in-camera.

11 (State's Exhibit Number 99 was entered into  
12 evidence.)

13 BY MS. CAMPBELL:

14 Q And I show you finally, State's Exhibit Number 101.  
15 Do you recognize that photograph?

16 A Yes, ma'am.

17 Q And what is that a photograph of?

18 A That's a photograph of the lacerations that I  
19 observed when the dye applied on it.

20 Q And does that fairly and accurately depict after  
21 you applied the blue dye?

22 A Yes, ma'am.

23 MS. CAMPBELL: Your Honor, at this time I'd offer  
24 State's Exhibit Number 101.

25 MR. MARTINEZ: Objection, Your Honor. Same.

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 THE COURT: State's 101 is in evidence subject to  
2 defense objections and my in-camera rulings, I reaffirm.

3 (State's Exhibit Number 101 was entered into  
4 evidence.)

5 BY MS. CAMPBELL:

6 Q And on State's Exhibit Number 99, can you tell the  
7 jury or show the jury what that shows?

8 A This shows the laceration that I observed with the  
9 bright red blood. Like I said, it wasn't actively  
10 bleeding, but it's still fresh.

11 Q And would that be consistent with the some five  
12 hours earlier she had been assaulted?

13 A Yes, ma'am.

14 Q And finally, State's Exhibit 101, what is that?

15 A So that just highlights it and the extent of it,  
16 when you just look at it with the naked eye, it just looks  
17 like a focal area and when you apply the dye, you can see  
18 there's still some extension of the injury.

19 (The solicitor was showing the photograph to the  
20 jury.)

21 BY MS. CAMPBELL:

22 Q You can take the stand.

23 (The witness returned to the stand.)

24 BY MS. CAMPBELL:

25 Q The laceration that you observed and that

**Bridgette de Guzman - Direct Examination Continued by Ms. Campbell**

1 ultimately showed up in the stain, would that have been  
2 painful?

3 A Yes.

4 Q Would that be consistent with some type of forcible  
5 penetration?

6 A Yes, ma'am.

7 Q That day, did you also collect any evidence from  
8 her as well?

9 A Yes.

10 Q Could you tell the jury what evidence you  
11 collected?

12 A I collected her dirty, her underwear. I collected  
13 that short black hair that I mentioned that I saw in her  
14 hymen. I collected vaginal swabs from her labia minora. I  
15 collected swabs from her mans pubis. I collected a swab  
16 from her right breast. I collected a swab from her right  
17 cheek.

18 Q And was that the extent of the swabs that you  
19 collected that day?

20 A Actually, I collected a rectal swab and then, of  
21 course, a vaginal swab, a buccal swab for her DNA.

22 Q What's a buccal swab mean? How is that collected?

23 A That just from the inside of her cheek for her DNA.

24 Q And that can be used for comparison purposes only?

25 A Correct.

## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 Q Once you collected the swabs and the clothing,  
2 what, if anything, did you do with them?

3 A The swabs -- after I put them in the air drier,  
4 once they're dry, I place them in their proper envelopes  
5 and then I seal them and I place them in an evidence  
6 collection kit. The underwear is placed in a bag as well  
7 and this's sealed with the evidence collection tape. That  
8 underwear goes into an evidence kit as well.

9 Q And did you take any precautions to make sure that  
10 none of this evidence was contaminated in any way?

11 A Yes, ma'am. In addition to the envelopes,  
12 individual envelopes being sealed, they're placed in a box  
13 and that box is sealed as well. And then on the back of  
14 it, I indicate where I secured that box. So the seals are  
15 also initialled by me to indicate that I'm the one that  
16 sealed that box.

17 Q Once you had all of your evidence sealed properly,  
18 did it remain in your possession until it's turned over to  
19 law enforcement?

20 A It remains in our office, in a locked refrigerator  
21 with a padlock.

22 Q In addition to the seal that's already been put on  
23 it?

24 A Yes.

25 Q And on April 4th, I believe, did you turn any of



## Bridgette de Guzman - Direct Examination Continued by Ms. Campbell

1 this evidence over to law enforcement?

2 A Yes, ma'am.

3 Q And did you complete a chain of evidence here on  
4 the kit?

5 A Yes.

6 Q I'm going to show you what's been marked as State's  
7 Exhibit 81. Do you recognize that?

8 A Yes, the box. And then where I signed it over.  
9 This is not part of our --

10 Q That would have been part of law enforcement,  
11 right?

12 A (Witness nodded head.)

13 Q But on the box, as far as when you turned this  
14 over, however, it was sealed.

15 A Yes, ma'am.

16 Q And then whatever testing is done, it's done by  
17 somebody else, correct?

18 A Correct.

19 MS. CAMPBELL: Your Honor, at this time, we'd offer  
20 State's Exhibit 81 into evidence.

21 MR. MARTINEZ: No objection.

22 THE COURT: State's 81 is in evidence without  
23 objection.

24 (State's Exhibit Number 81 was entered into  
25 evidence.)

**Bridgette de Guzman - Cross-Examination by Mr. Martinez**

1 MS. CAMPBELL: Thank you, ma'am. Nothing further.

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

3 Mr. Martinez.

4 **CROSS-EXAMINATION**

5 **BY MR. MARTINEZ:**

6 Q Do you -- so you took all the evidence from

7 Ms. Hurshman; is that correct?

8 A Correct.

9 Q Where exactly is the mans pubis?

10 A It's the fatty tissue part of the top of the vulva.

11 Q And where's the labia majora?

12 A It's on the outside part.

13 Q And you said that she gave you a description of the  
14 person that attacked her, correct?

15 A Correct.

16 Q Where exactly is that located in your report? Can  
17 you tell me, please?

18 A Page 5, at the top.

19 Q And that's the fullest -- that's the extent she  
20 went into detail?

21 A Yes, but I don't -- I'm not an investigator, so I  
22 don't ask for every detail.

23 Q Okay. What about when she said, when you asked her  
24 the alcohol and drug use of the assailant? Right there on  
25 the same page?

**Bridgette de Guzman - Cross-Examination by Mr. Martinez**

1 A Yes.

2 Q What did she say about that?

3 A She said that she didn't believe -- well, she said  
4 no. And I said do you think that the assailant was  
5 drinking alcohol or using drugs. She said no. And then  
6 she said he smelled clean like he had cologne on. His  
7 clothes weren't even dirty, like he got ready for the day.

8 Q And she never mentioned nothing about cigarette  
9 smoke?

10 A Not to me.

11 Q Did you get -- did you collect from underneath her  
12 fingernails?

13 A I did not.

14 Q Did -- did -- you said that -- asked that injuries  
15 usually don't occur from sexual assaults; is that correct?

16 A Typically with a sexual assault, you're not always  
17 going to find injuries. So the majority of the patients  
18 that I've seen or even in literature where other people  
19 have seen, the majority of them do not sustain injuries.

20 Q Is it also true that people just having consensual  
21 sex, there's injuries from that as well?

22 A There can be, yes.

23 Q It's more likely to -- you're more likely to get an  
24 injury from consensual sex than from forcible sex; is that  
25 correct?

**Bridgette de Guzman - Cross-Examination by Mr. Martinez**

1 A I don't believe so.

2 Q So you're saying that you're more likely to get an  
3 injury from being sexually assaulted?

4 A Yes.

5 Q Was -- did you do a test that says that she was --  
6 I don't know, but I think there's a test -- what's called  
7 -- when you test to see if she's been penetrated?

8 A There's no -- what type of test are you talking  
9 about?

10 Q Something like when they're -- like you can see if  
11 it's been opened or stretched or anything like that?

12 A There's no test for that.

13 Q Okay.

14 A No.

15 Q So you can't tell if somebody's been penetrated?

16 A Not just by looking at it.

17 Q Would there be a test for that?

18 A There's no test for that that I'm aware of.

19 Q So how would you tell if someone's was raped?

20 A By -- I'm just a piece of the puzzle. So  
21 everything is put together, testimony, witnesses, evidence,  
22 injuries. If the injuries corroborate her history, then  
23 that is evidence.

24 Q And you said you got her underwear and her clothes;  
25 is that correct?

**Bridgette de Guzman - Redirect Examination by Ms. Campbell**

1 A I got her underwear. I placed that if the evidence  
2 collection kit.

3 Q And her jeans?

4 A I believe the clothing that she was wearing at the  
5 time of the assault was not collected by me. It was  
6 already in a biohazard bag when I arrived at the hospital.  
7 I, myself, did not collect jeans.

8 Q No further questions. Thank you.

9 THE COURT: Thank you, Mr. Martinez.

10 Solicitor, any redirect?

11 MS. CAMPBELL: Just a couple of questions.

12 **REDIRECT EXAMINATION**

13 **BY MS. CAMPBELL:**

14 Q He asked you about fingernail scrapings.

15 A Yes, ma'am.

16 Q Why didn't you take fingernail scrapings.

17 A There is a question that I ask of all victims. All  
18 these questions are asked -- any patient might have them.  
19 Do you believe that you injured him in any way, which would  
20 mean kicking, punching, stabbing, scratching, that type of  
21 thing. She said no. So sometimes I specifically ask do  
22 you think you may have scratched him. But she said she did  
23 not inflict any injuries on him so I did not collect.  
24 Because typically they would say, I scratched him or I  
25 kicked him, that sort of thing.

**Bridgette de Guzman - Recross-Examination by Mr. Martinez**

1 Q The injuries she had sustained, the lacerations,  
2 would those be painful?

3 A Yes.

4 Q Thank you, I don't have anything further.

5 THE COURT: Recross examination, Mr. Martinez?

6 **RECROSS EXAMINATION**

7 BY MR. MARTINEZ:

8 Q When you -- when you collect this data -- I mean  
9 this DNA, these such swabs, after you dry it, does it say  
10 how much evidence is there?

11 A No, I do not test. I collect it and then -- I'm  
12 not a DNA analyst.

13 Q After this was -- after you guys reached your  
14 result, did you contact the alleged victim and tell her the  
15 results of anything?

16 A The only reason why I would -- I did not contact  
17 her for any reason.

18 Q All right. Thank you. No further questions.

19 THE COURT: Thank you, thank you very much. You  
20 may step down. Thank you for being with us Ms. De Guzman.

21 All right. Solicitor, you may call your next  
22 witness:

23 MS. CAMPBELL: State would call Investigator  
24 Charles Morrison.

25 CHARLES MORRISON,

**Charles Morrison - Direct Examination by Ms. Campbell**

1       having been duly sworn, testified as follows:

2               THE CLERK: Please have a seat. State your full  
3 name for the record.

4               THE WITNESS: My name is Investigator Charles  
5 Morrison.

6                               **DIRECT EXAMINATION**

7       BY MS. CAMPBELL:

8       Q       Where are you employed?

9       A       City of Forest Acres Police Department.

10      Q       And what do you do there?

11      A       I'm assigned to the investigative department.

12      Q       And as an investigator for the city of Forest Acres  
13 Police Department, what do your duties include?

14      A       I followup on reported incidents, crimes,  
15 misdemeanors, felonies.

16      Q       I want to turn your attention back to March the  
17 27th of 2014. Did you have -- did you respond to [REDACTED]  
18 [REDACTED], Apartment Number [REDACTED]?

19      A       Yes.

20      Q       And what kind of call were you responding to that  
21 morning?

22      A       I was informed that it was a criminal sexual  
23 conduct case.

24      Q       And approximately what time was it when you arrived  
25 there?

## Charles Morrison - Direct Examination by Ms. Campbell

1 A I believe it was around eight o'clock in the  
2 morning.

3 Q What was the weather like that morning?

4 A It was cool, the air was dry.

5 Q And when you say it was cool, did you actually note  
6 what the temperature was?

7 A I believe it was in the 30's.

8 Q And when you got there, were there any other  
9 officers already there?

10 A There was an Officer Matt Harrell and Russell  
11 Shumard.

12 Q Are they also employed by the Forest Acres Police  
13 Department?

14 A Yes.

15 Q And the location on [REDACTED]  
16 [REDACTED], is that within Richland County?

17 A Yes.

18 Q In the city of Forest Acres?

19 A That's correct.

20 Q Once you got there, who did you make contact with?

21 A Sergeant Harrell, Lieutenant Shumard, they advised  
22 me of the situation.

23 Q Were any of the victims there that morning?

24 A Yes.

25 Q And who all was there when you got there?



## Charles Morrison - Direct Examination by Ms. Campbell

1 A It was the, the victim, her two daughters and her  
2 husband.

3 Q Did you actually make contact with the victims or  
4 was your role something else that day?

5 A My role was something else. Russell Shumard was  
6 talking to the victims, I believe working on a statement.  
7 I was going to process the scene.

8 Q And when you say process the scene, can you explain  
9 to the jury what you're doing?

10 A Yes. By processing the scene, I was there to  
11 collect any evidence that might have been left by the  
12 suspect, photograph the scene.

13 Q And once you get to the scene and your job is to  
14 process the scene, initially, do you do what is known as a  
15 walkthrough?

16 A Yes, that is correct.

17 Q What's that?

18 A Just a -- meeting with the officers, having them  
19 advise me what they'd learned from witnesses, the victim  
20 and kind of pointing out the surroundings, possible  
21 evidence that's already been pointed out to law  
22 enforcement.

23 Q And do you go ahead and photograph the scene prior  
24 to collecting any evidence?

25 A Yes.

## Charles Morrison - Direct Examination by Ms. Campbell

1 Q And did you do that in this case?

2 A Yes.

3 Q And I'm going to show you a series of photographs,  
4 which is State's Exhibits 11 through 42 and first ask if  
5 you recognize those?

6 A (Looking through the photographs.) Yes, I believe  
7 these are the photos I took.

8 Q That day when you got to the apartment?

9 A Yes.

10 MS. CAMPBELL: Your Honor, at this time, we would  
11 offer State's Exhibit --

12 BY MS. CAMPBELL:

13 Q Do these fairly and accurately represent the  
14 photographs of the apartment and of some of the actual  
15 evidence you collected?

16 A Yes.

17 MS. CAMPBELL: Your Honor, at this time we'd offer  
18 State's Exhibit's Numbers 11 through 42.

19 (Showing the photographs to Mr. Martinez.)

20 MR. MARTINEZ: No objection, Your Honor.

21 THE COURT: State's 11 through 42 is in evidence  
22 without objection.

23 (State's Exhibit Number 11, Number 12, Number 13,  
24 Number 14, Number 15, Number 16, Number 17, Number 18,  
25 Number 19, Number 20, Number 21, Number 22, Number 23,

**Charles Morrison - Direct Examination by Ms. Campbell**

1 Number 24, Number 25, Number 26, Number 27, Number 28,  
2 Number 29, Number 30, Number 31, Number 32, Number 33,  
3 Number 34, Number 35, Number 36, Number 37, Number 38,  
4 Number 39, Number 40, Number 41, Number 42 was entered into  
5 evidence.)

6 BY MS. CAMPBELL:

7 Q Before I go any further, how is this house -- what  
8 type of house was this?

9 A It's a condominium, an apartment kind of house.  
10 It's a large building divided into a number of different  
11 living units, residents. When you walk in the door, you'll  
12 notice that the first floor is kind of a shared living  
13 space, living room, kitchen. The second floor, third floor  
14 are bedrooms with bathrooms.

15 Q Okay.

16 MS. CAMPBELL: And, Your Honor, may the witness  
17 step down?

18 THE COURT: Yes, ma'am, you may step down. Please  
19 keep your voice down for us, please.

20 THE WITNESS: Yes, sir.

21 BY MS. CAMPBELL:

22 Q If you would stand on this side, please.

23 State's Exhibit Number 11, what does that show?

24 A That is the backside of the townhouse or condo.

25 Q And State's Exhibit Number 12?

**Charles Morrison - Direct Examination by Ms. Campbell**

1 A That would be the main door, front door leading  
2 into the residence.

3 Q So that's the actual door leading into the  
4 residence?

5 A Yes, sir.

6 Q And as part of your investigation, did you become  
7 aware of when this family moved in?

8 A I learned at arriving on the scene and talking to  
9 Harrell and Shumard they'd only been living there a short  
10 time.

11 Q I'm going to show you State's Exhibit Number 13.  
12 Is this another photograph you took?

13 A Yes, ma'am, that's just inside that main door.

14 Q And what floor is this on?

15 A The first floor.

16 Q The ground floor?

17 A Yes, ma'am.

18 Q And what is this showing in the photograph?

19 A It shows just inside that main door is a stairwell  
20 and up those steps were what leads to the second and third  
21 floor.

22 Q Moving onto State's Exhibit Number 14, what area  
23 does this show?

24 A That's the same area, the front door is to the  
25 right. These are the steps that lead up the stairs and

## Charles Morrison - Direct Examination by Ms. Campbell

1 just inside that is the laundry area with the washer and  
2 drier.

3 Q And what is this item that I'm pointing to right  
4 there?

5 A That is a hammer that was found on the steps. I  
6 was advised by the family that that possibly belonged to  
7 the family. However, they didn't think that was there  
8 prior to this -- prior to my arrival or that day.

9 Q And during the course of your investigation, did  
10 become aware that the hammer was used by the assailant in  
11 this case?

12 A That's what I was told my Shumard and Harrell.

13 Q State's Exhibit Number 15, is that another  
14 photograph?

15 A Yes, ma'am, that's just a close up picture of the  
16 stairs and the hammer.

17 Q And that's how it was when you got there that day  
18 and where it had been left?

19 A That's correct.

20 Q And ultimately did you collect that hammer as  
21 evidence that's already been entered in this case?

22 A Yes.

23 Q Going through the first floor area, State's Exhibit  
24 Number 16, you photographed just the general whole  
25 apartment?

## Charles Morrison - Direct Examination by Ms. Campbell

1 A Yes, ma'am, try to get a layout of the apartment.

2 Q State's Exhibit 16, what area does that show?

3 A That is the kitchen. That still is the first floor  
4 of the residence. It's just coming from the doorway over  
5 to where I pointed out the laundry room and the kitchen.

6 Q And did you find any items of significance that you  
7 collected in that area?

8 A No, ma'am.

9 Q In moving on to State's Exhibit Number 17?

10 A Yes, ma'am; that's going to the second floor of the  
11 living area.

12 Q This is on the second floor?

13 A Yes, ma'am.

14 Q That's going to be the second floor with a bathroom  
15 and -- and what's this over here?

16 A They are the steps that lead to the third floor.

17 Q Leading to the third floor?

18 A Yes.

19 Q And do you recall how many bedrooms were on that  
20 floor?

21 A On the second floor there was two bedrooms.

22 Q And I show you State's Exhibit Number 18 and 19.  
23 What does that show?

24 A Those are the bedrooms of the daughters.

25 Q Second photo, State's Exhibit 21?

## Charles Morrison - Direct Examination by Ms. Campbell

- 1 A Yes, that's still on the second floor.
- 2 Q State's Exhibit 22 and 23 show what?
- 3 A That's from the second floor.
- 4 Q The second floor?
- 5 A Yes.
- 6 Q State's Exhibit 25 and 26?
- 7 A Still that's the bedrooms of the daughters.
- 8 Q This is just at different angles?
- 9 A Yes.
- 10 Q Moving on to State's Exhibit Number 28 and 29, what
- 11 areas do those show?
- 12 A This is now the third floor master bedroom and
- 13 master bathroom.
- 14 Q State's Exhibit 30 and 31?
- 15 A Again that's the same master bathroom just at a
- 16 different angle.
- 17 Q State's Exhibit Number 32?
- 18 A You'll see the doorway going into that same master
- 19 bathroom. Just further away on the other side of the bed,
- 20 again, this's the master bath -- bedroom, third floor.
- 21 Q Looking into the bathroom?
- 22 A Yes.
- 23 Q State's Exhibit Number 34, what does this show?
- 24 A This is the -- again this is the master bedroom and
- 25 here in this photograph, I noticed the electrical cord and

## Charles Morrison - Direct Examination by Ms. Campbell

1 a drill cord that was pointed out to me that was used by  
2 the defendant.

3 Q And what is this blue item in 22?

4 A I believe that was clothing -- yeah, she -- from  
5 the bed that was used in the incident.

6 Q And you mentioned that those two cords you can see  
7 here. The one next to the blue thing that you can see,  
8 under it is what?

9 A That's a brown electrical cord, extension cord.

10 Q And it shows what?

11 A And this's the cord to the drill. Both of those I  
12 was told, was used to tie up the victim.

13 Q 33 and 35?

14 A That's still in the bedroom. You'll see here a  
15 jewelry box beside the bed on the night stand.

16 Q Right here?

17 A Yes, ma'am, that is correct.

18 Q And ultimately, we'll get to that in a minute, but  
19 did you collect that jewelry box?

20 A Yes, I did.

21 Q State's Exhibit 36 shows what?

22 A Jewelry box on the night stand beside the same bed.

23 Q And at this point that's how it was opened?

24 A Yes, ma'am, that's correct.

25 Q State's Exhibit 27 shows what? A photograph of



## Charles Morrison - Direct Examination by Ms. Campbell

1 what?

2 A A bed sheet that was on the floor and the brown  
3 electrical cord.

4 Q Once these items were collected, did you then take  
5 some close ups of certain parts of these?

6 A Yes.

7 Q On State's Exhibit 40 and also on State's Exhibit  
8 38, what's that showing?

9 A That's the extension cord that was -- at the scene.  
10 You can see how it has been used as a kind of -- put a knot  
11 in it; the knot that was tied in it.

12 Q And that was a knot that was tied in it when you  
13 collected it?

14 A Yes.

15 Q You didn't do that?

16 A No, I did not.

17 Q State's Exhibit 41 and 42, is what item?

18 A That is the extension cord, the cord to the drill.

19 Q And again, what you see here, is that how it was  
20 when you collected it?

21 A That's correct.

22 Q You didn't put those knots in them?

23 A No, I did not.

24 Q You can have a seat.

25 (The witness returned to the witness stand.)

## Charles Morrison - Direct Examination by Ms. Campbell

1 BY MS. CAMPBELL:

2 Q And these last photographs where you took a close  
3 up of the knots, where were those photographs taken?

4 A Those were after I collected them, taken to  
5 headquarters to secure them in our lab.

6 Q Once you photographed the scene, what, if anything,  
7 did you do about trying to collect evidence?

8 A Yes, items that were pointed out to me by Shumard  
9 and Harrell, kind of gave me an idea of what the victim had  
10 told them; the steps of the progression of the incident.  
11 That's where it kind of gave me some ideas of where to  
12 start. I learned that he -- the defendant had to come in  
13 the front door and probably exited the same door. It was  
14 supposed to have been left unlocked. That's where I  
15 started. And I did try to dust the handles of the doors --

16 Q Uh-huh.

17 A -- to lift some latent prints, however --

18 Q Explain to the jury how you do that.

19 A Yes, there is a black powder, latent powders that  
20 are used. What they do is latent powders will connect with  
21 latent oils that is in a person's skin. Those oils come  
22 out of a person's skin. Not everybody leaves it.  
23 Sometimes skin is dry. Conditions of weather, the person's  
24 skin itself may not leave a latent print. Using this black  
25 powder, it will connect to the oils, if the skin does not

## Charles Morrison - Direct Examination by Ms. Campbell

1 leave any oils or latent prints behind, you usually don't  
2 find any.

3 Q Are you familiar with the term of smudging or  
4 blurring as far as physical --

5 A Yes, that's where you may see where an fingerprint  
6 impression was. It doesn't show ridges or swirls or the  
7 loops. Those are kind of the details. The minutia is in a  
8 fingerprint.

9 Q So if I walk up here and touch this like this, am I  
10 going to necessarily leave a fingerprint?

11 A No.

12 Q And if -- if something such as a door handle that  
13 may be used by more than one person, does that affect your  
14 results typically?

15 A Yes, it can.

16 Q And any kind of motions such as twisting or turning  
17 or moving of the fingers, does that make it so you can't  
18 get anything?

19 A That's correct.

20 Q When you dusted the handles for fingerprints, were  
21 you able to get anything?

22 A No, I was not.

23 Q Were you able to get any lifts?

24 A No.

25 Q No lifts?

## Charles Morrison - Direct Examination by Ms. Campbell

- 1 A No.
- 2 Q And is that unusual?
- 3 A No, it's not.
- 4 Q Once you processed that area, where did you go
- 5 next?
- 6 A Right beside was the hammer. I went ahead and
- 7 bagged that.
- 8 Q And collected the actual hammer itself?
- 9 A Yes.
- 10 Q And did you do any testing on the hammer or collect
- 11 any evidence from it?
- 12 A I swabbed it for DNA on the handle.
- 13 Q And I show you State's Exhibit 78, do you recognize
- 14 that?
- 15 A Yes, that's the hammer.
- 16 Q And you said you swabbed the handle?
- 17 A Yes.
- 18 Q And do you do the DNA testing or does somebody else
- 19 do that?
- 20 A No, that was handled by the Richland County DNA
- 21 lab.
- 22 Q And again, as with fingerprints, if somebody holds
- 23 the hammer, are they necessarily going to leave anything?
- 24 A That's correct.
- 25 Q It just depends?

## Charles Morrison - Direct Examination by Ms. Campbell

1 A Yes.

2 Q Once you have swabbed the handle for DNA and  
3 collected the hammer, what else did you do?

4 A I also was advised that during the incident the  
5 defendant had handled the victim's cell phone and made a  
6 call from that cell phone. That's when I dusted the cell  
7 phone for possible fingerprints, using a white color latent  
8 print powder. Also I took a swab of the front of the cell  
9 phone case knowing that he'd touched it, for possible touch  
10 DNA.

11 Q And I show you State's Exhibit Number 77. Do you  
12 recognize that?

13 A Yes.

14 Q Is that the actual cover you collected?

15 A Yes, it is.

16 Q With the swab you got that you took was from where  
17 on the phone?

18 A It was upon the front. The front of the phone and  
19 all that was given -- it was in the front where the buttons  
20 would have been or the display.

21 Q Like on an iPhone or something?

22 A Yes.

23 Q Okay. And that's the area you actually swabbed?

24 A Yes.

25 Q And again, when you're collecting swabs, do you

**Charles Morrison - Direct Examination by Ms. Campbell**

1 know whether or not there's DNA there?

2 A No. A lot of times if it's not something you can  
3 see, like blood, it's known more as a touch DNA from where  
4 a person's skin cells may have attached to that item.

5 Q And when you dusted that phone for prints, were you  
6 able to get any results?

7 A No.

8 Q Not the victim's either?

9 A No, not even the victim's.

10 Q Moving onto the master bedroom, did you collect any  
11 items there?

12 A Yes, the items that you saw in the photograph, the  
13 electrical cord, the drill, the jewelry box.

14 Q I show you State's Exhibit Number 9. Do you  
15 recognize that?

16 A The victim's jewelry box.

17 Q State's Exhibit Number 79, you recognize that?

18 A That is the drill.

19 Q State's Exhibit Number 80?

20 A The brown extension cord.

21 Q And then, of course, you'd already collected the --  
22 78?

23 A The hammer.

24 Q Did you also collect her clothing?

25 A The clothing went with the victim to the hospital

## Charles Morrison - Direct Examination by Ms. Campbell

1 at that time.

2 Q It had been bagged separately or was it collected  
3 there or at the hospital?

4 A It went with her. I never touched her clothing at  
5 the home.

6 Q Okay. Did you do any processing on any of those  
7 items that you collected from the bedroom area?

8 A Yes. They were swabbed for touch DNA. The wooden  
9 box was put in a fuming bag. That's where you use  
10 materials in a tank, you fume it up and it gets in the air  
11 so that way you can, again, attach to any latent oils.  
12 With it being a wooden box, I didn't get any latent prints  
13 on that box.

14 Q Nothing there either?

15 A No.

16 Q And is this unusual for you not to be able to find  
17 what's known as a latent print or a print at a scene?

18 A It's not unusual, especially with a wooden box. A  
19 lot of times the type of wood will absorb liquids, so if a  
20 person did leave a print, it would be absorbed into the  
21 wood so it may not be found. With it -- with the weather  
22 that morning, it was cold and dry. A person's hands would  
23 have been dry, and again, it all depends on the material,  
24 like wood, it may not have a latents left behind.

25 Q Were there any areas in the home or evidence from

**Charles Morrison - Direct Examination by Ms. Campbell**

1 the home that you processed for latent prints?

2 A Doorknobs. The doorknobs upstairs because I knew  
3 that the defendant had placed the children into the  
4 bathroom. Those doorknobs were processed.

5 Q Were you able to get any prints?

6 A No, ma'am.

7 Q And while at the scene, did you collect a number of  
8 swabs for potential testing for DNA?

9 A Yes, I did.

10 Q And once you had collected this evidence and the  
11 swabs, during the time period it was in your custody, did  
12 you alter or change it in any way?

13 A No, I did not.

14 Q And specifically, did you submit this evidence into  
15 -- for further testing?

16 A Yes, I did. I was advised by Mr. Russell Shumard  
17 that the county was going to test these items in their DNA  
18 lab.

19 Q That would be the Richland County Sheriff's  
20 Department?

21 A Yes.

22 Q Okay. And were those swabs turned over to the  
23 Richland County Sheriff's Department evidence room?

24 A Yes, by me.

25 Q And you would not have done that testing, would



## Charles Morrison - Direct Examination by Ms. Campbell

1 you?

2 A No, I wouldn't.

3 Q And again, during the time period when these items  
4 were in your custody, did anyone alter them or change them  
5 or do anything to them?

6 A No.

7 Q That morning -- I want to turn back, go back to  
8 that morning. Did you make contact with a Mr. Bob Hickman?

9 A Yes, I did.

10 Q And what was the purpose of doing that, sir?

11 A He has been a contact for law enforcement with the  
12 Richland County Recreational Department. Where the home  
13 is, or the condominiums, it's located on [REDACTED].

14 Across from this apartment or condo community is Trenholm  
15 Park. Trenholm Park has a recreational building. They do  
16 have outside cameras. I was not sure what path the  
17 defendant had taken that day, so I reached out to  
18 Mr. Hickman, advised him that we did have an incident. I  
19 gave him the description that I knew of the defendant at  
20 that time, a man with a knit cap, knit type hat, glasses  
21 and a burgundy sweatshirt and I asked him to review the  
22 video to see if he may have been in that area.

23 Q And as far as the cameras for the park?

24 A Yes, that is correct.

25 Q That's the only cameras he has access to?

## Charles Morrison - Direct Examination by Ms. Campbell

1 A Yes, that's correct.

2 Q And did he later get back in touch with you?

3 A Yes, I got a voicemail from him. He had said he  
4 checked the cameras and he found nothing matching my  
5 description.

6 Q And again, at this point, you didn't know what  
7 direction he had come from?

8 A That is correct.

9 Q So at this point, you're just trying to see what,  
10 if any, evidence you can collect?

11 A That's correct.

12 Q Did y'all make contact with any other institutions  
13 that day as far as any other items that were taken from the  
14 victim such as a bank card?

15 A I had advised Mr. Shumard, he was the lead  
16 investigator, that we may need to reach out to the banks to  
17 see if the bank card that was told to us by the victim, see  
18 if they were used. We could track them, see if they were  
19 used, maybe where. We could check the video.

20 Q That day did you also make contact with the victim  
21 in the case, later that morning?

22 A Yes. She came to headquarters after --

23 Q Is that after -- okay.

24 A She came the headquarters after being attended to  
25 at the hospital. It was set up for her to do a sketch with

## Charles Morrison - Direct Examination by Ms. Campbell

1 the help of SLED sketch artist. She completed that and a  
2 statement was taken.

3 Q And that was after she had met with the sketch  
4 artist?

5 A Yes, ma'am, that's correct.

6 Q Later that evening, did you receive a phone call  
7 from a person who you ultimately got a statement from?

8 A Yes, Ms. Culpepper. I was the investigator on call  
9 that night and at work, I leave my cell phone -- my  
10 department cell phone number for my answering service or my  
11 answering machine or voicemail there at work. I understood  
12 that Ms. Culpepper had called the office and -- in response  
13 to a media report that she saw on TV.

14 Q Were you aware of what media report she was  
15 referring to?

16 A Not exactly. I didn't handle any press releases.  
17 She just stated that she saw the incident on one of the  
18 media outlets.

19 Q But you were aware that a sketch had been done?

20 A Yes, I knew that a sketch had been done. I knew it  
21 was going to be put out to the media.

22 Q Okay. Moving on to the next day, that morning when  
23 you came in, were you advised of a possible suspect in this  
24 case?

25 A Yes. I first spoke with Mr. Shumard and told him

**Charles Morrison - Direct Examination by Ms. Campbell**

1 of my phone call with Ms. Culpepper. And at some point he  
2 had told me that he had spoke with an investigator with  
3 Richland County and had learned of a name, basically  
4 learned of the defendant.

5 Q Okay. With that information, what did you do?

6 A I had checked a data base that we have called Leads  
7 Online because I knew there was property taken out of the  
8 home and I wanted to see if possibly that property could  
9 have been pawned. Or even if there was even any other  
10 transactions by that defendant.

11 Q And when you looked into this Leads Online --  
12 what's the purpose of Leads Online?

13 A It's a data base that is shared between pawnshops,  
14 law enforcement that I know of. A lot of times if you have  
15 theft, property will be sold at pawnshops so we check that  
16 to see if we can recover the property. It's kind of called  
17 a reverse search. You may not have a person that you can  
18 check for property that was taken from the victim.

19 Q And when you searched on Leads Online, did anything  
20 catch your attention?

21 A Yes, by using the name that I was given --

22 Q What name was that?

23 A Martinez, Nathan Martinez.

24 Q Uh-huh.

25 A That name was plugged in with the information also

**Charles Morrison - Direct Examination by Ms. Campbell**

1 that we had from Richland County like a date of birth or a  
2 driver's license number, that information can be plugged  
3 into a computer and it can transact any information with  
4 that information.

5 Q What did you find when you plugged it in?

6 A I found that there had been a transaction done by  
7 the defendant on the day of the incident a short time after  
8 the incident. It was a pawnshop on Decker Boulevard.

9 Q Once you got that information, what did you do?

10 A I looked at it. I noticed that it was rings. I  
11 knew that there had been rings taken from the home. I  
12 proceeded to go to the pawnshop.

13 Q Once you got to the pawnshop, who did you make  
14 contact with?

15 A A Mr. Decker.

16 Q Uh-huh.

17 A He was the, I guess manager, the employee there at  
18 the store at that time.

19 Q And in speaking with Mr. Decker, were you able to  
20 get a copy of a pawn slip?

21 A Yes. The way the Leads Online works is there's a  
22 pawn ticket associated with that transaction. With that  
23 number and with what I had learned from Leads Online, I was  
24 able to tell Mr. Decker what I was looking for. And he  
25 recalled the transaction and said that he handled it

## Charles Morrison - Direct Examination by Ms. Campbell

1 himself.

2 Q And I show you State's Exhibit Number 86. Do you  
3 recognize that?

4 A Yes, that's the pawn slip from this particular  
5 pawnshop.

6 Q And once he provided you with a pawn slip, did you  
7 also collect any items there at the pawnshop?

8 A Yes, there's a ring, a man's ring and a woman's  
9 ring. Those are the two items listed here on the same slip  
10 that was involved in the transaction with the defendant.

11 Q Let me show you State's Exhibit Number 10 and ask  
12 if you recognize those.

13 A Yes, these are the two rings that were there at the  
14 pawnshop involving this transaction with the defendant and  
15 Mr. Decker.

16 Q And those are the rings that corresponded to the  
17 pawn slip?

18 A That's correct.

19 Q How much was Mr. Martinez paid for those two rings?

20 A I believe it was \$50 or \$55 total.

21 Q Did you take photos of the rings as well?

22 A Yes, I did.

23 Q And were photos of the rings taken -- let me show  
24 you, at headquarters to -- State's Exhibit Number 44 --

25 A Yes, that is correct. I took those pictures.

## Charles Morrison - Direct Examination by Ms. Campbell

1 Q -- as well?

2 A Yes, ma'am.

3 Q And did you alter them or damage them in any way  
4 when you were taking these pictures?

5 A No, I did not.

6 Q Did you get a statement from Mr. Decker?

7 A Yes, I did. We did a statement there at the  
8 business when I collected the rings.

9 Q And what time of the day is this on the 28th, which  
10 I believe is what day of the week?

11 A The 28th was a Friday. The incident happened on a  
12 Thursday. I was at the business more in the afternoon.

13 Q Okay. Did you show him a lineup at this point?

14 A I did not have a lineup available to show him.

15 Q Was one shown to him by someone else in your  
16 department?

17 A Yes. Investigator Denizard was tasked with  
18 followup for a lineup.

19 Q Later that day, did y'all make any attempt -- did  
20 you -- and you can't talk about -- was there other evidence  
21 that was collected that day as well? Not by you but by  
22 other members of your department?

23 A Yes, I understand there was a lineup that was shown  
24 by Investigator Shumard. In those lineups, the people had  
25 pointed out the defendant as a suspect in the case.

**Charles Morrison - Direct Examination by Ms. Campbell**

1 MR. MARTINEZ: Objection, Your Honor, hearsay.

2 THE COURT: I would sustain that objection.

3 BY MS. CAMPBELL:

4 Q Without saying what the evidence was, was other  
5 evidence collected that day involving this defendant?

6 A Yes.

7 Q And based on the evidence that you had at that  
8 point, did y'all get warrants in this case?

9 A We met with Judge Streeter. She's the County  
10 magistrate.

11 Q And were warrants issued?

12 A Yes.

13 Q Over the next several days -- were you the lead  
14 investigator in this case?

15 A Shumard was.

16 Q Okay. Did you ultimately also collect, I believe,  
17 a sexual assault kit in this case?

18 A That is correct.

19 Q I show you State's Exhibit Number 81. Who did you  
20 collect that from and when?

21 A This was collected from a SANE nurse at Richland  
22 Memorial.

23 Q And what date did you actually collect that?

24 A That would have been April the 2nd, I believe is  
25 when they completed their report and had finished their



## Charles Morrison - Direct Examination by Ms. Campbell

1 processing of that.

2 Q And then ultimately what, if anything, did you do  
3 with this?

4 A Yes, I got in contact with Richland County  
5 Sheriff's Office, again the DNA lab, set up a time and date  
6 where I could submit it to them for further testing. That  
7 would have been done on April 4th.

8 Q Okay. During the time period that it was in your  
9 custody, did anyone alter or tamper with any evidence in  
10 this case?

11 A No, did not.

12 Q And I see here on the back, it shows where it was  
13 actually transferred from Ms. De Guzman to you?

14 A That is correct.

15 Q After the warrants were taken out in this case,  
16 your next involvement came on the 2nd in the early morning  
17 hours?

18 A That is correct.

19 Q And how did you become involved at this point?

20 A Investigator Shumard had called me and said that  
21 the defendant had been located by the Richland County  
22 Sheriff's Department Fugitive Task Force. Once he was in  
23 custody he was going to be brought to Forest Acres.

24 Q And did that happen?

25 A That is correct, it did.

**Charles Morrison - Direct Examination by Ms. Campbell**

1 Q And approximately what time of night was this that  
2 you came in contact with him?

3 A That's approximately 2:20 in the morning, sometime  
4 between 2 and 2:30 in the morning.

5 Q Do you know how he was transported in headquarters?

6 A I'm not quite sure if the County, Richland County  
7 brought him to us or if maybe one of our marked units met  
8 him. I believe it was Richland County that brought him to  
9 Forest Acres headquarters.

10 Q And once he got there, did you actually -- were you  
11 one of the investigators that made contact with him?

12 A Yes myself, and Investigator Shumard.

13 Q Were there any other investigators there?

14 A There was, Investigator Bailey from the City of  
15 Columbia.

16 Q From the City of Columbia? Prior to asking -- what  
17 was your purpose in trying to make contact with him that  
18 night?

19 A We were going to advise him of his rights and speak  
20 with him and see what information he would share with us.

21 Q I'm going to show you what's been marked as State's  
22 Exhibit Number 91. Where did this take place that y'all  
23 came together?

24 A We spoke on the second floor at the police  
25 department.

## Charles Morrison - Direct Examination by Ms. Campbell

1 Q I'm going to show you State's Exhibit Number 91 and  
2 first ask if you recognize that?

3 A I do.

4 Q What is that, sir?

5 A That is a Forest Acres Police Department advice of  
6 rights form.

7 MR. MARTINEZ: Objection, Your Honor. Same as  
8 before.

9 THE COURT: All right. Subject to previous  
10 objection, I reaffirm my in-camera rulings.

11 What number was that, Solicitor?

12 MS. CAMPBELL: I believe it was 91.

13 THE COURT: 91.

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: You may continue, Solicitor.

16 MS. CAMPBELL: Thank you.

17 BY MS. CAMPBELL:

18 Q Prior to him getting there, did you fill out any  
19 parts of this?

20 A Yes, ma'am, I use his driver's license information  
21 to fill out the top part.

22 Q And that would be the same driver's license  
23 information you used on the leads?

24 A Yes, ma'am.

25 Q And in the top part, what information did you write

## Charles Morrison - Direct Examination by Ms. Campbell

1 down?

2 A Basic information, person's name, address, driver's  
3 license number, date of birth, time, date.

4 Q Once he got there, prior to questioning him about  
5 the events that happened on the 27th, did you go through  
6 his rights with him?

7 A Yes. I read this form to him.

8 Q And can you walk through it with the jury just how  
9 you did that?

10 A Sure because I'm the government and Mr. Martinez  
11 was a possible suspect in this case, he has rights. Before  
12 I can talk to him, because I'm the government, I'm law  
13 enforcement, I do have to advise him of his rights. On  
14 this form it says your rights.

15 Before we ask any questions, you must understand  
16 your rights. There's a listing of them and I read them  
17 individually. I go through and I will say: You have the  
18 right to remain silent. Anything you say can and will be  
19 used against you in court.

20 You have the right -- you have the right to have a  
21 lawyer, and counsel with your lawyer before and while  
22 answering any questions. If you cannot afford a lawyer,  
23 one will be provided for you before answering if you wish  
24 and at no cost to you.

25 If you decide to answer questions now without a

**Charles Morrison - Direct Examination by Ms. Campbell**

1 lawyer present, you will still have the right to stop  
2 answering at any time. You also have the right to stop  
3 answering questions at any time until you counsel with a  
4 lawyer.

5 At the bottom, below that is a paragraph. I read  
6 this paragraph to people just like I did the top part. It  
7 says, I have read this statement of my rights. I  
8 completely understand my rights. I am willing to make a  
9 statement and answer questions at this time without a  
10 lawyer present. No promises have been made to me. No  
11 threats pressure or coercion of any kind have been used  
12 against me. I know and understand what I'm doing by  
13 waiving my rights.

14 What I normally do is I tell the person after  
15 reading all this, Sign and then right below it print your  
16 name. The defendant did. I signed it because I witnessed  
17 him do it firsthand then I asked Mr. Martinez how far in  
18 school did he go. He told me two years of college. I  
19 asked him what year did this end. He said 2004. I wrote  
20 at the bottom.

21 Q And I notice in looking at this form that there are  
22 -- it's an area over here where there's handwriting and  
23 initials?

24 A Yes, ma'am. When I explained the form, I draw a  
25 line. I say here are lines, please put your initials. Mr.

## Charles Morrison - Direct Examination by Ms. Campbell

1 Martinez initialed by each line.

2 Q At any time when you were advising him of his  
3 rights and this entire time you talked to him, did you  
4 promise him anything to make him talk to you?

5 A No, I did not.

6 Q Did you threaten him in any way?

7 A No, I did not.

8 Q Did you deprive him of any creature comforts?

9 A I did not.

10 Q Did he appear coherent and understand what you were  
11 saying?

12 A Yes.

13 Q Did he respond to your questions?

14 A Yes, he did. He appeared to be calm and pleasant.

15 Q And when he initialed what his rights were, that  
16 was his initials, right?

17 A Yes, that's correct, those are his initials where  
18 he signed his name and then he printed his name underneath  
19 where he signed it.

20 Q And did he indicate that he was willing to talk to  
21 y'all?

22 A Yes.

23 Q And, in fact, was he anxious to talk to y'all?

24 A Yes.

25 Q What was his demeanor like that night?

**Charles Morrison - Direct Examination by Ms. Campbell**

1 A In my opinion he was relaxed, calm, again he was  
2 pleasant..

3 Q Once you advised him of his rights and he chose to  
4 sign off and waive his rights, he indicated he wanted to  
5 talk to you?

6 A Yes, that's correct.

7 Q Did y'all then start questioning him about what had  
8 happened with Ms. Hurshman?

9 A Yes. The incident, the Forest Acres incident was  
10 our main conversation.

11 Q And did you ultimately ask him questions and go  
12 through them and let him answer?

13 A Yes, we did.

14 Q I'm going to show you State's Exhibit Number 92.  
15 Do you recognize this?

16 A Yes, that's -- this is the original handwritten  
17 statement that we had taken with the defendant.  
18 Investigator Shumard and I spoke about the matter.  
19 Mr. Shumard did the handwriting. He wrote out the  
20 questions. What we like to do, a lot of times we'll do a  
21 question and answer type of form. We would ask him a  
22 question and Mr. Shumard would write the question and then  
23 beside that question would be a Q for question and beside  
24 the answer by the person we're talking to would be an A for  
25 answer.

## Charles Morrison - Direct Examination by Ms. Campbell

1 Q Okay. And ultimately are the questions written  
2 out?

3 A Yes, we would write the questions that we would  
4 ask.

5 Q And who's actually doing the writing on this one?

6 A That would be Mr. Shumard.

7 Q And who's answers are these? Where it says A.

8 A Those are the answers --

9 MR. MARTINEZ: Your Honor, I object to that  
10 statement.

11 THE COURT: All right.

12 MR. MARTINEZ: Same as before, renew my objection.

13 THE COURT: All right. Subject to previous  
14 objections, I reaffirm my previous rulings. State's 91 and  
15 -- 92?

16 MS. CAMPBELL: 92.

17 THE COURT: Are in evidence subject to previous  
18 objection.

19 MS. CAMPBELL: Thank you.

20 (State's Exhibit Number 91 and Number 92 were  
21 entered into evidence.)

22 BY MS. CAMPBELL:

23 Q So --

24 A When we would ask him a question, he would answer  
25 it and Mr. Shumard would write down the answer. What we do



**Charles Morrison - Direct Examination by Ms. Campbell**

1 also, we have the defendant read over once the answers have  
2 been written. They read over it. If it's correct they'll  
3 sign it and initial beside the answer that's written. In  
4 this case and in many others, we'll actually let them  
5 expand on their answer if we wrote it that they wish to  
6 write more and we let him write more.

7 Q Okay. And in this case, I notice these highlighted  
8 spaces. What were those put on there for?

9 A Those are the defendant's initials, where he agreed  
10 with what the answer was.

11 Q So he went through individually what the answers  
12 were initialing beside them if he agreed with them?

13 A That is correct.

14 Q But as you just said some of these if he wanted to  
15 change something or add to it, he's allowed to do that?

16 A That's correct.

17 Q And in fact, some of these you can see the  
18 handwriting is different, down this first page --

19 A Yes, that's where -- that was his handwriting.

20 Q And at any time while y'all are questioning, is  
21 anyone threatening, making him talk, or anything of this  
22 nature?

23 A No, we were not.

24 Q And was he wanting to give you his version of  
25 events?

**Charles Morrison - Direct Examination by Ms. Campbell**

1 A Yes, he wanted to talk to us.

2 Q And he even added to the statement as it was  
3 originally taken?

4 A That's correct.

5 Q And then ultimately he signed at the bottom?

6 A Yes, ma'am. Each page should have a signature and  
7 his printed name at the bottom.

8 Q And is this your signature here?

9 A Yes, that's my signature where I notarized it.

10 MS. CAMPBELL: Permission to publish, Your Honor?

11 THE COURT: You may publish it.

12 BY MS. CAMPBELL:

13 Q You can read it. And can you also tell the jury  
14 when he added to it, what his words were?

15 A Sure.

16 Q Thank you.

17 A This is a handwritten statement, four pages long,  
18 front one side, back has nothing on it on each page. At  
19 the top it's labeled, statement, has the date April 2nd,  
20 2014. Has the defendant's name, address, and date of  
21 birth. Here beside the question it says, what was written:  
22 Do you know why you are here. The written answer is yes.

23 And that's where, Mr. Martinez's initial is.

24 The next question is: Why. For the answer: I am  
25 here for the incident in Forest Acres, with Mr. Martinez's

## Charles Morrison - Direct Examination by Ms. Campbell

1 initials again.

2 Next question: What day was this. He answered  
3 Thursday. That's where it has Mr. Martinez's initials.  
4 Beside that it says: Because of the news story about it.  
5 And again Mr. Martinez's initials.

6 Q And that's -- who wrote because of the news story  
7 about it?

8 A That was Mr. Martinez's handwriting.

9 Q Okay.

10 A The next question is: What did you do in Forest  
11 Acres? The answer: I was looking for a house to break  
12 into, find something to steal. And then Mr. Martinez  
13 initialed it. Beside it he wrote, his handwriting:  
14 Because the voices in my head said to. And that's where  
15 Mr. Martinez initialed again.

16 Next question, what did this place look like that  
17 you broke into? Answer: I did not know, it was some  
18 apartments. I do not remember which ones. I walked past a  
19 BP. And that's where Mr. Martinez initialed it.

20 Why do you -- why did you pick this particular  
21 apartment? Answer: This was unlocked. I had checked a  
22 few others --

23 There's a little arrow going to the next page,  
24 we're going from page 1 to page 2.

25 -- because they were locked. Mr. Martinez

## Charles Morrison - Direct Examination by Ms. Campbell

1 initialed there as well.

2           Next question: When you came into this apartment,  
3 what did you see or what did you do? Answer: I do not  
4 know. I remember walking up some steps -- stairs. I was  
5 alone -- I was alone; that part was handwritten.

6 Q           And then his initials?

7 A           And then his initials. Yes, that's still a  
8 handwritten statement.

9 Q           What was the next question?

10 A          Did you see any lady tied up? Yes. I remember  
11 coming to and seeing a lady tied up and the two girls in  
12 the bathroom. I had something on my face and I was  
13 thinking, What the fuck am I doing, and I left. And again,  
14 Mr. Martinez's initials.

15           Next question, Did you take anything out of the  
16 home? Answer: Credit card, \$3, and gold rings.

17 Q           How many gold rings?

18 A           Two.

19 Q           Okay.

20 A           With Mr. Martinez's initials. And beside that,  
21 found after I left.

22 Q           Let me get it straight, whenever he's adding  
23 something -- and this is after he's given y'all his  
24 original statement and he's going back through it and  
25 adding things?

## Charles Morrison - Direct Examination by Ms. Campbell

1 A Yes, that's correct.

2 Q Okay. Keep going.

3 A Next question: Did the victim ask you not to take  
4 her cell phone -- I'm sorry ask to take her phone? Answer:  
5 Yes, I had it in my hand and she told me not to take it,  
6 with Mr. Martinez's initials. As you know there's an arrow  
7 going to page 3.

8 And page 3, the next question: What did you do  
9 with the rings? Beside A for answer: I pawned the two  
10 rings at Quick something, in quotes. I got \$55 for them.  
11 I talk to a white guy there. I walked there. I was alone  
12 and I pawned them on the same day. With Mr. Martinez's  
13 initials after that.

14 Next question: What were you wearing at the time  
15 you went into the apartment? By the answer it said: Blue  
16 pants, a burgundy Carolina jacket and Carolina beanie,  
17 burgundy in color. Mr. Martinez's initials are there.  
18 Beside that he wrote in his handwriting, don't remember  
19 which shirt, initialed by Mr. Martinez.

20 Next question: Where are these clothes now?  
21 Answer: I do not know. Mr. Martinez initialed that.

22 Why did you do all of this? And the answer: I  
23 have been complaining about being illegally implanted with  
24 microchips inside my head by the Utah police. Also they  
25 want to tell me to hurt myself and others. I did not want

**Charles Morrison - Direct Examination by Ms. Campbell**

1 to do this or hurt no one, but the voices tell -- made --  
2 made me -- I think it's lose my mind and thoughts and black  
3 out and want, or can't, I'm sorry, can't recall or remember  
4 things that happen to me because of these chips inside of  
5 me. Mr. Martinez initialed and went a little further.

6 Once I realized what was going on, I left. That's  
7 where Mr. Martinez initialed again. That was the end of  
8 page 3.

9 At the beginning of page 4, next question: Do you  
10 remember having a gun? The answer was: No. Mr. Martinez  
11 initialed it.

12 Do you remember having a hammer? Answer: Yes,  
13 when I came to I did not know where I got it from. I left  
14 the hammer there. Mr. Martinez initialed and went on.

15 I do not remember a gun, but I do remember a hammer  
16 and he initialed again.

17 Q That's what he added?

18 A Yes, ma'am. His handwriting.

19 Question: Did R. W. Shumard help you with this  
20 statement? Yes. He initialed it.

21 Next question: Is there anything you wish to add?

22 Answer: I want to get to -- I want to get to resolve these  
23 issues and prove that what I complained about with this or  
24 the chips implanted inside of me to mental health and then  
25 a little and mark, Richland County investigators,

## Charles Morrison - Direct Examination by Ms. Campbell

1 Lieutenant Heidi Jackson, Holly Wagner. Are the truth and  
2 what I am not responsible for my actions, but am being  
3 electronically harassed by the Utah police and made me want  
4 to harm myself and others. And Mr. Martinez initialed it.  
5 At the end of this page, page 4, the last page of the  
6 statement, he signed and printed his name as he did on all  
7 four pages.

8 Q Once he had given a statement and signed it, did  
9 you do anything else as far as documenting how he looked?

10 A No, ma'am. I initialed -- notarized all the pages.

11 Q As far as the statement goes?

12 A Yes.

13 Q And once the statement was complete, what then did  
14 you do as far as Mr. Martinez was concerned?

15 A He was served with his warrants.

16 Q Did he have any distinguishing marks on him?

17 A Yes, in the description given by the victim, she  
18 had remarked that he had a large tattoo on his neck.  
19 Photographs were taken of Mr. Martinez just shortly after  
20 taking that statement.

21 (State's Exhibits were being marked.)

22 MS. CAMPBELL: I apologize, it should be 70 through  
23 74 -- I misspoke, Your Honor, I apologize.

24 THE COURT: All right.

25 MS. CAMPBELL: Thank you. And then 95, 96 and 97.

1 Let me mark two more.

2 (More State's Exhibits were being marked.)

3 MS. CAMPBELL: If I might mark three more, Your  
4 Honor.

5 THE COURT REPORTER: That's 103, 104, and 105.

6 THE COURT: The chart was 10 --

7 THE COURT REPORTER: 2.

8 THE COURT: The SANE nurses chart, diagram?

9 MS. CAMPBELL: It's 102.

10 THE COURT: 102 and then you pick back up at 103.

11 MS. CAMPBELL: Right.

12 BY MS. CAMPBELL:

13 Q I'm going to show you 103, 104, and 105, do you  
14 also recognize those?

15 A Yes, these are more photos taken at the same time  
16 of the defendant.

17 MS. CAMPBELL: Your Honor, at this time I'd offer  
18 these into evidence.

19 MR. MARTINEZ: Your Honor, I object. Rule 403, my  
20 14th Amendment, due process, and a fair trial.

21 THE COURT: Sir?

22 MR. MARTINEZ: Due process and a fair trial.

23 THE COURT: All right. There are ten photographs?  
24 Is that correct?

25 THE COURT REPORTER: Eleven.



1 MS. CAMPBELL: Eleven.

2 THE COURT: Eleven. Okay.

3 Well, it may take me a while to review those.

4 Rather than -- it's close to the hour of 6 o'clock, I'm not  
5 sure if I -- which I will take that time it wouldn't be  
6 prudent for me to capture the jury for this period of time.

7 Ladies and gentlemen, I generally don't break  
8 testimony for the day when the witness is on the stand. I  
9 generally like to finish that witness. However, given the  
10 time and the hour and the pretrial matter I have to take  
11 up, I'm going to release you from your service for the  
12 remainder of the day.

13 Again I advise you do not discuss the case with  
14 others, your fellow jurors, family, friends or anyone else.  
15 If anyone tries to talk with you about the case, please  
16 report that to me. Do not read, watch, or listen to any  
17 news accounts about the case. Do not do any independent  
18 investigation or any investigation on the internet. As far  
19 as obtaining or disclosing information through research  
20 that is prohibited which includes, but is not limited to  
21 the following information about a party, a witness, an  
22 attorney, or a court officer; news accounts about the case  
23 past or present should there be any. Information collected  
24 through juror research on any topics raised or testimony  
25 offered by any witness or information collected through

1 juror research on any topic the juror might think would be  
2 helpful in deciding the case.

3 Remember you decide the case based on the evidence  
4 presented in the courtroom and the testimony, physical  
5 items of relevance, inferences you think may properly be  
6 drawn and the law as I tell you the law is.

7 With that being said, you're released from your  
8 jury service for the remainder of the day, the remainder of  
9 the evening.

10 Is it dark outside, Sheriff?

11 Have the jury escorted, Sheriff. Thank you very  
12 much.

13 You're released from your jury service, if you  
14 would please be back promptly at 9:30 in the morning, 9:30  
15 in the morning. Hope y'all have a pleasant evening.

16 Leave your notes turned upside down on your chair.  
17 They will be secured by the sheriff's office. Make sure  
18 your number's on there.

19 (The jury left the courtroom at 5:54 p.m.)

20 THE COURT: I've got 70 through 74, 95, 96, and 97,  
21 103, 104 and 105?

22 THE COURT REPORTER: Yes, sir.

23 MS. CAMPBELL: May I approach or do you want to  
24 take a break?

25 THE COURT: No, ma'am, you may approach.

1 All right. Mr. Martinez, the -- 70, 71, 72 all  
2 appear to be photographs of you showing either -- showing  
3 parts or either -- I don't know that you could have a  
4 camera that would show all parts of the neck tattoo. What  
5 is your objection to those, Mr. Martinez?

6 MR. MARTINEZ: Unfair prejudice under Rule 403 and  
7 also due process and my right to a fair trial, 14th  
8 Amendment.

9 THE COURT: What is the undue prejudice?

10 THE WITNESS: Undue prejudice is there's -- there's  
11 -- there's going to be tattoos of the back of my head.  
12 They have --

13 THE COURT: I'm talking about three. I just  
14 directed your attention to 70, 71, and 72 that just show  
15 the front part of your neck. I'm going to get you the  
16 others --

17 MR. MARTINEZ: Oh, the one with my --

18 THE COURT: The front of your neck --

19 MS. CAMPBELL: Want me to show them to him?

20 (The Solicitor was showing the exhibits to Mr.  
21 Martinez.)

22 MS. CAMPBELL: These are just these.

23 MR. MARTINEZ: The unfair prejudice is that I'm --  
24 some of them have the back of my head.

25 THE COURT: I'm going -- I'm focused on this right

1 now. I can only rule on one at the time.

2 MS. CAMPBELL: Just these three. This is --

3 THE COURT: And those three show either part,  
4 front, or the sides or the front of your neck.

5 MR. MARTINEZ: Yeah, Rule 403 and I -- I --

6 THE COURT: I heard like you said. I'm asking you  
7 specifically, these photographs, what is the unfair  
8 prejudice of 70, 71, and 72. That's all I'm asking you,  
9 sir.

10 MR. MARTINEZ: Because it's going to be -- it's  
11 going to cause a -- it's going to -- that's the only  
12 pictures for the jury to see the one person with the  
13 tattoo, neck tattoo. They're not going to see multiple  
14 people with multiple -- there's -- there's multiple  
15 Hispanics with seat's on their necks out there. There's  
16 more people with tattoos on their necks and they're only  
17 going to see one person with tattoos on their necks.

18 THE COURT: I apologize, Mr. Martinez. I'm not  
19 tracking your argument.

20 We're only trying one person. I'm just --

21 MR. MARTINEZ: The person wasn't identified by the  
22 victims until later on.

23 THE COURT: So how does that make the photographs  
24 unduly prejudicial? I'm just not tracking.

25 MR. MARTINEZ: Because they was taken illegally.

1 against -- when I was illegally searched and seized so they  
2 was -- anything that was taken after illegal search and see  
3 sure, I mean, as you know, is inadmissible because it was  
4 taken illegally.

5 THE COURT: Well, I guess you're talking about the  
6 fruits of the poisonous tree. I have already ruled on that  
7 and the tree is not poison. I thought your objection's on  
8 Rule 403, unduly prejudicial. Simply, all I'm asking you  
9 is what -- what do these photographs -- tell me please, the  
10 basis for your objection under 403.

11 MR. MARTINEZ: Unfair prejudice it means -- and you  
12 undue tendencies to suggest based decisions on an improper  
13 basis.

14 THE COURT: All right, sir.

15 Solicitor.

16 MS. CAMPBELL: Your Honor, the testimony has been,  
17 from every witness in the case that's identified the  
18 defendant and the victim as well, is that the tattoo around  
19 the neck stood out. There was lettering. This  
20 corroborates totally what each and every witness has  
21 described as far as his -- the lettering on his back. They  
22 were taken when he was apprehended on April the 2nd. We  
23 think that that would be admissible.

24 THE COURT: Mr. Martinez.

25 MR. MARTINEZ: We also heard testimony as well from

1 the police that I was sought illegally just because of a  
2 prior incident and that's how I became a suspect. As he  
3 said, there's no corroborating evidence that goes with that  
4 and when the suspect -- I mean when the victim seen my  
5 photographic lineup after they didn't identify me either,  
6 so it just goes to exactly she's looking at the sketch and  
7 it just goes to enhance and bolster their sketch because  
8 they are going to look at me as being -- showing my neck  
9 tattoos.

10 THE COURT: Do you have any other position as to  
11 70, 71, or 72? The three neck tattoos?

12 MR. MARTINEZ: No, sir.

13 THE COURT: All right. Having cited this case  
14 throughout this proceeding, State versus Collins, the  
15 relevancy, materiality, the admissibility of photographs is  
16 evidence or matters left to the sound discretion of the  
17 trial judge. If the offered photographs serve to  
18 corroborate testimony, it is not an abuse of discretion to  
19 admit it. When balancing the danger of unfair prejudice  
20 against the probative value, a determination must be made  
21 on the entire record in determining the facts in this case.

22 This evidence, based on the record before now, with  
23 a caveat that -- I don't know if it's post statement  
24 caveat, but I will give one momentarily. This evidence is  
25 highly probative, corroborative of testimony of several of

1 the witnesses who have testified, including Ms. Briona  
2 Hurshman and others. And it's probative value outweighs  
3 any potential prejudice that it may have.

4 Further, it's not the type of photographs that the  
5 individual juror or jury would have an emotional reaction  
6 to the subject matter. Further, the standard is not  
7 similarly whether the evidence is prejudicial, but whether  
8 the standard under Rule 403 is whether there is a danger of  
9 unfair prejudice that substantially outweighs the probative  
10 value of the evidence.

11 I have some concerns. I think they are admissible,  
12 but I have some concern as to the actual lettering and the  
13 word that it spells. That's not an answer. That's just  
14 not an answer. I mean, I think the word may be on the neck  
15 doesn't offend me. Do you have any position on that, Mr.  
16 Martinez.

17 MR. MARTINEZ: Yes, sir. That would violate my due  
18 process, as well as my 14th Amendment right to --

19 THE COURT: Well, I don't think it would because  
20 the word is what it is. If someone couldn't put something  
21 that would perhaps have some prejudicial effect to it and  
22 then say, well, you can want use that to identify me but it  
23 might prejudice me. However, I think I will give a  
24 curative instruction to the jury not to take into account  
25 nor discuss in the jury room what the specific word Crip

1 means. Because I just feel that they should be given that  
2 instruction in that regard.

3 MS. CAMPBELL: Yes, sir.

4 THE COURT: And I'll fashion a curative instruction  
5 to the jury.

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: All right. Now, State's 73, it appears  
8 it's your hands. You are handcuffed and part of your  
9 foreman's -- what is your position on that photograph.

10 MR. MARTINEZ: The same, Your Honor.

11 THE COURT: Why is that specific photograph unduly  
12 prejudicial suggested, suggested. It's the same is not an  
13 argument for that photograph.

14 MR. MARTINEZ: It's going to cause unfair --  
15 unfairness.

16 THE COURT: Why? Tell me why.

17 MR. MARTINEZ: Because there's no relevancy -- just  
18 like he testified, there's no -- they didn't get no  
19 fingerprints, they didn't -- there's no --

20 THE COURT: We're not talking about fingerprints.  
21 We're not talking about DNA. We're not talking about touch  
22 DNA. We're talking about these photographs, Mr. Martinez.

23 MR. MARTINEZ: And I said that they're highly  
24 prejudicial because --

25 THE COURT: Because why?



1 MR. MARTINEZ: Because they're showing tattoos off.

2 THE COURT: So your general position is that anyone  
3 -- any picture of a tattoo on a defendant is prejudicial?  
4 Is that your position.

5 MR. MARTINEZ: In my case it is because that's the  
6 sole reason that I'm here.

7 THE COURT: Why aren't you wearing gloves then.

8 MR. MARTINEZ: Right now?

9 THE COURT: Yes, sir.

10 MR. MARTINEZ: Because I can't.

11 THE COURT: Because what.

12 MR. MARTINEZ: Because I don't have to, I don't  
13 want to.

14 THE COURT: You don't have to, but your hand tattoo  
15 on your left hand is within eyesight. If it's prejudicial,  
16 why don't you cover the prejudicial off.

17 MR. MARTINEZ: It's prejudicial when I'm -- when  
18 the identifying factor that they claim was a prompt  
19 innocent neck tattoo.

20 THE COURT: So it's prejudicial because it's an  
21 identifying characteristic.

22 MR. MARTINEZ: Not only that, but I'm the only one,  
23 just like -- I've already stated that I'm the only person  
24 that was targeted for that had a neck tattoo in that photo  
25 lineup.

1 THE COURT: All right. State's Exhibit Number --  
2 tell me the State's position as the 73, Solicitor.

3 MS. CAMPBELL: Your Honor, we feel like that just  
4 shows the tattoos. He even showed one of the witnesses his  
5 arm and pulled down the sleeve to show her the tattoos  
6 we're referring to in that picture. He was cross-examined  
7 at trial.

8 THE COURT: And is this corroborative of any  
9 witness?

10 MS. CAMPBELL: That would be corroborative of --  
11 yeah, L.H. 's testimony.

12 THE COURT: All right. I would allow 73 in,  
13 subject to Mr. Martinez's objection.

14 74 also shows, it looks like the upper arm and part  
15 of the very slim part of the right arm. What is your  
16 position as to this, Mr. Martinez.

17 MR. MARTINEZ: Undue prejudice, has no -- the  
18 victim's or nobody seems to -- there's no scratch, they  
19 can't say that -- Mr. Decker said he saw a scratch, that  
20 doesn't mean I got it from somewhere. Ms. Hurshman said  
21 she never scratched nobody. So there's no relevance to  
22 that.

23 Solicitor, what about it?

24 MS. CAMPBELL: It shows -- Mr. Decker talked about  
25 the scratch on his arm. And it's clearly here on the arm.

1 Totally corroborates Mr. Decker's testimony.

2 THE COURT: All right. Further I think there's  
3 testimony in the record from Ms. Culpepper that he perhaps  
4 came through a wooded area, run out of some bushes, so I  
5 think based on both the testimony of Ms. Culpepper and the  
6 testimony of Mr. Decker, there is probative value that is  
7 not substantially outweighed by unfair prejudice or  
8 suggestiveness, under Rule 403, State versus Collins, 74 is  
9 admissible.

10 94, also, Solicitor?

11 You have the same to 94?

12 MR. MARTINEZ: Yes, sir.

13 THE COURT: All right.

14 MS. CAMPBELL: Beg the Court's indulgence.

15 (There was a pause in the proceedings.)

16 MS. CAMPBELL: Your Honor, we'll withdraw that one.

17 THE COURT: 95, 96, 97 actually appear duplicitous  
18 to me, Solicitor. Can you look at these?

19 MS. CAMPBELL: Yes, sir. We would agree.

20 THE COURT: All right. And 103, and 104, and 105,  
21 photographs of the back of, I take it these are the back of  
22 Mr. Martinez's head.

23 MS. CAMPBELL: When he cross-examined the young  
24 child, the young woman on the fact that she said that there  
25 was a tattoo on the back of the head. They went back and

1 forth about that. Clearly, there is a tattoo across the  
2 back of his head. We can narrow it down to two, Your  
3 Honor.

4 MR. MARTINEZ: Your Honor, she said she never said  
5 that.

6 THE COURT: Who said what?

7 MR. MARTINEZ: Ms. Tucker said that she never said  
8 that. I asked her about that and she never said -- she  
9 said that she never said that and I said in her statement  
10 and then she contradicted herself and said, I didn't say  
11 that.

12 MS. CAMPBELL: I don't know who? Ms. Tucker?

13 THE COURT: DO what now?

14 MS. CAMPBELL: I don't know who Ms. Tucker is.

15 THE COURT: Ms. Tucker.

16 MR. MARTINEZ: Elexia Tucker that's the one  
17 who's --

18 THE COURT: She has not yet testified before the  
19 jury, so it cannot be based on Ms. Tucker's testimony.

20 MR. MARTINEZ: That's what she said --

21 THE COURT: I know that's what she said, Mr.  
22 Martinez. You know I've got seven or eight senses, one of  
23 which is hearing. And I'm saying it cannot be based on  
24 Ms. Tucker's because she has not testified and there's no  
25 testimony about that in the record before the jury.

1           What is it based on?

2           MS. CAMPBELL: It's based on, I believe it's  
3 cross-examination of L.H.

4           THE COURT: All right. Well, I'll take 90 --  
5 excuse me 103, 104, 105 and y'all can check the record  
6 sometime in the morning before we start court with the  
7 court reporter. All right.

8           MS. CAMPBELL: Thank you.

9           THE COURT: You got the ruling?

10          THE COURT REPORTER: Yes, sir.

11          THE COURT: Thank you. Thank you very much. And  
12 then we can revisit 103, 104 and 105.

13          Anything further before we take our evening recess,  
14 Mr. Martinez?

15          MR. MARTINEZ: I was just going to ask the State --  
16 or would you ask the State if they can have the DNA so we  
17 can get the DNA -- the stuff requested so we can forward it  
18 to our DNA expert.

19          MS. CAMPBELL: That was supposed to earlier. I'll  
20 check on that as soon as we break. And I told them to you  
21 form in the morning. If it's available, at the latest.

22          MR. MARTINEZ: All right.

23          THE COURT: Anything else, Mr. Martinez?

24          MR. MARTINEZ: No, sir.

25          THE COURT: Anything further from the State?

1 MS. CAMPBELL: No, sir.

2 THE COURT: Mr. Kata, would you -- not this  
3 evening, in the morning upon the arrival of my court  
4 reporter if you would review the testimony, the testimony  
5 of Mr. Decker.

6 MR. KATA: Your Honor, I can.

7 THE COURT: If you do that, it is brief. I have  
8 made a statement on the record, my review of it if you  
9 would review it and report that to Mr. Martinez, so I will  
10 know whether -- or when to have Mr. Decker to be back.

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

12 THE COURT: Thank you, thank you very much, Mr.  
13 Kata.

14 Thank you, Solicitor.

15 MS. CAMPBELL: Thank you, sir.

16 THE COURT: We're in recess until tomorrow morning.

17 FRIDAY, DECEMBER 2, 2016

18 THE COURT: All right. Anything from the defense  
19 before we bring in our jury, Mr. Martinez?

20 MR. MARTINEZ: Yes, Your Honor. I subpoenaed some  
21 information from -- from the State concerning  
22 Ms. Clarissa's history and I never received it.

23 THE COURT: Concerning whose history? I just  
24 didn't understand you.

25 MR. MARTINEZ: Ms. Clarissa McRae.

1 THE COURT: All right. Solicitor?

2 MS. CAMPBELL: I'm not sure what he's talking about  
3 if he could clarify what he means.

4 MR. MARTINEZ: Her --

5 MR. KATA: Your Honor, I think what he's requesting  
6 the impeaching convictions. That would be -- prior  
7 convictions that are subject to impeachment.

8 THE COURT: All right. And which witness is it in  
9 particular?

10 MS. CAMPBELL: I believe he said Ms. McRae.

11 THE COURT: Oh, you're talking about Ms. McRae?

12 MR. MARTINEZ: Yes, sir.

13 MS. CAMPBELL: Your Honor, may I approach?

14 THE COURT: Yes, ma'am.

15 MS. CAMPBELL: We've represented to the defense  
16 that she has no prior record and I will hand it up for  
17 confirmation of that.

18 (The Court was looking at the document.)

19 THE COURT: All right. Did you give a copy of  
20 this, Solicitor, to Mr. Kata.

21 MS. CAMPBELL: Yes, Your Honor, do you mind if I  
22 just redact the identifying information as far as just date  
23 of birth.

24 THE COURT: No, ma'am, I do not. I do not mind if  
25 you redact it.

1 (The document was redacted.)

2 (Mr. Martinez was looking at the document.)

3 MR. MARTINEZ: Nothing further.

4 THE COURT: All right. Officer, would you hand  
5 that up to the -- Sheriff, would you get that for me,  
6 please.

7 If you want -- you want the copy of it or -- I'm  
8 going to have it marked as a Court's Exhibit and then I'm  
9 going to have it sealed. Do you want a copy of it?

10 MR. MARTINEZ: No, sir.

11 THE COURT: All right. If you would mark that the  
12 next number as a Court's Exhibit under seal.

13 Anything else, Mr. Martinez?

14 MR. MARTINEZ: No, sir.

15 THE COURT: All right. Thank you.

16 MS. CAMPBELL: Your Honor, at this time, we would  
17 not be offering State's Exhibits 103, 104, and 105.

18 THE COURT: And that's the photographs of the back  
19 of Mr. Martinez's head with the tattoos?

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: All right. 103, 104, and 105.

22 MS. CAMPBELL: And, Your Honor, with your  
23 permission, I just need to get the ones that we have agreed  
24 to come in.

25 THE COURT: Mr. Martinez, Mr. Kata, did you review



1 the cross-examination with the court reporter of  
2 Mr. Decker?

3 MR. KATA: Yes, Your Honor, I did this morning  
4 before court started.

5 THE COURT: All right. And have you -- I don't  
6 want to get into the standby counsel defendant  
7 attorney/client privilege, but have you conveyed that  
8 information to Mr. Martinez?

9 MR. KATA: Yes, Your Honor, I have.

10 THE COURT: All right. Mr. Martinez, do you want  
11 Mr. Decker to be recalled as a witness on that issue on the  
12 length of the arm -- the sleeve length?

13 MR. MARTINEZ: Your Honor, I would like to listen  
14 to the audio of it.

15 THE COURT: All right. Do you have the audio?

16 THE COURT REPORTER: I do.

17 THE COURT: All right. Would you find it for us,  
18 please.

19 (The court reporter was looking for the portion of  
20 audio to play for the defendant.)

21 THE COURT REPORTER: It will take me just a moment,  
22 Your Honor.

23 THE COURT: All right..

24 (There was a pause in the proceedings.)

25 THE COURT REPORTER: I found it, Your Honor.

1 THE COURT: All right. And this is the  
2 cross-examination of Mr. Decker?

3 THE COURT REPORTER: In pretrial, yes, sir.

4 THE COURT: All right. In what pretrial?

5 THE COURT REPORTER: The pretrial of this hearing.

6 THE COURT: All right.

7 THE COURT REPORTER: This week.

8 (The following audio was played in open court  
9 without the jury present:)

10 THE COURT: Mr. Martinez?

11 CROSS-EXAMINATION IN CAMERA

12 BY MR. MARTINEZ:

13 Q Mr. Decker, when you seen me what was I wearing?

14 A You were wearing a hoodie and a skull cap.

15 Q Was that a short sleeve hoodie or a long sleeve?

16 A I don't even recall, sir.

17 Q You don't recall? I used my own ID, correct?

18 (The recording was turned off.)

19 THE COURT: Did you hear it, Mr. Martinez?

20 (The recording continued.)

21 BY MR. MARTINEZ:

22 Q I used my own ID, correct?

23 A You used your driver's license to be exact.

24 Q Did I seem nervous, anxious?

25 A Didn't seem nervous at all.

1 (The recording was stopped.)

2 THE COURT REPORTER: He has already answered --  
3 asked that question and answered it.

4 THE COURT: Ma'am?

5 THE COURT REPORTER: He has already asked that  
6 question and answered it, that he did not recall.

7 THE COURT: Did you hear it?

8 MR. MARTINEZ: Yes.

9 THE COURT: All right. Anything further on that  
10 issue?

11 MR. MARTINEZ: No, sir.

12 THE COURT: Thank you. Anything further?

13 MS. CAMPBELL: Do we want to have Mr. -- Your  
14 Honor, do you want to have the witness back on the stand.

15 THE COURT: Yes, ma'am.

16 MR. MARTINEZ: Excuse me, Your Honor, will I be  
17 able to recall Mr. Kendall Decker about that issue again.

18 THE COURT: You want to recall Mr. Decker?

19 MR. MARTINEZ: Yes, sir.

20 THE COURT: All right.

21 All right. Solicitor, make arrangements for  
22 Mr. Decker to be here.

23 MS. CAMPBELL: Yes, sir. We will have him here  
24 today. He will be back today.

25 THE COURT: Before the State rests and I don't know

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 what time that will be.

2 MS. CAMPBELL: I don't think we know either, Your  
3 Honor. But we will have him here today, if possible.

4 THE COURT: Thank you.

5 He'll be back today.

6 MR. MARTINEZ: Yes, sir.

7 (The jury entered the courtroom at 9:58 a.m.)

8 THE BAILIFF: Jury is seated, Your Honor.

9 THE COURT: Good morning. Welcome back. As you  
10 know we're continuing the trial of the case by the State in  
11 its case in chief and the direct examination by the  
12 solicitor of Detective Morrison.

13 All right. Solicitor.

14 MS. CAMPBELL: May it please the Court?

15 THE COURT: Yes, ma'am.

16 DIRECT EXAMINATION CONTINUED

17 BY MS. CAMPBELL:

18 Q Investigator Morrison, we were talking about after  
19 the statement was taken from the defendant in this case,  
20 did you then take some photographs?

21 A Yes, ma'am.

22 Q And I want to show you what's been marked as  
23 State's Exhibit 70, 71, and 72 and first ask, do you  
24 recognize those?

25 A Yes, ma'am. Those are photographs I took of the

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 defendant.

2 Q And what part of his body are those photographs of?

3 A The head and neck.

4 MS. CAMPBELL: Your Honor, at this time, we'd offer  
5 State's Exhibits 70, 71, and 72.

6 MR. MARTINEZ: Objection, Your Honor. Same.

7 THE COURT: All right. Subject to previous  
8 objections. And I reaffirm my previous rulings.

9 May I see them, please, Solicitor?

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Again.

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: All right.

14 MS. CAMPBELL: Thank you.

15 (State's Exhibit Number 70, Number 71, and Number  
16 73 was entered into evidence.)

17 BY MS. CAMPBELL:

18 Q And I want to show you what's been marked as  
19 State's Exhibit Number 73. Do you recognize that?

20 A Yes, ma'am, it's a photograph I took of the  
21 defendant.

22 Q And what part of the body does that show?

23 A His hands.

24 Q And finally State's Exhibit Number 74, do you  
25 recognize that?

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 A Yes, ma'am. It's his arm, the defendant's arm.

2 Q And do these fairly and accurately depict how he  
3 looked when you photographed him that day?

4 A Yes, ma'am. It does.

5 MS. CAMPBELL: Your Honor, at this time we'd offer  
6 State's Exhibits 73 and 74.

7 MR. MARTINEZ: Objection.

8 THE COURT: Subject to previous objection.

9 MR. MARTINEZ: Yes, sir.

10 THE COURT: All right. 73 and 74 is in evidence  
11 subject to defense objection and I will reaffirm my  
12 previous ruling in that regard.

13 (State's Exhibit Number 73 and Number 74 was  
14 entered into evidence.)

15 MS. CAMPBELL: Thank you, sir.

16 BY MS. CAMPBELL:

17 Q Showing them, in State's Exhibit Number 70, 71, and  
18 72, again what part of the body are these?

19 A The defendant's neck.

20 Q And does that show how he appeared on -- this would  
21 have been April 2nd, I believe?

22 A Yes, ma'am.

23 (The photographs were being shown to the jury.)

24 BY MS. CAMPBELL:

25 Q And then moving onto State's Exhibit 71, is that

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 straight on?

2 A Yes, ma'am, that is correct.

3 (The photograph was being shown to the jury.)

4 BY MS. CAMPBELL:

5 Q And then from the other side, State's Exhibit  
6 Number 72?

7 A Yes, that's correct.

8 (The photograph was being shown to the jury.)

9 BY MS. CAMPBELL:

10 Q State's Exhibit Number 73 is again what?

11 A That's the defendant's hands.

12 (The photograph was being shown to the jury.)

13 BY MS. CAMPBELL:

14 Q And State's Exhibit 74 shows what part of the body?

15 A That is his left arm.

16 Q And what is shown right there?

17 A The tattoos.

18 Q What is that?

19 A That's a leaf, appears to me to be a leaf.

20 MR. MARTINEZ: Objection, leading the witness.

21 THE COURT: That's not -- I'll overrule the  
22 objection. That doesn't assume the answer.

23 MS. CAMPBELL: Permission to publish, Your Honor?

24 THE COURT: Yes, ma'am.

25 (The photograph was being shown to the jury.)

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 BY MS. CAMPBELL:

2 Q Investigator Morrison, I'm going to back up a  
3 little bit to when you collected evidence in this case.  
4 Again, when you met with the victims, or were there with  
5 the victims on that first day, did you collect any evidence  
6 from them as far as for DNA testing?

7 A Yes. They, they basically provided what's called a  
8 buccal swab.

9 Q Uh-huh.

10 A That's basically a collection of their saliva.

11 Q A collection of their saliva?

12 A Yes, ma'am.

13 Q And how is that actually collected, sir?

14 A A cotton swab is provided and they swab the inside  
15 of their cheek for saliva and then we put it in a small  
16 white card board box and then that way we can submit that  
17 with whatever we've collected of unknown versus known.

18 Q And I show you State's Exhibit Number 20 -- no, 83,  
19 excuse me. Do you recognize that?

20 A Yes, ma'am. It's an evidence bag with -- titled  
21 Richland County Sheriff's Department Evidence and Property  
22 bag. This is a bag that has handwritten information on it  
23 from the swabs that I collected from the victims. It's  
24 when I provide it to the sheriff's department so it can be  
25 tested in their DNA lab.



## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 Q Okay.

2 MS. CAMPBELL: Your Honor, at this time, we'd offer  
3 State's Exhibit Number 83.

4 MR. MARTINEZ: No objection.

5 THE COURT: That's 83?

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: No objection, Mr. Martinez? To 83?

8 MR. MARTINEZ: No, sir.

9 THE COURT: Thank you. 83 is in. State's 83 is in  
10 evidence without objection.

11 (State's Exhibit Number 83 was entered into  
12 evidence.)

13 MS. CAMPBELL: Thank you.

14 BY MS. CAMPBELL:

15 Q And when you collected buccal swabs from the  
16 Hurshman's individually, did you take any steps to make  
17 sure that they weren't cross contaminated or put in with  
18 each other or anything like that?

19 A No, ma'am. They were done individually.

20 THE COURT: Speak up a little bit for me.

21 THE WITNESS: Sorry sir. They were done  
22 individually.

23 THE COURT: All right.

24 BY MS. CAMPBELL:

25 Q So they weren't packaged together?

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 A That's correct.

2 Q And then during the time period that you had them  
3 prior to submitting them for testing, did anyone alter  
4 them, handle them, or do anything to them?

5 A No.

6 Q And each of these individual containers were  
7 separated --

8 A Yes, ma'am. What I do is I take a cotton swab from  
9 the person once they've gotten the sample of their saliva.  
10 That individual puts it in the cardboard tube. I close it  
11 and seal it. They're still individually with the plastic  
12 material.

13 Q And then these would have been opened by whoever  
14 was doing the testing?

15 A That's correct. By the lab.

16 Q Okay. As well, you mentioned during your testimony  
17 that you got some swabs there at the scene. I'm going to  
18 show you what's marked as State's Exhibit Number 84. Do  
19 you recognize that?

20 A Yes, it's another Richland County Sheriff's  
21 Department evidence bag, property bag. The swabs I  
22 collected from the drill, the hammer, the cell phone and  
23 the brown electrical cord were all placed into this and  
24 turned over to the sheriff's department. Again these were  
25 swabs, cotton swabs taken of the item, placed in this paper

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 cardboard type container and then they're sealed in a piece  
2 of plastic for submission to the lab.

3 Q Okay.

4 MS. CAMPBELL: Your Honor, at this time we'd offer  
5 State's Exhibit Number 84.

6 MR. MARTINEZ: No objection.

7 THE COURT: State's 84 is in evidence without  
8 objection.

9 BY MS. CAMPBELL:

10 Q And when you collected these swabs again, what did  
11 you do to insure they weren't cross contaminated or  
12 anything?

13 A I'm the only one that handled them.

14 Q Uh-huh.

15 A I sealed them personally and then I also hand  
16 delivered them to the sheriff's office.

17 Q And then, of course, the state there in now would  
18 have been done when the testing was done?

19 A That's correct.

20 Q During the time period these were in your custody,  
21 did anyone alter them or tamper with them in any way?

22 A No.

23 Q And I want to move back to -- and I'm sorry I'm  
24 jumping around a little -- to April the 2nd when you came  
25 in contact with the defendant. Did y'all ask his

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 permission to collect anything from him?

2 A Yes. There was a form that we use. We read him  
3 the form, the defendant signed it, and he was willing to  
4 give a sample of his saliva.

5 Q Saliva?

6 A Yes, ma'am.

7 Q The same type of buccal swab?

8 A Yes, ma'am.

9 Q And again, the purpose of getting that is for what?

10 A This is to compare known to unknown samples for the  
11 lab.

12 Q And during the time period when it was in your  
13 custody, did anyone alter or tamper with it in any way?

14 A No, ma'am.

15 Q And, in fact, on State's Exhibit 85, does that show  
16 where you actually submitted the item to the Richland  
17 County Sheriff's Department?

18 A That is correct.

19 MS. CAMPBELL: We would offer this into --

20 MR. MARTINEZ: No objection.

21 THE COURT: State's 85 is in evidence without  
22 objection.

23 (State's Exhibit Number 85 was entered into  
24 evidence.)

25 BY MS. CAMPBELL:

## Charles Morrison - Direct Examination Continued by Ms. Campbell

1 Q And again, the manner in which you collected that  
2 swab from the defendant, how was it collected?

3 A A cotton swab was provided to him. He's the one  
4 that used the cotton swab to get the saliva from inside his  
5 mouth, provide him with a paper carton. He put it in  
6 there. It was sealed in plastic.

7 Q And I believe, also the victim's clothes were  
8 submitted by you?

9 A Yes, ma'am, that's correct.

10 Q And again, when any of this evidence was in your  
11 custody, did anyone alter, tamper with it, have the  
12 opportunity to get it in any way?

13 A No, ma'am.

14 Q The person that you took the statement from that  
15 you read to the jury yesterday --

16 A Yes, ma'am.

17 Q Do you see him here in the courtroom?

18 A Yes, ma'am, it's the defendant, Mr. Martinez.

19 Q Seated at the table?

20 A Yes, he's seated at the defense table wearing a  
21 striped shirt.

22 Q A striped shirt?

23 A Yes, ma'am.

24 MS. CAMPBELL: Your Honor, may the record reflect  
25 he's identified the defendant.

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 THE COURT: So reflected.

2 MS. CAMPBELL: I don't have any further questions.

3 THE COURT: Mr. Martinez?

4 **CROSS-EXAMINATION**

5 **BY MR. MARTINEZ:**

6 Q Mr. Morrison, you're the one that photographs the  
7 scene?

8 A Yes, sir.

9 Q And you took, collected evidence?

10 A Yes.

11 Q And you said that -- you told the State that it's  
12 based off -- you guys already had knowledge of stuff that  
13 -- from the alleged victims -- of what the person touched,  
14 where he was at, and got that information so you know how  
15 to conduct your search; is that correct?

16 A This is correct.

17 Q And they both told you that -- well, they both  
18 stated that there -- that the individual had no gloves on;  
19 is that correct?

20 A That's correct.

21 Q So you testified that it's -- it's usual that  
22 there's no fingerprints or nothing like that left behind?

23 A I stated it was usual -- the possibility of someone  
24 leaving fingerprints is not a guarantee. It's not 100  
25 percent.

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 Q But with them touching multiple articles like that  
2 with no gloves on: Cell phone, hammer, jewelry box, doors,  
3 is it still highly improbable -- highly unlikely?

4 A Still highly unlikely somebody would leave a  
5 fingerprint?

6 Q Yes.

7 A I wouldn't put a degree on that. It's just a 50/50  
8 chance.

9 Q A 50/50 chance?

10 A Yes, sir.

11 Q So there wasn't even a partial print. There wasn't  
12 even a palm print. There wasn't even a drop of sweat.  
13 There wasn't a hair. No fiber. There was nothing  
14 collected from all of them items right there?

15 A I collected swabs. I did not get any latent  
16 prints.

17 Q Not at the doors, not off of the door handles, the  
18 cell phone?

19 A That is correct.

20 Q And let's say that somebody -- let's say that  
21 somebody wiped all that stuff off. If someone was to clean  
22 all that stuff off, would you still be able to collect DNA  
23 or stuff from him? Would you still be able to get a swab  
24 off it?

25 A I can swab it. I don't know what I'm going to

## Charles Morrison - Cross-Examination by Mr. Martinez

1 find. That's up to the lab to find out what's on that  
2 cotton swab.

3 Q So you're not sure if someone can touch something  
4 and then wipe it off and then there be nothing found in  
5 there?

6 A I would say it depends on the manner in which they  
7 swab it sir, or wipe it. You know, what they use or what  
8 they don't use, that's a hypothetical question.

9 Q So on that jewelry box, you said it's wooden, so  
10 it's -- it absorbs the oil so you wouldn't be able to get a  
11 read off it?

12 A With the nature of wood, it could absorb oils. A  
13 lot of times it depends on the varnish or the finish. I  
14 didn't know what I'd find. That's why I thought I'd try to  
15 see what we could find.

16 Q And there was nothing on it, correct?

17 A No fingerprints, no latent prints, no.

18 Q And you tested the electrical cord, the drill, the  
19 -- you said the jewelry -- the brown extension cord and the  
20 hammer, correct?

21 A Yes, sir.

22 Q And you did that with prints or with DNA swab?

23 A I did that with DNA swab.

24 Q You didn't do a print for the hammer?

25 A No, sir, I did not.



## Charles Morrison - Cross-Examination by Mr. Martinez

1 Q Okay. You said you talked to Bob Hickman; is that  
2 correct?

3 A Yes, sir.

4 Q And he is over the parks?

5 A That is correct. He works for Richland County  
6 Recreational Department.

7 Q And where is that -- where is the park at in  
8 relative to the entrance to these apartments or these  
9 condos?

10 A Yes, sir. The address of the park is 3900 Covenant  
11 Road. The park is -- it's kind of at the intersection of  
12 Bethel Church and Covenant Road. It sits back behind a  
13 Kangaroo Convenience Store. The convenience store sits  
14 across from what we would title, what we call it, the city,  
15 the lower entrance going into [REDACTED] Condominiums.

16 Q So if -- what was the purpose of that -- of asking  
17 him?

18 A Yes, sir, I did not know if you had walked near the  
19 angle of that recreational park. I knew they had a camera  
20 on the outside. I just wanted to see using the description  
21 that he was given from the victims that if you might have  
22 been caught on camera. I advised Mr. Hickman of the  
23 description we were given and he reviewed the cameras.

24 Q And he said there was nothing on there?

25 A Yes, sir. He called and left the voicemail for me

## Charles Morrison - Cross-Examination by Mr. Martinez

1 and said that he did not see anyone in the burgundy  
2 sweatshirt and knit hat and glasses that I had provided him  
3 with the description. He said that he did not see it on  
4 the video system.

5 Q You were the one that went and got the rings, is  
6 that correct from Kendall Decker?

7 A Yes, sir.

8 Q And you stated that no one altered the evidence; is  
9 that correct?

10 A Yes, sir, that's correct.

11 Q Are you the one that put them in that vice?

12 A Yes, sir, I merely set them in the vice so that way  
13 they would stand up and I could get a more clear, detailed  
14 picture of the two rings.

15 MR. MARTINEZ: Can I show him the rings? The  
16 pictures of the rings?

17 THE COURT: The pictures of the rings?

18 MR. MARTINEZ: Yes, sir.

19 THE COURT: Yes, sir.

20 What numbers are they?

21 MS. CAMPBELL: 44 -- 43, 44, and 45.

22 THE COURT: You want to see them or you want to  
23 give them to the --

24 MR. MARTINEZ: I want to be able to show him.

25 THE COURT: All right. Thank you.

## Charles Morrison - Cross-Examination by Mr. Martinez

1 THE WITNESS: Yes, sir, I see them.

2 BY MR. MARTINEZ:

3 Q So you placed them in that vice?

4 A Yes, sir.

5 MR. MARTINEZ: Can I show him the rings now?

6 MS. CAMPBELL: The rings?

7 MR. MARTINEZ: Yes.

8 MS. CAMPBELL: You want to see them?

9 MR. MARTINEZ: I want him to see them.

10 MS. CAMPBELL: This is State's Exhibit 10, Your  
11 Honor.

12 THE COURT: Thank you.

13 (The rings were given to the witness.)

14 THE COURT: All right. Mr. Martinez?

15 BY MR. MARTINEZ:

16 Q If you would hold the ring exactly with that 14  
17 carat showing up in your hand and see if those flat marks  
18 are consistent with being smashed in this device?

19 A I don't see any damage to the rings, sir.

20 Q You don't?

21 A Not to me, sir, no.

22 Q So it looks smooth on the edges?

23 A It feels smooth on the edges and looks smooth on  
24 the edges, so me.

25 Q You don't see any nicks on there?

## Charles Morrison - Cross-Examination by Mr. Martinez

- 1 A No, sir, I don't.
- 2 Q Does it look discolored to you?
- 3 A Not in my opinion, no, sir.
- 4 Q And you say the next day after the incident that
- 5 you went to work and you heard a name; is that correct?
- 6 A I was advised of your name.
- 7 Q What was the -- how was my name brought up?
- 8 A Investigator Shumard had told me your name.
- 9 Q So after that you guys was looking for me; is that
- 10 correct?
- 11 A Yes, sir.
- 12 Q Did you guys receive any other tips and leads into
- 13 this investigation?
- 14 A Ms. Culpepper had called me the night before.
- 15 Q You never got no other calls prior to that?
- 16 A No, sir. Not me, personally, no, sir.
- 17 Q What about Crime Stoppers?
- 18 A I don't recall a Crime Stoppers tip.
- 19 Q You don't remember Crime Stoppers? You don't know
- 20 if you guys received numerous a Crime Stopper tips?
- 21 A I don't recall Crime Stopper tips off the top of my
- 22 head, sir.
- 23 Q The Crime Stoppers said they were reporting to you
- 24 and Officer Shumard because you guys were the investigating
- 25 officers. They said that they was forwarding --

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 MS. CAMPBELL: Your Honor, I would just object. I  
2 think he said he doesn't know anything about any Crime  
3 Stoppers tips and he's not the lead investigator. That  
4 would be for Investigator Shumard.

5 THE COURT: Sustained.

6 BY MR. MARTINEZ:

7 Q So do you know who Crime Stoppers was reporting to?

8 THE COURT: I thought he said he didn't know  
9 anything about Crime Stoppers tips.

10 MR. MARTINEZ: Your Honor, what I have from Crime  
11 Stoppers, it has contact name, C Morrison 803-782-9444.

12 THE COURT: Well, if you've got something to show  
13 -- you want to show the detective that document?

14 (The document was handed to the witness.)

15 THE WITNESS: Yes, sir, these are Crime Stoppers  
16 tips that did come in. I had forgot about them. That is  
17 my handwriting on these. I filled out handwritten remarks  
18 stating that that particular case was helpful and that we'd  
19 already identified you and I wrote your name and address in  
20 the suspect area.

21 BY MR. MARTINEZ:

22 Q Were those -- when were those -- so -- so you're  
23 saying even -- you guys never investigated those other  
24 tips, is that --

25 A No, sir, at that time, I believe, we'd already

## Charles Morrison - Cross-Examination by Mr. Martinez

1 identified you.

2 Q How did you identify me with no evidence?

3 A We'd already talked to the witnesses and with the  
4 help of the composite sketch you were identified by that.

5 Q How was I identified by that?

6 A By the sketch?

7 Q Yes, sir.

8 A Well, the victim had given a sketch of the  
9 defendant -- or of the suspect at the time. That was you.  
10 When this tip came in, this tip was done on April 2nd.  
11 You'd already given us a statement saying you were there.

12 Q That's not -- how did I become a suspect?

13 A By looking at the sketch, sir, and looking at your  
14 driver's license I felt you were the same person.

15 Q So you identified me as being the suspect?

16 A That was left up to the people and the lineups,  
17 sir. That helped as well.

18 Q How did I get in that lineup?

19 A Lineups were drafted with your picture in it. I  
20 didn't make any lineups. How your picture got in it, I'm  
21 not 100 percent sure, sir. I didn't make the lineups.

22 Q So you don't know how I became the suspect?

23 A No, sir. When I came in the day after the  
24 incident, that would have been the 28th, Investigator  
25 Shumard advised me that he had learned of your name.

## Charles Morrison - Cross-Examination by Mr. Martinez

1 Q Was there an eyewitness ho said that it was me?

2 Who gave him my name?

3 A I don't know how Shumard got that name. I don't  
4 know who you're asking about and I would -- I don't know.  
5 Shumard advised me of your name.

6 Q He didn't advise you of how he got it?

7 A No, sir. I started working on the pawnshops using  
8 your information.

9 Q Okay. And did you know anything about -- about me  
10 being tracked?

11 A Sir?

12 Q Did you know anything about me being tracked?

13 A No, sir.

14 Q You had no reports of me being tracked through a  
15 phone?

16 A No, sir, I did not know that.

17 Q What -- when you guys conducted -- did you conduct  
18 any -- did you show any victims or any witnesses the photo  
19 lineups?

20 A No, sir.

21 Q Before -- you stated before -- before I was even  
22 arrested, you guys already had a waiver filled out; is that  
23 correct?

24 A No, sir, that's not correct. I filled out that  
25 form before you arrived at the police department. You were

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 already taken into custody by Lexington County Sheriff's  
2 Office.

3 Q And you filled that out how?

4 A Handwritten.

5 Q How did you obtain that information?

6 A That was information obtained by the driver's  
7 license.

8 Q Is it -- is it knowingly and voluntarily and freely  
9 giving my rights away by you filling out the form for me?

10 A I filled out the top of the form with your personal  
11 information. As we went over that form, you initialed it  
12 and signed it and was willing to talk to me.

13 Q What was I willing to talk to you about?

14 A About what we put in that statement, the incident  
15 at Forest Acres.

16 Q And you advised me that I was there for an incident  
17 at Forest Acres prior to me signing that waiver?

18 A No, sir, we didn't talk about the incident. As I  
19 told the jury yesterday, I advised you of those rights  
20 before we went into a discussion about the incident.

21 Q So my voluntary waiver had nothing to do with the  
22 incident that you was investigating, that I didn't --  
23 because you didn't advise me as to why I was signing my  
24 rights over; is that correct?

25 A I advised you that I was the police an before I had



## Charles Morrison - Cross-Examination by Mr. Martinez

1 -- before I was going to talk to you that I had to advise  
2 you of your rights.

3 Q Okay. But you didn't advise me as to why I was  
4 waiving my rights?

5 A That was going to be something we talked about  
6 after you were -- after you were advised of your rights.

7 Q So I wasn't notified --

8 A It was more important to advise you of your rights  
9 first and then learn if you wanted to talk to me, the  
10 police officer. You had the right not to talk to me.

11 Q Okay. But I'm supposed to be notified as to why I  
12 was at your -- why I was at your jail or your police  
13 department?

14 A You were under arrest at that time, sir.

15 Q Was I notified as to why I was under arrest?

16 A You would have to ask the sheriff's department. I  
17 don't know what that conversation was when they took you  
18 into custody.

19 Q Was you aware as to why -- was you aware as to --  
20 was there any notification to you or your department as to  
21 me wanting to come to the police station and talk to you  
22 guys?

23 A No, sir. I had no idea what was going to be said  
24 or done at the police department. I didn't know if you  
25 would talk to me or not. As a law enforcement officer, all

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 I can do is advise someone of their rights. If someone is  
2 a potential suspect in a case and I feel -- I may ask them  
3 a question that may be criminally to them, I have to advise  
4 them of their rights. We cannot discuss the matter until I  
5 advise the person of their rights.

6 Q Okay. And when you -- when you advised me of my  
7 rights, who was all their?

8 A It was myself, Investigator Shumard, Investigator  
9 Bailey.

10 Q And did you -- when I -- when I read these rights,  
11 did you introduce Investigator Bailey to me?

12 A Yes.

13 Q And you told me why he was there at that time?

14 A I did not advise you of why so much he was there.  
15 I really didn't know any details of any cases in Columbia,  
16 so I didn't speak about that.

17 Q So you never told me, you're waiving your rights to  
18 talk to us and to City of Columbia?

19 A I believe I advised you you were waiving your  
20 rights to talk to law enforcement. We were all law  
21 enforcement in that room.

22 Q That's what you said?

23 A I believe so, yes, sir.

24 Q So before I signed any waiver was there any -- you  
25 said that I wanted to be there; is that correct?

## Charles Morrison - Cross-Examination by Mr. Martinez

- 1 A You were there willingly, sir. You weren't asking  
2 to leave.
- 3 Q I said I wanted to be there?
- 4 A Well, you were -- I believe up did say you wanted  
5 to talk to me, yes, sir.
- 6 Q Was there any -- why was there -- was there any,  
7 like, I agreement made between us?
- 8 A No, sir.
- 9 Q There was no agreement for like cigarettes?
- 10 A No, sir.
- 11 Q Are you sure?
- 12 A Yes, sir.
- 13 Q There was no agreements for Newport Red 100's to  
14 calm me down when I first got there?
- 15 A No, sir. As that form says, no threats, pressure  
16 or coercion, no promises.
- 17 Q Okay. Before we started talking, did -- was there  
18 a discussion about my mental health issues?
- 19 A Before we started talking -- before the advise of  
20 rights?
- 21 Q Yes.
- 22 A No.
- 23 Q There was no discussion about my mental health  
24 issues?
- 25 A No, sir.

## Charles Morrison - Cross-Examination by Mr. Martinez

1 THE COURT: You're talking about that same time  
2 frame before the advise of rights, Mr. Martinez?

3 MR. MARTINEZ: Yes.

4 THE COURT: All right. I'm just trying to track  
5 that. Thank you.

6 BY MR. MARTINEZ:

7 Q So after the waiver of rights, did I talk about my  
8 mental health issues?

9 A You had stated that you had chips planted in your  
10 head.

11 Q And what else did I say?

12 A You said you heard voices.

13 Q And -- I needed medical help? Did I say in my  
14 statement I needed medical help?

15 A You made the statement you wanted the chips taken  
16 out of your head.

17 Q And did I ask for medical help?

18 A You did. And I told you as a police officer I  
19 could not have chips taken out of a person's head. That's  
20 more of a surgical thing, very -- you know, more detailed.

21 Q But you said that you could try to get me help?

22 A I said that I'd pass that information onto the  
23 solicitor's office and the Court's staff.

24 Q And you would see that you would get me some help?

25 A I said that I would pass it onto them. They would

## Charles Morrison - Cross-Examination by Mr. Martinez

1 have the authority, they would have more power to do  
2 something about that. All I could do was pass along that  
3 information.

4 Q And when -- when exactly did you guys start talking  
5 about the Forest Acres incident?

6 A When did we?

7 Q Yes.

8 A After you were advised of your rights.

9 Q Okay. And who was -- who was assisting in that?

10 A It was myself and Investigator Shumard.

11 Q It was only you two; is that correct?

12 A That is correct.

13 Q Mr. Bailey never helped you guys out?

14 A Mr. Who?

15 Q Mr. Colin D. Bailey, investigator from the Columbia  
16 Police Department?

17 A He did not ask any questions about our incident in  
18 Forest Acres.

19 Q Okay. And you didn't take -- you didn't take a  
20 narrative or -- you didn't give a supplemental report or  
21 notes or anything like that of this interrogation? Is that  
22 correct?

23 A That is correct. The statement was my notes of  
24 mine.

25 Q But the other statements that you took, you did

## Charles Morrison - Cross-Examination by Mr. Martinez

1 take a narrative of?

2 A That's correct.

3 Q Why would you not do that with my statement?

4 A Because your statement can stand on it's own. Also  
5 Investigator Shumard advised me he was going to write a  
6 statement of our interview and of your statement, which he  
7 did.

8 Q He did?

9 A Yes, sir, he did.

10 Q Did you let -- do you know if that was provided  
11 with everything else to the solicitor's office?

12 A Yes.

13 Q Okay. You said I appeared to be calm and polite;  
14 is that correct?

15 A No, sir, that's not correct. I said you were calm  
16 and pleasant.

17 Q Oh, yeah, pleasant. Okay. And willing to talk?

18 A Yes, sir.

19 Q And anxious to talk?

20 A I don't believe that was my word.

21 Q Wanted to talk?

22 A You were willing to talk, sir, after you were  
23 advised of your rights. You shared through speech that you  
24 wanted to talk to law enforcement.

25 Q And I never seemed like, like I didn't want to be

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 there, like I was wasn't comfortable, I wasn't safe, I  
2 wasn't willing, wanting to talk to you guys about something  
3 I --

4 A You appeared very willing to talk to us.

5 Q And what was the topic of my conversation?

6 A After you were advised of your rights and you had  
7 told us that you had saw a media report on television and  
8 that -- about that media report that you wanted to talk to  
9 us.

10 Q And I just started telling you guys -- okay. So  
11 who took the statement?

12 A Investigator Shumard wrote out the statement. He  
13 wrote out questions and answers. It was made clear what  
14 the answer that he wrote down and you initialed it. A few  
15 of the questions, you actually in your handwritten remarks  
16 added more to it.

17 Q And he was writing this out and then I was taking  
18 it -- and I was taking it and I was writing other things on  
19 there; is that correct?

20 A Yes.

21 Q And when I was writing that stuff, what was I --  
22 when I was writing my little -- my version, what was I  
23 talking about?

24 A About the question at hand, whatever the specific  
25 question was.

## Charles Morrison - Cross-Examination by Mr. Martinez

1 Q So you guys were asking me about microchips  
2 implanted inside my head?

3 A No, sir. That was more of the statement that you  
4 wrote all on your own.

5 Q Yes. That's what I'm asking, was that part of your  
6 guys questioning?

7 A About microchips specifically?

8 Q Yes.

9 A No, sir, I didn't know about a microchip until you  
10 brought it up.

11 Q So why would I -- why would that be -- if I'm  
12 anxious to talk and calm and -- why would I be discussing  
13 something like that?

14 A I can't answer that, sir. I don't know why you  
15 would say that.

16 Q Was that the topic of my conversation?

17 A That was something you voluntarily said.

18 Q Was it -- was I constantly talking about that or  
19 was I just --

20 A Constantly, no, sir.

21 Q Was I repeatedly talking about that?

22 A You mentioned it once or twice. It wasn't a  
23 constant throughout the conversation.

24 Q I wrote it down twice just in the statement alone?

25 A Yes, sir.



**Charles Morrison - Cross-Examination by Mr. Martinez**

1 Q When I said at the end of that statement that I  
2 wanted to get this resolved and I wanted to be able to  
3 prove that what I was saying about the microchips inside of  
4 my head, what was I meaning by that?

5 A I don't have -- I don't know what your answer is,  
6 sir. What you would mean by it, I don't know. Only you  
7 can answer that.

8 Q I know, but -- I'm just saying though, if by me  
9 giving you guys a statement, how would that resolve getting  
10 these microchips removed from my head?

11 MS. CAMPBELL: Objection, Your Honor, I believe  
12 that's asked and answered.

13 THE COURT: You may answer the question, Detective.

14 THE WITNESS: That was just information I could  
15 pass on to the solicitor's office and the Court staff. I  
16 advised you that law enforcement just couldn't do a  
17 surgical procedure. If that was -- that that was something  
18 to be done by higher powers than mine.

19 BY MR. MARTINEZ:

20 Q And you also stated that you would take pictures of  
21 me and my ear to give to the solicitor's office to help me;  
22 is that correct?

23 A I took the pictures to help match the description  
24 that we were given by witnesses and victims and you  
25 consented and wanted pictures taken.

## Charles Morrison - Cross-Examination by Mr. Martinez

1 Q And you took pictures of the back of my ears; is  
2 that correct?

3 A I believe I took pictures of your whole body kind  
4 of a distance away from a person, then I got closer from  
5 the waist up and then of your arms and your head area.

6 Q What about behind my ear?

7 A Yes, sir.

8 Q And what was the reason I gave you that I had them  
9 cuts behind my ear?

10 A The cuts behind your ear?

11 Q Yes, sir.

12 A I believe that was because you -- you'd said that  
13 you had something put in your head.

14 Q And what was the point of the cuts though?

15 A I don't know how you got those cuts, sir.

16 Q I never stated how I got them cuts?

17 A No, sir.

18 Q Okay. When you were taking the pictures, who was  
19 present?

20 A Mr. Shumard, Mr. Bailey.

21 Q And you was present -- you was the ones taking the  
22 pictures and you would have heard everything that was said  
23 in the room, correct?

24 A I may not have heard it, sir, I was busy taking  
25 pictures. If there was some general conversation between

## Charles Morrison - Cross-Examination by Mr. Martinez

1 you and the other investigators, I wasn't paying attention.

2 I was trying to take good pictures.

3 MR. MARTINEZ: I beg the Court's indulgence.

4 THE COURT: Yes, sir, of course.

5 (There was a pause in the proceedings.)

6 MR. MARTINEZ: Your Honor, are the pictures -- I  
7 entered the pictures that were taken earlier.

8 THE COURT: All right. Those photographs,  
9 Solicitor, would you locate them for me, please.

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: And then show them to Mr. Martinez.

12 And you're talking about the -- not the pictures  
13 already been introduced, you're talking about the other  
14 pictures, correct?

15 MS. CAMPBELL: The ones he objected to.

16 MR. MARTINEZ: No the ones that I have entered  
17 into --

18 THE COURT: During pretrial?

19 MR. MARTINEZ: -- during pretrial.

20 THE COURT: The photographs that Detective Morrison  
21 got.

22 (Photographs were handed to the defendant.)

23 THE COURT: Is what you're looking for in there,  
24 Mr. Martinez.

25 MR. MARTINEZ: Yes, sir.

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 THE COURT: All right. Thank you.

2 (The defendant was looking through the  
3 photographs.)

4 THE COURT: All right. Are those -- you've picked  
5 out the ones you want to show the witness?

6 MR. MARTINEZ: Yes, sir.

7 THE COURT: All right. Would you have the  
8 solicitor review -- Sheriff, if you would show those to the  
9 solicitor, first.

10 (The solicitor was looking through the  
11 photographs.)

12 MS. CAMPBELL: None of the rest of them?

13 MR. MARTINEZ: No.

14 THE COURT: Thank you, thank you, Sheriff.

15 All right. Mr. Martinez?

16 (The photographs were handed to the witness.)

17 BY MR. MARTINEZ:

18 Q Do you remember exactly how many pictures you took  
19 of behind my ear?

20 A There's three here in my hands, sir. I don't know  
21 if that's -- two of them appear to be the same and then one  
22 with your finger in it.

23 Q So I never explained to you what was right there?  
24 Why them cuts were there?

25 A I don't recall, sir. It could have been in regards

## Charles Morrison - Cross-Examination by Mr. Martinez

1 to your claim of some microchips, but to a specific detail,  
2 no, sir, I don't recall it off the top of my head.

3 Q And when did -- when did you introduce Mr. Bailey?

4 A While we were in the conversation there at Forest  
5 Acres.

6 Q And was it after you guys were completed with your  
7 interrogation?

8 A No, sir, I believe I had announced Investigator  
9 Bailey was present there long before we concluded our  
10 conversation of the Forest Acres incident.

11 Q And was it -- was it before or after the waiver?

12 A That Mr. Bailey was there?

13 Q That Mr. Bailey was introduced to me and why he was  
14 there?

15 A I believe I did introduce him. We basically all  
16 announced who we were to you before the advise of rights  
17 because we were law enforcement.

18 Q And what was the reasoning? Was there any -- the  
19 scratch that -- the scratch that was on my arm, was there  
20 anything -- did I say anything why it was there?

21 A The scratch on your arm?

22 Q Yeah.

23 A I don't recall why you had said anything about a  
24 scratch. I know from a witness, Ms. Culpepper, she had  
25 said that she had saw you coming from the bushes and I felt

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 that that scratch could be related from you coming from the  
2 bushes to confirm what she advised us, law enforcement.

3 Q So -- so just because somebody's coming from the  
4 bushes they could have one cut and that would be -- that  
5 would be like what? An identifying factor or something?

6 A It could corroborate her statement to us.

7 Q And in your investigation -- how long have you been  
8 an investigator?

9 A I have -- I started with the police department in  
10 1998 as a uniform patrol. In 2005 I was put into CID  
11 that's Criminal Investigative Division for the police  
12 department. So I've been an investigator since 2005, about  
13 11 years.

14 Q And how important is identification?

15 A It is important.

16 Q How important?

17 A It's very important.

18 Q So let's say -- is there a difference between  
19 medium build and heavy build?

20 A It all depends on who you're talking to, sir.  
21 Somebody's opinion of a heavy build could be different than  
22 another person's of a heavy build or medium build. It all  
23 depends on that person's personal lifetime experiences.

24 Q Okay. But let's say everyone says that the person  
25 was 190 pounds, is that a big difference from a person

## Charles Morrison - Cross-Examination by Mr. Martinez

1 that's say 230 pounds?

2 A In the body shape of a person no, it all depends  
3 because one person could be 230 pounds and be all muscle or  
4 somebody could 230 pounds and be all fat. I'm a lot of  
5 fat. So, I mean it's just how that person's body makeup  
6 is.

7 Q So that's -- that's what I'm saying though, that's  
8 important, though, correct?

9 A Sure. But it's very subjective too. Each person  
10 and their opinion, how they see it.

11 Q But everybody has their own distinctive body type?

12 A Sure.

13 Q Correct?

14 A Yes.

15 Q Say someone's wider, someone's narrow, someone's  
16 skinny, that would play a major factor, right?

17 A It could.

18 Q On my -- you stated -- okay so you stated that  
19 during our conversation I only talked about microchips like  
20 once or twice; is that correct?

21 A Yes, sir.

22 Q And I didn't keep persistently talking about my  
23 problems and issues?

24 A We focused more on question by question. That's  
25 how the statement was written out. That's how we kind of

**Charles Morrison - Cross-Examination by Mr. Martinez**

1 proceeded through the process. There was two parts in that  
2 statement that you wrote in your handwriting, I believe.  
3 About microchips. On the other parts of the conversation,  
4 we tried to stay on task about questions at hand.

5 Q And what I was saying, is that logical?

6 MS. CAMPBELL: Objection, Your Honor. It calls for  
7 his opinion.

8 THE COURT: Can you answer that question,  
9 Detective? Was that logical?

10 THE WITNESS: I don't know -- I don't know if that  
11 would be logical for every person.

12 MR. MARTINEZ: All right. No further questions,  
13 Your Honor.

14 THE COURT: Redirect, Solicitor?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Thank you, thank you very much,  
17 Detective Morrison. You may step down.

18 THE WITNESS: Yes, sir.

19 THE COURT: All right. Solicitor, next witness.

20 MS. WALKER: Your Honor, State calls Elexia Tucker.

21 THE COURT: All right. Ms. Tucker come around  
22 please.

23 MR. MARTINEZ: Objection, Your Honor, same as  
24 before.

25 THE COURT: All right. And I would reaffirm my



**Elexia Tucker - Direct Examination by Ms. Walker**

1 previous in-camera rulings.

2 Thank you, Mr. Martinez.

3 Thank you, Madam Clerk.

4 ELEXIA TUCKER,

5 having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat. State your full  
7 name for the record.

8 THE WITNESS: Elexia Tucker.

9 THE COURT: Make sure you speak up for me,  
10 Ms. Tucker. Thank you.

11 THE WITNESS: Yes, sir.

12 THE COURT: Solicitor.

13 MS. WALKER: Thank you, Your Honor.

14 **DIRECT EXAMINATION**

15 **BY MS. WALKER:**

16 Q Ms. Tucker, what State do you currently live in?

17 A North Carolina.

18 Q At some point did you live in South Carolina?

19 A Yes, ma'am.

20 Q When did you live here in Columbia in South  
21 Carolina?

22 A Up until 2015.

23 Q I want to take your attention back to March of  
24 2014. Were you living in Columbia at the time?

25 A Yes.

## Elexia Tucker - Direct Examination by Ms. Walker

1 Q You nervous?

2 THE COURT: Speak up. Our court reporter has to  
3 get down your answers, okay?

4 THE WITNESS: Yes, sir.

5 BY MS. WALKER:

6 Q Take a deep breathe and speak so that the very last  
7 juror on the back row can hear you.

8 Who were you living with when you lived in  
9 Columbia?

10 A My father.

11 Q I want to take you back to a particular morning.  
12 You remember about what month we're here to talk about  
13 today?

14 A It was March 25th.

15 Q March 25th of 2014 were you at your father's house?

16 A Yes.

17 Q That morning what were you doing?

18 A I was asleep.

19 Q Were you awakened by something?

20 A Yes.

21 Q Elexia what was that?

22 A Someone touching my hand.

23 Q Did you recognize this person who was the touching  
24 your hand?

25 A Not at the moment, no.

## Elexia Tucker - Direct Examination by Ms. Walker

1 Q Did the person have permission to touch you in any  
2 way?

3 A No.

4 Q Did the person have permission to be in your house?

5 A No.

6 Q When you woke up what happened?

7 A I woke up to a knife at my neck, telling me if I  
8 said anything or did not listen to him that he was going to  
9 kill me.

10 Q What did you do?

11 A I listened.

12 Q What did the person tell you to do?

13 A He told me -- well, at first he asked me if my  
14 father was home and if my father had a gun and he asked me  
15 where my dad was because I told him that he was home and he  
16 asked -- I said he's asleep. And he asked if my dad had a  
17 gun and I told him no. And he told me that if he found out  
18 that I was lying to him he was going to kill my father and  
19 I both.

20 Q Did the person have very specific things that he  
21 wanted you to do?

22 A Yes.

23 Q What were those, Elexia?

24 A He wanted me to tell him where my dog was and I did  
25 not know. He told me -- he asked me where my father's car

**Elexia Tucker - Direct Examination by Ms. Walker**

1 keys were and I told him. And he told me that I had to go  
2 with him.

3 Q Now, describe how the person walked you -- let me  
4 stop there. Were you tied up at that point?

5 A My arms were, but I do not remember if my feet were  
6 or not.

7 Q And did the person remove you from your bedroom?

8 A Yes.

9 Q Describe that for the jury, please.

10 A He sat me up in my bed so that my feet were off the  
11 bed and he told me that I had to go with him and he picked  
12 me up by my arm and walked me out of my bedroom and down  
13 the stairs.

14 Q Do you know where the knife was at that point?

15 A I don't remember.

16 Q At this point had you gotten a good look at the  
17 person?

18 A Yes.

19 Q Tell me about how close the person got to you while  
20 he was tying you up at knife point.

21 (The solicitor was moving toward the witness.)

22 BY MS. WALKER:

23 Q Closer?

24 A Closer. Yes.

25 Q This close? Or closer?

## Elexia Tucker - Direct Examination by Ms. Walker

1 A Probably about that far.

2 (The solicitor stopped moving.)

3 BY MS. WALKER:

4 Q And describe for the jury what the person looked  
5 like?

6 A Well, I was laying down, so at that point he looked  
7 real tall, but he was Hispanic and he had glasses and --  
8 the first thing I knew noticed was the tattoo over his left  
9 eyebrow.

10 Q And as he's -- describe to me how he makes you  
11 leave your bedroom?

12 A He was holding me by my left arm.

13 Q And where did y'all go?

14 A Out of my bedroom door, went down the hallway and  
15 down the stairs. And by that time he was holding my right  
16 arm to walk me down the stairs.

17 Q What did y'all do when you got down the stairs?

18 A He grabbed the car keys and opened the door and  
19 made me get into the car.

20 Q And whose car keys did he grab?

21 A My dad's.

22 Q Once y'all got into the car, your father's car,  
23 what happened?

24 A He drove to Airbase Road in Hopkins.

25 Q And at this point is the sun up or down; do you

## Elexia Tucker - Direct Examination by Ms. Walker

1 remember --

2 A It's down.

3 Q The sun's still down?

4 A It was dark.

5 Q Did you notice any other tattoos on the person  
6 other than the one on his right eyebrow?

7 A Yeah, I noticed one on his hand and on his neck.

8 Q Can you describe the one on his neck?

9 A I couldn't -- it was dark. I noticed it, but I  
10 couldn't make it out.

11 Q Was it a small tattoo or a large tattoo?

12 A It was big.

13 Q You said he drove you out to Hopkins?

14 A Yes.

15 Q Elexia, what happened when you got to Hopkins?

16 A After we got to Hopkins. He parked the car behind  
17 what I believe is a daycare center. It was a brick  
18 building. He drove behind it and parked the car.

19 Q And once he parked the car, what happened?

20 A He got into the backseat with me and told me to  
21 take off my clothes.

22 Q Did you listen?

23 A Yes.

24 Q Why did you listen to him?

25 A Because I didn't want to die. I was scared.

## Elexia Tucker - Direct Examination by Ms. Walker

1 Q Once you took off your clothes, what, if anything  
2 did the man do?

3 A He took my tampon out. And he told me to -- I had  
4 to have sex with him.

5 Q Did you -- stupid question, but did you want the  
6 have sex with him?

7 A No.

8 Q Can you describe the sexual intercourse with this  
9 man, if it happened?

10 A He made me lay down at one point and he tried to  
11 get on top of me, but there was not enough room in the car,  
12 so he made me get on top of him.

13 Q Do you know how long that lasted?

14 A I can't answer that question honestly. I don't  
15 know.

16 Q At some point, did he stop?

17 A Yes.

18 Q And once he stopped, what did he do?

19 A He told me that I could put my clothes back on and  
20 minutes after that, he told me to --

21 Q Let me show you down. Did you put your clothe back  
22 on?

23 A Yes.

24 Q At that point were you relieved?

25 A No, not really.

## Elexia Tucker - Direct Examination by Ms. Walker

1 Q Not yet? Did you think that the rape had stopped?

2 A Yes.

3 Q Okay. What happened next?

4 A He told me to take my clothes back off and have sex  
5 with him again.

6 Q Did you listen?

7 A Yes.

8 Q Were you still afraid for your life at this point?

9 A Yes.

10 Q What happened next?

11 A I began to tell him that it hurt over and over and  
12 so he told me that I didn't have to continue to have sex  
13 with him, but I had to give him oral sex until he was  
14 satisfied.

15 Q And did you do as you were told?

16 A Yes.

17 Q Did that eventually stop as well?

18 A Yes.

19 Q Once that stopped, tell me what happened?

20 A Once that stopped, I asked him what time it was and  
21 he told me it was about 6 o'clock in the morning. And I  
22 told him that my father would be awake soon and he would  
23 know that I was gone. So not too long after that, he got  
24 back in the driver seat and drove a little bit past Lower  
25 Richland High School.



## Elexia Tucker - Direct Examination by Ms. Walker

1 Q And what happened when you got past Lower Richland  
2 High School?

3 A He asked me if I could drive and I told him yes.  
4 So he told me that I could drive the rest of the way home  
5 and he grabbed his belongings, including the tampon that he  
6 had removed himself and got out of the car and started  
7 walking the opposite way.

8 Q Did you drive yourself home?

9 A Yes.

10 Q Elexia, what happened when you got home?

11 A My dad was already awake and he heard the front  
12 door open and he knows I wouldn't come home at that time of  
13 the morning; and so he asked me what I was doing up so  
14 early and out and I -- I just broke and I told him.

15 Q Did you tell anyone else?

16 A Yes.

17 Q Who else did you tell?

18 A She was my girlfriend at the time, Brittany.

19 Q Did you call the police?

20 A Not that day, no.

21 Q Why not?

22 A Because I was really scared.

23 Q Why were you afraid?

24 A I thought that he would come back or something. I  
25 don't -- I don't know.

## Elexia Tucker - Direct Examination by Ms. Walker

1 Q Okay. At some point, did you realize who the man  
2 was?

3 A Yes.

4 Q And who was that man?

5 A It was my father's friend's brother.

6 Q Have you seen him before?

7 A Yes.

8 Q Had he been in your house before?

9 A Yes.

10 Q Had he been introduced to you before?

11 A Introduced, yes.

12 Q And what was the name that he was -- that was given  
13 to the man that was introduced to you?

14 A Nate.

15 Q And you said you didn't call the police that day,  
16 but did you make contact with law enforcement at some  
17 point?

18 A Yes.

19 Q When was that?

20 A I believe it was -- I don't know if it was the 27th  
21 or the 28th, but it was the same day that my father sent me  
22 a picture of the sketch that was on the news.

23 Q And why did you make contact with law enforcement  
24 then?

25 A Because I knew it happened to someone else. And I

**Elexia Tucker - Direct Examination by Ms. Walker**

1 thought it was my fault.

2 Q And did you give a statement to law enforcement?

3 A Yes, ma'am.

4 Q Mr. Colin D Bailey?

5 A Yes.

6 Q Did Investigator Bailey show you a series of  
7 pictures?

8 A Yes, ma'am.

9 MS. WALKER: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 BY MS. WALKER:

12 Q I want to show you what's been marked as State's  
13 Exhibit Number 1?

14 MR. MARTINEZ: Objection, Your Honor, 14th  
15 Amendment.

16 THE COURT: All right. Subject to previous  
17 objections, I reaffirm my previous in-camera rulings. One?  
18 Is that correct, Solicitor?

19 MS. WALKER: Yes, Your Honor.

20 THE COURT: State's 1 is in evidence subject to  
21 objection.

22 (State's Exhibit Number 1 was entered into  
23 evidence.)

24 BY MS. WALKER:

25 Q I want to show you State's Exhibit Number 1 and

## Elexia Tucker - Direct Examination by Ms. Walker

1 ask you if you recognize this?

2 A Yes, ma'am.

3 Q Did Investigator Bailey show you this?

4 A Yes.

5 Q Did he tell you who to pick?

6 A No, ma'am.

7 Q Did he tell you that the person who had done this  
8 to you was definitely in here?

9 A No, ma'am.

10 Q Were you able to identify the man?

11 A Immediately.

12 Q And how did you indicate to law enforcement that  
13 you identified him?

14 A I circled it and signed my name and dated it.

15 Q Did you also write something else on that?

16 A Yes.

17 Q What did you write?

18 A This is the man that took me.

19 Q The man who took you from your bedroom at knife  
20 point and then raped you in your father's car, do you see  
21 him in the courtroom?

22 A Yes, I do.

23 Q Can you point him out for me?

24 A He's right there, standing up.

25 MR. MARTINEZ: Objection, Your Honor. 14th

**Elexia Tucker - Direct Examination by Ms. Walker**

1 Amendment, due process, right to a fair trial.

2 THE COURT: All right. In-court identification is  
3 admissible, subject to your objection, subject to my  
4 previous in-camera trial rulings.

5 All right. Solicitor.

6 MS. WALKER: Your Honor, may the record reflect  
7 that she's identified the defendant.

8 THE WITNESS: So reflected.

9 MS. WALKER: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 BY MS. WALKER:

12 Q While you were in your bedroom, what was the  
13 lighting like?

14 A It was dark but my TV was on, so there was a little  
15 bit of light.

16 Q While you were inside of your house, did you  
17 scream --

18 A No.

19 Q -- or say anything to try to alert your father --

20 A No.

21 Q -- to what was going on?

22 A No, ma'am.

23 Q And why was that?

24 A Because he told me if I made a noise or said  
25 anything that he was going to kill me.

**Elexia Tucker - Cross-Examination by Mr. Martinez**

1 Q And you said he had a knife when he first  
2 approached you?

3 A Yes.

4 Q Do you remember where that knife was while you were  
5 in the car?

6 A It was in the passenger seat.

7 MS. WALKER: Thank you, I don't have any other  
8 questions.

9 THE COURT: Thank you solicitor.

10 Mr. Martinez?

11 **CROSS-EXAMINATION**

12 BY MR. MARTINEZ:

13 Q Ms. Tucker, are you still sniffing cocaine?

14 MS. WALKER: Objection, Your Honor.

15 THE WITNESS: I've never snorted cocaine.

16 THE COURT: Wait just a minute, Ms. Tucker, please.

17 I didn't mean to point at you like that, I  
18 apologize.

19 Ladies and gentlemen, step to your jury room,  
20 please. Do not discuss the case. In fact, we'll take  
21 about a 15 minute recess.

22 (The jury left the courtroom at 11:15 a.m.)

23 THE COURT: Court will be in recess 15 minutes.

24 Ms. Tucker, you may step down. You may refresh  
25 yourself during this brief recess. Do not discuss your

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 testimony.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you. Thank you very much.

4 (A brief recess was observed.)

5 THE COURT: All right. All right. Madam Court  
6 Reporter, will you read me back the last question before  
7 the break, please.

8 THE COURT REPORTER: Ms. Tucker, are you still  
9 sniffing cocaine.

10 THE COURT: All right. And Solicitor, you have an  
11 objection?

12 MS. WALKER: Yes, Your Honor.

13 THE COURT: All right. I'll be glad to hear from  
14 you.

15 MS. WALKER: And, Your Honor, I don't think the  
16 question is permitted under a rules. I don't understand  
17 how he can get into that under 608. He's trying to get  
18 into it under 609, she doesn't have any convictions for  
19 anything of that nature or anything more that matter. I  
20 don't understand how, if he's -- it wouldn't be under 404.  
21 I just don't think there's anything in the rules that  
22 allows him to ask that question. And furthermore, Your  
23 Honor, I'm not sure what basis he has for asking the  
24 question.

25 THE COURT: All right. Mr. Martinez.

**Ellexia Tucker - Cross-Examination by Mr. Martinez**

1 MR. MARTINEZ: Your Honor, I know the -- Ms. Tucker  
2 and I know her father. And I know their friends and people  
3 that associate with them because of their drug use.

4 THE COURT: Okay.

5 MR. MARTINEZ: And --

6 THE COURT: So you think that's the basis for  
7 allowing you to ask that question?

8 MR. MARTINEZ: That's how I know them.

9 THE COURT: That wasn't my question. Do you think  
10 the fact that you know them and you know their drug use,  
11 that is the basis for you asking that question?

12 MR. MARTINEZ: Yes, sir.

13 THE COURT: It is not. It is not. It's got to be  
14 admissible under the rules. Under State versus Haile will  
15 tell you about impeachment testimony, but that's not even  
16 impeachment testimony. That's either evidence under rule  
17 608 of character, conduct, bias of the witness, even if it  
18 were true. If not that, it is 404, other crimes, wrongs,  
19 or acts not admissible to prove the character of the person  
20 in order to show action in conforming therewith. 608,  
21 specific instances of conduct by a witness for the purpose  
22 of attacking and supporting the witness's credibility other  
23 than conviction of crimes provided by 609 may not be  
24 admissible by extrinsic evidence. They may, however, in  
25 the discretion of the Court, be probative of truthfulness



**Elexia Tucker - Cross-Examination by Mr. Martinez**

1 or untruthfulness may be inquired into on cross-examination  
2 of witnesses.

3 That's an improper question. It doesn't meet the  
4 standard under 608. There's no evidence that it is a  
5 conviction under 609. It's not admissible under 404(b).  
6 It's not part of the res gestae crime that was alleged to  
7 have occurred on the date of 25 March 2014.

8 If an attorney, seasoned or unseasoned asked that  
9 question I would call office of disciplinary counsel. I  
10 would give them the opportunity to self-report and if they  
11 failed to do so, I would call the office of disciplinary  
12 counsel because it's unethical.

13 So I sustain your objection, Solicitor.

14 All right. Anything further?

15 MR. MARTINEZ: No, sir.

16 THE COURT: Anything further, Solicitor?

17 MS. WALKER: As long as he understands, Your Honor,  
18 that he can't go into any drug use or anything of that  
19 nature based upon the Court's ruling. I just want to make  
20 sure he doesn't go down this path again.

21 THE COURT: I don't mean to sound short in that  
22 regard, but I don't know what anybody understands or not  
23 understands.

24 MS. WALKER: I understand.

25 THE COURT: I will ask you, Mr. Martinez, do you

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 understand that?

2 MR. MARTINEZ: So I can't get her to say how she  
3 knows -- how her family knows me and my family?

4 THE COURT: Solicitor?

5 MS. WALKER: He can -- as long as he phrases the  
6 question, How do you -- I don't have an objection to him  
7 asking, How do you know me. I don't have objection to  
8 that.

9 THE COURT: What is the answer to that?

10 Can you tell me that answer --

11 THE WITNESS: What was the question?

12 THE COURT: I think the question was how does your  
13 family know Mr. Martinez.

14 THE WITNESS: My father is friends with his  
15 brother.

16 MS. WALKER: I don't have any objection to that,  
17 Your Honor.

18 THE COURT: All right. Is that all you intend to  
19 ask in that regard?

20 MR. MARTINEZ: I wanted to know, what's their  
21 relationship.

22 THE WITNESS: They're friends, Nathan.

23 MR. MARTINEZ: So your dad said that he buys drugs  
24 from my brother. He told the police that.

25 THE COURT: Say that, again, I'm sorry, I didn't

**Elexia Tucker - Cross-Examination by Mr. Martinez**

1 understand.

2 MR. MARTINEZ: Her father even told the police that  
3 he buys drugs.

4 THE COURT: That's hearsay.

5 MR. MARTINEZ: Well, I -- okay, yeah, but that  
6 contradicts what she's saying.

7 THE COURT: No, sir, that's not a contradiction.  
8 Number one, it's not admissible because it's hearsay. Even  
9 if it was contradicting Ms. Tucker, it's still not  
10 admissible because it's hearsay. That's not contradicting  
11 anything.

12 What else do you intend to ask her in that regard?

13 MR. MARTINEZ: I was going to ask her if her and  
14 her father buy -- I would just say does she know anything  
15 about buying drugs.

16 THE COURT: That's not admissible. That's a  
17 fishing expedition. It's not admissible.

18 MR. MARTINEZ: So -- okay. All right.

19 THE COURT: I'm also going to advise that that will  
20 be -- that last question to which there was no response  
21 will be stricken from the record. Is that correct, there  
22 was no response?

23 THE COURT REPORTER: She did say, I've never --

24 THE COURT: She said what?

25 THE COURT REPORTER: She said I've never sniffed

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 cocaine.

2 THE COURT: The question and the response will be  
3 stricken from the record.

4 (The jury entered the courtroom at 11:59 a.m.)

5 THE BAILIFF: Jury is seated, Your Honor.

6 THE COURT: Thank you. Thank you, Mr. Bailiff.

7 Ladies and gentlemen of the jury, the last question  
8 asked before the break and if you do not recall it I would  
9 have it read back and the last response, is not admissible  
10 and it is stricken from the record and it is in no way to  
11 be part of your deliberations and your determination of the  
12 facts and the verdicts that you reach in this case.

13 If anyone needs it read back, because I don't want  
14 to strike from the record -- I'm not striking from the  
15 record, but based on your -- if you don't remember it I  
16 will do that, but if you do, each and everyone of you do  
17 remember it, again, it is stricken from the record and it  
18 would not be part of your deliberations and your  
19 determination as to the guilt or the innocence of Mr.  
20 Martinez.

21 Thank you. Thank you very much.

22 Mr. Martinez, you may ask your next question.

23 BY MR. MARTINEZ:

24 Q Ms. Tucker do you know me?

25 A How do I know you?

## Elexia Tucker - Cross-Examination by Mr. Martinez

- 1 Q Yes.
- 2 A No. I know your name and I've seen you before, but
- 3 I don't know you.
- 4 Q So you've met me before; is that correct?
- 5 A Yes.
- 6 Q Where at?
- 7 A My house.
- 8 Q At your house. What was I doing there?
- 9 A You were with your brother.
- 10 Q And what was the reasoning for that visit?
- 11 A I'm not sure. I walked in the room to ask my
- 12 father a question and you two were standing in there. And
- 13 I asked him a question and I walked back out.
- 14 Q So you don't know why we was there?
- 15 A I don't know.
- 16 Q Did we go over there all the time or did you see me
- 17 over again, later on?
- 18 A I've seen you twice.
- 19 Q Twice. Okay. So you say that you just woke up and
- 20 you was at knife point?
- 21 A That's correct.
- 22 Q And then what? You was tied up?
- 23 A You proceeded to tie my hands together and told me
- 24 that I had to go with you.
- 25 Q And then -- you said you didn't know who I was at

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 the time?

2 A At the time I didn't.

3 Q Okay. And you said -- was there anybody else in  
4 the house?

5 A Yes.

6 Q Who was in the house?

7 A My father and his friend, Mike.

8 Q And where was Mike at?

9 A He was downstairs in the living room.

10 Q And from the front door, how far -- how far is it  
11 to where he was at?

12 A Probably about from me to you, maybe a little bit  
13 further, but not too much.

14 Q So probably about to him?

15 A Yeah.

16 Q And the house would be set up -- you're standing at  
17 the door or the hallway and there's a couch that goes this  
18 way, correct?

19 A Yes.

20 Q And if there was a light on, would you be able to  
21 see into that room?

22 A If there was a light on where?

23 Q Let's say it's dark in the room, would you be able  
24 to see inside that room?

25 A Probably not, but it wasn't dark.

## Elexia Tucker - Cross-Examination by Mr. Martinez

- 1 Q It was -- the light was on in there; correct?
- 2 A A lamp was on, yes.
- 3 Q And he was up, correct?
- 4 A I do not know.
- 5 Q But you saw me wave to him though, correct?
- 6 A I watched you do a little hand motion as if you
- 7 were waving to him, yes.
- 8 Q So it's possible he seen me -- seen us leave,
- 9 correct?
- 10 A Yes, it's possible, but I can't speak for what he
- 11 seen or what he did not see. It was 3:30 in the morning.
- 12 I'm assuming he was asleep.
- 13 Q And -- okay. Let's say he was asleep. Would I be
- 14 able to see him?
- 15 A From the bottom of the stairs looking through?
- 16 Q Yes.
- 17 A Yes.
- 18 Q I'd be able to see him clearly and know exactly how
- 19 to describe him and know that there was a man laying on the
- 20 couch?
- 21 A Yes.
- 22 Q And -- so you didn't know if he was up?
- 23 A No.
- 24 Q Okay. And you say you was taken at knife point?
- 25 A I woke up at knife point.

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 Q And you said you was forced to leave at knife  
2 point?

3 A I woke up at knife point and you told me if I did  
4 not listen to what you said or if I made a noise or spoke  
5 you were going to kill me.

6 Q How did I get into the house?

7 A I'm assuming the back door because it was unlocked.

8 Q So you did not let me into the house?

9 A No, I woke up at knife point. I did not let you  
10 into my house.

11 Q And -- okay. So you came back home and what  
12 happened?

13 A When I arrived back home?

14 Q Yes.

15 A My dad heard me open the door or close the door,  
16 I'm not sure. And whenever he heard the door, he asked me  
17 what I was doing out at that time of morning and I told  
18 him.

19 Q What did you tell him?

20 A That someone broke in the house, took me with him  
21 and raped me and made me drive myself back home from Lower  
22 Richland High School.

23 Q And did you tell him who it was?

24 A I didn't know exactly who you were.

25 Q You didn't describe him -- I mean describe me to



## Elexia Tucker - Cross-Examination by Mr. Martinez

1 your dad?

2 A Not fully. But I did give some description as to  
3 your face that I did see, that I was able to see.

4 Q And that's it?

5 A For the most part, yes.

6 Q What did you tell him? What was the details --  
7 what was the description that you gave to him?

8 A Hispanic male, maybe mid 30's, glasses, and a  
9 tattoo above the left eyebrow.

10 Q And you told him -- did you tell him that he was  
11 tall?

12 A I could have said that.

13 Q And did you tell him that he was bigger, Mexican,  
14 Hispanic?

15 A Hispanic was my word.

16 Q You didn't say bigger?

17 A Like I just said, I could have.

18 Q Okay. You didn't go back and tell him or asked him  
19 what E's brother's name is?

20 A Yes, I did.

21 Q How -- how soon -- how later on after this?

22 A After I talked to Brittany, I believe.

23 Q So you called your girlfriend and you told her,  
24 correct?

25 A Correct.

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 Q And then you recalled who I am and you tell your  
2 dad, or you ask your dad -- you ask your dad's what's E's  
3 brother's name?

4 A Correct.

5 Q And he tells you?

6 A Correct.

7 Q And then you told your dad, that's who it is?

8 A I told him that I believe that that's who it was  
9 because I asked him if you had a tattoo above your left  
10 eyebrow. And looking at you, it would be the right. So he  
11 said that I believe it was above his right eyebrow, but I'm  
12 not sure, but yes he does have one above his eyebrow. So  
13 that's how I asked.

14 Q And what did he say?

15 A That your name was Nate.

16 Q And he didn't take you to the hospital?

17 A I refused.

18 Q So you came home, told your dad you was just  
19 abducted at knife point, taken to some wooded area and  
20 raped. And you come home and you tell your dad and you  
21 tell your girlfriend and then what?

22 A Then after I called Brittany, she told -- they both  
23 told me that I needed to call the police. I was scared and  
24 I refused. And my dad asked me if he wanted me -- him to  
25 take me to the hospital and I said no.

**Elexia Tucker - Cross-Examination by Mr. Martinez**

1 Q So he didn't -- so your dad and your girlfriend  
2 didn't take you to the hospital and they didn't call the  
3 police?

4 MS. WALKER: Objection, Your Honor. Asked and  
5 answered.

6 THE COURT: I think that's a different question.  
7 I'll overrule the objection.

8 You may answer the question, Ms. Tucker.

9 THE WITNESS: No, they did not.

10 BY MR. MARTINEZ:

11 Q Okay. So you told your girlfriend -- did you tell  
12 your dad that you thought it was me or just knew that it  
13 was me?

14 A I told him I thought it could possibly be you, yes.

15 Q And then you told your girlfriend the same thing,  
16 correct?

17 A Correct.

18 Q So how come when you guys all talked to the police,  
19 you didn't know who it was?

20 A Because I didn't know for sure that it was you, but  
21 I was about 99 percent sure that it was you.

22 Q So why didn't you tell the police that?

23 A I told them that I thought that I knew you. I  
24 thought that I knew the person that took me. That is what  
25 I told them.

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 Q You told them that? That you thought you knew who  
2 it was?

3 A Yes.

4 Q You didn't tell him an unknown?

5 A I don't understand your question.

6 Q All the police reports state that you stated an  
7 unknown man?

8 THE COURT: You're cross-examining her on officers  
9 reports, not on her statement?

10 MR. MARTINEZ: What she told the police.

11 THE COURT: No, sir. Listen to my question. Are  
12 you cross examining her on reports by officers?

13 MR. MARTINEZ: The report, yes.

14 THE COURT: No, sir. That's hearsay. That's  
15 another party's statement. Cross-examine her on her  
16 statement or any prior testimony.

17 Q So when did you -- when did you tell the cops that  
18 you knew it was me?

19 A I called them the morning that I seen your sketch  
20 on -- or my father sent me a text message with the picture  
21 of the sketch that was on the news and that's when I went  
22 forward and called them.

23 Q What made you go forward and call them?

24 A The sketch that my father sent me in a text  
25 message.

## Elexia Tucker - Cross-Examination by Mr. Martinez

- 1 Q Did your father have to convince you to call them?
- 2 A No.
- 3 Q So your father knew who I was, correct?
- 4 A He didn't know that you were the person that
- 5 abducted me and raped me, no. But he does know who you
- 6 are, yes.
- 7 Q So how would -- how would he see -- okay. He seen
- 8 the sketch, correct? And then he sent it to you?
- 9 A Correct.
- 10 Q And he said, Is this the guy?
- 11 A His specific words was, Is this him.
- 12 Q And then he told you that you need to go forward?
- 13 A No, he did not.
- 14 Q He didn't?
- 15 A No, Brittany did.
- 16 Q And when they showed you the photographic lineup,
- 17 you said -- you told the police I had a tattoo above my
- 18 eye, that I had a tattoo on my neck and -- how many people
- 19 do you see in that photo lineup with a tattoo above their
- 20 eye?
- 21 A Only one. But in the sketch, there is no eyebrow
- 22 tattoo.
- 23 Q Yeah, but I'm talking about your description?
- 24 A Correct. And I said only one.
- 25 Q And plus you also -- you also know each other?

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 A I don't know you, I know your name.

2 Q Okay. And they -- well the police when they --  
3 they got into your phone; is that correct?

4 A Yes.

5 Q And did they take any information off your phone?

6 A I don't know what they did with my phone.

7 Q You signed a waiver for them to get stuff off your  
8 phone, correct?

9 A Yes.

10 Q And also you took -- you took DNA tests?

11 A I believe so, yes.

12 Q And you also -- they also went and tested all kinds  
13 of stuff: The -- the whole car; they went and did all  
14 kinds of stuff on the house; and you gave them some  
15 clothes, I guess the clothing articles that you claimed  
16 that you was tied up with. You gave them the clothes that  
17 you was wearing at the time?

18 A Correct.

19 Q And you never went to the hospital?

20 A No.

21 Q And when they asked you -- when Colin D Bailey was  
22 asking you about the statement, did he tell you that the  
23 person who did that to you was in there?

24 A The lineup?

25 Q Yes.

## Elexia Tucker - Cross-Examination by Mr. Martinez

1 A No.

2 Q Are you sure?

3 A I'm positive.

4 Q Okay. Because you testified previously when Ms.  
5 Campbell was questioning you, did they tell you that  
6 necessarily the person that raped you would even be in  
7 there. And you said, Yeah, they said that. They just  
8 asked me if anyone of them looked like the person I had  
9 seen?

10 A No, they said that he could be in there, but he  
11 didn't have to be in there.

12 Q That's not what you stated though.

13 A Well, that's what I'm saying now.

14 THE COURT: All right. Let me stop you just a  
15 moment, please.

16 Step out, ladies and gentlemen. Do not discuss the  
17 case during this break.

18 (The jury left the courtroom at 12:15 p.m.)

19 THE COURT: Mr. Martinez, you need a break?

20 MR. MARTINEZ: No, sir.

21 THE COURT: Well, you can continue your  
22 cross-examination of Ms. Tucker sitting down.

23 Bring us our jury, please.

24 MR. MARTINEZ: Your Honor, may I ask what the  
25 purpose of that is?

**Elexia Tucker - Cross-Examination by Mr. Martinez**

1 THE COURT: No, sir.

2 (The jury entered the courtroom at 12:16 p.m.)

3 THE BAILIFF: Jury is seated, Your Honor.

4 THE COURT: Thank you. Thank you, Mr. Bailiff.

5 All right. Mr. Martinez, you may ask your next  
6 question.

7 BY MR. MARTINEZ:

8 Q So --

9 MR. MARTINEZ: Your Honor, I beg the Court's  
10 indulgence.

11 THE COURT: Of course. Yes, sir.

12 BY MR. MARTINEZ:

13 Q Did Colin D Bailey go and question you about Mike  
14 Moore -- about the guy who was sleeping in the front room?

15 A He brought him up, yes.

16 Q What did he say?

17 MS. WALKER: Objection to the hearsay, Your Honor.  
18 Objection to the hearsay as what Colin D. Bailey said.

19 MR. MARTINEZ: I'm asking what she told him.

20 THE COURT: You -- I sustain the objection, but you  
21 may answer that question, what did you say to Colin Bailey.

22 THE WITNESS: I told him that my dad's friend,  
23 Mike, was staying with us for a few days because he had to  
24 leave to go to California to go take care of his dad and he  
25 was there at the time that you abducted me.



## Elexia Tucker - Redirect Examination by Ms. Walker

1 BY MR. MARTINEZ:

2 Q And did he ask you if he was up?

3 A Yes.

4 Q And what did you say?

5 A I said no.

6 Q Did you know if he was up?

7 A Well, it was 3:30 in the morning. I'm assuming  
8 that he was asleep, but I didn't know for a fact that he  
9 was asleep.

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

11 THE COURT: Redirect, Solicitor?

12 MS. WALKER: Beg the Court's indulgence, Your  
13 Honor.

14 THE COURT: Yes, ma'am.

15 **REDIRECT EXAMINATION**

16 BY MS. WALKER:

17 Q He asked you if you ever told the police that it  
18 was Nathan Martinez that abducted you at knife point. Did  
19 you pick him out of a photo lineup?

20 A Immediately.

21 Q And at some point did you give police the name that  
22 you had of Nathan Martinez?

23 A Yes.

24 MS. WALKER: At this point, I want to mark this for  
25 identification purposes only as -- I'm sorry.

**Elexia Tucker - Recross-Examination by Mr. Martinez**

1 THE COURT REPORTER: 106.

2 (State's Exhibit Number 106 was marked for  
3 identification.)

4 MS. WALKER: State's Exhibit Number 106.

5 BY MS. WALKER:

6 Q He asked you about the number of times you spoke  
7 with him face to face. Remember that?

8 A Yes.

9 Q At some point did you actually receive a letter  
10 from Mr. Martinez?

11 A After he was incarcerated, yes.

12 Q This is for identification purposes at this point.  
13 Is this the letter you received?

14 A Yes, ma'am.

15 Q Is there any doubt in your mind who took you at  
16 knife point?

17 A No, ma'am.

18 Q Did you consensually have sex with Nathan Martinez?

19 A No.

20 Q Thank you.

21 MS. WALKER: I don't have any further questions.

22 THE COURT: Recross examination, Mr. Martinez?

23 You may stand.

24 **RECROSS EXAMINATION**

25 BY MR. MARTINEZ:

**Elexia Tucker - Recross-Examination by Mr. Martinez**

1 Q When did you become certain that it was me?

2 A After -- probably after the sketch.

3 Q After the sketch?

4 A Yes.

5 Q Not when you went home and your dad told you who I  
6 was when you asked him who I was?

7 A I wasn't certain, like absolutely positive that it  
8 was you, but like I said, I was about 99 percent sure it  
9 was you.

10 Q So you're saying that you didn't know who I was?

11 A At the time, no.

12 Q You're saying that there was no conversation?

13 A When?

14 Q The whole time.

15 A During my abduction or before?

16 Q When you left with me?

17 A There was no conversation other than me asking you  
18 what time it was and you were telling me and I told you  
19 that my dad would be up soon and know that I was gone.

20 Q That's the only conversation we had?

21 A Conversation, yes.

22 MR. MARTINEZ: Nothing further, Your Honor.

23 THE COURT: Thank you. Thank you, Ms. Tucker. You  
24 may step down.

25 Solicitor, Mr. Kata?

**Kendall Decker - Cross-Examination Continued by Mr. Martinez**

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

3 THE COURT: All right. Thank you. Thank you, Mr.  
4 Kata.

5 Mr. Decker.

6 THE WITNESS: Yes, sir.

7 THE COURT: Would you come around and be sworn for  
8 us, please.

9 KENDALL DECKER,

10 having been duly sworn, testified as follows:

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

13 THE COURT: Mr. Martinez, I believe you requested  
14 Mr. Decker --

15 THE WITNESS: Kendall Decker.

16 THE COURT: I'm sorry, Mr. Decker, I interrupted  
17 you, I apologize.

18 I believe you requested you had some additional  
19 questions you would like to ask Mr. Decker.

20 MR. MARTINEZ: Yes, sir.

21 THE COURT: All right. You may proceed.

22 **CROSS-EXAMINATION CONTINUED**

23 **BY MR. MARTINEZ:**

24 Q You stated that -- I asked you if I had a long  
25 sleeve hoodie on?

**Kendall Decker - Cross-Examination Continued by Mr. Martinez**

1 A You asked me if it was a long sleeve or short  
2 sleeve and I told you I don't know, sir.

3 Q You didn't know but you told the State that I had  
4 cuts on my arms?

5 A Yes, sir.

6 Q So how would you not know that I had on long or  
7 short sleeve?

8 A Because I couldn't remember if it was a long sleeve  
9 hoodie that was rolled up or if it was a short sleeve  
10 hoodie. So that's why I didn't know.

11 Q So you don't know if it was pulled up, bunched up  
12 where you could see it, or if it was...

13 A I don't recall, sir.

14 Q All right. Thank you.

15 MR. MARTINEZ: No further questions.

16 THE COURT: Any followup in that regard, Solicitor?

17 MS. WALKER: No, sir.

18 THE COURT: Mr. Decker, thank you very much for  
19 being with us, returning today. You may now step down.

20 Any objection to this witness be relieved of his  
21 subpoena?

22 MS. WALKER: None from the State, Your Honor.

23 THE COURT: From you, Mr. Martinez?

24 MR. MARTINEZ: No, sir.

25 THE COURT: Thank you very much, Mr. Decker.

**Kendall Decker - Cross-Examination Continued by Mr. Martinez**

1 THE WITNESS: You're welcome sir.

2 THE COURT: Solicitor, you indicated at the bench  
3 when you and Mr. Kata came forward that your next witness  
4 would be rather lengthy?

5 MS. WALKER: It's possible. It's very possible,  
6 Your Honor.

7 THE COURT: Well, I guess litigants and parties  
8 can't tell time any better than judges.

9 MS. WALKER: No, sir, Your Honor.

10 THE COURT: Madame Clerk, you got our lunch cooked  
11 yet.

12 THE CLERK: I'm working on it, Your Honor.

13 THE COURT: You're always working, Madam Clerk.  
14 And doing a great job.

15 Let's take our luncheon recess. I'll say we'll  
16 take at least an hour. 1:30. Of course, if you want to  
17 walk about, whenever you want. You may do so. Say 1:30.  
18 If lunch runs a little late, you want some extra time, just  
19 advise the bailiff.

20 All right. Thank you. Do not discuss the case,  
21 don't read reports, no independent research, no research on  
22 the internet.

23 Thank you, thank you very much, I hope you have a  
24 pleasant lunch.

25 (The jury left the courtroom at 12:29 p.m.)

1 THE COURT: All right. Sheriffs, I would like the  
2 courtroom cleared of everyone accept the solicitor's, the  
3 solicitor's staff, the officers, Mr. Martinez and  
4 co-counsel.

5 THE OFFICER: Yes, sir.

6 THE COURT: All right. So those folks can stay.  
7 My staff can stay. The clerk can stay. Officers can  
8 remain.

9 And once the courtroom is cleared, I would like the  
10 back door locked.

11 THE OFFICER: Yes, sir.

12 (The courtroom was cleared of all observers and  
13 victims in the gallery.)

14 THE COURT: Mr. Martinez, you asked me a question  
15 during the course of the break during the testimony of  
16 Ms. Tucker, why I required you to sit down.

17 It was reported to me by two individuals in the  
18 courtroom, one a sheriff's deputy, another a member of the  
19 judicial staff that you appeared to be physically aroused  
20 during the cross-examination of Ms. Tucker. And my  
21 responsibilities as to the decorum and dignity of the  
22 courtroom, if you were, that's why I had you sit.

23 I did not want to comment to you at that time  
24 either in or out of the presence of Ms. Tucker because I  
25 did not want to inhibit your ability to cross-examine her

1 in any manner.

2 As soon as I thought it was appropriate, I allowed  
3 you to stand, the record will reflect the number of  
4 questions that you asked after that break in a seated  
5 position. And of course, I allowed you to stand during  
6 your examination of Mr. Decker.

7 Do you have any questions you would like to ask me  
8 about that.

9 MR. MARTINEZ: How did they notify you of that?

10 THE COURT: Through my law clerk.

11 MR. MARTINEZ: Your law clerk was sitting -- nobody  
12 went and talked to your law clerk.

13 THE COURT: This is my law clerk.

14 MR. MARTINEZ: Nobody went and talked to her.

15 THE COURT: I disagree. A sheriff's deputy came to  
16 the bench, spoke with her and I had her confirm it.

17 MR. MARTINEZ: Nobody went over there.

18 THE COURT: Well, between your credibility and  
19 mine, I go with mine. If you want to have a hearing on it,  
20 I'll have the officer called to the bench and you can  
21 question the officer. If you want to have a hearing on it,  
22 I'll allow you to call my law clerk as to what she  
23 observed.

24 MR. MARTINEZ: So you're saying that somebody went  
25 to her and told her what they seen?



1 THE COURT: Yes.

2 MR. MARTINEZ: When was that?

3 THE COURT: During the course of your  
4 cross-examination of Ms. Tucker.

5 MR. MARTINEZ: Where did they -- did they go  
6 through that side or --

7 THE COURT: Yes.

8 MR. MARTINEZ: Your Honor, that did not happen.

9 THE COURT: What didn't happen?

10 MR. MARTINEZ: Nobody went over there and told her  
11 anything.

12 THE COURT: I saw the officer come --

13 Come around here sheriff.

14 Swear the officer for me, Madam Clerk.

15 HORACE LOCKLEAR, JR.,

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: Horace Locklear, Jr.

20 THE COURT: During the course of Mr. Martinez's  
21 examination of Ms. Tucker, did you have occasion to come to  
22 the bench?

23 THE WITNESS: Yes, sir.

24 THE COURT: Would you explain that, please, for the  
25 Court and for Mr. Martinez.

1 THE WITNESS: Yes, sir. I was informed of the  
2 situation that was going on. I walked around, came down  
3 the side of the wall here moved up and had spoken to the  
4 law clerk and I stepped back up.

5 THE COURT: What information did you provide the  
6 law clerk.

7 THE WITNESS: That it looked like Mr. Martinez had  
8 an erection.

9 THE COURT: Thank you.

10 Any questions you'd have, Mr. Martinez?

11 MR. MARTINEZ: When exactly did you go over there?

12 THE COURT: It was during the course of the  
13 cross-examination of Ms. Tucker.

14 MR. MARTINEZ: When exactly during the course of  
15 the inter--

16 THE COURT: No, sir, you're not going to ask that.  
17 It was during the course of the cross-examination of  
18 Ms. Tucker. And the record will reflect when I sent the  
19 jury out.

20 MR. MARTINEZ: You sent the jury out?

21 THE COURT: Yes, sir.

22 MR. MARTINEZ: When --

23 THE COURT: I sent the jury out because I didn't  
24 want to say anything in front of the jury when I had you  
25 sit down.

1 The record will also reflect when the jury went  
2 out.

3 Anything further, Mr. Martinez?

4 MR. MARTINEZ: I just want to say, you know it  
5 didn't happen like that.

6 THE COURT: I know exactly how it happened, Mr.  
7 Martinez.

8 MR. MARTINEZ: I know how it happened too.

9 THE COURT: I'm sure you do.

10 MR. MARTINEZ: I do.

11 THE COURT: I'm sure you do.

12 Thank you, Sheriff. You may step down.

13 (The officer left the stand.)

14 THE COURT: All right. Solicitor, when -- do you  
15 think the State will rest today?

16 MS. WALKER: Your Honor, depending upon -- I mean I  
17 think with our direct examinations and -- I think so, but  
18 it all depends on the cross-examination.

19 THE COURT: All right. And even given that, we  
20 would probably still go into next week?

21 MS. WALKER: My understanding from speaking with  
22 Nathan Martinez, Your Honor, is that he intends upon  
23 offering a case, so, yes, sir.

24 THE COURT: All right. Thank you.

25 Anything further before we take our recess,

1 Solicitor?

2 MS. WALKER: No, sir.

3 THE COURT: Mr. Martinez?

4 MR. MARTINEZ: Yes, Your Honor. I'd like to --  
5 I've got to declare a mistrial. I have to renew my right  
6 to a mistrial.

7 THE COURT: I don't know what you're talking about  
8 renewing your rights.

9 MR. MARTINEZ: I got to put in my motion for a  
10 mistrial. I'm being prejudiced by you. I'm being -- you  
11 guys all have this thing rigged up to where I'm being  
12 accused of stuff that's not even true.

13 THE COURT: All right. Mr. Martinez. I would  
14 respectfully deny your motion for a mistrial. I have no  
15 bias, no prejudice, no impartiality towards you. I've  
16 actually bent over backwards at every opportunity to  
17 protect your rights, based on State's Exhibit Number 23,  
18 based on the jury's instructions that I have given  
19 throughout the course of this trial and have allowed you  
20 great leeway in your cross-examinations of the witnesses.

21 You further had one witness subject to recall that  
22 you examined again today. And I will continue to do that.  
23 I -- I feel that I am dedicated to and honor our system of  
24 justice and every American or non-American, anyone that's  
25 come before the Courts of record in South Carolina or any

1 state are entitled to a fair and impartial trial by a fair  
2 and impartial jury, by a fair and impartial, unbiased,  
3 unprejudiced judge. I have no prejudice towards you  
4 whatsoever. No bias towards you whatsoever.

5 There's nothing in my multiple behavior or my  
6 conduct that in my judicial discretion has prejudiced you  
7 in any manner. I would respectfully deny your motion for a  
8 mistrial.

9 Anything further?

10 MR. MARTINEZ: No, sir.

11 THE COURT: All right. Thank you. We'll be in  
12 recess until at least -- until at least 1:30. Y'all heard  
13 what I told the jury. The jury is, of course, asking  
14 questions and I was going to address that with them today.  
15 I have a note because they've got to make plans for the  
16 future and how long they -- when we can estimate the trial  
17 may complete -- be completed. I will give them the best  
18 advice I can in that regard, their service will continue  
19 until next week to completion and kind of go from there.

20 MS. WALKER: Yes, sir.

21 THE COURT: I mean, I just -- I don't know what  
22 they may have on their plate for their personal and  
23 professional lives next week, particularly given the time  
24 period. All right. About 1:30. Thank you.

25 MS. WALKER: Thank you, Judge.

1 (A recess for lunch was observed.)

2 THE COURT: All right. Solicitor.

3 MS. CAMPBELL: Your Honor, I think we'd like to  
4 take up, our next witness is Ms. -- actually the DNA  
5 analyst and she did do a report on both the cases, the case  
6 we're here on today and then filed on. And she also did  
7 some examinations on Elexia Tucker's case. And I'm just  
8 inquiring beforehand we are not prepared to go forward on  
9 Elexia Tucker's. We've done everything we could pursuant  
10 to the Court's ruling, but I'm just inquiring of the  
11 defense if they intend to go into that.

12 THE COURT: You're asking if the defense can go  
13 into it?

14 MS. CAMPBELL: Yes, sir.

15 THE COURT: Mr. Martinez?

16 MR. MARTINEZ: Your Honor, yes. I have to go into  
17 it.

18 MS. CAMPBELL: That's fine. We just needed to know  
19 because -- just in order to present everything.

20 MR. MARTINEZ: Your Honor, I asked prior to -- my  
21 pretrial motions, I asked for a copy of that and they  
22 stated that they don't have no results. There was no DNA  
23 results. So I guess now they told Mr. Kata they do have  
24 results. I would ask to be furnished with a copy before  
25 they --

1 MS. CAMPBELL: We've given him a copy of the DNA  
2 report and I am told that we've turned that over on  
3 multiple occasions. The only addendum I made was I told  
4 Mr. Kata just a few minutes ago that we weren't prepared to  
5 go forward on that. The DNA report, if I could hand it up  
6 to the Court with my handwriting on it.

7 THE COURT: Yes, ma'am.

8 MS. CAMPBELL: The only amendment to that was that  
9 they excluded Mr. Martinez from any of the items that were  
10 submitted. The buccal swabs was negative. They did not do  
11 an actual comparison to the victim or her father and she  
12 has spent -- she had the data and the data's been provided,  
13 but she made an addendum that basically the victims are  
14 included in two of them. But it does not change that Mr.  
15 Martinez is excluded from all the swabs.

16 Is that what you're asking.

17 MR. MARTINEZ: Yeah, like I said in my pretrial  
18 motion I would like -- if I can have a copy of that,  
19 please.

20 MS. CAMPBELL: She doesn't have it written down  
21 anywhere. It should be in the data that was provided to  
22 you. You look at the alleles, it will be there.

23 MR. MARTINEZ: I looked -- I looked everywhere. I  
24 never found them, I'm sorry.

25 MS. CAMPBELL: I can have her write it out for him

1 real quick. It's in the data, it's just that she didn't  
2 make a conclusion.

3 THE COURT: And the data is that Mr. Martinez is --

4 MS. CAMPBELL: Excluded --

5 THE COURT: -- is excluded.

6 MS. CAMPBELL: And that's been turned over.

7 THE COURT: Well, why don't y'all stipulate to  
8 that. Why don't y'all agree, the State and Mr. Martinez  
9 agree to that and there would be that stipulation that  
10 would be read into the record.

11 You cant to discuss that stipulation legally with  
12 Mr. Kata, Mr. Martinez?

13 MR. MARTINEZ: Yes.

14 THE COURT: All right.

15 (There was a pause in the proceedings.)

16 MR. MARTINEZ: Your Honor, yes, I'd like a  
17 stipulation. I'd also ask, as I said, if I could have a  
18 copy of that form.

19 MS. CAMPBELL: I have no problem turning over my  
20 notes. As long as you understand these are -- these are my  
21 notes. Is that okay?

22 MR. MARTINEZ: Yeah.

23 MS. CAMPBELL: But it's got what you want.

24 MR. MARTINEZ: Okay.

25 MS. CAMPBELL: And, Your Honor, I would not want to



1 just stipulate and just go through it with the DNA analyst.

2 That's all, you want a copy of this?

3 MR. MARTINEZ: Yes.

4 THE COURT: All right.

5 MS. CAMPBELL: Beg the Court's indulgence.

6 (There was a pause in the proceedings.)

7 THE COURT: How many more witnesses does the State  
8 have, Solicitor?

9 MS. CAMPBELL: Four, maybe.

10 THE COURT: Four, maybe? All right.

11 MS. CAMPBELL: Four, Your Honor, I think, if we can  
12 tie some things up with one of them.

13 THE COURT: Okay. Thank you.

14 (There was a pause in the proceedings.)

15 THE COURT: Anything further from the State?

16 MS. CAMPBELL: No, sir.

17 THE COURT: Mr. Martinez, anything from the defense  
18 before we bring in our jury.

19 MR. MARTINEZ: Yes, Your Honor. I was -- I was  
20 wandering if when I present my defense, if I could call the  
21 SLED agent, Mr. Berube and the clerk of court that  
22 testified at our hearing. I wasn't able to put them on the  
23 list because I didn't know about that information.

24 THE COURT: All right. Prepare subpoenas, I'll  
25 have the sheriff contact -- it won't be difficult to

1 contact the clerk and it shouldn't be difficult to contact  
2 the SLED agent and they will probably accept the subpoenas  
3 by fax. So prepare the subpoenas.

4 MR. KATA: Yes, Your Honor.

5 THE COURT: All right. Thank you.

6 All right. Anything further, Mr. Martinez? You  
7 ready for the jury.

8 MR. MARTINEZ: Yes, sir.

9 THE COURT: All right.

10 (The jury entered the courtroom at 2 o'clock p.m.)

11 THE BAILIFF: Jury is seated, Your Honor.

12 THE COURT: Thank you, thank you, Mr. Bailiff.

13 Welcome back, ladies and gentlemen. I hope you all  
14 had a pleasant luncheon recess. I received your note.

15 Thank you, thank you so much for this note. I  
16 don't think I've had a note from the entire jury panel, so  
17 I think I will respond to it the way I respond to group  
18 texts. I don't respond. I understand -- I understand  
19 y'all's concern and was intending to discuss the timing  
20 issue at the end of the day, of course, but obviously, the  
21 State has not yet rested. The State has other witnesses,  
22 perhaps four. We may or may not get to the conclusion of  
23 the State's case today.

24 In the past, I have -- if I see the end in sight  
25 where the next day is Saturday, many times I will give the

1 jury -- allow them to discuss if they want to work Saturday  
2 or come back Monday.

3 I'm not even sure the case will be completed  
4 Monday, so it could go into a period of time, probably at  
5 least more than a day, maybe more than that. I can't  
6 predict beyond Monday. I just don't know. If any of the  
7 jurors have particular issues they need to discuss as to  
8 next week's schedule, I will discuss with you individually.

9 Madame Forelady, at the break, if there are jurors  
10 that have particular issues on the timing for next week,  
11 write down the numbers for me and I will address those on  
12 an individual basis.

13 With that being said, and this is not to make you  
14 feel guilty or box you into a corner in any manner  
15 whatsoever, or to coerce you in any manner, I just say I  
16 need all of you. I need all of you. That's why I get more  
17 than one and sometimes more than two alternates, which I  
18 have done in this case, three. Because you never know what  
19 may come up in a person's personal life during the course  
20 of a trial. You know, just different issues come up from  
21 time to time that a juror has to be excused. At the end of  
22 the day when a case goes to the jury in the criminal  
23 setting, there must be a minimum of twelve jurors. A  
24 minimum. And as deep as we are into the case, of course, I  
25 want to press on.

1           Again, Madame Forelady, any of the jurors want to  
2 talk to me individually about specific timing issues of  
3 next week -- my preference would be not to work tomorrow  
4 for quite a number of reasons. That's not selfish on my  
5 part. As I've told y'all many times, I really don't have a  
6 life outside of the courtroom, so I don't mind working  
7 tomorrow, but I know people have -- y'all have lives and I  
8 would prefer not to work tomorrow. I've worked on Sunday  
9 afternoons. I don't like that. I just don't like that and  
10 we'll just start back Monday:

11           Okay. All right. And I'll address it  
12 individually. This is the first time ever I've ever  
13 responded to a group letter.

14           All right. If y'all would please continue to give  
15 the parties your complete and undivided attention as you  
16 have done throughout the trial of this case.

17           Solicitor, you may call your next witness.

18           MS. CAMPBELL: Thank you, Your Honor. State calls  
19 Rachel Grant.

20           THE COURT: All right. If you would come around  
21 for us and be sworn, please.

22                               RACHEL GRANT,  
23           having been duly sworn, testified as follows:

24           THE CLERK: Please have a seat up there, speak into  
25 the microphone and state your full name for the record.

## Rachel Grant - Direct Examination by Ms. Campbell

1 THE WITNESS: Rachel Grant.

2 DIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q Where are you employed?

5 A I am employed at the Richland County Sheriff's  
6 Department in the DNA laboratory.

7 Q And what do you do in the DNA laboratory?

8 A I am a DNA analyst and also the DNA technical  
9 leader.

10 Q Can you tell this jury a little bit about your  
11 education and training in the field of DNA analysis?

12 A I have a bachelor's degree in biology with an  
13 education minor from Lincoln University. I have a master's  
14 degree in forensic serology and DNA from the University of  
15 Florida. Since I began my career with Richland County,  
16 I've undergone extensive forensic serology and DNA  
17 training. I attend additional continuing education  
18 training yearly and have successfully completed  
19 competencies set forth by the DNA advisory board and the  
20 FBI.

21 Q And is your laboratory accredited in any manner?

22 A Yes, they are.

23 Q Can you tell the jury how they're accredited?

24 A The Richland County Sheriff's Department laboratory  
25 is accredited by ASCLD International.

**Rachel Grant - Direct Examination by Ms. Campbell**

1 Q And what is ASCLD International for those of us  
2 that are not familiar with it?

3 A That is the American Society of Crime Laboratory  
4 Directors, Laboratory Accreditation Board and National.

5 Q And to become accredited, there are some steps you  
6 have to go through?

7 A Yes.

8 Q And are there certain protocols in place to insure  
9 the quality of the results?

10 A Correct.

11 Q Prior to issuing a report in any case; is it  
12 reviewed?

13 A It is reviewed.

14 Q By whom?

15 A By another qualified DNA analyst.

16 Q And have you been received before as an expert in  
17 DNA analysis?

18 A Yes, I have.

19 Q And how many times have you actually been qualified  
20 in court as a DNA expert?

21 A I believe this is number 16.

22 Q 16?

23 A Uh-huh.

24 MS. CAMPBELL: Your Honor, at this time, I'd offer  
25 her as an expert in DNA analysis.

**Rachel Grant - Direct Examination by Ms. Campbell**

1 THE COURT: Mr. Martinez, do you have any questions  
2 of this witness as to her qualifications?

3 MR. MARTINEZ: No, sir.

4 THE COURT: All right. Thank you. Thank you very  
5 much.

6 Again, ladies and gentlemen, normally a person  
7 cannot testify to opinion testimony. Normally when a  
8 person testifies, they must testify as to whatever they  
9 saw, heard, sensed by smell, or some other human -- some  
10 other of our human senses. However, there is an exception  
11 when someone is qualified because of education, training,  
12 experience in a particular art, craft, science, or  
13 profession. If the Court qualifies them that way, they are  
14 permitted to give their opinions in certain areas and the  
15 basis of those opinions.

16 This witness will be qualified in the area of DNA  
17 analysis to give opinions and the basis of those opinions.  
18 That does not mean that you must accept the opinions or the  
19 basis of the opinions, but it is evidence for you, the jury  
20 to use in any way you deem fit and appropriate.

21 Thank you Mr. Martinez.

22 Solicitor, you may continue.

23 MS. CAMPBELL: Thank you, Your Honor.

24 BY MS. CAMPBELL:

25 Q In the DNA lab where you work, typically how do you

## Rachel Grant - Direct Examination by Ms. Campbell

1 get DNA in? In what forms? And then how is it compared to  
2 another standard?

3 A Evidence is brought into the DNA laboratory in many  
4 forms. The most common type of form is a swab where your  
5 crime scene investigators or deputies have taken basically  
6 a clean sterile Q-tip, gotten it moist with distilled water  
7 and taken a swab of that area or of a particular item. We  
8 also receive criminal sexual conduct kits. We receive  
9 clothing, any item that potentially could have biological  
10 material behind. So -- but most typically, it's a swab.

11 Q And I notice you used the words potentially has  
12 biological material left behind. Every time someone comes  
13 in contact with something, are they necessarily going to  
14 leave DNA?

15 A No, not necessarily.

16 Q And what are the factors that are involved in that?

17 A There's several factors that contribute to whether  
18 or not someone leaves their DNA behind on an item. First  
19 of all, body fluids are an excellent source of DNA, so  
20 anything that could have saliva or semen or blood, it's  
21 going to have some DNA profile. Touch DNA is a bit more  
22 challenging. It depends on how the item was touched, how  
23 often it was touched, how many other people have touched  
24 it.

25 In the DNA world there are people that we kind of



**Rachel Grant - Direct Examination by Ms. Campbell**

1 call shedders and those are people with slough epithelial  
2 cells off more readily than others, so if someone's  
3 potentially a shedder, their DNA might be able to be  
4 obtained better than in other individuals.

5 Q So if I'm a shedder and I walk up and touch an item  
6 or handle it, if I'm what you called a shedder, what's that  
7 -- what did you say? Sloughs off?

8 A Yes, sloughs off.

9 Q DNA cells, I might leave DNA here?

10 A Most likely.

11 Q Most likely?

12 A Uh-huh.

13 Q But other people aren't as likely?

14 A Yes, and it -- correct. But also it depends if  
15 that person was maybe sweating or if it's an item that's  
16 touched by several individuals. For example, they can do a  
17 swab from a convenience door handle to get an idea of how  
18 many people touch or come in contact with that particular  
19 item. So those are some of the examples that we deal with.

20 Q In addition, when you test for DNA, can you tell  
21 this jury how long it's been there?

22 A No, we cannot.

23 Q And in doing your DNA analysis also, is it unusual  
24 to get a type of mixture or several people's DNA?

25 A Correct.

## Rachel Grant - Direct Examination by Ms. Campbell

1 Q Whether it be a body fluid or touch DNA?

2 A Correct.

3 Q When we talk about body fluid can get in that  
4 versus touch DNA, is it a different kind of DNA or just a  
5 different way it's deposited?

6 A It's the same type -- it's the same type of DNA,  
7 it's just that one is basically transferred through a body  
8 fluid and one's not.

9 Q Prior to doing any kind of comparison or while  
10 you're doing a comparison, you also need to have something  
11 to compare it to?

12 A We do.

13 Q And typically how is a known standard from a person  
14 collected?

15 A Typically what is taken from an individual is  
16 called a buccal swab. This's just a clean sterile swab  
17 that is inserted into someone's mouth and that swab  
18 collects other allele cells in your saliva and that is the  
19 derivative of the DNA matter for you for analysis.

20 Q Well, before doing any kind of analysis on any  
21 case, do you make sure that items are submitted properly  
22 and packaged properly prior to doing your analysis?

23 A That is correct.

24 Q And is that typically what we call  
25 cross-contamination?

## Rachel Grant - Direct Examination by Ms. Campbell

1 A Correct.

2 Q And in your laboratory itself, are there protocols  
3 you follow to prevent any type of cross-contamination or  
4 degradation of any DNA you may receive?

5 A Correct.

6 Q Let me ask you this, if I walk up and look at an  
7 item that I know's been handled and it gets swabbed, can  
8 you tell just looking at -- before you do your analysis,  
9 can you tell whether or not there's going to be DNA there?

10 A No.

11 Q I want to turn your attention to your Case Number  
12 1403951227. Are you familiar with that case?

13 A I am.

14 Q And did you receive certain known samples or buccal  
15 swabs from certain people in this case?

16 A I did not, but another staff employee in the DNA  
17 laboratory did, our technician.

18 Q And what buccal swabs were received by your  
19 laboratory?

20 A I have a buccal swab from Briona Hurshman.

21 Q Briona Hurshman?

22 A Briona Hurshman.

23 Q Yes.

24 A A buccal swab for L.H.

25 Q Yes.

## Rachel Grant - Direct Examination by Ms. Campbell

1 A A buccal swab from Becky Hurshman -- D.H. , I  
2 apologize. A buccal swab from Robert Hurshman and a buccal  
3 swab from Nathan Martinez.

4 Q And what items of evidence were submitted to you to  
5 be compared to any or all of those buccal swabs?

6 A There was a criminal sexual conduct kit submitted  
7 from Briona Hurshman that contained several items. You  
8 want me to list them?

9 Q Yes.

10 A Okay. One item was her buccal swab, her known  
11 reference sample. Vaginal swabs and slides, rectal swabs  
12 and slides, underwear, a touch DNA swab from the right  
13 breast, a touch DNA swab from the mans pubis, a touch DNA  
14 swab from the right cheek at an abrasion, a touch DNA swab  
15 from the labia majora, and a miscellaneous hair that was  
16 found also in that kit was analyzed.

17 Q Did you receive additional swabs from another --  
18 from other places?

19 A I did.

20 Q What swabs were those?

21 A Item 1 was a swab from a Black and Decker drill;  
22 Item 2 was a swab from a hammer; and Item 3 was a swab from  
23 a cell phone cover; and Item 4 was a swab from a  
24 brown-in-color electrical cord.

25 Q And finally, did you receive one item of clothing?

## Rachel Grant - Direct Examination by Ms. Campbell

1 A Yes. Item 11 was a shirt.

2 Q And did you actually do testing on these items and  
3 compare it to the buccal swabs that you had?

4 A That is correct.

5 Q And did you prepare a report in this case?

6 A I did.

7 Q And you reviewed a chart in this case which is on  
8 State's Exhibit 82, I believe.

9 A Yes, I did.

10 Q Does that summarize your findings in this case?

11 A Yes.

12 Q And would this be helpful in presenting evidence to  
13 the jury?

14 A Yes.

15 MS. CAMPBELL: Your Honor, at this time I'd offer  
16 State's Exhibit Number 82.

17 (Showing the exhibit to Mr. Martinez.)

18 MR. MARTINEZ: I'd object, Your Honor. This has  
19 new information that they just barely recently added it.  
20 It wasn't on the original DNA information that they gave to  
21 me originally.

22 THE COURT: All right. Solicitor, can you have Mr.  
23 Martinez show you what he is referring to so I can  
24 thereafter look at it.

25 (Mr. Martinez is showing the portions to the

## Rachel Grant - Direct Examination by Ms. Campbell

1 solicitor.)

2 MS. CAMPBELL: Okay, Your Honor.

3 THE COURT: All right. Are you familiar with where  
4 he -- where Mr. Martinez has pointed it out, Solicitor?

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: All right. If you'd bring it over here  
7 and show it to me and the same way where Mr. Martinez can  
8 view it also.

9 (The Court was looking at the exhibit.)

10 THE COURT: All right. Mr. Martinez, can you see  
11 the solicitor?

12 MR. MARTINEZ: Yes, sir.

13 THE COURT: All right. Is she pointing to where  
14 you pointed.

15 MR. MARTINEZ: Yes, sir.

16 THE COURT: All right. So are there are others  
17 besides this?

18 Did you -- are there others besides this that you  
19 pointed to.

20 MR. MARTINEZ: No, sir.

21 THE COURT: So does it go all the way back here or  
22 just this -- these one, two, three lines and two words.

23 MR. MARTINEZ: Yeah, just right there in that area.

24 THE COURT: All right. And your objections, Mr.  
25 Martinez, are that it was -- the information was not

## Rachel Grant - Direct Examination by Ms. Campbell

1 provided to you until recently.

2 MR. MARTINEZ: It was provided to me today.

3 THE COURT: Well, that -- earlier today, which that  
4 is recent, correct?

5 MR. MARTINEZ: Yes, sir.

6 THE COURT: All right. Solicitor, was that -- when  
7 was that testing performed.

8 MS. CAMPBELL: The testing -- can I ask the  
9 witness?

10 THE COURT: As far as the objectionable  
11 information, when that was performed.

12 MS. CAMPBELL: The original testing was done in  
13 2014, and then there was additional statistical analysis  
14 done this week and it was provided to Mr. Martinez at his  
15 request.

16 THE COURT: And why is that span of time.

17 MS. CAMPBELL: Why is it -- I'm sorry?

18 THE COURT: Yeah, why is there a span of time from  
19 2014 to now.

20 MS. CAMPBELL: There was an additional program that  
21 they've gotten into the laboratory that can be run in  
22 addition to the one that was run at the time and we just  
23 ran the additional program.

24 THE COURT: And that was just ran.

25 MS. CAMPBELL: It was just run.

## Rachel Grant - Direct Examination by Ms. Campbell

1 THE COURT: All right. Mr. Martinez.

2 MR. MARTINEZ: Yeah, it wasn't at my request. I  
3 never requested it. They asked me if I wanted them to  
4 rerun it because I told the jury that it wasn't my DNA and  
5 I supplied them with my DNA expert's analysis so they came  
6 to me and asked me, and I brought this to the Court and we  
7 had the issue with Mr. Kata and them wanting to retest the  
8 -- they came and asked me and I was like why -- why would  
9 you guys want to retest it when you've already tested. I  
10 never agreed to it, never wanted it.

11 THE COURT: I will allow it under South Carolina  
12 Rules of Criminal Procedure, Rule 5(C).

13 All right. Thank you. You may continue,  
14 Solicitor.

15 MS. CAMPBELL: Thank you, Your Honor.

16 Your Honor, may the witness step down?

17 THE COURT: Yes, ma'am.

18 BY MS. CAMPBELL:

19 Q Now, if you'll come over on this side where  
20 everybody can see it.

21 According to this chart, starting at the top, what  
22 are the first five entries on the left? What are those  
23 items?

24 A Those are the buccal swabs or known references,  
25 reference standards from individuals.



## Rachel Grant - Direct Examination by Ms. Campbell

1 Q And are those the items that you're actually making  
2 the comparisons to?

3 A That is correct, yes.

4 Q And taking the items, they have numbers next to  
5 them. Do these numbers mean anything to you or is that  
6 just how you log them?

7 A Those are the item numbers they were assigned to in  
8 the case.

9 Q Then that would be assigned by whom?

10 A Just our case management program when they're  
11 logged in.

12 Q To the evidence room?

13 A To the evidence room.

14 Q Prior to getting to you?

15 A Correct.

16 Q And the first item that you received that you did  
17 any comparisons to was what?

18 A Item 1.

19 Q And in this first column -- let me go through  
20 these, I forgot to do this. This column says item  
21 submitted?

22 A Yes.

23 Q And what is this column?

24 A Serology.

25 Q And in a case such as a sexual assault case such as

## Rachel Grant - Direct Examination by Ms. Campbell

1 this, what type of serology are you looking for?

2 A So serology is the identification of body fluids.  
3 So in the laboratory we're screening for blood and seminal  
4 fluid, so if there's anything in this particular column, it  
5 means that we did some preliminary screening on the front  
6 end.

7 Q And you get a little bit of history about a case  
8 prior so you know kind of what you're looking for?

9 A Yes.

10 Q Okay. And the next column it says, it just says  
11 DNA extracted?

12 A Yes, that's correct.

13 Q And what does that mean?

14 A So the first step in our analysis process is called  
15 extraction. And what we're trying to do is get any DNA  
16 that's present purified, in the purified form and we're  
17 trying to extract it from the rest of the cell. So if it  
18 says yes in this column, that means we were successful in  
19 getting DNA extracted from that sample.

20 Q And if it says no in this column, would you go any  
21 further or could you do any additional testing?

22 A At this point, we do not move onto the next step if  
23 there's no DNA extracted.

24 Q Because there's no DNA to be tested?

25 A Correct.

## Rachel Grant - Direct Examination by Ms. Campbell

1 Q Okay. And in this first column too under serology,  
2 under two of these it says nothing of serological value?

3 A Correct.

4 Q And what were you looking for there?

5 A In those particular items, I believe we're looking  
6 for seminal fluid. And we do that with a screening and if  
7 that screen is negative, there's nothing of serological  
8 value that we're going to move on for DNA testing.

9 Q Okay. Taking the first item, which is Item Number  
10 1, which is what item?

11 A It's a swab from a Black and Decker drill.

12 Q Uh-huh. And did you do any serology testing on  
13 that one?

14 A No.

15 Q But did you extract any DNA?

16 A Yes.

17 Q And what were the results when you looked at that  
18 DNA extraction?

19 A It was a mixture of two individuals and Nathan  
20 Martinez is excluded from that mixture; however, Briona and  
21 Robert Hurshman could not be excluded.

22 Q So Briona and Robert Hurshman's DNA were both  
23 present in that two person mixture?

24 A Yes, they could not be excluded.

25 Q And again, can you tell this jury how long their

## Rachel Grant - Direct Examination by Ms. Campbell

- 1 DNA had been there?
- 2 A I cannot, no.
- 3 Q Moving onto Item Number 2, which is swab from
- 4 hammer?
- 5 A Yes.
- 6 Q Were you able to extract any DNA from that?
- 7 A Yes.
- 8 Q What were your results?
- 9 A No DNA result for that item.
- 10 Q What does that mean?
- 11 A So the first step is extraction, the second step,
- 12 which allows us to zero in on DNA is there, it's called
- 13 plantation. It gives us an actual numerical value. After
- 14 that if we get anything, we'll put it into what's called
- 15 amplification, which is simply making copies and copies and
- 16 copies of the DNA fragments that we're looking at.
- 17 However, just because I extract DNA and because there even
- 18 may be a block value, does not mean that I'll necessary get
- 19 a DNA profile at the end. So in this particular sample, I
- 20 was able to extract DNA, but there wasn't enough there to
- 21 get a DNA result or profile.
- 22 Q Moving onto Item Number 3, which is what item?
- 23 A Swab from a cell phone, front cover.
- 24 Q And did you do any serological tests on that?
- 25 A No.

**Rachel Grant - Direct Examination by Ms. Campbell**

1 Q So in this, you're extracting DNA from that swab?

2 A That is correct.

3 Q And you were able to get any DNA?

4 A I was.

5 Q And what were the results?

6 A It was a mixture of three individuals. So in DNA  
7 analysis when we have a mixture, which is just meaning that  
8 there's two or more people present, the type of statistic  
9 that we can do, there's actually several different types  
10 and in this particular example, there are two mixtures that  
11 I calculated.

12 Nathan Martinez cannot be excluded from this  
13 mixture. Based on the probability of exclusion, excluding  
14 99.999 percent of Hispanics, Caucasian, and African  
15 American population. So --

16 Q And at our request was there additional programs  
17 that were -- that came to your lab since this was  
18 originally run?

19 A That's correct.

20 Q Does it change the match in any way?

21 A It's just a different type of mixture statistic.  
22 It's actually --

23 Q It's a statistic?

24 A Yes, it's actually better. So in 2014, the initial  
25 report was generated. Since then probabilistic genotypes,

## Rachel Grant - Direct Examination by Ms. Campbell

1 which is kind of where DNA forensic labs are moving to help  
2 mixture convolution, and so we got this program after that  
3 first initial report and so that way I was able to go back  
4 and do a new statistical analysis on the same evidence.

5 Q And again, could Nathan Martinez be excluded?

6 A No, he could not.

7 Q And when you say -- there are a lot of negatives  
8 here. These were included versus exclusion. When you say  
9 he cannot be excluded, does that mean that his DNA profile,  
10 in this partial DNA profile, was present?

11 A Correct.

12 Q So it matches?

13 A His alleles are present.

14 Q His alleles are present. And explain to the jury  
15 what the alleles are and what you're looking for?

16 A So alleles are just basically different forms of a  
17 gene, which gene -- your DNA is a long molecular molecule  
18 that comes from our development. So these genes have  
19 different forms. You get half from mom and half from dad.  
20 And everyone is unique except for -- with the exception of  
21 identical twins.

22 Q So the alleles from his DNA was present and you  
23 determined that his DNA cannot be excluded; is that kind of  
24 a term of art y'all use?

25 A Yes.

## Rachel Grant - Direct Examination by Ms. Campbell

- 1 Q So his alleles are there?
- 2 A Correct.
- 3 Q And your original statistical included -- excluded
- 4 what percent of the population?
- 5 A 99.999 percent.
- 6 Q Of both the Hispanic, Caucasian --
- 7 A Caucasian and African American populations.
- 8 Q And then were you able to run it again with another
- 9 statistic?
- 10 A Correct. So the second statistic is more like a
- 11 ratio and basically it does -- it's a mixture of modeling
- 12 that the statistic that came up for this one is that Nathan
- 13 Martinez is 344 trillion times more likely to be in this
- 14 mixture than a friend or unrelated individual.
- 15 Q 344 trillion times likely to be him than another
- 16 individual?
- 17 A To be included in this mixture.
- 18 Q And how many people are even on earth?
- 19 A I believe it would 7.8 billion.
- 20 Q And is trillion more than billion?
- 21 A It is.
- 22 Q Significantly more than a billion?
- 23 A Yes.
- 24 Q And in your opinion is that a significant finding?
- 25 A It is.

## Rachel Grant - Direct Examination by Ms. Campbell

1 Q Even the 99.999 percent exclusion is significant?

2 A It is.

3 Q And those are his alleles?

4 A Yes, he cannot be excluded.

5 Q And that's from the --

6 A Cell phone.

7 Q Moving onto the next item, Item Number 4. What  
8 were you able to find there?

9 A It's a swab from an brown electrical cord.

10 Q And were you able to extract DNA?

11 A Yes.

12 Q And what were your conclusions?

13 A There was a mixture of two individuals. The major  
14 contributor was Briona Hurshman and the minor contributor  
15 is too weak for match purposes.

16 Q And when you say again too weak for match purposes,  
17 does that not mean that there's another individual's there?

18 A There is. I can see it, but in our laboratory, we  
19 have certain thresholds in order for us to use for match  
20 purposes and it was just too weak.

21 Q So to be fair, you can't use it?

22 A Correct.

23 Q Item Number 9, you mentioned that you were  
24 submitted a criminal sexual conduct kit?

25 A That's correct.



**Rachel Grant - Direct Examination by Ms. Campbell**

1 Q And the first item that you tested was what?

2 A It was a vaginal swab.

3 Q And did you do any serological testing on that?

4 A We did.

5 Q And what were your findings there?

6 A It was positive for seminal fluid. And then in  
7 conjunction with that, there were vaginal slides that were  
8 submitted. We look under those under a microscope to look  
9 for the presence of sperm, spermatozoa and in this  
10 particular swab there was no spermatozoa present.

11 Q And the seminal fluid itself, does it have DNA that  
12 can be tested? Or is it the spermatozoa?

13 A It's the spermatozoa that is the holder of the DNA.

14 Q So there was no spermatozoa that could be tested?

15 A No.

16 Q And -- but you were able to extract DNA?

17 A Yes.

18 Q And whose DNA was that?

19 A It was Briona Hurshman.

20 Q And is it unusual from a vaginal swab from a victim  
21 to get a victim's DNA?

22 A It is not. Items that come off the individual  
23 themselves, we call these incident sample. So basically a  
24 vaginal swab, a rectal swab, fingernail scrapings, we  
25 expect to see that person's DNA on that particular sample

## Rachel Grant - Direct Examination by Ms. Campbell

1 because it came off of them.

2 Q Moving onto the next item in the criminal sexual  
3 conduct kit, which is the swab from the right breast.

4 A Yes.

5 Q Did you do any swabs on that?

6 A No.

7 Q But were you able to extract DNA?

8 A We were.

9 Q And what's that first line mean?

10 A So last Y STR strand, Y STR profile too weak for  
11 match purposes. So in the laboratory, we do autosomal  
12 Y STR analysis which means kind of the plain Jane nuclear  
13 DNA analysis. We also have capabilities that are male  
14 specific, it's called Y STR's and that's the only locations  
15 on Y chromosomes. So if we have a sample that we feel it  
16 might have enough male there, enough minor, then we'll try  
17 to find Y STR's on it. In this particular case I did and  
18 -- however, that Y STR profile was too weak for us  
19 exam-wise.

20 Q So the Y STR is specific to who -- to what?

21 A To male only.

22 Q To male?

23 A Yes.

24 Q And there was a Y STR strand there?

25 A Yes, but it was too weak for my purposes.

## Rachel Grant - Direct Examination by Ms. Campbell

1 Q And again to be fair to everyone, you can't use it  
2 for any type of comparison?

3 A That's correct.

4 Q What did you find from the actual swab itself?

5 A So using the autosomal STR analysis, it was a  
6 mixture of two individuals. The major was Briona Hurshman  
7 and then the minor contributor was too weak for match  
8 purposes.

9 Q Which would be consistent with your Y STR strand  
10 being too weak as well?

11 A Correct.

12 Q So the male was too weak to use for match purposes?

13 A Correct.

14 Q What's the next item that was tested?

15 A A swab from mans pubis.

16 Q Uh-huh.

17 A No serology done. We extracted DNA. It was a  
18 mixture of at least two individuals and Nathan Martinez is  
19 excluded.

20 Q But you were able to determine whose that was?

21 A Yes, Briona and Robert Hurshman could not be  
22 excluded from that -- from that mixture.

23 Q And this is kind of embarrassing question, but if a  
24 person has had consensual sex with their partner, their  
25 husband like in the day before, would that DNA still be

## Rachel Grant - Direct Examination by Ms. Campbell

1 present in some cases?

2 A Yeah, probably, yes.

3 Q Moving onto the next item?

4 A Swab from right cheek abrasion. So no serology was  
5 done, no DNA extracted so we didn't go any further in the  
6 process.

7 Q Moving onto the next item?

8 A Swab from labia majora. So no serology was done.  
9 DNA was extracted. It was a mixture of two individuals.  
10 Briona Hurshman is the major contributor, but the minor is  
11 too weak for match purposes.

12 Q And again to be fair, it's too weak for match  
13 purposes?

14 A That's correct.

15 Q And finally moving onto -- were there some  
16 underwear submitted?

17 A There was a pair of underwear submitted, correct.

18 Q And were you able to test it for serology?

19 A We were able to screen it and nothing of  
20 serological value was evident so at that point, we don't  
21 move on with it.

22 Q Moving onto the final item in that kit, which was a  
23 miscellaneous hair?

24 A That's correct.

25 Q Were you able to do any serology on that?

**Rachel Grant - Direct Examination by Ms. Campbell**

1 A No. We did extract DNA from the root and the DNA  
2 matches Briona Hurshman.

3 Q And the final item that was submitted, which is a  
4 shirt?

5 A A shirt.

6 Q And did you test it as well?

7 A Yes, we looked at it and nothing of serological  
8 value was evidenced. At that point we didn't pursue  
9 process.

10 Q And that was the extent of your findings as far as  
11 what was tested in this case?

12 A Yes, ma'am.

13 (The witness returned to the stand.)

14 BY MS. CAMPBELL:

15 Q When you reran -- when you reran the statistical  
16 analysis you were referring to, did you have to rerun the  
17 entire DNA analysis?

18 A No.

19 Q So the testing never changed?

20 A Correct.

21 Q Just statistical analysis is a more modern, I  
22 guess, way of doing it?

23 A That's correct, yes.

24 Q Any time I say something wrong, correct me.

25 I want to just go back to Item Number 3, the swab

## Rachel Grant - Direct Examination by Ms. Campbell

1 from the cell phone cover. In your opinion, is Nathan  
2 Martinez's DNA on that phone?

3 A Yes, it is.

4 Q Did you also have some items from a separate case?

5 MS. CAMPBELL: Your Honor, may I inquire if he  
6 wants me to do this?

7 THE COURT: Yes.

8 MS. CAMPBELL: You want me to go into this?

9 MR. MARTINEZ: Yes.

10 MS. CAMPBELL: You request that?

11 MR. MARTINEZ: Yes.

12 MS. CAMPBELL: Okay.

13 BY MS. CAMPBELL:

14 Q Did you also receive some items in a separate case?

15 A I did.

16 Q And in that case, did you receive known buccal  
17 swabs from certain people?

18 A I did. Elexia Tucker and Christopher Tucker.

19 Q And did you also compare it to an additional swab  
20 or have an additional swab for comparison?

21 A I did.

22 Q And whose is that?

23 A A buccal swab from Nathan Martinez.

24 Q And specifically what items did you receive in this  
25 case?

## Rachel Grant - Direct Examination by Ms. Campbell

1 A I received an item -- Item Number 3, swab from door  
2 handle to the second floor bedroom.

3 Q Okay.

4 A Item 4, swab from interior front driver's seat door  
5 handle; Item 5, swab from door handles to rear door.

6 Q Uh-huh.

7 A Item 6, swab from steering wheel; Item 7, swab from  
8 shifter knob; and Item 8, swab from interior front  
9 passenger seat door handle.

10 Q And do you know from your own personal knowledge  
11 when those swabs were collected that you compared to the  
12 buccal swabs?

13 A I do not.

14 Q That's not information you do, that would be  
15 somebody else?

16 A Correct.

17 Q But these items were submitted to you for possible  
18 testing?

19 A That's correct.

20 Q And taking them one at the time on Item Number 3,  
21 the swab from the door handle on the door handle on the  
22 second floor bedroom, were you able to get -- to extract  
23 DNA in that case?

24 A I was.

25 Q And were you able to get any results?

## Rachel Grant - Direct Examination by Ms. Campbell

1 A Item 3 was a mixture and Nathan Martinez is  
2 excluded.

3 Q And were you able to include either Elexia Tucker  
4 or Christopher Tucker?

5 A Yes, Elexia Tucker is excluded. Christopher  
6 Tucker's buccal swab standard did not amplify very well.  
7 Because these items were from victim's belongings, it's not  
8 -- sometimes in our policy, we do not go back when it's not  
9 particularly probative to the case. So in this particular  
10 instance I did not go back and amplify Christopher Tucker's  
11 buccal swab, so I don't know his genotype.

12 Q Okay. So you weren't able to use his sample?

13 A Correct.

14 Q Okay. Let's go forward. And Item Number 4, the  
15 swab from the interior front seat driver's -- front  
16 driver's seat door handle, I'm sorry. Were you able to  
17 extract DNA?

18 A I -- I was, yes.

19 Q And then were you able to develop a DNA profile?

20 A I was not. No DNA profile was developed from Item  
21 4.

22 Q Moving on the Item Number 5 from the handle on the  
23 rear door, were you able to extract DNA?

24 A I was.

25 Q Were you -- what was the result of your testing as



## Rachel Grant - Direct Examination by Ms. Campbell

- 1 far as a DNA profile?
- 2 A No profile -- no DNA profile was developed from
- 3 Item 5.
- 4 Q Item Number 6, the swab from the steering wheel.
- 5 A Yes.
- 6 Q And again, was DNA able to be extracted?
- 7 A Correct.
- 8 Q And were you able to --
- 9 A Yes, it was a mixture. Tucker -- Elexia Tucker is
- 10 included in that mixture.
- 11 Q And again you weren't able to compare it to the
- 12 father?
- 13 A Correct.
- 14 Q Items -- one more. Swab from the shifter knob,
- 15 were you able to extract DNA from that?
- 16 A Item 7, yes.
- 17 Q And what were your conclusions?
- 18 A That was a mixture. Nathan Martinez is excluded
- 19 and Elexia Tucker is included in that mixture.
- 20 Q Her DNA is included?
- 21 A Correct.
- 22 Q And finally Item Number 8.
- 23 A It was also a mixture Nathan Martinez is excluded
- 24 and Elexia Tucker is included.
- 25 Q And again you don't know what these swabs are for?

**Rachel Grant - Cross-Examination by Mr. Martinez**

1 A That's correct.

2 Q Okay. One thing I skipped over, did you also get  
3 submitted some rectal swabs in this case?

4 A In this, the Tucker case?

5 Q I'm going back to the other case, I apologize  
6 because I jumped.

7 A Okay. Yes, there were.

8 Q And did you do any serological testing on that?

9 A I did.

10 Q And what were the results?

11 A Those were negative for seminal fluid and then  
12 after looking at the slides, they were negative for  
13 spermatozoa on the slides.

14 Q So you didn't do any further testing?

15 A That's correct.

16 Q Okay. Thank you, I have no further questions.

17 THE COURT: Thank you, Solicitor.

18 Mr. Martinez.

19 MR. MARTINEZ: Yes.

20 **CROSS-EXAMINATION**

21 **BY MR. MARTINEZ:**

22 Q Ms. Grant, what is nonprobative evidence, no  
23 statistical analysis formed?

24 A I'm sorry, nonprobative?

25 Q Yeah.

**Rachel Grant - Cross-Examination by Mr. Martinez**

1 A So basically what that means is like I explained  
2 before, if it's an intimate sample or the DNA has come from  
3 a swab that belongs to a particular individual, it's not  
4 uncommon to find that person's DNA there, so if it's likely  
5 that that person's individual profile is there and we see  
6 that, that means we don't have to do a statistical analysis  
7 to back that.

8 Q So are all these other ones it says like -- the  
9 same wording, they can't be excluded and then it has that  
10 little asterisk by it and then it goes to nonprobative  
11 evidence?

12 A That's correct.

13 Q How come there's no statistical analysis for that?

14 A Because those items belong to those individuals.  
15 So it's not uncommon -- we're not surprised to see their  
16 DNA on those particular items.

17 Q So how hard is it to pull, to determine the DNA  
18 from a mixture of three individuals?

19 A So, basically what we do, depending on the type of  
20 mixture that it is, there are discernible mixture or  
21 distinguishable mixtures and indistinguishable so depending  
22 on the type of mixture it is, we'll sit down and do an  
23 interpretation beforehand of the contributors in that  
24 mixture and then once a referenced standard is submitted  
25 then we can interpret that to see whether or not someone's

**Rachel Grant - Cross-Examination by Mr. Martinez**

1 included or excluded from that mixture.

2 Q When you have a mixture of three or more  
3 individuals, how hard is it to read the alleles?

4 A It's not very difficult. We take several things  
5 into account. We look at -- like I said whether it's  
6 distinguishable or not, we look at -- we interpret the  
7 profile as a whole. We can also tell different intensities  
8 of contributors in there. We can tell if a sample is more  
9 degraded than others, but that's just common practice and  
10 that's just kind of what we do in DNA.

11 Q When there's three or more people in there, in a  
12 mixture, doesn't the alleles tend to drop out?

13 A Not -- not necessarily. It depends on the  
14 intensity of that mixture. If it is kind of a weak mixture  
15 and certain things fall between certain thresholds we have  
16 in the laboratory, then yes, it's possible to have a little  
17 drop out, but if you have alleles that are above those  
18 thresholds then, you know, for example, in a three person  
19 mixture, it's not that difficult being as they're not a lot  
20 of competition in the tube, but, you know, that's something  
21 that we typically -- we do.

22 Q If you -- if you have a mixture of three  
23 individuals and there's missing -- you have to have all the  
24 alleles in there, alillies is it alillies?

25 A Alleles.

**Rachel Grant - Cross-Examination by Mr. Martinez**

1 Q Alleles. You have to have all the alleles in there  
2 in order to read each individual's -- each individual's  
3 DNA; is that correct?

4 A I'm not sure I follow your question.

5 Q With a mixture, all the DNA is intermixed together;  
6 is that correct?

7 A That is correct. You can have what's called allele  
8 sharing, so if I share a particular allele that's common to  
9 the population with someone else at this location, you kind  
10 of have those that are shared and they kind of overlap.  
11 But through training and experience we're able to kind of  
12 determine contributors and mixture weights and also that's  
13 where that known standard comes in to help us determine  
14 whether or not someone's included or excluded.

15 Q And does it make it even harder with the -- you  
16 said you tested if there's five -- four individuals that  
17 are closely related and they share the same type of DNA, so  
18 would that make it hard to distinguish from that mixture of  
19 DNA who's who and which is which?

20 A That is correct. So, you get half of DNA from mom,  
21 half from dad. So if you have relatives all in one  
22 particular sample, it is -- it can become difficult to  
23 determine who is actually the contributor of those alleles  
24 because they're sharing it all. You get one allele from  
25 mom and one from dad, so children are clearly going to have

## Rachel Grant - Cross-Examination by Mr. Martinez

1 the same alleles as their parents, so that can be  
2 difficult.

3 Q What's a -- sto -- stochastic threshold?

4 A Stochastic threshold?

5 Q Yeah.

6 A So, in the laboratory, we have a stachastical  
7 range, basically is -- and we also have what's called an  
8 analytical threshold, so in the lab when we generate data  
9 and we analyze that data our analytical threshold is kind  
10 of where we draw the line. Anything below this line we're  
11 not really going to look below. Our stochastic threshold  
12 is a little bit higher than that. Anything between those  
13 -- that analytic threshold and that stochastic threshold I  
14 told you about is a stochastic range and in that area it's  
15 not uncommon to see allele dropout just because it's not as  
16 intense in the -- in the chemistry.

17 Q So when there's that type of dropout -- is that  
18 type of -- did you do that type of test on this DNA?

19 A That's on every item -- every item that we do.

20 Q So it's saying that with that, it's completely  
21 inadequate for a mixture because -- is that true?

22 A No. So, if we were to look at a particular  
23 location in your data and everything is above that  
24 stochastic threshold, then based on our validation studies  
25 and things done in the laboratory, we can feel confident

**Rachel Grant - Cross-Examination by Mr. Martinez**

1 that allele dropout has not occur ed.

2 So in those loci that we feel like dropout has  
3 occurred, we don't use those for statistics. So we are  
4 only using the areas that we feel confident that allele  
5 dropout has not occurred for a stat.

6 Q Is it true that your data and all that stuff should  
7 be -- the compilations that you used before, the 99 percent  
8 and all the ethnicity's, is it true that that should not  
9 have been used in that type of validation?

10 A No, it's appropriate to use for that. Because at  
11 that particular time, that was the best appropriate  
12 statistic for us to use.

13 Q You stated that there was another DNA present that  
14 wasn't from -- when you talked to Ms. -- the State, you  
15 said there was another DNA present that you didn't test?

16 A In what particular sample?

17 Q It was -- I can't -- I would need to look at the  
18 paper that you did -- when you went over that --

19 THE COURT: What paper do you need to look at Mr.  
20 Martinez?

21 MR. MARTINEZ: I think it's --

22 THE COURT: Well, what exhibit? 82?

23 MR. MARTINEZ: Yes, sir.

24 THE COURT: You may get it, Mr. Kata.

25 Is there some way you can set it up for the jury to

## Rachel Grant - Cross-Examination by Mr. Martinez

1 see it and Mr. Martinez?

2 (A sheriff's deputy was setting the chart up.)

3 THE OFFICER: Can you see it, ma'am?

4 THE WITNESS: Not really.

5 (A sheriff's deputy was moving the demonstrative  
6 for the witness.)

7 THE COURT: You may step down -- well, there's a  
8 microphone there.

9 MR. MARTINEZ: Which one's the --

10 THE COURT: Wait just a minute, Mr. Martinez let  
11 the witness come up to see.

12 BY MR. MARTINEZ:

13 Q The labia majora?

14 A Yes, the minor contributor's too weak for match  
15 purposes.

16 THE COURT REPORTER: I can't --

17 THE COURT: Speak up for us a little bit for us,  
18 please.

19 BY MR. MARTINEZ:

20 Q Is it true that there was 12 and 19 alillies in  
21 there?

22 A That's correct.

23 Q And that would be inconsistent with any of the  
24 people that you tested?

25 A That's correct.



**Rachel Grant - Cross-Examination by Mr. Martinez**

1 Q So that would mean that there could be one or two  
2 more possible contributors to that DNA?

3 A Well, the minor for that was too weak for match  
4 purposes, but we interpret the DNA as a whole, so we take  
5 that into account. So, yeah, it was just too weak for  
6 matching purposes.

7 Q Okay. And why did you -- why did you rerun the  
8 test?

9 A So, like I mentioned, the report was generated in  
10 2014 using this one particular statistic that -- that we  
11 currently used during that time that was appropriate for  
12 that time. Well, there have been advances and as  
13 statistics, DNA analysts and since then we have put on  
14 board probabilistic genotyping, and so that being a more  
15 appropriate statistic for that type of mixture, that's why  
16 we went back and reran it.

17 Q And when did you rerun it?

18 A I believe I started my analysis on Wednesday, on  
19 Wednesday.

20 Q All right. And you provided all this information  
21 that you had to somebody else; is that correct? For it --  
22 I think the State and they forwarded it to my lawyer; is  
23 that correct?

24 A What do you mean, everything else?

25 Q All of the notes that you used, like everything

**Rachel Grant - Redirect Examination by Ms. Campbell**

1 that you turned over -- your testing those that you -- that  
2 you --

3 A That's correct, yes.

4 Q Okay. I'm done with that.

5 (The witness returned to the stand.)

6 BY MR. MARTINEZ:

7 Q In the other case, in Elexia Tucker case, did you  
8 test her clothing?

9 A No, I did not.

10 MR. MARTINEZ: Nothing, further, Your Honor.

11 THE COURT: Thank you, Mr. Martinez.

12 Redirect, Solicitor.

13 MS. CAMPBELL: Yes.

14 **REDIRECT EXAMINATION**

15 BY MS. CAMPBELL:

16 Q You mentioned, he asked you questions just bit ago  
17 about how a person gets their DNA?

18 A I'm sorry, repeat that.

19 Q He asked you how a person gets their DNA from their  
20 mother and their father?

21 A Yes.

22 Q And in this case on Item Number 3, which is the  
23 cell phone cover, you did -- you were able to determine  
24 that Mr. Martinez's DNA was present?

25 A That's correct.

## Rachel Grant - Redirect Examination by Ms. Campbell

1 Q And as far as you know, is he related to either of  
2 the Hurshman's?

3 A As far as I know, no.

4 Q However, were you able to make any determinations  
5 as to the other two contributors of the mixture?

6 A I was not able to make a clear distinction.

7 Q Why not?

8 A Because I had the reference standards from, I  
9 believe, four individuals that were related. There was so  
10 much allele sharing going on that I could not make a  
11 definitive call who was contributing those alleles.

12 Q And even when a person is related, say a brother,  
13 sister, mother, daughter, son, that type of thing, are each  
14 person's -- is their DNA still unique?

15 A It is. Everyone has unique, correct.

16 Q But it's -- they get half from their mother and  
17 half from their father?

18 A That is correct.

19 Q So typically with a father, mother, and two  
20 daughters, you would expect to see alleles shared?

21 A That's correct, yes.

22 Q And that's why you weren't able to make any  
23 determinations as to the other contributors?

24 A That's right.

25 Q Thank you.

**Rachel Grant - Recross-Examination by Mr. Martinez**

1 MS. CAMPBELL: Your Honor, I have nothing further.

2 THE COURT: Mr. Martinez?

3 **RECROSS EXAMINATION**

4 **BY MR. MARTINEZ:**

5 Q So you're saying that they shared all the alleles?  
6 You just said they shared all the alleles you couldn't get  
7 a read off of them?

8 A No, the minor contributors.

9 Q There's three contributors, right?

10 A That the correct.

11 Q So wouldn't they all start sharing alleles?

12 A Not all of them. They -- the alleles that are  
13 present for those minor contributors -- our job is to kind  
14 of go in and try to extrapolate who potentially contributed  
15 those alleles, but if I have alleles that are not related  
16 to anybody in the family then that person clearly is -- I  
17 can make a distinction because I'm not sharing alleles with  
18 anybody else. So by having references from four individual  
19 family members, I could kind of see what mom and dad should  
20 have given to children and at that point I can make a call.  
21 But I can also recognize alleles that aren't in that family  
22 tree as well.

23 Q So you're saying that you can do what a lot of DNA  
24 experts cannot do, like extracting a mixture of three  
25 individuals?

**Rachel Grant - Recross-Examination by Mr. Martinez**

1 A I'm not sure I follow your question.

2 Q You -- it's -- it's -- it's -- hold on?

3 MR. MARTINEZ: Beg the Court's indulgence.

4 THE COURT: Yes, sir, of course.

5 (There was a pause in the proceedings.)

6 BY MR. MARTINEZ:

7 Q Are you aware of the forensic science in criminal  
8 courts insuring validity of future --

9 THE COURT: When you read just -- not only for my  
10 court reporter, but for the jury, when you read, just read  
11 slowly and keep your voice up, Mr. Martinez.

12 MR. MARTINEZ: All right. I'm sorry.

13 THE COURT: Thank you. Thank you very much.

14 BY MR. MARTINEZ:

15 Q Forensic science in criminal courts assuring  
16 scientific validity of future comparison methods?

17 A Yes.

18 Q So if I told you that the president -- something  
19 the president used all counsel of science and technology?

20 A Yes.

21 Q And do you agree with them that it's hard to  
22 extract the alleles out of a mixture of three --

23 (There was a sound in the courtroom.)

24 THE COURT: That was my chair. I have been using  
25 this -- it's getting lower on me.

## Rachel Grant - Recross-Examination by Mr. Martinez

1 BY MR. MARTINEZ:

2 Q That it's hard to extract specific DNA's from a  
3 mixture of three or more, it doesn't matter if family or  
4 not because of the alleles dropout and they tend to mix?

5 A If we have standards and -- to compare to our  
6 evidence, that is kind of what DNA analysts do. Now, the  
7 statistical analysis is a whole different component of that  
8 interpretation, but mixture interpretation is what we're  
9 thoroughly trained in and that's what we get our continuing  
10 ed in. So it's not -- especially if you have, say a major  
11 contributor or distinguishable alleles, it's based on  
12 training, it is possible to interpret three or four  
13 contributor mixtures.

14 Q When there's a mixture, are all the locus present  
15 at each allele?

16 A I'm sorry, can you repeat that question?

17 Q Okay. In order to have a DNA -- in other words it  
18 has -- it goes back in alillies, right? And then it has --  
19 you have to have each -- like, I'm not -- sort of each name  
20 of each individual -- there's a name for each little thing  
21 and they all have to connect. I mean, it's like a chain  
22 that keeps going and they all have to connect in order for  
23 you to be able to read it; is that correct?

24 A We're only looking at small fragments of the entire  
25 molecule; for analysis.

**Rachel Grant - Recross-Examination by Mr. Martinez**

1 Q But when you read it, it follows like a pattern,  
2 like in your shocks, when you shock, it follows a pattern  
3 that -- that's how you read it?

4 A Well, we aren't looking at sequencing, patterns,  
5 we're looking at fragment length for this type of analysis.

6 Q So each individual would be different, though; is  
7 this correct?

8 A That is correct. With the exception of identical  
9 twins.

10 Q Yeah, that's true.

11 So you don't believe that with a complex -- you  
12 don't agree -- would you agree that with a complex mixture  
13 of three or -- of three people especially containing family  
14 relations so closely together that, that it would have to  
15 be -- that the sample would have to be deemed inconclusive?

16 A Not necessarily. So like I said, we have several  
17 guidelines in the laboratory to allow us to use, not only  
18 for interpretation for statistical application. So those  
19 thresholds I mentioned before, if we have any reason to  
20 believe that something has dropped out, an allele has  
21 dropped out based on our stochastic threshold, we don't use  
22 those for statistics. So -- and then also like I mentioned  
23 before, if you have a discernible major or minor  
24 contributor or contributors, we are able to interpret those  
25 because we have references for those.

**Rachel Grant - Recross-Examination by Mr. Martinez**

1 But -- and again, too, the statistical approach for  
2 the weight of those mixtures is different. So like I  
3 mentioned before, the statistics that we did back in 2014  
4 were one particular type, versus what we've done just  
5 recently.

6 Q Thank you.

7 MR. MARTINEZ: No further questions.

8 THE COURT: Thank you. Thank you very much, ma'am,  
9 you may step down.

10 How long is your next witness, Solicitor?

11 MS. CAMPBELL: It may be --

12 THE COURT: Say again? I said how long will your  
13 next witness be.

14 MS. CAMPBELL: I would hope not -- I don't know,  
15 Your Honor.

16 THE COURT: Great answer. Call your next witness,  
17 Solicitor.

18 MS. CAMPBELL: State calls Dr. Rozanna Tross.

19 THE COURT: All right. If you would come around  
20 and be sworn for us, please.

21 ROZANNA TROSS,

22 having been duly sworn, testified as follows:

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

25 THE WITNESS: My name the Rozanna Tross.



## Rosanna Tross - Direct Examination by Ms. Campbell

## DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Dr. Tross, where are you employed?

A I work with the South Carolina Department of Mental Health.

Q I'm sorry, can you speak up a little bit, it's hard to hear in this courtroom for some reason today.

A I work --

MR. MARTINEZ: Your Honor, I object. 403.

THE COURT: All right. Madame Forelady, ladies and gentlemen, please step out momentarily. Do not discuss the case during in brief recess.

(The jury left the courtroom at 2:03 p.m.)

THE COURT: All right. Solicitor, tell me what is, briefly, the substance of the doctor's testimony.

MS. CAMPBELL: Your Honor, briefly, and the only reason we're going into this is because the defense has elicited through the witnesses repeatedly about his saying he has mental illness and issues of that nature. Dr. Tross did an evaluation on this defendant back in 2015. She did issue a report in this case. We're not offering that at this point because we have not been notified of an insanity defense. However, he is basically alleging that he suffers from various mental illnesses. She did evaluate him and diagnosed him with antisocial personality disorder --

## Rosanna Tross - Direct Examination by Ms. Campbell

1 Did I say that right.

2 THE WITNESS: Correct.

3 MS. CAMPBELL: In 2015. She noted his history of  
4 malingering as far as in reviewing his complete mental  
5 health history and in times where he's brought out that he  
6 had issues, I'm including and up to and during the time of  
7 being around these events occurring, Your Honor.

8 We were not intending to go there. We weren't  
9 going to go there at all until he started eliciting through  
10 Investigator Isenhoward about how he talked about having  
11 things in his head and other things about just his mental  
12 illness and his actual diagnosis.

13 THE COURT: Thank you, Solicitor.

14 Mr. Martinez.

15 MR. MARTINEZ: Ms. Tross gave a false report on me.  
16 I went to her to do an evaluation.

17 THE COURT: No, don't -- tell me your legal  
18 position.

19 MR. MARTINEZ: My legal position is, like I said  
20 403, unfair prejudice, my 14th Amendment, due process, and  
21 my right to a fair trial because I -- I put in a letter  
22 long time ago to the administrator at the forensic  
23 evaluation services to dispute her findings because her  
24 findings are inaccurate they're not -- they don't --

25 THE COURT: Again, don't characterize her

## Rosanna Tross - Direct Examination by Ms. Campbell

1 testimony. Give me just a moment, Mr. Martinez.

2 At this point in the trial, I would find that the  
3 probative value of this testimony is substantially  
4 outweighed by the danger of unfair prejudice. The  
5 testimony's been presented given the fact that the  
6 questioning by the attorneys or by the pro se defendant are  
7 not evidence came through factual situations in his  
8 conversations with Detective Morrison and his examination  
9 of Lieutenant Isenhoward and Lieutenant Isenhoward's  
10 conversation with Officer Heidi Jackson.

11 So at this point in the trial, I would sustain the  
12 objection.

13 MS. CAMPBELL: Thank you, Your Honor.

14 THE COURT: Is there anything further from the  
15 doctor?

16 MS. CAMPBELL: Not at this point.

17 THE COURT: All right. Thank you. Is the doctor  
18 under subpoena.

19 MS. CAMPBELL: She is under subpoena, Your Honor,  
20 and we ask that she remain under subpoena. We've discussed  
21 -- we didn't know when we get to her today, but she is  
22 available next week as well.

23 THE COURT: All right. Thank you. Thank you for  
24 being here with us this afternoon, Doctor. You may step  
25 down. You may be excused. If you would please stay --

1 consider yours -- if you would remain under subpoena for  
2 us, please.

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you. Y'all want to take a brief  
5 recess while our jury is out or y'all want to press on?

6 Y'all includes you, Mr. Martinez.

7 MR. MARTINEZ: Sir?

8 THE COURT: Well, let's do it like this. Let's  
9 take about a 15 minute recess. Thank you, thank you very  
10 much.

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

13 (A brief recess was observed.)

14 THE COURT: Sheriff, somebody said y'all need to  
15 know how late I'm going to work tonight.

16 THE OFFICER: Just inquiring.

17 THE COURT: Sir?

18 THE OFFICER: We were just inquiring.

19 THE COURT: It won't be any later than 10.

20 THE OFFICER: Okay.

21 THE COURT: Thank you.

22 THE OFFICER: All right.

23 THE COURT: As far as staff, whatever time any  
24 staff member needs to leave, I certainly have no objection.  
25 All right?

1 THE OFFICER: Yes, sir.

2 THE COURT: All right. Anything before we bring in  
3 our jury, Solicitor?

4 MS. WALKER: The only thing, Your Honor, Mr.  
5 Martinez told us who he wants us to have here on Monday for  
6 him for his case and we've agreed to do that. That's the  
7 only thing. That happened during the break.

8 THE COURT: And what now?

9 MS. WALKER: A number of witnesses that Mr.  
10 Martinez would like us to have for him on Monday for his  
11 case --

12 THE COURT: All right.

13 MS. WALKER: We will have them here on Monday  
14 morning.

15 THE COURT: All right.

16 MS. WALKER: He asked for a little bit of time to  
17 talk to them before we start, so we'll have them here  
18 early.

19 THE COURT: All right. Thank you, thank you very  
20 much.

21 Is that correct, Mr. Martinez?

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

23 THE COURT: All right. Anything from the defense,  
24 Mr. Martinez, before we bring in our jury?

25 MR. MARTINEZ: No, sir.

**Colin D. Bailey - Direct Examination by Ms. Walker**

1 (The jury entered the courtroom at 3:28 p.m.)

2 THE BAILIFF: Jury is seated, Your Honor.

3 THE COURT: Thank you, Mr. Bailiff.

4 Ladies and gentlemen, please continue to give the  
5 parties your complete and undivided attention.

6 Solicitor, you may call your next witness.

7 MS. WALKER: Thank you, Your Honor. The State  
8 calls Investigator Colin D. Bailey.

9 THE COURT: All right. Investigator Bailey if  
10 you'd come around and be sworn for us, please.

11 COLIN D. BAILEY,

12 having been duly sworn, testified as follows:

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

15 THE WITNESS: Sergeant Colin Bailey, City of  
16 Columbia police.

17 **DIRECT EXAMINATION**

18 **BY MS. WALKER:**

19 Q Sergeant Bailey, you mentioned that you work at the  
20 Columbia Police Department?

21 A I do.

22 Q How long have you been at the Columbia Police  
23 Department?

24 A I've been with the Columbia Police Department since  
25 2005.