

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Michael G. Nettles, Circuit Court Judge

CASE NO. 2018-000151

Steven Lee Morgan, #355128

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI
Vol. II

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1 A. Yes, sir.

2 Q. What was the reason for trying to get these
3 to eliminate them for DNA comparison?

4 A. Mr. Mazyck had stated to me that he had
5 touched this knife, as well as his biological son
6 had. In the event that the -- the DNA would come
7 back, obviously, that he had touched the knife.
8 So the elimination samples were to be able to
9 exclude him, to say 'well, we know who that
10 belongs to.'

11 SOLICITOR ALFARO: Your Honor, at this
12 time we would ask that State's Exhibit 97 be
13 admitted into evidence.

14 CHAD SHELTON: No objection.

15 THE COURT: Without objection, State's
16 Exhibit 97 is admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 97)

18 SOLICITOR ALFARO: Thank you.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR ALFARO:

21 Q. In going back to where the truck was located,
22 as well as the Defendant, the truck was located on
23 February 1st in Augusta. When did you come into
24 contact with the defendant?

25 A. I came in contact with the defendant on

1 February 3rd, 2012.

2 Q. Between the incident date of January 29th,
3 2012, and February 3rd, 2012, were you actively
4 attempting to locate the defendant?

5 A. There were active attempts underway to locate
6 the defendant.

7 Q. Can you describe for us what those attempts
8 were?

9 A. Obviously the information had been put out to
10 surrounding agencies. There was also an
11 informational release, press release, done at that
12 time. There was an active warrant at that time
13 for the burglary in the first degree.

14 Q. Did you have any contact with him or any
15 communication with him during that period between
16 January 29th and February 3rd?

17 A. No, sir, I did not.

18 SOLICITOR ALFARO: Thank you. Please
19 answer any questions that Mr. Shelton has for you.

20 THE COURT: You may cross exam, Mr.
21 Shelton.

22 CROSS EXAMINATION

23 BY CHAD SHELTON:

24 Q. Investigator Goodyear, when you met with Rose
25 and Chantelle Mazyck, you were told that Chantelle

1 was her sister?

2 A. Uh, -- yes, at that time that's what I did
3 put in my incident report, that she was identified
4 as her sister.

5 Q. So you wrote down what you were told?

6 A. Yes, sir. I don't recall whether it was Rose
7 or Ms. Mazyck that made that statement, but that's
8 what I indicated.

9 Q. And -- Mr. Morgan was apprehended January
10 30th, in Georgia?

11 A. If you will bear with me just a moment. I
12 want to be sure that I give you the correct
13 information. (Upon review of report), ---

14 Q. Actually January 29th, the late hours of
15 January 29th?

16 A. He was taken into custody on the 29th and Ms.
17 Lampkin was advised that he was in custody on the
18 30th.

19 Q. Okay. Now, you also -- part of the process
20 when you got Mr. Morgan, was to book him into the
21 jail?

22 A. He was booked and processed; yes, sir.

23 Q. And when you do that, you get his information
24 on where he lives?

25 A. That's correct.

1 Q. And the address on his license is Georgia?

2 A. That is what is indicated on the booking
3 sheet.

4 Q. Sure. And you fill out the booking sheet
5 information?

6 A. (No response).

7 Q. Yours was the booking officer's name?

8 A. If I filled out the booking information
9 sheet, I did in fact book him.

10 Q. Would it help to see a copy of the booking
11 sheet?

12 A. Sure.

13 CHAD SHELTON: (Tenders document to
14 be marked as exhibit).

15 COURT REPORTER: Defendant's Exhibit 2
16 for identification.

17 CROSS EXAMINATION CONTINUED

18 BY CHAD SHELTON:

19 Q. (Tenders).

20 A. (Upon review), yes, sir, that is the booking
21 sheet and I am indicated as the booking officer.

22 Q. And you indicate that his place of birth was
23 also Georgia?

24 A. Yes, sir.

25 Q. And you indicate that his driver's license

1 was based in Georgia?

2 A. Yes, sir. Dearing, Georgia.

3 Q. You would have had a chance to observe Steven
4 and look to see if there were any injuries on Mr.
5 Morgan?

6 A. Yes, sir, to some degree. Obviously he
7 wasn't disrobed or anything at that point.

8 Q. Did you take pictures of his hands?

9 A. I am going to have to refer to the incident
10 report. (Upon review), I made no notation that
11 day when he was booked about photographs at that
12 time.

13 Q. And you didn't notice any fresh injuries?

14 A. No, sir, or I would have noted them in this
15 report.

16 Q. And your testimony was that the keys and the
17 knife were given to you on April 3rd?

18 A. The knife -- Mr. Mazyck first advised Ms.
19 Lampkin that he had these items. He had traveled
20 to Columbia to speak with her. He left the keys
21 with Ms. Lampkin, however he brought the knife
22 back to Charleston.

23 Q. You said that the knife came that day, on
24 April 3rd and that the keys came on April 6th.

25 A. Yes.

1 Q. All you know about the knife and the keys is
2 what you have been told?

3 A. Yes.

4 Q. The truck was searched ---

5 A. (Affirmative nod), the truck was searched.

6 Q. And no evidence was found?

7 A. No evidence was obtained at that time.

8 CHAD SHELTON: Thank you. No further
9 questions.

10 THE COURT: Sure. Redirect?

11 SOLICITOR ALFARO: No, Your Honor.

12 THE COURT: Thank you. You may step
13 down, sir.

14 (WITNESS STEPS DOWN)

15 THE COURT: Call your next witness,
16 Solicitor.

17 SOLICITOR WILLIAMS: Victor Mazyck.

18 (WITNESS TAKES STAND)

19 VICTOR MAZYCK, having been sworn to tell
20 the truth, and nothing but the truth, testified as
21 follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR WILLIAMS:

24 Q. Mr. Mazyck, do you know Chantelle Mazyck?

25 A. Yes, she's my sister-in-law.

- 1 Q. And do you know Rose Lampkin?
- 2 A. Yes, I do.
- 3 Q. And how long have Rose and Chantelle known
- 4 each other?
- 5 A. All their lives, as far as I know.
- 6 Q. And do they sometimes refer to each other as
- 7 sisters?
- 8 A Yes, they do. All the time.
- 9 Q. How did you meet Rose?
- 10 A. Through Chantelle.
- 11 Q. Where do you presently work?
- 12 A. I am retired. I am an associate pastor at a
- 13 church, Southside Christian Fellowship.
- 14 Q. What did you do before that?
- 15 A. Electronics tech for the College of
- 16 Charleston, and before that a solider.
- 17 Q. At some point in time, did you purchase a
- 18 truck from Rose Lampkin?
- 19 A. Yes, I did.
- 20 Q. Tell us what kind of truck that was?
- 21 A. It's a Ford truck.
- 22 Q. I am going to show you a picture back here
- 23 and I want you to look at it and see if it is the
- 24 truck that you purchased?
- 25 A. (Upon review), it's the same truck.

1 Q. Do you remember about when you purchased it?

2 A. I really can't remember the dates.

3 Q. Do you know if it was in 2012?

4 A. Yes, it was.

5 Q. How long had you had it -- did you find
6 something in the truck?

7 A. Yes, I did.

8 Q. How long had you had it before you ---

9 A. Not even a couple of weeks.

10 Q. Tell us the circumstances around you finding
11 these items?

12 A. Well, I wanted to change the console in the
13 truck, between the seats, because it wasn't big
14 enough for what I use the truck for. I use the
15 truck for things like, you know, going to mow
16 lawns and I would have my papers and everything in
17 it. I'd had a truck like this truck before, so
18 I just decided to change the console out to
19 accommodate what I needed to do. I began to take
20 the bolts out to remove the console, because I
21 wanted to exchange it with a console from an
22 Expedition, which is bigger, same body style.
23 When I lifted -- you have to take the cup holder
24 out of that console to take it out. When I lifted
25 the console, I found a knife, a Schrade block

1 blade knife and some keys.

2 Q. The whole time before you pulled it and
3 lifted it up, where those visible to you at all,
4 the whole two weeks that you had had it?

5 A. No, you couldn't see it unless you'd take
6 that cup holder out. As a matter of fact, you
7 can't remove the console without taking the cup
8 holder out.

9 Q. Okay. What did you do after you found those
10 items?

11 A. I called Rose. I needed to see her anyway to
12 make payment on the truck. I explained to her
13 that I had found these items in the truck and that
14 I would deliver those to her. At the time, I went
15 to Columbia to visit her, she was at her mother's
16 and her dad's.

17 Q. Tell us about that, when you brought the
18 items to her?

19 A. It was a, you know, pretty -- it was pretty
20 shocking, actually, since that was the first time
21 that I'd seen Rose in such bad condition. I
22 didn't realize the extent of everything that was
23 going on. It really hurt me a lot, because she's
24 a friend of mine -- first of all -- and it just
25 really, -- I was devastated, actually. But when

1 I went to see her -- she's strong, you know, so
2 her spirits were good. She walked on in but it
3 wasn't the same walk, it wasn't the same -- she
4 was trying to show me her strength. I told her
5 what I had, matter of fact I brought it to her and
6 she said, 'Well, this is exactly ---

7 CHAD SHELTON: Objection.

8 THE COURT: Sustained.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR WILLIAMS:

11 Q. You can't repeat what Ms. Lampkin told you.

12 You can just ---

13 A. Okay.

14 Q. --- kinda described it, if you would. What
15 was her reaction to the item?

16 A. Surprise. Devastation.

17 SOLICITOR WILLIAMS: I am going to
18 show defense counsel, Your Honor, what has been
19 marked as 44, 45 and 46.

20 THE COURT: Very well.

21 CHAD SHELTON: (Review).

22 SOLICITOR WILLIAMS: May I approach the
23 witness?

24 THE COURT: You may.

25 DIRECT EXAMINATION CONTINUED

1 BY SOLICITOR WILLIAMS:

2 Q. Mr. Mazyck, if you could just look at these
3 pictures and tell me if they accurately depict the
4 way that those items looked at the time that you
5 found the items that you were just discussing in
6 your testimony, the way that the truck looked?

7 A. (Upon review), same truck.

8 Q. And is that the way that the console looked
9 before you ---

10 A. Yes, ma'am.

11 SOLICITOR WILLIAMS: Your Honor at this
12 time the State would offer 44, 45 and 46 into
13 evidence.

14 THE COURT: Any objection?

15 CHAD SHELTON: No objection.

16 THE COURT: State's Exhibits 44, 45 and
17 46 entered without objection.

18 (SO ENTERED AS STATE'S EXHIBIT 44)

19 (SO ENTERED AS STATE'S EXHIBIT 45)

20 (SO ENTERED AS STATE'S EXHIBIT 46)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR WILLIAMS:

23 Q. There will be a picture displayed behind you.
24 I am going to hand you this laser point. If you
25 could just push this button and show the jury what

1 you're talking about. What adjustment that you
2 were trying to make on this truck.

3 A. Here is the console. This console had to be
4 removed. But here, right on top where the cup is
5 -- that is the cup holder -- and that had to be
6 removed before you had take the bolts which are
7 down into the body. The bolts are inside. You
8 can't see them from the outside. You have to lift
9 the cup holder, which is here, to get down in and
10 take the nuts out of the console.

11 Q. Where were the items that you found?

12 A. They were in this area. You can't see it
13 unless you remove the console, but they were down
14 in this area.

15 Q. Thank you.

16 SOLICITOR WILLIAMS: Thank you so much,
17 Mr. Mazyck. Please answer any questions that the
18 defense may have.

19 THE COURT: Cross examine?

20 CROSS EXAMINATION

21 BY CHAD SHELTON:

22 Q. Mr. Mazyck, you gave a statement to the
23 police?

24 A. (No response).

25 Q. You gave a statement to the police?

1 A. Yes, I did.

2 Q. Would it help you refresh your memory as to
3 when you bought this truck if you could review
4 that statement?

5 A. Yes, of course.

6 CHAD SHELTON: (Tenders document to
7 marked as exhibit).

8 COURT REPORTER: Defendant's Exhibit 3
9 for identification.

10 CROSS EXAMINATION CONTINUED

11 BY CHAD SHELTON:

12 Q. If you would just read that to yourself.

13 A. Okay, (review).

14 Q. Is that your statement?

15 A. Yes, it is.

16 Q. And you see that you bought the truck March
17 28th?

18 A. Yes.

19 Q. Do you know when this incident occurred?

20 A. Maybe about a week, a week and a half or a
21 little afterwards.

22 Q. Do you know when the incident that we are
23 here about today occurred?

24 A. Oh, no, I don't. I don't -- I wasn't privy
25 to that information.

1 Q. Do you know who had possession of the truck
2 the last two months?

3 A. As far as I know, Rose had possession of the
4 truck.

5 Q. I think that your testimony earlier was that
6 Chantelle and Rose consider themselves -- call
7 themselves sisters?

8 A. Yeah.

9 Q. They are not sisters?

10 A. No.

11 CHAD SHELTON: No further questions.

12 THE COURT: Redirect?

13 SOLICITOR WILLIAMS: No, Your Honor.

14 THE COURT: Mr. Mazyck, you may step
15 down.

16 (WITNESS STEPS DOWN)

17 THE COURT: Next witness.

18 SOLICITOR ALFARO: The State calls
19 Nicholas Powell.

20 (WITNESS TAKES STAND)

21 NICHOLAS POWELL, having been sworn to
22 tell the truth, and nothing but the truth,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR ALFARO:

1 Q. Tell the jury where you work.

2 A. I work for the Goose Creek Police Department.

3 Q. How long have you been with Goose Creek?

4 A. Approximately six years.

5 Q. What is your current rank and what are your
6 current duties?

7 A. I currently work as an investigator in the
8 criminal investigative division, specifically for
9 vice and narcotic crimes.

10 Q. Did you have the opportunity to participate
11 in the investigation of Steven Morgan?

12 A. Yes, I did.

13 Q. Did you actually response to the crime scene
14 on Crystal Street?

15 A. I did not respond to the crime scene.

16 Q. Did you have the opportunity to come in
17 contact with the defendant during the course of
18 this investigation?

19 A. I did.

20 Q. When did that take place?

21 A. That took place on February 3rd, 2012.

22 Q. Where did you come in contact with him?

23 A. I made contact with him at the Richmond
24 County Detention Center located in Augusta,
25 Georgia.

1 Q. And can you tell us what the reason or what
2 the purpose of the interactions with the defendant
3 were?

4 A. Myself and Detective Mason were making
5 contact with the defendant in order to transport
6 him -- essentially to extradite him from the
7 detention center there to the Goose Creek Police
8 Department.

9 Q. And when you got the defendant back to the
10 Goose Creek Police Department, did you collect any
11 evidence from him?

12 A. I did. I executed a DNA search warrant on
13 Mr. Morgan. We conducted that in interview room
14 "B", which was recorded at the time. I utilized
15 two cotton swabs to obtain DNA samples from the
16 inner cheek area.

17 Q. After obtaining the DNA sample, what did you
18 do with the swabs?

19 A. I transferred custody of those to CSI Myers.

20 Q. And how many swabs were taken?

21 A. There were two swabs that were taken.

22 Q. Let me show you what has been marked for
23 identification as State's Exhibit 93 and 94. Do
24 you recognize those items?

25 A. (Upon review), yes. These are the swabs that

1 I took from Mr. Morgan.

2 SOLICITOR ALFARO: Your Honor, at this
3 time the State would ask that State's Exhibits 93
4 and 94 be admitted into evidence.

5 THE COURT: Any objection?

6 CHAD SHELTON: No objection.

7 THE COURT: Without objection, State's
8 Exhibits 93 and 94 are admitted.

9 (SO ENTERED AS STATE'S EXHIBIT 93)

10 (SO ENTERED AS STATE'S EXHIBIT 94)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR ALFARO:

13 Q. Other than this meeting with the defendant
14 and obtaining those buccal swabs, did you have any
15 further contact with the defendant?

16 A. Not following that. I did not.

17 Q. Did you have any other role in this
18 investigation?

19 A. Other than drafting the initial warrant to
20 place a hold on Mr. Morgan and making contact with
21 two of the neighbors, (negative gesture).

22 SOLICITOR ALFARO: Thank you. Please
23 answer any questions that Mr. Shelton may have.

24 THE COURT: Cross examine?

25 CHAD SHELTON: No questions.

1 THE COURT: Thank you, you may come
2 down. Do you wish for Mr. Powell to be excused?

3 SOLICITOR ALFARO: Yes, sir.

4 THE COURT: Any objection?

5 CHAD SHELTON: No, sir.

6 (WITNESS STEPS DOWN)

7 THE COURT: You are excused. Call
8 your next witness, please.

9 SOLICITOR ALFARO: The State calls
10 Maggie Carver.

11 (WITNESS TAKES STAND)

12 MAGGIE CARVER, having been sworn to tell
13 the truth, and nothing but the truth, testified as
14 follows:

15 DIRECT EXAMINATION

16 BY SOLICITOR ALFARO:

17 Q. Can you tell us where you work?

18 A. I work at the Goose Creek Police Department.

19 Q. And what do you do for Goose Creek?

20 A. I am an investigator.

21 Q. How long have you been an investigator there?

22 A. Eleven years.

23 Q. Were you working for Goose Creek on January
24 30th, 2012?

25 A. I was.

1 Q. Did you have an opportunity to respond to the
2 Medical University of South Carolina to meet with
3 the victim in this case, Rose Lampkin, on that
4 day?

5 A. I did.

6 Q. What was the purpose of your -- what did you
7 do when you met with Ms. Lampkin?

8 A. I took a buccal swab from Ms. Lampkin.

9 Q. And can you describe for us the process that
10 you utilized to obtain that swab?

11 A. Yes. I used -- I took two sterile swabs and
12 I asked Ms. Lampkin to open her mouth and I took
13 swabs from inside her cheeks.

14 Q. I show you what has been marked for
15 identification as State's Exhibit 95. Do you
16 recognize that package?

17 A. This was packaged by Investigator Myers.

18 Q. After you took the swabs from Ms. Lampkin,
19 what did you do with the swabs?

20 A. I put it in a carton, then I took them back
21 to the police department, filled out an evidence
22 form and gave them to Investigator Myers.

23 Q. You then packaged them?

24 A. Yes, sir.

25 SOLICITOR ALFARO: Your Honor, at this

1 time the State would ask that State's Exhibit 95
2 be admitted into evidence.

3 THE COURT: Any objection?

4 CHAD SHELTON: No objection.

5 THE COURT: Without objection, it is
6 admitted.

7 (SO ENTERED AS STATE'S EXHIBIT 95)

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR ALFARO:

10 Q. In addition to taking that swab from Ms.
11 Lampkin at MUSC, did you have an opportunity to
12 pick up any other evidence at the Medical
13 University that day?

14 A. Yes, sir, I did.

15 Q. What was that?

16 A. That was a SLED protocol rape kit that I
17 picked up from the department for, uh, uh, from
18 the police department at MUSC.

19 Q. I show you what is in evidence as State's
20 Exhibit 96. If you could, look at that and tell
21 us if that is the kit that you picked up from the
22 Medical University?

23 A. When I picked up the kit from the department
24 at MUSC, it was in a box. Therefore, I wasn't
25 able to see any of the stuff that was inside.

1 Q. Did you tamper with the box in any way?

2 A. I did not.

3 Q. And was that turned over to Investigator
4 Myers at Goose Creek as well?

5 A. Yes, sir, it was.

6 SOLICITOR ALFARO: Thank you. Please
7 answer any questions that Mr. Shelton may have.

8 THE COURT: Cross examine?

9 CHAD SHELTON: Thank you for
10 testifying. I have no questions.

11 THE COURT: You may step down and you
12 are also free to leave.

13 (WITNESS STEPS DOWN)

14 THE COURT: Please call your next
15 witness.

16 SOLICITOR ALFARO: The State calls Wendy
17 Myers.

18 (WITNESS TAKES STAND)

19 WENDY MYERS, having been sworn to tell
20 the truth, and nothing but the truth, testified as
21 follows:

22 DIRECT EXAMINATION

23 BY SOLICITOR ALFARO:

24 Q. Ms. Myers, please tell us where you are
25 employed?

1 A. The Goose Creek Police Department.

2 Q. And how long have you been with Goose Creek?

3 A. A little over eight years.

4 Q. Prior to coming to Goose Creek, did you work
5 at any other law enforcement agency?

6 A. Yes, sir. I was a patrol officer with the
7 North Charleston Police Department for ten years.

8 Q. And what do you do for Goose Creek?

9 A. Crime scene investigator and evidence
10 technician.

11 Q. How long have you been doing that?

12 A. A little over eight years.

13 Q. Can you describe for the jury a little bit
14 of your training in the field of crime scene
15 processing?

16 A. Sure. I have an associates degree in
17 criminal justice with an emphasis in
18 criminalistics, which is basically the old term
19 for forensics.

20 Property evidence room management, which has
21 to do with the preservation of evidence.

22 DNA collection.

23 Crime scene evidence workshop, which is
24 basically: fingerprinting, DNA collection.

25 Photography and video of crime scene.

1 DNA collection at sexual assault scene.

2 Crime - property crime scene.

3 Child death investigations.

4 Some arson training.

5 Blood spatter pattern analyses.

6 Q. And were you working on January 29th, 2012?

7 A. Yes, sir, I was.

8 Q. On that day, did you have the opportunity to
9 respond to the crime scene at 107 Crystal Street
10 in Goose Creek?

11 A. Yes, I did.

12 Q. When you got to the scene, had the scene
13 already been secured?

14 A. Yes, sir, it was.

15 Q. How could you tell that it was secured?

16 A. There was crime scene tape roping off the
17 front of the scene and Sergeant Tavelle was in the
18 driveway, securing the front of the residence as
19 well.

20 Q. When we say "secured", does that mean that
21 only authorized personnel were allowed in or out?

22 A. That's correct.

23 Q. And when you respond to a crime scene, is it
24 customary for you to be briefed on the facts and
25 circumstances of the incident that you are there

1 to investigate?

2 A. Yes, it is.

3 Q. Did that happen in this case?

4 A. It did.

5 Q. And do you recall who gave you the briefing?

6 A. Captain Oliver, which is my direct
7 supervisor.

8 Q. As part of your role in investigating this,
9 at some point you entered the house?

10 A. That's correct.

11 Q. And can you describe for the jury what you
12 observed when you entered the residence?

13 A. I can. Immediately inside the front door of
14 the residence was what appeared to be some type of
15 material, we found out later that it was strips of
16 towel.

17 To the right going inside of the front door
18 is the den area, which extends -- it's an open
19 den all the way to the back. Against the furthest
20 wall was a piece of wood, with glass going from
21 the piece of wood all the way to the sliding glass
22 door. The sliding door, if you were looking at it
23 it would be the door on your left. It was broken
24 out, with glass going from there to where the
25 piece of wood ended up.

1 To the left of the front door is a formal
2 dining area. There was a cigarette butt there.

3 There was a small hallway to the kitchen.
4 There was a cigarette butt there.

5 There was a wall directly across from the
6 stairwell and there was a hole -- it looked to be
7 fresh. There was still some of the sheetrock and
8 things that came out of the hole on the floor.

9 The house appeared to be in renovation. Some
10 of the floors (sic) were pulled up, wires strewn
11 across different areas of the residence.

12 There were a couple of blood droplets on the
13 foot of the stairwell and leading up the stairs.

14 Q. Did you also proceed to the second floor of
15 the residence?

16 A. I did. The blood droplets continued up the
17 stairwell. There were additional pieces of towel
18 and some wire, pieces of cardboard that appeared
19 to be from a hanger similar to a hanger from the
20 drycleaners, wire with cardboard on the bottom.
21 Those were in front of the closet door directly at
22 the top of the stairs.

23 There was a bedroom to the right at the top
24 of the stairs, which didn't appear to be -- it
25 appeared to be used occasionally.

1 Then there was the master bedroom. In the
2 master bedroom there were additional pieces of the
3 towel beside the bed and at the foot of the bed,
4 additional pieces of the hanger material and more
5 of the cardboard. The bed had clothing piled on
6 one side. Then there was one side closest to the
7 door that was kind of open.

8 Q. After doing your walk-thorough, did you
9 personally collect evidence from the scene?

10 A. Yes, I did.

11 Q. Those items that were collected, were they
12 photographed before they were collected?

13 A. They were. Photographed and video.

14 Q. I show you what has been entered into
15 evidence as State's Exhibit 86. Do you recognize
16 that item?

17 A. Yes, I do. This is the green corduroy jacket
18 that was located beside the bed in the master
19 bedroom, directly underneath the window.

20 Q. And at some point in the investigation, were
21 you able to perform any tests on that?

22 A. I did. After collecting it at the scene,
23 the following day it was taken to the police
24 department where it is a little more of a
25 controlled environment, to do more processing.

1 I took photographs. I also did what we -- what is
2 a presumptive blood test. The test that we use
3 can't identify the difference between human blood
4 and animal blood but we are able to say that it is
5 a blood derivative and then we take it to the lab.
6 This did show as presumptive for blood. I also
7 did locate a hole in the neck area, in the collar.

8 Q. And when you say that it tested presumptive,
9 what is the process that you use?

10 A. There is a reagent, it's called the Castle-
11 Meyer reagent. It turns -- if it locates
12 hemoglobin in the sample that we have put in the
13 test, it will turn bright pink, almost hot pink,
14 that will indicate the presence of hemoglobin.

15 Q. So you apply the reagent to ----

16 A. The swab, the stain itself. We put that into
17 the kit, crack the ampules, then shake it and it
18 will turn the hot pink color.

19 Q. I will also show you what is in evidence as
20 State's exhibit 87. Can you tell and show the jury
21 what those items are and where they were located?

22 A. Yes, these were the cardboard tubes that
23 appeared to be part of the drycleaner type
24 hangers. They were located in the landing at the
25 top of the stairs, as well as in the master

1 bedroom. There were wires, mixed in with the
2 cardboard and towels, had been twisted into loops.

3 SOLICITOR ALFARO: We would ask that
4 these be marked for identification as State's
5 Exhibits 39 and 40.

6 DIRECT EXAMINATION CONTINUED
7 BY SOLICITOR ALFARO:

8 Q. If you could, look at those and then I will
9 ask you a couple of questions about them.

10 A. (Review).

11 Q. Do you recognize what is depicted in those
12 two exhibits?

13 A. I do.

14 Q. Does those photographs fairly and accurate
15 depict the part of the scene as you saw it that
16 day?

17 A. It does.

18 SOLICITOR ALFARO: Your Honor, at
19 this time the State would ask that State's
20 Exhibits 39 and 40 be admitted into evidence.

21 THE COURT: Any objection?

22 CHAD SHELTON: No, sir.

23 THE COURT: Without objection, State's
24 Exhibits 39 and 40 are admitted, each being a
25 photograph.

1 (SO ENTERED AS STATE'S EXHIBIT 39)

2 (SO ENTERED AS STATE'S EXHIBIT 40)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR ALFARO:

5 Q. We are going to put on the screen State's
6 Exhibit 39. It's a little tough to see in the
7 picture. Can you tell us, using this laser
8 pointer, what's in that picture?

9 A. This is the side of the bed.

10 This is a shoe.

11 This is a piece of the floor where the carpet
12 has been removed.

13 That is one of those pieces of cardboard that
14 we just showed you and then the circular twisted
15 piece of the hanger.

16 Q. State's Exhibit 40?

17 A. That is a close-up shot of the same piece.

18 This is the wire, going into the cardboard.

19 This looks like the bottom of a shoe.

20 Q. Showing you what has been entered into
21 evidence as State's Exhibit 88.

22 A. These are the strips of towel that were
23 located inside the residence, some at the front
24 door and at the top of the landing as well as
25 inside the bedroom, tied to the pieces of hanger

1 and cardboard.

2 Q. The condition in which they are, tied and
3 torn, that is the condition which you found them
4 in that day?

5 A. This is the condition that they were in on
6 being returned from testing. Part of them were
7 tied into the hangers and the wires, correct.

8 Q. Let me show you what has been marked for
9 identification as State's Exhibit 99. If you
10 could, look at that item and tell us what that is.

11 A. (Upon review), this is a roll of packing tape
12 that was located at the foot of the bed in the
13 master bedroom.

14 SOLICITOR ALFARO: Your Honor, the State
15 would ask that State's Exhibit 99 be admitted into
16 evidence.

17 THE COURT: Any objection?

18 CHAD SHELTON: No objection.

19 THE COURT: State's Exhibit 99 is
20 admitted, without objection.

21 (SO ENTERED AS STATE'S EXHIBIT 99)

22 SOLICITOR ALFARO: Thank you.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR ALFARO:

25 Q. State's Exhibit 98, do you recognize this

1 item?

2 A. I do. This was the piece of cut wood that
3 was against the den window, closest to the front
4 door.

5 Q. Inside the home?

6 A. Correct.

7 Q. Did you have the opportunity to also look in
8 the backyard of the residence?

9 A. I did. There was a pile of similar cut wood
10 directly against the sliding glass door in the
11 back yard.

12 Q. Any other items recovered from the back porch
13 area?

14 A. There was a pole with a type of rubber sleeve
15 on it. It seems to be from maybe a mop or a
16 broom, some type of cleaning implement that was
17 unscrewed from that. It was laying against that
18 pile of cut wood.

19 SOLICITOR ALFARO: May we have this
20 marked for identification.

21 COURT REPORTER: State's Exhibit 105
22 for identification.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR ALFARO:

25 Q. I show you what has been marked for

1 identification as State's Exhibit 105. Is this
2 the pole that you have been referencing?

3 A. Yes, it is.

4 Q. What was the purpose in collecting this?

5 A. Initially I wasn't sure if it was possibly
6 used to force entry into the residence, as well.
7 So I took it in an abundance of caution, just to
8 make sure that we had everything that we needed.

9 Q. Let me show you what has been marked for
10 identification as State's Exhibit 92. If you
11 can, take a look at that and tell us what that is,
12 if you recognize it.

13 A. These are the two swabs that I collected from
14 the blood droplet and the blood smear that were at
15 the foot of the stairwell and on the first step
16 leading up to the second floor.

17 Q. And can you briefly describe to the jury what
18 the process is that you used to collect those?

19 A. We have sealed sterile swabs. With dried
20 blood we would use sterile water to moist the swab
21 and collect it. Then they are put into either --
22 they are called a capture swab, which is an open
23 plastic tube which is open at the top, which
24 allows it to air dry, and also protects it from
25 cross contamination. In this case, I used two of

1 those capture swabs. So I moistened the tip of
2 swab with sterile water, swabbed it, capped it
3 closed and then secured them in an envelope for
4 further processing at the lab.

5 Q. Let me show you two photographs that have
6 been marked for identification, State's Exhibits
7 23 and 24. If you could look at these exhibits
8 and tell us if you recognize what is depicted in
9 them.

10 A. (Upon review), I do. This is the foot of the
11 stairwell where the blood droplets were, leading
12 up. That is a closer image of the same shot, with
13 the blood droplets.

14 Q. Were these areas where the blood swabs that
15 you just testified about taken from?

16 A. Yes, they were.

17 SOLICITOR ALFARO: Your Honor, at this
18 time the State would ask that State's Exhibits 23
19 and 24 be admitted.

20 THE COURT: Any objection?

21 CHAD SHELTON: No objection, Your Honor.

22 THE COURT: State's Exhibits 23 and
23 24 be admitted without objection, each being a
24 photograph.

25 (SO ENTERED AS STATE'S EXHIBIT 23)

1 (SO ENTERED AS STATE'S EXHIBIT 24)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR ALFARO:

4 Q. Regarding State's Exhibit 92, which I had
5 showed you previously ---

6 SOLICITOR ALFARO: Your Honor, we would
7 ask that that be admitted into evidence.

8 THE COURT: Number what?

9 SOLICITOR ALFARO: Number 92.

10 CHAD SHELTON: No objection.

11 THE COURT: Without objection, State's
12 Exhibit 92 is admitted.

13 (SO ENTERED AS STATE'S EXHIBIT 92)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR ALFARO:

16 Q. In addition to the evidence that you've
17 testified about that was collected that day, did
18 you have an opportunity to come into contact with
19 any other evidence in this case?

20 A. There were four Newport cigarette butts that
21 were located in the residence; one in the dining
22 room, one in the hallway on the first floor, and
23 then two on the floor of the master bedroom beside
24 the bed.

25 Q. I show you what has been submitted into

1 evidence as State's Exhibit 96.

2 A. This is the sexual assault evidence
3 collection kit that was submitted by Investigator
4 Carver.

5 Q. When did you come into possession of that?

6 A. That was on January 30th, 2012.

7 Q. When you got it, was it packaged in the box
8 like ---

9 A. It was, (affirmative nod). The integrity
10 seals would have been in place at that time.

11 Q. And when you got that, was it secured in your
12 evidence facility?

13 A. It was.

14 Q. Let me show you what is in evidence as
15 State's Exhibits 93 and 94. Do you know what
16 those items are?

17 A. These are swabs that were submitted together
18 from Steven Morgan by Investigator Powell. Those
19 were submitted on February 3rd, 2012.

20 Q. When those were submitted to you, were those
21 then secured into Evidence?

22 A. They were.

23 Q. And when those were submitted into evidence,
24 did you tamper with the package at all?

25 A. I did not.

1 Q. Regarding State's Exhibit 96 that you just
2 testified about, was that item -- which was the
3 sexual assault kit, uh, did you have an
4 opportunity to transport that to another facility
5 for testing?

6 A. I did. That was transported to the South
7 Carolina Law Enforcement Division's forensic
8 laboratory. That was transported on February 17th
9 of 2012, along with one of the swabs from Steven
10 Morgan.

11 Q. Of the two Steven Morgan swabs that you just
12 identified, which of the two was taken to SLED.

13 A. It would be this one.

14 Q. That is State's Exhibit 93; is that correct?

15 A. Yes, that's correct.

16 Q. Other than taking State's Exhibits 93 and 96
17 to SLED, was the other evidence taken, that's
18 you've testified to, taken to any other place for
19 further forensic testing?

20 A. Yes, it was. It was taken to the Intelli-
21 genetics Laboratory, and that was done of February
22 10th of 2012

23 Q. So you recall which of the items that you've
24 testified about were transported to Intelli-
25 genetics on that date for further testing?

1 A. I do. It was the Newport cigarette butts,
2 the two swabs that were taken from the residence,
3 the corduroy jacket, the piece of cut wood, the
4 towels, and portions of the hangers as well as one
5 of the swabs from Ms. Lampkin and one of the swabs
6 from Mr. Morgan.

7 Q. Could you tell me again when those were
8 transported to Intelligentics?

9 A. February the 10th, 2012.

10 Q. And on that day when you were -- where is
11 Intelligentics?

12 A. It's in Hilton Head, South Carolina.

13 Q. And during your trip from Goose Creek to
14 Hilton Head, did you tamper with the packaging of
15 any of those items in any way?

16 A. I did not.

17 Q. I show you what is in evidence as State's
18 Exhibit 89. If you could, take a look at that.

19 A. This is a Schrade block knife that was
20 submitted by Investigator Goodyear.

21 Q. Was that item also transported to Intelli-
22 gentics for further testing?

23 A. Yes, it was.

24 Q. When was that transported?

25 A. It was submitted on April 3rd, 2012 and it

1 was transported to Intelligentics on April 20th,
2 2012.

3 Q. And did you transport that item as well?

4 A. I did.

5 Q. Did you tamper with the packaging in any way?

6 A. I did not.

7 SOLICITOR ALFARO: Your Honor, I think
8 that I neglected to ask that Exhibit 105 be
9 admitted into evidence.

10 THE COURT: Any objection?

11 CHAD SHELTON: No objection.

12 THE COURT: Without objection, it is
13 admitted.

14 (SO ENTERED AS STATE'S EXHIBIT 105)

15 SOLICITOR ALFARO: No further questions.
16 Please answer anything that Mr. Shelton has.

17 THE COURT: Cross examination?

18 CHAD SHELTON: Yes, Your Honor.

19 CROSS EXAMINATION

20 BY CHAD SHELTON:

21 Q. Ms. Myers, you have a list of everything
22 that you have submitted to Intelligentics but you
23 didn't mention a beige sheet.

24 A. I did.

25 Q. You sent Intelligenetics a beige sheet?

1 A. Yes, I did, on February 10th of 2012.

2 Q. That was also processed prior to you sending
3 that to Intelligenetics?

4 A. That's correct.

5 Q. And what was found on the beige sheet?

6 A. There was -- after looking at it with an
7 alternate light source, which will luminesce,
8 anything with a, uh, petroleum base, semen or
9 other bodily fluid will glow under that light
10 source. It was examined with that light source.
11 Similar to the presumptive blood swabs, we would
12 do a presumptive semen swab which looks for acid
13 phosphates, which is a compound located in semen
14 as well as other things. I got a presumptive for
15 acid phosphates from the sheet, so that sheet was
16 also sent to Intelligenetics.

17 Q. It was presumptive for semen?

18 A. For the presence of acid phosphates.

19 Q. So when you first came into the home, there
20 was a towel -- was it the bigger towel or the
21 smaller towel that was right in front of you?

22 A. I believe that it was smaller. Let me check
23 my photographs. (Upon review), it actually looks
24 like it is the large section of the towel or two
25 smaller ones.

1 Q. And the other sheet was found upstairs?

2 A. That's correct.

3 Q. That was the bigger?

4 A. In these thumbnail photos it appears to be,
5 yes.

6 CHAD SHELTON: (Tenders item to be
7 marked as exhibit).

8 COURT REPORTER: Defendant's Exhibit 4
9 for identification.

10 CROSS EXAMINATION CONTINUED

11 BY CHAD SHELTON:

12 Q. Would it be helpful to see pictures?

13 A. Yes, (review).

14 Q. Does that help refresh your memory as to what
15 was found upstairs?

16 A. (Upon review), it does appear to be the
17 larger towel.

18 Q. And there were only two towels that were
19 taken into evidence?

20 A. There were strips of the same towel -- or I
21 believe that it was one whole towel when it was
22 put together.

23 Q. Okay. But there were two separate towels
24 that were collected?

25 A. Strips of the same towel and portions of them

1 were tied together. I would not have untied them,
2 for fear of losing evidence.

3 Q. You didn't do a presumptive test for blood on
4 any of the towels?

5 A. I did not.

6 Q. The outside of the broken glass -- there was
7 some glass on the outside?

8 A. Correct.

9 Q. You mentioned that you also found two
10 cigarette butts downstairs.

11 A. One cigarette butt downstairs. Well, one in
12 the hallway and then one in the dining room.

13 Q. But there is a doorway that was open or that
14 could be opened between the dining room and the
15 kitchen?

16 A. Yes, it is an open walkway.

17 Q. And you said that you saw some blood at the
18 bottom of the stair?

19 A. Correct.

20 Q. And you are characterizing that as a smear?

21 A. One was a smear and an additional one I
22 swabbed as a droplet.

23 Q. Not a whole lot of blood.

24 A. Correct.

25 Q. And the smear, was there -- were there any

1 hairs?

2 A. Not that I recall any hairs in the blood.

3 Q. You would have collected hairs if there were
4 hairs at this scene?

5 A. Correct.

6 Q. Are you qualified to take fingerprints?

7 A. I am.

8 Q. And you didn't see any fingerprints, shoe
9 prints or any other types of prints in the smears
10 or blood evidence?

11 A. Correct.

12 Q. You weren't able to get any fingerprints from
13 the pole or the wood?

14 A. Correct. The wood would be not a surface
15 that would be fingerprintable. That's more for
16 DNA collection.

17 Q. And I think you described the -- there are
18 two bedrooms in the home.

19 A. Correct.

20 Q. One bedroom wasn't used as much.

21 A. Correct.

22 Q. Then the master bedroom?

23 A. Correct.

24 Q. And you took some photos in the master
25 bedroom?

1 A. Correct.

2 Q. You took photos of what you collected in the
3 master bedroom?

4 A. Correct.

5 Q. There were two cigarette butts in the master
6 bedroom?

7 A. Correct.

8 Q. There are no other pictures, no other
9 collection of no other wire?

10 A. Any of the wire?

11 Q. Other than what we have here today?

12 A. That's correct

13 Q. There are no pictures and no collection of
14 used tape?

15 A. Correct.

16 Q. Going back downstairs, did you notice
17 anything -- granite countertops having any marks
18 from a knife or what could have been a knife on
19 it?

20 A. Not that I saw.

21 Q. You did note that the window shades were half
22 open in the master bedroom?

23 A. Let me review my report. (Upon review),
24 that's correct. The second window on the west
25 wall, blinds were pulled up approximately halfway.

1 Q. Okay. Also on that windowsill -- and you may
2 have to refer to your pictures to refresh your
3 memory -- there was also a Mountain Dew bottle?

4 A. (Upon review), I see a green bottle.

5 Q. A green bottle?

6 A, (Affirmative nod).

7 Q. Do you know what is on the windowsill right
8 next to the green bottle?

9 A. I can't see anything in that.

10 Q. Would it be helpful to see ---

11 A. --- a larger photograph, (affirmative nod).

12 CHAD SHELTON: (Tenders photograph to
13 be marked as an exhibit).

14 COURT REPORTER: Defendant's Exhibit 5
15 for identification.

16 WITNESS: (Upon review), it looks
17 like some type of papers or cards next to the
18 bottle?

19 CHAD SHELTON: I am not sure. Nothing
20 was collected. That wasn't collected?

21 WITNESS: That was not collected.

22 CROSS EXAMINATION CONTINUED

23 BY CHAD SHELTON:

24 Q. There were also items on the floor next to
25 the bed, do you remember a glass being on the

1 floor next to the bed, a drinking glass?

2 A. Not that I recall. I can refer to my report
3 and see if I mention it. (Upon review), I don't
4 mention it in my report.

5 CHAD SHELTON: (Tenders item to be
6 marked as identification).

7 COURT REPORTER: Defendant's Exhibit 6
8 for identification.

9 CROSS EXAMINATION CONTINUED

10 BY CHAD SHELTON:

11 Q. Would it be helpful to see a blown up
12 picture?

13 A. Yes.

14 Q. It is kinda of hard to see in that picture
15 but do you see a mug at the corner of the bed?

16 A. I see several items on the floor at the foot
17 of the bed. I don't see a mug on the corner of
18 the bed.

19 Q. (Indicating).

20 A. Okay. Yes, some type of large glass mug at
21 the foot of the bed.

22 Q. That is standing up, it is not disturbed in
23 any way?

24 A. Correct.

25 Q. The jacket that was collected and was

1 presumptive for blood, that was found upstairs?

2 A. Correct.

3 Q. You also had a chance to search the truck and
4 you didn't find anything in the truck?

5 A. Correct.

6 CHAD SHELTON: (Tenders to be marked
7 as an exhibit).

8 COURT REPORTER: Defendant's Exhibit 7
9 for identification.

10 CROSS EXAMINATION CONTINUED

11 BY CHAD SHELTON:

12 Q. There was an ironing board in the room, did
13 you notice that there was also a cup on the
14 ironing board? Would it be helpful to see a blown
15 up ---

16 A. There appears to be a red cup.

17 Q. A red cup?

18 A. Um-humm.

19 THE COURT: Is that a "yes"?

20 WITNESS: Yes, sir, it is.

21 CHAD SHELTON: No further questions.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY SOLICITOR ALFARO:

25 Q. Investigator Meyers, in your direct

1 examination, you testified that you received a
2 briefing as to what happened in the residence?

3 A. That's correct.

4 Q. When you receive that briefing, does that
5 help you determine what items are going to be
6 collected when you're processing the scene?

7 A. It does.

8 Q. Is it fair to say - you were asked
9 specifically by Mr. Shelton about a Mountain Dew
10 bottle, a mug at the foot of the bed that did not
11 appear to be disturbed, is it fair to say that
12 there are numerous items that you didn't collect
13 in that scene?

14 A. That's correct.

15 Q. Would it be physically -- would it be
16 possible to collect every single item in the
17 house?

18 A. That would be -- there would be nowhere to
19 store every single item in the house.

20 Q. And when you're processing a crime scene, is
21 it your purpose to try to determine what evidence
22 or what items are directly related to what you are
23 investigating?

24 A. That's correct.

25 Q. I show you what Mr. Shelton had marked as

1 Defendant's Exhibit 7, a photograph. I believe
2 that you testified about a red cup on the ironing
3 board.

4 A. Yes.

5 Q. Are you able to tell what that item next to
6 the red cup is?

7 A. It appears to be a jar of Vaseline.

8 Q. Vaseline?

9 A. (Affirmative nod).

10 Q. And that was located in the master bedroom?

11 A. That's correct.

12 SOLICITOR ALFARO: Your Honor, at this
13 time the State would ask -- it was marked as
14 Defendant's 7 but was previously marked as State's
15 Exhibit 32 for identification. We would ask that
16 State's Exhibit 32 be admitted into evidence.

17 THE COURT: Any objection?

18 CHAD SHELTON: No objection.

19 THE COURT: Without objection, State's
20 Exhibit 32, a photograph, is admitted.

21 (SO ENTERED AS STATE'S EXHIBIT 32)

22 SOLICITOR ALFARO: No further questions.

23 THE COURT: Recross?

24 RECROSS EXAMINATION

25 BY CHAD SHELTON:

1 Q. It is also fair to say that there were some
2 items that are not collected that are necessary --
3 that turned out to be necessary?

4 A. It's possible.

5 Q. And any information that you obtained to get
6 the items -- collect items -- that information
7 came from Ms. Lampkin?

8 A. They came from my supervisor.

9 Q. You are not sure who that information came
10 from before that?

11 A. I am not.

12 CHAD SHELTON: That's all.

13 THE COURT: You may step down. Thank
14 you. Do you wish for this witness to be excused?

15 SOLICITOR ALFARO: Yes, Your Honor.

16 THE COURT: Any objection?

17 CHAD SHELTON: No, sir.

18 THE COURT: You are free to leave, as
19 well, Ms. Myers. Thank you.

20 (WITNESS STEPS DOWN)

21 THE COURT: At this point, ladies and
22 gentlemen, we will take a recess. Do not begin
23 your deliberations, do not discuss the case among
24 yourselves, we will be with you in about fifteen
25 minutes.

1 (JURY EXITS COURTROOM)

2 THE COURT: Is there anything from the
3 State before recessing?

4 SOLICITOR WILLIAMS: There is, Your
5 Honor. I was going to ask the court if we could
6 take a short break, had you not taken one. We
7 have two witnesses left and one of the witnesses
8 is Dr. Daniel DeMiers from Intelligenetics.

9 Sometime ago I had asked him to relook at all
10 the data just to see if there was some kind of
11 paternity analysis that he could do on the semen
12 stain that did not belong to the defendant. He
13 had looked at it.

14 Then Friday, after the hearing, I asked
15 him if he had looked at it. He said that he had.
16 That it was a good probability that it was
17 actually from Ms. Lampkin's son, Sean Lampkin.
18 That at some point he had either used the sheets
19 or had been in the bed when she was at work and
20 that's how the semen got there. I immediately
21 called Mr. Shelton and told him about that. At
22 that time, Dr. DeMiers did not tell me that he was
23 doing to do a report.

24 He's just shown up for his testimony. He
25 did a report yesterday. I just wanted to make the

1 court aware of that and make a copy for Mr.
2 Shelton, for Mr. Shelton to look at.

3 THE COURT: He's available to talk with
4 Mr. Shelton without you being present?

5 SOLICITOR WILLIAMS: Absolutely.

6 THE COURT: Okay. Feel free to do so,
7 Mr. Shelton. If you need additional time after
8 that, let me know.

9 CHAD SHELTON: Thank you, Your Honor.

10 THE COURT: We will take about a
11 fifteen minute break. Thank you.

12 (BRIEF RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Are you ready, Mr. Shelton?
15 Do you need more time?

16 CHAD SHELTON: I think that I am
17 prepared to go forward.

18 THE COURT: If that changes before your
19 cross, just let me know.

20 CHAD SHELTON: Yes, sir. Thank you.

21 THE COURT: We can take a recess.
22 Let's bring in our jury.

23 (JURY ENTERS COURTROOM)

24 THE COURT: Thank you very much, ladies
25 and gentlemen. We are not ready to continue. If

1 you will, give your attention to the next witness.

2 Solicitor, you may call your next witness, please.

3 SOLICITOR WILLIAMS: The State would
4 call Dr. Daniel DeMiers.

5 (WITNESS TAKES STAND)

6 DANIEL DEMIERS, having been sworn to tell
7 the truth, and nothing but the truth, testified as
8 follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR WILLIAMS:

11 Q. Dr. DeMiers, can you tell us what your
12 occupation is?

13 A. I am currently the director and technical
14 leader at Intelligenetics.

15 Q. What is that located?

16 A. Hilton Head Island, South Carolina.

17 Q. What is that company?

18 A. I'm sorry?

19 Q. What is that company?

20 A. Intelligenetics is a DNA testing laboratory
21 that specializes in identity testing. We do it
22 for police departments, public defenders,
23 attorneys. Then we also do parenting testing
24 primarily for Homeland Security and the INS
25 office, Immigration and Naturalization Service.

1 Q. What kind of educational background and
2 experience do you have in DNA testing and forensic
3 testing?

4 A. I have a bachelor's degree in cell biology
5 from Eastern State University, and I have a Ph.D.
6 in molecular biology from the Medical College of
7 Virginia.

8 Q. How long have you worked in the field of DNA
9 testing and forensic science?

10 A. Oh, let's see. About twenty-seven years.

11 Q. You worked at other labs, obviously, before
12 Intelligenetics?

13 A. Yes.

14 Q. Have you testified as an expert in the field
15 of field of forensic science and DNA analyses
16 before?

17 A. Yes, I have.

18 Q. Do you know about how many times?

19 A. Between fifty and sixty times.

20 Q. And have you testified for defense counsels
21 and for the State?

22 A. Yes.

23 SOLICITOR WILLIAMS: Your Honor, at
24 this time the State would move Dr. DeMiers to be
25 qualified as an expert in the field of forensic

1 science and DNA analysis.

2 THE COURT: Do you wish to examine him
3 as to his qualifications?

4 CHAD SHELTON: No, sir.

5 THE COURT: He will be admitted as an
6 expert to render opinions in those areas.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR WILLIAMS:

9 Q. In the course of your work as a forensic
10 scientist, did you receive items of evidence in
11 this case?

12 A. Yes, I did.

13 Q. Can you tell us what items of evidence that
14 you received? And if you need to refresh your
15 memory by referring to some notes, ----

16 A. I will refer to my case file if that's okay.

17 Q. That's fine.

18 A. On February 10th, 2012, we received a number
19 of items:

20 A wooden log, like you'd put in the
21 fireplace;

22 a green corduroy jacket;

23 torn strips of towels, some of which were
24 tied into knots;

25 some broken pieces of metal hangers;

1 a beige fitted bed sheet;
2 a white mattress cover;
3 four Newport cigarette butts;
4 two swabs from a stain on the floor;
5 and then a reference swab from Steven
6 Morgan and a reference swab from Rose Lampkin.

7 Then there were other items received
8 subsequent to that.

9 Q. Okay.

10 A. Would you like those items at this time?

11 Q. Please.

12 A. On April 12th, 2012, we received a knife.

13 On May 4th, 2012, we received a reference
14 sample from Victor Mazyck.

15 That would be all the evidence that we
16 received.

17 Q. Let's talk about -- did you prepare reports
18 with the results of this testing?

19 A. Yes.

20 Q. Let's talk first about autosomal DNA testing.
21 What is that?

22 A. Autosomal DNA testing is -- it's a testing
23 that everybody kind of thinks about when they talk
24 about DNA testing for parentage or DNA testing.
25 We all inherit DNA from our mom and from our dad.

1 Half comes from mom and half comes from dad. They
2 are packaged, those are packaged - the DNA is
3 packaged in structures called chromosomes, so half
4 comes from mom. We have forty-six chromosomes,
5 total, twenty-three pairs. So we get twenty-three
6 chromosomes from mom and twenty-three chromosomes
7 from dad. Those come together as an egg and a
8 sperm. You now have a complete complement of DNA.
9 From that an embryo starts to develop.

10 The twenty-three pairs of chromosomes are
11 divided into - twenty-two of which are classified
12 as what they call autosomes. Those primarily code
13 for all the things that make us who we are -- you
14 know, how tall we are, the color of our skin, the
15 color of our eyes, how wide our nose is, all these
16 various characteristics, including genetic
17 disorders that we sometimes inherit or develop
18 afterwards.

19 The other pair - so that's twenty-two of
20 the twenty-three. The other pair is the X and Y
21 chromosome, what they refer to as the sex
22 chromosome. That is what determines our gender.
23 There are also some other characteristics on those
24 chromosomes but primarily they are thought of as
25 determining our gender; so, will we be female or

1 will we be male?

2 So in the standard DNA case, which most
3 commonly is what is done. If it is a parentage
4 case, it will be done using autosomal DNA testing.
5 If it forensic case, it will most of the time be
6 done using autosomal DNA testing.

7 Y chromosome testing is a separate test
8 that zeros in on the Y chromosome. So the Y
9 chromosome is what makes a male a male. So women
10 inherit an X - remember that we get half from mom
11 and half from dad. Women/girls inherit an X
12 chromosome from mom and an X chromosome from dad.
13 Boys inherit an X chromosome from mom and a Y
14 chromosome from dad. So women, girls are XX and
15 boys are XY. So this Y chromosome test, it's done
16 in the same way as an autosomal DNA test except
17 that the reagents zero in on the Y chromosome and
18 they basically ignore all the other DNA there, so
19 it gives you a Y-specific DNA profile, just the
20 male DNA.

21 Q. So hypothetically if you took a sample of DNA
22 from a piece of evidence and then you had blood
23 from a defendant and you compared them, would you
24 be comparing the DNA markers to see how much - how
25 many of the markers from the DNA of the defendant

1 would make the specimen that you took from the
2 piece of evidence?

3 A. That is correct. We do it the same way on a
4 Y chromosome test as well.

5 Q. Okay. So Y chromosome tests are sometimes
6 necessary on a test of evidence that you have
7 already tested for autosomal.

8 A. It can be useful for a number of reasons.
9 One can be if there is a lot of female DNA and
10 just a really small amount of male DNA, uh, the
11 system -- the autosomal test basically gets
12 swamped by the female DNA that is present and --
13 so, although you're picking up the male DNA, it's
14 just kinda of below the radar screen. It's just
15 too low to actually detect. So in that particular
16 case, a Y chromosome test can be useful.

17 As an example, in a sexual assault case
18 where the man has been vasectomized or just has a
19 naturally low sperm count, there are not enough
20 sperm cells there to pick up an autosomal profile
21 if it is mixed with female DNA. So - but even
22 though a man has been vasectomized, he still
23 produces semen. In his semen are cells. Within
24 his cells are his Y chromosomes. So a Y
25 chromosome test can be useful in that situation.

1 The other time that it can be useful is -
2 it is a more sensitive test, at least at the time.
3 Now, we actually have a new type or set of
4 reagents that have increased sensitivity, but at
5 the time that this test was done we didn't have
6 those. So the Y chromosome test could be useful
7 in situations where you have a problem with
8 sensitivity, that there is just so little DNA
9 there that the regular autosomal reagents do not
10 pick it up but the chromosomal test does. So it
11 is a combination of mixtures, sorting out mixtures
12 and sensitivity issue, I'd say.

13 Q. Just one more hypothetical. If you had a
14 sexual assault kit and several samples were taken
15 but -- say from the vaginal swabs you had an
16 overwhelming amount of female DNA, of you just did
17 the autosomal testing would it be possible that it
18 would just pick up the semen but not enough to
19 identify the male?

20 A. It really depends on the circumstances. If
21 you had a vaginal swab postcoital or after a rape
22 has taken place and if the man ejaculated, then
23 his semen would potentially be picked up and we
24 could potentially pick up his DNA profile.
25 Depending on the circumstances, depending on how

1 much material is there, we might be able to do
2 what is called a differential extraction. That is
3 -- basically if you have a mixture of female DNA
4 and male DNA, the sperm cells can be separated out
5 from the female DNA and we're able to develop a
6 male-specific profile and a female-specific
7 profile. But if you are unable to do that, you
8 can use a Y chromosome test. But if there is very
9 little sperm present, for example if he has been
10 vasectomized, then we could use the Y chromosome
11 test.

12 Q. Right. Okay. So if you didn't move on to
13 the Y, it is possible that you would know that
14 there was semen there but it would be an un-
15 identified male because there just wasn't enough
16 semen there?

17 A. Correct.

18 Q. Okay, let's look at the evidence that you
19 tested. First, let's go to the sheets. Now, you
20 picked up -- first, on the sheets, tell us if any
21 semen was found on the sheets.

22 A. We tested a number of items for the presence
23 of semen. The two areas that I tested from the
24 bed sheet were positive for semen.

25 Q. Okay. But that did not belong to the

1 defendant, Steven Morgan; is that correct?

2 A. (Affirmative nod), Steven Morgan was excluded
3 as a contributor of that DNA.

4 Q. And Rose Lampkin - her DNA was present,
5 right?

6 A. Yes, her DNA was clearly present.

7 Q. And if it were Rose Lampkin's sheets and
8 someone else deposited semen on it, would that
9 explain why her DNA was present on it as well?

10 A. Uh, -- yes. Clearly her DNA was all over the
11 sheet. There was no trouble picking her up on the
12 sheet.

13 Q. Had those sheets been freshly laundered, as
14 far as you could tell?

15 A. They actually looking quite soiled at the
16 time that I analyzed them.

17 Q. And did you do further testing on the sheets,
18 on that stain on the sheets? As far as genetic
19 testing for maternity?

20 A. No.

21 Q. Did you do a report yesterday on some genetic
22 testing?

23 A. Oh, yes. I'm sorry. I did do actual
24 additional DNA processing but -- I did generate a
25 parentage report that compared the DNA profile we

1 obtained from the sheet that was clearly Rose
2 Lampkin, then the male DNA that we recovered from
3 the bed sheet. I compared them for parentage.
4 Found with a 99.99 probability that the male DNA
5 on the bed sheet came from a child of Rose
6 Lampkin.

7 Q. Okay.

8 A. I was just going to add that, having said
9 that, we would get a similar result if we were to
10 compare semen from Rose Lampkin's father because
11 he also is a first order relative. So Rose
12 Lampkin shares half of her DNA with her mother,
13 half of her DNA with her father and she also
14 shares half of her DNA with any children that she
15 would have.

16 Q. So you didn't retest the evidence, you just
17 reanalyzed it using the ---

18 A. Correct.

19 Q. So if Rose Lampkin were at work and her son
20 used her bed for purposes where at some point
21 semen was deposited ---

22 CHAD SHELTON: Objection.

23 THE COURT: It's speculative. Let me
24 hear the question finish, please.

25 SOLICITOR WILLIAMS: I just want to

1 pose it as a hypothetical.

2 THE COURT: Go ahead and pose your
3 question.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR WILLIAMS:

6 Q. Hypothetically, if Rose Lampkin were not in
7 the home, those were her sheets, and her son were
8 to do something in the bed where her (sic) semen
9 was deposited on the sheets, would that be an
10 explanation for that stain? Would that be a
11 reasonable explanation based on scientific data?

12 A. Yes, that would explain it.

13 THE COURT: Overrule the objection to
14 that question based on the way that he responded.

15 SOLICITOR WILLIAMS: Thank you.

16 DIRECT EXAMINATION CONTINUED

17 BY SOLICITOR WILLIAMS:

18 Q. Did you also test the swabs from the stains
19 on the floor?

20 A. Yes.

21 Q. And you have a report where these items are
22 identified, is that correct?

23 A. Yes, I do.

24 Q. I am looking at Item 201200188.2 and 00191.
25 What - did you do a presumptive test for blood on

1 those things?

2 A. The stain on the floor, that I have as 191.

3 Q. Yeah.

4 A. The stain on the floor, that we identified as
5 our item 2012001191 was positive for blood, human
6 blood.

7 Q. And did you compare that blood to the DNA
8 standard for Rose Lampkin?

9 A. Yes. The blood from the floor matched the
10 DNA profile of Rose Lampkin.

11 Q. Did you also test the green jacket that you
12 took into evidence, the green corduroy jacket that
13 had blood on it?

14 A. I did not do a test for blood on the green
15 jacket.

16 Q. What testing did you do?

17 A I swabbed the green jacket, I swabbed the
18 lapel of the jacket - it was a zip-up jacket, I
19 swabbed the zipper. I also swabbed this area
20 here, the arms.

21 SOLICITOR WILLIAMS: I am going to show
22 defense counsel what is marked as State's Exhibit
23 86.

24 CHAD SHELTON: (Review).

25 SOLICITOR WILLIAMS: May I approach?

1 THE COURT: You may.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR WILLIAMS:

4 Q. Tell us if this is the item that you
5 examined.

6 A. Yes, that's the item.

7 Q. This is State's Exhibit 86, the corduroy
8 jacket. Sorry. Continue.

9 A. Just to repeat, I swabbed the lapel of the
10 jacket, the zipper and I swabbed this region of
11 the arms.

12 Q. And would that be referred to as touch DNA?
13 Were you looking for touch DNA?

14 A. Yes, I was looking -- I knew that I would
15 find her DNA. It was her jacket. Based on the
16 police report, I was looking for evidence of a
17 perpetrator, going on the assumption that she was
18 manhandled. Generally when that happens, people
19 are grabbed by the lapel and they're grabbed by
20 the arms. So I thought that might be the most
21 likely place to find touch DNA from some
22 perpetrator. So I swabbed cotton swabs to extract
23 the DNA and processed that DNA.

24 Q. What were the results of that testing?

25 A. That yielded, not surprisingly, a mixture of

1 profiles, two people. The major contributor,
2 again not surprisedly, was Rose Lampkin, because
3 it was her jacket and most of the DNA was hers.
4 Steve Morgan could not be excluded as a minor
5 contributor to that DNA mixture.

6 Q. Is that one of the items that you did Y
7 chromosome testing on also?

8 A. I also -- again because there was so much
9 female DNA, I proceeded to do a Y chromosome test,
10 which just zeros in on the male DNA. I was able
11 to get a unique male-specific profile, which was a
12 match to Steven Morgan.

13 Q. Can you talk about probability in terms of a
14 match on the green jacket to Steven Morgan, after
15 the Y chromosome testing?

16 A. On a Y chromosome profile - and also on a
17 unique chromosomal profile, we look at the
18 frequency of that profile in the general
19 population. In the case of the Y chromosome DNA
20 profile, it was observed that profile, composite
21 profile, was observed two times in an African
22 American database of 1,932 people. So it is a
23 frequency of about one in a thousand.

24 Q. And did you do testing on the white pieces of
25 torn towel?

1 A. Yes, we did DNA testing on that, and it was
2 positive for semen. So we did a differential
3 extraction and developed a male profile and a
4 female profile.

5 Q. Who did those profiles match?

6 A. The male fraction of the -- the male DNA
7 profile obtained from the towel matched Steven
8 Morgan. And the female DNA profile obtained from
9 the towel -- so we did a differential extraction
10 and we were able to separate the male-bearing
11 sperm cells from the female-bearing epithelia
12 cells to develop a male-specific profile and a
13 female-specific profile. The male-specific
14 profile matched Steven Morgan and the female-
15 specific profile matched Rose Lampkin.

16 Q. So you did not have to do Y testing on that?

17 A. No, I did not.

18 Q. And what is the frequency of the probability
19 of that matching somebody besides Steve Morgan,
20 the sperm that was found on the towel?

21 A. The frequency of this is one in -- it's less
22 than one in nine hundred and ninety-nine trillion.
23 So it's basically considered a unique profile
24 statistically. We have a world of seven billion
25 people, more or less, and statistically if you

1 went and sampled every person that you'd never
2 find another person on the world (sic) with that
3 DNA profile.

4 Q. So it was a match?

5 A. It's a match.

6 Q. Hypothetically, if Steven Morgan had sexually
7 assaulted Rose Lampkin, deposited semen in her
8 vagina, and then wiped her vagina with that towel,
9 would that be an explanation for why those
10 mixtures would be on the towel?

11 A. That could explain it.

12 Q. And did you also test some brown wire hanger
13 pieces?

14 A. Yes. The brown hanger pieces were labeled as
15 item 187.1

16 Q. Tell us what the result were from those wire
17 hanger pieces?

18 A. The brown wire hangers yielded a mixture of
19 DNA profile of two people. So this was a
20 composite of the two. So we could not exclude
21 Rose Lampkin from this mixture profile. We could
22 not exclude Steven Morgan from this mixture
23 profile.

24 Q. And how would - what kind of DNA is on there?
25 Like what part of his body? What would be the

1 explanation? Is it touch DNA or ---

2 A. Well, he -- I was looking for touch DNA
3 because the wires, the coat hangers were bent up
4 and twisted together. They looked like they have
5 been used for binding somebody's hands or feet.
6 So the wires were broken into pieces and then
7 those were wrapped around and then they were
8 twisted. Anyone that has done any -- if you're
9 kind of a handy person that works around the house
10 or on your car and you've ever used a coat hanger
11 to twist together, that coat hanger really digs
12 into your fingers. So if that was used in that
13 manner, we are certainly going to pick up Rose
14 Lampkin because it was around -- if it were around
15 her arms, hands or feet, we could pick up her DNA.
16 If somebody did use it in that manner, twisted
17 these wires together, it's a pretty good source of
18 DNA. You leave a log of DNA because wires really
19 dig into your fingers. So that's what we were
20 looking for. That's what appears we found.

21 Q. Did you test the white hanger pieces?

22 A. I also tested the white hanger. That was
23 identified as 187.2 and ---

24 Q. And what were the results of that?

25 A. On the white hanger, I obtained a - also, I

1 should point out, going back to the brown hanger,
2 that I also ran a Y chromosome test and that
3 produced a male-specific profile that matched
4 Steven Morgan.

5 Q. Okay. Thank you.

6 A. On the white hanger, identified as 187.2,
7 again it was a mixture of two contributors. Rose
8 Lampkin matched the major contributor, so she --
9 most of the DNA off of the white hanger was her
10 DNA.

11 There was a minor profile that we describe as
12 being consistent -- it was a very minor, low level
13 profile -- and it was consistent with Steven
14 Morgan being the contributor. Now, I have to
15 point out that because it was minor, at a very low
16 level, that we didn't pick up every single loci
17 within that DNA mixture. Some of them, you can
18 see below threshold. But what we have is that it
19 is consistent with being from Steven Morgan. The
20 probability of exclusion is still 99.99 percent or
21 greater than 99.99 percent.

22 Q. So not as strong as the brown hanger?

23 A. Not as strong as the brown. But I also did Y
24 chromosome testing on the white hanger and had
25 enough male-specific DNA to pick up a unique

1 profile that matched Steven Morgan.

2 Q. Did you test the cigarette butt from the
3 bedroom? 109.3?

4 A. Yes. I believe -- give me one second, please,
5 (reviewing report). Yes, that was tested as well.

6 Q. What were the results of that?

7 A. That matched Steven Morgan.

8 Q. What about the cigarette butt from the
9 hallway? 190.2?

10 A. That was a mixture of two people. Steven
11 Morgan matched the major contributor. So that
12 was a mixture, with most of the DNA from one
13 person. That one person matched Steven Morgan.
14 The minor contributor -- somebody else handled it
15 but it just wasn't enough to do a comparison on.

16 Q. Okay. And the cigarette butt from the
17 dinning room?

18 A. The dining room was 190.1?

19 Q. Yes.

20 A. Also a mixture of two individuals. Rose
21 Lampkin matched the major contributor. Again,
22 the minor contributor was not sufficient for
23 comparison.

24 Q. And, lastly, did you test -- tell us what
25 tests that you ran on the knife.

1 A. (No response).

2 Q. Did you do a presumptive test on that?

3 A. The knife came in at a later date, so it was
4 reported on a separate report. We did do a test
5 to look for the presence of blood on the knife
6 blade. That was positive.

7 Q. Did you test that blood against Rose Lampkin?

8 A. Yes, I did.

9 Q. And what was the results of that?

10 A. The knife blade was a mixture of three
11 people: Rose Lampkin cannot be excluded as being
12 one of the contributors to that DNA mixture;
13 Steven Morgan was excluded from the knife blade.

14 Q. From the knife blade?

15 A. (Affirmative nod), so there was blood. Rose
16 Lampkin matched that mixture profile, Steven
17 Morgan did not matched that profile.

18 Q. And the fact that there are two other
19 contributors that were found on the knife blade,
20 does that necessarily mean that there were three
21 people's blood -- or just three people's DNA?

22 A. I can only say with certainty that there were
23 three people - three people handled or were in
24 contact with that blade at some point.

25 Q. At some point?

1 A. At some point, (affirmative nod).

2 Q. And hypothetically of someone had handled
3 that blade and then it was used to put to her
4 throat and she bled on it, would that be an
5 explanation for why there is more than her DNA on
6 the knife?

7 A. Yes, that would explain it.

8 Q. Did you test the handle of the knife?

9 A. I tested the handle of the knife separately.
10 It is fairly routine when we get knives in/
11 submitted in these kinds of crimes that we are
12 looking for DNA from the victim and DNA from the
13 perpetrator. So we tested the knife handle. Again
14 we obtained a mixture of at least three people.
15 Rose Lampkin could not be excluded as one of the
16 contributors. Steven Morgan could also not be
17 excluded as one of the contributors. The third
18 person was unknown.

19 Q. Did you test Victor Mazyck's profile against
20 that handle?

21 A. Yes. Afterwards -- (searching through
22 papers). Again, the reference sample from Victor
23 Mazyck came in at a later date, in May, and
24 generated another report. He was excluded as a
25 contributor of the DNA mixture found on the knife

1 blade and on the knife handle.

2 Q. Okay. Why would -- if someone touches a
3 knife, if two or three people touch a knife, why
4 would some people's DNA be on it and other's not?
5 If sweating or some other circumstances relevant
6 to why if three people touch it that maybe only
7 one person's DNA would be on it and another
8 person's would not. Can you explain why that
9 might be the case?

10 A. Yeah, it's -- when you're talking about
11 transfer DNA onto an object, like a knife or a gun
12 or anything else for that matter, it's quite
13 variable as to how much DNA transfers to any item.

14 You know, putting my hand here on this
15 countertop, I am transferring my DNA to this
16 countertop. But probably not very much because
17 it's -- I'm just casually touching it.

18 I am not classified as what you'd call a
19 shedder. In forensics we classify people as
20 shedders and nonshedders. Some people shed cells.
21 You know, they may be prone to having dandruff on
22 their jacket or shirt. But they just are more
23 likely to leave DNA behind. So it would depend
24 on what we refer to as their shedder status, how
25 likely are they to do that.

1 Then it also depends greatly on the surface.
2 You know, this is not a smooth surface, so it is
3 not pulling my cells off. If you were grab
4 something with a textured surface, like the handle
5 of a knife, -- I commonly get knives and guns as
6 evidence in cases and the textured surface of the
7 gun or knife is a very good surface for pulling
8 DNA off of a hand of an individual holding the
9 item.

10 Another circumstance is that, too, in the
11 case of a crime people's adrenaline is up, their
12 heart rates are up and they're - they commonly are
13 perspiring and that is a great source of DNA. So
14 if somebody has something in their hand, they're
15 nervous and they are perspiring, they are leaving
16 tons of DNA on that item.

17 So it's -- it's really variable. You know,
18 if somebody just casually touches something, there
19 is not going to be enough there for us to pick up.
20 If they leave more material, then we do pick it
21 up.

22 SOLICITOR WILLIAMS: Court's
23 indulgence.

24 THE COURT: Certainly.

25 SOLICITOR WILLIAMS: Thank you, Dr.

1 DeMiers. Please answer any questions that the
2 defense may have.

3 THE COURT: You may proceed.

4 CROSS EXAMINATION

5 BY CHAD SHELTON:

6 Q. Dr. DeMiers, in a forensic situation you're
7 only testing fifteen genes?

8 A. Well, they're not technically genes but there
9 are fifteen - well, including gender, sixteen.
10 Sixteen regions of chromosomes.

11 Q. And that represents of maybe a total of one
12 percent of DNA?

13 A. Actually less than that.

14 Q. Less than one percent of the total cells DNA?

15 A. Less than one percent of the total DNA.

16 Q. So you are not testing every single part of
17 the DNA?

18 A. No, that would be highly impractical in a
19 forensics situation, due to the time that it would
20 take. It would also be highly uninformative.

21 That's because most of our DNA, between all of us
22 regardless of who we are, is the same. It's genes
23 and DNA that codes for our skin, our blood cells,
24 our tissues and all these things that we all have
25 in common. It is actually a very, very small

1 amount of DNA that makes us different from
2 individual to individual.

3 Q. And you did give some percentages, but you
4 could never be a hundred percent sure unless you
5 tested everything in the DNA?

6 A. Well, I would -- would not agree with you
7 exactly on that. Statistically it's pretty well,
8 quite well established that -- in fact, when the
9 FBI has a match, they just call it identity.
10 When you have a DNA profile with a frequency that
11 is less than one in nine hundred ninety-nine
12 trillion, and the actual number is much smaller
13 than that, we just cap it off at nine hundred
14 ninety-nine -- after you get into trillions it
15 becomes, you know, almost meaningless to keep
16 adding nines onto the end of the number or zeros
17 onto the end of the number.

18 Q. That is not a real number of the actual
19 population in the United States, the world?

20 A. It's not meant to be. It's meant to give
21 you an idea of its relative frequency. If you
22 consider that we have about seven billion people
23 in the whole world and, of course, obviously most
24 of those people would not reasonably be considered
25 perpetrators of a crime in this region, uh, -- if

1 you consider that we have seven billion people and
2 you have a DNA profile that is expected to only
3 occur less than once in nine hundred ninety-nine
4 trillion, that's why the FBI considers it a unique
5 profile/identity. You are not likely to find
6 another person in the world that has that same
7 profile.

8 Q. There are two parts to your analysis. First
9 is the molecular genetics and the second part
10 would be like a population genetics, comparing --
11 it's comparing to the population of, in this
12 situation, blacks and white, Hispanics. So that
13 would be the population genetics of you analysis?

14 A. Yes. That's a good explanation.

15 Q. And the molecular genetics part of your
16 analysis is the lab work leading up to the DNA
17 profile?

18 A. Yes.

19 Q. But unless you analyze a hundred percent of
20 the DNA, you can never be a hundred percent
21 certain that a particular individual matches
22 evidence received?

23 A. Again, I'm sorry, I would have to disagree
24 with you on that.

25 Q. The technology that is used is called a pcr?

1 A. That is one of the technologies that we use,
2 yes.

3 Q. Was that used in this?

4 A. Yes.

5 Q. What does pcr stand for?

6 A. Pcr stands for the polymerase chain reaction,
7 which is why we call it "pcr".

8 Q. And this is some pretty sensitive technology?

9 A. Yes, it is.

10 Q. That allows you to test a few cells?

11 A. Yes, a relatively small number of cells.

12 Q. So you wear gloves and take proper
13 precautions?

14 A. Exactly.

15 Q. Because you don't want to transfer any of
16 your cells or any other cells?

17 A. Yes, sir.

18 Q. And, uh, you change your gloves often?

19 A. Yes.

20 Q. Because you don't want to transfer from one
21 sample to another sample?

22 A. That's correct.

23 Q. This is very sensitive technology?

24 A. It is.

25 Q. And unless you are very careful you could

1 come across some cross contamination?

2 A. It's possible. There is no evidence of that
3 in this case but it is possible.

4 Q. When you get samples, you also have an
5 incident report that comes with it so that you
6 kind of know what is being alleged?

7 A. I don't generally get an incident report. I
8 get a chain of custody report, commonly. I do not
9 know if I have an incident report on this case
10 because I don't really use them in my file notes
11 where -- so I can't say if I got one in this case
12 or not.

13 Q. All right. You testified that touch DNA on
14 the hangers and the twisting of hangers -- was
15 that based on your observations or was that based
16 on an incident report?

17 A. You mean my reasoning for analyzing what I
18 analyzed?

19 Q. (Affirmative nod), your reasoning.

20 A. It was based partly on what I saw. I know
21 from experience when I have a case like this and I
22 have coat hangers that are bound together, that
23 they are used for restraining. But it was also
24 based on what was verbally provided to me by the
25 Goose Creek Police Department.

1 Q. So you had some verbal contact with the
2 police department ---

3 A. Yes.

4 Q. --- who told you kind of what the allegations
5 were?

6 A. Yes.

7 Q. Do you have any like general guidelines that
8 your office has like changing gloves, that -
9 within a certain amount of time?

10 A. Yes, it's part of our standard operating
11 procedures. It's also what -- we are accredited
12 by ASCLD labs, the same as the State lab, SLED.
13 You know, they have their requirements that we
14 conduct ourselves in a certain way. So we are
15 accredited and inspected by them.

16 Q. Now, the DNA results, they don't indicate a
17 race of the donor?

18 A. I did not look for race. I was not requested
19 for that information, so I did not.

20 Q. And the results that you received in the lab,
21 they don't indicate age?

22 A. No, we don't get that information from our
23 testing. The age of the person is what you are
24 referring to?

25 Q. Right.

1 A. No. We don't get that information.

2 Q. And part of the population genetics that you
3 have to rely on is who your suspect is and what
4 they tell you is a person's race and that sort of
5 thing.

6 A. I don't always have it. In forensics cases,
7 we don't always know what it is. But I actually
8 generate -- in this case, I did have it, so
9 generated race-specific data. However, I can tell
10 you that, unequivocally, that the number would not
11 be any different. We would still be less than one
12 in nine hundred ninety-nine trillion, because the
13 one in nine hundred and ninety-nine trillion that
14 I use is a cap. The number goes into quad-
15 rillions. Quite honestly, if I weren't a
16 scientist, I wouldn't know what a quadrillion was
17 myself, so I think the numbers become so
18 meaningless at a point that -- so -- given that
19 our national deficit is now at a point in the
20 trillions, it is a number that people tend to know
21 a little bit more. I cap it off at 999 trillion.
22 But if I were to run the same number for
23 Caucasian, Hispanic or Asian, it would be - it
24 would still be one in nine hundred ninety-nine
25 trillion.

1 Q. And that was just on the beige towel?

2 A. That would be -- let me go back to the
3 report. That would be on anything where we had
4 what we call a single source contributor.

5 Q. Now, your results indicate how DNA got on
6 something else, on a sample.

7 A. No. I don't -- in the lab, we receive items,
8 we test them and we report what we find. How it
9 got there is not, you know, what we do. That's
10 for the police and the investigators.

11 Q. So you have no idea how ---

12 A. You'd have to give a specific hypothetical.

13 Q. Do -- now, -- the results that you gave on
14 March 8th, you gave those results to law
15 enforcement.

16 A. (Affirmative nod).

17 Q. Did you give it to the Solicitor's office?
18 Do you know?

19 A. No, I did not.

20 Q. If you were requested to, would you have been
21 able to give it to SLED?

22 A. If I was requested by the Goose Creek police
23 department or the Solicitor's office, I would have
24 complied.

25 Q. Whoever was paying for it?

1 A. Well, no, it doesn't have anything to do with
2 who is paying the bill. It has to do with the
3 guidelines that I work under.

4 Q. Okay.

5 A. So, you know, I basically report to whoever
6 brings us the case. In this case it was a police
7 department. It could be a public defender's
8 office, because I do work for public defenders as
9 well. I report to whoever has brought the case to
10 me, and then it's up to them to distribute it
11 wherever they feel appropriate.

12 Q. So on March 8th, you would have given that
13 information to SLED

14 A. On March 8th?

15 Q. Yes.

16 A I could have but I didn't because no one
17 asked me to do that.

18 Q. And you can only analyze what you're given?

19 A. Yes. Of course.

20 Q. You can -- your analysis is basically a
21 comparison of known samples?

22 A. A comparison of the known to what we know as
23 the unknown, which is the evidence; yeah.

24 Q. And in this instance, the known samples came
25 from law enforcement?

1 A. In this case the reference samples from Rose
2 Lampkin and Steven Morgan were delivered to me by
3 the Goose Creek Police Department.

4 Q. The only definite that you have is this sperm
5 fraction from the fitted sheet -- or, excuse me,
6 the sperm fraction from the towel, that compares
7 to Steven Morgan?

8 A. What do you mean by definite.

9 Q. Definite -- the only definite match with
10 Steven Morgan is the towel? Sperm fraction from
11 the towel?

12 A. Well, not exactly. We have, first of all, a
13 unique male Y chromosome specific male profile off
14 of the jacket, the brown hanger, the white hanger,
15 which also match Steven Morgan. Then on the
16 corduroy jacket and the towel, as well as the
17 hangers, we also have mixture profiles which do
18 not exclude Steven Morgan.

19 Q. The stains on the floor, there is no -
20 you didn't find any mixture in the stains on the
21 floor.

22 A. I only tested one stain from the floor, which
23 was blood. That matched the victim, Rose Lampkin.

24 Q. You testified about green jacket and that
25 there was a mixture that could not exclude Steven

1 Morgan.

2 A. Yes. If I could back up for just one second.
3 We did two types of testing on the corduroy
4 jacket. We did the autosomal testing, which was a
5 mixture. If you look at it, you can see that it
6 was a composite of Steven Morgan and Rose Lampkin.
7 Then we did Y chromosome testing which gave a
8 unique male profile which only Steven -- you know,
9 the Y chromosome zeros in on the DNA and that was
10 a unique profile matching Steven Morgan.

11 Q. But you have no ideal how Steven Morgan's DNA
12 could have gotten on the jacket?

13 A. No.

14 Q. Touch DNA. It could have been a hug.

15 A. No, it would have taken more. In my opinion,
16 you know, when you hug somebody -- at least I
17 don't -- generally you don't grab them by the
18 label or grab them by the arms. You embrace. But
19 even in that situation, I think -- excuse me. We
20 actually obtained a good amount of DNA from the
21 jacket and I don't think a casual contact would
22 account for the amount of DNA that we found on the
23 jacket.

24 Q. You can't tell where -- you said that you
25 swabbed three different places: the lapel, the

1 zipper and the arms.

2 A. Yes.

3 Q. You can't tell where Steven Morgan's DNA is
4 on any -- which one that is on?

5 A. That's correct. I did them together. So
6 they could have been off of the lapel only, could
7 have been off the arms only or could have been of
8 the zipper only.

9 Q. So you can't testify as to where that was
10 found?

11 A. I can testify that it was found in one or all
12 of those places.

13 Q. And I think that you said that if somebody
14 was a shedder that they would give more DNA?

15 A. There is a tendency, yes.

16 Q. And you don't know anything about Steven
17 Morgan?

18 A. No.

19 Q. You don't know if he could be a shedder?

20 A. Shedder status is -- you know, quite honestly
21 it was a fairly large amount of DNA that I
22 recovered. In my opinion it's just not going to
23 happen in a casual contact situation.

24 Q. But you don't know how it got there?

25 A. No, sir.

1 Q. Touch DNA could also - if somebody hadn't
2 lived in the home, their DNA could still be in the
3 home and could be transferred that way?

4 A. Potentially if somebody had lived in the
5 home, it could be obtained that way. It would
6 depend on quite a number of factors.

7 Q. If someone had a relationship with that
8 person, consensual relationship with that person,
9 -- so there's a lot of different ways that DNA
10 could be on the jacket?

11 A. Yes. I don't -- as I said, I test the items
12 and generate data, then compare that data, but I
13 can't comment as to how it got there. Only in
14 general terms, as I said, from my experience you
15 don't leave that much DNA on a hanger or a jacket
16 through casual contact. It takes a fairly good
17 amount of contact to leave that amount of DNA.

18 Q. On the hanger -- you -- you -- if he was
19 living in the home, using the hanger, his DNA
20 could still be on that hanger.

21 A. I don't think so. I don't -- again, in my
22 experience you -- a smooth surfaced metal hanger,
23 the casual use of picking up that hanger and
24 putting your clothes on it and putting it back is
25 not likely to transfer the sufficient DNA to get

1 the DNA profiles that we got. It requires
2 different circumstances. That's my opinion. I
3 can't say that with a hundred percent certainty,
4 but that's based on my almost thirty years of
5 experience.

6 Q. So you have no idea how it got there?

7 A. No. In reality, I do not know how it got
8 there. I can only tell you that it was.

9 Q. Now, -- sorry. I am going to back up real
10 quick. There is a cigarette butt from the bedroom
11 that matches Steven.

12 A. Correct.

13 Q. And there is a cigarette butt from the
14 hallway that matches Steven Morgan as a minor
15 contributor?

16 A. Yes. The cigarette butt from the dining room
17 had more of his DNA -- excuse me, from the
18 hallway. You're correct.

19 Q. The cigarette butt from the dining room was
20 Rose's?

21 A. Mostly. There was also another contributor
22 there.

23 Q. But it couldn't have been a male contributor
24 because there was only an X.

25 A. There is only an X recorded. I would have to

1 look at the actual data to tell you if there's a Y
2 down below. You know, things that are below
3 threshold we do not put on the report, but that
4 doesn't mean that it is not there.

5 Q. And there was one cigarette butt from the
6 bedroom that was not tested?

7 A. Correct.

8 Q. Did -- you have just generated a report
9 yesterday?

10 A. I did, yes.

11 Q. And that was at the direction of the
12 Solicitor's office?

13 A. No, she didn't direct me to do it. We
14 discussed it and -- as I mentioned to you in our
15 conference earlier, I am kind of obligated to put
16 that into writing. So after the conversation, I
17 did generate a report and gave it to her this
18 morning.

19 Q. And that was you compared the stain -- the
20 semen stain found on the bed sheet?

21 A. Yes, I compared the male DNA from the semen-
22 positive area of the bed sheet to the victim's DNA
23 profile.

24 Q. And you did something similar to what you did
25 to the towel, that you did to the bed sheet. You

1 differentiated the extraction?

2 A. Yes.

3 Q. There was semen that you -- you do an
4 extraction and you separate the semen from the
5 epithelia?

6 A. Yes.

7 Q. So you separated -- you did that on the white
8 sheet or the white towel?

9 A. Correct.

10 Q. And the epithelia extraction from the towel
11 matched Rose?

12 A. (Affirmative nod).

13 Q. The sperm extraction matched Steven, from the
14 towel.

15 A. (Upon review), yes. That's correct.

16 Q. And based off of the report that you did
17 yesterday, you did a differentiated extraction
18 of the bed sheet, the beige bed sheet. The
19 epithelial fracture was Rose.

20 A. The epithelia fraction -- well, there were
21 two areas of the sheet, actually, that were
22 examined. They are distinguished as 188.1 and
23 188.2

24 Q. Right. 188.1 is the semen?

25 A. The 88.1.M, "M" for male, is the sperm

1 fraction. The 88.1.F is the epithelial fraction.

2 Q. The female matched Rose?

3 A. Yes. On the 188.1, the female fraction
4 matched Rose.

5 Q. And the male fraction excluded Steven?

6 A. Correct.

7 Q. So Steven's DNA is not on the bed sheet?

8 A. No, I wouldn't go that far. It is only not
9 on the little area that I tested.

10 Q. But you can't say that it is on the bed
11 sheet?

12 A. I can't say that it is on the bed sheet, but
13 I can't say that it is not on the bed sheet.

14 Q. Based off the report that you did yesterday,
15 the male section of that is now a child or a
16 father?

17 A. Through my analyses, I found that the male
18 DNA profile from the bed sheet -- I don't have the
19 report anymore because I gave my copy to Ms.
20 Williams. I don't have a copy. If you could ---

21 SOLICITOR WILLIAMS: Do you want my
22 copy?

23 CHAD SHELTON: Please.

24 WITNESS: Sorry. I should have made a
25 copy.

1 CHAD SHELTON: (Tenders to be marked
2 as exhibit).

3 COURT REPORTER: Defendant's Exhibit 8
4 for identification.

5 CROSS EXMAINATION CONTINUED

6 BY CHAD SHELTON:

7 Q. (Tenders).

8 A. (Upon review), so to answer your question, I
9 used the 188.1 area of the sheet.

10 Q. That is sperm fraction?

11 A. Yes.

12 Q. And did you - you used the 188.2?

13 A. No. In fact, I didn't -- if you see the
14 report, you'll see that I didn't get a DNA profile
15 from that particular fraction.

16 Q. And that's a 99.9 percent maternity?

17 A. Right. So I -- I compared the male DNA from
18 the bed sheet with the DNA from Rose Lampkin to
19 look to see if it was possible that she could be
20 the mother of the person who left that DNA. The
21 analysis indicates that it is likely, 99.99
22 percent probability that she is in fact the mother
23 of that contributor.

24 Q. And if I -- there is a maternity index number
25 for each of the loci.

1 A. Right.

2 Q. So each of the sections tested there's a
3 maternity index, and that's a probability.

4 A. Yes. Not a probability, the index is an
5 odds. The odds in favor about -- you know, if you
6 buy a lottery ticket, you think about one in so
7 many odds chance of winning. You know, the one in
8 four million chance of winning, those are 'odds.'
9 If you watch the weather report -- well, I guess
10 it would be a probability if you're looking at the
11 weather report. This is the odds in favor of a
12 relationship as compared to against it.

13 Q. So what you did to get to in your maternity
14 index is one in 7,790?

15 A. Correct.

16 Q. Of black U.S. women?

17 A. Correct.

18 Q. And what you did was take every single loci
19 and multiple it?

20 A. Correct, to get the index.

21 Q. So on this index 1.16 times 6.6 times 1.21
22 times and so forth -- so on down the ---

23 A. Yes, sir. That gives you that number at the
24 top, that 7,790.

25 Q. And that number, the maternity index of 1.16

1 times 6.6, that 1.16, that comes from the U.S.
2 black population?

3 A. Yes. Correct.

4 Q. That's not -- that would be a different
5 number if it was Caucasian or Hispanic, if you
6 compared it to that?

7 A. Potentially. But not substantially, I
8 wouldn't say.

9 Q. But potentially. The multiplications could
10 change that ---

11 A. Each number would change that. Some would be
12 a little higher, some would be a little lower.

13 Q. You were also given Mr. Mazyck's profile?

14 A. Just a swab and we generated the profile
15 ourselves.

16 Q. Was that compared to anything else other than
17 the knife?

18 A. I did compare it to everything in the case,
19 which is kind of a standard practice.

20 Q. And his DNA was excluded from the knife?

21 A. Yes.

22 Q. Mr. Morgan's DNA was excluded from the knife
23 blade?

24 A. I believe that's correct, but let me just
25 check the report here. (Upon review), yes, Mr.

1 Morgan was excluded from the knife blade.

2 Q. Were -- did you give any -- were you given
3 any pictures or anything of the knife?

4 A. Well, I was actually provided with the knife,
5 which I photographed myself.

6 Q. So you are aware that it is a flip open
7 knife?

8 A. Yes.

9 Q. So you have to touch the blade to open it?

10 A. Yes. I received it in the open position.

11 Q. But Mr. Morgan's DNA was excluded from the
12 knife blade?

13 A. From the blade, correct.

14 Q. And he could not be excluded from the handle?

15 A. Correct.

16 Q. So -- and Rose could not be excluded from the
17 handle?

18 A. Also correct.

19 Q. And there were three contributors or at least
20 contributors ---

21 A. At least three contributors on both the blade
22 and the handle.

23 Q. So there could -- there is at least the
24 possibility of at least one more contributor to
25 the handle?

1 A. Yes.

2 Q. And did you do a maternity comparison on
3 that?

4 A. No, I did not.

5 Q. The only contributor to the knife blade is
6 Rose, so there's at least two other contributors
7 to the knife blade?

8 A. Correct.

9 Q. Did you do a maternity comparison on that?

10 A. I can't really do a maternity comparison
11 because it is a mixture. So that makes it hard.
12 I mean, I could make some estimates and back out
13 what we know is Rose Lampkin but then it starts
14 getting kind of unclear, I think.

15 Q. Because half of her DNA and half of his?

16 A. Right. Also, you know, the other people in
17 some cases will share things, just by chance
18 alone.

19 Q. Right. Are you aware of where the knife came
20 from?

21 A. My recollection is that it came from a
22 vehicle. I don't know anything about that
23 vehicle.

24 Q. And if that vehicle was owned by Mr. Morgan,
25 that would explain how his DNA was on the handle?

1 A. No, that wouldn't be sufficient. It would
2 have to put that thing in his hand. He would have
3 to put this DNA on it, usually through handling
4 it. Just tossing it into a vehicle wouldn't
5 transfer it to ---

6 Q. Well, his DNA is going to be in the vehicle?

7 A. That's correct, but it's not just going to
8 jump on the knife. It is not that sensitive, to
9 pick up that. If it did occur, it's just not
10 enough for us to pick up. It has to be somebody
11 that handles it.

12 Q. But there is transfer?

13 A. Not from just dropping it on the -- in the
14 vehicle, whether it be on the seat or in the glove
15 box, wherever it was found. You're not going to
16 get -- you get transfer from people to objects but
17 not generally object to object.

18 Q. I mean, the jacket, you said was Rose's. So
19 you expected that to be on it. Then her DNA, I
20 guess, jumped -- transferred to the jacket?

21 A. Correct.

22 Q. So could his DNA not transfer from things
23 that he owns?

24 A. Can you give me an example?

25 Q. I mean, if he was sweating, if he had sweated

1 in the vehicle and the knife blade is on the
2 sweat?

3 A. If the sweat was fresh, still wet -- you
4 know, if you had a puddle of sweat and you put the
5 knife into that sweat, you'd transfer some DNA to
6 it. But aside from that -- if a person bleeds on
7 it or handles it, they are going to put their DNA
8 on the object. But just putting a dry object on
9 another dry object is not going to transfer the
10 DNA, there's not going to be sufficient transfer
11 that I can pick it up in a DNA test.

12 Q. But there was no DNA and you'd have to handle
13 the blade for his DNA to be on the blade, or for
14 any DNA to be on the blade.

15 A. Well, you'd have to handle it, bleed on it or
16 perspire on it or something like that.

17 Q. And his DNA was not on the blade?

18 A. We did not find his DNA on the blade.

19 CHAD SHELTON: No further questions.

20 THE COURT: Redirect?

21 SOLICITOR WILLIAMS: Just one.

22 THE COURT: Sure.

23 REDIRECT EXAMINATION

24 BY SOLICITOR WILLIAMS:

25 Q. Doctor, as far as the stain on the sheet

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1 which you were asked a lot of questions about,
2 there is no way to age that? We don't know when
3 that happened, do we?

4 A. No. I can't give you an age. I'm sorry.

5 SOLICITOR WILLIAMS: Thank you.

6 THE COURT: Recross?

7 CHAD SHELTON: No, sir.

8 THE COURT: Thank you. You may come
9 down, sir.

10 (WITNESS STEPS DOWN)

11 THE COURT: Do you wish for the witness
12 to be excused?

13 SOLICITOR WILLIAMS: Please, Your
14 Honor.

15 THE COURT: Any objection?

16 CHAD SHELTON: No, sir, no objection.

17 THE COURT: You may also be excused,
18 Doctor.

19 THE COURT: Ladies and gentlemen, at
20 this point we will take our recess for lunch.
21 Please remember that you are not at liberty to
22 discuss this case among yourselves or with anyone
23 outside of the courthouse. Don't allow anybody to
24 talk about the case in your presence.

25 I'd ask you to return to your jury room,

1 please, by 2:00 o'clock and we will resume the
2 trial at that time. Thank you. See you at 2:00.

3 (JURY OUT @ 12:45 P.M.)

4 THE COURT: Anything from the State
5 before we recess?

6 SOLICITOR WILLIAMS: No, Your Honor.

7 THE COURT: Anything from the
8 defendant?

9 CHAD SHELTON: No, sir.

10 THE COURT: We will be at-ease until
11 2:00 o'clock.

12 (LUNCH RECESS)

13 (DEFENDANT PRESENT)

14 THE COURT: Let the record reflect that
15 the defendant is present. Anything before we
16 bring the jury in, from the State?

17 SOLICITOR WILLIAMS: No, sir.

18 THE COURT: Are you ready?

19 SOLICITOR WILLIAMS: Yes, sir.

20 THE COURT: Defense ready, Mr. Shelton?

21 CHAD SHELTON: Yes, Your Honor.

22 THE COURT: Bring the jury in.

23 (JURY IN @ 2:05 P.M.)

24 THE COURT: Thank you, ladies and
25 gentlemen. I hope that you had a good lunch,

1 We are now ready to continue with the trial.

2 Solicitor, you may call your next witness.

3 SOLICITOR WILLIAMS: Thank you, Your
4 Honor, the State calls Amanda Webb.

5 (WITNESS TAKES STAND)

6 AMANDA WEBB, having been sworn to tell
7 the truth, and nothing but the truth, testified as
8 follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR WILLIAMS:

11 Q. Ms. Webb, with whom are you employed?

12 A. I am employed with South Carolina Law
13 Enforcement Division, in Forensics, as a DNA
14 case worker.

15 Q. How long have you worked there?

16 A. A little over five years.

17 Q. What is your background, your educational and
18 work background for this position?

19 A. I have a bachelors in science and forensic
20 chemistry and I have a masters in science,
21 forensic science. Upon completing of my degrees,
22 I was hired on at SLED and have been working in
23 the DNA case worker department for the whole five
24 years.

25 Q. As a forensic analyst, before you can

1 actually take on a case at SLED, tell us a little
2 bit about the training, classes, any other kind of
3 vocational things that you have to do in order to
4 be able to start working cases.

5 A. Well, you have to have a science degree with
6 core biology courses, which I have. Upon hiring,
7 I was trained under another competent DNA analyst
8 for approximately a year and a half before I was
9 able to take on my own case work. And also, in
10 order to be able to do that, there were multiple
11 tests that I had to pass: oral tests, written
12 tests. Also every - twice a year, an outside
13 company sends the DNA case work department,
14 everyone, every analyst in the department gets a
15 test and they have to pass the pass, to get the
16 answers correct in order to maintain, to keep
17 doing case work.

18 Q. Can you estimate roughly how many cases that
19 you've worked on as a SLED forensic analyst?

20 A. I would say about five hundred cases.

21 Q. And how many cases have you supervised other
22 people that were training as a DNA analyst?

23 A. I am currently training an employee in the
24 DNA department. I've probably supervised about
25 forty cases.

1 Q. Do they have a peer review process there at
2 SLED?

3 A. Yes, they do. Each case that is written,
4 every report, is reviewed by two other analysts
5 other than the author of the review. The first
6 report is a technical review. The second report
7 is an administrative review.

8 Q. Do you regularly participate in peer review
9 of other people's reports?

10 A. Yes, I do. It's a rotational basis, so I
11 also frequently get other DNA analysts reports to
12 review as well.

13 Q. How many times do you think that you've done
14 that?

15 A. Probably approximately five hundred cases.

16 Q. Did you review this case as part of your
17 duties?

18 A. Yes, I did.

19 Q. Is this one of the case that you did a peer
20 review on?

21 A. Yes, this was a case that I did for peer
22 review.

23 Q. Did you also review materials and notes and
24 specimens in preparation for your testimony?

25 A. Yes, I did. I reviewed the whole case file

1 before any testimony today.

2 Q. Have you testified as an expert in the field
3 of forensic science, DNA analyses, before?

4 A. Yes, I have.

5 Q. How many times have you been qualified as an
6 expert?

7 A. About fifteen.

8 Q. Is that in General Sessions?

9 A. Yes, it is.

10 SOLICITOR WILLIAMS: Your Honor, at
11 this time the State would move for Ms. Webb to be
12 qualified as an expert in the field of forensic
13 science, DNA analyses.

14 THE COURT: Do you care to examine her
15 as to her qualifications?

16 CHAD SHELTON: No, sir.

17 THE COURT: Very well, she will be
18 permitted to render her opinions in forensic
19 scientific analyses.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR WILLIAMS:

22 Q. What did you review -- I think that you gave
23 us a brief synopsis but what did you review for
24 this case specifically?

25 A. What I reviewed was a tech review. I

1 reviewed all of the case report, which contains a
2 list of all the items that were submitted to SLED
3 for this case for analysis. I also receive an
4 incident report so that I can read the incident
5 and crime scene information. I also receive and
6 review any medical notes. In this case the sexual
7 assault examiner's notes, I reviewed those as
8 well. I also reviewed what the analyst who
9 performed the analysis -- I reviewed all of her
10 work, all of her lab bench notes, all of the data
11 and the scientific data that she used to make her
12 conclusions and form her opinions for the report.
13 I check all of that for accuracy and scientific
14 validity, to make sure that it is correct.

15 Q. And you reviewed the evidence that was
16 received by the analyst in this case?

17 A. Yes, I did.

18 Q. And based on your review of the records, what
19 evidence -- what items of evidence were received
20 by the analyst?

21 A. If I may refer to the notes?

22 Q. If it will refresh your memory, please do.

23 A. (Upon review), a sexual assault kit from the
24 victim, Rose Lampkin, was received. Then also an
25 oral swab from the suspect, Steven Morgan, was

1 received.

2 Q. Is that recorded somewhere? If an analyst
3 receives items of evidence, where would she record
4 -- where would she record what she received and
5 what condition that it was in?

6 A. That is recorded in a computer software
7 program. When evidence comes into the lab, it
8 gets its own lab number and it gets a bar code.
9 We have scanners on our computer and that's
10 scanned into the computer system. So it's all
11 tracked electronically. Anytime evidence is
12 shifted from maybe one location, maybe an analyst
13 to another analyst, it's all tracked
14 electronically. I can pull up that information
15 any time in the computer system.

16 Q. Is there a SLED protocol regarding whether or
17 not you test an item and what condition it has to
18 be in if you test it?

19 A. Yes, correct. The protocol is that the
20 evidence has to be sealed in the heat-sealed
21 pouch. The bag needs to be sealed, initialed and
22 dated by the person who last opened the bag. Or
23 if nobody in the lab has opened the bag, it needs
24 to be sealed and signed by the agency that was
25 submitting the evidence.

1 Also we check to make sure that what the item
2 is described as when it is submitted to the lab,
3 described by the agency submitting the evidence,
4 we make sure that matches the description once we
5 open the pouch, to make sure that everything that
6 it is said to contain that it does contain.

7 Q. And if an item is not properly sealed, what
8 is the protocol? What are you supposed to do?

9 A. The protocol is to not move forward with any
10 analysis. You don't do any of the work. What you
11 do is, you do your own investigation. We will
12 oftentimes call the investigator and see if we can
13 track down why something might have been labeled
14 different, described differently or maybe wasn't
15 sealed properly.

16 Q. Based on your review of the records of this
17 case, does the analyst indicate that anything was
18 compromised?

19 A. No, nothing was noted that there was anything
20 out of the ordinary or compromised. I can tell
21 that by -- I also reviewed her laboratory evidence
22 worksheet and we make notes any time that there is
23 anything out of the ordinary. No notes were made
24 here, so everything was in compliance, a normal
25 situation.

1 Q. Now, you said that you received a sexual
2 assault kit. Is that -- is that -- what is in
3 that kit? And what in that kit was actually
4 tested by SLED?

5 A. In this kit in particular, what it is is
6 swabs from the victim's body in order to try to
7 find the assailant. In this case, there were
8 buccal swabs taken from the victim. Buccal swabs
9 are taken from the inside of the cheek. That way
10 we know that the DNA is from her and if we develop
11 something from the evidence, we can compare it to
12 that buccal swab, DNA, that was taken from her.
13 That way we can say that it matches her, does not
14 match her.

15 Also there were some smears taken. These are
16 microscopic slides. These were taken from the
17 vaginal, oral and rectal areas. We look at the
18 slides to look for any spermatozoa. Also there
19 were vaginal swabs, oral swabs, rectal swabs,
20 fingernail swabbings, external genitalia swabs,
21 another set of vaginal swabs, perianal swabs,
22 perineum swabs. That was all evidence in the kit.

23 Q. Turning first to the preliminary testing that
24 was done, did you review the records of all the
25 preliminary testing to test for the presence of

1 sperm of semen on these slides?

2 A. Yes, I did. I reviewed the case notes for
3 that.

4 Q. Did you form an expert opinion as to what was
5 identified on these slides in the preliminary
6 testing?

7 A. Yes, I did.

8 Q. Can you tell us what that expert opinion is?

9 A. Sure. Semen was indicated on the vaginal
10 swabs. No semen was identified on the oral swabs.
11 Semen was identified on the rectal swabs. Semen
12 was indicated on all of the following:

13 External genitalia swabs.

14 Another set of vaginal swabs.

15 Perianal swabs.

16 Perineum swabs.

17 Q. And what is the difference in the opinion of
18 something being -- those are all indicated?

19 A. Indicated, yes.

20 Q. Is there a difference, in your opinion, in
21 something being identified and something being
22 indicated?

23 A. Yes, there is.

24 Q. The test that we do for semen is a presump-
25 tive test. That means that it's not absolutely

1 positive that semen is present. So all of those
2 tested positive or that we say semen indicated.

3 However there is a difference in the result
4 for the rectal swabs. It says semen identified.
5 That is because - our protocol states that if our
6 test for semen is positive and we also develop a
7 male DNA profiled, then we can combine those
8 results and say that yes, it is - that semen was
9 identified. Because the test was semen was
10 positive and there was a male profile, which
11 indicates semen. So that is where "identified"
12 comes in versus "indicated."

13 Q. So the preliminary test if the same on all of
14 them and then in the second test you go back and
15 say how they were identified?

16 A. Yes, with the DNA profile in addition to.

17 Q. Okay. So what was found on the vaginal swabs?
18 Well, first of all, let me ask you a preliminary
19 question. I'm sorry. Withdrawn. Do you test
20 every single swab?

21 A. Not necessarily. That is dependent on case
22 scenarios, analyst experience and just what is
23 available. For example, in this case there was
24 only one suspect mentioned in the incident report.
25 So not all the swabs were tested. Most of the

1 swabs in this case are from the same area of the
2 body, from the genital parts of the body. So a
3 connection was made and so, therefore, not all
4 swabs were tested.

5 Q. Okay. So which swabs were actually tested?
6 After you reviewed the records in this case did
7 you figure out which ones were actually tested?

8 Q. The ones that were tested for DNA analyses
9 was the first set of vaginal swabs, the rectal
10 swabs and the fingernail swabbings.

11 Q. And what is your expert opinion as to what
12 was determined from the vaginal swabs?

13 A. The only found on the vaginal swabs was a DNA
14 profile from the victim, Rose Lampkin.

15 Q. Was there a male profile developed?

16 A. No, not from the vaginal swabs.

17 Q. And if there was semen in the vaginal swabs
18 and there wasn't a male profile developed, what
19 are some of the reasons why that would happen?

20 A. For DNA purposes there are really two
21 components that we are concerned with. The first
22 part is the seminal fluid. The second part is the
23 sperm. That's what we all think of as the little
24 tadpole, mobile things. And, uh, so the seminal
25 fluid is what the test that we use for --

1 indicates semen, is what is tested. It will give
2 a positive result for seminal fluid. However, we
3 obtain DNA from the sperm. It is possible to have
4 seminal fluid present but not have sperm present.
5 So a scenario could be that possibly seminal fluid
6 was there but it just didn't have any sperm in
7 that spot and therefore we were unable to develop
8 a DNA profile.

9 Q. If there were less semen in one area of the
10 body than another, would that be an explanation?

11 A. Yes, that could be an explanation.

12 Q. If semen was wiped away or someone urinated
13 and there was less semen there, would that be a
14 reason why you might not develop a profile?

15 A. Yes. Frequent urination or wiping during
16 elimination can physically remove some of the
17 semen or sperm. In fact, it is so important to
18 use that that is one of the questions that we have
19 the nurses ask, is about wiping or frequent
20 urination.

21 Q. Is -- did you review all the records
22 regarding the rectal swabs?

23 A. Yes, I did.

24 Q. And did you form an expert opinion as to a
25 male profile on the semen that was found on the

1 rectal swabs?

2 A. Yes, that's true.

3 Q. And what is that opinion?

4 A. The DNA profile developed from the semen on
5 the rectal swabs matches the semen profile of
6 Seven Morgan.

7 Q. What is the percentage of that match?

8 A. The percentage is one in thirty quadrillion.

9 Q. That's a pretty strong match?

10 A. (Affirmative nod), pretty strong. Yes.

11 SOLICITOR WILLIAMS: Would you please
12 answer any questions that Mr. Shelton may have?

13 THE COURT: You may cross-examine.

14 CROSS EXAMINATION

15 BY CHAD SHELTON:

16 Q. Ms. Webb, good afternoon.

17 A. Good afternoon.

18 Q. You were not present when the items were
19 first run through the machines and first analyzed?

20 A. That's correct. I was not with the analyst
21 when she was doing the laboratory work. I just
22 reviewed all of her notes, worksheets and data.

23 Q. And the analyst was a Ms. Boehm (phonetic)?

24 A. Yes. Correct.

25 Q. So you're relying completely on Ms. Boehm?

1 A. Yes, all of her work and the data that she
2 produced is what I base my opinion and conclusions
3 on as well.

4 Q. And you have to assume that Ms. Boehm did
5 everything right?

6 A. Yes. Correct.

7 Q. There are certain policies and procedures
8 that SLED has in analyzing DNA?

9 A. Yes. That's correct.

10 Q. And there are certain guidelines -- general
11 submission information that you need?

12 A. Yes. That is often helpful.

13 Q. As you said, you require an incident report
14 for these type cases?

15 A. It is extremely helpful. The information can
16 help us to determine what types of tests to
17 conduct.

18 Q. And there is some testing that SLED cannot
19 do?

20 A. That's correct.

21 Q. Can they do a Y chromosome testing?

22 A. Yes. We've been doing that for about the
23 past year and a half.

24 Q. They can't do maternal or paternal testing.

25 A. We can do the paternal but not the maternal

1 testing.

2 Q. And the equipment that is used is very
3 sensitive?

4 A. Yes.

5 Q. So it's really important that a lot of the
6 procedures are followed so that there is not cross
7 contamination or any type of transfer of DNA or
8 cells?

9 A. Yes, that's correct.

10 Q. So in the guidelines that SLED has is that
11 personal protective equipment must be worn at all
12 times?

13 A. Yes, we wear gloves, lab coats, and masks are
14 available and goggles, safety goggles.

15 Q. Gloves, you change gloves between samples and
16 ---

17 A. Yes, we frequently change gloves. Sometimes
18 not necessarily between samples. For example,
19 with swabs you can hold onto the stick end and cut
20 the cotton tip without touching the cotton tip, so
21 you don't really get anything on your gloves. But
22 definitely it is mandatory that you change between
23 cases and in between evidence such as buccal
24 swabs, the standards that come from the actual
25 people.

1 Q. In this case there were some other samples
2 that were used in, I guess, the machines. Put
3 some other samples in those machines?

4 A. Yes, that's correct.

5 Q. And you'd want to change gloves between those
6 samples, anything have to do with that?

7 A. Yes, that's right.

8 Q. You want to change instruments, tweezers and
9 that sort of thing, if you're using those types of
10 items?

11 A. We will reuse scissors. We use scissors to
12 cut the cotton swabs. The thing is that we
13 decontaminate them between each cut, between each
14 item. We have different solutions that we use.
15 Most frequently is a bleach and water solution,
16 followed by an ethanol and alcohol wipe. That
17 eliminates changing scissors between each item.

18 Q. And the analyst wants to make sure not to
19 sneeze, cough or touch their face, things like
20 that, when they are analyzing these materials?

21 A. Yes, that's right. We are very cognizant of
22 what we are doing, our exposed skin, our body
23 fluids as well as no talking over the evidence.

24 Q. And, so, you did not analyze these materials.
25 So you had to rely on Ms. Boehm doing everything;

1 is that correct?

2 A. Yes, that's right.

3 Q. SLED's guidelines also say that in these
4 types of cases that you typically analyze one of
5 five things.

6 A. That's correct. Originally with sexual
7 assault kits, sexual assault cases, essentially
8 what we request be submitted first is the sexual
9 assault kit. Those are the items most likely to
10 develop DNA profile evidence because it's the
11 swabs from the victim's body. Additional items
12 can be submitted if we do not find anything in the
13 sexual assault kit. Additional items are usually
14 clothing, bedding or things like that when it
15 comes to sexual assault kits.

16 Q. Would you accept results from other labs to
17 compare?

18 A. We do not adopt other labs results.

19 Q. Because these items, they were submitted in
20 February of 2012. That's the computer-generated
21 date.

22 A. Yes, that's right.

23 Q. They are submitted in February. They were
24 there at SLED until analyzed in December of 2012.

25 A. Yes, that's correct.

1 Q. Are you -- in the notes and everything that
2 you received, did you receive information that
3 there was another DNA lab involved in the case?

4 A. No. I had no knowledge of that until there
5 was a pretrial phone conference with Solicitor
6 Williams and she had indicated to me that another
7 lab had performed some testing.

8 Q. So if you were told other DNA was found on
9 the scene, that might be helpful when you analyzed
10 it or when Mr. Boehm analyzed it?

11 A. It wouldn't change how we analyze or any of
12 the procedures that we used for the items that
13 were submitted to us. Other items don't really
14 affect other items. It's just a scenario of what
15 the tests were. Mainly an incident report helps
16 in a case like this for tests for semen, what to
17 test for semen. What is most likely -- depending
18 on the area of the body that was touched, what
19 swabs are most likely to produce results.

20 Q. I believe that your testimony earlier was
21 that semen was found in the rectal swabs?

22 A. That's correct.

23 Q. There was also semen indicated in the vaginal
24 swabs?

25 A. Yes, that's correct.

1 Q. The external genital swabs?

2 A. Yes.

3 Q. Another vaginal swabs? Perianal swabs,
4 perineum swabs.

5 A. Yes, that's correct.

6 Q. And semen was indicated in all of those?

7 A. Yes, that's right.

8 Q. But was not compared because there was only
9 one suspect?

10 A. Right. Those other items were not tested for
11 DNA. Only the first set of vaginal and rectal
12 swabs, simply because there was only one suspect
13 named. Then, uh, those swabs produced a match to
14 the suspect. So, therefore, it is just SLED
15 policy that once a connection is made that there
16 is no need to go any further and test any of the
17 other swabs or items that are available, because a
18 connection has been made.

19 Q. But if you were given information that there
20 was other semen found on the scene that excluded
21 Mr. Morgan, would that have changed the analyst's
22 deciding to test the other items or to not test?

23 A. It would depend on where the semen was found.
24 Oftentimes - it's not the case here but if things
25 are collected from bedrooms or hotel rooms, it's

1 possible to find other semen. It might not
2 actually be related to the incident. So it is
3 mainly the victim's recall of events that we use
4 to make our judgment on items to test.

5 Q. So it is based on what Ms. Lampkin says?

6 A. Yes, that's a big part of it.

7 CHAD SHELTON: No further questions.

8 THE COURT: Redirect examination?

9 REDIRECT EXAMINATION

10 BY SOLICITOR WILLIAMS:

11 Q. In your experience have there been cases
12 where there has been more than one biological -
13 more than one contributor?

14 A. Yes, I've analyzed multiple -- lot of cases
15 where there have been multiple contributors or
16 multiple suspects.

17 Q. And in those cases, like say on a vaginal
18 swab or rectal swab, what would you expect to
19 find?

20 A. What I usually find in those cases is a
21 mixture of DNA. Meaning that I can see that there
22 have been multiple contributors who have left
23 their DNA behind on the swabs or on the body or at
24 the scene.

25 Q. Like one on a rectal swab and one on a

1 vaginal swab?

2 A. No, I've really only seen that when it was,
3 uh, maybe a vaginal swab or a swab from the neck
4 or breast area, not when they're -- when they are
5 taken from such a close proximity of the body,
6 usually what you find is a mixture.

7 Q. No mixture here?

8 A. No mixture.

9 SOLICITOR WILLIAMS: Nothing further.

10 THE COURT: Recross?

11 CHAD SHELTON: No, Your Honor.

12 THE COURT: Come down. Thank you very
13 much.

14 (WITNESS STEPS DOWN)

15 THE COURT: Do you wish for the
16 witness to be excused?

17 SOLICITOR WILLIAMS: Please, Your
18 Honor.

19 THE COURT: Any objection?

20 CHAD SHELTON: No, Your Honor.

21 THE COURT: Ms. Webb, you are also free
22 to leave. Thank you very much. Call your next
23 witness, Solicitor.

24 SOLICITOR WILLIAMS: Your Honor, at
25 this time the State rests.

1 THE COURT: Before doing that, though,
2 you've submitted a stipulation -- I think that is
3 by agreement, is that correct?

4 SOLICITOR WILLIAMS: Yes, sir.

5 CHAD SHELTON: That's right.

6 THE COURT: Ladies and gentlemen, a
7 stipulation -- it is not uncommon in presenting a
8 case -- for the purpose of expediting, the parties
9 can agree about certain things; such as what a
10 witness would have said or not said if they had
11 appeared. They've entered a stipulation to that
12 effect which I wish to share with you now. It
13 will be marked as Court's Exhibit 2.

14 (SO ENTERED AS STATE'S EXHIBIT 2)

15 THE COURT: (Reading): *"The State and*
16 *the defense have entered into a stipulation that*
17 *the buccal swabs taken from Defendant, Steven*
18 *Morgan, remain in the same sealed condition that*
19 *they were in after they left Nicholas Powell of*
20 *the Goose Creek Police Department; that each link*
21 *in the chain of evidence was recorded and*
22 *documented and that this evidence was stored*
23 *properly and remained in that condition until it*
24 *reached the analysts, Mary Boehm and analyst*
25 *Daniel DeMiers at Intelligenetics. The evidence*

1 collected during Rose Lampkin's sexual assault by
2 Nancy Hall and sealed in the sexual assault kit
3 remain in the same sealed condition that it was in
4 after it left Nancy Hall. That each link of the
5 chain was recorded and documented until it reached
6 Analyst Mary Boehm and that this evidence was
7 stored and properly remained in hat condition
8 until it reached Analyst Mary Boehm. That the
9 other evidence tested by Daniel DeMiers went from
10 Wendy Myers of the Goose Creek Police Department
11 to Daniel DeMiers in the same condition that Wendy
12 Meyers maintained it and that it was properly
13 stored, recorded and documented until it reached
14 Dr. Daniel DeMiers."

15 That stipulation is now fact and may be
16 considered with all other factors that you may
17 consider when you begin your deliberation in this
18 case.

19 With that, the States rests. Is that
20 correct?

21 SOLICITOR WILLIAMS: Yes, Your Honor.
22 At this time the State rests.

23 THE COURT: Very well. Ladies and
24 gentlemen, there are some matters of law now that
25 I must take up out of your presence. In order to

1 accomplish that, I will ask you to retire to your
2 jury room. Do not begin your deliberations, do
3 not discuss the case.

4 (JURY EXITS COURTROOM)

5 THE COURT: Any Motions or matters from
6 the State?

7 SOLICITOR WILLIAMS: No, Your Honor.

8 THE COURT: Be happy to hear from you,
9 Mr. Shelton.

10 CHAD SHELTON: Your Honor, I would
11 move for a directed verdict. Taking the evidence
12 in the light most favorable to the State, we
13 submit that the State has not met its burden of
14 proving all charges.

15 THE COURT: Well, when analyzed in the
16 light most favorable to the State, which I am
17 required to do, -- let's take them one at a time.

18 The attempted murder, of course if the
19 jury believes Mr. Morgan held a knife to Ms.
20 Lampkin's throat and in fact inflicted a wound to
21 her throat, that coupled with being pushed down
22 the stairs -- which would probably justify that,
23 as well -- clearly that would establish. In this
24 case, we don't have -- at least not at this point
25 -- any issue of self-defense. So if the -- if the

1 inference of malice is drawn from the use of a
2 knife, if the jury believes all that, they could
3 conclude that malice has been established and that
4 he did intentionally intend to kill Ms. Lampkin.
5 Certainly the lesser-included offense of ABHAN, if
6 for some reason they should not determine malice.
7 There is no question that there was great bodily
8 injury here, from the injuries that were
9 inflicted. The jury could easily determine that,
10 assault and battery of a high and aggravated
11 nature. I would respectfully deny your motion as
12 to each of those.

13 The burglary first, should the jury
14 conclude that he was allowed to enter the premises
15 or invited to enter the premises - of course, as
16 we know, if he formed the intent to commit a crime
17 after entering, that would not be burglary. I
18 will charge that. I would agree that is one.
19 But when you take the evidence in the light most
20 favorable to the State, the throwing of a log
21 through a sliding glass window clearly shows --
22 that coupled with the other testimony of Ms.
23 Lampkins clearly shows that he intended to commit
24 a crime. So the jury could easily conclude that
25 there is no question that it was - and there is no

1 question that it was in the nighttime. So I --
2 and I think that's the only issue that they are
3 required to prove that would establish burglary,
4 because clearly he entered, according to the
5 testimony, without permission.

6 Criminal sexual conduct in the first
7 degree, there's no question that the holding of
8 a knife, threatening her, taking liberties, that
9 coupled with all other circumstances such as
10 binding her, if the jury believes, with coat
11 hangers. I can't think of anything more
12 indicative of some violent act by a person.
13 Of course, I might add that so far as that is
14 concerned, and the others as well, the jury can
15 conclude that the letter from the defendant -- can
16 conclude that that is a confession that he did it.
17 He attributes it to something about the devil
18 making him do it, but that doesn't remove it being
19 criminal at all. So clearly that's established
20 without any question, if the jury chooses to
21 believe that.

22 Maybe you could argue some consensual sex
23 but at some point when a person is pushed down
24 stairs, brutalized and then brought back upstairs
25 and -- the various acts clearly establish that.

1 The kidnaping, if the jury believe that
2 he held her, in the jury believes that he held a
3 knife to her, if the jury believes that he put the
4 coat hangers on her, where by the way his DNA
5 happens to be, clearly that is kidnaping. There
6 is no question about that, that in and of itself.
7 Just the putting of the coat hangers on her was
8 kidnaping. Over. Done. That's history. They
9 don't have to prove anything else. So clearly
10 that's established without any question, if the
11 jury believes all of that.

12 Possession of a knife during a violent
13 crime. There is no question that there was
14 testimony about him having a knife.

15 No question of attempted murder, ABHAN,
16 Burg 1st, -- I haven't looked - I was looking to
17 see if kidnaping is. I don't see it listed but I
18 don't see why it isn't a violent crime.

19 SOLICITOR WILLIAMS: It is.

20 THE COURT: It is. All right, so
21 kidnaping is clearly a violent crime. Of course
22 I will instruct them that they would have to find
23 him guilty of one of those crimes. But clearly if
24 they prove that and prove that he had the knife,
25 there's no question that the other aspects of that

1 statement is proof beyond a reasonable doubt
2 that the weapon further advanced or helped in
3 the commission of the crime(s). There is an
4 abundance of testimony to that effect.

5 For those reasons, I would respectfully
6 deny your Motions.

7 CHAD SHELTON: Thank you, Your Honor.

8 THE COURT: Have you talked with your
9 client about his right to testify or to not
10 testify?

11 CHAD SHELTON: Yes, I have.

12 THE COURT: Has he had time to reflect
13 on that? I am going to ask him that, but do you
14 believe that he has?

15 CHAD SHELTON: I do. Yes, sir.

16 THE COURT: Has he indicated to you his
17 decision?

18 CHAD SHELTON: Yes, Your Honor.

19 THE COURT: And what is that?

20 CHAD SHELTON: He is not going to
21 testify.

22 THE COURT: Mr. Morgan, you may remain
23 seated. You've had a discussions with your
24 lawyers about your right to testify or to not
25 testify, is that right, sir?

1 DEFENDANT: Yes, sir.

2 THE COURT: And you've made a conscious
3 decision for yourself in that regard?

4 DEFENDANT: Yes, sir.

5 THE COURT: Have you had sufficient
6 time to reflect on that decision?

7 DEFENDANT: Yes, sir.

8 THE COURT: And it is your decision not
9 to testify?

10 DEFENDANT: It is.

11 THE COURT: Do you understand that I
12 will instruct the jury that they, of course,
13 cannot use that against you. As I have already
14 indicated, when we started, that they may not look
15 to you to prove or disprove anything or present
16 any evidence. I would further instruct them that
17 are not permitted to even talk about that in the
18 jury room. Do you understand that?

19 DEFENDANT: Yes, sir.

20 THE COURT: But you also understand
21 that it would be your right to testify if you
22 chose to testify?

23 DEFENDANT: Yes, sir.

24 THE COURT: Of course if you do, you'd
25 be subject to cross examination just as every

1 witness that has been presented in this case. Do
2 you realize that?

3 DEFENDANT: Yes, sir.

4 THE COURT: Are you under the influence
5 of any alcohol or any medication here today, sir?

6 DEFENDANT: No, sir.

7 THE COURT: Do you know of anything
8 that is affecting your ability to make this type
9 of decision?

10 DEFENDANT: No, sir.

11 THE COURT: Are you satisfied with the
12 manner in which your attorneys have advised you
13 concerning this?

14 DEFENDANT: Yes, sir.

15 THE COURT: All right. I find that Mr.
16 Morgan has had the benefit of very competent
17 counsel. He has indicated that he's satisfied
18 with their advice concerning this particular
19 issue. He has also demonstrated by his responses
20 in a very calm and methodical manner that he has
21 made a conscious decision for himself not to
22 testify. I find that decision to be one that
23 he makes freely, voluntarily, knowingly and
24 intelligently.

25 Mr. Morgan, if at any point between now

1 and when your attorney tells me that the defense
2 rests you change your mind and you want to
3 testify, make that known to your attorney. I
4 will excuse the jury and we will resume this
5 conversation. But if I don't hear from you, I
6 am going to assume that you stand by that
7 decision. Once he tells me that the defense
8 rests, then that will conclude your right to
9 testify in this matter. Do you understand that?

10 DEFENDANT: Yes, sir.

11 THE COURT: Does Mr. Morgan wish to
12 present any witnesses, any additional witnesses
13 for the jury to consider?

14 CHAD SHELTON: No, Your Honor.

15 THE COURT: Very well. So when we
16 bring the jury back, I am going to ask you if you
17 wish to present any additional testimony for the
18 jury's consideration, you're going to tell me no
19 and that the defense rests. Is that right?

20 CHAD SHELTON: Yes, Your Honor.

21 THE COURT: Just for the sake of -- I
22 know that you would want to make Motions again on
23 formal resting. Let's assume that that has been
24 accomplished when you rest. Of course, should you
25 choose not to, then we will revisit this at that

1 time.

2 CHAD SHELTON: Yes, sir.

3 THE COURT: But assuming that you do
4 rest, then your Motion would be again for directed
5 verdict; is that right?

6 CHAD SHELTON: Yes, Your Honor, and
7 to renew all objections made during the trial.

8 THE COURT: Sure. And the Motions in
9 *limine* that we heard pretrial, the Motions in
10 *limine* concerning the rationale -- although, I
11 don't think that there were any questions
12 concerning, really, -- I believe that you agreed
13 that you would not ask Ms. Lampkin about her prior
14 or any other sexual conduct. Clearly you were
15 allowed to explore the stain on the bed sheet.
16 I think that it is consistent with what we ruled
17 on. Certainly all your objections are noted and
18 preserved for the record. My rulings would be as
19 I have previously announced, with the rationale
20 for those rulings. Thank you.

21 All right. Let's talk for a minute about
22 the charge. I am going to charge, certainly,
23 attempted murder and ABHAN under the new statute.
24 Any reason to charge assault and battery in the
25 first degree in this case?

1 CHAD SHELTON: Your Honor, my
2 argument would be that if the jury believes that
3 she was not pushed down the stairs then --
4 obviously if they believe that she was pushed
5 down the stairs, then assault and battery ---

6 THE COURT: How about the puncture
7 wound to her neck?

8 CHAD SHELTON: Yes, Your Honor, the
9 puncture wound to her neck. That would be, Your
10 Honor.

11 THE COURT: I've looked at it. Do you
12 think that he is entitled to a first degree?

13 CHAD SHELTON: Based on the injury
14 to the neck, uh, it was to the skin. Just the
15 differentiation of great bodily injury and bodily
16 injury, Your Honor, it was merely to the skin.
17 If it was with a dangerous weapon, Your Honor, I
18 would say but -- Your Honor, that's my argument.
19 The legislature has not helped us.

20 THE COURT: No, they haven't. They
21 should have left in that all they had to prove was
22 an aggravating circumstance. That would be all
23 that is needed. The other stuff was just, again,
24 poorly -- poorly drafted legislation, in my
25 opinion.

State v. Steven Lee Morgan
Case No. 12-GS-08-0496-0500
Jury Trial of April 19-23, 2013
Before The Honorable R. Markley Dennis, Jr.

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1 CHAD SHELTON: Yes, sir.

2 THE COURT: Specific intent to kill is
3 included in the charge here by the State. I am not
4 sure that is necessary. Because I think that you
5 have to prove that he intended to kill with malice
6 aforethought.

7 SOLICITOR WILLIAMS: Right.

8 THE COURT: That is wasn't
9 accomplished. So I am not going to charge that.
10 ABHAN - excuse me, ABWIK says that specific intent
11 was not an element, but I think that it is with
12 intent to murder.

13 SOLICITOR WILLIAMS: Yes, Your Honor.

14 THE COURT: Do you agree with
15 that?

16 SOLICITOR WILLIAMS: I do, either
17 express or implied.

18 THE COURT: I agree. I am going to
19 charge use of a weapon as being -- as a
20 circumstance from which they can infer malice, but
21 I am not going to charge that. I think that's a
22 mistake to include it in the general charge.

23 I see that Mr. Alfaro is looking
24 perplexed.

25 SOLICITOR WILLIAMS: Yeah, Your Honor,

1 there was a case. It was before they changed the
2 assault and battery statute. Where you're not
3 supposed to charge that a weapon can be considered
4 express malice but that we can argue it.

5 THE COURT: You can do it unless
6 there's -- that's where it because unlawful use
7 of. That's a case where -- when self-defense is an
8 element, I think that you can't charge it. I
9 think when it is not that it goes back to fair
10 game. Certainly not bound by it. But I will
11 review that case again. I've got the cite here
12 and will look at it. But, uh, I -- I'm fairly
13 comfortable with that.

14 SOLICITOR WILLIAMS: I think, either
15 way, that they say that the State can argue that
16 the knife was, you know, malice.

17 THE COURT: All right. I will charge
18 general assault and general battery. I think that
19 we have to define that.

20 What about the second part, this is the
21 one -- "that the act is accomplished by means
22 likely to produce death or great bodily injury."
23 Putting a -- I mean, that's the part of ABHAN that
24 I think -- somebody sticks a knife to somebody in
25 that setting, that's likely to produce great

1 bodily - I just don't think - I - (pause).

2 Great bodily injury means bodily injury
3 which causes a substantial risk of death or which
4 causes serious permanent disfigurement or
5 protracted loss or impairment of function of a
6 body member. She was in the hospital for a week.
7 What is "protracted"? I don't think that it is
8 defined but I think that, in and of itself, is
9 sufficient.

10 What is the State's position on assault
11 and battery first?

12 SOLICITOR WILLIAMS: We do not think
13 that it applies, Your Honor, for all the reasons
14 that you've just stated. I think that there is
15 evidence of not just great bodily injury but she
16 says that she still isn't the same, as far as
17 being able to walk. Also, in addition to putting
18 the knife to her throat, which could have caused
19 great bodily injury, did cause great bodily
20 injury, there was also the strangulation. When he
21 said, "I am going to kill you", charge up the
22 stairs and strangles her. So we would think it
23 is consistent with the lesser, ABHAN, but not with
24 assault and battery first.

25 THE COURT: After *Cottrell*, I swore

1 that I'd charge anything that they asked. When I
2 didn't charge involuntary manslaughter because the
3 man turned and shoots the policeman in the face
4 with a .44; which I was supposed to charge because
5 he'd stopped him to ask him a question? If
6 that's manslaughter (sic), I don't know what is.
7 But they reversed me on that issue.

8 I will look at it. Let me look at it
9 during this break. How long do y'all need to be
10 ready to go?

11 SOLICITOR WILLIAMS: State's ready,
12 Your Honor.

13 THE COURT: Ten minutes or so?

14 CHAD SHELTON: Could I ask for a
15 little bit longer?

16 THE COURT: Hold up your hand when
17 you're ready. We will be at-ease.

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Let the record reflect that
21 Mr. Morgan is present. Ready, Mr. Shelton?

22 CHAD SHELTON: Yes, sir. Thank you, Your
23 Honor.

24 THE COURT: Is the State ready?

25 SOLICITOR WILLIAMS: Yes, Your Honor.

1 THE COURT: Invite the jury to return.

2 (JURY ENTERS COURTOOM)

3 THE COURT: You will recall when we
4 started that I told you that the burden of proof
5 was on the State to prove or disprove its case,
6 that the defendant had absolutely nothing to prove
7 or disprove. But still that the defendant if he
8 chose to would have the right to present
9 additional testimony for your consideration. We
10 have reached the point now where the State has
11 rested. Mr. Shelton, does the defense wish to
12 present any witnesses?

13 CHAD SHELTON: No, Your Honor, the
14 defense rests.

15 THE COURT: Normally this would be a
16 time when I would excuse you again to take up
17 Motions, matters of law that I would need to take
18 up on the record, but that has already been done
19 on the record and is protected for the purposes of
20 review.

21 We will now move into the final two
22 portions of this trial, the closing arguments of
23 counsel and my instruction to you on the law.
24 Unlike opening statements, you have now heard all
25 the evidence and it is appropriate for them to

1 discuss that evidence with you and to suggest
2 reasonable inferences that you may draw from that
3 evidence. I am confident that very shortly when
4 you begin your deliberations that you will find
5 those remarks extremely helpful for analyzing the
6 evidence and applying the law. So please give
7 them your attention, and I know that you will.
8 But please remember that while very important
9 that their remarks are not evidence and should
10 never be considered as evidence by you in your
11 deliberations.

12 Following the closing arguments, I will
13 then give you instruction on the law. Thank you
14 for your attention thus far. Please now give your
15 attention to the attorneys as they give their
16 closing arguments. Ms. Williams?

17 SOLICITOR WILLIAMS: Thank you, Your
18 Honor, may it please the court.

19 THE COURT: Yes, ma'am.

20 SOLICITOR WILLIAMS: Mr. Shelton. I
21 want to begin by thanking you all. Judge Dennis
22 is right when he says that you are the only people
23 who don't get paid for your time, and you have to
24 sit through a lot of stuff, especially in this
25 case.

1 This has been a difficult, difficult set
2 of facts. I apologize in advance for discussing
3 things that are just very unpleasant. We had to
4 ask questions of Ms. Lampkin and some of the
5 experts about some things that we don't ordinarily
6 talk about. I thank you for your attention.

7 Pieces of the puzzle. Mr. Shelton talked
8 to you about pieces of the puzzle.

9 Let's talk about what pieces of the
10 puzzle that are present. Let's talk about the
11 Defendant's DNA being all over the crime scene.
12 How about his semen in the vaginal swabs and his
13 semen in the rectal swabs? How about her blood on
14 the knife? Her blood all over the floor? How
15 about his DNA on the pieces of hanger.

16 How about his apology letter? Remember
17 the apology letter? He was so sorry. If he is
18 sitting incarcerated, like he says, why doesn't
19 the apology letter say, 'Hey, Rose, why did you
20 lie about me?' I'm sitting here incarcerated.
21 That's not what he said. Or, 'Hey, Rose, I didn't
22 do this. Why am I in jail?' He says, "I am so
23 so sorry. Somebody put something in my drink. I
24 hope your family doesn't hate me."

25 That may be the best evidence that we

1 have, but there are plenty of other pieces of the
2 puzzle. How about a shattered back door? If this
3 man had permission to be in this house, why is he
4 throwing a log through the sliding glass door?
5 Mr. Alfaro talked to you about shattered, that her
6 life was shattered that night. She was beaten to
7 a pulp.

8 If ever there was a question of whether
9 this woman was beaten and raped, you only have to
10 look at those pictures. They're horrifying.

11 In addition to that, Mr. Shelton brought
12 out that his address was in Georgia. Clearly he
13 no longer lives at that residence, because when he
14 was booked in his driver's license is now in
15 Georgia. It is not 109 Crystal Street.

16 We have the burden in this case. We
17 accept that burden. The judge is going to give
18 you all the instruction on the law. If I say
19 something that is inconsistent with what the judge
20 says, please defer to his instructions. I believe
21 that he will tell you that the State has the
22 burden and that we have to prove all the charges
23 beyond a reasonable doubt. You will hear in that
24 instruction that that is not beyond all doubt.
25 There are very few things in life that we know

1 beyond all doubt. That is not our burden. It is
2 beyond a reasonable doubt. We accept that burden.

3 Now I would like to go through, very
4 briefly, some of the things that we learned in
5 this trial. You are charged with finding the
6 truth, finding justice in this case. In order to
7 do that, you have to search for the truth through
8 the facts and evidence that you heard. So let's
9 do that that. Let's see what he heard during the
10 course of this trial.

11 First of all, Dan Moates. He was the
12 neighbor that lived next door. When you evaluate
13 the credibility of Rose Lampkin and some of the
14 other witnesses, one of the things that you should
15 look for is corroboration. Dan Moates is
16 interesting because he's just living next door.
17 He is asleep and he hears a crashing sound at
18 about the same time that Rose Lampkin says that
19 she hears it, around 4:00. He says that it is
20 dark, which is very important for one of the
21 charges because the State has to prove that the
22 burglary - that the burglary occurred when it was
23 dark. Unfortunately he can't see over the fence
24 into her yard, which is really very sad because
25 had he been able to see that the sliding glass

1 door was broken he might have called 911 and he
2 might have saved the day for Rose Lampkin.
3 Unfortunately that didn't happen.

4 Rose. Rose tells you that he broke into
5 the house. Okay? She hears a crash. She assumes
6 that it is a mirror falling off the wall. She
7 comes out of sleep -- and this is a very important
8 part of this case, because what we have to prove
9 in attempted murder is expressed or implied malice
10 aforethought. That he attempted to kill her and
11 that he intended to kill her. He races up the
12 stairs with a knife and he says, "I am going to
13 kill you." Later in the evening he says, "I am
14 going to kill you and I am going to kill myself."

15 During the course of this nightmare that
16 she endured for hours, he vacillates back and
17 forth as to whether he is going to kill her. He
18 puts the knife to her throat, actually punctures
19 her throat. When he gets upstairs, one of the
20 first things that he does is that he strangles her
21 to the point where she has marks all around her
22 neck and bloodshot eyes, hemorrhaging behind her
23 eyes. She could have died from that. He could
24 have slipped and severed her vein in her throat.
25 So many things could have happened. The fact that

1 he decides later not to kill her during the course
2 of the night does not matter. All he has to do
3 was intend to kill her, attempt to kill her. So
4 think about that when you evaluate the statutes.

5 What else did she tell you? He held a
6 knife to her throat. He beat her. He sexually
7 assaulted her vaginally, orally and rectally.
8 Then she tells you about the apology letter.

9 Now, there was an awful lot of fuss
10 about whether or not Rose Lampkin told a
11 consistent story. I would submit to you, ladies
12 and gentlemen, that what the nurse told you after
13 she was allowed to read everything that Rose
14 Lampkin told her, was very consistent to what she
15 testified to. This happened a year and a half
16 ago. She was questioned by the police when she
17 got to the hospital, probably two hours after she
18 got there. Then she is questioned again by
19 another nurse. Then she is questioned again by
20 another nurse.

21 Did she mess up some of the details as
22 whether, well, he pushed her down the stairs
23 before or after they smoked a cigarette. Or did
24 he rape her rectally before or after he pushed her
25 down the stairs. She might have been slightly

1 inconsistent but I would submit to you that if you
2 really think about the testimony that she was very
3 consistent in her account. It was a horrible thing
4 to have to tell from this witness stand. I am
5 sure that it was a horrible thing to have to
6 recount right after it happened. You are the sole
7 judges of credibility and I just ask you to
8 evaluate her testimony based on what you saw here
9 in the courtroom.

10 The next witness that you saw was John
11 McCurdy. He is the individual that called 911.
12 You can just tell by the way that he talked about
13 Rose and the way that he described her, that he
14 just wasn't used to seeing her like that. He said
15 that she just didn't look like herself. I think
16 based on the reaction to that photograph that we
17 had to show you that you can see why he had that
18 reaction.

19 Consistent with Rose's story, she hobbled
20 down the stairway and laid in the doorway until
21 some man essentially was walking his dog, see her
22 and tells that man to get his phone. He goes to
23 the neighbor's house to get the phone and comes
24 right back, which is exactly what Rose told you.

25 The next witness that we heard from was

1 Officer Tisdale. He arrives at 8:48 a.m. That
2 gives you some sense of how long this nightmare
3 went on. If Mr. Morgan breaks in about 4:00 or
4 4:30, she doesn't even get downstairs until 8:00
5 or 8:30 a.m. She endured that for at least two
6 hours, maybe closer to four.

7 When we talk about her - I asked her,
8 'Did you try to run to away from him? Did you try
9 other ways to make the beating and rape stop?'
10 She tried everything. She tried to reason with
11 him, she tried to make nice with him, she tried to
12 run away. In that situation, I don't know what
13 the average person does. I imagine that they just
14 do whatever they can. If they see some way to
15 reason with someone, then that's what you do. If
16 a Bible verse helps, then that's what you do.
17 You're just trying to make sure that he doesn't
18 kill you, because that's what he keeps saying that
19 he is going to do.

20 The next witness was Nurse Brigada. One
21 of the important things that Nurse Brigada tells
22 you, because this is important when you evaluate
23 the scientific evidence. She tells you that she
24 has to give -- and this is terrible to talk about,
25 but I think that she said that she had to give Ms.

1 Lampkin the bedpan three or four times. Ms.
2 Lampkin also told the next nurse, and I think that
3 she might have told this nurse too, that the
4 defendant had wiped her vaginally. This is
5 important because it may be an explanation as to
6 why, even though they find semen in the vaginal
7 swab, that there is just not enough there to
8 identify a male profile. So that's one thing that
9 you should think about when you think about her
10 testimony, that she urinated at least four times.

11 She talks about the knee injury. I think
12 Rose talked about that she still has trouble from
13 time to time, so that knee has really never been
14 the same.

15 Rose tells you that she was raped. You
16 saw the picture of the bloodshot eyes, which
17 really is not apparent in the earlier pictures,
18 but in that small picture that you passed around
19 you can really see the petechial hemorrhaging.
20 Just solid red.

21 The next witness as we go through was
22 Nancy Hall. She was the one that actually did the
23 rape exam. She was the one that was asked
24 question about real specific parts of Rose
25 Lampkin's statement. But then when she read the

1 whole thing it was almost like identical to her
2 testimony; down to where she was pushed down the
3 stairs and then dragged back up and rectally
4 raped.

5 She also told you another very important
6 thing, that was very difficult to do this
7 particular exam, that ordinarily a patient doesn't
8 have an injury to their knee to where they can't
9 bend their knee and the nurse is able to obtain
10 some visibility, she is able to see some sexual
11 organs and the rectum and all of those things in
12 things in order to determine if there is an injury
13 there. In this case that just wasn't possible.
14 She also talked about the fact that the victim
15 told her about the assailant wiping her, about her
16 urinating. She also talked about the swabs that
17 she took that eventually wound up at SLED. You
18 heard the testimony from the scientist about what
19 that revealed.

20 She also talks a little bit about Rose's
21 demeanor during that particular exam, how she was
22 trembling and she was upset.

23 We also heard from any analyst named
24 Amanda Webb. Amanda talked to you about the --
25 about vaginal swabs, which we just talked about.

1 Also that the rectal swab was the DNA of Steven
2 Morgan. What was the chance that it was not
3 Steven Morgan? One in thirty quadrillion. That
4 was Steven Morgan.

5 (The other analyst that you heard from was
6 Dr. Daniel DeMiers. He talked about a lot of the
7 other evidence. He talked about hanger pieces, he
8 talked about the towel that was cut into strips
9 and tied, consistent with what Rose tells you. She
10 told you that first he put hanger pieces on her
11 wrists and her ankles and then hog-tied her with
12 the piece of towel.

13 Those pieces of towel still have a knot
14 in them. Can you imagine -- I cannot imagine.
15 I'm sure that when she explained to you the pain
16 that she was in -- having your knee broken and
17 then having it pulled back behind you, being hog-
18 tied. The pain with that kind of injury and being
19 put in that position must have been excruciating.

20 He also talked about the knife. It
21 tested positive for blade on the blade. Rose
22 cannot be excluded from that. He also talked
23 about the handle, that the Defendant cannot be
24 excluded from that.

25 Let's talk a little bit about the

1 statutes, very briefly. The State has to prove
2 kidnaping. Kidnaping is not what we think of
3 ordinarily, not what we see on TV where you have
4 to take someone and take them away. That is not
5 what is required. All that is required is that he
6 seized, confined, inveigled, decoyed, kidnap,
7 abduct or to carry away any other person by any
8 means. There is an "or" in between those things.
9 So if you confine someone, that is kidnaping.
10 If you just prevent them from leaving, that is
11 kidnaping. When he -- at the very least when he
12 tied her up and prevented her from moving, when he
13 hog-tied her that night, that was kidnaping. In
14 addition to that, just keeping her in that room is
15 also kidnaping. Preventing her from leaving is
16 what is required.

17 Attempted murder. A person who, with
18 the intent to kill, attempts to kill another
19 person with malice aforethought, either express or
20 implied. What is malice aforethought? It's kind
21 of a big word that we throw around in the court-
22 room a lot. Malice is a wicked heart, that's all
23 that it is. It is a wicked heart, it is meanness.

24 Mr. Morgan charged up the stairs with the
25 knife and said, "I am going to kill you." During

1 the four hours that she endured, she said it over
2 and over again. He said "I am going to kill you",
3 "I am going to kill myself." That is expressed
4 malice. That is him saying that, "I am going to
5 kill you". It doesn't get any clearer than that.
6 He strangled her. She could have died from that.
7 Him putting a knife to her throat, she could have
8 died from that. So that is attempted murder.

9 Let's talk about burglary first. Okay.
10 Actor -- and the actor is Mr. Morgan -- enters a
11 dwelling without consent and with the intent to
12 commit a crime. I would say that if you throw a
13 big giant log through a glass door that you're not
14 supposed to be there. That is without consent.
15 He was put out six weeks before, he did not live
16 in that home. If he did, he wouldn't have had to
17 break in to get in.

18 He is -- armed with a deadly weapon.
19 To cause physical injury to anyone that is not
20 participating in the crime. Used or threatened to
21 use a dangerous object and displayed what appeared
22 to be a knife, pistol, revolver, shotgun, rifle,
23 machine gun or other firearm. Obviously here we
24 have a knife. And that he remained in the
25 dwelling in the nighttime. Several witnesses

1 testified that it was dark.

2 What is a deadly weapon? It is a knife.
3 In the law we define everything. Everything has to
4 have a definition. In this case a "deadly weapon"
5 is article, instrument or substance which is
6 likely to cause death or great bodily injury. I
7 would submit to you, ladies and gentlemen, that
8 that knife that you saw -- and you will have it
9 back in your jury room to look at it -- is such a
10 deadly weapon.

11 We even go so far in the law to define
12 "nighttime", as if your common sense is not
13 enough. Nighttime is defined as the period
14 between sunset and sunrise during which there is
15 not enough daylight to recognize a person's face
16 except by artificial light or moonlight. It was
17 4:00 in the morning. It was pitch dark. It was
18 nighttime.

19 Now, they say that a picture tells a
20 thousand words. Burglary first, I would submit to
21 you -- and it is very hard to see in there, and I
22 am glad that you're going to have these pictures
23 in the jury room. That is a picture of this
24 woman's house where he broke into the sliding
25 glass door, shattered that door, shattered her

1 life that night. That right there, that picture,
2 is burglary in the first degree.

3 Now, possession of a weapon during the
4 commission of a violent crime. That is another
5 charge that Mr. Morgan is charged with. He
6 committed or attempted to commit a violent crime.
7 While doing so, he was in possession of or visibly
8 displayed a knife during this crime. You may
9 think that a violent crime is any crime, but it
10 is not. The judge is going to give you
11 definitions of which of these are violent crimes
12 as defined by law. If you find that he committed
13 one of these violent crimes -- burglary first,
14 kidnaping, criminal sexual conduct in the first
15 degree -- and you find that he had the knife, then
16 he is guilty of the possession of a weapon during
17 the commission of a violent crime. They even
18 define "knife."

19 Let's talk a little bit about criminal
20 sexual conduct in the first degree. In order to
21 be guilty of this, this person, Steven Morgan, has
22 to have engaged in a sexual battery with the
23 victim, Rose Lampkin, and the following is proven:

24 That the actor uses aggravated force to
25 accomplish sexual battery. And we're going to

1 define "aggravated force."

2 Or she submits to sexual battery.

3 Or she is also the victim of -- and you
4 will see there the burglary. In this case clearly
5 she submitted to the rape because of the
6 aggravated force.

7 What is aggravated force? Aggravated
8 force is define as use of physical force or
9 physical violence of a high and aggravated nature
10 to overcome the victim. I would submit to you
11 that that knife and the way that he attacked her
12 with that knife is aggravated force.

13 This also includes the threat of using
14 a deadly weapon. Clearly we have that here.

15 Sexual battery, which is required by the
16 statute, is also defined. "Sexual battery" is
17 sexual intercourse, cunnilingus, fellatio, anal
18 intercourse or any intrusion, however slight, to
19 any part of a person's body or of any object into
20 the genital or any openings of another person's
21 body -- except when a doctor does it. That's
22 basically what that last part says. And I am not
23 going to talk about that subject any more because
24 it's awful. But you have evidence of three kinds
25 of penetration. It's been discussed and it's been

1 testified to. I think that the State has met its
2 burden of sexual battery.

3 Let's talk a little bit about the letter.
4 I said what it doesn't say. What it does say is
5 that he says that he is sorry, was manipulated by
6 the devil and sin, that his instinct led him to
7 her but that he never intended for such a tragic
8 thing to happen. The devil's helper probably put
9 something in his drink.

10 Ladies and gentlemen, voluntary intoxica-
11 tion is not a defense. You will hear that from
12 the judge. Whether or not some devil put
13 something in his drink does not matter. He's
14 responsible for his behavior. He is criminally
15 responsible for his behavior.

16 Like I said, a picture tells a thousand
17 words. If every there was a doubt in your mind
18 that this person was raped, was beaten, just look
19 at that picture.

20 THE COURT: Mr. Shelton.

21 CHAD SHELTON: Thank you, Your Honor, may
22 it please the court.

23 THE COURT: Yes, sir.

24 CHAD SHELTON: I apologize, I have to
25 have notes (arranging them on podium). I don't

1 like to have notes during a closing, but I don't
2 want to forget anything.

3 In this case, things just don't make
4 sense. The State has decided not to tell you the
5 whole story. There are certain things that a
6 violent rapist does not do that apparently Mr.
7 Morgan did. He agreed to call 911. He gave her
8 a shirt because it was cold. He cleans up, her
9 face. They drink water together, smoke cigarettes
10 together. As Mr. Lampkin said, they smoked
11 upstairs in the bedroom together. We find from
12 DNA evidence that there were cigarettes. There
13 were also cigarettes downstairs. So two
14 cigarettes. Rapists don't smoke cigarettes
15 together. Taking a tour of the house to see the
16 renovations, that just doesn't make any sense.

17 There are some things that we can't get
18 around, some things that do make sense. Ms.
19 Lampkin had injuries to her face. The window was
20 smashed. The window being smashed, though, the
21 wood going through the window, that's just common
22 physics, not a scientist in any way. But when you
23 get that picture back there, you'll see that --
24 pick up the wood, pick up this wood and see how
25 far that would fly after breaking windows, to get

1 on the other side of the room without hitting
2 anything. You will see in the picture that there
3 is a glass table (indicating). The wood ends up
4 over here, the glass door right here, so it had to
5 go across the room. There is a glass table right
6 in the way. There is a couch right in the way.
7 That's just physics. I submit that it wasn't the
8 wood. The window is broken and the assumption is
9 that the window was broken as Mr. Morgan was
10 coming in the home. That's an assumption. That
11 is based off what Rose has to say. So the window
12 could have been broken as he was leaving. It
13 doesn't have to have been broken as he was coming
14 in the home. There are no fingerprints, no DNA,
15 no blood. There is glass on the outside, glass on
16 the inside. But the assumption is that the window
17 was broken as he was coming in the home?

18 There are injuries. She was hurt, no
19 doubt. She also admits that she fell down the
20 stairs. Pushed down the stairs? Fell down the
21 stairs? She had alcohol in her system. You will
22 get -- she had been drinking alcohol.

23 You will get the photo of the stairwell
24 where there are CDs, undisturbed. She had a
25 violent fall down the stairs and being violently

1 drug back up the stairs and these CDs are
2 undisturbed on this stairwell?

3 If you want to find Steven guilty of
4 something, find him guilty of assault, if you
5 believe that he assaulted her. Her injuries could
6 have been sustained in the fall. Find him guilty
7 of assault. The judge is going to give you
8 different levels of assault.

9 The medical evidence, the SANE sexual
10 assault nurse, the DNA evidence, all of that came
11 from Rose. It was their job. Their job is based
12 off of what Rose had to say. They heard her story
13 and built it all around it. The nurse, Ms.
14 Brigada, based it on Rose's account. The
15 hemorrhaging behind the eyes could have happened
16 because of vomiting. She had been drinking. It
17 could have happened as a result of the fall.

18 The sexual assault nurse, with over
19 thirty years of experience, documented the
20 injuries. There were no injuries on her wrist or
21 her ankles. What did Ms. Lampkin say? She said
22 that he wrapped it around at least ten times. I
23 would submit that the hangers wrapped around ten
24 times -- and there were no injuries to her wrists
25 or her ankles?

1 There is an injury to her knee. She
2 admits that happened when she fell down the
3 stairs.

4 The blood on the ground, no transfer of
5 hair. That part about Mr. Morgan apparently
6 hitting her head on the ground, there is no
7 transfer. There is not a pool of blood. It's a
8 smear, it's drops.

9 Ms. Hall, the sexual assault nurse.
10 No injuries to the vagina or anus, no injuries.
11 This is a repeated violent sexual assault, no
12 injuries.

13 The DNA person, the DNA person at SLED,
14 there was only one place where they found DNA.
15 That was on the rectal swabs and you heard Ms.
16 Hall testify that that could have come from
17 anybody.

18 Without any semen, the DNA was tested and
19 there was only one thing that came from Mr.
20 Morgan, and that was the rectal swab which could
21 have come from anywhere. It doesn't mean that
22 they could not have had consensual sex.

23 You all heard Rose testify yesterday. It
24 is your job to take note of her demeanor. She was
25 calm, she was matter of fact. I am not sure that

1 is how someone who has been violently attacked
2 would testify. She said that it was hard to
3 remember.

4 You heard the statements from Ms. Hall.
5 She read the statement. That happened an hour and
6 a half after she gave her written statement to
7 Goose Creek. Maybe she was under medication,
8 maybe she was not. But you didn't hear what Ms.
9 Hall said about this tour of the house and the
10 renovations. That didn't come out. In talking
11 about her written statement, the tour of the house
12 didn't come out. After hearing the testimony that
13 the house was in disarray, it was undergoing
14 renovations. If you look at these pictures, it's
15 pretty clean. You've got some things stacked up
16 but the downstairs is pretty clean. Upstairs it's
17 a different story.

18 There's two bedrooms. There some
19 confusion about the DNA that was found on her bed
20 sheets, bed sheets that had not been washed in a
21 while. But there were two bedrooms, one that had
22 not been used for a while because she said that
23 her son was in college. You can look at the
24 picture and see what's up there. Look at the
25 scene. It makes sense what she says happened,

1 repeated violent rapes.

2 Scratches on the countertops. There was
3 testimony about that.

4 The cell phone. I submit that you can't
5 flush a cell phone down the toilet. That is going
6 to ruin all the piping. You can't flush a cell
7 phone down the toilet. But it is convenient that
8 we don't have it. Now you can't see if there was
9 any communication. She'd been drinking. Invited
10 him over? Got upset? Maybe Steven thinks its
11 going to be a little bit more, turns out that is
12 really not what she wants and gets upset. Decides
13 to give her a little bit more to renovate.

14 Cigarettes. Two cigarettes downstairs,
15 two cigarettes upstairs.

16 What about the tape? Taped her hands up,
17 all around her mouth. No tape. All we had was a
18 roll of tape. No used tape.

19 Ms. Lampkin made it down the stairs.
20 Either she hopped down the stairs, slowly went
21 down the stairs. Waited at the doorstep for the
22 police. They cleared the scene, no one else
23 there. No tape.

24 The keys and the knife, found two months
25 later. Not by the police who had search warrants

1 and who'd searched the car but found by Mr. Mazyck
2 who was doing some changes to the truck. Two
3 months later. It was in Rose's property for two
4 months. That also didn't have any of Mr. Morgan's
5 DNA on the blade. You will see that the knife is
6 one that you had to open.

7 Ms. Lampkin testified that while they
8 were dating that she never called the police.
9 Once they broke up, apparently the son calls the
10 police. No injuries on scene. No injuries. No
11 evidence whatsoever of anything injuries on the
12 scene.

13 Taking a tour of the house to see the
14 renovations does not make sense. Putting on a
15 tee shirt because you're cold just does not make
16 sense.

17 There was something else going on.
18 That's not the whole story. The State has decided
19 not to tell you the whole story.

20 Everybody does it, you grab some milk and
21 you see that the expiration date is today. What
22 do you do? You smell it to see if it is bad. You
23 know that it doesn't end today, you know that.
24 But what you do, you act. You're a reasonable
25 person and you acted, you smelled the milk.

1 That's reasonable doubt. If a reasonable person
2 acts, you doubted that that milk had expired.
3 That's reasonable doubt.

4 If there are things that just don't make
5 sense, that's reasonable doubt. We don't know the
6 whole story. Because we don't know the whole
7 story, you must find Steven not guilty. It's the
8 State's burden, it is their responsibility to
9 prove their case. Steven Morgan doesn't have to
10 prove a thing. The State decided not to tell you
11 the whole story. You have to find him not guilty.
12 Thank you.

13 THE COURT: Thank you, Mr. Shelton.
14 Now, ladies and gentlemen, if I may have your
15 attention, we are ready to move into the final
16 portion of this process, where it is my
17 responsibility as the judge of the law to give you
18 instruction on the law. Of course it is your
19 responsibility to apply that law to the facts as
20 you will determine them to be very shortly when
21 you begin your deliberation.

22 It is your responsibility, your duty to
23 evaluate and establish the truth, the value and
24 the weight of the evidence. When you've done that
25 by assessing the evidence, applying your sense of

1 logic and reason and apply the law fairly and
2 impartially to those facts, then Mr. Morgan and
3 the State will have received and attained a fair
4 and impartial determination in this proceeding.

5 Please remember during this instruction
6 when I refer to the "defendant" that, as I
7 mentioned to you in my instructions when we first
8 started, is simply the person against whom a claim
9 is made. That's the sole significance of that
10 term, it's just a way of identifying Mr. Morgan.
11 So if you hear the term "defendant" during this
12 instruction, just understand that it is another
13 way of identifying him or making reference to him.
14 That's the only purpose for which it is used.

15 He has been accused in these documents,
16 which I shared with you when we started the
17 selection, of five charges. These charges are
18 brought by a document called an indictment, it's a
19 formal charging paper. To these indictments for
20 attempted murder, burglary first, criminal sexual
21 conduct in the first degree, kidnaping and
22 possession of a knife during the commission of a
23 violent crime, Mr. Morgan has rendered a plea of
24 not guilty. That then, of course, places upon the
25 State the burden of proving his guilt beyond a

1 reasonable doubt.

2 As I stated, every person -- including
3 Mr. Morgan -- in this state and in this country
4 accused of criminal offense(s) is presumed to be
5 innocent. That is that active presumption that I
6 explained. That is to be maintained throughout a
7 trial. Persons accused or not required to prove
8 anything whatsoever. The State has the burden of
9 establishing the evidence which would convince you
10 beyond a reasonable doubt that he is guilty of one
11 or more of these offenses. That active
12 presumption means that as we sit here right now
13 that still has to be your conclusion, mentally.
14 That can't change until you've evaluated the
15 evidence, assessed it and determined that you
16 believe and then address each element of the
17 crime.

18 Then and only then if you're satisfied
19 beyond a reasonable doubt that he is guilty, then
20 you may -- you would be instructed to return a
21 verdict of guilty. On the other hand if the State
22 fails as to any one of the elements, then you must
23 return a verdict of not guilty.

24 Obviously, ladies and gentlemen, since
25 a person so accused has no burden to prove or

1 disprove anything whatsoever, that person has the
2 right to not testify and to remain silent. The
3 assertion of that Constitutional right cannot
4 and must not be considered by a jury in its
5 deliberations. Under your oath, you are therefore
6 instructed to reach no inference or draw no
7 conclusion whatsoever from the fact that Mr.
8 Morgan did not testify in this case. The failure
9 of Mr. Morgan to testify should not even be
10 discussed by you in the jury room. If you do,
11 you will have violated the oath that you took.

12 As I have stated throughout, you will
13 assess the evidence and the testimony and decide
14 whether or not the State has convinced you beyond
15 a reasonable doubt whether he is guilty of any of
16 these offenses.

17 What is a reasonable doubt? A reasonable
18 doubt is that doubt which would make a honest,
19 sincere, conscientious juror searching for the
20 truth in a case to hesitate to act. Proven beyond
21 a reasonable doubt is proof that leaves you firmly
22 convinced as to the defendant's guilt as to one or
23 more of these offenses.

24 Now, there are very few things in our
25 life and in this world that we know with absolute

1 certainty. In cases such as this, in criminal
2 cases, our law does not require the State to offer
3 proof that overcomes every possible doubt. If
4 based upon your consideration of the evidence
5 you're firmly convinced that the defendant is
6 guilty of one or more of these crimes, then you
7 must return a verdict of guilty. If, on the other
8 hand, you think that there is a real possibility
9 that he is not guilty, then you must give him the
10 benefit of that doubt and return a verdict of not
11 guilty.

12 Reasonable doubt, ladies and gentlemen,
13 may arise from the evidence that's in a case or
14 the lack or absence of evidence in a case. It's
15 up to you to determine whether or not a reasonable
16 doubt exists in evaluating this case.

17 I charge you that Mr. Morgan is entitled
18 to every reasonable doubt arising in the whole
19 case. What does that mean? It means simply this,
20 if upon any issue of fact which is essential to a
21 conviction or a verdict of guilty and you should
22 have an issue as to how that should be resolved, I
23 would instruct you that it would be your duty to
24 resolve that in his favor.

25 Now, the evidence that you are to

1 consider of course consists of the testimony of
2 the witnesses and exhibits offered during the
3 trial, during their testimony. Please remember
4 that during the trial you may have heard
5 objections, as we have talked about those. From
6 time to time we've had sidebars. Those were
7 matters for my determination, were very properly
8 raised. The attorneys, as officers of this court,
9 have to raise those in the record during the
10 trial. You heard me rule sometimes, either I
11 overruled or I sustained an objection. Please
12 understand that you're not to draw any inference
13 or place any weight on my decision. In fact, it
14 has nothing to do with your determination of
15 anything. If you should put any weight on my
16 decision, then you have let me invade your
17 province and that's to be the sole judge of the
18 facts.

19 Likewise, if I overruled the objection,
20 sustained it and excluded the evidence, you
21 Shouldn't speculate on that.

22 If I allowed you to hear the testimony
23 in question, no weight should be given to that
24 either. Frankly that ruling probably demon-
25 strates, I think as clearly as anything, how we

1 work together in trying this case. When I
2 overruled the objection, I simply said as a matter
3 of law that under our rules of evidence that I am
4 going to permit the question and answer. That's
5 as far as it goes. It shifts now to you. You
6 decide whether you believe it or not and, if so,
7 how strongly you believe it.

8 That's how we do. I will resolve the
9 legal issues and you, in turn, will resolve the
10 factual issues.

11 I will further instruct you that while
12 the attorneys remarks are extremely beneficial,
13 please remember that their statements, their
14 arguments, should never be considered by you as a
15 statement of fact. Nor should they be considered
16 by you if it differs from any of the law that I
17 may give to you because, ladies and gentlemen, for
18 purposes of this proceeding, you and you alone
19 will decide the facts of this issue based on your
20 evaluation of the evidence.

21 It is my responsibility today to be the
22 sole judge of the law. Therefore, you must
23 disregard any law -- any argument by the attorneys
24 or statement which is contrary to my instructions
25 or contrary to your collective discussion and

1 resolution of what a witness said or didn't say.

2 In cases such as this, there are two
3 types of evidence which are used to present a
4 case, one is called direct evidence and the other
5 indirect evidence. The more popular or common
6 name for indirect evidence is circumstantial
7 evidence.

8 Direct evidence is when someone comes in
9 and testifies, generally to a sensory perception.
10 'I saw something, I heard something, I felt
11 something' or the like. If you are firmly
12 convinced as to the truthfulness of that
13 testimony, they that would establish that
14 particular fact or circumstance.

15 Circumstantial evidence is when one
16 comes in and testifies to a number of facts or
17 circumstances. If you are firmly convinced as to
18 each of them and you link them, either through
19 inductive or deductive reason, and reach a logical
20 conclusion, then that is circumstantial evidence.
21 If the logical conclusion -- if you are firmly
22 convinced of the truthfulness or the reliability
23 of that, that again would be established by the
24 evidence and you may rely on it.

25 Now, I will tell you that either method can

1 be used to present a case. Quite often you have
2 both in a case such as this.

3 Our law makes absolutely no distinction
4 between the weight and the value to be given or
5 circumstantial evidence, nor is there any greater
6 degree of certainty required for direct evidence
7 or circumstantial evidence than the other. You
8 should weight all of the evidence of this case and
9 decide what you find to be the true facts of this
10 particular dispute.

11 I further instruct you, however, in that
12 regard that the mere fact that circumstances
13 brought out in a case are strongly suspicious of
14 guilt or that the circumstances are such that a
15 defendant's guilt is probable, that would not be
16 enough to sustain or establish a verdict of guilty
17 because in order for that to be established it has
18 to be proof offered by the State of more than
19 establishing that a person is suspected of
20 committing a crime or most probably committed a
21 crime. It has to be proof that satisfied you
22 beyond a reasonable doubt that Mr. Morgan did in
23 fact commit one or more of these offenses.

24 Now, how do you decide these facts? You
25 decide them by applying your common sense, your

1 sense of logic and reason. As I told you, you
2 brought everything that you need to establish
3 this. You have that tool with you because that is
4 what you use every day of your life. You will use
5 it when you begin your deliberations.

6 You have the right to -- you have great
7 latitude in deciding the circumstances. By that, I
8 mean simply this. You may consider several
9 witnesses against one, one witness against
10 several. You may consider all of a witness'
11 testimony, part of a witness' testimony or none
12 of a witness' testimony.

13 When I say "consider", I mean simply
14 this. You have the right to believe all of a
15 witness' testimony, parts of a witness' testimony
16 or none of a witness' testimony.

17 Now, you don't make those types of
18 decisions arbitrarily but if you reach that
19 conclusion, you have that prerogative because your
20 objective throughout this entire proceeding is to
21 determine the truth regardless of the source of
22 the evidence.

23 Generally I would tell you that in
24 evaluating witnesses that we have two types of
25 witnesses that from time to time may appear.

1 Typically our rules of evidence do not permit a
2 witness to render an opinion except in very
3 limited areas. But certain witnesses, who we call
4 expert witnesses, those witnesses who by education
5 and experience have been expert in some art,
6 science, profession or calling, they are permitted
7 to state opinions as to relevant material in which
8 a witness claims some expertise, and may state the
9 reasons for that opinion. I would instruct you to
10 consider any expert opinion received in evidence
11 in this case like any other evidence that has been
12 received. That means, give it the weight that you
13 think that it deserves.

14 If you decide that an expert's opinion is
15 not based on sufficient evidence and experience or
16 if you conclude that the reasons given in support
17 of the opinion are not sound or that the opinion
18 is outweighed by other evidence in the case, you
19 may disregard the opinion in its entirety.

20 An expert witness' testimony is to be
21 given no greater weight than any other witness
22 simply because the witness professes some
23 expertise. Further, you are not required to
24 accept the expert's opinion even though it is not
25 contradicted.

1 Now, in assessing credibility and
2 believability, there are many factors that we may
3 consider. I am going to discuss some of them with
4 you now. But if I don't mention a method or
5 factor that you've used in your life, that
6 assisted you, that you've found to be reliable in
7 telling you whether somebody is telling the truth
8 or not, please use it when you begin to assess and
9 evaluate this evidence.

10 Some of the factors that you may want to
11 consider would be:

12 The demeanor of the witness. How did
13 they appear to you, straightforward or hesitant in
14 answering questions?

15 Was the testimony of a witness consistent
16 or was it inconsistent?

17 Was it strengthened or weakened by other
18 evidence in the case?

19 How did the witness come to know the
20 facts that he or she come to testify to, and what
21 was the witness' ability to know those particular
22 facts or circumstances?

23 Was the witness - did the witness have
24 some reason to give testimony that would be
25 beneficial or detrimental to one side or the

1 other? In other words, was the witness biased or
2 prejudiced in any fashion?

3 These are some of the methods. But, here
4 again, if I didn't mention one that you've used,
5 please apply it. Again, you're simply to
6 determine, as you have done every day of your
7 life, what you find to be most convincing.

8 I respect your right to differ with the
9 law -- in fact, one of the reasons that I make a
10 comment about it, and it's truly how I feel, you
11 will recall that when I was qualifying you and
12 asked you whether you had a driver's license, a
13 highway department identification card or voter's
14 registration, I knew that you had one because you
15 were here. I made a comment about that law, that
16 I don't understand that. But you know what? I've
17 been asking that question since 1994. If the Lord
18 blesses me and lets me continue another nineteen
19 years, I will ask it again every time I qualify a
20 jury. Why? Because I took the same oath that you
21 took. That means that I apply that law notwith-
22 standing my personal opinion. You will have to do
23 the same thing. You will take this law as I give
24 it to you and apply that law fairly and
25 impartially.

1 Please understand that it is my
2 responsibility to give you instruction on certain
3 aspects of the law. Don't put any greater weight
4 or emphasis on any one part of the instruction but
5 consider the charge as a whole. But also remember
6 that because I give you instruction on certain
7 areas that that shouldn't be considered by you as
8 a suggestion of how you are to resolve a factual
9 issue, because I have nothing to do with that.
10 Nothing that I say throughout this charge and
11 nothing that I have said or done during this trial
12 should be considered by you as a suggestion of how
13 you are to resolve the factual issue(s), because
14 that is your job. Yours alone.

15 Let's look at the charges now. I want to
16 discuss those with you as the latter portion of
17 this instruction.

18 As I mentioned to you, in one indictment
19 the defendant is charged with the offense of
20 attempted murder. In order to prove this crime,
21 the State must prove that the defendant attempted
22 to kill another person with malice aforethought,
23 either express or implied.

24 "Malice", ladies and gentlemen, is
25 hatred, ill will, hostility towards another

1 person. It is the intentional doing of a wrongful
2 act without just cause or excuse and with the
3 intent to inflict an injury under circumstances
4 that the law would infer as an evil intent.
5 Malice aforethought does not require that the
6 malice exist for any particular time before the
7 act is committed, but the malice must exist in the
8 mind of the defendant just before and at the time
9 that the act is committed. Therefore, there must
10 be a combination of the previous evil intent and
11 the act itself.

12 Malice aforethought may be expressed or
13 inferred. Now these terms, "expressed" or
14 "inferred" do not mean different kinds of malice,
15 but merely the manner in which malice may be shown
16 to exist. That is either by direct evidence or by
17 inference from facts and circumstances which are
18 proved.

19 Express malice is shown when a person
20 speaks words which express hatred or ill will for
21 another, or when the person prepared beforehand to
22 do the act which was later accomplished.

23 Malice may be inferred from conduct
24 showing a total disregard for human life.

25 Now, if the facts established by the

1 State are insufficient to raise the inference of
2 malice -- excuse me. If the facts established by
3 the State are sufficient to raise an inference of
4 malice to your satisfaction, this inference would
5 be simply an evidentiary fact to be considered by
6 you with all other facts and evidence in this
7 case. You may give it the weight that you feel
8 that it is entitled.

9 If you find in your analysis of attempted
10 murder that the State has failed to prove one or
11 more elements of attempted murder, you must then
12 decide if the State has proved what we call a
13 lesser-included offense than the charge of
14 attempted murder. A lesser-included offense --
15 and in this case there are two. One would be an
16 assault of a high and aggravated nature.

17 An assault occurs, ladies and gentlemen,
18 when a person unlawfully attempts to commit a
19 violent injury upon another person and has the
20 present ability to complete the attempted injury.
21 An "assault" is the intentional creation of a
22 reasonable fear of immediate bodily harm. It
23 is not necessary that the attempted injury or
24 actual harm actually take place.

25 A "battery" is the unlawful touching of

1 another person by a person who has committed the
2 assault. An unlawful touching can be caused by a
3 part of the accused's body or by any object that
4 the accused puts in motion. A battery is the
5 completion of the assault by using or applying
6 force to another person, however slight, in a
7 rude, anger or illegal manner without justifica-
8 tion for doing so.

9 A person commits the offense of assault
10 and battery of a high and aggravated nature if the
11 person unlawfully injures another person and great
12 bodily injury to another person results and/or the
13 act is accomplished by means likely to produce
14 death or great bodily injury.

15 Great bodily injury, ladies and gentle-
16 men, means injury which causes a substantial risk
17 of death or which causes serious permanent
18 disfigurement or protracted loss or impairment or
19 the function of a body member of organ.

20 Now, if in evaluating the evidence you
21 are not convinced that the State has met its
22 burden of proof as to attempted murder or assault
23 and battery of a high and aggravated nature, you
24 may also consider as another lesser-included
25 offense assault and battery of the first degree.

1 A person commits the offense of assault
2 and battery of the first degree if that person
3 unlawfully injures another person and the act
4 either involves a nonconsensual touching of the
5 private parts of an adult, either under or above
6 clothing, with a lewd, lascivious intent or
7 occurred during the commission of a burglary or a
8 kidnaping.

9 " Private parts" means the genital area,
10 buttocks, or the breast of a female.

11 A person may also commit the offense of
12 assault and battery of the first degree if a
13 person unlawfully offers or attempts to injure
14 another person, with the present ability to do so,
15 and the act is accomplished by means likely to
16 produce death or great bodily injury, or occurred
17 during the commission of a burglary or a
18 kidnaping.

19 Now let's look at the - the next matter
20 that I want to discuss with you is the indictment
21 that charges burglary in the first degree. The
22 State must prove beyond a reasonable doubt, in
23 order to obtain a conviction of burglary in the
24 first degree, that the defendant entered a
25 dwelling without consent but the State does not

1 have to prove that force was used to gain entry.
2 It may prove it, but it is not required to prove
3 that force was used to gain entry.

4 A "dwelling" is a building or any portion
5 of a building in which a person ordinarily sleeps.

6 Next, the State must prove beyond a
7 reasonable doubt that the defendant intended to
8 commit a crime, either a felony or a misdemeanor,
9 at the time of an entry. For, you see, the mere
10 entry into a dwelling without consent and without
11 the intent to commit a crime is not burglary. If
12 the intent to commit a crime is formed after the
13 entry, it still would not be burglary.

14 On the other hand, if the defendant
15 intended to commit a crime at the time of the
16 entry, it is a burglary even if the intent was
17 abandoned after entry. It does not matter that
18 the intended crime was not committed.

19 Finally, the State must prove beyond a
20 reasonable doubt at least one of the following:

21 One, when entering, while in the
22 dwelling or when fleeing that the defendant was
23 armed with a deadly weapon. A "deadly weapon" is
24 any article or substance which is likely to cause
25 death or great bodily harm. Whether an instrument

1 has been used as a deadly weapon of course depends
2 on the facts and circumstances in each case. I
3 would instruct you, ladies and gentlemen, that a
4 knife is a deadly weapon.

5 Two, or when entering - that is an "or" -
6 or that when entering the dwelling or when fleeing
7 that the defendant caused physical injury to
8 anyone not participating in the crime. Or when
9 entering, while in the dwelling or when fleeing,
10 the defendant used or threatened to use a
11 dangerous object. Or when entering, while in the
12 dwelling or when fleeing that the defendant
13 displayed what was or appeared to be a knife. Or
14 that the defendant entered or remained in the
15 dwelling in the nighttime.

16 "Nighttime" is the period between sunset
17 and sunrise, during which there is not enough
18 daylight to recognize a person's face except by
19 artificial light or by moonlight.

20 Now let's look at the offense of criminal
21 sexual conduct in the first degree. The first
22 element that the State must prove is that the
23 defendant engaged in a sexual battery with the
24 victim. A sexual battery, ladies and gentlemen,
25 is defined as sexual intercourse or any intrusion,

1 however slight, of any part of a person's body
2 into the genital openings of another person's
3 body except when the intrusion is accomplished for
4 medically recognized treatment or diagnostic
5 purposes.

6 If you find that the State has not proven
7 beyond a reasonable doubt that a sexual battery
8 occurred, you deliberate no further.

9 If you find that a sexual battery did
10 occur, you must then decide if the State has
11 established beyond a reasonable doubt any of the
12 following:

13 One, that the defendant used
14 aggravated force to accomplish the sexual battery.
15 "Aggravated force" means the use of physical force
16 or physical violence of a high and aggravated
17 nature. This includes the threat of the use of a
18 deadly weapon. Or the victim submitted to sexual
19 battery while the victim was also the victim of a
20 forcible confinement, kidnaping or any similar act
21 or offense.

22 Now lets look at the offense of kid-
23 naping. Kidnaping - in order to prove kidnaping,
24 the State has to prove beyond a reasonable doubt
25 that the defendant knowingly and unlawfully

1 seized, confined and kidnapped another person
2 without authority of law.

3 To do a thing "unlawfully" is to do it
4 willfully against the law.

5 "Knowingly" means with knowledge,
6 consciously, not accidentally.

7 To "seize" means to take hold suddenly or
8 forcibly.

9 "Confine" means to limit, restrict or
10 enclose within the bounds, imprison, shut or keep
11 in.

12 "Kidnap" is to remove a person against
13 his/her will by unlawful force or by fraud.

14 Now, the State does not have to prove
15 that the defendant did all of these things.
16 Instead, if you find beyond a reasonable doubt
17 that the defendant did any of these things, you
18 may return a verdict of guilty on the charge of
19 kidnaping.

20 I would instruct you that something done
21 "without authority of law" is something that the
22 law does not sanction, permit, allow, condone or
23 provide justification for.

24 The kidnaping does not have to be for any
25 personal or monetary gain, or for any illegal

1 purpose, but may be for any reason whatsoever.

2 The gravamen of the essence of the
3 offense of kidnaping is some sort of compulsion,
4 but the law says that the requisite force or
5 compulsion need not consist of the use of actual
6 physical force or violence or of expressed
7 threats.

8 The offense of kidnaping, ladies and
9 gentlemen, commences when one is wrongfully and
10 unlawfully deprived of his or her freedom and
11 continues until that freedom is restored.

12 Now, the last charge is the possession
13 of a commission (sic) -- the possession of (sic)
14 while attempting to commit a violent crime. The
15 State, in order to obtain a conviction for this
16 offense, must prove beyond a reasonable doubt that
17 the defendant visibly displayed a knife during the
18 commission of a violent crime.

19 "A knife" means an instrument or tool
20 with a sharp cutting blade, whether or not
21 fastened to a handle, which can be used to
22 inflict, cut, slash or wound.

23 In order to find the defendant guilty of
24 the possession of a weapon during the commission
25 of a violent crime, you must first find the

1 defendant guilty of committing a violent crime, or
2 attempting to commit a violent crime. I would
3 instruct you that in this regard that attempted
4 murder, assault and battery of a high and
5 aggravated nature, burglary first, kidnaping or
6 criminal sexual conduct in the first degree are
7 all considered violent crimes.

8 The State must prove also, beyond a
9 reasonable doubt, that the weapon further advanced
10 or helped in the commission of the crime.

11 Now, the one common thread that runs
12 through all of these charges is that the State has
13 to prove, in addition to those elements that I
14 have outlined for you, for each of the charges the
15 State must prove criminal intent. Criminal intent
16 is proven by basically your assessment of all the
17 facts and circumstances, because it is always a
18 matter that must be determined by you considering
19 the facts and circumstances surrounding the
20 situation.

21 There is no way to prove intent to a
22 mathematical certainty. Nor is there any way that
23 medical science can dissect a person's brain and
24 determine what the person had in mind. So the law
25 says that criminal intent may be inferred from the

1 circumstances that have been shown to have
2 existed. This is how a determination is made as
3 to whether the required intent was present.

4 It is not necessary to establish intent
5 by direct and positive evidence but intent may be
6 established by inference as any other fact and by
7 taking into consideration the acts of the parties
8 and all the facts and circumstances surrounding
9 those facts.

10 Criminal intent is a mental state of
11 conscious wrongdoing and it's up to you to
12 determine what the defendant intended to do, based
13 on the circumstances that have been shown to have
14 existed.

15 It includes those acts which one intends
16 or which are likely to follow regardless of one's
17 specific intent.

18 I would instruct you also, ladies and
19 gentlemen, with regard to criminal intent that
20 voluntary intoxication is not a defense to a
21 crime. A person who voluntarily becomes
22 intoxicated is just as responsible for his or her
23 acts committed while intoxicated as a person would
24 be who is not intoxicated.

25 Ladies and gentlemen, throughout this

1 entire matter you have not been, you are not now,
2 and you will not be when you go to deliberate an
3 advocate or a partisan for either side. You --
4 neither you nor I have had any friends in this
5 process that we should reward, nor do we have any
6 enemies to punish. Rather -- and we also are
7 required to do something which I confess to you as
8 a fellow human being is not always easy to do, but
9 it is something that we have to consciously do to
10 perform our task. That is to set aside all human
11 emotion. If you think about it, it has no place
12 in this process. None whatsoever.

13 You have been challenged and tasked with
14 the responsibility of evaluating the evidence,
15 methodically, applying your sense of logic and
16 reason to decide what you believe to be the true
17 facts. Then once you decide that, you take the
18 law as I have given it to you, apply it fairly
19 and impartially to the facts, and report your
20 decision. When you have done that, you will have
21 honored your commitment.

22 As I stated to you when we began the
23 process, the fact that we might not please someone
24 has nothing to do with this. We have an
25 obligation, you and I, to do what we're charged

1 to do; me, presiding over the trial and giving
2 you the law; you, applying those facts as you
3 determine.

4 Mr. Presiding Juror, to assist you in
5 reporting the decisions, I've prepared several
6 verdict forms, one for each of the charges.
7 I'd like to discuss them with you now. There are
8 a number of -- one has a number of options. Most
9 of them have two. The order in which they appear
10 means absolutely nothing whatsoever.

11 The first one, that happens to be the
12 charge of attempted murder, -- and you will note
13 that they are captioned. This will be the same
14 for each one. They are captioned, which just
15 simply facilitates the filing. It has no
16 significance for you. In this one the body says,
17 "We, the jury, by unanimous consent..." - what does
18 that mean? Unanimous consent, as the term would
19 imply to you, means that all of you have to agree.
20 Twelve to zero is the required vote. Eleven to
21 one is not sufficient. "We, the jury, by
22 unanimous consent find that Steven Lee Morgan on
23 the charge of murder..." -- and there are four
24 choices:

25 Guilty.

1 Guilty of the lesser-included offense
2 of assault and battery of a high and aggravated
3 nature.

4 Guilty of the lesser-included offense of
5 assault and battery, first degree.

6 Not Guilty.

7 Then a place for you to sign where it
8 says Presiding Juror and then date it.

9 If the first is your selection, then you
10 will have said that you evaluated the evidence and
11 you all agree that the State has met its burden of
12 proof, proven beyond a reasonable doubt that Mr.
13 Morgan, with malice aforethought, attempted to
14 kill Ms. Lampkin. If that is your decision, then
15 Guilty would be your choice.

16 If you're not convinced of one or more of
17 the elements of that charge, you may then next
18 consider the lesser-included offense of a high and
19 aggravated nature. We talked about what that
20 charge entails.

21 If you find that you are not convinced
22 that the State has established guilt of that, then
23 you may then consider assault and battery of the
24 first degree. We've talked about elements of that
25 particular offense.

1 If you're not convinced that the State
2 has met its burden as to that offense, then Not
3 Guilty would be your decision. Again, that says
4 that the State has failed to establish beyond a
5 reasonable doubt the elements of any one of those
6 offenses: attempted murder, assault and battery
7 of a high and aggravated nature, or assault and
8 battery of the first degree.

9 The next form as it will be is for
10 kidnaping and the burglary first. I'll save the
11 possession for last. You will note that there are
12 two choices on each of those: guilty or not
13 guilty. It basically says the same, "We, the
14 jury, by unanimous consent find the Defendant,
15 Steven Lee Morgan..." -- guilty or not guilty.
16 One says criminal sexual conduct of the first
17 degree and the other says burglary first degree or
18 kidnaping. It's guilty or not guilty. The "or"
19 means nothing.

20 Guilty would mean that you obviously were
21 convinced on each of those that the State has met
22 its burden of proof and established the elements
23 of that particular crime. Or they've failed to
24 establish one or more. Again, it must be
25 unanimous. All twelve of you must agree.

1 The last one is the one that is
2 contingent upon your decisions in some of the
3 others. That is the possession of a knife during
4 the commission of a violent crime. Guilty or not
5 guilty.

6 If guilty, you will have said that the
7 State has established its burden of proof that the
8 defendant possessed the knife when he committed
9 one or more of the crimes that I have mentioned to
10 you, that are violent. Those are, again,
11 kidnaping, criminal sexual conduct of the first
12 degree, burglary first, attempted murder or
13 assault and battery of a high and aggravated
14 nature. If you don't have a conviction of any of
15 those, you must return a verdict of not guilty on
16 this charge. Why? Because the State would have
17 failed to establish proof beyond a reasonable
18 doubt that he was guilty of a violent crime.

19 Now, if you find him guilty then you, of
20 course, must address whether he had a knife in his
21 possession during the commission of that offense,
22 that it facilitated the crime itself, for you to
23 be able to return a verdict of guilty.

24 Again, I know you're anxious to get
25 started and you are almost to that point.

1 Of the first twelve of you selected, do
2 any of you feel that you will be unable to
3 continue? (No response). That being no hands
4 shown, Mr. Wrench, Mr. McPherson, it appears at
5 this point that the first twelve will continue.
6 So when the jury is excused in just a moment, I
7 would ask that you not rejoin them in the jury
8 room. They will take you to another room and I
9 will be in shortly to discuss with you how much
10 longer that you will need to remain.

11 I know that you are anxious to get
12 started with the resolution of this case and
13 you're almost to that point. I told you that the
14 last instruction that I would give to you would be
15 when you may start. It is necessary that I excuse
16 you now and discuss my charge with the attorneys.
17 It might be necessary for me to return you to the
18 courtroom and give you some additional instruction
19 or clarification. If so, we will return all of
20 you to the courtroom to accomplish that. But if
21 there aren't any exceptions or additions that need
22 to be given, then we will gather the exhibits and
23 the verdict forms and deliver them to you.

24 When you receive your exhibits, then you
25 may commence your deliberations, but not before.

1 Once the deliberations start, the only
2 restriction that I place on the deliberations is
3 that if any juror has to leave the table for any
4 reason, you must stop deliberating until all
5 twelve of you are together. Other than that, you
6 may proceed as you deem fit and proper.

7 Thank you so much for your attention.
8 Please retire to your jury room and await your
9 exhibits before commencing your deliberations.
10 Thank you.

11 (JURY OUT @ 4:10 P.M.)

12 THE COURT: Exceptions or additions
13 from the State?

14 SOLICITOR WILLIAMS: None, Your Honor.

15 THE COURT: Exceptions or additions
16 from the Defendant?

17 CHAD SHELTON: No, sir.

18 THE COURT: Thank you very much.

19 (COUNSEL APPROVAL OF EXHIBITS)

20 (JURY IN DELIBERATION @ 4:12 P.M.)

21 (NOTIFIED OF JURY QUESTION @ 4:50 P.M.)

22 (SO ENTERED AS COURT'S EXHIBIT 3)

23 (DEFENDANT PRESENT)

24 THE COURT: I am informed that we have
25 a question from the jury. They are inquiring as

1 to the various elements of the charges, whether or
2 not we have a worksheet. Bring them in and I'll
3 inquire. Counsel and Mr. Morgan are present.

4 (JURY IN @ 4:57 P.M.)

5 THE COURT: Thank you. Mr. Fowler, I
6 have what has now been marked as Court's Exhibit
7 3. Your question is, "Can we get the law work-
8 sheets?" I am assuming that you're talking about
9 my charge, the instruction on the law.

10 FOREMAN: Yes, sir.

11 THE COURT: Do you want the entire
12 instruction or just the instructions outlining
13 the various crimes?

14 FOREMAN: Outlining the various
15 crimes.

16 THE COURT: Very well. I will give
17 you the crime portion. If you need additional
18 portions, just let me know. I'll send that back.
19 Hopefully that will address your concerns.

20 FOREMAN: Yes, sir.

21 THE COURT: It will take me just a few
22 moments to print it, but I will get that to you
23 very shortly. You may retire and continue your
24 deliberations.

25 (JURY OUT @ 4:58 P.M.)

1 THE COURT: Any objection, exceptions
2 or additions from the State?

3 SOLICITOR WILLIAMS: No, Your Honor.

4 THE COURT: Any objections, exceptions
5 or additions from the Defendant?

6 CHAD SHELTON: No, Your Honor.

7 THE COURT: I will give you a copy of
8 what I print. We'll attach it to Court's Exhibit
9 3 as the response.

10 (PRINTED RESPONSE PROVIDED TO JURY @ 5:02 P.M.)

11 (NOTIFIED OF VERDICT @ 5:45 P.M.)

12 (DEFENDANT PRESENT)

13 THE COURT: All right, let the record
14 reflect that Mr. Morgan is present. I am notified
15 that we have a verdict. Is the State prepared to
16 receive the verdict?

17 SOLICITOR WILLIAMS: We are, Your
18 Honor.

19 THE COURT: Is the defense ready to
20 receive the verdict, Mr. Shelton?

21 CHAD SHELTON: Yes, Your Honor.

22 THE COURT: Ladies and gentlemen, I
23 appreciate the proper decorum and courtesies
24 extended during this trial. I can only imagine
25 the anxiety that each of you feel, for various

1 reasons. I respect that. But one thing that I
2 believe in, as you have heard me say throughout
3 this week, is that I believe in this process, I
4 believe in this country and the method that we
5 have for resolving disputes. These citizens of
6 this community have given up their time for us.
7 I want to continue to respect this process.

8 When I receive the verdicts, I will not
9 permit any reaction, any emotional response or any
10 outburst at all when the verdict is published. I
11 understand that that may be difficult. If you
12 feel that you might have some difficulty
13 controlling yourself, then you need to excuse
14 yourself now. If you don't and there is an
15 outburst, I will have to deal with that. That's
16 contempt of court. I don't like to do that but
17 that is what I will have to do to, again, protect
18 and preserve the sanctity and dignity of this
19 process. Bring the jury in, please.

20 (JURY IN @ 5:54 P.M.)

21 THE COURT: Mr. Fowler, I am informed
22 that the jury has reached a verdict?

23 FOREMAN: Yes, sir.

24 THE COURT: Please provide the verdict
25 form to Mrs. Wiggins (bailiff).

1 CLERK: (Receives verdict from Foreman
2 and tenders to the Court).

3 THE COURT: (Upon review), okay. The
4 verdict forms each have been properly completed.
5 I would ask the defendant to please rise.

6 DEFENDANT: (Complies).

7 THE COURT: In the State of South
8 Carolina versus Steven Lee Morgan, 12-GS-08-0499,
9 "We, the jury, by unanimous consent find the
10 Defendant, Steven Lee Morgan, on the charge of
11 attempted murder Guilty." Signed by Mr. Fowler
12 as the presiding juror, dated April 23, 2013.

13 Same caption, 12-GS-08-0496, "We, the
14 jury, by unanimous consent find the Defendant,
15 Steven Lee Morgan, on the charge of burglary first
16 Guilty." Signed by Mr. Fowler as the presiding
17 juror, dated April 23rd, 2013.

18 Same caption, 12-GS-08-0498, "We, the
19 jury, by unanimous consent find the Defendant,
20 Steven Lee Morgan, on the charge of kidnaping
21 Guilty." Signed by Mr. Fowler as the presiding
22 juror, dated April 23rd, 2013.

23 Same caption, 12-GS-08-0497, "We, the
24 jury, by unanimous consent find the Defendant,
25 Steven Lee Morgan, on the charge of criminal

1 sexual conduct in the first degree Guilty."

2 Signed by Mr. Fowler as the presiding juror, dated
3 April 23rd, 2013.

4 Case number 12-GS-08-0500, "We, the jury,
5 by unanimous consent find the Defendant, Steven
6 Lee Morgan, on the charge of possession of a knife
7 during the commission of a violent crime Guilty."

8 Signed by Mr. Fowler as the presiding juror, dated
9 April 23rd, 2013.

10 Ladies and gentlemen, if the court has
11 accurately published your verdicts, please
12 indicate that by raising your right hand - (each
13 juror raised their right hand). Thank you. You
14 may put them down. Let the record reflect that
15 each juror raised his or her right hand in
16 response to the court's inquiries.

17 Anything further from the jury, from Mr.
18 Morgan?

19 CHAD SHELTON: Your Honor, we would
20 ask that the jury be polled.

21 THE COURT: Very well. You may take
22 your seat, Mr. Morgan. Thank you very much.

23 Ladies and gentlemen, what is going to
24 happen now is that the clerk is going to call your
25 name. She is going to ask you if these are your

1 verdicts, and are they still your verdicts --
2 there will be two questions. If you will respond
3 to the clerk, please, while she does that we would
4 appreciate it. Thank you.

5 CLERK: Juror Number 52, Michael
6 Fowler, is this your verdict?

7 JUROR NUMBER 52: Yes, ma'am.

8 CLERK: Is it still your verdict?

9 JUROR NUMBER 52: Yes, ma'am.

10 CLERK: CLERK: Juror Number 171,
11 Brandi Thomas, is this your verdict?

12 JUROR NUMBER 171: Yes, ma'am.

13 CLERK: Is it still your verdict?

14 JUROR NUMBER 171: Yes, ma'am.

15 CLERK: Juror Number 64, Kayla Hall,
16 is this your verdict?

17 JUROR NUMBER 64: Yes, ma'am.

18 CLERK: Is it still your verdict?

19 JUROR NUMBER 64: Yes, ma'am.

20 CLERK: Juror Number 154, William
21 Sirois, is this your verdict?

22 JUROR NUMBER 154: Yes, ma'am.

23 CLERK: Is it still your verdict?

24 JUROR NUMBER 154: Yes, ma'am.

25 CLERK: Juror Number 67, Mildred

State v. Steven Lee Morgan
Case No. 12-GS-08-0496-0500
Jury Trial of April 19-23, 2013
Before The Honorable R. Markley Dennis, Jr.

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1 Hammonds, is this your verdict?

2 JUROR NUMBER 67: Yes, ma'am.

3 CLERK: Is it still your verdict?

4 JUROR NUMBER 67: Yes, ma'am.

5 CLERK: Juror Number 183, John

6 Williams, is this your verdict?

7 JUROR NUMBER 183: Yes, ma'am.

8 THE COURT: Is it still your verdict?

9 JUROR NUMBER 183: Yes, ma'am.

10 CLERK: Juror Number 92, Holly Leonard,
11 is this your verdict?

12 JUROR NUMBER 92: Yes, ma'am.

13 CLERK: Is it still your verdict?

14 JUROR NUMBER 92: Yes, ma'am.

15 CLERK: Juror Number 152, Kenneth

16 Singleton, is this your verdict?

17 JUROR NUMBER 152: Yes, ma'am.

18 CLERK: Is it still your verdict?

19 JUROR NUMBER 152: Yes, ma'am.

20 CLERK: Juror Number 144, Timothy

21 Russell, is this your verdict?

22 JUROR NUMBER 144: Yes, ma'am.

23 CLERK: Is it still your verdict?

24 JUROR NUMBER 144: Yes, ma'am.

25 CLERK: Juror Number 94, Patricia

1 Lindsey, is this your verdict?

2 JUROR NUMBER 94: Yes, ma'am.

3 CLERK: Is it still your verdict?

4 JUROR NUMBER 94: Yes, ma'am.

5 CLERK: Juror Number 148, John C.

6 Savage, is this your verdict?

7 JUROR NUMBER 148: Yes, ma'am.

8 CLERK: Is it still your verdict?

9 JUROR NUMBER 148: Yes, ma'am.

10 CLERK: Juror Number 31, Michael

11 Cousino, is this your verdict?

12 JUROR NUMBER 31: Yes, ma'am.

13 CLERK: Is it still your verdict?

14 JUROR NUMBER 31: Yes, it is.

15 CLERK: Your Honor, I have polled the
16 jury and the verdict stands.

17 THE COURT: Thank you, Ms. Tucker.

18 The jury has been polled and the verdicts stand.

19 Thank you very much, ladies and
20 gentlemen. I am going to ask that you retire to
21 your jury room. I will be with you in just a few
22 moments, please.

23 (JURY EXCUSED)

24 THE COURT: Do you have the sentencing
25 sheets?

1 SOLICITOR WILLIAMS: They are bringing
2 them, Your Honor.

3 THE COURT: All right. Any Motions
4 from the State?

5 SOLICITOR WILLIAMS: None from the
6 State.

7 THE COURT: Any Motions from the
8 Defendant?

9 CHAD SHELTON: I just renew all
10 Motions, the directed verdict Motions, objections,
11 everything that we raised during the trial.

12 THE COURT: Very well. The court has
13 previously ruled specifically on each one of those
14 Motions. I believe that the verdicts are
15 supported overwhelmingly in this case by the
16 evidence. Therefore, I refuse to grant a new
17 trial. We will be at-ease for a few minutes.

18 (BRIEF RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Thank you, ladies and
21 gentlemen. Ms. Williams, are we ready to proceed?

22 SOLICITOR WILLIAMS: Yes, Your Honor.
23 There is one family member that would like to
24 address the Court at the appropriate time.

25 THE COURT: I would be delighted to

1 hear from them at this time.

2 SOLICITOR WILLIAMS: This is Robert
3 Grantham.

4 THE COURT: Thank you very much. Mr.
5 Grantham, good afternoon, sir.

6 ROBERT GRANTHAM: Good afternoon, Judge.
7 I want to thank you for this opportunity to speak.
8 My name is Robert Grantham. Rose is my niece. I
9 helped raise Rose, in Moncks Corner. I am tired.
10 I am very, very tired. I have a lot of things
11 that I wanted to say but I'm going to keep it very
12 short.

13 Thank God that I live in a country called
14 America. Thank God that justice will be served.
15 I thank God for the God that I serve because he is
16 an awesome God. God has given man every right
17 except over another human being. No human being
18 has a right to put their hands on anyone.

19 I retired from the Darlington County
20 Sheriff's Office. In my time in law enforcement,
21 I saw some of everything. But never would I have
22 expected this to happen in my family. This is
23 something that we see in other people's families.
24 We did not realize that we had a monster coming
25 around our family.

1 I would like to say to Steven that you
2 have shaken this family but we are not down. We
3 will get back up and you will never bring us down.
4 Never. I want you to know that.

5 I would also like to say that Rose's son,
6 Sean, is going through some things right now. He
7 is wrestling with some things right now. A couple
8 of years ago Sean and his friends were walking
9 and heard some lady yelling for help. Sean and
10 his friend went to assist. When they got there,
11 it was a man beating his wife. They intervened,
12 as any decent human being would do. Instead, this
13 man pulled a gun. They ran, and Sean was shot.
14 When the police officer arrived, the police
15 officer was shot in his face. Sean dealt with the
16 lady, with the officer getting shot and with
17 putting himself in danger. But what he is really
18 dealing with today is that on the night that his
19 mother was viciously and violently attacked, he
20 wasn't there to protect his mother. That is what
21 he is dealing with today.

22 We are a family. We are strong and we're
23 going to get through this. The God that we serve
24 will not let us down.

25 What I am going to ask this Court, the

1 Ninth Circuit, is that whatever time you want to
2 give to Steven, I am asking - at least on two of
3 the charges, criminal sexual conduct and the
4 burglary first, I am asking that he be given the
5 maximum and that the sentences be run consecutive.
6 I am asking for twenty-five years each and that
7 they be run consecutive because I don't want to
8 see him out no time soon. If he gets out, I want
9 to see him out as an old man so that he cannot
10 harm anyone anymore. That's what I am asking of
11 this Court. I want you to send a message for
12 every woman in this courtroom, every woman in this
13 county, every woman in the state, every woman in
14 this country that the Ninth Circuit Court will not
15 tolerate a man putting his hands on a woman.
16 Thank you very much.

17 THE COURT: Thank you, Mr. Grantham.
18 I appreciate your words. I appreciate your being
19 here. Anything else?

20 SOLICITOR WILLIAMS: No, sir.

21 THE COURT: Mr. Shelton?

22 CHAD SHELTON: Thank you, Your Honor,
23 may it please the court.

24 THE COURT: Yes, sir.

25 CHAD SHELTON: Steven is thirty-eight

1 years of age. He does have two children. Steven
2 has decided not to answer Your Honor, for obvious
3 reasons.

4 THE COURT: I understand.

5 CHAD SHELTON: For those same
6 reasons, I don't think that I would be right for
7 me, necessarily, to talk about everything that
8 Steven and I have talked about, to talk about the
9 case.

10 Your Honor, I do -- you've probably seen
11 him in the courtroom, his father sitting right
12 behind us.

13 THE COURT: I have noticed. My heart
14 has gone out to him as well.

15 CHAD SHELTON: He came from Georgia to
16 be here. He was here -- we were on the trial
17 docket a couple of terms ago and he was here then.
18 Steven's mother is also here and his sister, but
19 they are in Goose Creek. They just knew that they
20 wouldn't be able to handle this emotionally, to be
21 here. Your Honor, his father would like for me to
22 let you know that they care about him, they love
23 him.

24 There were some things in evidence, as
25 far as jail tapes, that I was able to listen to,

1 some of those. I can tell you from that and from
2 talking with his father that they would do
3 anything for him. They -- they are here.

4 Steven knows what the possible punishment
5 is, the max punishment, especially for burglary in
6 the first degree. Your Honor, he's thirty-eight
7 years of age, he does have two children. I would
8 ask Your Honor to have as much mercy as you can in
9 this case. Thank you.

10 THE COURT: Thank you. Anything else?

11 CHAD SHELTON: No, sir.

12 THE COURT: Mr. Morgan, I ask you to
13 rise, please, sir.

14 DEFENDANT: (Complies).

15 THE COURT: The evidence in this case
16 speaks for itself so far as the cruelty, the
17 absolute lack of compassion for a human being.
18 To further it by having her have to go through
19 this entire ordeal -- in my forty years practicing
20 law, I've never seen anyone brutalized to that
21 extent. I can't tell you that I've seen every one
22 but there is nothing in our society that says that
23 that can be tolerated for a second.

24 So I am going to show some mercy because
25 you probably deserve to never leave prison. I

1 have the power to do that. But I am going to
2 choose not to. Now, you're going to be a senior,
3 very senior, when you get out but I'm going to
4 allow you the opportunity to get out one day.

5 The sentence of the Court on 12-496,
6 which is the burglary charge, and it will be the
7 controller -- as I interpret that statute, it's
8 fifteen years to life. So I'm going to sentence
9 you to forty (40) years. I'll give you credit for
10 the time that you have served. You know, that's
11 an eighty-five percent sentence. You're aware of
12 that?

13 DEFENDANT: (No verbal response).

14 THE COURT: The sentence of the Court
15 on Indictments 12-499, the attempted murder,
16 2012-498, which is the kidnaping, 2012-497, I
17 will impose the maximum sentence on each of those
18 but they are concurrent. I will run those
19 concurrently with the burglary first.

20 The sentence, however, on 2012-500,
21 possession of the knife, -- because the knife,
22 to me, became very, very critical in this. It
23 caused her fear, it injured her, it absolutely
24 -- I think the jury absolutely got it right that
25 it facilitated the crimes, all of them. So the

1 sentence of the Court -- and you know that that is
2 a day-for-day sentence. The sentence of the
3 Court on the possession of a knife during the
4 commission of a crime is five (5) years. It is
5 consecutive to 2012-08-496. Good luck to you,
6 sir.

7 COURT REPORTER: Judge, what is the
8 maximum on the others?

9 THE COURT: On that one it is five
10 years.

11 COURT REPORTER: On 499, 498, 497?

12 THE COURT: Thirty (30) years. Thank
13 you.

14 CHAD SHELTON: And, Judge, he has been
15 in custody since January 29th. He signed the
16 extradition warrants ---

17 THE COURT: Okay. So January 29th, --
18 what year?

19 CHAD SHELTON: 2012.

20 THE COURT: I will write that in there,
21 January 29th. Credit for time served since January
22 29th, 2012. I will write that on each indictment.
23 Thank you, sir.

24 (TRANSCRIPT CONCLUDED)

25

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Beetley County

STEVEN LEE MORGAN #355128
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2015-CP-08-2742

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay thifces and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE Correctional Institution
2. Name and location of Court which imposed sentence General Session Court, Beetley County
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 12-GS-08-0496, 0497, 0498, 0499, 0500
 - (b) Burglary 1st, C.S.C. 1st, Kidnapping, Attempted Murder,
 - (c) Possession of a knife
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 23, 2013 40 yrs, 30 yrs, 30 yrs, 30 yrs, 5 yrs
 - (b) _____

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Attained
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October, 21 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2015-UP-492
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistant
 (b) _____
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Tell to hire DNA expert
 (b) Tell to look for contamination to preserve issue for ^{Appellate Review}
 (c) Tell to request jury instruction for expert opinion.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Not available for appellate review
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Chad A. Shelton and assistance Keisha White
- ii. 219 Hwy 52 Suite E. Blacks Creek S.C. 29461
- iii. Laura Ruth Bae (SCCJD) 1330 Lady Street, Suite 401
Columbia, S.C. 29201-3332
- (b) the proceedings at which each such attorney represented you:
- i. 17 ABC above
- ii. 17 DE above
- iii. _____

19. State clearly the relief you seek in filing this application:

Reverse all sentencing and Remand for a new trial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Berkeley County)

VERIFICATION

STEVEN MORGAN 355128

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 18th
day of Nov, 2015

[Signature] (L.S.)
Notary Public

My Commission Expires: 9/27/2023

TSM

2015 DEC -4 PM 4:41
JAY P. GARNIN
CLERK OF COURT
BERKELEY COUNTY, SC

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

STEVEN MORGAN #355128
I, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Steven Morgan
Applicant

SWORN or affirmed to and subscribed before me this
18th day of Nov, 2016.

Daniel Pangle
Notary Public

My Commission Expires: 9/27/2023

CLERK OF COURT
BERKELEY COUNTY, SC

2015 DEC -4 PM 4:41

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Steven Lee Morgan, #355128

vs.

State of South Carolina

Plaintiff.

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2015-CP-08-2742

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Rodney D. Davis, Esquire, Bar No. _____

Address:

4000 Faber Place Dr, Suite 300; Charleston, SC
29405

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

J. Rutledge Johnson, Bar No. 78871

Address:

PO Box 11549 Columbia, SC 29211-1549

Phone: 803-734-3737 Fax 803-734-4113

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

June 9, 2016

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☒ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	NINTH JUDICIAL CIRCUIT
	)	
Steven Lee Morgan, #355128.	)	2015-CP-08-2742
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina.	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed on December 4, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. The Applicant was indicted by the April 2012 term of the Berkeley County Grand Jury for one (1) count of Burglary, 1st degree, one (1) count of Criminal Sexual Conduct, First Degree, one (1) count of Kidnapping, one (1) count of Attempted Murder, and one (1) count of Possession of a Firearm or Knife During the Commission of a Violent Crime (2012-GS-08-0496, -0497, -0498, -0499, -0500). Chad Shelton, Esquire, represented him. On April 23, 2013, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted on all charges. The Honorable R. Markley Dennis, Jr. sentenced the Applicant to confinement for forty (40) years for the count of Burglary, First Degree. The Applicant was sentenced to thirty (30) years for each count of Criminal Sexual Conduct, First Degree, Kidnapping, and Attempted Murder; each sentence runs concurrently. The Applicant was sentenced

to five (5) years for the count of Possession of a Firearm or Knife During the Commission of a Violent Crime, which will run consecutively.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v. California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Morgan, Op. No. 2015-UP-492 (filed on October 21, 2015). The Remittitur was issued on November 13, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistant (sic)"
 - a. "Fell (sic) to hire DNA expert"
 - b. "Fell (sic) to lack of confrontation to preserve issue for Appellate review (sic)"
 - c. "Fell (sic) to request jury instruction for expert opinion"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

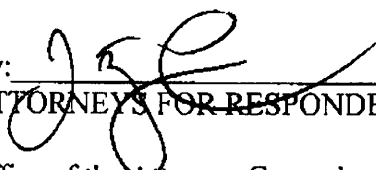
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

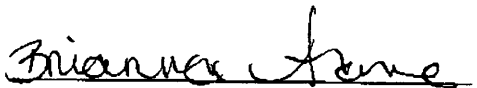
June 9, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2015-CP-08-2742
	)	
STEVEN LEE MORGAN, #355128	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, South Carolina 29405

DATED this 9th day of June, 2016.


Brianna Arnone, Legal Assistant
For Respondent

STEVE LEE MORGAN,
Petitioner,
-vs-
STATE OF SOUTH CAROLINA,
Respondent.

)
) TRANSCRIPT OF RECORD
)
) July 31, 2017
)
)
) Moncks Corner, South Carolina
)
)

The Honorable Roger M. Young, Sr., Judge.

Rodney Davis, Esquire
Attorney for the Applicant

Lindsey McCallister, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

E X A M I N A T I O N S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Chad Shelton	8, 50	20, 52	33	--
Steven Morgan	35	43	--	---

1 (July 31, 2017.)

2 THE COURT: Yes, ma'am.

3 MS. McCALLISTER: Lindsey McCallister for the
4 State, Your Honor. This is Steven Lee Morgan versus the
5 State of South Carolina, 2015-CP-08-2742. Mr. Morgan is
6 currently incarcerated in the South Carolina Department
7 of Corrections pursuant to orders of commitment from the
8 Berkeley County Clerk of Court.

9 He was indicted in April 2012 for one count
10 of burglary first degree, one count of criminal sexual
11 conduct, first degree, one count of kidnapping, one count
12 of attempted murder, and one count of possession of a
13 firearm or knife during the commission of a violent
14 crime. He was represented on those charges by Chad
15 Shelton.

16 On April 23rd, he proceeded to a jury trial
17 in front of Judge R. Markley Dennis. He was found guilty
18 as indicted on all charges, and Judge Dennis sentenced
19 him to confinement for a term of 40 years for the
20 burglary first, 30 years for the criminal sexual conduct,
21 kidnapping, and attempted murder -- I'm sorry, 30 years
22 each, Your Honor, for those. Those sentences were to run
23 concurrently, and then he was sentenced to a consecutive
24 five-year term for the possession of a knife during the
25 commission of a violent crime.

1 A timely notice of appeal was filed on his
2 behalf and perfected by the office of appellate defense.
3 The South Carolina Court of Appeals affirmed his
4 conviction and sentence on October 21st, 2015, and he
5 filed this PCR application timely on December 4th, 2015.
6 He is present in the courtroom today, and he is
7 represented by Mr. Rodney Davis.

8 THE COURT: Mr. Davis, I'm reviewing the
9 application for post-conviction relief, and essentially,
10 as I understand the application, the only issue before
11 the Court is ineffective assistance of counsel in three
12 particular areas: Failure to hire DNA expert, failure to
13 preserve issues of appeal, and failure to request a jury
14 instruction.

15 Are those the grounds that are before the
16 Court today?

17 MR. DAVIS: Nothing additional, and we
18 refined a couple of those into one. We would be
19 presenting, basically, two grounds, Your Honor, but it
20 does not go outside the scope my client --

21 THE COURT: Define what the two issues are.

22 MR. DAVIS: Yes, sir. Judge, one issue deals
23 with the second SLED agent testifying on behalf -- that
24 the first never tested DNA, simply reviewed it, and the
25 second is a more global argument, which is Mr. Shelton

1 was ineffective in dealing with the DNA results that
2 showed a third contributor. So it's not that he didn't
3 specifically hire a DNA expert and it's not that he
4 didn't ask for a particular charge, it more deals with
5 the way he handled the evidence, in front of the jury,
6 dealing with a third possible contributor, but it still
7 would be under the umbrella of ineffective assistance of
8 counsel.

9 THE COURT: You may call your first witness.

10 MR. DAVIS: If I could ask two things. First
11 of all, we have discussed -- but as the State read
12 through the significant number of charges and significant
13 charges, in and of themselves, I've talked to my client
14 about the fact that if we were successful at PCR that he
15 would return to the Berkeley County jail and face these
16 charges anew.

17 If we could get on the record that he's
18 aware -- for example, burglary first is 15 to life, which
19 is significantly more than the sentence he's serving.
20 We've talked about it, but if you don't mind talking to
21 him about that.

22 STEVEN LEE MORGAN,

23 having been first duly sworn,

24 was examined and testified as follows:

25 THE COURT: Mr. Morgan, are you under the

1 influence of any drugs or alcohol today?

2 THE APPLICANT: No, sir.

3 THE COURT: Are you suffering any physical or
4 mental problem that would affect your understanding of
5 what's going on here this morning?

6 THE APPLICANT: No, sir.

7 THE COURT: I know that you've spoken with
8 your very capable lawyer about the nature of this
9 proceeding. It's a civil action where you can come
10 before this Court and have me review whether or not you
11 received a fair trial. There are a number of different
12 grounds for post-conviction relief that would grant you a
13 new trial, and you have availed yourself of probably the
14 most predominant one, which is ineffective assistance of
15 counsel.

16 You've discussed these issues with your
17 lawyer?

18 THE APPLICANT: Yes, sir.

19 THE COURT: And you understand I can't
20 resentence you. I can't undo what Judge Dennis did. I
21 can't dismiss the charges. The only thing that I'm able
22 to do would be to grant you a new trial, and then you
23 would stand to be tried for this very offense, and, if
24 convicted, you could be sentenced up to life.

25 Do you understand that?

1 THE APPLICANT: Yes, sir.

2 THE COURT: You understand that by going
3 through this, if you prevail at this hearing, it might
4 end up being worse for you. You understand that?

5 THE APPLICANT: Yes, sir.

6 THE COURT: Obviously, if you -- that's a
7 strategic decision that you and your lawyer need to
8 discuss, but the ultimate decision is left up to you as
9 to whether or not you go forward with this hearing here
10 today. It could be that if you get a new trial, you
11 could get retried and you could be found not guilty and
12 get to go home, but those are things we can't say with
13 any certainty here today, but I think what your lawyer
14 was asking that I review with you is that, number one, I
15 can't do anything but grant you a new trial.

16 THE APPLICANT: Yes, sir.

17 THE COURT: And if that happens, things might
18 get worse. Do you understand that?

19 THE APPLICANT: Yes, sir.

20 THE COURT: Do you have any questions of me?

21 THE APPLICANT: No, sir.

22 MR. DAVIS: I believe he has some family
23 members that might be outside. If I could just ask the
24 bailiffs to check with that, we would be prepared to
25 start.

1 THE COURT: Sure. You may be seated.

2 Mr. Davis, you're recognized.

3 MR. DAVIS: Thank you, Your Honor. We would
4 call Chad Shelton to the stand, please.

5 CHAD SHELTON,

6 having been first duly sworn,

7 was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. DAVIS:

10 Q. Where do you work?

11 A. I have my own practice.

12 Q. How long have you had your own practice?

13 A. A year now.

14 Q. At the time you represented Mr. Morgan, where were
15 you working?

16 A. Public defender's office, Berkeley County.

17 Q. And at the time of representing Mr. Morgan, went
18 to trial in April of 2013, how long had you been an
19 attorney?

20 A. I was sworn in November of 2007, and I was already
21 a part of the Berkeley County public defender's office at
22 that time.

23 Q. So, roughly, five or six years into your public
24 defender practice; is that fair?

25 A. That's fair.

CHAD SHELTON - DIRECT EXAMINATION

1 Q. At the time of this trial?

2 A. Yes.

3 Q. In that time leading up to this trial, had you
4 handled any other trials which dealt with offenses that
5 carried up to a maximum punishment of life in prison?

6 A. Yes.

7 Q. Had you had other trials where you were first
8 chair on the trial?

9 A. Yes.

10 Q. You did have a second chair that assisted on this
11 case?

12 A. Yes, Keisha White.

13 Q. But is it fair to say you were the lead attorney
14 and had the most contact with Mr. Morgan?

15 A. Yes.

16 Q. Just by way of setting the stage here, were there
17 any discussions before the trial about this resolving
18 itself as a guilty plea?

19 A. Discussion -- I discussed with Steven
20 possibilities with the solicitor's office. Their best
21 was a 30-year offer, which was the max on all the charges
22 except for the burglary first, and at one point I talked
23 with Steven about a possible 20 years, if I could get the
24 solicitor down to that.

25 We discussed back and forth the evidence and that

1 possibility. He was open to it if the solicitor's office
2 was open to it. They never were, and so it was pretty
3 much they were asking for the max, we might as well go to
4 trial and see what we can get.

5 Q. Do you recall when you were appointed on
6 Mr. Morgan's case?

7 A. It was around August of 2012.

8 Q. And between August 2012 and April -- I guess it
9 started on the 19th, 2013, do you have documentation how
10 often you met with Mr. Morgan?

11 A. I do. I'm sorry. I didn't print those off. It's
12 on my computer. I'm not sure exactly how many times. It
13 was several times.

14 Q. Did he make bond or was he incarcerated during the
15 post arrest and leading up to the trial?

16 A. He was in jail, the detention center.

17 Q. So all meetings would have been at the
18 Hill-Finklea detention center?

19 A. Yes.

20 Q. Again, in setting the stage, did you talk to Mr.
21 Morgan about the elements of each of his offenses?

22 A. Yes.

23 Q. Did you talk to him about the potential punishment
24 for each of his offenses?

25 A. Yes.

1 Q. Did you talk to him about defenses to the
2 allegations?

3 A. Yeah. Multiple times we talked about different
4 possibilities, different things we can do, different ways
5 to investigate, different ideas and things, so I went
6 over all that with Steven and came up with different
7 ideas and different things to do.

8 We actually did hire an investigator at one
9 point to look into possible credibility issues on the
10 victim's side, just different alternatives.

11 Q. Let me go back for just one second. Did you also
12 talk about how at least -- well, all but the possession
13 of weapon during commission of a violent crime were
14 strike offenses?

15 A. Yes.

16 Q. And that they were all no parole or 85 percent
17 offenses?

18 A. Yes.

19 Q. What was your advice to Mr. Morgan about whether
20 he should continue negotiations on the plea deal or
21 actually go to trial?

22 A. Well, my advice is they were asking for the max,
23 so we might as well go to trial and take a chance, but
24 that was my ultimate advice. I did talk with him about
25 if we could work out something that would be lower than

1 the max that he should consider taking that, just based
2 off the evidence in the case, but -- and the
3 DNA evidence, but I -- they really weren't offering
4 anything. It was a straight-up plea. Unless he was
5 comfortable doing a straight-up plea, you know, we might
6 as well take our chances at trial.

7 Q. And we understand the judge has the packet of the
8 PCR, but, just briefly, the evidence against Mr. Morgan
9 was the testimony of the victim, correct?

10 A. Yes.

11 Q. And then multiple items which DNA was found?

12 A. Right.

13 Q. And the general nature or scene of the crime,
14 there was some evidence of some type of physicality. Is
15 that fair enough?

16 A. Yes.

17 Q. Is there anything generally in the State's
18 evidence against Mr. Morgan that I left out?

19 A. No. The crime scene as indicated, a window was --
20 a smashed window, but other than that, no.

21 Q. So that led into the whole reason you had an
22 investigator look in to see whether you could determine
23 any issues of credibility with the accuser, correct?

24 A. Correct.

25 Q. Now, in dealing with then the collaborative

1 evidence, the DNA evidence, did you hire an expert to
2 review that evidence?

3 A. No.

4 Q. It's true that there were items sent to a private
5 lab and then items sent to SLED to be tested, correct?

6 A. Correct.

7 Q. And so you relied on the results of those two labs
8 in preparing for trial?

9 A. Correct.

10 Q. How would you categorize your discussions about
11 that evidence with Mr. Morgan?

12 A. I don't know specifically. I don't remember
13 specifically what we talked about. I know I went over
14 the results with him and what they mean and just
15 different strategies that we could use at trial, but I
16 can't remember exact conversations I had with him.

17 Q. And, again, the judge has the transcript to
18 review, but is it fair to say that the items that were
19 tested fall into three categories: One where they did
20 identify Mr. Morgan as a contributor --

21 MS. McCALLISTER: Your Honor, object to the
22 form of the question. He's leading.

23 THE COURT: Under these circumstances, I'll
24 allow him to do that.

25 BY MR. DAVIS:

1 Q. First area will be items Mr. Morgan was a
2 contributor, second category would be where there is a
3 mixture, and the third would be where he could be
4 excluded.

5 Is it fair to break those items down into those
6 three areas?

7 A. Yes.

8 Q. Is it fair to say you would have focussed on the
9 one where he was identified or where there was a mixture,
10 correct?

11 A. Correct.

12 Q. It was your general sense to this that Mr. Morgan
13 did not commit these crimes. That was the defense of
14 Mr. Morgan at trial, correct?

15 A. Correct.

16 Q. Even though there was a mixture on some of these
17 items, a mixture of some people, again, there was no
18 decision to hire an independent expert for testing?

19 A. No, no.

20 Q. Is it fair to say your strategy was to simply
21 argue to the jury that the State's evidence shows that
22 there is at least a third contributor?

23 A. Right, absolutely. There was a mixture and other
24 possibilities.

25 Q. But even in arguing that strategy, there was no

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1 evidence presented as to why or how Mr. Morgan's DNA
2 would be present on any of the items?

3 A. Well, that he had a relationship with her, that
4 they had a relationship.

5 Q. Any discussions with Mr. Morgan about himself
6 testifying or not at trial were brief; is that fair?

7 A. That's fair.

8 Q. And prior to the judge reviewing on the record --
9 in camera, but on the record -- what prior record the
10 State would be able to question Mr. Morgan about if he
11 testified, prior to that, there was very brief discussion
12 with you and Mr. Morgan about his prior record, used to
13 impeach?

14 MS. McCALLISTER: Objection, Your Honor.
15 Relevance. This line of questioning doesn't have
16 anything to do, that I can see, with the allegations that
17 have been raised about the DNA.

18 THE COURT: Would you like to be heard on
19 that?

20 MR. DAVIS: Judge, it's going toward
21 ineffective assistance. Mr. Shelton just testified the
22 whole strategy was not to hire an expert, but that's
23 about as far as I'm going into that area now.

24 We're dealing with trial strategy, and there
25 was a third contributor, so I want to head down that

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1 area.

2 THE COURT: I'll allow some leeway in that
3 regard.

4 THE WITNESS: I mean, throughout the
5 representation, I would have talked with him about
6 whether he wanted to testify or not, so -- and over that
7 time, trying to gauge his -- how, in my opinion, he would
8 do testifying.

9 I can't remember specifically ever saying he
10 shouldn't -- or don't testify. I may have indicated that
11 based off the way that he answers questions with me that
12 it might not be a good decision, but I always indicate
13 it's always their decision to make, testifying or not.

14 Q. And while it's ultimately his choice, and you told
15 him that, your advice, or your suggestion, perhaps, about
16 it not being a good idea was based on conversations you
17 had with him?

18 A. Right.

19 Q. And how he interacted with you?

20 A. Yes, and answered questions.

21 Q. Okay. Now, you had discussions with Mr. Morgan
22 about what happened, about what he did the day of the
23 incident, correct?

24 A. Right.

25 Q. And, in fact, he explained to you why his

1 DNA would have been found on the scene, why his semen
2 would have been found on the scene, right?

3 A. Right.

4 Q. And can you tell the Court what your recollection
5 is of those discussions.

6 A. That they had a consensual encounter, had
7 consensual sex.

8 Q. And even with that information, it was your
9 suggestion to him that he not testify and present that
10 story to the jury, correct?

11 A. Yes. There were some other things that he would
12 go back and forth on that I wasn't sure how that would
13 portray to the jury on our theory.

14 Q. Because you would have discussed with him about
15 the fact that not only does he have to handle direct
16 examination, that the State would cross-examine him,
17 correct?

18 A. Exactly, yes.

19 Q. But to be clear, that was more focussed on the
20 actual details of the story, not as much dealing with any
21 impeachable offenses?

22 A. Correct.

23 Q. Okay.

24 A. I mean, I would have looked at his record, and I
25 think I asked him about the items that were on his

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1 record. I definitely would have asked him about that.

2 THE COURT: Were there impeachable offenses?

3 MR. DAVIS: Yes, sir, and if you give me a
4 moment, I can find it in the transcript, or if Your Honor
5 prefer Mr. Shelton would be able to find those in the
6 transcript.

7 THE COURT: Do you know what the offenses
8 were?

9 THE WITNESS: I don't. Just late last night
10 I got the full trial transcript, so I apologize. There
11 was a rape conviction, but there was not -- I don't know
12 if that was within the time frame.

13 BY MR. DAVIS:

14 Q. Do you recall the general nature of your closing
15 argument?

16 A. Yes.

17 Q. And, basically, it was the sense that the State
18 hadn't presented the full story. There were unresolved
19 issues. There's things that the jury doesn't know, and
20 it's the State's obligation. That was basically the
21 thrust of your closing, correct?

22 A. Yes, correct.

23 Q. And certainly, the State was aware that, again,
24 there were items that Mr. Morgan was excluded as the DNA
25 contributor, correct?

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1 A. Correct.

2 Q. And there were items where there was a mixture of
3 at least a third contributor, correct?

4 A. Correct.

5 Q. But, again, you were not able in closing to give a
6 definite explanation why, if the evidence was accurate,
7 Mr. Morgan's DNA was on any items of the accusers?

8 A. That's true.

9 Q. If you testified, you could have explained why
10 there was his DNA there, his semen there, correct?

11 A. Sure.

12 Q. I should have taken this up at first. It's
13 another minor issue. The State had filed ahead of time a
14 motion to allow a SLED examiner to testify in lieu of the
15 actual DNA examiner who tested the items, correct?

16 A. Correct.

17 Q. And forgive me, but did you file a written
18 response, or do you have that in court?

19 A. It was just an argument in court.

20 Q. Pretrial in limine in camera with Judge Dennis,
21 correct?

22 A. Correct.

23 Q. Do you recall pretty quickly Judge Dennis
24 indicated that it was pretty settled law he was going to
25 be allowing that?

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1 A. Yes, yeah.

2 Q. And just to complete the record, do you recall
3 asking for a more specific expert opinion charge than
4 what would normally be given?

5 A. Yes.

6 Q. And what do you recall the judge's reaction to
7 that was?

8 A. That it was with an instruction on the facts.

9 Q. So you had no objection pretrial to those two
10 things, to the second expert testifying in lieu of the
11 one that tested, and you asked for a specific instruction
12 about that issue; however, isn't it accurate you made no
13 contemporaneous objection to that SLED agent when she
14 ultimately testified?

15 A. That's true. That's a mistake.

16 MR. DAVIS: Your Honor, thank you so much.
17 Mr. Shelton, no questions.

18 THE COURT: Any questions from the State?

19 MS. McCALLISTER: Yes, Your Honor. Thank
20 you.

21 CROSS-EXAMINATION

22 BY MS. McCALLISTER:

23 Q. Mr. Shelton, just going back briefly to kind of
24 your history as an attorney, I believe you have testified
25 that you have handled other trials involving a maximum

1 sentence of life; is that correct?

2 A. That's correct.

3 Q. So you've handled other felony trials before this
4 case?

5 A. Absolutely.

6 Q. Have you handled cases that involved issues of an
7 expert witness before this trial?

8 A. Yes.

9 Q. And specifically a DNA witness?

10 A. Yes.

11 Q. Okay. And at the time of trial, you had five to
12 six years as a practicing attorney?

13 A. Yes, that's right.

14 Q. How much of that practice was in criminal law?

15 A. 100 percent.

16 Q. 100 percent. Okay. Can you recall a number of
17 times that you met with applicant before the trial?

18 A. I can't recall a number. I know that I would
19 characterize my visits with Steven as more than usual, so
20 I can't recall. I don't want to give a number, but I
21 know it was several times.

22 Q. Okay. And were there any issues of communication
23 with him? Did you feel like he understood the issues in
24 his case and he was able to help you prepare the case?

25 A. Yeah, absolutely. We were able to talk and

1 discuss, and I think, as we got closer and no more offers
2 and just the stress of that and some disagreements on
3 strategy, but for the most part, I felt we got along
4 pretty well.

5 Q. Okay. And you reviewed State's evidence in this
6 case, correct?

7 A. Correct.

8 Q. The DNA evidence?

9 A. Yes.

10 Q. And I believe you testified earlier there are two
11 separate DNA experts; is that right?

12 A. That's right.

13 Q. And one was from SLED and one was from some
14 independent lab?

15 A. That's correct.

16 Q. What was the name of that lab, do you recall?

17 A. IntelliGenetics.

18 Q. What did the SLED expert test, do you recall?

19 A. The rape kit --

20 Q. And what did the IntelliGenetics expert testify?

21 A. Pretty much the exhibits. There was a towel and
22 sheets.

23 Q. Okay. And you received the reports from both of
24 those experts in discovery?

25 A. Yes, yes.

1 Q. And you discussed both of those reports with
2 Mr. Morgan?

3 A. Yes.

4 Q. Okay. And what were the results of those reports?
5 Just briefly, if you can summarize.

6 A. I'll have to review my notes.

7 Q. I can rephrase my question to be more specific.

8 Did the DNA reports you received from SLED
9 identify Mr. Morgan's DNA on the rape kit swabs that were
10 tested?

11 A. Yes.

12 Q. And did any of the items from IntelliGenetics
13 identify Mr. Morgan's DNA on the physical evidence?

14 A. Yes.

15 Q. Do you recall specifically what physical evidence?

16 A. I know it was on the towel.

17 Q. Okay.

18 A. Some cigarettes.

19 Q. And what was the significance of the towel in this
20 crime, do you recall?

21 A. The victim had indicated that Steven had wiped
22 himself off with the towel.

23 Q. And is it your understanding that the DNA evidence
24 that was found on that towel was DNA from semen or
25 seminal fluid?

1 A. Yes.

2 Q. So it wasn't epithelial DNA from the skin or
3 something like that?

4 A. That's correct.

5 Q. Okay. And the expert from IntelliGenetics was
6 present and testified at trial, correct?

7 A. That's correct.

8 Q. And the expert from IntelliGenetics that testified
9 is the same person who actually performed the tests; is
10 that correct?

11 A. That's correct.

12 Q. So had the State's motion to exclude the SLED
13 expert not been granted, is it fair to say there was
14 still DNA evidence and expert testimony at trial linking
15 Mr. Morgan to the crime?

16 A. Yes.

17 Q. So as part of your general theory of the case, how
18 did you handle that fact?

19 A. That it was a consensual encounter and either that
20 it was an accidental fall or that someone else had broken
21 in.

22 Q. Okay. So the victim, in addition to -- in
23 addition to the rape, there was also some physical --
24 some other physical injuries to the victim; is that
25 correct?

1 A. That's correct.

2 Q. Okay. Fairly serious injuries, correct?

3 A. That's correct.

4 Q. Okay.

5 A. The pictures were bad.

6 Q. And she had to be hospitalized as a result of
7 those injuries, correct?

8 A. I don't remember that off the top of my head. I
9 know she called the police and ambulance, but I'm not
10 sure.

11 Q. So she was transported, at least, to the hospital
12 in an ambulance?

13 A. Yes. She did go to the hospital, I'm sorry. I
14 remember those pictures.

15 Q. And she testified at trial, correct?

16 A. Correct.

17 Q. And she identified Mr. Morgan as the perpetrator?

18 A. That's correct.

19 Q. And they had had a previous relationship. He was
20 an ex-boyfriend?

21 A. That's correct.

22 Q. And he had previously lived in that home?

23 A. That's correct.

24 Q. Did you see any way to attack her identification
25 of Mr. Morgan?