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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM Charleston COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2014-CP-10-03018

Joseph Richard Graddick, ... Petitioner,

v.

State of South Carolina, ... Respondent.

Appendix Volume I of II

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2010-GS-10-02295
2011-GS-10-03096
2011-GS-10-03100

STATE OF SOUTH CAROLINA
Plaintiff
V.
JOSEPH RICHARD GRADDICK,
Defendant.

TRANSCRIPT OF RECORD

July 11 - 13, 2011
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

A P P E A R A N C E S:

Mr. Timothy Finch, Assistant Solicitor
Ms. Deborah Herring-Lash, Assistant Solicitor
Representing The State

Mr. Beattie Butler, Assistant Public Defender
Representing The Defendant

Anne Bouley Meyer, RPR
Circuit Court Reporter

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1 THE COURT: Are you going forward on all of the
2 indictments?

3 MR. FINCH: There are three we are going forward
4 with.

5 THE COURT: I have 3100; I have 3096; I have
6 2291; I have 2295; I have 2296, 2297, 1401.

7 which ones are you all going forward on?

8 MR. FINCH: 3096, 3100, and 2010-2295.

9 THE COURT: What are you doing with the rest of
10 them?

11 MR. FINCH: Some of those are strong armed
12 robberies which will be disposed of separately.

13 THE COURT: I have 2291, which is burg first; I
14 have a 2296, which is CSC first.

15 MR. FINCH: We will non-pros those because we
16 amended the indictment.

17 THE COURT: Which ones are you going to
18 non-pros?

19 MR. FINCH: The older 229 --

20 THE COURT: 2296?

21 MR. FINCH: 2296, that correct.

22 THE COURT: And I have a 2297 which is a strong
23 armed robbery.

24 MR. FINCH: That is still open.

25 THE COURT: And 2291, which is burg first.

1 MR. FINCH: We are going to non-pros. It's been
2 replaced by 22 -- 3096 and 3100.

3 THE COURT: I have 1401, attempted strong arm
4 robbery.

5 MR. FINCH: That is still a pending case.

6 THE COURT: I have 1402, strong armed robbery.

7 MR. FINCH: Still pending.

8 THE COURT: And 1403, strong arm robbery.

9 MR. FINCH: Still pending.

10 THE COURT: I will give these back to the clerk.
11 What do all do with the non-pros form?

12 MR. FINCH: We will do a non-pros form, correct.

13 THE COURT: Mr. Butler, did you want a formal
14 arraignment?

15 MR. BUTLER: No, ma'am.

16 THE COURT: Okay. Bring them in.

17 (Whereupon, the prospective jurors enter the
18 courtroom.)

19 THE COURT: Good morning, ladies and gentlemen.
20 I hope -- I am Deadra Jefferson, I'm one of your
21 resident circuit judges for the 9th Circuit. For those
22 of you who do not know, our state is divided into
23 judicial circuits. Yours is the 9th Circuit which is
24 made up of Charleston and Berkeley counties.

25 We are going to select this morning a criminal

1 jury or a general sessions, we use those terms
2 interchangeably, for the cases of the State of South
3 Carolina versus Joseph Richard Graddick.

4 And those -- and we will be selecting juries for
5 the following cases. And after I make you aware of
6 that, we are going to go through a process that is
7 called voir dire, which is simply a legal term that
8 means we are going to ask you questions so that the
9 attorneys may more effectively exercise their
10 preemptory challenges in jury selection.

11 During that process, if a question applies to
12 you, I would ask that you stand and in a loud and clear
13 voice give us your name and your juror number and an
14 answer to the question if applicable, and remain
15 standing until the Court has completed questioning you.

16 Before we begin that process, and after I have
17 published the indictments, the counsel for the State
18 will stand and introduce themselves, as well as the
19 members of their office. And counsel for the defense
20 will have his client stand and also introduce himself,
21 as well as publish the names of the members of his
22 office. And then we will begin the voir dire process.

23 As I have indicated, we are going to select a
24 jury for the cases of the State versus Joseph Richard
25 Graddick, indictment 2010-GS-10-2295, an indictment for

1 kidnapping.

2 And that indictment alleges that in Charleston.
3 County, South Carolina on or about June 16th, 2008, the
4 defendant, Joseph Richard Graddick unlawfully did
5 seize, confine, inveigle, decoy, kidnap, abduct or
6 carry away the victim, LaVanda Joyner, without
7 authority of law, alleging a violation of code section
8 16-3-910 of the code of laws as amended.

9 And indictment 2011-GS-10-3096, an indictment
10 for burglary in the first degree. And that indictment
11 alleges that in Charleston County, South Carolina, on
12 or about June 16, 2008, the defendant, Joseph Richard
13 Graddick, did enter the dwelling of LaVanda Joyner,
14 located at [REDACTED] [REDACTED] [REDACTED]
15 without consent and with the intent to commit a crime
16 therein.

17 That in addition, the entry occurred at night,
18 and/or the defendant was armed with a deadly weapon,
19 and/or the defendant caused physical injury to a person
20 not a participant in the crime, and/or the defendant
21 used or threatened the use of a dangerous instrument,
22 and/or the burglary was committed by -- alleging a
23 violation of code section 16-11-311 of the code of laws
24 as amended.

25 And indictment 2011-GS-10-3100, an indictment

1 for criminal sexual conduct in the first degree. That
2 indictment alleges that in Charleston County, South
3 Carolina, on or about June 16th, 2008, the defendant,
4 Joseph Richard Graddick, did commit a sexual battery
5 upon the victim, LaVanda Joyner, to wit: sexual
6 intercourse, without her consent, and with the use of
7 aggravated force, and/or with the victim's submission
8 to the sexual battery under circumstances where the
9 victim is also the victim of forcible confinement,
10 kidnapping, robbery, extortion, burglary, house
11 breaking, or any other similar offense or act, alleging
12 a violation of 16-3-652 of the code of laws as amended.

13 And alleging each of these actions to be against
14 the peace and dignity of the State of South Carolina.

15 If counsel for the State would stand and
16 introduce themselves. And then likewise counsel for
17 the defense.

18 You may proceed, Mr. Finch.

19 MR. FINCH: Thank you, Your Honor.

20 My name is Timmy Finch. I'm assistant solicitor
21 in the 9th circuit. Assisting me with this case is Ms.
22 Debbie Herring-Lash.

23 Some other attorneys in our office are Scarlet
24 Wilson. Bruce Durant. Marian Askins. Jessica
25 Baldwin. Spencer Compton. Julie Cardillo. Natasha

1 Chisolm. Rutledge DuRant. Shannon Elliot. Elizabeth
2 Gordon. Meg Haley. Amy Harrell.

3 Culver Kidd. Jennifer Kinzeler. Stephanie
4 Linder. Lindsay McClain. Michael Nelson. Michael
5 Sahn. Dale Savage. Jennifer Shealy. Benjamin Chad
6 Simpson. Jim Stack. Greg Voigt. Burns Wetmore.
7 Tyler Whitaker and Adam Young.

8 THE COURT: Thank you. Mr. Butler.

9 MR. BUTLER: Thank you, Your Honor.

10 Good morning. My name is Beattie Butler, I'm a
11 lawyer in the public defender's office for the 9th
12 Circuit which includes Charleston and Berkeley
13 counties.

14 The Circuit Defender is Ashley Pennington. This
15 is Joseph Graddick, my client. Other lawyers in my
16 office are Rodney Davis. Martha Dicus. Brett Dunaway.
17 Megan Ehrlic. Mary Ford. Cantrell Frayer. Andrew
18 Grimes. Cody Greober. Herb Hoefffer. Jason King. Ben
19 Lewis. Marybeth Mullaney. Lori Proctor. Martha Kent
20 Runey. Ted Smith. Kelly Solar. Reese Stidham.
21 Michelle Suggs. Tim Taylor. And Cassandra Winslow.

22 THE COURT: Again, ladies and gentlemen, I'm
23 going to ask you certain questions. If any question
24 applies to you, please stand and in a loud and clear
25 voice give us your name and your juror number, and

1 remain standing until I have completed questioning you.

2 Is there any member of the panel related by
3 blood or marriage to Joseph Richard Graddick or LaVanda
4 Joyner, if so please stand at this time.

5 Does any member of the panel have a close
6 personal, social, or business relationship with Joseph
7 Richard Graddick or LaVanda Joyner, if so please stand
8 at this time.

9 The following are a list of potential witnesses,
10 I would ask that you listen very carefully. LaVanda
11 Joyner. Mozelle Joyner. Preston Thompson. Officer
12 Tony Middleton. Sgt. All Hallman. Officer Rob Van
13 Tine. Officer Shawn Patrick. Officer Kelly Murphy.
14 Sgt. William O'Brien, all of the North Charleston
15 Police Department.

16 Fulvia Kandie Dunham. Kristy Jovanell. Faye
17 LeBoeuf of the Medical University. Officer Jason
18 Forsythe with the Hanahan Police Department. Amy
19 Stephens and Lindsay Thompson of the South Carolina Law
20 Enforcement Division.

21 Is there any member of the panel related by
22 blood or marriage to, or have a close personal or
23 social relationship with any of the individuals that I
24 have just listed, if so please stand at this time.

25 Yes, sir.

1 A JUROR: James Caudill, juror number 50. I
2 believe I may have a social relationship with Tony
3 Middleton.

4 THE COURT: As a result of this relationship,
5 sir, do you feel that you can remain fair and
6 impartial, and render a fair and impartial decision in
7 this case based solely on the evidence as it will be
8 presented and on the law as the court will instruct?

9 A JUROR: Yes.

10 THE COURT: Thank you, sir, you may take your
11 seat.

12 Has any member of the panel ever been
13 represented by any of the attorneys involved in this
14 case or anyone in their offices, if so please stand at
15 this time.

16 Is there any member of the panel related by
17 blood or marriage to, or have a close personal or
18 social relationship with any of the attorneys involved
19 in this case or anyone in their offices, if so please
20 stand at this time.

21 Is there any member of the panel related by
22 blood or marriage to, or have a close personal or
23 social relationship with anyone who is employed by the
24 public defender's office or the solicitor's office, if
25 so please stand at this time.

1 Has any member of the panel formed or expressed
2 an opinion about any issue or matter involved in this
3 case, if so please stand at this time.

4 Is there any member of the panel aware of any
5 bias or prejudice toward either the State or the
6 defense in this case, if so please stand at this time.

7 Is there any member of the panel who was a
8 member of the grand jury which issued the indictments
9 in this case, if so please stand at this time.

10 Is there any member of the panel who is a member
11 of or contributor to any group which has as its primary
12 concern the enforcement and promotion of victim's
13 rights. Those groups would include, but are not
14 limited to, Mother's Against Drunk Driving, Students
15 Against Drunk Driving, Citizens Against Violent Crime,
16 People Against Rape, Citizens Advocating a Return to
17 Decency and Ethics, Persons Empowered to Save Teens, or
18 any other community watch type group or program, if so
19 please stand at this time.

20 Yes, ma'am.

21 A JUROR: Sarah Rosenlieb, my number is 227.
22 I'm the chairperson for SAD for West Ashley High
23 School.

24 THE COURT: As a result of this experience do
25 you feel that you can remain fair and impartial, and

1 render a fair and impartial decision in this case based
2 solely on the evidence as it will be presented and on
3 the law as the Court will instruct?

4 A JUROR: Yes, I do.

5 THE COURT: Thank you, ma'am, you may take your
6 seat.

7 Is there any member of the panel or member -- is
8 there any member of the panel who is a former member of
9 law enforcement, or formally employed with law
10 enforcement, if so please stand at this time.

11 Is there any -- just remain standing for me for
12 a moment.

13 Is there any member of the panel who has any
14 family members who are employed in law enforcement, if
15 so please stand at this time.

16 I'm going to start on this side and work my way
17 over. If you would give me your name, your juror
18 number and whether it's you or a family member and what
19 agency it is and remain standing.

20 Yes, ma'am.

21 A JUROR: Sarah Rosenlieb, number 227. My
22 stepson is Charleston City Police Officer.

23 THE COURT: Yes, sir.

24 A JUROR: Mike Sullivan, my number is 261. My
25 son he is United States Secret Service.

1 THE COURT: Yes, ma'am.

2 A JUROR: Sandra Passailaigue, number 196. My
3 niece's husband is a North Charleston Police Officer.

4 THE COURT: Did I get everybody on that side?
5 Starting with you, ma'am.

6 A JUROR: Alice Helin, 110. Department of
7 Correction for the State of California. Correctional
8 counselor.

9 THE COURT: Yes, sir.

10 A JUROR: George Tempel, 268. My son is a
11 commissioned officer with the Department of Health and
12 Environmental Control.

13 THE COURT: Yes, sir.

14 A JUROR: Michael Cone, juror number 57. My
15 cousin is a police officer with the North Charleston
16 City Police Department.

17 THE COURT: Did I get everyone?

18 As a result of these experiences, do you all
19 feel that you can remain fair and impartial, and render
20 a fair and impartial decision in this case based solely
21 on the evidence as it will be presented and on the law
22 as the Court will instruct. If your answer is yes,
23 please take your seat.

24 Let the record reflect that all answered yes.

25 Is there any member of the panel or a member of

1 your family ever been the victim of a violent crime, if
2 so please stand at this time.

3 Yes, sir.

4 A JUROR: Dennis Birr, juror number 20. My
5 niece was raped two years ago.

6 THE COURT: Tell me your number again, sir.

7 A JUROR: 20.

8 THE COURT: Okay. And if you would remain
9 standing for me.

10 Yes, ma'am in the back.

11 A JUROR: Joan Perry, number 198. My younger
12 brother's family were attacked inside their home.

13 THE COURT: A home invasion?

14 A JUROR: (Affirmative head shake.).

15 THE COURT: Yes, sir.

16 A JUROR: Michael Cone, juror number 57. My
17 cousin and his family were victims of a violent home
18 invasion.

19 THE COURT: As a result of these experiences, do
20 you all feel that you can remain fair and impartial,
21 and render a fair and impartial decision in this case
22 based solely on the evidence as it will be presented
23 and on the law as the Court will instruct. If your
24 answer is yes, please take your seat.

25 Let the record reflect that all answered yes

1 with the exception of number 20. Sir, you will be
2 excused from the trial of this case only. You may take
3 your seat.

4 Is there any member who has any moral,
5 philosophical or religious conviction or belief that
6 would prevent you from sitting in judgment of a fellow
7 human being, if so please stand at this time.

8 Is there any member of the panel who has ever
9 had what they would characterize as an unpleasant
10 experience with law enforcement that would impair your
11 ability to be fair and impartial, if so please stand at
12 this time.

13 Now I know this question may be intensely
14 personal, I say may be, it is intensely personal. And
15 I do not want anyone to suffer any embarrassment. So
16 if you do not wish to answer this question in the
17 presence of your fellow jurors, please make me aware
18 and I will speak with you privately with the attorneys
19 and the court reporter here at the bench.
20 Again I emphasize, I do not want anyone to suffer any
21 embarrassment or feel uncomfortable, so please let me
22 know if you wish to speak with me privately.

23 Is there any member of the panel or member of
24 your family ever been the victim of sexual abuse --
25 been the victim of sexual abuse or a sexual attack, if

1 so please stand at this time.

2 And again this is an intensely personal question
3 and if you wish to speak with me privately, please make
4 me aware of it.

5 Is there any member of the panel or a member of
6 your family ever been accused of sexual abuse or a
7 sexual attack, if so please stand at this time.

8 Is there any member of the panel who has any
9 knowledge of the alleged facts and circumstances of
10 this case, and that would be whether you read, watched
11 or listened to any media accounts about this particular
12 factual circumstance, if so please stand at this time.

13 Yes, ma'am, tell me your name and juror number.

14 A JUROR: Ashley Dozier, juror number 70.

15 THE COURT: And how did you -- did you read,
16 watch or listen to something, or did you have other
17 knowledge?

18 A JUROR: Well first I did not know one point.
19 But I work for the Department of Social Services. I
20 did a home study.

21 THE COURT: Come forward. I don't want you to
22 tell me anymore.

23 (Whereupon, the following discussion was held at
24 the bench.)

25 THE COURT: Tell me your name and juror number.

1 A JUROR: Ashley Dozier, 70.

2 THE COURT: Okay. Tell me again just a minute?

3 A JUROR: I did a home study in regards to
4 placement of his son with his mother. I'm not sure
5 about the allegations in the case. But my supervisor
6 was working with the family and asked me to do a home
7 study..

8 When I asked mom about the kids, she said her
9 son was in the jail for kidnapping.

10 THE COURT: Did you have any contact with the
11 defendant?

12 A JUROR: No.

13 THE COURT: Do you have any personal knowledge
14 of the facts and circumstances of this case?

15 A JUROR: No. I knew he was in jail for
16 kidnapping.

17 THE COURT: Is that the extent of your
18 knowledge?

19 A JUROR: Yeah. She didn't tell me anything
20 else. But the name rings a bell.

21 THE COURT: As a result of doing this home
22 study, do you feel you can remain fair and impartial?

23 A JUROR: Yes.

24 THE COURT: Do you feel you can render a fair
25 and impartial decision in this case?

1 A JUROR: Yes.

2 THE COURT: Do you feel you can render a
3 decision based solely on the evidence as it will be
4 presented and on the law as the court will instruct?

5 A JUROR: Yes, ma'am.

6 THE COURT: Do you feel that you have formed any
7 fixed opinion about the facts as a result of the home
8 study?

9 A JUROR: As far as?

10 THE COURT: I want to know if you -- what I have
11 to determine is whether you can be fair and impartial,
12 whether you have formed some fixed opinion which may or
13 may not have happened. Do you feel you have formed any
14 fixed opinion as a result of your conduct?

15 A JUROR: No, ma'am.

16 THE COURT: Okay, you may step down.

17 (In open court.)

18 THE COURT: Number 70 will remain with us.

19 Does any member of the panel know of any reason
20 whatsoever that he or she shouldn't serve as a juror in
21 this case, with particular emphasis being placed on
22 your ability to be fair and impartial to both the State
23 and the defense, if so please stand at this time.

24 Are there any additional questions from the
25 state?

1 MR. FINCH: No, Your Honor.

2 THE COURT: From the defense?

3 MR. BUTLER: No, ma'am.

4 THE COURT: Strikes are 10 and 5.

5 Ladies and gentlemen, if your name is called
6 please come forward, as Mr. Major is doing, come stand
7 back toward your fellow jurors, and remain with us
8 until we have sat you as a juror or excused you from
9 the trial of this case.

10 Please bring all of your personal belongings
11 with you. And, ladies and gentlemen, if someone comes
12 up from the end of the pew, if you could slide down if
13 they're returned to the panel so that they don't have
14 to step over you to be seated.

15 THE CLERK: Ladies and gentlemen, when I call
16 your name, please come forward to the podium.

17 Juror number 154, Kenneth Martin.

18 (Whereupon, a white male approaches.)

19 THE CLERK: What say you for the State?

20 MR. FINCH: Please seat this juror.

21 THE CLERK: What say you for the defendant?

22 MR. BUTLER: Please excuse the juror.

23 THE CLERK: Mr. Martin, please have a seat back
24 in the audience.

25 Juror number 153, Kong Mao.

1 (Whereupon, an Asian male approaches.)

2 THE CLERK: What say you for the State?

3 MR. FINCH: Please seat this juror.

4 THE CLERK: What say you for the defendant?

5 MR. BUTLER: Please seat this juror.

6 THE CLERK: Mr. Mao, please have a seat in the
7 jury box.

8 Juror number 156 Sandra Passailaigue.

9 (Whereupon, a white female approaches.)

10 THE CLERK: What say you for the State?

11 MR. FINCH: Please seat this juror.

12 THE CLERK: What say you for the defendant?

13 MR. BUTLER: Please excuse the juror.

14 THE CLERK: Ms. Passailaigue, please have a seat
15 back in the audience.

16 Juror Number 289, Dean Williams.

17 (Whereupon, a white male approaches.)

18 THE CLERK: What say you for the State?

19 MR. FINCH: Please seat this juror.

20 THE CLERK: What say you for the defendant?

21 MR. BUTLER: Please seat this juror.

22 THE CLERK: Mr. Williams, please have a seat in
23 the jury box.

24 Juror number 167, Alyssa Melson.

25 (Whereupon, a white female approaches.)

1 THE CLERK: What say you for the state?

2 MR. FINCH: Please seat this juror.

3 THE CLERK: What say you for the defendant?

4 MR. BUTLER: Please seat this juror.

5 THE CLERK: Ms. Melson, please have a seat in
6 the jury box.

7 Juror number 261, Michael Sullivan.

8 (Whereupon, a white male approaches.)

9 THE CLERK: What say you for the State?

10 MR. FINCH: Please seat this juror.

11 THE CLERK: What say you for the defendant?

12 MR. BUTLER: Please seat this juror.

13 THE CLERK: Mr. Sullivan, please have a seat in
14 the jury box.

15 Juror Number 36, Brian Burke.

16 (Whereupon, a white male approaches.)

17 THE CLERK: What say you for the State?

18 MR. FINCH: Please seat this juror.

19 THE CLERK: What say you for the defendant?

20 MR. BUTLER: Please seat this juror.

21 THE CLERK: Mr. Burke, please have a seat in the
22 jury box.

23 Juror number 8, Rodney Alston.

24 (Whereupon, a black male approaches.)

25 THE CLERK: What say you for the State?

1 MR. FINCH: Please seat this juror.

2 THE CLERK: What say you for the defendant?

3 MR. BUTLER: Please seat this juror.

4 THE CLERK: Mr. Alston, please have a seat in
5 the jury box.

6 Juror Number 72, Glenn Dyches.

7 (Whereupon, a white male approaches.)

8 THE CLERK: What say you for the State?

9 MR. FINCH: Please seat this juror.

10 THE CLERK: What say you for the defendant?

11 MR. BUTLER: Please excuse the juror.

12 THE CLERK: Mr. Dyches, please have a seat back
13 in the audience.

14 Juror number 108, Wayne Hegamyer.

15 (Whereupon, a white male approaches.)

16 THE CLERK: What say you for the State?

17 MR. FINCH: Please seat this juror.

18 THE CLERK: What say you for the defendant?

19 MR. BUTLER: Please excuse the juror.

20 THE CLERK: Mr. Hegamyer, please have a seat
21 back in the audience.

22 Juror 185, Marijo Nettles.

23 (Whereupon, a white female approaches.)

24 THE CLERK: What say you for the State?

25 MR. FINCH: Please seat this juror.

1 THE CLERK: What say you for the defendant?

2 MR. BUTLER: Please seat this juror..

3 THE CLERK: Ms. Nettles, please have a seat in
4 the jury box.

5 Jury number 50, James Caudill.

6 (Whereupon, a white male approaches.)

7 THE CLERK: What say you for the State?

8 MR. FINCH: Please seat this juror.

9 THE CLERK: What say you for the defendant?

10 MR. BUTLER: Please excuse the juror.

11 THE CLERK: Mr. Caudill, please have a seat back
12 in the audience.

13 Juror number 198, Joan Perry.

14 (Whereupon, a white female approaches.)

15 THE CLERK: What say you for the State?

16 MR. FINCH: Please seat this juror..

17 THE CLERK: What say you for the defendant?

18 MR. BUTLER: Please excuse the juror.

19 THE CLERK: Ms. Perry, please have a seat back
20 in the audience.

21 Six strikes for the defendant..

22 Juror number 70, Ashley Dozier.

23 (Whereupon, a black female approaches.)

24 THE CLERK: What say you for the State?

25 MR. FINCH: Please seat this juror.

1 THE COURT: What say you for the defendant?

2 MR. BUTLER: Please seat this juror.

3 THE CLERK: Ms. Dozier, please have a seat in
4 the jury box.

5 Juror number 91, Kathleen Golka.

6 (Whereupon, a white female approaches.)

7 THE CLERK: What say you for the State?

8 MR. FINCH: Please seat this juror.

9 THE CLERK: What say you for the defendant?

10 MR. BUTLER: Please excuse the juror.

11 THE CLERK: Ms. Golka, please have a seat back
12 in the audience.

13 Juror number 90, Sheila Gibbs.

14 (Whereupon, a black female approaches.)

15 THE CLERK: What say you for the State?

16 MR. FINCH: Please seat this juror.

17 THE CLERK: What say you for the defendant?

18 MR. BUTLER: Please seat this juror.

19 THE CLERK: Ms. Gibbs, please have a seat in the
20 jury box.

21 Juror number 96, Cathryn Griffith.

22 (Whereupon, a white female approaches.)

23 THE CLERK: What say you for the State?

24 MR. FINCH: Please seat this juror.

25 THE CLERK: What say you for the defendant?

1 MR. BUTLER: Please seat this juror.

2 THE CLERK: Ms. Griffith, please have a seat in
3 the jury box.

4 Juror number 122, Gwendolyn Isaacson.

5 (Whereupon, a white female approaches.)

6 THE CLERK: What say you for the State?

7 MR. FINCH: Please seat this juror.

8 THE CLERK: What say you for the defendant?

9 MR. BUTLER: Please excuse the juror.

10 THE COURT: Ms. Isaacson, please have a seat
11 back in the audience.

12 Juror number 32, Emaculada Brockman.

13 (Whereupon, a white female approaches.)

14 THE CLERK: What say you for the State?

15 MR. FINCH: Please seat this juror.

16 THE CLERK: What say you for the defendant?

17 MR. BUTLER: Please seat this juror.

18 THE CLERK: Ms. Brockman, please have a seat in
19 the jury box.

20 Juror number 69, Kenneth Donahoe.

21 (Whereupon, a white male approaches.)

22 THE CLERK: What say you for the State?

23 MR. FINCH: Please seat this juror.

24 THE CLERK: What say you for the defendant?

25 MR. BUTLER: Please seat this juror.

1 THE CLERK: Mr. Donahoe, please have a seat in
2 the jury box.

3 THE COURT: One or two alternates? I think we
4 can go with one alternate. Is that acceptable?

5 MR. FINCH: No objection from the State.

6 MR. BUTLER: I think one would be sufficient.

7 THE COURT: Strikes are one and two. You may
8 proceed.

9 THE CLERK: Juror number 59, Brian Cradock.
10 (Whereupon, a white male approaches.)

11 THE CLERK: What say you for the State?

12 MR. FINCH: Please seat this juror.

13 THE CLERK: What say you for the defendant?

14 MR. BUTLER: Please seat this juror.

15 THE CLERK: Mr. Cradock, please have a seat in
16 the jury box.

17 THE COURT: Are there any motions regarding the
18 selection of the jury from the State?

19 MR. FINCH: No, Your Honor.

20 THE COURT: From the defense?

21 MR. BUTLER: No, ma'am.

22 THE COURT: Ladies and gentlemen, we appreciate
23 your patience. We have to select a civil jury as well
24 this morning. We know that we are into the afternoon
25 now, I apologize.

1 We do a lot on Monday because we try to do as
2 many as possible so that you know what to expect of
3 your week, and we know what to expect. The old system
4 required that we have you come up here every day. And
5 we just found that to be an incredible waste of your
6 time and resources.

7 So I know today may seem very long, but it will
8 give you a great amount of predictability for the rest
9 of your week. We are going to send you back
10 downstairs, it's up and down, so sorry, the bailiffs
11 are going to bring you right back upstairs to Judge
12 Hughston once they get you back downstairs and redo
13 what we need to do to add your names to another list.

14 Again we greatly appreciate your patience. If
15 you would go with the bailiffs for me, please.

16 (Whereupon, the prospective jurors exit the
17 courtroom.)

18 THE COURT: Any exception to the jury being
19 sworn from the State?

20 MR. FINCH: No, Your Honor.

21 THE COURT: From the defense?

22 MR. BUTLER: No. No, ma'am.

23 THE COURT: Ladies and gentlemen, if you would
24 stand for me please and raise your right hand to
25 administer the oath. Once she has completed

1 administering the oath, please answer loudly and
2 clearly in response to her question.

3 You may proceed when you are ready.

4 (Whereupon, the jury panel is sworn in by the
5 clerk.)

6 THE COURT: Ladies and gentlemen, you have been
7 selected for the case of the State of South Carolina
8 versus Richard Joseph Graddick.

9 I anticipate that we will go ahead and start
10 probably with opening arguments and opening
11 instruction. And if we have enough time maybe one
12 witness. But I kind of like to break a little early
13 for lunch because it give us a greater amount of
14 flexibility with our afternoon schedule.

15 I'm going to speak with the lawyer, and then
16 after a very brief recess I will let you know how we
17 will be proceeding for the remainder of the day. I
18 have selected number 185 as your foreperson. Your
19 foreperson is basically the person that fills out the
20 verdict form and writes out any questions that you all
21 may have during deliberation.

22 It is a completely random process that the Court
23 employs to make sure that a cross-section of the
24 community serves in that capacity. I would emphasize
25 that that person does not have any greater vote or

1 voice than you do, it is simply an administrative
2 function.

3 During this break, please do not discuss the
4 case in any manner whatsoever. Please don't speculate
5 about what you think it may or could be about. It
6 should be enough time for you all to use the restroom
7 and refresh yourselves just a little bit. We will
8 probably be out about five minutes.

9 If you would go with Mr. Robinson for me, please.

10 (Whereupon, the jurors exit the courtroom.).

11 THE COURT: Are there going to be any pretrial
12 matters we need to deal with?

13 MR. FINCH: None from the State.

14 MR. BUTLER: I don't think we have any.

15 THE COURT: That's novel. Okay. If you all
16 might want use this time to go to the restroom. I'm
17 going to take two guilty pleas right quick. And then
18 I'm thinking we will have enough time to do opening
19 argument and opening instruction and then break for
20 lunch and then get better use on the back end of our
21 afternoon.

22 MR. BUTLER: I thought you were going to send
23 them to lunch and then do those things.

24 THE COURT: Do what things?

25 MR. BUTLER: Opening statements and opening

1 instructions.

2 THE COURT: Maybe I am underestimating how long
3 it will take to do the guilty pleas. Probably to take
4 me to 12:30.

5 I have to qualify the grand jury at 2:00.
6 That's going to take me an hour, that means we couldn't
7 start back until 3:00. I was thinking we could do
8 opening argument and opening instruction.

9 MR. BUTLER: I think we could do that after
10 3:00. My opening statement won't be more than five
11 minutes.

12 THE COURT: I'm going to do opening argument and
13 opening instruction and then I'm going to send them to
14 lunch and then we will start back at 3:00.

15 You all can go use the restroom or otherwise.

16 (Whereupon, a recess was taken and matters were
17 heard.)

18 (Whereupon, the jurors enter the courtroom.)

19 THE COURT: You may be seated. Ladies and
20 gentlemen, the bailiff is going to pass notebooks out
21 to you. There is a white sticker on that notebook.
22 Please put your juror number on it.

23 We are going to have my opening instructions to
24 you, and then the lawyers' opening arguments, and then
25 we're going to break for lunch. You are going to have

1 an extended lunch recess because I have to qualify the
2 grand jury. So we will break for lunch probably until
3 3:00 or 3:15, give or take.

4 We appreciate your patience in allowing us -- I
5 had some other matters that I needed to take up that
6 were not related to this case during that break. So
7 again we appreciate your patience, and we do not take
8 your time for granted.

9 As I have indicated, you have been selected for
10 the case of the State of South Carolina versus Joseph
11 Richard Graddick. What I'm now going to say to you
12 will serve as an introduction to the trial of this case
13 so that you may better understand how we are
14 proceeding.

15 These remarks are not a charge on the law. And
16 just so you know, charge is a legal term that means
17 instruction. So when you hear me use the term charge
18 it simply means instructions. And often I will use
19 those terms interchangeably.

20 Again, as I have indicated, this is just a
21 general instruction so that you will know how we will
22 be proceeding in this trial. These remarks are not an
23 instruction on the law, I will give you those
24 instructions prior to you retiring to consider your
25 verdict in this case. This is merely an explanation of

1 the procedures that we will follow.

2 During the course of this trial, you will be
3 given the opportunity to take notes. And I will give
4 you some instructions regarding that near the
5 conclusion of this initial instruction. Again just
6 place your juror number on that sticker so that you
7 will be able to identify which notes belong to you.

8 The defendant is charged by three indictments
9 filed with this Court with the crimes of kidnap,
10 burglary in the first degree, and criminal sexual
11 conduct in the first degree; the elements of which I
12 will explain to you at the conclusion of the trial
13 after the lawyers' closing arguments, and after all of
14 the evidence has been introduced.

15 The indictments, ladies and gentlemen, are
16 simply the charge by which the case is brought into
17 court. They are not, in any sense, evidence of any of
18 the allegations they may contain.

19 The defendant has pled not guilty to the
20 indictments. The State, therefore, has the burden of
21 proving each of elements of each indictment beyond a
22 reasonable doubt. And it will be your duty, ladies and
23 gentlemen, to decide whether the State has met that
24 burden or not.

25 Your purpose as jurors is to find and determine

1 the facts. You are the sole judges of the facts in
2 this case. If at any time I make any comment regarding
3 the facts, you must disregard it. You are to
4 determine the facts from the testimony you hear, and
5 the other evidence that will be introduced during the
6 course of this trial. It is up to you to determine the
7 inferences which you feel maybe properly drawn from the
8 evidence.

9 It is especially important that you perform your
10 duty of determining the facts diligently and
11 conscientiously because ordinarily there is no way to
12 correct an erroneous determination of facts made by a
13 trial jury.

14 On the other hand, and with equal emphasis, the
15 same law that makes you the judges of the facts makes
16 me the judge of the law. The law, as given by the
17 Court, is the only law you may consider. You must
18 accept and follow it, even though you may disagree with
19 it.

20 The Court cannot tell you what the facts are,
21 and you cannot disagree with the Court about what the
22 law is or what the law should be.

23 Your responsibility, ladies and gentlemen, is to
24 take the law as it is instructed, and apply it to the
25 facts as you find them from the testimony of the

1 witnesses and the other evidence that will be
2 introduced. After doing that, you will render your
3 verdict, a true and just verdict under the solemn oath
4 that you have taken as juror in this case.

5 Until I advise you to begin your deliberations, you
6 must not discuss this case with anyone; that includes
7 among your fellow jurors, your friends, your family
8 members, or anyone that may be involved in this case.
9 After the case is submitted to you, you must discuss it
10 only in the jury room with your fellow jurors.

11 The attorneys and the parties have been advised
12 that they should not speak with you at all. So if you
13 should see them around the hallway or in the elevator
14 or even downstairs in the lobby, or often you may run
15 into them in the parking garage, or even along the
16 street or in a restaurant during lunch, and they should
17 not acknowledge you or speak with you, please don't
18 think they're being unfriendly or untoward, they're
19 simply following the Court's instructions.

20 It's so very easy for an innocent conversation
21 to be observed by someone else and to be
22 misinterpreted. We would not want anyone to think that
23 you are improperly discussing the facts and
24 circumstances of this case. So again don't think
25 they're being unfriendly, they're simply following the

1 Court's instructions.

2 During the trial you are not to read, listen to,
3 or watch any news reports about this case. This
4 includes anything that may be in the newspaper, on the
5 Internet, radio or television. And you are not to do
6 any independent research of any type, including any
7 matter or issue involved in this case on the Internet.

8 It is essential that you consider only the
9 things that you hear in the courtroom by way of sworn
10 testimony and the other evidence that is introduced.
11 And you must not consider anything that you may have
12 read or heard about this case outside the courtroom,
13 whether before or during the course of this trial.

14 It is essential that you keep an open mind and
15 not decide any issue in this case until all of the
16 evidence has been presented, the parties have made
17 their closing arguments, and I have instructed you on
18 the law.

19 It is your solemn responsibility, ladies and
20 gentlemen, to determine the guilt or innocence of the
21 defendant. And your verdict must be based solely on
22 the evidence as it is presented to you in this trial,
23 and on the law as I will instruct you during and at the
24 close of this trial.

25 In just a moment the solicitor will make an

1 opening statement in which they will explain to you
2 what they believe the issues to be in this case. The
3 attorney for the defendant may also make an opening
4 statement, although he is not required to do so.

5 What the attorneys tell you during their opening
6 statements is not evidence in this case. It is only
7 their contention as to what they believe the evidence
8 will show in this case. The evidence in this case will
9 be presented to you by the testimony of sworn witnesses
10 from the witness stand, and/or by exhibits that may be
11 introduced into evidence.

12 From time to time during the trial you may hear
13 one of the attorneys say, Your Honor, I object. Just
14 as in sports, business or any other structured
15 activity, there are certain rules that we must obey in
16 the presentation of evidence. These rules ensure that
17 you receive the most trustworthy and reliable evidence
18 available.

19 An objection is the procedure that an attorney
20 uses to call a possible violation of these rules to my
21 attention as the Judge of this court. For this reason,
22 you should never hold an attorney's objection against
23 them. Nor should you conclude from the Court
24 overruling or sustaining an objection that I favor one
25 side or the other.

1 Also, you might hear one of the attorneys say
2 something like, Your Honor, we have a matter of law to
3 take up with you. Or I may ask them to approach the
4 bench, or they may ask to approach the bench.

5 And sometimes we will utilize bench conferences
6 because it's quicker than sending you in and out of the
7 courtroom. During those conferences you will hear this
8 noise. And it is directly over your heads, and it is
9 designed to interfere with your hearing so that you
10 cannot hear what we are talking about.

11 And the reason we do this is because sometimes
12 when I'm discussing matters of law with the attorneys,
13 it might be necessary for me to make some comment about
14 the facts in connection with ruling whether an
15 evidentiary rule applies or a statute or a procedural
16 rule applies.

17 And for this reason, we exclude you from those
18 discussions so that in no way will you be influenced by
19 anything that the Court may say or do in connection
20 with the facts of this case.

21 I always explain to jurors the white noise
22 because I had a juror one time raise his hand, and I
23 asked him and he said, we can't hear you. So I had to
24 explain to him that it's designed so that you can't
25 hear us. And it's a real time-saving measure because

1 it keep us from having to send you up and down during
2 the process.

3 But sometimes it still may be necessary for us
4 to exclude you from the courtroom so that you will not
5 be influenced by anything in connection with your
6 fact-finding province.

7 In determining what the true facts are in this
8 case, ladies and gentlemen, you must decide whether or
9 not the testimony of a witness or witnesses is
10 believable. It is my responsibility to rule as a
11 matter of law as to whether certain testimony is
12 admissible at all or not. But once the testimony is
13 admitted, whether or not you believe it is solely a
14 matter for you to determine.

15 In deciding whether to believe a witness you
16 have the right to consider the interest of any
17 witnesses; the bias of any witness; the prejudice of
18 any witness; the opportunity for the witness to have
19 seen the matters and things about which the witness may
20 testify; and the way the witness acts on the witness
21 stand, something we commonly refer to as demeanor.

22 You have a right to consider anything that is in
23 the record that will help you evaluate the testimony of
24 the witnesses. That means, ladies and gentlemen, that
25 it is your duty to pay close attention to the

1 witnesses, to observe them, to listen to them, and to
2 pay close attention to the attorneys and the Court.

3 Although I know it is very difficult in a room
4 without windows not to allow your thoughts to wander,
5 but I would ask that you give strict attention to the
6 testimony. So that at the end of the testimony, after
7 the arguments of the attorneys and the charge or
8 instruction on the law as given by the Court, you will
9 then be in a position to determine what the true facts
10 are, and to apply the law to those facts, and then
11 render a true and just verdict in this case.

12 You will be given the opportunity to take notes.
13 Note-taking is a privilege that you may choose to
14 exercise or choose not to exercise. Please do not feel
15 you are required to take notes. Not everyone finds
16 note-taking helpful to them.

17 If you should decide to take notes, please don't
18 try to record everything that is said. It's physically
19 impossible. We all speak probably about 200 words a
20 minute. And if you even thought you were taking it
21 down verbatim, if you were to go back and listen to it,
22 you would realize that you probably would invert some
23 sentences, you would use different words. So it would
24 be cumbersome, it would be distracting, and in the end
25 it probably would not be accurate.

1 The only reason the court reporter can do it is
2 because she's trained in a very specialized form of
3 shorthand that allows her take down words phonetically,
4 that's really an oversimplification of what she does,
5 but it allows her to take down many words in a very
6 short period of time.

7 You might want to keep an outline of the main
8 points and arguments that are being made so that when
9 you retire to deliberate you can allow your notes to
10 refresh your memory. Your notes are only to be used
11 for your purposes. They're only to be used to refresh
12 your own memory. They're not to be shared with anyone
13 else.

14 During breaks and recesses your notes will be
15 left in your seats. And that's so we can ensure there
16 are no premature deliberation. In other words, that
17 there is no temptation to talk about testimony that you
18 may have just heard, or matters and things in the trial
19 that you may have just heard.

20 Please be reminded again that your notes are for
21 your specific and your individual purposes. They're
22 only to be used to refresh your own memory. And also
23 be reminded that your notes should not be considered
24 any more reliable than someone else's memory. Their
25 memory should be considered just as reliable as notes

1 that may have been taken by another juror.

2 Madam Forelady, it is your responsibility to
3 fill out the verdict form, and to write out any notes
4 that the jury may have during deliberations. But I
5 will give additional instructions regarding that at the
6 conclusion of the trial.

7 Again, ladies and gentlemen, I reinforce that
8 the foreperson does not have any greater vote or voice
9 than you do. It is simply an administrative function.

10 In order to preserve everyone's rights, I'm
11 going to give the parties the opportunity to take
12 exception to anything that the Court has said by way of
13 opening instruction.

14 Are there any exceptions from the State?

15 MR. FINCH: No, Your Honor.

16 THE COURT: From the defense?

17 MR. BUTLER: No, ma'am.

18 THE COURT: State may proceed.

19 Ladies and gentlemen, I would ask that you give
20 the attorneys your undivided attention.

21 MS. HERRING-LASH: LaVanda Joyner is now 28
22 years of age. She is in the Army National Guard, and
23 was actually in the Army around 2004 to 2008.

24 In May of 2008, she moved into an apartment
25 complex called [REDACTED] It's in North

1 Charleston off of McMillan Drive near where the old
2 Navy hospital used to be.

3 On the evening of June the 15th, which was a
4 Sunday, and it had been Father's Day that day, she had
5 laid down to go to sleep on her couch. Her TV was in
6 the living room, so she was going to sleep on the
7 couch. Her boyfriend had been there earlier in the
8 evening, but he had left.

9 She falls fast asleep. And at some point she is
10 awakened. At first she is disoriented and doesn't
11 understand what is going on. And then she realizes
12 that someone has come into her apartment, and they are
13 there at her on her couch with her. A nightmare for
14 all of us.

15 He asked where her boyfriend is. He asked where
16 the money is. She says, I don't have money but my
17 purse is in the kitchen. She tries to struggle and
18 fight and tussle. She ends up on the floor on her
19 knees with her head pushed into the pillows of the
20 couch, and feels what she thinks is a knife at her
21 neck.

22 She is then afraid to struggle at that point.
23 He pulls down her pants, she has on like sleeping
24 shorts, and he sexually assaults her.

25 At this point in time, she realizes that she --

1 he had a shirt over his head, so she doesn't see who he
2 is. He has socks on his hands. She knows at some
3 point the socks come off. Whether he takes them off
4 with his mouth, she doesn't know. But because when he
5 is fondling her she feels his bare hands on his skin.

6 After this -- she goes into what she calls kind
7 of survival mode. She knows she can't see his face,
8 but she does try to look for anything possible to help
9 her maybe recognize him. And at some point during the
10 struggle, he had had his hand maybe the arm there of
11 the couch, and she sees a watch on his arm. It has a
12 large, gold square face. She sees that.

13 After the assault, he puts her hands behind her
14 back, pulls them behind her back, and pushes her or
15 guides her up the steps and into her bathroom. At that
16 point he tries to shut her in the bathroom and realizes
17 that the lock is on the inside. They go back and
18 forth.

19 He then leaves and runs down the steps and out
20 the back door.

21 At this point in time she feels that she is
22 angry. She grabs a can of hair sheen spray and runs
23 after him, but she doesn't catch him, he gets away.
24 She knocks on the neighbor's door and the neighbor
25 gives her a blanket because all she has on is a

1 T-shirt, and tries to calm her down and she calls 911
2 and she calls her mother.

3 Officers and her family members, sisters and her
4 mother arrive. The officers noticed that the screen in
5 the back window next to the back door is propped up
6 beside the building. She had just lived there a short
7 time and had never actually opened that window. So she
8 didn't know whether it was locked or not.

9 It was beside the air-conditioning vent, and
10 they found what they thought may be fresh dirt on the
11 air-conditioning vent. At that point in time also they
12 sent her to have a medical exam, to have what is called
13 a rape sexual assault exam.

14 One of the things they do in those exams is swab
15 for any possible semen to try to identify an unknown
16 suspect.

17 LaVanda never spends another night in that
18 apartment. Her mother and her sisters help her pack
19 up. She is afraid to go back there. She has no idea
20 who this person was.

21 On July 19th, which is a few days later, the
22 assault was in the early, early morning hours of the
23 16th. July 19th she's back there to pick up some
24 stuff, to talk to the landlords about getting her
25 deposit back because she is moving out for safety

1 concerns.

2 She goes to little strip mall right down from
3 [REDACTED] she is going to a hair product
4 place. And she notices a man looking at her, kind of
5 staring at her. He is standing by the subway, going to
6 go into the subway.

7 She looks at him and notices that this man has
8 on a watch that looks very much like the watch she
9 observed on the man's arm that sexually assaulted her,
10 so she calls the police. Please come, I think I see
11 him.

12 She also notices when he is standing there, that
13 the person he is with is a woman that she knows as her
14 neighbor that lived directly across the sidewalk from
15 her. She doesn't know her, but she recognized that
16 that is her neighbor. Law enforcement comes, they go
17 into the subway, they look, he is not there. But she
18 does tell them, I think that he was with the person
19 that lives right across from me in the Apartment [REDACTED]

20 So they go there. And they speak to the lady
21 there. And while they're talking, a person fitting the
22 description -- that she is giving a description of what
23 he had on at the subway -- comes walking down. She
24 starts screaming, there he is. The officers pursue him
25 and he gets away. So they do not catch him.

1 They do, though, get a search warrant to go into
2 the neighbor's house and they find documentation there
3 of his name. So now they know the name Joseph Graddick
4 is the man who lives there.

5 About a year later, July of 2009, the SLED,
6 which is the state law enforcement division, notified
7 the North Charleston Police there was semen on that kit
8 and it belongs to Joseph Graddick. So now they have
9 connected it.

10 The way the ID happens is really the DNA, but
11 also her kind of seeing him and then getting that
12 information.

13 They still don't know where he is. But by
14 October of 2009 they locate Joseph Graddick and they
15 serve him with these charges which are burglary in the
16 first degree, and I will just go over briefly with you
17 what the element are.

18 A person is guilty of burglary in the first
19 degree if the person enters the dwelling, without
20 consent, and with the intent to commit a crime, the
21 entry is at night, and/or the defendant was armed with
22 a deadly weapon. Here there is a long -- when the
23 police are at the home, they find a long screwdriver at
24 the base of the couch where he was which is what she
25 thought was the knife.

1 The defendant caused physical injury to a
2 person. Here he sexually assault LaVanda. And he
3 threatened the use of a dangerous instrument. He held
4 that screwdriver to her neck.

5 Kidnapping. To unlawfully seize, confine,
6 inveigle, decoy, kidnap, abduct, or carry away another
7 person by any means, without authority of law. When he
8 holds her hands or arms behind her neck and forces her
9 upstairs and into the bathroom, he is carrying her away
10 without authority of law.

11 Criminal sexual conduct in the first degree. A
12 person is guilty of criminal sexual conduct in the
13 first degree if he engages in the sexual battery with
14 the victim. He's charged with the crime, he used
15 aggravated force to accomplish the sexual battery.
16 Holding her down, using a weapon at her neck and
17 forcing the sexual intercourse upon her; and/or the
18 victim submitted to the sexual battery while the victim
19 was also the victim of forcible confinement,
20 kidnapping, robbery, extortion, burglary, house
21 breaking, or any other similar act. Here she was also
22 the victim of burglary and forcible confinement.

23 In a sexual battery means sexual intercourse,
24 cunnilingus, fellatio, anal intercourse, any intrusion,
25 however slight. Here we are talking about sexual

1 intercourse that he performed upon her against her
2 will.

3 Ladies and gentlemen, I would like to thank each
4 of you for your service. I know you didn't volunteer.
5 But as Judge Jefferson mentioned earlier, many -- or
6 Judge Dennis -- many people get out this service and
7 you all didn't. And I would like to thank you on
8 behalf of all of us in advance for the attention you
9 will pay to the evidence, and to the attention you will
10 pay to all of the witnesses.

11 And we would ask, after you've heard all the
12 evidence, that you come back with a verdict that speaks
13 the truth. The truth about what happened to Lavanda
14 Joyner on that evening. Thank you.

15 THE COURT: Mr. Butler.

16 MR. BUTLER: All of you are about to learn a
17 valuable lesson. Every criminal trial is a lesson.
18 It's already started the lesson about citizenship, your
19 role as citizens, government, civics.

20 But this is a particularly important lesson.
21 You are about to learn how the word of one person, and
22 just one person, can bring a person, Joseph Graddick my
23 client, to trial on some of the most serious charges
24 that we have in South Carolina. And
25 Ms. Herring is right, the charge, the elements of

1 criminal sexual conduct, she did it better than I
2 could, but it's rape. Criminal sexual conduct is the
3 sanitized term that we use. He is charged with being a
4 rapist and a burglar and a kidnapper.

5 But it didn't happen. When Ms. Joyner went to
6 the emergency room after Jarod left the apartment, and
7 Jarod was in the apartment, I will speak to that in a
8 moment.

9 When she went to the emergency room for this
10 forensic exam she had no injuries. No bruises to her
11 arms; no abrasions to her knees; no tears; no
12 lacerations to her buttocks, her thighs, her back; and
13 most importantly to her vagina. And we have to talk
14 about some of those issues in this case. And the
15 reason she didn't have those injuries is because she
16 wasn't raped.

17 So it's also clear this isn't a who-done-it.
18 This isn't what we call in the law an identification
19 case. This is a what happened case. And what you are
20 about to see over the next day, two days, is the state
21 go to great lengths to prove to you the identification
22 of the person who was in her apartment.

23 I'm telling you right now, it was Joseph
24 Graddick. And the reason that he was in her house, Ms.
25 Joyner's house, he doesn't break in, he didn't climb in

1 the window, she let him in the front door. And the
2 reason his DNA, his semen is on the floor and inside
3 her is because he had sex with her, consensual sex.
4 And I'm telling you that from the beginning.

5 Keep that in mind when this parade of witnesses
6 to prove the identification of who was in the house. I
7 won't ask them any questions, it doesn't matter.

8 At the end of the day this is he said/she said.
9 And what she said is not supported, or as we say,
10 corroborated by the physical evidence. And that's
11 because it didn't happen.

12 And as far as this lesson. Mr. Graddick is
13 desperate for you to learn this. Because for the past
14 two years he has been branded a rapist. And he wasn't
15 branded a rapist by 12 citizens. And now, for the
16 first time, 13 of you now, 12 will get to decide, hold
17 the story to the light. Not the police officer gets to
18 decide, lawyer don't get to decide, not even judges get
19 to decide, you get to decide. And for that we are
20 grateful. And at the end of this case I'm going to ask
21 you to find him not guilty.

22 THE COURT: Madam Forelady, ladies and
23 gentlemen, we are going to take advantage of this break
24 to take our luncheon recess. We will break until 3:30.
25 I know that seems like a long time but I have to

1 qualify the grand jury at 2:00 o'clock and that
2 probably will take me until 3:30, give or take.
3 We have subpoenaed about 300 people, but we expect
4 about 120. So that's going to take a little bit of
5 time to go through the same process that you all went
6 through this morning except it's a little more extended
7 because I have to instruct them as well with selecting
8 them and qualifying them.

9 So it may take me a little less time than that,
10 but I don't want you all to have to be waiting in the
11 event it takes me a little longer than I anticipate.

12 So we will resume the trial at 3:30. During
13 this break, please do not discuss the case among
14 yourselves. Please don't speculate, based on opening
15 arguments, what you think it may or could be about.

16 Please don't do any independent research. That
17 includes any archived, anything on the Internet, any
18 subject matter on the Internet or otherwise.

19 When you return to the courthouse, you will
20 return directly to the jury room. The bailiffs will
21 show you how to do that. Again please don't have any
22 conversations with anyone in or about the courthouse.
23 I would not want an innocent conversation to be
24 misconstrued as there may be witnesses and otherwise
25 milling about the courthouse and I would not want

1 anybody to think you are having an inappropriate
2 discussion regarding the facts and circumstances of
3 this case.

4 We truly appreciate your patience with us today.
5 Monday is a long day. We are used to this schedule,
6 you all are not. There is a method to the madness.
7 But we try to do as much as possible, again so that you
8 can know what to expect of your week and we can as
9 well.

10 Again, we appreciate your patience and we do not
11 take your time for granted. I hope that you all have a
12 wonderful luncheon break and we will see you at 3:30.
13 If you will go with the bailiff. Please leave your
14 notepads in your seats.

15 (Whereupon, the jurors exit the courtroom.)

16 THE COURT: Is there anything before we break
17 for lunch from the State?

18 MR. FINCH: No, Your Honor.

19 THE COURT: From the defense?

20 MR. BUTLER: No, ma'am.

21 THE COURT: We will be at ease until 3:30.

22 (Whereupon, a recess was taken.)

23 (Whereupon, State's Exhibit Nos. 1 through 19
24 are marked for identification.)

25 THE COURT: Is the State ready to proceed?

1 MR. FINCH: Yes, Your Honor.

2 THE COURT: Is the Defense ready to proceed?

3 MR. BUTLER: Yes, ma'am.

4 THE COURT: Please bring in the jury.

5 (Whereupon, the jurors enter the courtroom.)

6 THE COURT: You may be seated.

7 Ladies and gentlemen, we appreciate your
8 patience. Qualifying the grand jury took a little
9 longer than I expected, so please know that we do not
10 take your time for granted. And we appreciate you all
11 being so very patience with us.

12 As I indicated, we would resume the trial
13 testimony after lunch.

14 The State may proceed.

15 I would ask that you give the attorneys your
16 undivided attention.

17 MR. FINCH: Thank you, Your Honor. State calls
18 LaVanda Joyner.

19 THE COURT: If the witness would come forward to
20 be sworn.

21 MS. LAVANDA ALICIA JOYNER,
22 after having first been duly sworn to state the truth,
23 the whole truth, and nothing but the truth, testified
24 on her oath as follows:

25 THE COURT: You may proceed.

1 MR. FINCH: Thank you, Your Honor, may it please
2 the Court.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. FINCH:

6 Q Good afternoon, Ms. Joyner. If you would tell
7 the Court how old you are?

8 A 27.

9 Q And what do you do for living?

10 A I'm in the Army National Guard right now.

11 Q What is your rank or position with the National
12 Guard?

13 A Specialist, E-4.

14 Q And how long have you been with the National
15 Guard?

16 A Three years, since March of '08.

17 Q And back in '08 were you doing anything else for
18 a living?

19 A I was working at T-Mobile.

20 Q And what were you doing for T-Mobile?

21 A I started off in the call center on Daniel
22 Island. And then I transferred to a store in West
23 Ashley.

24 Q And where did you grow up?

25 A Moncks Corner.

1 Q Did you go to school in Moncks Corner?

2 A Went to Wesley High School.

3 Q When did you graduated?

4 A Class of '01.

5 Q And what happened after graduation?

6 A I went to college for a little while, went to
7 Trident. And I went and enlisted in the Army in '04.

8 Q And how long were you in the Army?

9 A 18 months.

10 Q And did you receive an honorable discharge?

11 A Yes.

12 Q When we talked a little bit earlier about 2008
13 when you joined the National Guard, I guess that's
14 after your discharge from the Army?

15 A Uh-hum.

16 Q And where were you living in 2008?

17 A Before I moved?

18 Q Yeah, before you moved.

19 A On Dorchester Road, in Pepper Tree.

20 Q And then you moved when?

21 A I moved in May to [REDACTED]

22 Q And I might need you to speak up just a little
23 bit so that the court can hear you.

24 I want to talk to you about [REDACTED]
25 back in June of 2008. Well, let me back up a little

1 bit. In June of 2008, how long had you been living at

2

3 A About a month.

4 Q And why did you move to

5 A At the time I thought that it was secluded, it
6 was gated. So I thought it was kind of quiet and out
7 of the way.

8 Q Did you have any friends at

9 A No.

10 Q Any neighbors you hung out with?

11 A No. I didn't know anybody.

12 Q Did anybody visit you there?

13 A Yes.

14 Q Who was that?

15 A My boyfriend at the time.

16 Q And let me go back to June 15th and 16th of
17 2008. Do you remember those dates?

18 A Yes.

19 Q What were you doing on June 15, 2008?

20 A That was Father's Day. I remember I left work a
21 little early. My father had passed in '05, so I was
22 still, you know, still kind of dealing with that. I
23 went home early from work.

24 And my boyfriend came over later that afternoon.
25 And he left probably around 10:00 that night.

1 Q And what did you do with your boyfriend at the
2 house?

3 A We, you know, just spent some time together, was
4 watching TV.

5 Q And after he left, what did you do?

6 A I stayed in the house and I went to sleep not
7 long after.

8 Q Did you walk him to the door?

9 A Yes. Because he doesn't have a key so I had to
10 walk him to the door to lock the door.

11 Q Is that normal for you?

12 A Yes.

13 Q How many doors are in your apartment?

14 A Two. The front door and the back door.

15 Q And are they always locked?

16 A Yes.

17 Q Do you know how many windows are in your
18 apartment?

19 A I don't know exactly. I know there is a big
20 window in the front, like the living room and there was
21 one in the kitchen and of course upstairs in the rooms.

22 Q Did you check those windows?

23 A I don't recall checking those windows. The
24 doors, I know for sure, are locked. I hadn't been
25 there long enough, you know, I really just didn't think

1 about checking the windows to be honest.

2 Q Okay. So after your boyfriend left, what did
3 you do?

4 A I went to sleep not long after.

5 Q Where did you sleep?

6 A On the couch.

7 Q Was that normal?

8 A Yes. If I'm by myself, I usually sleep on the
9 couch and watch TV.

10 Q What is the next thing you remember after going
11 to sleep?

12 A I remember being woke up by hands over my face.
13 I was laying on my back. And I don't -- at the time, I
14 didn't really -- it took a minute for me to realize
15 what was going on.

16 But it was a person standing there with a shirt
17 over his face. And when he was covering my mouth, it
18 was socks. He didn't have on gloves, he had on socks.

19 And I was struggling, you know, trying to
20 breathe for one. And then, like I said, it took a few
21 minutes to register that someone was in my house. A
22 stranger, pretty much.

23 Q During that time, what was going through your
24 mind?

25 A A million things at once. I thought that I was

1 going to die.

2 Q What did you do after you realized what was
3 going on?

4 A I continued to struggle and try to fight him
5 off.

6 Q Did he say anything to you at that time?

7 A He was trying to get me to be quiet so that I
8 wouldn't scream. And while I was struggling I ended up
9 like falling off of the couch and that's how I ended up
10 like on my knees with my face towards, like in the
11 couch.

12 Q I'm going to show you what has been marked,
13 excuse me, for ID purposes only, State's Exhibit 1.
14 Can you tell me what that is?

15 A That's my couch, and the nightstand, and some
16 other items. You want me to say everything?

17 Q No, that's okay. Is that the couch you are
18 referring to?

19 A Uh-hum.

20 MR. BUTLER: No objection.

21 MR. FINCH: Your Honor, at this time State would
22 move for admission of State's 1.

23 THE COURT: 1 without objection.

24 (Whereupon, State's Exhibit No. 1 is admitted
25 into evidence.)

1 Q (By Mr. Finch) If you could, take a look behind
2 you there. There is a pointer here if you need to use
3 it for any of the photos, right there. If you
4 could just indicate, if you were laying on the couch
5 sleeping, where was your head on the couch?

6 A Here.

7 Q Okay. And was your head in that position when
8 you were woken up?

9 A Yes. I was laying long-ways. When I was
10 sleeping I was on my back so my face was up. But my
11 head was this way.

12 Q And after you -- let's go back to where we were.
13 After you woke up and realized what was going on, did
14 you recognize this person?

15 A No.

16 Q What happened once you were off the couch?

17 A When I was off the couch, I ended up on my knees
18 here and my face here. And he asked me where my
19 boyfriend was and I told him I didn't know. Then he
20 asked me where the money was. I told him I didn't have
21 any money, but my purse was in the kitchen.

22 I'd actually thought about grabbing this lamp
23 and trying to hit him with it, but I was afraid that if
24 I did that then it would have been worse and I just,
25 you know, decided to not struggle.

1 Q When you were laying on the couch sleeping, what
2 were you wearing?

3 A I had on those white shorts, and you probably
4 can't see it, but those are the shorts and that a gray
5 tank-top.

6 Q Take a look at State's No. 2. What is that?

7 A My shorts and my tank-top.

8 MR. FINCH: At this time State moves for
9 admission of State's 2.

10 MR. BUTLER: No objection.

11 THE COURT: Marked and admitted without
12 objection.

13 (Whereupon, State's Exhibit No. 2 is admitted
14 into evidence.)

15 Q (By Mr. Finch) I'm going to show you some
16 items. One has been marked for exhibit purposes as
17 State's 17. Can you identify?

18 A My shorts.

19 Q Are these the shorts that you were wearing?

20 A Uh-hum.

21 Q And depicted in that photo there?

22 A Yes, sir.

23 MR. FINCH: Your Honor, State would move for
24 admission of State's 17.

25 THE COURT: Any objection?

1 MR. BUTLER: No, ma'am.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit No. 17 is admitted
5 into evidence.)

6 Q (By Mr. Finch) Again, what has been marked for
7 ID purposes only as State's -- can you identify this
8 item, ma'am?

9 A That's my tank-top.

10 Q Is this the tank-top you were wearing?

11 A Yes.

12 Q That night.

13 MR. FINCH: State would move for the admission
14 of State's 18.

15 THE COURT: Any objection?

16 MR. BUTLER: No, ma'am.

17 THE COURT: Marked and admitted without
18 objection.

19 (Whereupon, State's Exhibit No. 18 is admitted
20 into evidence.)

21 Q (By Mr. Finch) So while you were fighting with
22 this individual you wound up, you said, your knees on
23 the ground and your face into the couch. Tell us what
24 happened next.

25 A Well he took -- well at the time I thought it

1 was a knife, and rubbed it up against the back of my
2 neck. I guess so I can, you know, be afraid or so that
3 I can know that he had a weapon.

4 He told me that he would be done in a minute.
5 And he pulled down my shorts and began to have
6 intercourse with me.

7 Q And did he say anything at that time?

8 A He just said, I will be done in a minute. And
9 if I try to make any noise he kept telling me to be
10 quiet.

11 Q And did you say anything to him?

12 A I begged him not -- you know, I pleaded that he
13 didn't have to do that. Like, you know, you don't
14 have, you don't have to do that, please don't.

15 Q And were you fighting him still at this time?

16 A No.

17 Q Why not?

18 A Because he put a sharp object against the back
19 my neck and, you know, I was afraid if I fought anymore
20 that he would end up killing me.

21 Q What was going through your mind at that time?

22 A well, I was wondering, just thinking like how my
23 mom was going to find me. I just thought -- I thought
24 he was going to kill me.

25 And I was worried about how much time would pass.

1 before Mom came because she's all the way -- she is all
2 the way in Moncks Corner. Maybe she would just think I
3 wasn't answering my phone. You know, I thought about
4 my son.

5 I was just thinking of everything. I tried to
6 think about everything and tried not to focus on what
7 was really going on. Just so that it could just be
8 over and done with.

9 Q And did you do anything to try to figure out who
10 this person was at that time?

11 A Well he, the couch side, the side of the couch
12 that I was on, this side, his hand came up here. I
13 guess it was his right hand. He put his right hand
14 here and I noticed a watch.

15 I tried to pay attention to anything that I
16 could because I couldn't identify him, he had a shirt
17 over his face, I didn't know who he was. So at that
18 time I had to try to be smart, I had to think, and
19 identify anything that I could that I could remember
20 hopefully to identify him later.

21 He had on a watch that I remember very
22 distinctly. It was like a large gold-face watch. The
23 tennis shoes, it was white tennis shoes which I could
24 see. Even though I was looking down, you know, I could
25 see from this side right here and I saw tennis shoes.

1 I didn't know what kind, I just know it was white,
2 dirty looking tennis shoes.

3 Q And when he was behind you, did he penetrate
4 you?

5 A Yes.

6 Q Do you know if he was wearing any sort of
7 protection?

8 A At the time I didn't know.

9 Q Afterwards, what happened?

10 A After he got done he put my hands, both my hands
11 behind my back and made me walk upstairs to the
12 bathroom.

13 Q Do you know if he was holding anything in his
14 hands at that time?

15 A I'm not sure.

16 Q At some point in time, did he take the socks off
17 his hand?

18 A Yes, he did. Before he -- before he penetrated
19 me he, I felt his bare hands up against me like he was
20 feeling all over me. And that's when I noticed that he
21 didn't have the socks on anymore.

22 Q Do you know how many hands he was using to hold
23 your hands behind his back?

24 A I don't remember clearly. I'm not sure if it
25 was one or two, but. Both of my hands were, he did

1 have both my hand behind my back.

2 Q And where did he take you from there?

3 A Upstairs to the bathroom.

4 Q Let me show you what has been marked previously
5 as State's Nos. 4 and 5 for ID purposes only.

6 Can you identify first No. 4?

7 A This is stairway going up to the bathroom.

8 Q And No. 5?

9 A Bathroom here, and my room on that side.

10 MR. FINCH: State would move for admission of
11 State's 4 and 5 into evidence.

12 THE COURT: Any objection?

13 MR. BUTLER: No, ma'am.

14 THE COURT: 4 and 5 marked and admitted without
15 objection.

16 (Whereupon, State Exhibit Nos. 4 and 5 are
17 admitted into evidence.)

18 Q (By Mr. Finch) So if you would turn around here.
19 You went up those stairs?

20 A Yes.

21 Q And what's at the top of those stairs?

22 A The bathroom.

23 Q Is that the bathroom there?

24 A Yes.

25 Q Tell us what happened when you were in the

1 bathroom?

2 A He put me in the bathroom, closed the door
3 behind him. I guess he was trying to lock the door,
4 but the door locks from the inside.

5 Q And what did you do?

6 A He kept going back and forth trying to get the
7 door -- I tried to get the door open, he kept trying to
8 keep the door closed. And I remember saying to him,
9 you wait until I get the door open. I was upset.

10 Q Why were trying to get the door open?

11 A Because I wanted to -- I was angry at that time.
12 I'm angry and it was like I wanted, I wanted back --
13 like he took something from me, you know like, I want
14 it back. I am mad, and I really wanted to fight him.

15 Q Then what happened? You eventually leave the
16 bathroom or?

17 A After he finally let the door go and he ran down
18 the stairs and I ran down the stairs after him. And he
19 went out the back door, and I chased him out the back
20 door through the yard, the back yard, through the other
21 apartments.

22 And I was screaming for help and nobody came.

23 Q Let me show you what has been marked as State's
24 10 for ID purposes only.

25 Can you identify that photograph, please.

1 A That's my back door, and the window in the
2 kitchen.

3 MR. FINCH: Your Honor, State moves for the
4 admission of State's 10

5 THE COURT: Any objection?

6 MR. BUTLER: No, ma'am.

7 THE COURT: Marked and admitted without
8 objection.

9 (Whereupon, State's Exhibit No. 10 is admitted
10 into evidence.)

11 Q (By Mr. Finch) And if you would take a look at
12 the picture. And that's your back door. You came out
13 that back door?

14 A Yes.

15 Q Okay. And did you see which way the defendant
16 went in any direction?

17 A Straight. He ran -- well it's kind of hard to
18 -- but out the back door I can go straight through, you
19 know, the buildings parallel this way. So he ran
20 straight through.

21 And if you keep going straight it's the fence,
22 the McDonald's is across the fence. So he ran towards
23 that way.

24 Q And where did you go? How far did you follow
25 him?

1 A I didn't follow him to the fence. I probably
2 stopped midway between the two buildings. That's in my
3 back, out the back door.

4 Q And what were you doing at that time?

5 A Yelling.

6 Q Do you remember what you were yelling?

7 A Well I was screaming for help to see if anybody
8 would come and, you know, try to help me catch him.
9 Nobody came.

10 At that time I didn't -- that was the only thing
11 I was saying at that time.

12 Q And what were you wearing at that time?

13 A Just my T-shirt. I didn't have on anything
14 else.

15 Q The same T-shirt you identified earlier?

16 A Uh-hum.

17 Q What did you do after that when no one came?

18 A I went back towards my apartment and I knocked
19 on the neighbor's door, his back door. I was banging
20 on the door just pleading for somebody to come.

21 Q Did anybody eventually come to the door?

22 A My neighbor came to the door. And I told him
23 what was going on, what happened. And he came and he
24 gave me a blanket and came back to my apartment when I
25 called the police, called 911.

1 Q From whose phone did you call 911 from?

2 A Mine.

3 Q And where was that located?

4 A It was on the couch or somewhere by the couch
5 because I usually sleep with my phone.

6 Q And did you know that neighbor?

7 A No.

8 Q Do you know his name now?

9 A (Negative head shake.) No.

10 I don't know his name. I hadn't been there
11 long. I didn't know any of my neighbors really at that
12 time, just by face.

13 Q And then what happened after you called the
14 police? Tell us what happened.

15 A I called my Mom. Well, I called my boyfriend
16 and then I called my Mom.

17 Q And what happened? Did your Mom come to you?

18 A She came right away. Her and my sisters, two of
19 my sisters and my brother-in-law.

20 Q How soon did the police respond after your call?

21 A They responded pretty quick. I'm not sure what
22 the timeframe was, but they came pretty quick.

23 Q And did you speak to the officers?

24 A Uh-hum.

25 Q Did you give them a written statement?

1 A No, not -- uh-uh. They -- I told the officer
2 what happened and they wrote down what I gave them.

3 Q What were the officers doing once they got
4 there?

5 A They took pictures of my face and, you know, the
6 different rooms and outside. They dusted for
7 fingerprints.

8 Q Let me show you what is previously marked for ID
9 purposes as State's 6, 7, 8 and 9.

10 Can you identify these photographs?

11 What's in those photographs?

12 A Pictures of my face.

13 Q I am going to show you these --

14 MR. FINCH: Your Honor, State moves for the
15 admission of State's 6, 7, 8 and 9 into evidence.

16 THE COURT: Any objection?

17 MR. BUTLER: No, ma'am.

18 THE COURT: Marked and admitted without
19 objection.

20 (Whereupon, State's Exhibit Nos. 6, 7, 8 and 9
21 are admitted into evidence.)

22 Q (By Mr. Finch) I'm going to show a few things in
23 order. If you would just tell us what is of note about
24 these photographs, please.

25 That's what has been marked and admitted as

1 state's Exhibit 6.

2 A You can see the scratches on my face, bruising
3 there. The scratch on my neck.

4 Q Okay. We are going to the next one which is
5 state's 7.

6 A That is the scratch on my neck.

7 Q Do you know what caused the scratch?

8 A Struggling with him.

9 Q Now State's 8. Take another picture of the same
10 area.

11 And State's No. 9.

12 A This is the part you can see everything is red,
13 my lip is swollen here. And I was crying. That's a
14 scar there that's I still have.

15 Q Say that again, please.

16 A That's a scar there that I still have.

17 Q Was that an injury from that night?

18 A Yes.

19 Q What did you do after the police came and took
20 those photos?

21 A They took me to the nurse to do a rape kit.

22 Q Do you know where that was located?

23 A It was in North Charleston off Rivers, I think.
24 I don't know if that's Northbrook Plaza.

25 Q And did you drive yourself or did you ride with

1 the officers?

2 A I rode with the officer, and my family followed.

3 Q And when you got there, what happened there at
4 the Women's Center?

5 A I had to, you know, tell them what happened
6 again. And they took my blood, and did a swab to check
7 for DNA. And checked for any injuries, any tearing or
8 anything.

9 Q I'm going to go to a couple of days later, June
10 19th. Do you remember that date?

11 A Yes.

12 Q Okay. Tell the Court what happened on that
13 date?

14 A I went back to the apartment to get some more of
15 my things. And as I was -- I went to the hair store
16 it's in that plaza on McMillan.

17 When I pulled into the hair store, I noticed the
18 guy standing in front of Subway.

19 Q How did you know that was the guy?

20 A Well I did not know it was him at the time. You
21 know, I recognized his face as being my neighbor. But
22 I didn't know this was the same guy at that point.

23 I had to -- I was driving through the parking
24 lot. And I noticed how he kept -- he just was staring
25 at my car. As my car went his eyes went. He followed

1 my car.

2 So I looked in my rear-view mirror and he was
3 still watching me. And I drove back around so that I
4 could get a closer look, I wanted to see if he had a
5 watch on. Because at that time I didn't know any other
6 way to identify the person.

7 And he had the watch, the same watch on.

8 Q When the person was in your house several days
9 prior, you said that they were wearing something on
10 their head. Was that on the entire time?

11 A Yes.

12 Q So at that time you never got a look at the
13 person's face?

14 A No.

15 Q What did you do when you recognized this watch?

16 A I called the police and told them that I think
17 this may be the guy who broke into my house.

18 Q And what happened after that?

19 A They came and met me in the plaza. And I talked
20 to them for a little while.

21 And one of the officers, he followed me back, we
22 were going back to my apartment. And we went -- we
23 ended coming up through the back way like where my back
24 door is to walk, you know, to the front, walk around
25 building.

1 And as we were coming around the building, he
2 was coming this way, so we actually ran into each
3 other.

4 Q When you say -- I'm sorry. When you say he, who
5 was coming that way? You and the officer were walking
6 and then you said he was coming that way. Who is he?

7 A The same person I saw at Subway.

8 Q And what happened at that point?

9 A I told the officer, I said, that's him right
10 there. And he immediately took off running.

11 Q Who took off running?

12 A The guy that I saw at Subway.

13 Q Then what happened after that?

14 A We started chasing him, me and the officer.

15 Q Were you saying anything at this time?

16 A Yes. I actually got closer to him than the
17 officer did. And I was very angry and I was asking him
18 -- I'm sure I was cursing at him.

19 But I said, oh, you want to rape me, you want to
20 rape me. And I really was upset. I wanted to -- but I
21 couldn't grab him.

22 Q What happened after that?

23 A He got away. And so me and the officer went
24 back at my apartment and just talking about the whole
25 situation. And they ended up talking to the girlfriend

1 at the time, which was the door directly across from my
2 door.

3 Q I'm going to show you what has been marked for
4 ID purposes only as State's Exhibits 14, 15 and 16.

5 First I'm going to show you 14. Can you tell me
6 what that is in the photograph?

7 A That is the apartment door directly across from
8 mine.

9 Q And State's 15?

10 A This is mine.

11 Q And State's 16?

12 A This is the front, or in between our buildings.

13 MR. FINCH: Your Honor, State moves for
14 admission of State's 14, 15 and 16 into evidence.

15 THE COURT: Any objection?

16 MR. BUTLER: No, ma'am.

17 THE COURT: Marked and admitted without
18 objection.

19 (Whereupon, State's Exhibit Nos. 14, 15 and 16
20 are admitted into evidence.)

21 Q (By Mr. Finch) Did you recognize this person
22 that you were chasing?

23 A Yes. I recognized him as being my neighbor.

24 Q And where did he stay?

25 A This door, this apartment.

1 Q And in relationship to your apartment which is
2 [REDACTED] where is that?

3 A, Directly -- see how this is to my right? The
4 other door would have been exactly, so it's directly
5 across from each other.

6 Q And that's the distance between the two?

7 A Yes.

8 Q Right. And had you ever spoken to that
9 individual before?

10 A Not past a hi, a wave.

11 Q And had you ever been in Number [REDACTED] before?

12 A No.

13 Q And had that person ever been to your house
14 before?

15 A No. I didn't even know his name.

16 Q What happened next with the officers after the
17 individual you were chasing got away?

18 A They tried to question the young lady that was
19 living in that apartment. And they also went and
20 talked to the landlord, to the office.

21 And they advised that -- I believe they gave his
22 name. I did not even know his name at that time.

23 Q Did you learn his name that day?

24 A Uh-hum.

25 Q What was that?

1 A Joseph Graddick.

2 Q Is that person in the courtroom today?

3 A Yes.

4 Q Can you identify him?

5 A Right there.

6 MR. FINCH: Let the record show --

7 THE COURT: Let the record so indicate.

8 Proceed.

9 Q (By Mr. Finch) I want to show you again a photo
10 that has been marked and admitted into evidence as
11 State's No. 1.

12 Can you identify that item that is next to the
13 couch?

14 A The screwdriver.

15 Q Did that screwdriver belong to you?

16 A No.

17 Q How do you know that?

18 A I have an electric screwdriver.

19 Q And is that an electric screwdriver?

20 A No, it's not.

21 Q Is the only screwdriver you have an electric
22 screwdriver?

23 A Yes.

24 Q In the early morning hours, overnight of June
25 16th, were you able to, at any point in time, see the

1 face of the person who woke you up on your couch?

2 A No.

3 Q Did you, after your boyfriend left, did you
4 invite anyone over to your house?

5 A No.

6 Q Did you let anyone into your house?

7 A No.

8 Q When you later identified the person with the
9 watch that you saw the night of June 16th, three days
10 later, was that somebody that you knew?

11 A No. Not by -- not personally.

12 Q Did you have any relationship with that person?

13 A No.

14 MR. FINCH: Beg the Court's indulgence.

15 THE COURT: Uh-hum.

16 MR. FINCH: No further questions at this time.

17 Please answer any questions defense may have.

18 THE COURT: Any questions for the witness?

19 MR. BUTLER: Yes, ma'am.

20 THE COURT: You may proceed.

21 CROSS-EXAMINATION

22 BY MR. BUTLER:

23 Q Ms. Joyner, I just have a few you questions for
24 you.

25 The night that this happened, you spoke to the

1 police, right?

2 A The night or the morning?

3 Q The morning, I'm sorry.

4 A Yes, sir.

5 Q And you gave a description of the perpetrator,
6 right?

7 A The best that I.

8 Q And do you remember telling them that the person
9 was '5 10" and 230 pounds?

10 A That sounds like around about.

11 Q And they took a pretty detailed statement from
12 you, right? They wanted to know everything that you
13 could recall?

14 A Yes, sir.

15 Q And you wanted to help them, right?

16 And they told you, do the best you could to
17 recall everything that you could so that they could
18 write it down in the report, right?

19 A (Affirmative head shake.)

20 Q And they even told you, if you think of anything
21 later here's my card and call me, right?

22 A Yes.

23 Q Okay. And you took your time and you were
24 careful and told them everything you could remember,
25 right?

1 A Yes.

2 Q Okay. But you didn't tell them anything about
3 Mr. Graddick holding a screwdriver to your neck, did
4 you?

5 A I told them I didn't know that -- it wasn't -- I
6 wasn't sure if it was a screwdriver, but it was a sharp
7 object that was up into my neck.

8 Q So your recollection is that you told them that
9 he held a sharp object to you?

10 A Yes.

11 Q You didn't tell the nurse at the, where the
12 examination was done, you didn't tell her that either,
13 though, or do you recall?

14 A I don't recall.

15 Q She, too, wanted you to tell her everything that
16 happened, right?

17 A Yes.

18 Q And that was after some time had passed and you
19 had some more time to calm down and think about it,
20 right?

21 A (Affirmative head shake.)

22 Q Is that right?

23 A Calm down.

24 Q And you didn't tell her that a sharp object was
25 placed against your neck, did you?

1 A I don't recall.

2 Q That's fair. Where --

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

4 THE COURT: Uh-hum.

5 A There is one right here.

6 Q (By Mr. Butler) Thank you.

7 I want to ask you a few questions about State's
8 1 again. If you could turn around.

9 And that floor is obviously carpeted, right?

10 A Yes.

11 Q And there is obviously fabric on the couch?

12 A Yes.

13 Q And this is the carpet where your knees would
14 have been the way you've described, right?

15 A Yes.

16 Q And where your face has been forcefully pushed
17 into the sofa, right?

18 A Yes.

19 Q And by the couch the items of clothing, the gray
20 tank-top and your white shorts?

21 A Uh-hum.

22 Q My understanding is that those were left there
23 before you went upstairs to the bathroom?

24 A No.

25 Q Okay. How did they get there?

1 A Well I had to leave, I had to give that to the
2 police officer.

3 Q Okay.

4 A When I left I had on a black -- I had to put on
5 another shirt.

6 Q Well when and how did they end up on the floor
7 there? So I guess I understood that you are saying
8 that Mr. Graddick took those off of you and that's
9 where they ended up?

10 A Well when during the process he pulled them down
11 to my knees. To be honest, I don't remember how they
12 got to there, but I know I had to give them over to the
13 officers.

14 Q Because you testified early that after you
15 chased Mr. Graddick out of, as I understand it, the
16 back door, that you were wearing that gray tank-top,
17 correct?

18 A Right.

19 Q So after that you came back in and took it off
20 and put it there on the floor?

21 A I had to give it to the -- the officers asked
22 for that as evidence, so I had to remove that tank-top.
23 I put on another shirt. And I'm not sure if they set
24 that there to take a picture of it, I'm not sure of
25 that.

1 Q Okay. so you don't know how it ended up there?

2 A Uh-uh.

3 Q Because clearly if you were running outside with
4 it on, it wouldn't have also been there on the floor,
5 right?

6 A I didn't have any bottoms on. I had the
7 tank-top on.

8 Q I understand that. I'm just asking about the
9 tank-top.

10 A Okay.

11 Q You don't know how it ended up from being on you
12 when you were chasing Mr. Graddick, you don't know how
13 it ended up from being on you after chasing to being on
14 the floor there?

15 A Like I said, I had that on. When I came in I
16 had to take it off for the officer. I didn't place it
17 there. They may have placed it there so that they
18 could take a picture of it, but.

19 Q Okay. And that box there that's on the right,
20 is that still because you were moving in or hadn't
21 completely moved in?

22 A Yes, sir.

23 Q And what is in that box?

24 A Chairs to my dining room table.

25 Q And you say that, if I understand you, by the

1 time you say he would have been running out the back
2 door, there are no socks or anything on his hands?

3 A Not that I can remember. Not that I can
4 remember.

5 Q Because you said that he taken them off at some
6 point earlier?

7 A Right.

8 Q And the socks aren't found in your apartment?

9 A (Negative head shake.)

10 Q And you said that both doors would have been
11 locked, right?

12 A Uh-hum. (Affirmative head shake.)

13 Q So while you are chasing, I assume there is a
14 deadbolt on these doors?

15 A I don't recall there being a deadbolt, just a
16 turn.

17 Q Just a turn, okay?

18 A (Affirmative head shake.)

19 Q So at the very least, according to your
20 testimony, he would have had to, while you were chasing
21 him, unlock the door, right?

22 A Uh-hum. (Affirmative head shake.)

23 Q And open the door?

24 A (Affirmative head shake.)

25 Q And go out?

1 A Yes.

2 Q So he would have had to touch the lock on the
3 door, right?

4 A (Affirmative head shake.)

5 Q And the handle of the door, right?

6 A Yes.

7 Q And during this struggle on either side of the
8 bathroom door upstairs, during this time his face
9 remains covered with, is it a T-shirt you are saying?

10 A Yes.

11 Q And at no time does that slide off or allow you
12 to see any part of his face?

13 A No, sir.

14 Q Do you recall telling the officers that you
15 thought Mr. Graddick got into a vehicle when he left?

16 A Yes.

17 Q That was driven by someone else?

18 A (Affirmative head shake.)

19 Q And you described that as a black car?

20 A I don't recall what the color was right now.

21 Q Do you recall that you told police it was a
22 four-door sedan that was either dark or black?

23 A I remember it being four-door, four-door car.

24 Q You don't recall telling them it was black in
25 color, four-door sedan?

1 A I don't recall.

2 Q And somebody else driving?

3 A Yes.

4 It was parked by the fence.

5 Q And then three days later when you see Joseph in
6 the subway, it is that very distinct watch that allowed
7 you to recognize him, correct?

8 A Yes, sir.

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

10 THE COURT: Uh-hum.

11 Q (By Mr. Butler) And you were angry?

12 A Very.

13 Q And while you were outside, you were yelling and
14 screaming?

15 A Yes.

16 Q While you were on your way outside, you were
17 yelling and screaming, right?

18 A Yes.

19 Q And there are other people that live in this
20 apartment complex?

21 A Yes, sir.

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

23 THE COURT: Uh-hum.

24 Q (By Mr. Butler) And if I understand you,
25 initially you did struggle and fight with him, correct?

1 A Yes, sir.

2 Q Okay. And that would have been while your legs
3 and knees were on the carpeted floor?

4 A That's while I was laying on the couch still,
5 initially.

6 Q Okay. And then you also struggled and fought
7 with him on the stairs or at the top of the stairs?

8 A No. The only struggle was the bathroom door.

9 Q Bathroom. Yes, ma'am, I understand.

10 Q And these windows, they have blinds on them,
11 don't they?

12 A Yes, sir.

13 Q And the blinds were down, correct?

14 A Yes, sir.

15 Q And what you told the police was that you didn't
16 know how he got in but you just assumed it had to be
17 through a window?

18 A Yes.

19 Q But you never heard anybody coming in?

20 A I didn't hear anything.

21 Q Didn't hear the window open, didn't hear the
22 blinds rattle?

23 A (Negative head shake.)

24 Q And didn't hear the window shut?

25 A No.

1 Q Because the window was still shut, right?

2 A Yes.

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

4 THE COURT: Uh-hum.

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

6 THE COURT: Uh-hum.

7 MR. BUTLER: I don't have any further questions.

8 Thank you.

9 THE COURT: Any redirect?

10 MR. FINCH: Yes, Your Honor, briefly.

11 THE COURT: You may proceed.

12 MR. FINCH: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. FINCH:

15 Q Ms. Joyner, how do you know -- what led you to
16 believe that he came in through the window?

17 A The -- well I don't recall having the door
18 unlocked. That's just the only other thing I could
19 think of. Plus the screen was removed from my window
20 as well.

21 Q And do you know if the screen was there when you
22 went to bed that night?

23 A Yes. I wouldn't take it off.

24 Q And you testified earlier, when Mr. Butler was
25 asking you questions, that you didn't hear the blinds

1 rattle, you didn't hear a window open or close?

2 A Right.

3 Q Do you know what the defendant was doing from
4 the time he entered your house to the time he woke you
5 up on the couch?

6 A No. I just woke up with the hands on my face.

7 Q Do you know if he unlocked the back door from
8 the inside?

9 A I'm not sure.

10 Q And you also testified that you were screaming
11 as you ran out of the house and into the backyard?

12 A Yes, sir.

13 Q Did anybody come outside while you were out
14 there screaming?

15 A No. Nobody.

16 Q Did your neighbor, I'm sorry, finish?

17 A Nobody came.

18 Q Did your neighbor come outside before you banged
19 on his door?

20 A No.

21 Q What did he do once he answered the door?

22 A He came. I was, you know, crying and he was
23 kind of looking like, you know, what happened to you.

24 And I told him, you know, what happened and he
25 -- that's when he gave me a blanket.

1 Q What were you wearing when the police arrived?

2 A That blanket and my tank-top.

3 MR. FINCH: No further questions, Your Honor.

4 THE COURT: Any objection to the witness being
5 excused, from the State?

6 MR. FINCH: No, ma'am.

7 THE COURT: From the defense?

8 MR. BUTLER: No, ma'am.

9 THE COURT: Ma'am, you are excused.

10 You may call your next witness.

11 MS. HERRING-LASH: Mozelle Joyner.

12 MS. MOZELLE JOYNER,

13 after having first been sworn to state the truth, the
14 whole truth and nothing but the truth, testified on her
15 oath as follows:

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MS. HERRING-LASH:

19 Q And, Ms. Joyner, be sure to try to talk into
20 that microphone so that the jury can hear you.

21 Ms. Joyner, where do you live?

22 A [REDACTED], Moncks Corner, South
23 Carolina.

24 Q How long have you lived there?

25 A 37 years.

1 Q How many children do you have?

2 A I have three girls and one boy.

3 Q And what are your girls' names?

4 A My oldest daughter named Tawana Moore. And my
5 middle daughter named Clarika Williams. And my baby
6 daughter is LaVanda Joyner.

7 Q And LaVanda is the person we're here about
8 today?

9 A Yes.

10 Q Do you remember back in June of '08 getting a
11 call from LaVanda?

12 A Yes. It was like, when she called it was like 6
13 o'clock that morning.

14 Q Where were you or what were you doing?

15 A I was on my way going to the church, like I do
16 usually do every morning at 6 o'clock. By the time I
17 get between, like before I got to Bonneau, then I got
18 the call.

19 Q And when you got the call, how was LaVanda
20 acting on the other end?

21 A She was crying.

22 Q Could you understand her?

23 A I got like nervous. And I said, what's wrong?
24 what's wrong? She said, Mama, just come, just come.
25 And I got nervous and upset, you know. And I turned.

1 around and I headed to Charleston.

2 Q Was she crying the whole time?

3 A Yeah, she was crying.

4 Q When you got to her house, what happened?

5 A When I got out of the car and I saw the officer,
6 he was at the door. And I couldn't go in right then
7 because they were still inside, some of the officers
8 were still inside. And I waited, you know, until I
9 could go inside.

10 Q Did any other of her family members come?

11 A My daughter, my two other daughters, they came.
12 And my son-in-law.

13 Q Did you all have to wait outside for a while?

14 A Yeah. For a good little while. And then
15 afterwards we could go in..

16 Q And what happened when you went in? What did
17 you see?

18 A If I could remember, you know, she was like
19 still crying. And then, you know, told me what
20 happened.

21 Q Did she tell you that she was assaulted?

22 A Yes.

23 Q Did she tell you where she was when she was
24 assaulted?

25 A Yes.

1 Q Where?

2 A On her couch.

3 Q And did she tell you when she was assaulted?

4 A It was that morning.

5 Q And what did you all do after you talked to her?

6 A I think she had to go to the medical so that the
7 doctors could examine her.

8 Q Did you go with her?

9 A Yes.

10 Q Did your other daughters go with her, or did
11 they stay at the apartment?

12 A No. I think they came for a while.

13 Q How long were you all there, do you remember?

14 A I can't remember, but I know it was a while.

15 Q After you left the doctor or the nurse, where
16 did you go?

17 A I told her that, you know, we need to start
18 packing up because she wasn't going to stay there.

19 Q Did she want to stay there anymore?

20 A No.

21 Q Where did she stay that night?

22 A I don't even remember. I don't know if she
23 stayed with me or she went to a friend's house. I
24 don't remember. I really don't.

25 Q Do you know if she ever went back and stayed at

1 that apartment?

2 A Oh, no.

3 Q Does -- have you discussed this with her a lot?

4 A No. Just that, you know, every now and then she
5 would, you know, like say that --

6 MR. BUTLER: I'm sorry, I have to object to the
7 hearsay at this point.

8 THE COURT: Yes, ma'am. You cannot say what she
9 said except if it comes within an exception.

10 Q (By Ms. Herring-Lash) Just have you discussed
11 it with her is all I wanted to ask her.

12 A Not really.

13 Q Why not?

14 A I don't bring it up. But if she bring it up
15 then she talk about how it just comes across her mind
16 and she can't sleep.

17 Q And you just listen?

18 A And I try to console her.

19 MS. HERRING-LASH: Court's indulgence, for one
20 moment.

21 THE COURT: Uh-hum.

22 MS. HERRING-LASH: Ms. Joyner, those are all the
23 questions I have for you. Now if you will answer any
24 that Mr. Butler has.

25 THE COURT: Any questions for the witness?

CROSS-EXAMINATION

BY MR. BUTLER:

Q Good afternoon, ma'am.

A Uh-hum.

Q I won't take up much of your time at all, thank you.

The people that went over to LaVanda's apartment that morning, you said your other daughters and you said a son-in-law. And that person would have been married to whom?

A To Clarika.

Q Okay. Because LaVanda had a boyfriend at the time, too. That's not who you are talking about?

A I don't know.

Q Okay. Was her boyfriend there when you were there at the apartment when the police were there?

A No.

Q Okay. So you don't recall him being there?

A I don't know him.

Q You didn't know about any boyfriend at the time?

A I don't know him.

MR. BUTLER: That's all I have. Thank you, ma'am

THE COURT: Any redirect?

MS. HERRING-LASH: No, Your Honor.

1 THE COURT: Any objection to the witness being
2 excused, from the State?

3 MS. HERRING-LASH: No, Your Honor.

4 THE COURT: From the defense?

5 Mr. Butler, any objection?

6 MR. BUTLER: No, ma'am.

7 THE COURT: Ma'am, you are excused.

8 (Whereupon, the following discussion was held at
9 the bench.)

10 THE COURT: I thought you had a witness who had
11 a conflict.

12 MR. FINCH: He is downstairs right now.

13 THE COURT: Downstairs. Then you may call your
14 witness.

15 (In open court.)

16 THE COURT: You may proceed.

17 MS. HERRING-LASH: State would call Tony
18 Middleton.

19 MR. TONY MIDDLETON,
20 after having first been sworn to state the truth, the
21 whole truth and nothing but the truth, Testified on his
22 oath as follows.

23 THE COURT: You may proceed.

24 DIRECT EXAMINATION

25 BY MS. HERRING-LASH:

1 Q Mr. Middleton, where are you employed?

2 A The City of North Charleston.

3 Q And are you a police officer?

4 A Yes, ma'am.

5 Q And what is your rank?

6 A I'm a patrolman right now.

7 Q And how long have you been in law enforcement?

8 A 16 years.

9 Q And were you working for North Charleston back
10 in June of 2008?

11 A Yes, ma'am.

12 Q And back in June of 2008, were you a patrol
13 officer?

14 A I was a sergeant, ma'am.

15 Q And what's the difference? If you could just
16 tell us briefly.

17 A Well sergeant, sergeant, I was a supervisor for
18 the midnight team on the south end of town. And my
19 duties then was to supervise the personnel that I had
20 working under me, which at the time was five patrolmen.

21 My duties were to approve paperwork, give shift
22 briefing, advise the team of any crime that took place
23 the night before. I also patrolled, I did traffic
24 enforcement, investigated traffic accident, and those
25 natures.

1 Q Did you leave North Charleston for a while after
2 that?

3 A Yes, I did.

4 Q And where did you go?

5 A I went to Afghanistan and I came back. At the
6 time the City of North Charleston had a hiring freeze
7 on so I went to Hanahan.

8 The City of North Charleston lifted the hiring
9 freeze, they gave me a call, and I went back to North
10 Charleston.

11 Q So now you are back as a patrol officer?

12 A Yes, ma'am.

13 Q And did you respond to the call of the State
14 versus Graddick?

15 A Yes, ma'am.

16 Q At that time, how did the call go out?

17 A Call went out -- whenever we have a high
18 priority type call, it starts off with what we call
19 tones. We get three tones. It goes beep, beep, beep.
20 That's to alert all of the officers.

21 It's -- they use a code, which was code five,
22 and that's a sexual assault. Just happened, black
23 male, he was armed with a screwdriver.

24 He entered the victim's apartment, excuse me,
25 sexual assaulted her, then left the apartment.

1 Q And where did you go when you got that call?

2 A When I received the call I went straight to the
3 incident location, I made contact with the victim, and
4 I asked her what happened.

5 Q Do you remember where that incident location
6 was?

7 A It was in [REDACTED] [REDACTED] -- I
8 think it was [REDACTED], [REDACTED]

9 Q You've got a good memory.

10 A Yeah.

11 Q And is that in Charleston County?

12 A Yes, ma'am.

13 Q And what did you do when you got there?

14 A I interviewed the victim. I, you know, was
15 trying to get some information so I could pass out to
16 the other officers that were responding to the area,
17 what to look for and who to look for.

18 Q What was her condition and demeanor when you got
19 to there?

20 A When I met with her she was crying, she was
21 hysterical, she was shaking. You know, I tried to get
22 her to calm down a little bit to give me some
23 information on who the suspect was and what happened.

24 Q Do you remember how she was clothed?

25 A At the time I believe she had a blanket around

1 her.

2 Q And did she tell you about an assault?

3 A Yes, ma'am, she did.

4 Q Did she tell you where it had happened?

5 A Yes, ma'am.

6 Q Where?

7 A It was in the living room of her apartment on
8 the sofa.

9 Q And did she tell you when it had happened?

10 A It was probably 20, I want to say 20, probably
11 30 minutes before we received the call.

12 Q And throughout the time that you were there, did
13 other officers arrive?

14 A Yes, ma'am.

15 Q And did this case, since you were the sergeant,
16 is this your case or is it someone else's case?

17 A It was someone else's case.

18 Q And who was that?

19 Q Officer MacDonald.

20 Q And is she on vacation right now?

21 A Yes, ma'am, she is.

22 Q But you were there when she was there?

23 A Yes, ma'am.

24 Q Did any family members arrive while you were
25 there?

1 A Her mother came, and I believe there was some
2 other male family members that arrived.

3 Q That evening while you were there, were you able
4 to develop the name of any suspect?

5 A No, ma'am.

6 Q Did she know who the person was that had
7 assaulted her?

8 A No, ma'am.

9 Q Did she give -- I know you cannot repeat it
10 here, but did she give you more details than the where
11 and the when this happened?

12 A Yes, ma'am.

13 Q What did you do after you spoke with her and the
14 other officers arrived?

15 A Well when Officer McDonald arrived on the scene,
16 I did a sweep of her apartment to make sure no one was
17 there. Then I went outside to see if I could track,
18 pickup a track from the suspect.

19 I noticed the screen from her back kitchen
20 window was pried away and leaning against her -- the
21 back end of her apartment.

22 Q And did you or someone call what we call crime
23 scene out to take pictures of those things?

24 A Yes, ma'am. I had crime scene -- I advised
25 dispatcher to have crime scene come out and to notify

1 the detective of what we had and what was going on.

2 Q And did -- was the victim also transported for a
3 medical exam?

4 A She was transported -- no, she was escorted to
5 Northwoods, which is a clinic that we take the sexual
6 assault victims to be examined by Officer McDonald.

7 Q And were you there when the pictures were taken
8 of her face at the apartment?

9 A I wasn't there when the crime scene did their
10 investigation. I was standing outside preventing
11 anybody who didn't have anything to do with the case to
12 enter the apartment.

13 Q When you were speaking with her, did notice
14 marks on her face?

15 A Yes, ma'am. I notice a mark, I believe it was
16 on the right side of her cheek. Her neck was red and
17 had like a welt mark around it.

18 Q Uh-hum. And did you see the screwdriver while
19 you were there?

20 A The screwdriver was on the floor near the end of
21 the sofa.

22 MS. HERRING-LASH: Court's indulgence for one
23 moment.

24 Those are all the questions I have. If you'd
25 answer any for Mr. Butler now, thank you.

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. BUTLER:

4 Q Good afternoon.

5 A Good afternoon, sir.

6 Q At the time you were -- were you the first or
7 one of the first responding officers?

8 A I was the first officer on the scene.

9 Q And the first responding officer has special
10 duties, correct?

11 A Yes, sir.

12 Q When you're the first person on the scene, you
13 are the first member of law enforcement who has the
14 opportunity to access the situation, right?

15 A Yes, sir.

16 Q To view the crime scene?

17 A Yes, sir.

18 Q To talk with witnesses?

19 A Yes, sir.

20 Q And get information from them when it is
21 freshest in their memory?

22 A Yes, sir.

23 Q And that's critical, part of what it means to be
24 an officer, an investigator, is you go out and
25 investigate, right?

1 A Yes, sir.

2 Q And that's collecting information?

3 A Yes, sir.

4 Q Right. And the sooner you get there the better,
5 right?

6 A Yes, sir.

7 Q And the more information you get, the better?

8 A Yes, sir.

9 Q And so you try to be thorough in the way you
10 question witnesses?

11 A Yes, sir.

12 Q And get detailed information from them?

13 A Yes, sir.

14 Q And in a case like this, some, you would calm a
15 person down, right?

16 A I would try, yes.

17 Q As best you could. And then get them to give
18 you the details of what occurred?

19 A Yes, sir.

20 Q Right. And at some point then that is put into
21 a report?

22 A Yes, sir.

23 Q That's the second part of just basic
24 investigation. You collect information and then you
25 document it, right?

1 A Yes, sir.

2 Q Usually in a report?

3 A Yes, sir.

4 Q Also there are written statements, right?

5 A Yes, sir.

6 Q Photographs, that's just more documentation of
7 the information you've collected, right?

8 A Yes, sir, it is.

9 Q And with all of that you try to be thorough?

10 A Yes, sir.

11 Q And accurate?

12 A Yes, sir.

13 Q And complete?

14 A Yes, sir.

15 Q And true?

16 A Yes, sir.

17 Q And the report is important because you are not
18 the only person involved in the investigation, right?

19 A No, sir, I'm not.

20 Q Okay. And if somebody else who's involved in
21 the investigation wants to know what you learned they
22 can go look at your report, right?

23 A They can, yes, sir.

24 Q And there is a case agent, and all of the
25 reports and witness statements go to the case agent?

1 A Are you talking about if I was the case agent?

2 Q No. I mean in general that's what happens.

3 There is a case agent who oversees the investigation,
4 all the reports, witness statements go to that person?

5 A Goes to the investigator.

6 Q The investigator?

7 A The investigator.

8 Q Okay.

9 A Yes.

10 Q And so if the lead investigator needs to know
11 what you learned and can't find you, he just looks at
12 your report, right?

13 A He can, yes, sir.

14 Q Okay. And all members of law enforcement work
15 on more than one case at a time, right?

16 A Yes, sir.

17 Q And there is often months or years, in this
18 case, time lapsing between the time you collect the
19 information and the time you're asked to recall it,
20 right?

21 A Right.

22 Q And this occurred almost three years ago, right?

23 A Yes, sir.

24 Q So you write things down in reports so that you
25 can say, well, here's how I know it happened on June

1 16th, I wrote it down in my report, right?

2 A Right.

3 Q Okay. And --

4 MR. BUTLER: May I approach the witness?

5 THE COURT: You may.

6 Q (By Mr. Butler) Ask if you --

7 MR. BUTLER: Mark this for ID.

8 (Whereupon, Defense Exhibit No. 1 is marked for
9 identification.)

10 THE COURT: ID only.

11 Q (By Mr. Butler) Do you recall that when you met
12 with Ms. Joyner, she did not tell you that the suspect
13 held a screwdriver to her neck; is that correct?

14 A Can't say if she did or didn't. I know there
15 was a mention that a screwdriver was used.

16 Q Okay. Showing you Defendant's 1 for ID. Ask if
17 you recognize that as a report with your name on it
18 detailing your involvement in the case?

19 A Actually, if you look at the top name is the
20 person that wrote the report.

21 Q Right.

22 A And my name is to the bottom. I assisted her.

23 Q You assisted?

24 A Right.

25 Q Okay. But do you recall that what you were told

1 was, suspect had a screwdriver in his hand which he
2 dropped on the floor during the struggle, right?

3 A Right.

4 Q Okay. Do you also recall that what she told you
5 was that when he left, he left and there was black
6 colored four-door sedan with an unknown subject in the
7 driver's seat?

8 A No. That's what she said, but she wasn't 100
9 percent sure that was involved with the suspect.

10 Q I got you. I understand. I understand.

11 But in any case nothing about running towards
12 the fence towards the McDonald's; is that right?

13 A That's what she told me.

14 MR. BUTLER: Okay. Beg the Court's indulgence.

15 THE COURT: Uh-hum.

16 Q (By Mr. Butler) And when you get there, another
17 important duty of the first responding officer is to
18 find out if there are any other witnesses who heard
19 anything, right?

20 A Yes, sir..

21 Q Any other witnesses who saw anything?

22 A Yes, sir.

23 Q Correct?

24 A Yes, sir.

25 Q And this is an apartment complex?

1 A Yes, sir, it is.

2 Q Right. And the doors to the apartments open
3 into the outside areas, so there is an outside area?

4 A Are you talking about the opening that leads
5 into a multi --

6 Q Like a courtyard. And there are multiple
7 apartments surrounding the common space?

8 A Right.

9 Q Okay. And there were no other witnesses who
10 said they heard these screams, right?

11 A No one said they heard anything. Not when I was
12 there, no.

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

14 That's all I have, sir. Thank you.

15 THE COURT: Any redirect of the witness?

16 MS. HERRING-LASH: Yes, Your Honor.

17 THE COURT: You may proceed.

18 REDIRECT EXAMINATION

19 BY MS. HERRING-LASH:

20 Q Officer Middleton, did you talk with any of the
21 neighbors of Ms. Joyner that evening?

22 A No, ma'am, I didn't.

23 Q And the report that Mr. Butler was showing you,
24 you didn't actually write that report, did you?

25 A No, ma'am, I didn't.

1 Q And that was because that officer McDonald wrote
2 it?

3 A Yes, ma'am.

4 Q And the way you write a report is you write it
5 when you get back to your office after you?

6 A Completed shift.

7 Q So you write down everything that you can
8 remember?

9 A Yes, ma'am.

10 Q I think you testified for Mr. Butler that she,
11 that Ms. Joyner, did tell you about running through the
12 yard and toward the fence?

13 A Yes, ma'am, she did.

14 Q And you do remember her telling you about a
15 screwdriver?

16 A Yes, ma'am.

17 MS. HERRING-LASH: Those are all the questions I
18 have.

19 MR. BUTLER: May we have one moment?

20 THE COURT: Sure.

21 MR. BUTLER: Just one follow-up.

22 RECROSS-EXAMINATION

23 BY MR. BUTLER:

24 Q You did not submit your own report in this case?

25 A No, sir, I didn't.

1 Q You just reviewed Officer McDonald's report?

2 A Yes, sir.

3 Q Which also has your name on it?

4 A Yes, sir.

5 Q Okay. And you reviewed that so that you could
6 testify today accurately, completely and truthfully,
7 right?

8 A I don't understand.

9 Q Well that's what reports are written for. You
10 review them so that you can remember?

11 A Well when I review a report as a supervisor, I
12 review the report to make sure that anything that
13 happened is put into the report.

14 Q Okay.

15 A And whatever statement was given to that
16 officer, I needed to make sure that it was put in there
17 the way that it was said.

18 Q Okay. And you did that in this case?

19 A Yes, sir. Well, no, sir. Sgt. Harding approved
20 the report.

21 Q Okay. But you reviewed that report prior to
22 testifying today?

23 A Yes, sir, I did.

24 MR. BUTLER: Okay. Thank you.

25 THE COURT: Any further questions from the

1 State?

2 MS. HERRING-LASH: No, Your Honor.

3 THE COURT: Any objection to the witness being
4 excused, from the State?

5 MS. HERRING-LASH: None, Your Honor.

6 THE COURT: From the defense?

7 MR. BUTLER: No, ma'am.

8 THE COURT: Sir, you are excused.

9 THE WITNESS: Thank you.

10 THE COURT: You're welcome.

11 Madam Forelady, ladies and gentlemen, we are
12 going to take advantage of this break in testimony to
13 take our evening recess. We will resume in the morning
14 at 9:30. You will follow the same procedure and return
15 directly to your jury room.

16 If you would leave your notepads in your seats,
17 we will safeguard them during the evening recess. And
18 be assured that no one will invade your privacy by
19 looking or seeing your notes. They will be kept under
20 lock with the Clerk of Court's office.

21 During this break, please do not discuss this
22 case among yourselves or with anyone else. Please do
23 not allow yourselves to be exposed to any media
24 coverage. That includes anything that could be on any
25 media outlet; television, newspaper, radio, or

1 Internet.

2 Also do not do any independent research of any
3 type on the Internet involving any issue or matter
4 involved in this case. And if you would also refrain
5 from discussing your jury service on any social
6 networking sites. That includes Facebook, My Space,
7 U-Tube, there are so many, Linked-In, I have lost
8 track.

9 But even the most innocent comment could be so
10 very easily misinterpreted. And in this digital age
11 there's -- it always amazes me when I talk to young
12 students who come to the court, one of the first
13 questions I ask is, how many of you think a text
14 message is erased when you erase it? And how many of
15 you think what you erase on Facebook is gone forever?
16 And they all raise their hands.

17 And I said, well, did you read the small print
18 that says all of your information belongs to Facebook,
19 it doesn't belong to you. And it is archived forever.
20 And then all their faces go.

21 But with this digital age, it's amazing how many
22 people surf the net all day and all night, apparently.
23 And it's amazing how very easily something very
24 innocent could be misinterpreted. So we would ask that
25 you refrain from that as well.

1 When you return to the courthouse in the
2 morning, please do not have any contact with anyone.
3 Again we would not want an innocent conversation to be
4 misinterpreted.

5 You all have been incredibly patient with us
6 today and we appreciate it. We look forward to seeing
7 you in the morning and at that time we will resume the
8 trial. If you would leave your notepads in your seats
9 and again go with the bailiffs and return directly to
10 your jury room in the morning at 9:30. Have a good
11 evening.

12 (Whereupon, the jurors exit the courtroom.).

13 THE COURT: You may be seated.

14 Is there anything we need to take up before we
15 take our evening recess, from the State?

16 MR. FINCH: Nothing from the State, Your Honor.

17 THE COURT: From the defense?

18 MR. BUTLER: No, ma'am.

19 THE COURT: You all have a good evening. See
20 you at 9:30.

21 (Whereupon, the proceedings in this matter
22 before the Court were adjourned for the evening.)

23 * * * * *

1 THE COURT: Is the State ready to proceed?

2 MR. FINCH: Yes.

3 MR. BUTLER: Is the defense ready to proceed?

4 MR. BUTLER: Yes.

5 MS. HERRING-LASH: Your Honor, we do have one
6 issue.

7 THE COURT: Okay.

8 MS. HERRING-LASH: There was one of the jurors
9 yesterday, I think you remember the DSS worker, Ms.
10 Dozier.

11 THE COURT: Uh-hum.

12 MS. HERRING-LASH: Said that she had done a home
13 study of Mr. Graddick, with Mr. Graddick's mother.

14 We inquired of her if she knew anything about
15 the case and she didn't. But she does know Ms.
16 Graddick, and Ms. Graddick is in the courtroom today
17 and is here.

18 THE COURT: Uh-hum. We inquired her regarding
19 that as well.

20 MS. HERRING-LASH: I thought we just asked her
21 if she knew anything about this case.

22 THE COURT: She fully disclosed her relationship
23 in the case. And I cleared her regarding that. She
24 said it did not affect her impartiality.

25 She made full disclosure to what her involvement

1 was in that she had a conversation with his grandmother
2 regarding placement of the child. And that she had
3 disclosed that -- that basically her supervisor had
4 delegated the home study to her.

5 MS. HERRING-LASH: Right.

6 THE COURT: And that her involvement was
7 speaking with the grandmother for the sole purpose of
8 placing the child. And that the grandmother had
9 referenced that the child's father was in jail.

10 It had not given her any details, and she did
11 not inquire as to any details. And that was her -- she
12 made it very clear that that was her limited
13 involvement.

14 MS. HERRING-LASH: Right.

15 THE COURT: Having done many DSS cases, a person
16 performing a home study does not get involved in any
17 congenial relationship with the custodial parent. It's
18 a sterile, objective process accessing where the best
19 placement of child would be.

20 But she indicated she could be impartial.

21 MS. HERRING-LASH: Okay.

22 THE COURT: I don't think there is any basis to
23 excuse her as a juror.

24 Is there anything further we need to deal with
25 prior to bringing in the jury, from the State?

1. MR. FINCH: No, Your Honor.

2. THE COURT: From the defense?

3. MR. BUTLER: No, ma'am.

4. THE COURT: Please bring in the jury.

5. (Whereupon, the jurors enter the courtroom.)

6. THE COURT: You may be seated.

7. Madam Forelady, ladies and gentlemen, I hope you
8. had a pleasant evening recess. We will now resume with
9. trial testimony.

10. State may proceed.

11. MS. HERRING-LASH: Fulvia Kandie Dunham.

12. MS. FULVIA KANDIE DUNHAM,
13. after having first been sworn to state the truth, the
14. whole truth, and nothing but the truth, testified on
15. her oath as follows:

16. THE COURT: You may proceed.

17. DIRECT EXAMINATION

18. BY MS. HERRING-LASH:

19. Q Ms. Dunham, where did you live back in June of
20. 2008?

21. A [REDACTED]

22. Q Do you know what apartment number?

23. A [REDACTED]

24. Q And who did you live with there?

25. A My best friend Tori Baskins, me and my children.

1 and her child.

2 Q And were you in a relationship with Mr. Graddick
3 at that time?

4 A Yes.

5 Q Was he your boyfriend?

6 A Yes.

7 Q And did he occasionally stay there with you?

8 A Yes.

9 Q Do you remember if he was there on Sunday, the
10 15th, Father's Day?

11 A Yes, he was there.

12 Q Do you remember if he spent the night or not?

13 A Not to my recollection.

14 Q And did Mr. Graddick have a watch?

15 A He had one.

16 Q And do you remember if the face was silver or
17 gold, or do you remember?

18 A No.

19 Q It had a face that was gold or silver?

20 A I mean that's most watches are gold or silver.

21 Q Then you don't remember?

22 A I can't recall whether it was gold or silver.

23 Q Now at some point on -- well let me ask you
24 this. Did you know the lady who lived in Apartment

25 

1 A No.

2 Q Had you ever met her?

3 A No. Just one day when the police was there. I
4 didn't formally meet her, but.

5 Q When the police were there?

6 A Yes.

7 Q Let me ask you about the day the police were
8 there. Before arriving home when the police were
9 there, where had you been?

10 A I went to Subway that day.

11 Q Was Mr. Graddick with you at Subway?

12 A Yes. We both went.

13 Q And when you went back home, did he go with you?

14 A No. I -- when the police encountered me, I was
15 halfway to [REDACTED] and I was by myself.

16 Q And did the police talk to you?

17 A Yes.

18 Q Did they later do a search warrant?

19 A Yes.

20 Q Did you see Mr. Graddick again at that
21 apartment?

22 A No.

23 Q Did he ever come back to that apartment after
24 that day?

25 A No because we got evicted.

1 Q And have you seen him since then?

2 A When he came to Charleston County.

3 Q And that was in what year?

4 A Last year, year before.

5 Q 2009 or '10?

6 A I think it was '9.

7 MS. HERRING-LASH: Those are all the questions I
8 have. Thank you.

9 THE COURT: Any questions for the witness?

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

11 CROSS-EXAMINATION

12 BY MR. BUTLER:

13 Q Good morning, Ms. Dunham. I just have a few
14 questions.

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

16 Q (By Mr. Butler) Showing you State's 3, do you
17 see that photograph of a screwdriver?

18 A Uh-hum.

19 Q You don't recognize that screwdriver, do you?

20 A No.

21 Q And Joseph was staying with you sometimes during
22 this time period?

23 A Yes; sometimes.

24 Q In June of 2008?

25 A Yes.

1 Q Okay. And you all have children together?

2 A Yes.

3 Q How many?

4 A We have one biologically, but he took in my
5 daughter as his own.

6 Q Okay. So he was helping you raise a daughter
7 that was not his biological daughter, and then you all
8 had a son together?

9 A Yes.

10 Q Okay. And how old were they at the time?

11 A They will be 6 and 7 this year. So it's like
12 two, three years back.

13 Q Okay. And what's your little girl's name?

14 A Kasiah.

15 Q And she thought of Mr. Graddick as her father?

16 A Yes.

17 Q And the watch that you say you recall him
18 having, the day at the Subway, he didn't have a watch
19 on that day, did he?

20 A Joseph usually puts the watch on like if we are
21 going out somewhere, like we gets fully dressed. But
22 as far as Subway, we were just going to subway so he
23 wouldn't have put it on.

24 Q Okay.

25 A But as far as like me knowing whether he had it

1 on that day, I don't know.

2 Q And you testified that after the day at the
3 subway you didn't see him again until he was arrested;
4 is that right?

5 A Right.

6 Q Do you recall seeing and being with Jarod at his
7 uncle's house after the subway incident?

8 A You know what, I did.

9 Q You did?

10 A I did see Joseph once. I really did. I totally
11 forgot about that because it was short and.

12 Q And so that was after the incident at subway
13 where the police came and the police -- and they spoke
14 to you at your apartment?

15 A Yes.

16 Q And after that you saw Joseph at his uncle's
17 house?

18 A Yes. On Dorchester Road.

19 Q On Dorchester Road. Okay, good.

20 And the evening of Father's Day, do you recall
21 leaving a note on your door, because you were upset at
22 Joseph, telling him not to come home?

23 A Uh-hum.

24 Q And you did?

25 A Uh-hum.

1 Q And you were upset with him because you thought
2 he was messing around with someone else?

3 A I know I told him in that letter -- I don't
4 recall what I said. I know it's a curse words. And I
5 told him -- I know it was because Jarod used to cheat
6 on me a lot.

7 Q And you were upset with him for messing around
8 with other girls so you left a note on the door saying,
9 don't come home tonight?

10 A I did leave a note on the door telling him don't
11 come back.

12 Q And he couldn't get in?

13 A Well he didn't have a key there.

14 Q Okay.

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

16 THE COURT: Uh-hum.

17 MR. BUTLER: That's all I have. Thank you,
18 ma'am.

19 THE COURT: Any redirect?

20 MS. HERRING-LASH: Yes, Your Honor.

21 THE COURT: You may proceed.

22 REDIRECT EXAMINATION

23 BY MS. HERRING-LASH:

24 Q Ms. Dunham, the day at the Subway, do know for
25 sure whether or not he had on the watch?

1 A I don't know for certain. But I do know like he
2 would get fully dressed as in putting the watch on,
3 putting the earring in, if we were going somewhere like
4 out.

5 Q Like at night?

6 A Or, you know, if we were going somewhere, if we
7 were taking the kids somewhere, things like that.

8 Q And he never came back to that apartment that
9 day?

10 A No. He never came back to that apartment.

11 Q And you only saw him one other time and that was
12 at his uncle's house on Dorchester Road?

13 A Yes. I totally forget about that, yes.

14 Q And when was that?

15 A I don't know the date. I don't know what day. I
16 know it was after the incident.

17 Q And so did he see the children?

18 A That day, no, I did not bring the children with
19 me.

20 Q So he never saw them. Has he seen them since
21 June, 2008?

22 A Yes.

23 Q Where?

24 A In Charleston County.

25 Q What do you mean Charleston County?

1 A At the jailhouse.

2 Q And, but he never saw them at an apartment? He
3 never came back?

4 A No.

5 Q Did you expect that he was leaving that day and
6 never coming back?

7 A No.

8 Q And you said he cheated on you with lots of
9 girls?

10 A Yes.

11 MS. HERRING-LASH: That's all I have.

12 THE COURT: Any objection to the witness being
13 excused, from the State?

14 MS. HERRING-LASH: No, Your Honor.

15 THE COURT: From the defense?

16 MR. BUTLER: No, ma'am.

17 THE COURT: Ma'am, you are excused.

18 You may call your next witness.

19 MR. FINCH: Sgt. Al Hallman.

20 MR. AL HALLMAN,

21 after having first been sworn to state the truth, the
22 whole truth, and nothing but the truth, testified on
23 his oath as follows:

24 THE COURT: You may proceed.

25 MR. FINCH: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 DIRECT EXAMINATION

3 BY MR. FINCH:

4 Q Good morning, Officer Hallman.

5 A Good morning.

6 Q If you would, tell the Court where it is that
7 you're employed?

8 A I'm currently employed with the City of North
9 Charleston Police Department.

10 Q And how long have you been with North
11 Charleston?

12 A Coming up on 24 years.

13 Q And what is your position with North Charleston?

14 A I am currently a road supervisor.

15 Q In 2008, was that your position?

16 A No. in 2008 I was the forensics services unit
17 supervisor.

18 Q And as the forensics unit supervisor, what were
19 the duties and responsibilities you had at that time?

20 A To oversee the processing of crime scenes, to
21 collect evidence and process evidence. And basically
22 oversee the daily functions of the unit.

23 Q And do you also respond to calls?

24 A Yes, sir, I do.

25 Q Did you respond to a call on June 16, 2008 on

1

2 A Yes, I did.

3 Q And what was your role in the investigation on
4 that call?5 A I was called out to the scene in reference to a
6 possible sexual assault. And it was approximately 6:00
7 in the morning that I got called out.8 Upon my arrival, I was advised that the suspect
9 had entered through a kitchen window into the residence
10 and had sexually assaulted the victim while armed with
11 a screwdriver.

12 Q And what did you do after you arrived?

13 A I surveyed the scene. I located some potential
14 items of evidence in the living room area.
15 There was a pair of shorts and a shirt, I believe it
16 was on the floor, along with a black handled
17 screwdriver. Those items were photographed for
18 documentation.19 I also photographed the entry point, which was
20 the kitchen window I believe. The screen had been
21 taken off the window, photos were taken of that.22 I was advised by the victim that the suspect had
23 worn socks on his hands, but I processed the screen
24 anyway for fingerprints. No latent fingerprints were
25 developed from that.

1 After photographing, I collected the clothing
2 items and the screwdriver as evidence. I swabbed the
3 screwdriver for touch DNA, and secured the swabs as
4 evidence. And then I examined the area in the living
5 room, the carpet area in the living room, for possible
6 body fluids using an alternate light source.

7 Q And show you what has been marked as State's
8 Exhibits 3, 11, 12 and 13.

9 Can you identify those photographs?

10 A State's Exhibit 3 is a photograph of the black
11 handled screwdriver as it was found when I arrived on
12 the scene.

13 State's Exhibit 11 is a photograph of the screen
14 that had been removed from the window.

15 State's Exhibit 12 is a photograph of the air
16 conditioning unit underneath the window which was the
17 entry point. And it shows some mud that was on the top
18 of the air conditioner that appeared to be fresh and
19 kind of moist.

20 And State's Exhibit 13 is an interior photograph
21 of the window at the entry point.

22 MR. FINCH: Your Honor, at this time, State
23 moves for the admission of State's 3, 11, 12 and 13
24 into evidence

25 THE COURT: Any objection?

1 MR. BUTLER: No objection.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit Nos. 3, 11, 12 and
5 13 are admitted into evidence.)

6 Q (By Mr. Finch) When you take photographs of the
7 scene, how does that process work?

8 A Well when I arrive on a scene, the first thing
9 we do, as a forensic investigator, is survey the scene
10 to locate potential items of evidence or things out of
11 the norm.

12 Once these areas or items are located, we
13 photograph them as we find them before touching
14 anything to document the condition and the location
15 where they were found and the condition that they were
16 in when located.

17 We do that to document the scene as it is upon
18 our arrival prior to any collection and any processing
19 of any sort.

20 Q Let me show you what has been marked as State's
21 Exhibit 1. Take a look at the screen behind you.

22 Is that the scene as you found it when you
23 arrived?

24 A Yes, sir.

25 Q And did you also dust for fingerprints?

1 You said you dusted for some on the screen, did
2 you dust any other areas of the house?

3 A No. Once it was apparent from the victim that
4 the suspect had socks on his hands, no further
5 processing was done for fingerprints.

6 Q So just to be clear, did you dust the back door
7 handle?

8 A Yes.

9 Q Okay. How about the upstairs bathroom door?

10 A No.

11 Q Was there a reason?

12 A There was. According to the victim, the suspect
13 never took the socks off his hands and therefore
14 there's no way that any fingerprints could be left and
15 no fingerprinting processing was done from that point
16 on.

17 Q So were any fingerprints recovered from that
18 scene?

19 A No, sir.

20 Q And you took swabs from certain items?

21 A I swabbed the screwdriver handle, right here,
22 for possible touch DNA or epithelial DNA.

23 Q And carpet fibers?

24 A Carpet fibers. When I examined the carpet using
25 the alternate light source, there were a couple of

1 areas that fluoresced. And an alternate light source
2 is used basically in a darkened room to locate or
3 identify possible body fluids.

4 But body fluids actually glow or fluoresce under
5 this alternate light source. I located several spots
6 in the carpet that did fluoresce indicating possible
7 body fluids. And at that point I cut some carpet
8 fibers from those areas and secured those as evidence
9 for DNA analysis.

10 Q What were all the items you took into evidence
11 from that scene that day?

12 A I took the screwdriver, the two articles of
13 clothing here, the carpet fibers, and I believe that
14 was it. If I can refer to my report?

15 Q Yes.

16 A And the swabs from the screwdriver.

17 Q When you said you got no fingerprints from that
18 scene, do you mean no fingerprints whatsoever?

19 A None whatsoever.

20 Q So none from the resident on the back door?

21 A No. There were no fingerprints whatsoever.

22 Q Is that odd?

23 A No.

24 Q Why is that?

25 A There are numerous factors that could lead one

1 not to leave a fingerprint. And the main factor in
2 this case was the suspect had, according to the victim,
3 had socks on his hands.

4 As far as the exterior handle of the back door,
5 it's exposed to heat and weather elements, that can
6 diminish a fingerprint rapidly. A back door is not a
7 commonly used door. Normally the front door is
8 commonly used.

9 And there just were no indications of smudges or
10 anything or any fingerprints whatsoever when those
11 areas were processed.

12 Q And did you ever speak to the victim?

13 A I can't recall if I spoke to her or not. The
14 initial information that was provided to me at the
15 scene from her was that the suspect had socks on his
16 hands.

17 Q You got that second- or third-hand?

18 A I believe it was second- or third-hand, yes,
19 sir.

20 Q Through another officer?

21 A Yes, sir.

22 Q Okay.

23 MR. FINCH: Beg the Court's indulgence.

24 THE COURT: Uh-hum.

25 Q (By Mr. Finch) And just to wrap up. No

1 fingerprints anywhere?

2 A No fingerprints anywhere.

3 MR. FINCH: No further questions at this time.

4 Please answer any questions defense may have.

5 THE COURT: Any questions for the witness?

6 CROSS-EXAMINATION

7 BY MR. BUTLER:

8 Q Good morning.

9 A Good morning.

10 Q Sgt. Hallman?

11 A Yes, sir.

12 Q When we are talking about -- what is your
13 specific title?

14 A Sergeant.

15 Q Okay.

16 A I don't understand.

17 Q Your area of expertise, you're a crime scene
18 investigator?

19 A When I was in crime scene I was a latent print
20 examiner expert. I have been certified on that
21 numerous times. Crime scene reconstruction, shooting
22 incident reconstruction.

23 Q Your specialty is physical evidence?

24 A Correct.

25 Q All right. And that is an important part of

1 forensics?

2 A Correct.

3 Q An important part of law enforcement?

4 A Yes.

5 Q Right. And in general, physical evidence is
6 something different than testimonial evidence, right?

7 A That's correct, yes.

8 Q Okay. There are things that witnesses say,
9 right, statements?

10 A Correct.

11 Q Right. And then there is physical evidence,
12 right? The crime scene itself is physical evidence?

13 A That's correct.

14 Q And you document that physical evidence in
15 photographs, right? Sometimes you might make drawings
16 and use maps, that's all physical evidence?

17 A That's correct.

18 Q Right. The items that you collected at the
19 crime scene, that's physical evidence?

20 A Yes.

21 Q Fingerprints is physical evidence?

22 A Yes.

23 Q Body fluids that can lead to DNA is physical
24 evidence, right? And the reason that there is this
25 specialization in law enforcement concerning itself

1 with physical evidence is that sometimes witnesses can
2 be mistaken?

3 A That's correct.

4 Q Right. Sometimes witnesses can be mistaken or
5 sometimes they can purposely not tell the truth?

6 A That's correct.

7 Q In other words, they lie sometimes?

8 A Yes.

9 Q Okay. And sometimes people's just memories are
10 faulty, right?

11 So the specialization in physical evidence, the
12 collection of and documenting physical evidence, is
13 that because it can either corroborate what someone
14 said, meaning support it, show what they said was true,
15 right?

16 A Right.

17 Q Or it could contradict or disprove what they
18 said?

19 A Correct.

20 Q So instead of just relying on what people say,
21 we have people like you, right?

22 A Right.

23 Q And you are thorough in what you do, right?

24 A Yes.

25 Q And detailed, meticulous, careful?

1 A Yes.

2 Q Because this is very important, vital
3 information?

4 A Correct.

5 Q Physical evidence. Okay.

6 And with respect to, are you familiar with this
7 term, preserving the integrity of the crime scene?

8 A Yes, I am.

9 Q And that means making sure that you don't
10 disturb or tamper, move anything before you document,
11 for example, by taking photographs?

12 A Correct.

13 Q Right. And that's because you want to be able
14 to preserve how it was when you got there?

15 A We want to be able to present the scene as it
16 was upon our arrival, correct.

17 Q Even better way of saying it, thank you.

18 So you would never, for example, in State's 1
19 that is behind you there. And this is -- preserving
20 the integrity of a crime scene, that is something that
21 all members of law enforcement know, right?

22 A Yes.

23 Q Okay. You don't go in there and start moving
24 things around?

25 A No.

1 Q And you certainly don't tell people to place
2 certain items of physical evidence in a place that they
3 were not before they got there?

4 A Absolutely not.

5 Q Okay. So in State's 1, that gray tank-top would
6 have been right there when law enforcement got there,
7 right?

8 A When I got there.

9 Q Okay. And certainly nobody in your department
10 would have said to anyone else or witness or otherwise,
11 please put that shirt there?

12 A I can't testify to that.

13 Q Well it wouldn't be common practice, would it?

14 A Absolutely not.

15 Q And that's how it was and where it was when you
16 found it?

17 A Yes, sir.

18 Q State's 12. This exterior HVAC unit?

19 A Yes.

20 Q Where you've documented the presence of some
21 loose dirt, right?

22 A Yes.

23 Q And that's just below the exterior window.
24 Is it just below that but on the outside?

25 A Yes.

1 Q Okay. And there is -- is there no photograph of
2 that same window from the outside? Do you know if you
3 took one?

4 A I believe I did. I believe there was a
5 photograph from a distance.

6 Q I thought there was too. But in any case, the
7 window is above that HVAC unit?

8 A Yes. Straight above.

9 Q So certainly if you saw dirt, loose dirt that
10 you thought was fresh on the HVAC unit, you would have
11 looked to see if on the inside of the window sill there
12 was dirt, right?

13 A Yes.

14 Q And back to State's 13, please.

15 And you would have looked to see if there was
16 loose and fresh dirt on the inside of this window sill,
17 certainly, you would have done that, right?

18 A Yes.

19 Q And you didn't find any?

20 A No, I did not.

21 Q Because if you did you would have documented
22 that?

23 A Absolutely.

24 Q And if these blinds had been disturbed or
25 damaged or in anyway consistent with somebody coming

1 through them in the middle of the night, you would have
2 documented that?

3 A If there was any irregularity, yes, it would
4 have been documented.

5 Q Any irregularity, I like that word too. There
6 was none, correct?

7 A No.

8 Q And if there had been any loose dirt or mud or a
9 shoe print on this tile floor, you would have noted
10 that?

11 A Absolutely.

12 Q Or any irregularity on this table, you would
13 have noted that?

14 A That's correct.

15 Q And there was none?

16 A No, sir.

17 Q If there had been loose dirt or shoe prints in
18 the deep shag carpet, you would have noted that?

19 A Yes, sir.

20 Q And there was none?

21 A No.

22 Q I want to talk a little bit about fingerprints
23 as one of your areas of specialization?

24 A Yes, sir.

25 Q You processed the exterior screen for

1 fingerprints, despite the fact that apparently the
2 information you got was that the suspect wore socks the
3 entire time?

4 A Correct.

5 Q You've processed scenes where suspects have worn
6 gloves, correct?

7 A Yes.

8 Q And sometimes you get, I don't know if this is
9 the right term so correct me, glove prints?

10 A There have been cases where we have gotten glove
11 impressions, yes.

12 Q Impressions, better word. In other words even
13 if somebody has worn gloves, you can, in processing the
14 scene, show where they touched the area with gloves?

15 A Sometimes.

16 Q Sometimes.

17 A Depending on if there is a substrate on the
18 glove itself, such as an oil or something to that
19 effect, which would actually leave an impression.

20 Q Okay. A textured material can leave an
21 impression?

22 A It can, yes.

23 Q Okay. If a glove has a woven pattern in it,
24 that can leave an impression on a surface that you can
25 pick up?

1 A Yes, it can.

2 Q Would it stand to reason that socks could do the
3 same thing?

4 A No.

5 Q It would not. Even though they are textured and

6 --

7 A Socks are made of a cloth. The cloth, the
8 substrate that I referred to a minute ago, an oil or
9 sweat or water or something like that, the cloth tends
10 to suck that up and absorb it.

11 And I have never gotten a latent impression or
12 smear or anything from someone touching something with
13 cloth or a cloth item between their hand and the
14 surface that they touch.

15 Q Okay. Then I must have misunderstood. I
16 thought it was the actual pattern, fabric itself that
17 could leave the impression. But you are saying it is
18 still the bodily secretions that leave the impression?

19 A That is correct.

20 Q All right. Well thank you for clearing that up.
21 So one possibility is this is a metal screen
22 that clamps in?

23 A Yes.

24 Q To an exterior bracket? Okay.

25 So would that seem to be to you an easy thing to

1 remove with socks on your hands, and then to open and
2 push up the window?

3 A I wouldn't know. I've never tried to do that.

4 Q I can't think of any reason why you would, sir.

5 And another reason why you might not get prints
6 is that no one touched the window?

7 A That's always a possibility.

8 Q Okay. One reason is someone was wearing socks
9 or gloves, but another reason could be that it wasn't
10 touched by the suspect?

11 A Yes, sir, that is one reason.

12 Q Okay. And did you process the window itself for
13 prints?

14 A Yes.

15 Q Okay. None?

16 A Nothing.

17 Q Processed the glass itself?

18 A Yes, the glass, the window frame on the exterior
19 side, the screen, the metal edge around the screen.
20 There was not even so much as a smear.

21 Q And the pane itself from wherever area you have
22 to push up?

23 A Yes.

24 Q And nothing?

25 A Absolutely nothing.

1 Q And of course that's also perfectly consistent
2 with someone not having opened it, correct?

3 A That is consistent with that, however it's not
4 definitive.

5 Q I understand that. Few things are?

6 A Very few things are.

7 Q It's all subject to different possible
8 explanations?

9 A Yes, sir.

10 Q And even though you were told that the suspect
11 wore socks, you still processed that part of the scene?

12 A No. I had began processing that when I was
13 advised of that.

14 Q When you were advice of that?

15 A Yes.

16 Q Okay. But you also processed the -- only the
17 exterior handle of the back door?

18 A Yes.

19 Q Okay. Was that also before you were told?

20 A That was before I was received the information
21 that the suspect had socks on his hands.

22 Q The entire time that he was in the residence?
23 That's what you were told?

24 A No. That's not what I was told. I was simply
25 told that the suspect had socks on his hands.

1 Q Okay. Well had you been told that the suspect
2 had on socks but only part of the time, then you would
3 have probably processed more; is that right?

4 A Absolutely.

5 Q Because your explanation for why you might not
6 expect to get prints on the exterior back door that
7 typically the back door is not the primary way of
8 entering and exiting a residence?

9 A That's correct.

10 Q And also because it's exposed to the elements
11 like heat and moisture and the weather?

12 A That's correct.

13 Q But the same couldn't be said for an inside door
14 handle of the exterior door, right?

15 A That's correct.

16 Q And if a person had, without gloves, exited
17 there, that would be a place for you to check for
18 fingerprints?

19 A Absolutely.

20 Q Unless of course he unlocked it and opened it
21 and pushed it open -- well, no, exterior doors usually
22 pull open, do they not? When there is no uniform --

23 A They do either way.

24 Q Unless somebody unlocked it, opened it with a
25 sock on their hand, this is an area you would likely

1 get fingerprints?

2 A It's an area I would likely process, yes.

3 Q Okay. You didn't process the screwdriver for
4 fingerprints?

5 A No. I processed it for epithelial DNA.

6 Q Epithelial is just a fancy word for dead skin
7 cells?

8 A Skin cells, DNA, yes, sir. Or commonly referred
9 to as touch DNA.

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

11 THE COURT: Uh-hum.

12 Q (By Mr. Butler) Sergeant, do you have your
13 report with you?

14 A Yes, sir, I do.

15 Q May I review it, please?

16 A Certainly.

17 Q Thank you, sir.

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

19 THE COURT: Yes, sir.

20 Q (By Mr. Butler) Lastly, Sergeant, one
21 explanation for the lack of findings in general,
22 physical findings, is that someone took measures to
23 prevent that information from being collected, somebody
24 covered it up or took some other step to make sure they
25 didn't leave evidence. That's one explanation?

1 A That's one of many, yes.

2 Q Okay. The other explanation could be is it just
3 didn't happen the way you were told, right?

4 A That's another explanation, yes. There are many
5 reasons why fingerprint evidence in particular may or
6 may not be found at the scene. The possibilities are
7 endless.

8 And it doesn't necessarily mean that a suspect
9 was or was not at that scene -- subject, excuse me. An
10 example of that would be simply, and I like to use
11 this, is if you brought a crime scene investigator in
12 here today and had them process this witness stand,
13 they're not going to get my fingerprints because by
14 design I have not touched anything over here. However,
15 that doesn't mean I'm not here.

16 Q Yes, sir, I got it. Thank you very much.

17 A Certainly.

18 THE COURT: Any redirect?

19 MR. FINCH: Yes, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. FINCH:

22 Q Sgt. Hallman, Mr. Butler spoke to you about the
23 collection of physical evidence.

24 (Whereupon, State's Exhibit No. 20 is marked for
25 identification.)

1 Q (By Mr. Finch) Showing you what has been marked
2 for identification purposes as State's Exhibit No. 20.
3 Can you identify that item?

4 A Yes. This is the black handled screwdriver that
5 I collected at the scene?

6 Q And is it in the same condition as when you
7 picked it up?

8 A Well the security seal has been broken, but it
9 has my initials where I had sealed it initially, yes.

10 MR. FINCH: Your Honor, at this time State would
11 move for admission of State's 20 into evidence.

12 THE COURT: Any objection?

13 MR. BUTLER: No.

14 THE COURT: Marked and admitted without
15 objection.

16 (Whereupon, State's Exhibit No. 20 is admitted
17 into evidence.)

18 Q (By Mr. Finch) Sgt. Hallman, you were told when
19 you were processing the scene, from my understanding,
20 that the defendant wore socks on his hands?

21 A Correct.

22 Q And you were in the middle of processing the
23 exterior portion of the apartment at that time?

24 A Correct, yes.

25 Q And when you were received that information,

1 from my understanding, you sort of called off the rest
2 --

3 MR. BUTLER: Objection to the leading.

4 THE COURT: Sustained, leading.

5 Q (By Mr. Finch) What did you do when you learned
6 about the socks on the hand?

7 A I made a determination that based on the fact
8 that, A, nothing, not even a smudge was recovered from
9 the exterior of the screen or the window, and B, that
10 the defendant was noted as wearing socks on his hands,
11 that no latent print evidence would be recovered, and
12 therefore no further latent print processing was done.

13 Q So once you understood, from your understanding,
14 that socks were on the hands, would you deem that
15 futile?

16 A It was -- that information compared to the lack
17 of evidence gotten from the exterior and the entry
18 point, yes.

19 Q Okay. And to be clear, you didn't find
20 anybody's fingerprints, not even the resident?

21 A I didn't find so much as a smear.

22 Q But somebody at some point had touched that
23 screen because it at least had to be put in?

24 A That's correct.

25 Q And it was out now. And the window presumably

1 had been touched at some point in time, but there were
2 no fingerprints?

3 A There was nothing.

4 MR. FINCH: No further questions, Your Honor.

5 MR. BUTLER: Just briefly.

6 RECROSS-EXAMINATION

7 BY MR. BUTLER:

8 Q In your meticulous collection of evidence at
9 this crime scene, you found no socks?

10 A No, sir.

11 Q Okay. So when we talk about the role of
12 physical evidence as corroborating what people say, the
13 physical evidence that corroborates the presence of
14 socks, the use of socks at this crime scene would be
15 none, correct?

16 A That is correct.

17 THE COURT: Anything further from the State?

18 MR. FINCH: Briefly, Your Honor.

19 MR. BUTLER: Judge, I'm sorry, I have to -- may
20 we approach?

21 THE COURT: You have no basis to object. The
22 State gets the last word. There really is no provision
23 in the rules for you asking another question but I gave
24 you some latitude.

25 They have the burden of proof. Overruled.

1 MR. BUTLER: Note my objection.

2 THE COURT: It is noted and overruled.

3 You may proceed.

4 REDIRECT EXAMINATION

5 BY MR. FINCH:

6 Q Do you have any independent knowledge of where
7 those socks could have been?

8 A No, sir, I do not.

9 Q Did any -- in your report, or any of the reports
10 you reviewed for this case, did anybody process the
11 suspect from that night?

12 A Not to my knowledge.

13 Q Would it then have been possible that the
14 defendant could have left with the socks on his person?

15 A Absolutely.

16 MR. FINCH: No further questions, Your Honor.

17 THE COURT: Any objection to the witness being
18 excused, from the State?

19 MR. FINCH: No, ma'am.

20 MR. BUTLER: No, ma'am.

21 THE COURT: Sir, you are excused.

22 You may call your next witness.

23 MR. FINCH: Officer Robert (sic) Van Tine.

24 MR. GEORGE VAN TINE,

25 after having been duly sworn to state the truth, the

1 whole truth, and nothing but the truth, testified on
2 his oath as follows:

3 THE COURT: You may proceed:

4 MR. FINCH: Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MR. FINCH:

7 Q Officer Van Tine, will you please tell the Court
8 where it is your employed?

9 A North Charleston Police Department.

10 Q And how long have you been with North
11 Charleston?

12 A Eight years.

13 Q What is your position there with North
14 Charleston?

15 A Well basically a corporal position, Master
16 Patrol Officer the official title is.

17 Q What are your duties and responsibilities as a
18 Master Patrol Officer and corporal?

19 A Well this right now, well right now my
20 responsibilities are -- at the time of this case I was
21 a patrol officer PFC, and I responded to calls.
22 Anything that you would call the police for, I
23 responded to.

24 Q And did you have a certain area of town that you
25 would patrol?

1 A I did, it was the south precinct. It's like a
2 -- it goes from Durant on down to Meeting and
3 Pittsburgh, up to Dorchester and Leeds.

4 Q And that was your position on June, 2008?

5 A Yes, patrol officer.

6 Q And did you respond to a call on June 19th of
7 2008 at the Subway?

8 A I did.

9 Q What was the nature of that call?

10 A The nature of the call was a victim that advised
11 that the suspect that possibly had raped her was inside
12 the Subway. And she gave his description and that he
13 was in the Subway eating at that time.

14 Q And what did you with that case?

15 A Myself and another officer, Officer Peel, we
16 went inside the Subway. And she gave us the
17 description, and we looked for anyone in the Subway
18 fitting that description.

19 We checked the bathrooms, we checked just about
20 everywhere in the Subway and we could not locate.

21 Q And what did you do after that?

22 A Well I went back to the victim and told her that
23 we couldn't locate him.

24 Q Do you recall where she was?

25 A It was going to be in the parking lot of 2000

1 McMillan. She was probably, I don't remember the
2 vehicle she was driving, I think she was in a car.

3 Q So you spoke to her at her car in the parking
4 lot?

5 A I believe so. I know it was in the parking lot
6 of the Subway. There is a parking lot at 2000
7 McMillan, there are several other businesses, and then
8 there is a Subway.

9 I think she was in the parking lot. I went back
10 out to her and talked to her.

11 Q Okay. What did you tell her?

12 A I told her we couldn't locate the suspect inside
13 the Subway.

14 Q Did you get any other information?

15 A Yeah, I got -- she saw --

16 MR. BUTLER: Objection, hearsay.

17 THE COURT: Approach.

18 (Whereupon, the following discussion was held at
19 the bench.)

20 The COURT: Her statement is made in the course
21 of the investigation. There is an exception pursuant
22 to the Supreme Court precedent. But don't go too
23 far.

24 MR. BUTLER: Note my objection to the hearsay
25 and confrontation clause.

1 THE COURT: He is merely indicating the purposes
2 for which they investigated. It's not offered for its
3 truth.

4 MR. BUTLER: I understand. Just preserving my
5 objection.

6 THE COURT: Noted, overruled.

7 (In open court.)

8 THE COURT: You may proceed.

9 Q (By Mr. Finch) What did you do next regarding
10 the investigation and regarding responding to this
11 call?

12 A Well the next thing I did was I went back to --
13 I ended up taking her back to her -- going back to --
14 she basically told me that there was.

15 MR. BUTLER: Hearsay and confrontational
16 objection.

17 THE COURT: You can say what you did as a result
18 of the conversation, sir.

19 A Right. As a result of the conversation she gave
20 me some information that somebody had alerted the
21 suspect, that the suspect was in the subway. This
22 person lived across the -- the apartment across from
23 her. I went with the victim over there.

24 Q (By Mr. Finch) Over to the?

25 A Over to the -- to her apartment. And also to

1 talk to possibly the woman that she stated possibly
2 alerted that the suspect was -- that the suspect was --
3 alerted that we were coming to the Subway.

4 while we were approaching her residence we
5 observed the suspect, the guy fitting the description.
6 He was about maybe 30 yards away from me.

7 Q What did you do at that point?

8 A She yelled, the victim yelled that that's the
9 guy. And I --

10 Q What was her demeanor at that time?

11 A Well she was just screaming, that's him, that's
12 him is what she screamed at me. He saw me and
13 immediately took off running around a couple of
14 apartment buildings.

15 I took off after him on foot. However, when I
16 went around the apartment building, I couldn't see
17 which way he went. So I alerted -- I notified other
18 units to come into the area. We conducted a search,
19 but were unable to locate him.

20 Q And were you saying anything to the suspect
21 while you were chasing him?

22 A No. I never got close enough to -- I just took
23 off running after him. And he vanished around the
24 buildings.

25 Q After you were unable to locate the suspect,

1 what did you do next?

2 A I went to the female that possibly alerted him
3 that we were in the -- when we were going to the
4 subway, there's a -- we got information there was a
5 female that possibly gave him a heads-up that we were
6 coming.

7 So I went to her. And that's the woman who
8 lives across the apartment. I got the -- let me see if
9 I can find the address. I made contact with the female
10 that I'm talking about is Kandie Dunham. She lives at
11 [REDACTED] or at least she lived
12 at that date. I made contact with her and asked her
13 about who the suspect was.

14 Q Were you able to get any information?

15 A At first, not --

16 MR. BUTLER: Objection, hearsay, confrontation.
17 clause.

18 THE COURT: Please repeat the question.

19 Q (By Mr. Finch) Were you able to get any
20 information from --

21 A Yes, I was.

22 Q What was that?

23 A After I --

24 MR. BUTLER: Your Honor, I have an objection.

25 THE COURT: I haven't heard the answer. I don't

1 know whether it was what someone said.

2 Sir, you may answer the question.

3 A She basically, after talking to her for quite a
4 few minutes, she eventually said that his name was
5 Joseph Graddick.

6 THE COURT: It's information gained in the
7 course of an investigation with foundation and basis
8 for the investigation, therefore it comes under the
9 hearsay exception of the rule.

10 MR. BUTLER: Note my objection.

11 THE COURT: And the witness has been available
12 for those purposes. Overruled.

13 MR. BUTLER: Yes, ma'am.

14 Q (By Mr. Finch) What did you do next in the
15 course of your investigation, after getting that
16 information?

17 A Once I obtained that information, I did a
18 supplement to the initial report. The initial report
19 was taken on a previous day.

20 I did a supplement that day. I gave her -- I
21 informed her to go ahead and contact the detectives and
22 that I would list everything that occurred.

23 Q When you say a supplement, you mean a
24 supplemental report?

25 A Yeah. I add my own narrative of basically the

1 events of what I observed on that day and the
2 information I obtained.

3 Q Okay. And let's back up a little bit. You
4 started at the Subway, and then where did you go from
5 there?

6 A The Subway, I went to -- we drove -- we were on
7 our way to [REDACTED], [REDACTED] That's in
8 [REDACTED] which is located behind the -- it's
9 the apartment complex behind the Subway.

10 Q And did you drive there or did you walk?

11 A I drove there. But we parked and then got out
12 to walk up to the apartment.

13 Q And about how far a distance is the walk from
14 wherever it is that you parked to the Apartment [REDACTED]
15 your destination, do you recall?

16 A I don't. I'd estimated is something like 40, 50
17 yards.

18 Q And about how far away was the suspect, now
19 defendant, when you saw him?

20 A I'd have to say either 20 or 30 yards. Not a
21 100 percent, but as we were approaching he was standing
22 there.

23 Q He was standing still?

24 A He was standing near one of the apartment
25 complex. As we were approaching up -- walking on to

1 the grass. I parked to walk on the grass, he was
2 standing in front of the apartment complex.

3 Q Let me show you what has been previously
4 admitted as State's 16. It's a photograph of the area
5 there.

6 A I would say that he was standing about right
7 here on this grass coming out. And I'm approaching
8 from -- I think I parked back here, I'm walking up. So
9 he ran around.

10 Q If you could indicate behind you, on the screen
11 behind you, I want the jury to see.

12 A He was probably standing about right there.

13 Q Kind of across of this walkway?

14 A Yes. And I'm walking up this way. And he ran
15 around the backside of that apartment.

16 Q You can indicate with this pointer which way,
17 you indicated which way he ran.

18 A I'd say he's probably about right here, and then
19 he runs back behind there in that direction.

20 Q And which direction did you follow in?

21 A Same direction. I ran up and around.

22 Q And were there any other officers involved in
23 that foot chase?

24 A No. Not in that initial one, no. It wasn't
25 until I had alerted the dispatch that I was -- that the

1 subject had just run from me. We had other units then
2 came into the area.

3 Q About how long did you chase him for?

4 A Well I lost sight of him after -- I mean it was
5 probably within a minute I lost sight of him.

6 Q And then what did you do? Did you return back
7 to --

8 A No. I continued to walk in this direction and I
9 called for additional units. We tried to set up a
10 perimeter.

11 There's cuts that go through, that leaves [REDACTED]
12 [REDACTED] that go to Rivers Avenue. We tried to
13 get units to cover those and just kind of set up a
14 perimeter. But unfortunately we weren't able to find
15 him that day.

16 Q Let me show you what has been previously marked
17 for ID purposes as State's Exhibit No. 19. Can you
18 identify that?

19 A Yeah, [REDACTED]

20 Q And I'm going to direct your attention up to
21 this area here. Is that the area of the buildings you
22 were referencing?

23 A That is.

24 MR. FINCH: Your Honor, at this time State would
25 move for the admission of State's 19.

1 THE COURT: Any objection?

2 MR. BUTLER: No, ma'am.

3 THE COURT: Marked and admitted without
4 objection.

5 (Whereupon, State's Exhibit No. 19 is admitted
6 into evidence.)

7 Q (By Mr. Finch) If you could use that pointer and
8 indicate, and if you need to reference this beforehand.
9 Just you referenced all those cuts, et cetera.

10 If you could just point with that pointer the
11 direction of travel and all the different
12 possibilities.

13 A Well I mean there is -- there are several. I
14 mean as far as -- there are several different apartment
15 complexes. Once you run around each of these complexes
16 you can -- I mean there are a variety of different
17 directions that you can go.

18 The place is surrounded by -- one side there is
19 chain-link fence, and there is cut that goes through to
20 Verizon village. And the other side, it's just a
21 wooden fence that you can easily hop over.

22 So no matter which way you go, there is an exit
23 out of [REDACTED] I'm not sure exactly which
24 way as far as.

25 Q Okay. But that's the layout of buildings you

1 were looking at?

2 A Yes.

3 Q And so when somebody goes around a corner that's
4 --

5 A They could go in any -- when they go around the
6 building, I mean he could have run in any possible
7 direction. There is just no telling at that point once
8 you lose sight of him.

9 Q So after you lost sight of him and you tried to
10 establish the perimeter, after that, what did you do
11 next?

12 A Well at that point we went back and I tried to
13 make contact with Kandie Dunham, which I did, in order
14 to see if I could obtain his name.

15 Q And then after all that did you discuss anything
16 with the -- you discussed with the victim and then did
17 your supplemental?

18 A Yeah.

19 Q Was there any other involvement in this case?

20 A No, that's it.

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

22 THE COURT: Um-hum.

23 Q (By Mr. Finch) When you spoke with Ms. Dunham,
24 was she cooperative?

25 A No, she was not. Not at first, no.

1 Q And you said not at first, how did your
2 interaction go?

3 A At first she -- when I first made contact with
4 her she was extremely uncooperative. She actually flat
5 out denied knowing the suspect.

6 MR. BUTLER: I have to object to hearsay.

7 THE COURT: Overruled.

8 A She basically said that his --

9 THE COURT: Sustained.

10 Sir, you cannot say what she said. You can say
11 what you did as a result of the conversation.

12 Q (By Mr. Finch) At first she was uncooperative
13 and then eventually you got some information?

14 A Correct.

15 MR. FINCH: No further questions at this time.
16 Please answer any questions the defense may
17 have.

18 THE COURT: Any question for the witness?

19 CROSS-EXAMINATION

20 BY MR. BUTLER:

21 Q Officer, I got confused. At the point that you
22 are at [REDACTED] and you see the person
23 running, is Ms. Joyner with you or not?

24 A She is.

25 Q She is, okay. And you say you were never close

1 enough to give any kind of voice command; is that
2 right?

3 A Well I guess I was close enough to yell. I did
4 -- I mean I could yell to him. I don't recall of
5 yelling to him though.

6 Q Okay, I must have misunderstood. I thought
7 that's what you said on direct.

8 You never made your own independent
9 identification of the person that you were chasing,
10 correct?

11 A No.

12 MR. BUTLER: That's all I have, thank you.

13 THE COURT: Any redirect?

14 MR. FINCH: No, Your Honor.

15 THE COURT: Any objection to the witness being
16 excused, from the State?

17 MR. FINCH: No ma'am.

18 THE COURT: From the defense?

19 MR. BUTLER: No, ma'am.

20 THE COURT: Sir, you are excused.

21 MR. BUTLER: Your Honor, may we approach?

22 THE COURT: You may.

23 (Whereupon, a discussion was held at the bench
24 off the record.)

25 THE COURT: Madam Forelady, ladies and

1 gentlemen, we are going to take advantage of this break
2 in testimony to take a brief restroom break.

3 During the break, please do not discuss the case and
4 please leave your notepads in your seats.

5 It will be about 10 minutes or so.

6 (Whereupon, the jurors exit the courtroom.)

7 (Whereupon, a recess was taken.)

8 THE COURT: Who is your next witness?

9 MR. FINCH: It is Kristy Jovanelly.

10 THE COURT: Is the State ready to proceed?

11 MR. FINCH: We are, Your Honor.

12 THE COURT: Defense ready to proceed?

13 MR. BUTLER: Yes.

14 THE COURT: Bring in the jury.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: Ladies and gentlemen, I hope you
17 enjoyed your break. We will now resume with testimony.

18 The State may call its next witness.

19 MS. HERRING-LASH: State would call Kristy
20 Jovanelly.

21 MS. KRISTY JOVANELLY,
22 after having first been sworn to state the truth, the
23 whole truth and nothing but the truth, testified on her
24 oath as follows:

25 THE COURT: You may proceed.

1 DIRECT EXAMINATION.

2 BY MS. HERRING-LASH:

3 Q Ms. Jovanelly, where do you work?

4 A At [REDACTED] Apartments.

5 Q And what are your duties?

6 A I'm the property manager there.

7 Q And as part of your duties, do you have access
8 to the records of tenants?

9 A Yes, ma'am, I do.

10 Q And are you considered the custodian of those
11 records?

12 A Yes, ma'am.

13 Q And are those records kept in the regular course
14 of your business there?

15 A Yes, ma'am.

16 Q And do you regularly record tenant's account
17 statements?

18 A Yes, ma'am.

19 Q And did a person by the name of LaVanda Joyner
20 live at [REDACTED]

21 A Yes, ma'am, she did.

22 Q When did she move in?

23 A She moved in 5-13-2008.

24 Q And what -- how long was her lease for?

25 A Her lease was for one year. It was supposed to

1 end 5-31-2009.

2 Q And do you know when she moved out?

3 A The move-out date that was reported was
4 7-03-2008.

5 Q And was she refunded some of June's rent also?

6 A It looks like she was refunded her deposit. And
7 she had overpaid, so an amount was refunded back. So
8 it was -- looks like it was a partial of June.

9 Q And what was her reason for her move?

10 MR. BUTLER: I'm sorry, objection. Based on
11 hearsay.

12 THE COURT: Please approach.

13 (Whereupon, the following discussion was held at
14 the bench.)

15 THE COURT: Why didn't you ask the witness this
16 question?

17 MS. HERRING-LASH: The reason for her move is
18 safety concerns.

19 THE COURT: You mean the --

20 MS. HERRING-LASH: I did ask the victim, yeah.
21 But they let her break her --

22 THE COURT: Why wouldn't it be hearsay?

23 MS. HERRING-LASH: The business records.

24 THE COURT: Doesn't exclude it from being
25 hearsay. It's someone's extraneous statement. A

1 business record is a compilation of records. It's not
2 -- it's usually data, not someone's statement. Unless
3 it's an admission against interest that could be used
4 to impeach her.

5 MS. HERRING-LASH: It's just listed as, reason
6 for move, and the reason she got her deposit back was
7 safety concerns.

8 THE COURT: It's still hearsay. It's still an
9 out-of-court statement offered for its truth.

10 (In open court.)

11 THE COURT: Sustained.

12 Q (By Ms. Herring-Lash) So her deposit and her
13 partial June rent was returned to her?

14 A Yes, ma'am.

15 Q And she was allowed to break her lease?

16 A Yes, ma'am.

17 MS. HERRING-LASH: Those are all the questions I
18 have. Thank you.

19 THE COURT: Any questions for the witness?

20 MR. BUTLER: No, ma'am.

21 THE COURT: Any objection to the witness being
22 excused, from the State?

23 MS. HERRING-LASH: No, Your Honor.

24 THE COURT: From the defense?

25 MR. BUTLER: No, ma'am.

1 THE COURT: Ma'am, you are excused.

2 You may proceed.

3 MR. FINCH: State calls Faye LeBoeuf.

4 MS. FAYE LEBOEUF,

5 after having first been duly sworn to state the truth,
6 the whole truth and nothing but the truth, testified on
7 her oath as follows.

8 THE COURT: You may proceed.

9 MR. FINCH: Thank you, Your Honor.

10 THE COURT: You're welcome.

11 DIRECT EXAMINATION

12 BY MR. FINCH:

13 Q Good morning, Ms. LeBoeuf.

14 A Good morning.

15 Q If you would please tell the jury what it is you
16 do for a living?

17 A I'm a certified nurse midwife with the Medical
18 University of South Carolina. And I am also a sexual
19 assault nurse examiner for the Medical University of
20 South Carolina.

21 Q And as a sexual assault nurse examiner, what are
22 the duties of that position?

23 A I was on call for any victim that complained of
24 sexual assault, whether they be male, female or an
25 adolescent.

1 Q And how long have you been a registered nurse?

2 A For about 35 years.

3 Q How long have you been doing sexual assault
4 nurse examinations?

5 A I have been a sexual assault nurse examiner
6 since about 1994. I have been certified by the
7 International Forensic Nurses Association since about
8 1994 too, I think that was.

9 Q So in 2008 you were certified as a sexual
10 assault nurse examiner?

11 A Yes, sir.

12 Q And I think you alluded to it before, but some
13 of your responsibilities were to perform exams for
14 people complaining of sexual assault?

15 A Yes, sir.

16 Q And do you know how many -- well explain to us,
17 explain to the Court, what's the purpose of a forensics
18 exam?

19 A A forensic exam is an exam where evidence is
20 collected and sent to the state law enforcement
21 division for evaluation for the claim of sexual
22 assault.

23 Q And is there an interview portion as well as a
24 physical portion?

25 A Yes, sir, there is.

1 Q Where does the interview portion take place?

2 A It usually would take place in my office because
3 I would type it into the computer.

4 Q And what is the purpose of the interview
5 portion?

6 A The interview portion guides me in where I need
7 to look for evidence for the sexual assault.. It also
8 clarifies medical issues to make sure there are no
9 allergies or medical problems that we needed to know
10 about beforehand.

11 Q And as part of that, someone complaining of a
12 sexual assault, tells you their story?

13 A Yes, they do.

14 Q And tell us about the physical exam. What is
15 entailed in the physical exam?

16 A The physical exam is done in another room, it's
17 an examination room. If there's injuries, we look for
18 the injuries. Most of it is a pelvic exam where the
19 ladies or even the male is put up in stirrups.

20 The area, in the vaginal area or the anal area
21 are both examined. There is a culdoscope which is a
22 camera with a magnifier on it, to look for trauma.
23 Some of the trauma in the vaginal area is a little hard
24 to see with the naked eye, so this make it a little bit
25 bigger and easier to evaluate.

1 Samples are taken of secretions, swabs are taken
2 around the anal area and the vaginal area. And then
3 they are medicated afterwards.

4 Q And all those swabs and the paperwork, what
5 happens to those items?

6 A The state law enforcement division of South
7 Carolina has a box that is set up. They have samples
8 that they want taken. The samples are dried and then
9 put into envelopes. They're sealed. They're -- I sign
10 off that I'm the one that did it.

11 They are then repackaged and put into a locked
12 refrigerator until law enforcement picks them up from
13 me.

14 Q And who has access to that refrigerator?

15 A Myself and the other forensic nurse that worked
16 with me.

17 Q And once a packet like that, or the box is
18 released to SLED, what is the procedure?

19 A Usually someone from law enforcement will come.
20 I will sign off on the back of the box. She will sign
21 off or he will sign off on the back of the box.

22 I also have a logbook where they would sign and
23 I would sign that they picked it up. And then after
24 that I don't know.

25 Q So I want to turn your attention to June 16th,

1 2008. Do you recall that date?

2 A May I review my records?

3 Q Yes.

4 A Yes, I do.

5 Q Do you recall performing an examination of
6 Lavanda Joyner on that date?

7 A Yes, sir, I do.

8 Q And I want to go through some of the paperwork.
9 Let me ask you about that paperwork. Is it filled out
10 -- do you fill out some of the paperwork at the same
11 time you are doing the exam, or is it done later or
12 before?

13 Q Some of it is done during the history portion.
14 And then I come back after the exam is done, the
15 patient has left, and fill out the rest of it.

16 Q And are there some documents that go -- do all
17 the documents go to SLED, or do you keep some records
18 separate, or how do you keep those records?

19 A I usually make them a copy of what I have done
20 and put that into the box so they have the same copy
21 that I have. Sometimes there is another copy. At this
22 point I think our computer was acting up, so they may
23 have gotten their copy also.

24 Q And when you say their copy?

25 A There is a set of forms that SLED has in their

1 box that you can use too.

2 Q And then you have another set on a --

3 A On a disk.

4 Q On the computer?

5 A Yes, sir.

6 Q Okay. And some of that you said is done ahead
7 of time? Well not ahead of time, but some of it is
8 done while you are doing the history, getting a history
9 from the patient?

10 A Right. We ask age and birth date, where they
11 live. And then some other questions like when their
12 last menstrual period was, if they are on birth
13 control, have they been sexually active.

14 There's other questions that we ask, and then we
15 go into the history of the sexual assault.

16 Q Okay. And part of the physical examination, as
17 you said, is to gather evidence or take swabs?

18 A Yes, sir.

19 Q Of areas of interest, the genital areas. And
20 others is to note injury?

21 A Yes, sir.

22 Q And you can refer to your report if you need to.
23 Did you note any injuries to Ms. Joyner?

24 A No, I did not.

25 Q Okay. And what kind of physical exam --

1 describe the physical exam again. You said mostly it's
2 in the genital region?

3 A Yes, sir.

4 Q Okay. Just take us through that. What is the
5 beginning and end of that physical exam in general?

6 A In general. The first part of the exam, when
7 they come in, I give them a shot, an antibiotic to
8 prevent an infection. Because they have to be there
9 for 30 minutes so I can make sure they don't have an
10 allergic reaction.

11 Then I go draw blood, looking for DNA on the
12 lady. And also a toxicology screen for drugs and
13 alcohol.

14 Once that's done then I have them lay down, put
15 their feet up in the stirrups, and then I do a visual
16 examination of the genital area. Then I will swab the
17 outside of the lips. And then I will open the lips up
18 and look there, and also swab there too. Then I
19 will put in a speculum, which is a plastic thing that
20 goes up inside the vagina, you open it up so that you
21 can look and see if there is any trauma in the vaginal
22 area or on the cervix.

23 Once that's in place I take some more swabs; two
24 of them going to SLED, and I also take a swab for
25 myself and I look under the microscope to see if I can

1 see sperm that is moving or not moving. I take the
2 speculum out when I'm done with the swabbing. I then
3 will swab the anal area and then the exam is done.

4 Q So in that you don't -- I didn't hear -- let me
5 ask a question, I'm sorry.

6 Do you also look over the general body for
7 injury?

8 A Yes, sir, I do.

9 Q And if you see injury, you note it?

10 A Yes, I do.

11 Q Okay. You didn't note -- did you note any
12 injury to Ms. Joyner?

13 A No, I did not.

14 Q I'm going to show you a couple of photos that
15 have been previously admitted into evidence.

16 State's No. 6. If you would take a look at
17 that. If you look at that photo, does anything to
18 stand out to you?

19 A She has a bruise just off to the side of her
20 eye.

21 Q Okay. And State's No. 9. Anything about that
22 photo?

23 A She looks like she has a little bruise
24 underneath her eye near her nose.

25 Q Okay. And this is State's No. 8.

1 A It's a scratch on the side of her neck.

2 Q Okay. Now there has been prior testimony from
3 several individuals that those photographs were taken
4 the same day as your exam.

5 MR. BUTLER: Objection. Lack of foundation,
6 it's an improper question.

7 THE COURT: Sustained.

8 Q (By Mr. Finch) Did you notice any of those
9 injuries?

10 A No, I did not.

11 Q So you didn't note them in your report either?

12 A No, I did not.

13 Q Can you think of why you would have done that?

14 A The only thing I can tell you is I either didn't
15 see them, or -- that's the only thing I can think of is
16 I did not see them. It has been three years.

17 I don't usually miss a lot, but apparently I
18 missed it that day.

19 Q If somebody didn't point out certain injuries,
20 is that one reason you could miss something?

21 A If they don't complain of pain in that area,
22 yes, sir.

23 Q Now I want to turn the focus then on to the
24 potential genital injuries. When you are looking for
25 that, you said you used a certain instrument?

1 A Culdoscope.

2 Q Okay. Is it common to find injury?

3 A No, it's not.

4 Q And why is that?

5 A There's different reasons.

6 MR. BUTLER: Objection. Lack of foundation,
7 irrelevant and Rule 702.

8 THE COURT: Please approach.

9 (Whereupon, the following discussion was held at
10 the bench.)

11 THE COURT: You need to qualify her as an expert
12 to have her give an opinion.

13 MR. BUTLER: Also the reference to other cases,
14 what you usually find.

15 THE COURT: If he qualifies her as an expert,
16 it's completely relevant, it's admissible. But he has
17 not laid the appropriate foundation and qualified her
18 to ask her opinions.

19 (In open court.)

20 THE COURT: Proceed.

21 Q (By Mr. Finch) Ms. LeBoeuf, do you have any
22 specialized training regarding your position, or your
23 previous position as a SANE?

24 A I have -- I took a sexual assault nurse examiner
25 course that was 40 hours of classroom training. Plus

1 about 40 hours of hands-on training.

2 Q How long have you been a SANE nurse?

3 A Since 1994.

4 Q And about how many examinations have you
5 performed in that time?

6 A More than 1,000.

7 Q And did you also perform any trainings in that
8 position?

9 A I did trainings for other nurses and residents
10 at the Medical University, yes, sir.

11 Q And how about any continuing education
12 requirements regarding sexual assault nurse
13 examination, or your role as an RN?

14 A Every three years I have to be re-certified by
15 the International Forensic Nurses Association, so there
16 is a 45-hour continuing education that has to be done
17 during that time.

18 Q Have you been qualified as an expert before?

19 A Yes, sir, I have.

20 Q In what fields?

21 A Sexual assault nurse examiner..

22 MR. FINCH: Your Honor, at this time State would
23 offer Ms. LeBoeuf as an expert.

24 THE COURT: Any questions or objections?

25 MR. BUTLER: No, ma'am.

1 THE COURT: So admitted. You may proceed.

2 Q (By Mr. Finch) Ms. LeBoeuf, in your experience
3 as a sexual assault nurse examiner, is it common to
4 find injury to genitals as a result of sexual assault?

5 MR. BUTLER: Objection, relevance.

6 THE COURT: Overruled.

7 Q (By Mr. Finch) You may answer the question.

8 A No, it's not common to find trauma.

9 Q And why is that?

10 A There are multiple reasons. It could be the age
11 of the person that's assaulted. The person could know
12 the person that assaulted them. There could be
13 lubrication there.

14 Sometimes the body goes into the fright/flight
15 where it will protect itself and trauma could happen,
16 but there wouldn't be any evidence of it.

17 Q You can't -- what is the forensic exam designed
18 to tell people? What information is it going to
19 provide?

20 A It can provide evidence that there was a sexual
21 assault, or it can provide evidence that there was no
22 evidence left behind.

23 Q And when you say left behind, what do you mean
24 by that?

25 A Well if a person has changed their clothes,

1 taken a shower, urinated, done anything in that area,
2 they could wipe away evidence.

3 For example, Ms. Joyner had changed her clothes
4 before I saw her. So there's a possibility if there
5 had been any evidence there, it would have gone with
6 those clothes that I didn't see. Or if she urinated
7 and wiped herself, you can wipe away.

8 Q So it would tell us the presence or absence of
9 evidence?

10 A Yes, sir.

11 Q Not necessarily -- would it also be able to tell
12 us whether someone was sexually assaulted versus a
13 different situation?

14 A No.

15 Q And just what evidence is left behind?

16 A Right.

17 Q So --

18 MR. FINCH: No further questions at this time.
19 Please answers any questions the defense may have.

20 THE COURT: Any questions for the witness?

21 MR. BUTLER: Yes, ma'am.

22 THE COURT: You may proceed.

23 MR. BUTLER: May it please the Court.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. BUTLER:

2 Q Before I get started with the substance of this,
3 I want to make one clarification.

4 When you say that there are things that a person
5 can do to wipe away or remove evidence, like changing
6 clothes, washing, using the restroom, you are talking
7 about steps a person can take to unknowingly get rid of
8 bodily fluids?

9 A Yes, sir.

10 Q Right. Not evidence of trauma, right?

11 A Right. Yes, sir.

12 Q Those things won't get rid of bruises, right?

13 A No, sir.

14 Q Lacerations?

15 A No, sir.

16 Q Tears?

17 A No, sir.

18 Q Abrasions?

19 A No, sir.

20 Q Okay. And you found none of that in your
21 physical exam of Ms. Joyner's entire body, right?

22 A Yes, sir.

23 Q And/or in her vaginal area?

24 A Yes, sir.

25 Q I want to talk first about the interview portion

1 of the exam. Like any good medical professional you
2 get a history of the patient, right?

3 A Yes, sir.

4 Q What happened?

5 A Uh-hum.

6 Q And in this case Ms. Joyner made no mention to
7 you about a screwdriver or other sharp object or knife
8 being held to her throat, did she?

9 A No. She just said that he had a screwdriver.

10 Q As to the physical examination, you've got your
11 report in front of you, ma'am?

12 A Yes, sir.

13 Q And on Page 4, this is an examination that you,
14 using just your eyes, the entire body of the patient,
15 right?

16 A Yes, sir.

17 Q Head to toe, right?

18 A Yes, sir.

19 Q Front and back?

20 A Yes, sir.

21 Q Side to side?

22 A Yes, sir.

23 Q Okay. And in your drawing you've got an
24 anatomical drawing of an unclothed woman, right?
25 Facing forward?

1 A Uh-hum.

2 Q And facing backwards?

3 A Uh-hum.

4 Q And facing to the right and facing to the left?

5 A Uh-hum.

6 Q Showing the areas that you looked?

7 A Uh-hum.

8 Q Okay. And in this case you would have looked
9 for abrasions?

10 A Yes, sir.

11 Q Right. For example an abrasion would be -- a
12 carpet burn is an abrasion?

13 A Yes, sir.

14 Q And it causes trauma is a word that you use in
15 medicine that just means injury, right?

16 A Yes, sir.

17 Q The scraping of the skin is traumatic, it's an
18 injury?

19 A Yes, sir.

20 Q And that's one example of an abrasion, a scrape?

21 A Yes, sir.

22 Q Right. And you looked on her knees?

23 A Yes, sir.

24 Q On her elbows?

25 A Yes, sir.

- 1 Q On her forearms?
- 2 A Yes, sir.
- 3 Q Right. On the front and backs of her legs?
- 4 A Yes, sir.
- 5 Q Right. On her back?
- 6 A Yes, sir.
- 7 Q Shoulders, chest, right? No abrasions?
- 8 A No, sir.
- 9 Q And no bruises, bruise is an evidence of
- 10 traumatic injury?
- 11 A Yes, sir.
- 12 Q And again, using that in a technical term, it
- 13 can even be slight it's called trauma, a bruise?
- 14 A Yes, sir.
- 15 Q Lacerations, you look for those?
- 16 A Yes, sir.
- 17 Q Over the entire body?
- 18 A Yes, sir.
- 19 Q And found none?
- 20 A Yes, sir.
- 21 Q All of which would be, I understand your
- 22 testimony, wouldn't have to be, but would be consistent
- 23 with a sexual assault?
- 24 A Would be consistent with trauma.
- 25 Q Trauma, okay. And trauma is not necessarily

1 definitive but consistent with an assault?

2 A Yes, sir.

3 Q Okay. So the trauma that would be consistent
4 with an assault, you found none on the physical gross
5 examination just with your naked eye of her entire
6 body?

7 A Yes, sir.

8 Q Now I want to talk about the vaginal exam if I
9 could. And I am going to let you do this. Every time
10 I try to do it, I get it wrong.

11 Would you mind, please, drawing for us the
12 anatomical diagram of the area that you examined during
13 that portion of the exam.

14 Okay. What have you drawn there?

15 A These two lines right here would be the lips,
16 just because I'm not artist.

17 Q That's fine, okay.

18 A This would be looking into the vaginal area this
19 is the hymen, this is the anus, and this would be the
20 clitoris.

21 Q Okay. And what is the medical term for the
22 lips?

23 A Labia majora and labia minora.

24 Q All right, so there are two parts. Can you
25 explain that to us, please?

1 A The outer part of the lip is the labia majora.
2 The inner part, in here, is the labia minora.

3 Q Okay. And is that indicated in the diagram?
4 Yes, thank you.

5 The outer part is the labia majora. The inner
6 part is the labia minora?

7 A Uh-hum.

8 Q Okay. And the area that you look to in the -- I
9 already forgot, what is the word for this exam? This
10 portion of it?

11 A Genital.

12 Q Genital exam. The portions, the specific body
13 parts that you look to for trauma in the genital exam?

14 A We look on the labia majora, we look on the
15 labia minora, we look around.

16 We look as much as we can into the anal area.
17 Around the posterior fourchette which is the well like
18 area here. The hymen, which is the stretchy part that
19 opens to either let a baby out or a penis in. We look
20 there for trauma. We look at the clitoris and around
21 the foot of the clitoris.

22 Q Okay. There are different types of trauma that
23 you look for, right?

24 A Yes, sir.

25 Q You look for tears?

1 A Yes, sir.

2 Q And how does that occur?

3 A If there has been force or different positions
4 can cause it.

5 Q This area on a woman's body is vulnerable to
6 injury?

7 A To a point.

8 Q Okay. It's -- well you look for lacerations or
9 tears in this area because even during consensual
10 activity there can be tears, right?

11 A Yes, sir.

12 Q Okay. Because for lack of a better way to put
13 it, even consensual intercourse is a physically
14 intrusive act, correct?

15 A I don't know if you want the word intrusive.
16 It's a physical act.

17 Q All right, it's a physical act. Okay. And even
18 in consensual sexual intercourse there can be even
19 slight or sometimes not so slight injury, right?

20 A Yes, sir.

21 Q Abrasions are another thing that you look for,
22 right?

23 A Yes, sir.

24 Q Okay. Those are scrapes?

25 A Uh-hum.

1 Q And you look for those on labia majora, the
2 labia minora, the clitoris, right?

3 A Uh-hum.

4 Q And where else?

5 A Posterior fourchette.

6 Q All right, posterior fourchette. Anywhere else?

7 A Sometimes down in this area below the anal.

8 Q So in this case no lacerations, right?

9 A Right.

10 Q No tears?

11 A Yes, sir.

12 Q No bruises. You looked for those too?

13 A Yes, sir.

14 Q Is a bruise the same thing as a contusion?

15 A It could be.

16 Q Okay. If it is different, do you look for
17 contusions?

18 A Yes, sir.

19 Q Found none of those?

20 A No, sir.

21 Q Okay. And you not only look grossly with just
22 your naked eyes, right?

23 A Right.

24 Q But you also use a culdoscope?

25 A Culdoscope.

1 Q Okay. And that's a magnifying device?

2 A Yes, sir.

3 Q All right. Because injury to this area can be
4 very, very small?

5 A Yes, sir.

6 Q And you can't see it with the naked eye?

7 A Yes, sir.

8 Q And what is the level of magnification in a
9 culdoscope?

10 A It's 3.75, 7.5 and then 10.

11 Q Ten, ten times. And then this exam would you
12 have used it on -- I don't know if it has different
13 settings?

14 A I usually use 3.75.

15 Q 3.75. So you can enlarge the area that you are
16 looking at almost four times?

17 A Yes, sir.

18 Q To look for very small tears, slight abrasions,
19 bruises, contusions, anything else?

20 A Lacerations.

21 Q Lacerations. And in this case you found none of
22 those?

23 A That's right.

24 Q Okay. You can resume your seat, please.

25 And you said that some of the explanations for

1 the lack of findings, the lack of findings of trauma,
2 could be the use of lubrication, right?

3 A Yes, sir.

4 Q There was no allegation that there was
5 lubrications used in this case?

6 A It could also be female lubrication, that's a
7 natural.

8 Q I understand. And you said whether or not a
9 person is stranger or familiar can make a difference?

10 A Yes, sir.

11 Q And I take it from that that if the person is a
12 stranger there is more likely to be trauma than if the
13 person is familiar?

14 A Not necessarily.

15 Q Okay. Well then tell me how that works?

16 A Well with a stranger her body could have gone
17 into the fight/flight --

18 Q Oh, I got you.

19 A -- response to protect itself from trauma.

20 Q Okay. And all of these physical symptoms, are
21 you comfortable with that term, physical symptoms?

22 A Yes, sir.

23 Q The injuries, the evidence of trauma. All of
24 those things are consistent with a sexual assault or
25 consensual sex, right?

1 A Yes, sir.

2 Q Okay. And you've found none of them?

3 A That's right.

4 Q Another possible explanation for the lack of
5 those findings is that there was no sexual assault,
6 that's an explanation, right?

7 A That would be an explanation, yes.

8 Q And in terms of just your physical exam, the
9 physical evidence that you found showing a sexual
10 assault would be none, right?

11 A I did find on my vaginal swabs non-motile sperm,
12 which are non-moving sperm. So there would be evidence
13 of sexual activity.

14 Q Sexual activity. Of an assault, physical
15 findings would be none?

16 A That's true.

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

18 THE COURT: Uh-hum.

19 MR. BUTLER: That's all I have, ma'am. Thank
20 you.

21 THE WITNESS: Thank you.

22 THE COURT: Any redirect?

23 MR. FINCH: Yes, Your Honor

24 THE COURT: You may proceed.

25 MR. FINCH: Thank you.

REDIRECT EXAMINATION

BY MR. FINCH:

Q Ms. LeBoeuf, you testified earlier that Ms. Joyner came to you complaining of sexual assault, correct?

A Yes, sir.

Q And as part of that procedure she gave you a history, a verbal history?

A Yes, she did.

Q Of not only her medical history but also of the assault?

A Yes, she did.

Q And to a reasonable degree of medical certainty in your field of expertise, is your examination consistent with the history that she gave?

A It's consistent with her history. Yes, it is.

Q And how is that, how could that be with no injury?

A In about 85 percent of the cases that I have done a sexual assault exam on, there has been no injury. She stated that she was sexually assaulted. We did find evidence of non-motile sperm. And it is consistent with her history of being sexually assaulted.

Q And you do acknowledge today that you saw some

1 Q How about the unit number?

2 A [REDACTED] [REDACTED] [REDACTED].

3 Q And where is that in relation to [REDACTED]?

4 A Door to door.

5 THE COURT: Sir, if you could speak directly
6 into the microphone for me.

7 Thank you, you may continue.

8 MR. FINCH: Thank you.

9 Q (By Mr. Finch) And did you know the woman who
10 lived in [REDACTED]?

11 A No, not really.

12 Q And when you say not really, what do you mean?

13 A I mean she lived there and we lived there. And
14 I seen her, I spoke to her.

15 Q Okay. And do you remember early morning of June
16 16th, 2008?

17 A I don't know the exact date but I know what you
18 are talking about.

19 Q Well why don't tell us what I was talking about?

20 A Well I was in there watching Sports Center, I
21 heard a knock on my door. It was her. She said, I had
22 to use my phone. I gave it to her. She called the
23 police, the police came, I left.

24 Q What was she wearing when she came to your door?

25 A I don't know. I think she was like half naked

1 or something.

2 Q Okay. And do you remember how she was acting
3 when she knocked on your door?

4 A I think she was probably crying a little bit.

5 Q And what did you do when you opened the door?

6 A She asked to use my phone, I gave it to her, and
7 she called the police.

8 Q Did you give her anything else?

9 A Yeah. I gave her a blanket.

10 Q Why did you do that?

11 A Because she was half naked.

12 Q Do you want to be here today?

13 A To tell you the truth?

14 Q Yes.

15 A No.

16 Q Why is that?

17 MR. BUTLER: Objection. May we approach?

18 THE COURT: You may.

19 (Whereupon, the following discussion was held at
20 the bench.)

21 MR. BUTLER: I don't know what he is going to
22 say, if it's something like he is afraid of my guy.

23 MR. FINCH: I'll withdraw the question. That's
24 fine.

25 (In open court.)

1 THE COURT: The question is withdrawn.

2 You may proceed.

3 Q (By Mr. Finch) You said you were in your
4 apartment watching Sports Center?

5 A Yes.

6 Q How long had you been up at that point?

7 A Well Sports Center comes on about 7 o'clock. I
8 got off work at 6 o'clock. So I way say it was about
9 an hour.

10 Q And did you hear anything else prior to somebody
11 banging on your door?

12 A No.

13 Q In your neighborhood -- how long had you lived
14 there?

15 A Probably about from February 2007 up until I
16 moved.

17 Q Do you remember when you moved?

18 A No.

19 Q Okay. And people, in your experience from
20 living there, did people normally bang on your door at
21 that hour?

22 A Yeah. Asking for cigarettes and stuff so.

23 Q Asking for cigarettes?

24 A Yeah.

25 Q Did you -- after that date, do you know if the

1 woman who lived next door to you lived there any
2 longer?

3 A No. She moved by the next day.

4 Q Okay. You said she was crying. Can you explain
5 that a little bit?

6 A I mean she was crying.

7 Q Tears running down her face?

8 A How else are people going to cry?

9 Q I'm sorry, I misunderstood.

10 A Yeah, I guess so. It was two years ago. I
11 really can't say.

12 Q And do you remember if she said anything to you?

13 A She asked to use my phone, I gave it to her.
14 She called the police, I think the police came.

15 Q Did she tell you anything about why she needed
16 your phone?

17 A Nope.

18 Q Did you ask her?

19 A Nope.

20 Q Did ask her why she was half naked?

21 A No.

22 MR. FINCH: No further questions, Your Honor.

23 THE COURT: Any questions for witness?

24 CROSS-EXAMINATION

25 BY MR. BUTLER:

1 Q Good morning, Mr. Thompson. I just have a few
2 questions.

3 You got off work at 6:00, so you hadn't been
4 asleep, you were awake?

5 A Somewhat.

6 Q Okay. And prior to her knock on the door, you
7 didn't hear any commotion outside?

8 A The TV was up loud. I don't know.

9 Q You didn't hear any screams?

10 A No.

11 MR. BUTLER: That's all I have. Thank you, sir.

12 THE COURT: Any redirect?

13 MR. FINCH: No, Your Honor.

14 THE COURT: Any objection to the witness being
15 excused, from the State?

16 MR. FINCH: No, Your Honor.

17 THE COURT: From the defense?

18 MR. BUTLER: No, ma'am.

19 THE COURT: Sir, you are excused.

20 Call your next witness.

21 MR. FINCH: State calls Shawn Patrick.

22 MR. SHAWN TIMOTHY PATRICK,

23 after having first been duly sworn to state the truth,
24 the whole truth, and nothing but the truth, testified
25 on his oath as follows:

1 THE COURT: You may proceed.

2 MR. FINCH: Thank you, Your Honor.

3 THE COURT: You're welcome.

4 DIRECT EXAMINATION

5 BY MR. FINCH:

6 Q Mr. Patrick, what is your occupation?

7 A I'm a police officer with the City of North
8 Charleston.

9 Q And how long have you been with North
10 Charleston?

11 A Going on 11 years.

12 Q And what is your position right now?

13 A Right now I'm on patrol, evening shift, central.

14 Q And in 2008, what was your position?

15 A I was a detective in the persons crimes unit.

16 Q And as a detective in the persons crimes unit,
17 what are your duties and responsibilities of that
18 detective?

19 A To investigate persons crimes which is anything
20 from homicides to simple assaults; gather facts,
21 information; and hopefully, you know, make an arrest in
22 the case the facts lead you to.

23 Q And do you go out to the -- respond to calls as
24 a detective?

25 A To the scene, yes, usually.

1 Q Is it -- do you also look at reports?

2 A Yes.

3 Q The reports written by other officers,
4 supplementals, things like that, all help you in the
5 investigation?

6 A Yes.

7 Q Okay. Do you recall responding to a call on
8 June 19th, 2008 at [REDACTED] [REDACTED]?

9 A Yes.

10 Q And what was your role in that investigation?

11 A I was to assist Detective Sergeant Jordan in
12 reference to doing a search warrant of a residence.

13 Q And who obtained the search warrant?

14 A Sgt. Jordan.

15 Q Do you know where Sgt. Jordan is now?

16 A I believe he is on vacation.

17 Q And you were there to assist?

18 A Yes.

19 Q And what's the role in general if you are
20 serving or assisting in a search warrant? What do you
21 do?

22 A Usually you go into the residence with a search
23 warrant. You search the residence for facts and
24 evidence pertaining to the case that you are
25 investigating.

1 Q And do you recall what you were looking for in
2 this residence?

3 A Any information to prove that Mr. Graddick
4 resided there.

5 Q And tell us what happened when you went to that
6 residence to serve the search warrant?

7 A I searched the upstairs rear bedroom, located
8 three photographs between the mattress in the bedroom.
9 And also I guess another detective with Sgt. Jordan may
10 have located other evidence, miscellaneous medical
11 paperwork with his name, ID cards and a photocopy.

12 Q And what happens after those items are located?

13 A You call crime scene. Usually they are en route
14 there, you notify them and let them know you're in the
15 residence and they meet you there.

16 They photographed everything, collected whatever
17 evidence that needed to be collected that we located.

18 Q And is there any paperwork that goes with the
19 search warrants after it's served?

20 A There is a copy of the search warrant that we
21 leave with the resident, or whoever is at the residence
22 at the time, of the search.

23 Q How do you know what you are taking? Do you
24 write that down anywhere?

25 A Yes, it is called a return. It's the last sheet

1 of the search warrant. The return is everything that's
2 written down that you've taken, collected, or
3 photographed.

4 MR. FINCH: No further questions at this time.
5 Please answer any questions the defense may have.

6 THE COURT: Any questions for this witness?

7 MR. BUTLER: No questions for this witness.

8 THE COURT: Any objection to the witness being
9 excused, from the state?

10 MR. FINCH: No, ma'am.

11 THE COURT: From the defense?

12 MR. BUTLER: No, ma'am.

13 THE COURT: Sir, you are excused.

14 MS. HERRING-LASH: Kelly Murphy.

15 MS. KELLY MURPHY,
16 after having been duly sworn to state the truth, the
17 whole truth and nothing but the truth, testified on her
18 oath as follows:

19 THE COURT: You may proceed.

20 DIRECT EXAMINATION

21 BY MR. HERRING-LASH:

22 Q Ms. Murphy, where do you work?

23 A At North Charleston Police Department's Crime
24 Scene Unit.

25 Q And how long have you been there?

1 A Approximately four years.

2 Q And did you do some work on this case?

3 A I did.

4 Q And what did you do on June 19th?

5 A On June 19th I responded to a residence at [REDACTED]

6 [REDACTED] in reference to a search warrant.

7 Q And what did you do there?

8 A Once I arrived on the scene, I was notified by
9 detectives that several items had been located within
10 the residence and they just needed them photographed
11 and documented.

12 Q And that's what you do?

13 A That's what I do.

14 Q As part of your duties in crime scene, do you
15 also handle evidence?

16 A I do.

17 Q And did you handle any evidence in this case?

18 A I did.

19 Q And what was that?

20 A On June 17th, I responded to MUSC Women's Clinic
21 to pick up a sexual assault kit.

22 Q And how -- what is the procedure when you go to
23 pick up a sexual assault kit?

24 A I meet with the nurses at the Women's Health
25 Center and I sign their logbook and take custody of the

1 sexual assault kit that has been sealed by them during
2 collection. And then I take it back to North
3 Charleston Police Department and log it into our
4 evidence room.

5 Q And do you know the nurse that you took this
6 from?

7 A Yes. It was Faye LeBoeuf.

8 Q And when you say the kit, is it the sexual
9 assault kit belonging to the victim, Ms. Joyner?

10 A Yes.

11 Q And when you take it to log it in, do you open
12 it?

13 A No, ma'am.

14 Q And who do you give it to?

15 A It is placed in a refrigerator, a locked
16 refrigerator in our evidence room. And then our
17 evidence custodians then take it out of the
18 refrigerator, log it into the computer system, and
19 transport it to SLED to be analyzed.

20 Q And do they open it?

21 A No.

22 Q At some point did you receive a letter from SLED
23 regarding the analysis of the kit?

24 A I did.

25 Q And did it confirm semen?

1 A It did. It confirmed that semen had been
2 located and had been identified.

3 Q And who did it identify?

4 A Joseph Graddick.

5 MS. HERRING-LASH: Court's indulgence.

6 THE COURT: Uh-hum.

7 MS. HERRING-LASH: Those are all the questions
8 that I have.

9 THE COURT: Any questions for the witness?

10 MR. BUTLER: No, ma'am.

11 THE COURT: Any objection to the witness being
12 excused, the from the State?

13 MS. HERRING-LASH: No, Your Honor.

14 THE COURT: From the defense?

15 MR. BUTLER: No, ma'am.

16 THE COURT: Ma'am, you are excused.

17 MR. FINCH: State calls William O'Brien.

18 MR. WILLIAM O'BRIEN,
19 after having been duly sworn to state the truth, the
20 whole truth, and nothing but the truth, testified on
21 his oath as follows:

22 THE COURT: You may proceed.

23 MR. FINCH: Thank you.

24 DIRECT EXAMINATION

25 BY MR. FINCH:

1 Q Mr. O'Brien, if you would tell the Court where
2 you are employed?

3 A I'm employed as a sergeant at the North
4 Charleston Police Department.

5 Q And how long have you been with North
6 Charleston?

7 A 20 years.

8 Q What is your role in North Charleston?

9 A The property and evidence division supervisor.

10 Q What are your duties and responsibilities in
11 that position?

12 A Maintain and control property and evidence that
13 comes into the possession of the North Charleston
14 Police Department.

15 Q And did you handle items taken from a search
16 warrant served on the defendant on your OCA Number
17 2008026754?

18 A I believe so. I'd have to see the chain of
19 custody. But I believe so.

20 (Whereupon, State's Exhibit No. 21 is marked for
21 identification.)

22 Q (By Mr. Finch) Let me show you what has been
23 labeled State's 21 for ID purposes only. Can you
24 identify about document?

25 A Yes, I can. This is a chain of custody where I

1 took possession of one oral buccal swab and transported
2 it to the South Carolina Law Enforcement Division for
3 analysis.

4 Q What is a buccal swab?

5 A I believe it is like a Q-Tip that is used to
6 take some kind of reference sample.

7 Q Okay. And that's taken from where? I mean
8 where on the body?

9 A Probably -- I didn't take this buccal swab, that
10 would probably be a better question for forensics. But
11 I believe that it's taken from the mouth.

12 Q Okay. And your role is, you did what with this
13 piece of evidence?

14 A I took the package to evidence. And took it
15 from the North Charleston Police Department evidence
16 room to the South Carolina Law Enforcement Division for
17 analysis.

18 Q And when you received those pieces of evidence,
19 are they sealed?

20 A Yes, they are.

21 Q They have a security sort of, what is their
22 security label?

23 A They vary. There are plastic bags, paper bags,
24 it depends. I can't say exactly how this was packaged.
25 It has been quite a while ago, several years ago.

1 So without seeing the actual item, I wouldn't be
2 able to tell you what the type of packaging it was. If
3 it was a plastic evidence bag or a paper bag. We use
4 several methods of containment for items like this.

5 Q But they're always sealed when you take them to
6 SLED?

7 A Yes, they are.

8 Q And if it wasn't sealed, you would note that?

9 A Yes.

10 Q And when this item was in your possession, did
11 you do anything to alter or damage this item?

12 A No.

13 MR. FINCH: No further questions for this
14 witness, Your Honor.

15 THE COURT: Any questions for the witness?

16 MR. BUTLER: No, ma'am.

17 THE COURT: Any objection to the witness being
18 excused, from the state?

19 MR. FINCH: No, ma'am.

20 THE COURT: From the defense?

21 MR. BUTLER: No, ma'am.

22 THE COURT: Sir, you are excused.

23 THE WITNESS: Thank you, ma'am.

24 THE COURT: You're welcome.

25 MR. FINCH: Your Honor, may we approach?

1 (Whereupon, the following discussion was held at
2 the bench.)

3 MR. FINCH: We went a little quicker than I
4 thought. And my last witness guy, as far as the chain,
5 is on his way.

6 THE COURT: Who is that?

7 MR. FINCH: Forsythe. They're on their way.
8 They're supposed to be here at 1:00.

9 THE COURT: We can break for lunch until 1:30 if
10 you want to. How long is it going to take your witness
11 to get here?

12 MR. FINCH: He's coming from North Charleston.
13 I don't know where he is en route, I just know he is on
14 his way.

15 THE COURT: Traffic is horrendous. It will
16 probably take him at least 30 or 40 minutes.

17 MR. FINCH: Probably.

18 THE COURT: Do you all want to break for lunch?

19
20 MR. FINCH: That's fine with me.

21 MR. BUTLER: Can I ask a scheduling question?

22 THE COURT: Sure.

23 MR. BUTLER: At what point is it your policy
24 that we will not argue and charge?

25 THE COURT: After 3:00.

1 MR. BUTLER: If the evidence goes until 3:00 we
2 will not?

3 THE COURT: Uh-hum. I just think it's
4 unreasonable because by the time you get done with
5 closings and everything it will be 5:00. And you just
6 don't know how long the jury is going to take.

7 MR. BUTLER: Okay, thank you.

8 (In open court.)

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, we are going to take advantage of this break
11 in testimony to take our lunch recess.

12 During the break, please do not discuss the case
13 among yourselves or with anyone else. Please don't
14 allow yourselves to be exposed to any media coverage
15 regarding the case.

16 In addition to that, please don't have any
17 contact with anyone in or about the courthouse. I
18 would not want an innocent conversation to be observed
19 and misinterpreted.

20 Please leave your notepads in your seats. You
21 will return directly to your jury room at 1:30. Have a
22 good lunch. We'll see you then. Try to stay cool.

23 (Whereupon, the jurors exit the courtroom.)

24 THE COURT: Is there anything before we break
25 for lunch, from the State?

1 MR. FINCH: No, Your Honor.

2 THE COURT: From the defense?

3 MR. BUTLER: No, ma'am.

4 THE COURT: Have a good lunch.

5 (Whereupon, a recess was taken.)

6 THE COURT: Is the State ready to proceed?

7 MR. FINCH: Yes, ma'am.

8 THE COURT: Is the defense ready to proceed?

9 MR. BUTLER: Yes, ma'am.

10 THE COURT: Who is the State's next witness?

11 MR. FINCH: Your Honor, we have a stipulation.

12 THE COURT: Okay.

13 MR. FINCH: And then after that it would be Mr.

14 Forsythe, Jason Forsythe.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: Ladies and gentlemen, I hope that

17 you all had a pleasant lunch recess. We will now

18 resume with the testimony.

19 State may proceed.

20 MR. FINCH: Your Honor, may we approach?

21 THE COURT: Uh-hum.

22 (Whereupon, the following discussion was held at

23 the bench.)

24 MR. FINCH: This is the stipulation I'm going to

25 read to the jury.

1 THE COURT: Uh-hum.

2 MR. BUTLER: Uh-hum.

3 THE COURT: I'll explain to them what a
4 stipulation is in the instruction.

5 (In open court.)

6 THE COURT: Proceed.

7 MR. FINCH: The State and defense agree and
8 stipulate that the blood taken from LaVanda Alicia
9 Joyner on June 16th of 2008 as part of the rape
10 protocol, was analyzed for toxicology by the State Law
11 Enforcement Division as part of case number L-0809893.

12 The toxicology report on that item, dated
13 September 4th, 2008 identifies Ms. Joyner's blood
14 sample as negative for alcohol and all drugs.

15 THE COURT: You may proceed.

16 MR. FINCH: State calls Jason Forsythe.

17 MR. JASON FORSYTHE,
18 after having first been duly sworn to state the truth,
19 the whole truth, and nothing but the truth, testified
20 on his oath as follows:

21 THE COURT: You may proceed.

22 MR. FINCH: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. FINCH:

25 Q Good afternoon, Mr. Forsythe. If you would tell

1 the Court where it is you're employed?

2 A I'm a sergeant with the Hanahan Police
3 Department.

4 Q And how long have you been with Hanahan?

5 A Ten months now.

6 Q And in 2008, where were employed?

7 A I was a detective with the North Charleston
8 Police Department.

9 Q And as a detective with North Charleston, what
10 were your duties and responsibilities?

11 A Investigated crimes, served search warrants,
12 followed-up on general investigations. When I left, I
13 was assigned to the persons crime unit.

14 Q And do you recall serving a search warrant on
15 November 12th, 2009?

16 A Yes, sir, I do.

17 Q And what was the nature of that search warrant?

18 A It was to obtain a buccal swab for DNA purposes.

19 Q If you would, tell us what a buccal swab is?

20 A A buccal swab is a sterile swab. Place it in
21 the defendant's mouth or the subject's mouth of the
22 search warrant, and turn it over to SLED for analysis.

23 Q And what's the process, if you would just tell
24 us the process by which that happens?

25 A Well first you obtain a search warrant because

1 you are going into the mouth of the person. Once you
2 have the search warrant secured, you meet up with the
3 person that you are going to perform it on.

4 You open up -- the buccal swab is a sterile swab
5 that you open up. You open up the sterile swab. Of
6 course you have gloves on. You place it into the
7 subject's mouth. Let it air dry. Place it back into
8 the package and put it into evidence.

9 Q Is that package sealed?

10 A Yes.

11 Q And then what happens to that package?

12 A We turn it over to evidence, and then evidence
13 submits it to SLED for examination.

14 Q Let me show you what has been previously marked
15 State's Exhibit 21 for ID purposes. Can you identify
16 that document?

17 A Yes, sir.

18 Q What is that?

19 A This is a North Charleston Police Department
20 chain of custody form.

21 Q And is it for the buccal swabs?

22 A Yes, sir.

23 Q And where did you take that buccal swab?

24 A Where did I obtain it?

25 Q Where did you, yeah, where did you obtain it?

1 A I obtained the buccal swab at the Charleston
2 County Detention Center.

3 Q And the date that you obtained that?

4 A 11/12/2009, 12:10 p.m., sir.

5 Q And does that -- do you know if that corresponds
6 to an arrest date?

7 A No, sir.

8 Q Okay. Do you know when the subject was arrested
9 in this case?

10 A I know that he was incarcerated at the time. I
11 do not, sir.

12 Q Okay. And after you dropped off the buccal swab
13 to the evidence, did you do anything else with this
14 case? Did you write a supplemental report, for
15 instance?

16 A I would have to go back and check. Normally we
17 do, I don't know if I did one in this particular
18 instance.

19 Q Would you have filled out a search warrant
20 return?

21 A I would have, yes, sir.

22 (Whereupon, State's Exhibit No. 22 is marked for
23 identification.)

24 Q (By Mr. Finch) Let's me show you what has been
25 marked for ID purposes only as State's 22.

1 Can you identify that document?

2 A Yes, sir. This is a search warrant return.

3 Q And what is that search warrant return for?

4 A For the buccal swab for DNA purposes.

5 Q And while this buccal swab was in your
6 possession, did you do anything to damage or alter the
7 item?

8 A No, sir.

9 Q And after you deposited it with evidence, did
10 you have any other involvement with this case?

11 A No, sir.

12 MR. FINCH: Beg the Court's indulgence.

13 THE COURT: Uh-hum.

14 MR. FINCH: No further questions at this time.
15 Please answer any questions defense may have for you.

16 MR. BUTLER: No questions.

17 THE COURT: Any objection to the witness being
18 excused, from the State?

19 MR. FINCH: No, ma'am.

20 THE COURT: From the defense?

21 MR. BUTLER: No, ma'am.

22 THE COURT: Sir, you are excused.

23 You may call your next witness.

24 MS. HERRING-LASH: Your Honor, let me check and
25 see if there was one witness here. If not, we will

1 call another one.

2 MR. FINCH: State calls Lindsay Thompson.

3 MS. LINDSAY THOMPSON,
4 after having first been duly sworn to state the truth,
5 the whole truth, and nothing but the truth, testified
6 on her oath as follows:

7 THE COURT: You may proceed.

8 MR. FINCH: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. FINCH:

11 Q Good afternoon, Ms. Thompson.

12 A Good afternoon.

13 Q If you would, tell the Court where you are
14 employed?

15 A I'm currently employed at Virginia
16 Commonwealth University.

17 Q At the time of this case, where were you
18 employed?

19 A At the South Carolina Law Enforcement Division,
20 commonly referred to as SLED.

21 Q How long had you been employed by SLED at that
22 time?

23 A I was employed by SLED from October 2006 until
24 August 2010.

25 Q So in June of 2008, about two years?

1 A Yes, approximately.

2 Q And what was your job at SLED?

3 A I was a DNA analyst.

4 Q And what was the job in the laboratory that you
5 did?

6 A As a DNA analyst I would receive evidence from
7 law enforcement agencies across South Carolina. I
8 would analyze items that were submitted for both
9 serology and DNA analysis.

10 Develop profiles from any items that were
11 obtained. Compare those profiles to known standards
12 that were developed as well. Write reports, review
13 other's reports, and testify as needed.

14 MR. BUTLER: I'm sorry, Judge. May we approach?

15 THE COURT: You may.

16 (Whereupon, the following discussion was held at
17 the bench.)

18 MR. BUTLER: I may have missed something, but
19 they haven't established the chain yet.

20 MR. FINCH: The other witness is coming.

21 MR. BUTLER: You've got to establish the chain
22 before you can get her opinion.

23 THE COURT: What witness is coming?

24 MR. FINCH: The woman who did the intake at SLED
25 and delivered the box to her.

1 THE COURT: Who is that?

2 MR. FINCH: Amy Stephens.

3 THE COURT: Where is she?

4 MS. HERRING-LASH: She was trying to park in
5 this parking garage, it was full. About 20 minutes ago
6 she left to go find another parking garage.

7 What she did was accept the sealed box, and
8 place the sealed box in another location.

9 THE COURT: Do you have any indication that she
10 is not going to be the missing chain witness and that
11 she is not here to testify, Mr. Butler?

12 MR. BUTLER: Are you asking me?

13 THE COURT: Uh-hum.

14 MR. BUTLER: No. I have no way of knowing what
15 their witness are doing. I just didn't think they have
16 established the chain.

17 THE COURT: I think there is a good faith, and
18 as an officer of this court, you need to answer my
19 question. Which is do you have any really good faith
20 belief or basis, because you would have received the
21 discovery so you know who all chain witnesses are,
22 that's not their last witness on the chain?

23 And actually all they have to provide is the
24 chain sheet. They really don't have to have her come
25 testify based on case law.

1 MR. BUTLER: I don't know where their witness
2 is. But I'm objecting to the opinion coming out of the
3 witness without the chain having been proven.

4 THE COURT: What's the State's position?

5 MS. HERRING-LASH: I think she can take the
6 intern chain of evidence from SLED and go through the
7 entire internal chain.

8 And she also will testify that when she received
9 the items they were still sealed or she would not have
10 ever tested them.

11 THE COURT: Who is the witness that is missing?
12 What is she going to testify to again?

13 MS. HERRING-LASH: She works in the intake at
14 SLED. What she does is take the --

15 THE COURT: So she's going to testify that she
16 got it from the North Charleston Police Department?

17 MR. FINCH: Yes.

18 MS. HERRING-LASH: She is going to testify that
19 she got the box from North Charleston Police
20 Department. That it was broken -- she broke it and put
21 the rape stuff in one pile and the tox in another.

22 And then this witness got it and did all the
23 testing and actually unsealed the envelope.

24 THE COURT: She is here or she is not here?

25 MR. FINCH: She is in the immediate area,

1 vicinity. She is parking or she is on her way in the
2 building.

3 THE COURT: We will take a break until she gets
4 here. Although I really don't think that they have to
5 call them exactly in that order. Out of an abundance
6 of caution, that's what I'm going to do.

7 MR. FINCH: Thank you, Judge.

8 THE COURT: Uh-hum.

9 (In open court.)

10 THE COURT: Madam Forelady, ladies and
11 gentlemen, we have a little logistical situation that
12 we need to work through. We appreciate your patience
13 in advance.

14 We are going to take a brief break. During the
15 break, please do not discuss the case and please leave
16 your notepads in your seats.

17 (Whereupon, the jurors exit the courtroom.)

18 THE COURT: You can be seated.

19 Please find out where your witness is.

20 Ma'am, you can step down. During the break,
21 however, please do not discuss your testimony.

22 (Whereupon, a recess was taken.)

23 (Whereupon, the jurors enter the courtroom.)

24 THE COURT: You may be seated.

25 Ladies and gentlemen, we appreciate your

1 patience.

2 State may proceed.

3 MS. HERRING-LASH: State calls Amy Stephens.

4 MS. AMY STEPHENS,

5 after having first been sworn to state the truth, the
6 whole truth, and nothing but the truth, testified on
7 her oath as follows:

8 THE COURT: You may proceed.

9 DIRECT EXAMINATION

10 BY MR. HERRING-LASH:

11 Q Ms. Stephens, where do you work?

12 A I'm employed with the South Carolina Law
13 Enforcement Division also known as SLED.

14 Q How long have you been with them?

15 A I have been with SLED since March 2nd of 2006.

16 Q And what do you do there?

17 A I'm a forensic technician in the evidence
18 control department. Our job responsibilities are to
19 log in, package and transfer evidence for forensic
20 analysis.

21 Q And with evidence at SLED, do you have an
22 internal chain of custody?

23 A Yes, we do.

24 Q How does that work?

25 A Everything that comes into our laboratory is

1 electronically tracked. Each case that comes in is
2 given a unique lab number. That lab number is assigned
3 to each piece of evidence along with an item number, it
4 contains a bar code.

5 So every time that evidence moves to a different
6 location or a different individual, that bar code is
7 scanned to track the location.

8 Q And do you have the internal chain of custody on
9 L-0809893?

10 A Yes, I do.

11 Q And did you handle that evidence when it arrived
12 at SLED?

13 A I handled some pieces of this evidence, yes.

14 Q What do you do?

15 A When it arrives at SLED, we have the submitting
16 officer, which will hand us the paperwork and the
17 evidence. We will enter the information from the
18 paperwork into our computer system. And then we will
19 package the evidence appropriately.

20 Q In this case, what did you do?

21 A In this case I received a SLED item number one,
22 which was described as carpet fibers. I also received
23 SLED item number two, which was swabs from a
24 screwdriver. I placed those into a heat-sealed pouch.

25 I then had the submitting officer initial and

1 date the heat-sealed pouch, as well sign and date the
2 front of the heat seal.

3 Q And then what did you do with item number
4 three, the CSC kit?

5 A When I received the CSC kit, it came into me
6 sealed. I opened the box. I separated the DNA
7 evidence and placed it in a heat-sealed pouch.

8 I then place the toxicology evidence in a
9 heat-sealed pouch. Sealed both pouches. Had the
10 submitting officer initial and date both pouches.

11 Q And then does that heat-sealed pouch stay sealed
12 until the person who actually does the forensic science
13 technology on it?

14 A It will stay in the laboratory. We transfer all
15 evidence once it's logged in, most of the times, into
16 our evidence room.

17 Usually a technician from the appropriate
18 department will then come pick up that evidence and
19 transfer it to the department in which it's going to
20 conducted the analysis.

21 Q And those technicians do not open it?

22 A Not usually. No, ma'am.

23 Q In this case do you know who the forensic
24 scientists was that did the analysis on the rape kit?

25 A Yes, ma'am. It was Lindsay Thompson.

1 Q okay.

2 MS. HERRING-LASH: Those are all the questions I
3 have.

4 THE COURT: Any questions for the witness?

5 CROSS-EXAMINATION

6 BY MR. BUTLER:

7 Q Ma'am, the submitting officer for the CSC kit,
8 who was that?

9 A It was Alex P. Steen with the North Charleston
10 Police Department.

11 MR. BUTLER: Thank you.

12 THE COURT: Any further questions for the
13 witness?

14 MS. HERRING-LASH: No, Your Honor.

15 THE COURT: Any exception to the witness being
16 excused, from the State?

17 MR. FINCH: None from the State.

18 THE COURT: From the defense?

19 MR. BUTLER: No, ma'am.

20 THE COURT: Ma'am, you are excused.

21 THE WITNESS: Thank you.

22 THE COURT: You're welcome.

23 Ms. Thompson, if you will retake the stand,
24 please.

25 I will remind you, you are still under oath.

1 State may proceed once she is seated.

2 MR. BUTLER: Judge, may we have a moment?

3 May I have a moment with the State?

4 THE COURT: Uh-hum.

5 Mr. Finch, you may proceed when you are ready.

6 MR. FINCH: Thank you, Judge.

7 THE COURT: You're welcome.

8 CONTINUED DIRECT EXAMINATION

9 BY MR. FINCH:

10 Q MS. Thompson, I think we left off with your
11 testimony as to your educational background.

12 What is your educational background?

13 A I have a bachelor of science degree in forensic
14 science and biology with a minor in chemistry. I also
15 have a master's of science degree in biology with my
16 thesis covering forensic biology.

17 Q And do you have any specialized training?

18 A Yes. Every DNA analyst is required to have
19 specific course work, biochemistry, molecular biology,
20 statistics and genetics.

21 Also, after being hired with SLED, I completed a
22 year-long intensive training course on DNA and serology
23 under a court-qualified analyst. So an analyst that
24 was already working at SLED.

25 Also there was training course, a week-long

1 training course with the company that produces most of
2 the instruments that are used in the DNA department.
3 In addition to that, we also have yearly educational
4 requirements for continuing education.

5 Q And you mentioned serology, what is that?

6 A Serology is the characterization and
7 identification of body fluids such as semen, blood,
8 saliva, feces.

9 Q And were you certified by SLED to perform DNA
10 analysis?

11 A Yes, I was.

12 Q And have you been qualified as an expert in
13 serology and DNA analysis?

14 A Yes, I have been.

15 Q And do remember which courts those are in?

16 A South Carolina courts.

17 MR. FINCH: Your Honor, at this time State would
18 offer Ms. Thompson as an expert in DNA analysis and
19 serology.

20 THE COURT: Any questions or objections?

21 MR. BUTLER: No, ma'am.

22 THE COURT: So admitted. You may proceed.

23 Q (By Mr. Finch) Ms. Thompson, if you would tell
24 the Court what is DNA analysis?

25 A Well first DNA is stands for deoxyribonucleic

1 acid. That's a chemical that is found in almost every
2 cell of the human body, the exception being red blood
3 cells. But it is found in white blood cells.

4 This material is your genetic information. That
5 is how information is passed on from one generation to
6 the next. You get half of your information from your
7 mother, and you get half of your information from you
8 father.

9 99.9 percent of DNA, of that DNA in each cell,
10 is the same from person to person. And there is only
11 .1 percent that varies. Within that .1 percent, we
12 look at 15 locations for the DNA profile that is
13 analyzed by SLED. Those 15 locations are called a DNA
14 profile, as a whole, called a DNA profile.

15 DNA analysis is the development of that DNA
16 profile. So it's that scientific process of getting
17 from a Q-Tip to that string of numbers, that profile.

18 Q And did you perform DNA analysis in this case?

19 A Yes, I did.

20 Q And that would be SLED lab number L-0809893?

21 A Yes.

22 Q And what items did you test?

23 A For DNA analysis?

24 Q Yes.

25 A I tested items, SLED items 3.1, 3.3, 3.5, 3.6.

1 And then later item 5.

2 Q If you could just talk about this 3. et cetera.
3 How -- when you receive items for testing, how do they
4 come to you in a sexual assault case such as this?

5 A Typically we get one heat-sealed pouch which has
6 been initialed and dated by the submitting officer. If
7 that seal is broken, I will not analyze the case. I
8 make a phone call.

9 Within that heat-sealed pouch are typically two
10 paper pouches which are also sealed by the nurse who
11 collected the CSC kit. Each of those, one is fibers
12 and hairs and things along that sort. And the other is
13 swabs of potential body fluids and standards from the
14 individual.

15 I break open each of those pouches. And
16 depending on what was collected in the case, I
17 sub-itemize from the original kit number. So the kit
18 number in this case was 3. So 3.1 was the first item
19 from that kit that I came across. 3.2 was the next
20 item from that kit, and so on.

21 Q And the items analyzed, if you could give a
22 number and what those items were, please.

23 A So for DNA analysis I analyzed 3.1, which was a
24 blood standard from LaVanda Alicia Joyner. 3.3,
25 vaginal swabs from LaVanda Alicia Joyner. 3.5, rectal

1 swabs from LaVanda Alicia Joyner. 3.6, miscellaneous
2 body fluid from LaVanda Alicia Joyner.

3 Q And you mentioned item 5?

4 A Yes. Item 5 was a buccal swab submitted from
5 Joseph Graddick.

6 Q When you first got these the items number 3, did
7 you perform analysis on those items.

8 A Yes, I did.

9 Q And what were your results?

10 A For each item?

11 Q For each item.

12 A The blood standard is considered a known source
13 of that person's DNA profile. So for that, I just
14 developed a profile so that I could compare all of the
15 rest of the items to.

16 Okay. The vaginal swabs, item 3.3, semen was
17 identified and I develop a DNA profile. For 3.5, the
18 rectal swab, semen was identified and I developed a DNA
19 profile. 3.6, miscellaneous body fluids, semen was
20 identified and I developed a DNA profile.

21 Q And what did you compare those DNA profiles to?

22 A I first compared them to the victim in this
23 case. And there was an unknown profile in these
24 unknown samples which was not from the victim. It was
25 unknown. Therefore, it was put into a database.

1 Q And would you do further analysis of those
2 samples?

3 A No. Not until a suspect's standard was
4 submitted to compare to.

5 Q And was a suspect's standard submitted in this
6 case?

7 A Yes, it was.

8 Q Do you know the date of that submission?

9 A Just one moment. The submission date for item
10 number 5, the buccal swabs from Joseph Graddick, was
11 March 19, 2010.

12 Q And when you get that item, what is the process?

13 A From this item I would begin DNA analysis. It's
14 a standard. I'm just trying to develop his known
15 profile so that I can then compare it to the unknowns
16 that were previously developed on a separate occasion.

17 Q After you do that, do you compare the two?

18 A Yes. I would compare his known profile to those
19 unknowns.

20 Q And what were the results in this case?

21 A May I read directly from my report?

22 Q You may.

23 A Okay. The DNA profile developed from the semen
24 on items 3.3, 3.5 and 3.6 matches the DNA profile of
25 Joseph Graddick.

1 The probability of randomly selecting an
2 unrelated individual having a DNA profile matching
3 these items is approximately 1 in 2.2 quintillion.

4 Q And statistically, how does that compare with
5 the population of the earth?

6 A Well the population of the earth is
7 approximately 6.6 billion. So 2.2 quintillion is
8 approximately 333 million times the world population.

9 MR. FINCH: No further questions at this time.
10 Please answer any questions the defense may have.

11 THE COURT: You may proceed.

12 CROSS-EXAMINATION

13 BY MR. BUTLER:

14 Q Good afternoon, Ms. Thompson.

15 A Good afternoon.

16 Q I just have a few questions. DNA science is not
17 so new anymore but is part of the evolution,
18 progression of forensic science, right?

19 A Yes.

20 Q Such that what were before almost meaningless
21 microscopic pieces of evidence now have great
22 significance, do you agree with me?

23 A Potentially.

24 Q Potentially. Items that are invisible to the
25 naked eye can tell us a lot about who left the item

1 there?

2 A Potentially.

3 Q Potentially. When it works, that's what it
4 does?

5 A Potentially.

6 Q It's identification evidence. It leads back to
7 a person?

8 A It can lead back to a single person or multiple
9 individuals.

10 Q When it works it leads to the identification of
11 people?

12 A Yes.

13 Q Okay. And you are a forensic scientist?

14 A Yes.

15 Q And forensics is just a word for a combination
16 of science, medicine and legal?

17 A Correct. Applying science to the law. Yes.

18 Q And so you know that in the law, in criminal
19 law, there's situations where identity is an issue,
20 right?

21 A Yes.

22 Q And DNA can tell us a lot about the
23 identification of somebody?

24 A Potentially, yes.

25 Q And in this case, many more times than the

1 population of the earth, we know that the samples that
2 you analyzed belong to Mr. Graddick?

3 A Not in so many words, but, yes.

4 Q Well you correct me. I don't want to get it
5 wrong.

6 A The probability is actually a 1 in 2.2
7 quintillion which actually makes it a very small
8 number, the probability is a very small number that it
9 would be another person rather than this individual.

10 But the number itself, 2.2 quintillion, is quite
11 a large number.

12 Q Okay. Okay. Because sometimes you get results
13 that you can say are consistent with the person, but
14 this is the person?

15 A The probability, yes. I would say that in my
16 expert opinion that it is the person.

17 Q Well I mean you'd have to go to another planet
18 to find this many people? Another solar system? It's
19 more than the population of the earth?

20 A Correct.

21 Q Okay. So the significance of that as far as
22 identification evidence is powerful?

23 A Yes.

24 Q Okay. But DNA doesn't tell us what happened,
25 right?

1 A No.

2 Q And it doesn't tell us why it happened?

3 A No.

4 Q All right. And in a sexual assault case, it
5 tells us nothing about whether the act was consensual
6 or forced, does it?

7 A No. I only know if it happened or not.

8 MR. BUTLER: Thank you. That's all I have.

9 THE COURT: Any redirect?

10 MR. FINCH: No, Your Honor.

11 THE COURT: Any objection to the witness being
12 excused, from the State?

13 MR. FINCH: No, Your Honor.

14 THE COURT: From the Defense?

15 MR. BUTLER: No, ma'am.

16 THE COURT: Ma'am, you are excused.

17 State may proceed.

18 MR. FINCH: Your Honor, the State rests.

19 THE COURT: Madam Forelady, ladies and
20 gentlemen, the State has rested their case. I have
21 some matters of law that I need to take up with the
22 attorneys.

23 During this break, please do not discuss the
24 case, and please leave your notepads in your seats. We
25 should be out probably be out ten minutes.

1 (Whereupon, the jurors exit the courtroom.)

2 MR. BUTLER: Your Honor, at the appropriate time
3 my client would request a bathroom break.

4 THE COURT: We'll do that now, and then I will
5 hear motions.

6 (Whereupon, a recess was taken.)

7 THE COURT: Does the defendant have any record
8 that the State would be seeking to introduce to impeach
9 his credibility?

10 MR. FINCH: Some. His felony convictions for
11 cocaine possession I believe in 2004.

12 THE COURT: I assume, then, you would not be
13 seeking to introduce that to impeach his credibility?

14 MR. FINCH: From my understanding it would be up
15 to the Court to balance its probative value versus its
16 --

17 THE COURT: The Supreme Court has said that
18 narcotics offenses are not probative of truthfulness,
19 so.

20 MR. FINCH: This is regards to felonies outside
21 the ten years.

22 THE COURT: What did he get in '04?

23 MR. FINCH: It was two years to be served
24 concurrent. It was two different drug charges.

25 THE COURT: So he had two possessions of cocaine

1 or one?

2 MR. FINCH: It was a PWID.

3 THE COURT: What year was that?

4 MR. FINCH: I believe it was 2004 is my
5 understanding.

6 THE COURT: So which is it? Is it a PWID or
7 a --

8 MR. FINCH: It was two PWID's. I think they
9 were both for cocaine, maybe cocaine and marijuana.

10 THE COURT: Well which is it, because one is a
11 felony and one isn't.

12 MR. FINCH: I'm looking for it right now. At
13 least one of them is cocaine.

14 It was two PWID's cocaine. One crack in March
15 of '04. And then November of '04 there was a PWID for
16 cocaine.

17 THE COURT: So in 11/04 there was a PWID
18 cocaine?

19 MR FINCH: Yes.

20 THE COURT: And in March of 2004 there was what?

21 MR. FINCH: A PWID crack. Also arrests out of
22 Georgia, but I don't believe those were felonies.

23 THE COURT: They were not convictions either,
24 were they? Were they convictions or arrests?

25 MR. FINCH: There were some convictions, there

1 were arrests. There were five charges in Georgia.
2 There was a sentence, but it is unclear as to whether
3 that was for trespassing or for burglary in '09.

4 Because of the way the rap sheets are, it
5 doesn't spell it out.

6 THE COURT: But you are not proceeding under the
7 portion of the statute that deals with more than one
8 burglary arrest, I mean conviction, correct?

9 MR. FINCH: Correct, Your Honor. That would
10 just be again an additional felony conviction, if it
11 was indeed a felony conviction.

12 THE COURT: But you cannot prove whether it was
13 a felony or a trespass?

14 MR. FINCH: No, I can't.

15 THE COURT: The State has rested, are there any
16 motions?

17 MR. BUTLER: Move for a directed verdict
18 pursuant to criminal rule of procedure 19.

19 THE COURT: Would the State like to respond?

20 MR. FINCH: Just, yes, Your Honor, in that I
21 feel that the State has met its burden of proof; the
22 standard being any evidence standard regarding the
23 elements of the crime.

24 There has been sufficient testimony from the
25 victim, as well as corroborating testimony from other

1 witnesses; physical evidence that at least enough at
2 this stage to prove to the jury that Mr. Graddick
3 entered the home without permission with the intent to
4 commit a crime therein. He did assault Ms. Joyner.

5 There has been testimony regarding the
6 kidnapping and her removal from the downstairs to the
7 upstairs. So we feel as though it would be improper to
8 grant the motion for directed verdict at this time.

9 THE COURT: In considering a motion for directed
10 verdict, the Court looks at the existence or
11 nonexistence of evidence and not its weight. The Court
12 is not the fact finder, and therefore it is not for the
13 Court to weigh the evidence.

14 However, the evidence has to raise above a mere
15 suspicion of guilt. However, the State is not required
16 to prove or show evidence that infers guilt to the
17 exclusion of any other reasonable hypothesis.
18 There is direct evidence, as well substantial
19 circumstantial evidence, reasonably tending to prove
20 the defendant's guilt on the charges of kidnapping, as
21 well as burglary in the first degree and criminal
22 sexual conduct in the first degree. And that is in the
23 nature of eyewitness testimony, as well as the physical
24 evidence that has been entered into the record.

25 Therefore, the motion for directed verdict

1 denied.

2 Sir, if you would stand for me, please, and
3 raise your right hand to be sworn.

4 Do you swear or affirm the testimony you give
5 will be the truth?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: You can put your right hand down.

8 Sir, state your full name for the record.

9 THE DEFENDANT: Joseph Richard Gene Graddick.

10 THE COURT: I can't hear you.

11 THE DEFENDANT: Joseph Richard Gene Graddick.

12 THE COURT: How is your Gene spelled?

13 THE DEFENDANT: G-E-N-E

14 THE COURT: Say that one more time for me.

15 THE DEFENDANT: G-E-N-E.

16 THE COURT: Okay.

17 Sir, at this time we have reached the stage of
18 the trial where you may present your defense.

19 I'm going to explain to you certain of your
20 rights. If you do not understand something that I say,
21 please let me know. If you want me to explain
22 something in more detail, please let me know.

23 Do you understand?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Sir, you have the right to present a

1 defense. You also have the right to claim the
2 protections given to you by the Fifth Amendment of the
3 Constitution of the United States. And that
4 constitution states in part that no person shall be
5 compelled in any criminal case to be a witness against
6 himself.

7 This means that you cannot be required to
8 testify in this case. You have the right to testify on
9 your own behalf, however no one can make you testify.
10 This is a personal right and no one can waive that
11 right except you.

12 If you decide to testify, you will be subject to
13 the same rules that govern other witnesses, and you may
14 be examined and cross-examined on any relevant issue in
15 this case.

16 In addition, if you have any convictions
17 involving dishonesty or false statements, or for crimes
18 punishable by imprisonment for more than one year, and
19 this Court determines that the probative value in
20 admitting that evidence outweighs its prejudicial
21 effect to you, the solicitor will be able to introduce
22 your record to attack your credibility.

23 Sir, if you decide to testify, this decision on
24 your part must be made freely, voluntarily, knowingly,
25 and intelligently with knowledge of the protections

1 given to you by the Fifth Amendment and the
2 consequences of your decision to testify.

3 If you decide not to testify, I will instruct
4 the jury that they cannot give the fact that you did
5 not testify any consideration whatsoever. And that
6 there is to be no prejudice to you because you did not
7 testify.

8 I will instruct them that it cannot be discussed
9 in any manner whatsoever. That the burden is on the
10 State to prove your guilt beyond a reasonable doubt,
11 and that you have no burden in this case.

12 Sir, it is left entirely up to you whether or
13 not you testify. You may speak with your attorney,
14 your family members, your friends or anyone else. But
15 the final decision is left entirely up to you.

16 Do you understand your rights as I have just
17 explained them to you?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you -- have you spoken with your
20 lawyer as to whether you should or should not testify?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you need to speak with him any
23 further at this time?

24 THE DEFENDANT: No, ma'am.

25 THE COURT: Sir, do you wish to testify?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: You all can take your seats.

3 Mr. Butler, do you have any witnesses other than
4 your client?

5 MR. BUTLER: No, ma'am.

6 But before we get to him, I'd like to settle his
7 record from our position. Our position will be that
8 none of it should be used for impeachment, he two drug
9 convictions --

10 THE COURT: I'm going to get to them.

11 MR. BUTLER: Oh, yes, ma'am. I'm sorry.

12 THE COURT: Other than your client, you said you
13 had no other witnesses?

14 MR. Butler: No, ma'am, that's it.

15 THE COURT: Okay.. Now since the defendant has
16 indicated he will testify, does the State intend to
17 introduce any portion of his record to attack his
18 credibility?

19 MR. FINCH: Just the previously mentioned PWID
20 convictions from '04. We understand that's an analysis
21 that the Court will undergo.

22 THE COURT: What is the defendant's position
23 regarding the admissibility of his record to impeach
24 his credibility?

25 MR. BUTLER: The case I'm recalling, I'm

1 recalling off the top of my head, is State versus
2 Green. That in weighing those factors that drug
3 convictions are minimally relevant, if at all, when you
4 are talking about the defendant testifying.

5 They're not probative at all of truthfulness or
6 honesty or dishonesty, so we would object.

7 THE COURT: Would the State like to respond?

8 MR. FINCH: Just to clarify the position would
9 be that we would just be introducing that he is a
10 convicted felon, not exactly what he was charged with.

11 THE COURT: How does that mitigate what -- I
12 guess I'm trying -- when left unexplained, it might
13 give the impression that he was convicted of what he
14 has been charged with. That's my concern.

15 Normally I would split the baby that way.
16 Especially in cases where someone has drug offenses or
17 other type offenses. But my concern in this case, I'm
18 getting a little ahead of myself, but my concern in
19 this case is when you simply say, have you been
20 convicted of a felony, that leaves the im'puter that he
21 may have been convicted of something similar to this or
22 something more egregious than this.

23 which then sort of negates the whole purpose of
24 the question which is to impeach his credibility
25 because of his prior record.

1 The case law, however, is very clear that there
2 is no balancing when you deal with crimes involving
3 dishonesty or false statement. However, other crimes,
4 which of course carry a year or more and within the ten
5 year limit, can be used for purposes of impeachment.

6 However, our Supreme Court has noted that
7 narcotics offenses are generally not considered
8 probative of truthfulness and generally they do not
9 fall under this rule, citing State versus Cheeseborough
10 and State versus Green. Those are 2001 and 2000
11 Supreme Court cases. As well as State versus Bryant,
12 which is a 2006 Supreme Court opinion which supports
13 the same proposition.

14 Does the defense have any -- is it correct that
15 you have been convicted of a felony, or two felonies
16 and not mentioning what the substance of those felonies
17 are?

18 MR. BUTLER: Yes. Our objection would be based
19 upon exactly the concerns that the Court has. I
20 think it's worse. Because for all they know, that
21 means he was convicted of murder or armed robbery or
22 manslaughter.

23 So the actual offenses is less prejudicial, but
24 I don't think that under States versus Green that they
25 should come in.

1 THE COURT: I think for a few moments I need to
2 shepardize something.

3 It's my understanding that based on
4 Cheeseborough, Brown and Woleski (phonetic) that
5 narcotics offenses are not probative of truthfulness.

6 The precedent that deals with splitting the
7 baby, so to speak, and allowing asking whether it was a
8 felony or not deals with -- is the remedy that is
9 suggested when offenses are very similar to the
10 offenses charged.

11 Say for example somebody is charged with
12 burglary or charged with narcotics offenses. We'd
13 split the baby to allow the reference to the felony,
14 but not the substantive offense.

15 But I think under these -- I'm going to do a
16 little more research for a few moments. I suggest you
17 all powder your noses, during this break. But at this
18 moment, unless I read something different, I don't
19 think his record would be admissible to impeach him, or
20 that the appropriate remedy would be to ask if it's a
21 felony.

22 Because I think it is almost more prejudicial
23 because then it leaves to the imagination of the jury
24 whether he was convicted of some, you know -- in the
25 minds of jurors I think felonies usually fall under the

1 heading of, you know, rape, murder, you know, as we say
2 big ones.

3 So also if you all have any requests to charge I
4 need those as well. Because during this break I'm
5 going to go ahead and deal with that as well.

6 MR. BUTLER: I'm going to request the lesser
7 included of ABHAN. I'm going to request that the
8 defense of consent be charged. And specifically that
9 consistent with the case law on self-defense, that the
10 statements disprove consent.

11 And I'm going to object to, and ask to argue
12 against, precedents for the standard, what has now
13 become the standard circumstantial evidence charge from
14 Grippon.

15 THE COURT: Unless you have some case law that
16 allows you to argue against precedent, that's going to
17 be denied. And if you have any specific written --
18 does the State have any requests to charge? or do you
19 all have any exception to the request for the lesser
20 included ABHAN?

21 I'm going to hear argument, but I just need to
22 start thinking about it if you have some exception to
23 it. Because if you don't then that eliminates work for
24 me.

25 MR. FINCH: We don't have any objection to the

1 lesser included.

2 THE COURT: Okay. Are you all going to have
3 anything other than what he has requested?

4 MR. FINCH: No. Just the standard charges on
5 the statute of sexual assault does not have to be
6 corroborated.

7 THE COURT: Yeah, that's the standard part of my
8 charge.

9 MR. FINCH: Yes. Generally your standard
10 charges on burglary, kidnapping, CSC first, as well as
11 ABHAN.

12 MR. BUTLER: And I will object to the, I know
13 it's the standard charge, but the victim's testimony in
14 a CSC case may not be corroborated.

15 THE COURT: Actually it's statutory. Take it up
16 with the legislature. It's required to be instructed.
17 But it isn't required to be corroborated. The
18 legislature has spoken and I merely do what they
19 direct.

20 MR. BUTLER: Yes, ma'am. I just note my
21 objection.

22 THE COURT: It's noted.

23 All right, we will take about a ten minute
24 break.

25 (Whereupon, a recess was taken.)

1 THE COURT: I'm standing by my original
2 observation which would be more prejudicial than
3 probative to -- well first that narcotics offenses are
4 not probative as to truthfulness. And to ask it in the
5 way that's being suggested is not the -- the case that
6 articulates doing it that way does not stand for the
7 proposition of doing it in this factual circumstance.
8 And under these circumstances it would be more
9 prejudicial than probative. So you will not be able to
10 question him regarding his record.

11 Are we ready proceed from the State?

12 MR. FINCH: Yes, Your Honor.

13 THE COURT: From the defense?

14 MR. BUTLER: Yes, ma'am.

15 THE COURT: Please bring in the jury.

16 (Whereupon, the jurors enter the courtroom.)

17 THE COURT: Ladies and gentlemen, we appreciate
18 your patience as we dealt with those matters of law.

19 The defense may proceed.

20 MR. BUTLER: Thank you, Your Honor.

21 THE COURT: You're welcome.

22 THE COURT: Defendant calls Joseph Graddick.

23 THE COURT: Sir, if you would come to the
24 witness stand to be sworn.

25 MR. JOSEPH RICHARD GENE GRADDICK,

1 after having first been duly sworn to state the truth,
2 the whole truth, and nothing but the truth, testified
3 on his oath as follows:

4 THE COURT: You may proceed.

5 MR. BUTLER: Thank you, Your Honor

6 THE COURT: You're welcome.

7 DIRECT EXAMINATION

8 BY MR. BUTLER:

9 Q Joseph, on June 16th, 2008, did you rape LaVanda
10 Joyner?

11 A No, sir.

12 Q Did you burglarize her apartment?

13 A No, sir.

14 Q Did you kidnap LaVanda Joyner?

15 A No, sir.

16 Q Did you go into her apartment through a window
17 using socks on your hands?

18 A No, sir.

19 Q Were you in her apartment that morning?

20 A Yes, sir, I was.

21 Q We'll get to that in a minute. Joseph, tell us
22 where you are from?

23 A I'm from Goose Creek, South Carolina.

24 Q Where did you grow up?

25 A Right there on Frank Green Road, behind the

1 Community Center in Goose Creek.

2 A And tell us, who is this young lady right here?

3 A That's my mother, Jean Graddick.

4 Q And who is this young lady right here?

5 A That's my grandmother, Annabelle Wright.

6 Q And who is this handsome kid right here?

7 A That's my younger, youngest brother, Leroy
8 Graddick.

9 Q And you are all from the Goose Creek area?

10 A Yes, sir.

11 Q I want to take you back to June 16th, 2008, the
12 day that we are here for. I want to go back earlier in
13 the day. Do you remember that day?

14 A Yes, sir, I do.

15 Q All right. What do you remember about that day?

16 A Well --

17 Q Let's start off at the beginning of the day.

18 How did the day start?

19 A Well the 15th started off as Father's Day.

20 Q That's what I meant, thank you. Father's Day
21 the 15th?

22 A Yes, sir.

23 Q Go ahead.

24 A I woke up about 6:30; 7:00, that's what time my
25 kids always get me up in the morning. And this morning

1 they got up, they got me up early because they cooked
2 for me, it was Father's Day.

3 So I got up. I ate with them. I watched
4 cartoons with them. And we just kind of do what we
5 usually do, lay around. I played with them. They read
6 to me.

7 I called my mother. I called my father, told
8 him I would see him later on. Checked messages, got a
9 couple messages from some other people because my
10 sister had just passed. So, you know, I was dealing
11 with that at the time too.

12 Q All right. And all of this takes place where?

13 A At Apartment [REDACTED] [REDACTED] [REDACTED] [REDACTED].

14 Q And whose apartment was that?

15 A Katoria Dunham.

16 Q Okay. And that -- and who is that?

17 A That is the sister of Kandie Dunham.

18 Q And Kandie was your girlfriend at the time?

19 A Yes, sir.

20 Q And the mother of your children?

21 A Yes, sir.

22 Q And she lived there also?

23 A Yes, sir.

24 Q And how often did you live there?

25 A Some weeks I stayed there everyday. Sometimes I

1 stayed in Goose Creek to where my address is.

2 Q And where were you working at the time?

3 A For my father doing refurbishing antique
4 furniture.

5 Q And what's the name of his company?

6 A Graddick and Son.

7 Q And you were the son?

8 A Yes, sir.

9 Q And so it's Father's Day, you are hanging out
10 with your kids and family at [REDACTED]

11 At some point do you leave?

12 A Yes, sir, I do.

13 Q And where did you go?

14 A I went to a another female's house named Tanisha
15 Ghent. She also stays at [REDACTED]

16 Q All right. And how long were you there?

17 A I was there until probably 8:00 p.m. that
18 afternoon.

19 Q Okay. And where did you go from there?

20 A I left there and I went to Shawan Day's house, a
21 friend of mine, on south Rhett.

22 Q Okay. And how long were you there?

23 A Until about 4:15, 4:20 a.m. I remember last
24 looking at the clock at 4:05, so I know it was after
25 4:00 a.m.

1 Q And how did you get out there?

2 A It's an Exxon at McMillan and Rivers. And I met
3 Shawan there and she picked me up.

4 Q And how did you get back?

5 A The same way. Shawan dropped me off at the
6 Exxon at McMillan and Rivers.

7 Q And what time was that?

8 A That was maybe 4:30, close to 5:00.

9 Q All right. And where did you go then?

10 A Then I left and I walked through the gate and I
11 went the back way to LaVanda's house.

12 Q And why didn't you just go to Kandie's house,
13 where your kids were?

14 A Because earlier that day when I left Tanisha's
15 house, when I went back to Kandie's house, there was a
16 note on the door saying, go back to where you came
17 from. I'm tired of you and all the females, go back to
18 where you came from.

19 Q Who wrote that note?

20 A Kandie Dunham.

21 Q And to whom was that message intended, for whom?

22 A Me.

23 Q Okay. And it was basically telling you what?

24 A I know you are dealing with other females, go
25 back to where you came from.

1 Q And so at that point you went to LaVanda
2 Joyner's apartment. And where was that in relation to
3 Kandie's apartment?

4 A Right across the grass, about maybe 30, 35 feet.

5 Q Was that your first time going to LaVanda
6 Joyner's apartment?

7 A No, sir.

8 Q And did you know her name?

9 A Yes, sir.

10 Q And how many times had you been there previous
11 to this morning?

12 A I know more than four.

13 Q Okay. And how did you know LaVanda Joyner?

14 A From just moving in there.

15 Q Okay. Well had you spoken to her before June
16 16th?

17 A Like all together?

18 Q No, had you spoken to her?

19 A Oh yeah, yeah.

20 Q And how did you know to go to her house this
21 morning?

22 A Because when I was on South Rhett at Shawan's
23 house, I got a phone call.

24 Q And from whom?

25 A From LaVanda.

1 A Okay. And what did she tell you?

2 A That the door would be open, just come in
3 whenever I get to [REDACTED]

4 Q Okay. And what door would that have been?

5 A The back door.

6 Q And had you done that in the past?

7 A Yes, sir. I can't go through the front door
8 because you could see it from my apartment I was
9 staying in.

10 Q Would Kandie want you going to LaVanda Joyner's
11 apartment?

12 A No. That was one of the problems between me and
13 Kandie. Females, friends, or whatever it was. She
14 didn't want me dealing with other females.

15 Q Are you proud of that?

16 A No, sir. And that was the reason for me going
17 to see who I went to see that day. I went to see
18 Shawan. I went to tell Shawan that, you know, I really
19 don't want to deal with nobody no more.

20 My sister had just passed. Kandie had thyroid
21 cancer. My mother was going through a lot, and my
22 father, because they had just lost their daughter.

23 So my intention was to go tell Shawan that I
24 didn't want to deal with her no more. Tanisha, I
25 didn't want to deal with her no more. Tanisha I told,

1 I don't want to deal with you no more. It was, you
2 know, that was simple.

3 Q Let's get back to LaVanda. So you got a call
4 from her, she says come over?

5 A Yes, sir.

6 Q And you do that?

7 A Yes, sir.

8 Q You went in the back door?

9 A Yes, sir.

10 Q Did you have any socks on your hands?

11 A No, sir.

12 W Did you ever have any socks on your hands while
13 you were in her apartment?

14 A No. I didn't need to.

15 Q Okay. And when you went in the apartment, where
16 did you go?

17 A To the couch she was laying on.

18 Q Okay. And what happened?

19 A Nothing. She -- I woke her up by laying next to
20 her. We talked for a second about what happened in the
21 day, which was nothing. We kissed and we had sex.

22 Q And how many times do you think that that had
23 happened before?

24 A Four times.

25 Q Okay. And after that, then what happened?

1 A And then I kind of like explained to her, you
2 know, the situation. You know, what I was going
3 through with everything. And I kind of like told her,
4 I just don't want to deal with none of this no more. I
5 just, you know, I'm about to move on. I don't want to
6 deal with none of this no more.

7 Q Was this downstairs or did you go upstairs?

8 A This was downstairs that I made a statement.

9 Q All right. Did you go upstairs?

10 A Yes, I did.

11 Q And where did you go?

12 A To the bathroom.

13 Q And why?

14 A To wipe myself off.

15 Q Okay. And then what happened?

16 A She came behind me saying that I'm playing her
17 like a --

18 Q You can say, just say it.

19 A Playing her like a whore, you know, I'm wrong
20 and dirty and, you know, just saying stuff. Just, you
21 know, out of character, temperamental, you are playing
22 me like a whore basically.

23 Q All right. Where did this take place?

24 A Upstairs by the bathroom.

25 Q Was there an altercation at that point?

1 A Yeah. Right there between the bathroom and the
2 stairs which is right next to each other.

3 Q All right. And after that, what happened?

4 A We had like a push-and-shove match with she
5 grabbing me, grabbing my shirt. And, you know, I'm
6 pushing her off my shirt, she is pulled my shirt.

7 So finally I push her off me and I go
8 downstairs. She follows me downstairs. We pull and
9 push a little bit more, and I push her down and go to
10 the door.

11 Q All right. And then where did you go?

12 A I left out the back door.

13 Q All right. And where did you go?

14 A Walked through the back field and went to the
15 Stay Over Motel to where my friend had a room.

16 Q And why did you go there?

17 A Because she was making a scene at the back door
18 about telling my baby's mother, and I wasn't going to
19 go to my baby's mother's house.

20 Q All right. So let's fast forward then to June
21 19th at the Subway. Do you recall that?

22 A Yes, sir.

23 Q All right. And what happened there?

24 A Well before I got to the Subway, as I'm walking
25 to the subway, I see her car coming in.

1 Q Well let me back up, let me ask you something.

2 When was the next time you heard from LaVanda Joyner?

3 A The day before Subway. So that was the 18th.

4 Q All right. And what happened on the 18th?

5 A I got a call -- well the first call I didn't
6 answer. The second call was a private number. I
7 answered it and it said, you are going to jail for
8 rape.

9 Q Who was it?

10 A LaVanda.

11 Q That was on the 18th?

12 A Yes, sir.

13 Q And what did you think about that?

14 A Well I started thinking like, well I just seen
15 -- well my baby's mama told me the police was at her
16 house the morning of the 16th. So on the 18th when she
17 said that, that's when it registered to me that maybe
18 she did, maybe she wasn't lying.

19 Q Okay. And so what happened on the 19th at the
20 subway?

21 A I was walking to the subway and I seen her come
22 through the [REDACTED]. She seen me, I seen her.
23 We walked through the little cut to get to the subway
24 and we stayed there. She was inside [REDACTED]
25 [REDACTED]

1 well we was in the subway. I don't know if she
2 went to her house or turned right around, but the next
3 thing I know I see her car coming through the parking
4 lot.

5 Q All right. And what did you think was
6 happening?

7 A I didn't think nothing at the time. The only
8 thing I was thinking was, uh-uh, I hope my baby's mama
9 avoid confrontation. So I walked off from my baby's
10 mama.

11 Q All right. And then what happened?

12 A I went back to [REDACTED] to go back to
13 the apartment.

14 Q Okay. What happened then?

15 A I went to the apartment. But then, you know, I
16 was going to leave again. On my way out the apartment
17 I see Lavanda and I see an officer.

18 Q So what did you do?

19 A I ran.

20 Q All right. And why did you run?

21 A Because she had the police with her and I didn't
22 know what that was about. So my intention was run and
23 see if I can get away and find out what is really going
24 on.

25 You know, call my mama and ask her if she can

1 call somebody or who I can call to find out what is
2 going on. I ain't never been in no situation like
3 that, so I just wanted to know what was going on.

4 Q Okay. And when was the next time you saw
5 Kandie?

6 A At my uncle's house on Dorchester Road, probably
7 about three or four days later.

8 Q All right. And why was it that you didn't see
9 her again until you got arrested on this charge?

10 A Because I had to get away so I can figure out
11 what was going on, how I was going to get the money up
12 to get a lawyer. Because I saw that I was seriously in
13 trouble.

14 Q All right. And is that what you did?

15 A Yes, sir.

16 Q Okay. I ask you one more time, did you rape
17 LaVanda Joyner?

18 A No, sir, I didn't. I did not rape LaVanda
19 Joyner.

20 Q Did you kidnap her?

21 A No, sir.

22 Q Did you enter her house without permission
23 intending to hurt her in any way?

24 A I did not.

25 MR. BUTLER: That's all I have.

1 THE COURT: Any questions for the witness?

2 MR. FINCH: Yes, Your Honor.

3 THE COURT: You may proceed.

4 MR. FINCH: May we approach?

5 THE COURT: Uh-hum.

6 (Whereupon, the following discussion was held at
7 the bench.)

8 MR. FINCH: The defendant mentioned that he had
9 never been in a situation like that. He has been in a
10 situation --

11 THE COURT: Situation of being accused of rape.

12 MR. FINCH: Okay. I wanted to clarify.

13 (In open court.)

14 THE COURT: Proceed.

15 CROSS-EXAMINATION

16 BY MR. FINCH:

17 Q Mr. Graddick.

18 A Yes, sir.

19 Q You said you knew LaVanda for -- since she moved
20 in; is that right?

21 A Yeah.

22 Q And at that time it had been about a month,
23 right?

24 A Yes, sir.

25 Q And in that time you had been over to her house

1 at least four times?

2 A Yeah.

3 Q And had sex with her?

4 A Uh-hum.

5 Q So you knew her pretty well?

6 A Well enough.

7 Q Well enough?

8 A Uh-hum.

9 Q You guys had some sort of relationship there?

10 A Uh-hum.

11 THE COURT: Sir, please say yes or no.

12 A Yes, sir.

13 Q (By Mr. Finch) And you called her LaVanda?

14 A Yes, sir.

15 Q Not Ms. Joyner, LaVanda?

16 A No, sir.

17 Q But everybody who knows her calls her Keisha,
18 right?

19 A Yes, sir.

20 Q All her friends, everybody who is close to her
21 calls her Keisha, but you call her LaVanda, right?

22 A Vonda, LaVanda.

23 Q And you are aware that no one else calls her
24 that?

25 A Yes, sir.

1 Q No one that's close to her at all?

2 A Uh-hum.

3 Q And you said that you had been over there at
4 least four times, and this is the first time that she
5 had run out of the house naked, or half naked, right?

6 A I didn't know she even ran out of the house. I
7 knew she came behind me and came to the back door, but
8 I didn't know she ran out of the house naked.

9 Q Do you know what she was wearing when you were
10 tussling with her upstairs?

11 A She had a shirt on.

12 Q And she chased you down right after that, right?

13 A Yeah.

14 Q So she didn't stop to get dressed?

15 A No.

16 Q So she was wearing what she was wearing when you
17 were fighting upstairs?

18 A Uh-hum.

19 Q And you said you pushed her in the chest a
20 couple of times?

21 A Yeah.

22 Q And eventually knocked her down?

23 A I knocked her into the wall.

24 Q Knocked her back into the wall, pushed her in
25 the chest to get away from her?

1 A Yes.

2 Q Because there was some antagonism, you guys were
3 fighting? She was yelling stuff so you pushed her to
4 get away?

5 A Yes, sir.

6 Q Right there in the chest?

7 A Uh-hum.

8 Q And then you made your escape?

9 A Yeah.

10 Q And you ran. You did not push her in the eye,
11 you pushed her in the chest?

12 A Uh-hum. Yes, sir.

13 Q But she was swollen in the eye. You saw the
14 photos, she was swollen in the eye, she had a cut on
15 her face and a cut on her neck. Isn't that right?

16 A Yes, sir.

17 Q And when you ran out the door, your biggest
18 concern was your baby's mama finding out, right?

19 A Yes, sir. When I walked out the door that was.

20 Q When you walked out or ran out?

21 A I walked out.

22 Q Okay. So she's chasing you down the stairs and
23 you are just walking out. But you don't know if she's
24 behind you?

25 A No, I know she was behind me. And I didn't run

1 out, I walked down the stairs with a pace to get down
2 the stairs. Because, like I said, we had a shoving
3 match at the top of the stairs.

4 So I did walk downstairs with a pace. But once
5 I went the corner from the stairs, I didn't have to
6 run. I couldn't run because she had the back of my
7 shirt. So when she had the back of my shirt I pulled
8 loose and pushed her off me.

9 Q Okay. You didn't mentioned that before. When
10 you're -- your biggest concern once you get out of the
11 house is your baby's mama finding out?

12 A Uh-hum. Yes, sir.

13 Q And you are gone from the 16th, you don't
14 encounter Ms. Joyner again on the 17th, correct?

15 A No, sir.

16 Q You don't encounter her on the 18th?

17 A No, sir.

18 Q And -- but you were back, you had been speaking
19 to Ms. Dunham, right?

20 A I was at Ms. Dunham's house on the 16th, the
21 17th, the 18th, and the 19th.

22 Q Okay. So after you saw that note that said go
23 back to where you came from?

24 A Yes, sir.

25 Q Eventually you go back at [REDACTED] with Ms. Dunham?

- 1 A Yes. I say around 12:00 or 1:00 on the 16th.
- 2 Q Around 12:00 or 1:00?
- 3 A Uh-hum.
- 4 Q Weren't you at MUSC around 12:00 or 1:00?
- 5 A On the 16th?
- 6 Q Uh-hum.
- 7 A Yeah, around that time.
- 8 Q So after that?
- 9 A Yeah, around that time.
- 10 Q And what did you go to MUSC for?
- 11 A I don't recall.
- 12 Q Migraine headaches or something like that?
- 13 A Probably was.
- 14 Q So you were back with Ms. Dunham, back in her
- 15 house about 12 to 15 hours after you had last seen that
- 16 note that said go back to where you came from?
- 17 A Yeah.
- 18 Q So that note didn't really have a lot of
- 19 sticking power, did it?
- 20 A No. Because that's what she always do. We
- 21 fuss, and then she call me and then we talk.
- 22 Q So you are right there across from Ms. Joyner's
- 23 house?
- 24 A Yeah.
- 25 Q She knows you are there?

1 A No.

2 Q But she knows Kandie's there. Kandie hasn't
3 left. Kandie hasn't left [REDACTED] she's still staying
4 there, right?

5 A Oh, yeah, yeah, yeah.

6 Q But she never comes up -- you're there, you
7 would know if she came over and knocked on the door,
8 wouldn't you?

9 A She didn't know I was at Ms. Joyner's.

10 Q But that doesn't matter. I'm asking if you
11 would know whether she came over and knocked on the
12 door?

13 A Yeah.

14 Q So if she had walked over and knocked on the
15 door and told Ms. Dunham, you know what Joseph has been
16 fooling around with me and everybody else?

17 A Yeah.

18 Q Exactly what you were afraid of, you'd know that
19 the next day?

20 A Yes, sir.

21 Q You know it on the 16th?

22 A Yes, sir.

23 Q You know it on the 17th?

24 A Yes, sir.

25 Q You know it on the 18th?

1 A Yes, sir.

2 Q But she didn't, it didn't happen?

3 A No, sir.

4 Q Didn't happen, your biggest fear, because from
5 your understanding, from what your testimony is, she
6 knew who you were and where you lived?

7 A Yes, sir.

8 Q So if anything was going happen, you were going
9 to be arrested or you were going to be found out by
10 your baby's mama, it would happened on the 16th, 17th,
11 and 18th?

12 A Yes, sir.

13 Q Would have happened easily right there. And you
14 know the police were there on the 16th because Ms.
15 Dunahm told you?

16 A Yes, sir.

17 Q And she made allegations on the 16th, right?

18 A Yes, sir.

19 Q But she didn't say, he's right there, or he
20 lives right there or stays right there on the 16th, did
21 she?

22 A No, sir.

23 Q Or the 17th?

24 A No, sir.

25 Q Or the 18th?

1 A No, sir.

2 Q But on the 19th when she finally recognized you
3 and your watch, that's when it came to pass?

4 A Yeah, when she recognized me. On the 19th, I
5 didn't have a watch on that day.

6 Q On the 19th, after you came back from subway

7 A Yes, sir.

8 Q And you saw the police with her?

9 A Yes, sir.

10 Q You ran?

11 A Uh-hum.

12 Q And the reason you ran is because you had never
13 been in a situation like that before?

14 A Yes, sir.

15 Q Where a female is with the police saying, that's
16 the guy?

17 A Yes, sir.

18 Q But you didn't say, I'm not the guy, you ran?

19 A Uh-hum.

20 Q And your plan was to figure this all out, figure
21 out what happened, talk to an attorney.

22 Did you do that?

23 A Did I?

24 Q Yes.

25 A Yeah, I talked to an attorney.

1 Q Then your plan was to turn yourself in, right?
2 Isn't that what you said, turn yourself in and get a
3 lawyer?

4 A I was going to get some money up to get a
5 lawyer. I never said I was going to turn myself in.

6 Q Maybe I misheard that when you were testifying.

7 A Yeah.

8 Q And I think you testified that you stayed around
9 town, you didn't go anywhere?

10 A Yeah, I stayed right near [REDACTED] from
11 the 16th, 17th, 18th to the 19th to the altercation
12 with the officer.

13 Then I went on Dorchester Road to my uncle's
14 house to try to figure out what we was going to do; me,
15 my father, my mother and myself.

16 Q Then you went where?

17 A To Atlanta, Georgia to my other uncle's house so
18 that I could, you know, have more space to work and
19 make money so I can get a lawyer and figure out what I
20 was going to do about this case.

21 Q And did you hire a lawyer in Georgia?

22 A No, sir.

23 Q Did you contact the police to see what the
24 charges were?

25 A Yeah. I had somebody in South Carolina do that

1 while I was in Georgia.

2 Q What did they tell you?

3 A That I had a first degree burglary, if I recall,
4 which carries life. I had a rape, which carries almost
5 life. And a kidnapping that carries at least 30 years.

6 Q And you know that LaVanda Joyner could have said
7 it was Joseph Graddick on the 16th?

8 A Yes, she could have.

9 Q Because it's your testimony she knew exactly who
10 you were?

11 A Exactly.

12 Q Because you knew her for a month. The moment
13 she moved in you guys started some sort of
14 relationship?

15 A A little while after she moved in.

16 Q And you were living there with your children,
17 correct?

18 A Yes, sir.

19 Q 

20 A Yes, sir.

21 Q And how old were the kids at the time?

22 A Three and four.

23 Q Okay. And on -- and then you left on the 19th
24 and didn't see them again?

25 A No, sir.

1 Q Not until sometime in '09, year and a half or so
2 later?

3 A Yes, sir.

4 MR. FINCH: Beg the Court's indulgence.

5 Q (By Mr. Finch) From the 16th to the 19th of
6 June, you didn't see Ms. Joyner?

7 A On the 19th I did. But the 16th, I didn't see
8 her. 17th or 18th, I didn't.

9 Q And you didn't have any confrontations with her?

10 A No. Not besides the phone call on the 18th.

11 Q All right. And when did you come back to South
12 Carolina?

13 A Around '09.

14 Q Do you remember when in '09?

15 A No, sir.

16 Q Maybe around October of '09?

17 A Around that time.

18 Q And did you do that willingly?

19 A No, sir.

20 Q Explain that.

21 A I got arrested in Georgia, and Georgia
22 extradited me back to South Carolina.

23 MR. FINCH: Thank you, Mr. Graddick.

24 THE WITNESS: Thank you.

25 THE COURT: Anything further for the witness?

1 MR. BUTLER: No, ma'am.

2 THE COURT: Sir, you may step down.

3 THE WITNESS: Thank you.

4 THE COURT: Defense may proceed.

5 MR. BUTLER: Your Honor, the defense rests.

6 THE COURT: I will reserve motions.

7 Are there any rebuttal testimony?

8 MR. FINCH: None from the State, Your Honor.

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, both the State and the defense have rested
11 their cases. I have some matters of law that I need to
12 take up with the attorneys.

13 But the next part of the process is closing
14 argument and instructions. Because of the late hour,
15 we will not do that this evening because that will take
16 us well beyond 5 o'clock. So we will resume in the
17 morning at 9:30 for closing argument and instruction.

18 During this break it is absolutely essential
19 that you have no interaction with one another or have
20 any discussion regarding this case, or have any
21 discussion regarding this case with anyone else.

22 Please do not allow yourselves to have any
23 exposure to any media coverage. That includes anything
24 radio, television, newspaper, or Internet. And please
25 don't do any independent research of any type regarding

1 any matter or issue or subject matter involved in this
2 case.

3 Also please do not discuss your jury service on
4 any social networking sites. As I have explained on
5 yesterday as you were dismissed.

6 We will resume at 9:30. Please leave your
7 notepads in your seats. And you will return directly
8 to your jury room at 9:30 for closing argument and
9 instruction.

10 Again please don't have any contact with anyone
11 in or about the courthouse. Have a wonderful
12 afternoon. We appreciate your patience. We will see
13 you in the morning at 9:30.

14 (Whereupon, the jurors exit the courtroom.)

15 THE COURT: You may be seated.

16 The defendant has rested. Are there any
17 motions?

18 MR. BUTLER: We renew our motion for directed
19 verdict.

20 THE COURT: Does the State have any response?

21 MR. FINCH: If you're inclined to maintain the
22 previous ruling, nothing from the State.

23 THE COURT: The Court denies the motion based on
24 its previous ruling.

25 If you all will give me just one moment, I

1 needed my clerk to get something for me, then we will
2 do charge conference.

3 I will instruct the jury regarding their
4 responsibility and my responsibility. How they are to
5 judge witness credibility and believability. Give them
6 a general instruction regarding expert witness
7 testimony.

8 I will instruct the State versus Grippon on
9 circumstantial evidence. I will give a general
10 instruction that the charge, the arrest, and the
11 indictment are not evidence, as well as on the
12 presumption of innocent.

13 I will instruct Victor versus Nebraska on
14 reasonable doubt. Then I will instruct the elements of
15 kidnapping from 16-39-10. Burglary first from
16 16-11-311, with the applicable provisions being
17 subsection one, which is when entering, while in the
18 dwelling or when fleeing, the defendant or an
19 accomplice was armed with a deadly weapon or explosive,
20 which is defined by the statute and the examples are
21 provided by case law which are only evidentiary for the
22 jury to ultimately determine; as well as ordinary
23 objects may become deadly weapons when the facts show
24 that they have been used to inflict serious bodily harm
25 or injury.

1 Again instructing -- that is simply an
2 evidentiary fact for the jury to give what weight,
3 value and effect it deems it should have.

4 Subsection two, which is when entering, while in
5 the dwelling or when fleeing, the defendant or an
6 accomplice caused physical injury to anyone not
7 participating in the crime. Or subsection three, when
8 entering, while in the dwelling or when fleeing, the
9 defendant or an accomplice used or threatened to use a
10 dangerous object.

11 The indictment alleges that nighttime is
12 applicable. However, the indictment indicates, and the
13 testimony has supported, that this took place June
14 16th, 2008. Daylight savings time had already started,
15 I would imagine. And there is no indication, nor has
16 there been any evidence presented, that it was dark.

17
18 The testimony from the witness who said she came
19 to his door was that he was watching Sports Center and
20 it was after he'd gotten off from work and it had been
21 approximately an hour, so it would put it around 7
22 o'clock. She said she was sleeping, and was awakened
23 from sleeping, and doesn't remember what time it was.

24 MS HERRING-LASH: The police were called way
25 before 7 o'clock.

1 THE COURT: So it wouldn't have been dark,
2 correct?

3 MS. HERRING-LASH: Sunrise was at 6:15 that
4 morning.

5 THE COURT: But you all didn't put that in.

6 MS. HERRING-LASH: And they were called at

7 5 --

8 THE COURT: 5:50 p.m.?

9 THE COURT: You're saying at 5:50 it was dark?

10 MS. HERRING-LASH: I don't know.

11 THE COURT: 5:50 would not have been. Daylight
12 saving time would have started, it wouldn't have been
13 dark.

14 MR. FINCH: It was 5:50 a.m. when she was
15 called. And when she was awoken, sunrise was at 6:11
16 a.m. that day.

17 THE COURT: The gentleman testified that he had
18 gotten off work.

19 MR. FINCH: The police responded.

20 THE COURT: What time did the police respond?

21 MR. FINCH: I think 5:53 a.m. or so. It was
22 three minutes after they were called which I believe
23 was 5:50.

24 MS. HERRING-LASH: I think Officer Middleton
25 testified that it had happened about 20 minutes before

1 he got there, and the arrival time was 5:54.

2 THE COURT: You know, the sun comes up early so
3 what time was it?

4 MR. FINCH: Sunrise was at 6:11 that day.

5 THE COURT: Mr. Butler?

6 MR. BUTLER: To me it doesn't matter what --

7 THE COURT: Okay.

8 MR. BUTLER: No, what the Solicitor, State says
9 that sunrise is. Nobody testified that it was dark,
10 period. You know, I'm never up at that hour so I
11 wouldn't know.

12 THE COURT: Well I am. I'm in the gym. It
13 comes up about quarter to 6:00 or so because I watch it
14 come over the horizon.

15 MR. BUTLER: There has been no testimony that it
16 was dark. So in any case I would object to that
17 portion being charged. And in light of, if it creates
18 a factual issue, then I would ask for burglary second
19 to be submitted as well.

20 Because on his testimony, he never had
21 possession of the screwdriver.

22 THE COURT: Well her testimony was that he did
23 and it was left at the scene. Whether it was a deadly
24 object is for the jury to determine. That's why you
25 instruct -- I'm going to take argument on the charge,

1 I'm not taking argument right now.

2 I'm dealing with the portions of the statute
3 that are applicable. But clearly case law supports
4 that any ordinary object can become a deadly weapon, it
5 depends on the perception of the victim. And her
6 testimony was that at first she thought it was a knife,
7 and then she realized later it was something else.
8 But certainly it comes within the provisions of the
9 statute.

10 Ultimately, whether the jury believes that is up
11 to them. Is there a reason you all didn't have anybody
12 testify as to what time the sun came up? What time the
13 sun came up? Because it is not in evidence at this
14 point.

15 I'd have to go back and look through my
16 transcript to see what the actual testimony was, but.

17 MR. FINCH: I requested from a service, I
18 believe it is in Columbia

19 THE COURT: Yeah, but you still have to get it
20 in the record.

21 MR. FINCH: You asked for a reason. They sent a
22 certified copy of a self-authenticated document was to
23 be on my desk this morning, today. It wasn't. and I
24 didn't receive it today.

25 I got an e-mail yesterday, but I was waiting for

1 that document today.

2 THE COURT: None of you elicited from the
3 witnesses whether it was dark or not. I have to think
4 about that one. Okay.

5 Then I will instruct the elements of first
6 degree sexual conduct which is 16-3-652. And the
7 applicable provisions would be the use of aggravated
8 force; that the victim submitted to sexual battery
9 while the victim was also the victim of forcible
10 confinement, kidnapping, robbery, extortion, burglary,
11 house breaking or any other similar offense. Third
12 portion of the statute would not be applicable.

13 I will instruct 16-3-657 which is the testimony
14 of the victim need not be corroborated, and that is
15 supported by State versus Rayfield, which is a 2006
16 Supreme Court decision which states that it is still
17 appropriate and applicable case law and should be
18 instructed.

19 I'll then instruct the elements of assault and
20 battery of a high and aggravated nature as a lesser
21 included offense. Which will instruct that if you find
22 that the state has not proven that the defendant is
23 guilty of the criminal sexual assault conduct in the
24 first degree, then you must determine whether the State
25 has proven that the defendant is guilty of assault and

1 battery of a high and aggravated nature.

2 which includes all of the elements of criminal
3 sexual conduct in the first degree. In addition, the
4 State must prove beyond a reasonable doubt aggravated
5 circumstance.

6 And then I will instruct the elements of assault
7 and battery of a high and aggravated nature, as well as
8 circumstances of aggravation. Which again are just
9 simply factual circumstances for the jury to give
10 whatever weight they deem appropriate.

11 I will then instruct standard instruction on
12 consent. I will also instruct punishment, because the
13 defendant in his testimony indicated what he thought
14 potential punishment was for these offenses which is
15 not appropriate for the jury to consider. Therefore, I
16 have to give them an instruction indicating and letting
17 -- making them aware that in determining the guilt or
18 innocence it is not appropriate to consider any
19 potential penalty for any particular crime. It is a
20 matter of law for the Court. Should not be considered
21 in any manner whatsoever in arriving at a fair and
22 impartial verdict as to the guilt or innocence of the
23 defendant.

24 I will then give a general instruction regarding
25 the jurors being fair and impartial. And then I'll

1 instruct the forms of the verdict which are basically
2 -- which are boilerplate, which are guilty or not
3 guilty of each, with the exception of criminal sexual
4 conduct which will say, we the jury by unanimous
5 consent find the defendant guilty of criminal sexual
6 conduct first degree, or as to the lesser included
7 offense, guilty of assault and battery of a high and
8 aggravated nature, or not guilty.

9 Are there any exceptions to the verdict forms as
10 proposed, from the State?

11 MR. FINCH: No, Your Honor.

12 THE COURT: From the defense?

13 MR. BUTLER: Do your verdict forms have the
14 indictment on the opposite side?

15 THE COURT: Uh-hum.

16 MR. BUTLER: Does it contain the language that
17 is on the indictment?

18 THE COURT: You know, it will on that burglary
19 first. Is that the one you are about to comment?

20 MR. BUTLER: I'm worried about the person of
21 prior record, two or more convictions for burglary.
22 I'm not sure why that was ever indicted that way.

23 THE COURT: Oh, no. It may be because they knew
24 about his situation in Georgia. I'm not sure.

25 MR. BUTLER: Anyway, I would ask that that be

1 removed. I'd hate for them to think that that was the
2 case.

3 THE COURT: Yeah. Any exception from the State?

4 MS. HERRING-LASH: No, Your Honor. That's why I
5 didn't put that even in the element when I explained,
6 it because that does not apply.

7 THE COURT: Well I didn't read it to the jury.
8 So I caught it. I'll find a way to redact it.

9 MR. BUTLER: Yes, ma'am. And you asked, posed a
10 question in terms of the verdict form.

11 Because I'm requesting the burglary second be
12 charged, I'm asking that it be included as well.

13 THE COURT: You didn't ask for burglary second
14 until -- I'm not instructing -- I haven't decided
15 whether I'm instructing the nighttime or not.

16 I'm going to have to go back and read the
17 testimony.

18 MR. BUTLER: Yes, ma'am. I just want to make
19 sure that I'm requesting that as well.

20 MS. HERRING-LASH: Your Honor, I --

21 THE COURT: You're requesting that if I
22 instruct nighttime, or you are instructing that if in
23 general, I need to be clear. Because you didn't ask
24 that at first.

25 MR. BUTLER: If nighttime -- no, because there

1 is another version that could be burglary second degree
2 is that he went in with the intent to a commit crime
3 but did not come armed.

4 THE COURT: That's within burglary first because
5 that deals with what the intent was prior to entering,
6 and whether there was --

7 MR. BUTLER: Yes, ma'am.

8 THE COURT: So that doesn't make it burglary
9 second, it's still a burglary first. Even if it is
10 abandoned once you enter. You just can't form the
11 intent after you enter.

12 MR. BUTLER: Yes, ma'am. I was saying with
13 respect to the portion of the indictment and the charge
14 to the jury about the deadly weapon, they can find the
15 he did not possess the deadly weapon. They could also
16 find --

17 THE COURT: To which case he would not be
18 guilty. Well there are several provisions.

19 MR. BUTLER: That's right.

20 THE COURT: Or. It's or not and.

21 MR. BUTLER: Right. So I am asking for -- the
22 easiest way, if nighttime is going to be charged I'm
23 definitely asking that burglary second be charged as
24 well.

25 THE COURT: Let me ask this another way. What

1 provision of the statute does the State contend
2 applies?

3 MS. HERRING-LASH: Your Honor, and just so you
4 don't waste your time, I'm almost positive that no one
5 testified it was dark.

6 THE COURT: Okay.

7 MS. HERRING-LASH: And just.

8 THE COURT: I'm almost positive too. I was
9 going to go back and read it.

10 MS. HERRING-LASH: I am too. I think we would
11 ask that the defendant was armed with a deadly weapon,
12 and/or the defendant caused physical injury to a person
13 not a participant in the crime, and/or the defendant
14 used or threatened the use of a dangerous instrument.

15 THE COURT: Okay. Now so that is clear, are you
16 still requesting burglary second?

17 MR. BUTLER: Yes, ma'am

18 THE COURT: I have to look at the facts to see
19 if that supports it.

20 Let me ask, does the State have any exception to
21 the burglary second being instructed?

22 MR. FINCH: I'll have to take a quick look at
23 the elements.

24 THE COURT: All the elements of burglary second
25 are the same as burglary first, with the exception of

1 the circumstance of aggravation.

2 So what you have to prove in burglary second is
3 that there was an entry, that the defendant intended to
4 do commit a crime, and that's it.

5 MR. FINCH: Are you waiting on us?

6 THE COURT: Uh-hum.

7 It's actually a lesser standard. All you have
8 to prove is that he broke in with the intent to commit
9 a crime.

10 MS. HERRING-LASH: I think under the general
11 premise that if there is any facts that would support a
12 lesser included the defense has a right to it, that we
13 wouldn't object.

14 THE COURT: Okay. Add that to it.

15 Okay. We'll add burglary second to the
16 burglary, to the burglary verdict form.

17 I'm going to have my secretary make a copy and
18 we will try to redact that language out of the burglary
19 indictment. Okay.

20 Are there any exceptions to the charge as
21 proposed, from the state?

22 MR. FINCH: No, Your Honor.

23 THE COURT: From the defense?

24 MR. BUTLER: I had just one question. You said
25 that you would charge the standard consent charge.

1 Does that include the language the State must disprove
2 consent beyond a reasonable doubt?

3 THE COURT: That's what case law says.

4 MR. BUTLER: Thank you. And you asked earlier
5 what case law appealed to, State versus Roger Bostick
6 from April advance sheets of this year and my
7 opposition to Grippon. Just for the record.

8 THE COURT: Does that say that that's an
9 inappropriate?

10 MR. BUTLER: No, ma'am, it does not say that.

11 THE COURT: Okay.

12 MR. BUTLER: And my request for Edwards to be
13 charged.

14 THE COURT: How would it then stand for the
15 proposition to allow you to argue against precedent?

16 MR. BUTLER: Okay. What it says is that -- the
17 Grippon charge says that circumstantial evidence and
18 direct evidence are of equal weight and equally valid.
19 And in --

20 THE COURT: Well actually what it says is there
21 is no greater degree of certainty required for
22 circumstantial evidence than of direct evidence.

23 MR. BUTLER: To the extent the charge equates
24 the two, I think it's at odds with Bostick and Shrock
25 and Arnold, cases where our Supreme Court has reversed

1 convictions. I think at least two of them were murder,
2 all three of them may have been murder, where the
3 evidence was entirely circumstantial and said defendant
4 was entitled to directed verdict.

5 I think I can read those cases as saying that
6 Grippon is no longer valid. I just have to make that
7 for the record.

8 THE COURT: Well I have read all of those cases
9 and I do not recall the Supreme Court articulating that
10 isn't the standard.

11 MR. BUTLER: Yes, ma'am.

12 THE COURT: State versus Grippon is still good
13 case law. And actually not just State versus Grippon,
14 but the United State Supreme Court which is
15 black-letter standard that there is no greater degree
16 of certainty required of circumstantial evidence than
17 of direct evidence.

18 And it would not be appropriate to leave the
19 jury with the impression that that is the heightened
20 standard, because it is not.

21 Okay, now if you all give me a moment I will get
22 those verdict forms and I will let you look at the
23 redacted indictment and then we will -- while we are
24 doing that, could you all go ahead and go through the
25 evidence and make sure everything is in place for the

1 court reporter.

2 Can you all approach please and see if you have
3 any objection to --

4 MR. BUTLER: It still says at night.

5 THE COURT: Oh, does it? I'm sorry. I was so
6 focused on the two or more burglaries.

7 Is the State going to open and close?

8 MR. FINCH: Yes, ma'am.

9 THE COURT: How long are your closing arguments
10 going to be?

11 MS. HERRING-LASH: Maybe five minutes, maybe
12 not.

13 THE COURT: I'm sorry, I couldn't hear you.

14 MS. HERRING-LASH: Not more than 5 minutes, I am
15 just opening on the law.

16 THE COURT: I'm talking total.

17 MR. FINCH: Say 25 minutes total.

18 THE COURT: How long will the defense closing
19 arguments be?

20 MR. BUTLER: I'm trying to be more accurate, so
21 I'm going to say 30 minutes. Figure it's always better
22 to come in on the -- 30 to 35. I have the approval
23 from the deputies.

24 THE COURT: Now if you all can come look at that
25 for the Court, please. Make sure I did not fail to

1 redact anything.

2 Is there any exception from the redacted
3 indictment from the State?

4 MR. FINCH: No, Your Honor.

5 THE COURT: From the defense?

6 MR. BUTLER: No, ma'am.

7 THE COURT: Okay. Are there any exceptions to
8 the verdict forms as proposed, from the State?

9 MR. FINCH: No, ma'am.

10 THE COURT: From the Defense?

11 MR. BUTLER: No, ma'am.

12 THE COURT: Is there anything else we need to
13 take up before we adjourn for the afternoon, from the
14 State?

15 MR. FINCH: No, Your Honor.

16 THE COURT: From the defense?

17 MR. BUTLER: No, ma'am.

18 THE COURT: Okay. Have a great afternoon. I
19 will see you all in the morning at 9:30.

20 (Whereupon, the proceedings in this matter
21 before the Court were adjourned for the evening.)

22 * * * * *

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25

1 THE COURT: Is the State ready to proceed?

2 MR. FINCH: Yes, Your Honor.

3 THE COURT: Defense ready to proceed?

4 MR. BUTLER: Yes, ma'am.

5 THE COURT: Is the State going to open and
6 close?

7 MR. FINCH: Yes, Your Honor.

8 (Whereupon, the jurors enter the courtroom.)

9 THE COURT: Good morning, ladies and gentlemen.
10 I hope that you all had a pleasant and restful evening.
11 As I indicated on yesterday, both the State and defense
12 have rested their cases. The next part of the process
13 is closing arguments and instruction.

14 I would ask that you give the attorneys your
15 undivided attention.

16 The State may proceed when their ready.

17 MS. HERRING-LASH: Thank you, Your Honor, may it
18 please the Court.

19 THE COURT: Yes, ma'am, you may proceed.

20 MS. HERRING-LASH: I would like to once again
21 thank you for your service and your time this week. I
22 will just once again briefly go over the law, some of
23 the law, that you will be applying to facts of the
24 case. Before you go out to deliberate, Judge Jefferson
25 will clearly instruct you on the law. And if anything

1 I say differs from what she says, go by what she says.

2 But because some of these terms are very foreign
3 to you all, we would hope that maybe hearing it three
4 times will help you understand it a little better than
5 just twice. So let's look at statutes that are charged
6 here.

7 The first is burglary in the first degree. A
8 person is guilty of burglary in the first degree if he
9 enters a dwelling, a home, without consent and with the
10 intent to commit a crime. The defendant was armed with
11 a deadly weapon, and/or the defendant caused physical
12 injury to a person, and/or the defendant threatened the
13 use of dangerous instrument.

14 We have in the law something that is called a
15 lesser included offense. It's kind of difficult but I
16 will try to explain it to you the best I can with using
17 the example of burglary first.

18 You first look at the charged offense, burglary
19 first, and you go over each of these elements. And if
20 you find, when you are looking at them, that there was
21 no one armed with a deadly weapon, there was no
22 physical injury to any person, there was no use of a
23 dangerous instrument, then you would go to the lesser
24 included offense.

25 I will note to you, it doesn't have to be A, B

1 and C. It could be just A, just B, or just C. It
2 could be A and B, A and C, but just one of them. But
3 if you find none of them, you would go to the lesser
4 included offense which would be burglary in the second
5 degree.

6 And that would be, a person enters a dwelling,
7 enters a home, without consent, and with the intent to
8 commit a crime. That gives you just an idea of how you
9 look at the grading. And then if you don't find those
10 elements, you go to the next which is the lesser
11 included offense.

12 Kidnapping, the next crime that is charged here,
13 to unlawfully seize, to confine, to inveigle, to decoy,
14 to kidnap, to abduct, carry away any person by any
15 means without authority of law. Kidnapping is often
16 misunderstood by many people as, well, there has to be
17 a ransom; or you have to take someone and actually
18 secret them away for a long time to another place.

19 Actually confining them on a couch, holding them
20 down, holding their hands behind their back and
21 carrying them away upstairs is kidnapping if you have
22 no authority of law to do that. Kidnapping has no
23 lesser included offense. So when you look at
24 kidnapping, you would just be looking at these
25 elements.

1 Criminal sexual conduct in the first degree. A
2 person is guilty of criminal sexual conduct in the
3 first degree if he engages in the sexual battery. And
4 if you remember, and I have the slide, sexual battery
5 is any penetration. In this case sexual battery is
6 sexual intercourse.

7 The defendant is charged with the crime used
8 aggravated force to accomplish the battery, held the
9 person down and forced them to have intercourse;
10 or/and, could be either, both of these or one of these,
11 the victim submitted to the battery because at the same
12 time she was the victim of forcible confinement,
13 kidnapping, robbery, extortion, burglary, kidnapping --
14 excuse me -- house breaking, or any other similar
15 offense.

16 So you can look was there force, was there
17 aggravated force, and was she also a victim of any of
18 these offenses; it could be one, it could be two, it
19 could be both.

20 If you find, that is a sexual battery, that
21 there was none of those, then criminal sexual conduct
22 in the first degree does have a lesser included, and
23 that is assault and battery of a high and aggravated
24 nature. And that is an unlawful act of physical injury
25 to another person accompanied by circumstances of

1 aggregation.

2 I will go over circumstances of aggravation in a
3 second. But you notice what is not here is the sexual
4 battery, that is the element missing, if you find there
5 was no sexual battery during the assault.

6 Circumstances of aggravation could be the use of a
7 deadly weapon, the intent to commit a felony, the
8 infliction of serious bodily injury, the taking of
9 indecent liberties or familiarities with a female by
10 use of force.

11 This doesn't require battery, but you go through
12 the criminal sexual conduct first, first to see if you
13 believe the assault included intercourse, if a sexual
14 battery occurred. If you find there was no
15 intercourse, then you would look for if there was just
16 an assault.

17 There are two types of evidence that exist;
18 there is circumstantial and there is direct evidence.
19 Neither one is more probative than the other, they are
20 equally probative. And in this case you have both.
21 The direct evidence, I will just go over one example of
22 each just to kind of give you an example, Mr. Finch
23 will go over other examples on the direct and
24 circumstantial evidence.

25 But the direct evidence could be an eyewitness.

1 And in this case you have an eyewitness. The victim is
2 the eyewitness. It doesn't have to be a third person.

3 She told you what happened. She told you what
4 she saw, she told you what she heard, she told you what
5 she felt. She was there and telling you about what
6 happened this night when she was burglarized and
7 assaulted.

8 There is also circumstantial evidence. Proof of
9 a chain of facts and circumstances indicating the
10 existence of the assault. In this case you have
11 Preston Thompson, who what he told you can be the chain
12 of facts indicating that what she was saying is what
13 happened.

14 You would look at several chain -- several
15 things that corroborate what she said. Her injuries on
16 her face corroborate she was tussling --

17 MR. BUTLER: I have to object to arguing facts
18 in opening on the law.

19 MS. HERRING-LASH: Mr. Finch will go over more
20 of the circumstantial evidence with you.

21 Now reasonable doubt is one of the hard, hardest
22 concepts perhaps to get your head around for everyone.
23 But the standard of proof is proof that leaves you
24 firmly convinced of the defendant's guilt. That is the
25 standard.

1 There are few things in this world, if any, that
2 any of us ever know with absolute certainty. Absolute
3 certainty is not the standard. If that were the
4 standard, there could never be a conviction.

5 Because if you were absolutely certain this happened,
6 you would have been sitting up there. You would have
7 been there, and you would have seen it, or you would
8 have heard it, or you would have known about it, you
9 wouldn't be a juror.

10 It is not every doubt. It is not any doubt. It
11 is a doubt for which a reasonable juror seeking the
12 truth can articulate a reason.

13 If you believe this happened, the State has met
14 that burden. Thank you for your attention.

15 THE COURT: You may proceed.

16 MR. BUTLER: When you think about the most
17 important decisions that you've had to make in your own
18 life, where to send your children to school; whether to
19 take a new job, uproot your family and move to a new
20 town where you don't know anybody; how to invest your
21 money for your retirement; whether and when to get
22 married; you never would, and you shouldn't, rely on
23 the word of just one person in matters of such
24 significance in your own life.

25 And you certainly would not rely on the word of

1 one person when that word was contradictory,
2 implausible and at times required you to believe in the
3 impossible. And that's what you would have to believe
4 to find Joseph Graddick guilty in this case.

5 Like I told you just Monday, the State's case
6 relies on the word of one person and one person only.
7 And it doesn't make sense. And the reason it doesn't
8 make sense is because it didn't happen.

9 And I will give -- you know, a lot of times I
10 think people expect someone in my position to talk
11 about how ridiculous it was that a case was brought,
12 and how unfair it was that a case was prosecuted, and
13 how this is just some big frame-up, and how the police
14 are corrupt and the prosecutors don't care.

15 I'm not saying that. I'm definitely not saying
16 that in this case. This is what trials are for. And
17 everybody does their job. But ultimately you get to
18 decide. Luckily for all of us, you get to decide.

19 And I will give them credit because credit is
20 due. The police were meticulous in the way that they
21 investigated and documented their investigation.
22 Particularly Sgt. Hallman and the photographs he took
23 of the crime scene.

24 State's 1, remember the tank-top and the shorts?
25 Remember her explanation for how they ended up there?

1 How can they end up there? Remember because she says
2 she ran out with just her shirt on. And I asked her,
3 you mean the tank-top that is here on the floor with
4 the shots by the couch? She said, yeah, that's the
5 tank-top. How did it get there? If you ran out with
6 it on, the police must have put it there.

7 Well you heard Sgt. Hallman, and that wouldn't
8 make any sense. You preserve the integrity of the
9 crime scene. You want to be able to document it as it
10 was when you found it.

11 And would it just be a coincidence that her
12 tank-top would end up right where her shorts are? No,
13 it's not just a coincidence, that's where she left
14 them. And she didn't run outside half-naked,
15 screaming. And that's why nobody sees that or hears
16 that. It's a contradiction. It doesn't make sense.

17 The shirt's there on the floor because that's
18 where she left it. And she didn't run out in the dark.
19 It's the simplest explanation, you don't have to come
20 up with some other reason how it ended up there.

21 The screwdriver. Remember what she said three
22 years ago? The more I'm thinking about it, I don't
23 know why they wouldn't have fingerprinted the
24 screwdriver, socks or not. We will talk more about the
25 socks and the excuse of the socks. But if that's

1 Joseph's screwdriver, he would have touched it at some
2 point prior to putting on the socks, if they say he
3 did. I don't know why they didn't fingerprint it.

4 But that's neither here nor there, they didn't.
5 Remember what she said about the screwdriver three
6 years ago, and what she didn't say? What she told the
7 police then was, he came in and dropped it on the
8 floor. But before you, he held it to her throat.

9 Isn't that kind of dramatic, surely a terrifying
10 thing to have happened to a person, to have a sharp
11 object held to your throat? She didn't say that then.
12 And she didn't tell the SANE nurse that either, the
13 sexual assault nurse.

14 Wouldn't it be important enough and memorable
15 enough that you would tell the first responders, people
16 who are there to help you and treat you, that that
17 happened? But she didn't. It was an afterthought.
18 And it didn't happen.

19 How else does she contradict herself? Where did
20 Joseph go when he left? Well from the witness stand he
21 ran to the fence near the McDonalds. That's not what
22 she told the police three years ago. He got into a
23 four-door dark sedan driven by someone else.

24 Why would you forget that? I will note it seems a
25 meaningless enough fact, maybe you'd forget it, or is

1 it? Do you remember what all of our mothers told us?
2 You don't have to worry about keeping your story
3 straight as long as you tell the truth.

4 Another contradiction, what about this
5 boyfriend? Do you remember her testimony about the
6 boyfriend? And I don't know if I heard it right or
7 not, and there is more ears out there than I have. I
8 thought that she testified that not only did she call
9 the boyfriend on the phone, but also that he came to
10 the scene. Maybe she just testified she called him.

11 But in any case, where is that witness? Where
12 is the boyfriend to say what she told him on the phone?
13 You hear the objection, you might even be familiar with
14 the concept of hearsay, you can't repeat what someone
15 said. But there are exceptions, you saw that. A
16 witness in a sexual assault case, the State can put up
17 evidence of what that person told other people, the
18 complainant in a sexual assault case. That's why her
19 mother was able to say that. That's why the sexual
20 assault nurse was able to repeat things that she said.

21 But what's interesting, you know, they tried to
22 get the neighbor to say that that's what she said,
23 asked her several times and he said, no, she just asked
24 for the phone.

25 But in any case, where is the boyfriend? And

1 can you think of a reason why maybe the boyfriend would
2 not want to be here? Why would a boyfriend, someone
3 romantically involved, wouldn't want to be here to
4 testify? The boyfriend that the mother knew nothing
5 about. Recall? I asked her mother. But not only was
6 her boyfriend not there, she didn't know anything about
7 him.

8 The word of one person is not only
9 contradictory, but it's also implausible if not
10 impossible unless you are willing to admit the excuses.

11 No injuries, no superficial -- other than these
12 superficial scratches to her face. And this is
13 interesting, I don't know if you noticed this, but when
14 Mr. Finch asked her about the injuries to her face I
15 thought, and I think he thought, she was going to say
16 that was from the screwdriver. She didn't say that.
17 She said it had happened from when they tussled is the
18 word she used, tussled. Perhaps tussled on the stairs
19 like Joseph said.

20 Implausible if not impossible. Remember what
21 Faye LeBoeuf, the SANE nurse, sexual assault nurse
22 examiner, examined her entire body from head to toe,
23 front to back, side to side, nothing. And here is the
24 first of their excuses. How many excuses does the State
25 get in the prosecution of a criminal case? I don't.

1 know, but not this many. Well she just missed it. The
2 injuries were there, she just didn't see it.

3 How many times can they ask you to believe in
4 the existence of things that aren't there? I don't
5 know, but not this many. Well she had some scratches
6 on her face, so she could have missed the other things.
7 Okay, why would she have missed those?

8 Remember what Ms. LeBoeuf said? She looks to areas of
9 the body where the patient complains of injuries. She
10 must not have been complaining of any, so she must not
11 have had any. Or maybe they just weren't so serious
12 that she had seen them, the ones on her face. You'll
13 have the photographs of them, you can decide how
14 significant they are.

15 But no abrasions to her knees which would have
16 been on the carpet during a violent sexual assault. No
17 abrasions to her elbows. No bruises that you would
18 expect to see from when somebody is forced to do
19 something they don't want to do.

20 And if your eyes aren't good enough, they use
21 this colposcope, or whatever it is, that magnifies, go
22 inside her body. And as intrusive, as unpleasant as
23 that is, I'm glad that they have to do that because it
24 shows nothing. No swelling, no redness, no much less
25 abrasions or tearing, all of which can occur in

1 consensual sex. Still not there.

2 And Ms. LeBoeuf said, well, still it's
3 consistent with what Ms. Joyner reported. Well it is
4 also equally consistent with what Joseph said. Here is
5 really the bottom line of their explanation for the
6 lack of physical evidence. It's what I call a triple
7 negative. Just because there is no physical evidence
8 does not mean it didn't happen.

9 Okay. But what reason is there to believe that
10 it did? I mean you could say the same thing about a
11 unicorn. Just because nobody has photographed a
12 unicorn or capture a unicorn or given a reliable
13 account of seeing a unicorn, that doesn't mean that
14 there aren't unicorns. Well, that's true. But what
15 reason is there to believe? None.

16 Just because there is no physical evidence
17 doesn't mean that it didn't happen, well that's true,
18 it's still her word against his.

19 And then you don't always find it as she said,
20 as Ms. LeBoeuf said, well then why look at all? Why do
21 we have sexual assault nurse examiners do this thorough
22 physical exam if you don't always find them or you
23 don't expect to find it?

24 Don't you know if there had been carpet burns to
25 her knees, fabric burns to her elbows, bruises to the

1 inside of her thighs, anywhere, don't you know those
2 photographs would be blown up for you and they would
3 say, look what he did to her, as they should. But now
4 when they're not, that's not important. Just sweep
5 that away.

6 Do you want to know the better explanation? It
7 just didn't happen. That's how you can explain away
8 the absence of things that you would expect to see, it
9 just didn't happen. The clothes you'll have them, the
10 shorts, the tank-top. They're not ripped, they're not
11 torn, they're not stretched.

12 The same with the burglary. Just because there
13 are no fingerprints, just because the blinds aren't
14 disturbed, just because the dirt that's on the outside
15 does not make it to the inside, just because there was
16 no fingerprints, just because there are no shoe prints
17 doesn't mean that it did not happen.

18 And before I get too deep into that. Ms.
19 Herring-Lash went over the law better than I do, but I
20 want to make sure you understand. Burglary is not just
21 being in someone's house and a crime happens. A person
22 guilty of burglary intends to commit a crime when they
23 enter the house.

24 If someone goes looking for their friend and
25 they don't knock and they walk in, and then they see

1 something they want and they take it, it's not
2 burglary. The person has to intend to commit the crime
3 when they went in the house. The fact that there is a
4 physical assault on the stairs, even by Joseph's
5 account, doesn't make this a burglary because it
6 happened in her house.

7 Let's look at some more of these photographs.
8 How does this happen then? State's 12, the dirt that I
9 guess is supposed to have come from someone's foot
10 stepping on the HVAC unit outside the window, right?
11 Now first of all you remember also she said that the
12 screen, she said, was up, but this is the backdoor.
13 She didn't say that she noticed it was up, she's
14 assuming.

15 But in any case, no dirt on the window sill, no
16 dirt on the outside of the window sill where a person
17 would have had to step. No dirt on the inside of the
18 window sill where a person would have had to step and
19 if not there on this table, on this chair, on this tile
20 floor.

21 These blinds are not disturbed at all, these
22 vinyl blinds. Almost everybody, if they don't have
23 them in their house, is familiar with them. You can't
24 disturb those things without them bending, breaking.
25 All in pristine condition. You know why? Because no

1 one went in through that window.

2 You know, how does Joseph, or anyone else
3 tracking mud, come in through that window? First at
4 all without leaving a trace, disturbing the blinds,
5 dirtying up the table, the chair, disrupting that
6 kitchen, leaving a shoe print. Forget that, much less
7 without making a sound and waking up the person who's
8 sleeping on the same floor just feet away? Without
9 anybody seeing him?

10 Well let's see, one of the explanations is he
11 was wearing socks. Or he wasn't wearing socks. Well
12 he had on socks part of the time but not the whole
13 time. Well which one is it? I still don't know why
14 they wouldn't have fingerprinted the door going out of
15 the house, but in any case the socks aren't there.

16 So here's what they would have you believe. That
17 Joseph, with a screwdriver in his hand and socks on his
18 hand, in the early morning hours is able to remove the
19 screen from outside the window, without being seen by
20 anyone on the outside, no one says there's a yard.

21 And here's another thing. How did he know that
22 she would be alone? If she has a boyfriend and he
23 supposedly knows about it, how did he know she would be
24 alone if she didn't tell him? That's how. How else
25 would he have known that she was going to be alone,

1 unless she told him.

2 Pushes open the window, I guess with socks, with
3 the screwdriver in one hand. Then climbs in the
4 window, without being heard by the person sleeping just
5 inside. Commits this violent sexual assault without
6 bruising, tearing, scraping.

7 Takes off the socks at some point, the very
8 socks that were used to carefully conceal any trace of
9 his having been there, but then leaves his DNA. Leaves
10 his bodily fluid. The strongest, most powerful
11 evidence that he was there. He leaves that behind?
12 But then has the presence of mind to take the socks
13 with him? Doesn't make sense because it didn't happen.
14 The socks aren't there because he never was in there
15 with socks.

16 Once the bodily fluids are left behind, wouldn't
17 you have sex with someone without a condom? Everything
18 you've done before, everything you do after to conceal
19 is meaningless. It makes no sense because it didn't
20 happen.

21 You know why else it didn't happen? It's
22 because there are no zebras running wild in Charleston.
23 Let me tell you what that means. If you hear hoof
24 beats, if you're in Charleston or anywhere else in the
25 United States, if you hear hoof beats, the sound of a

1 horse, you don't think it's a zebra.

2 I have to admit this is something that my doctor
3 tells me. I'm a bit of hypochondriac. And every time
4 there is the newest pandemic disease on the television,
5 whether it's SARS, or the Asian flu, or I was having a
6 rough time of it with that swine flu thing awhile ago.

7 And I get the sniffles, I'm at the doctor, and
8 I'm convinced that I have it every time. My doctor
9 will say, Beattie, have you been to Asia? No. Have
10 you been around anybody who has just come back from
11 Asia? No.

12 Oh, I know, Doc, I know what it is. I had a
13 layover in Denver on my way to Salt Lake City. There
14 was a guy sitting next to me at the airport and he was
15 reading a pamphlet about Beijing and I think that's
16 where I got it. No. No.

17 Doc, look, the symptoms are the same; the cold
18 sweats, the chills, the aching. You've got the flu.
19 You've got the flu. Go home, rest, drink some juice
20 and no CNN for a month.

21 Well how can you tell? The symptoms are the
22 same. Because, Beattie, if you hear hoof beats, you
23 don't think it's a zebra. You can come up with some
24 explanations of how it's a zebra, you know, the circus
25 is in town and a zebra got out. Well what reason is

1 there to think that? None, it's a horse.

2 The simplest explanation is always the truth.
3 The truth is rarely that complicated, and it certainly
4 doesn't allow for excuses. It doesn't require you to
5 embrace contradiction. It doesn't allow you to accept
6 the implausible, if not the impossible.

7 It certainly doesn't allow for last-ditch
8 attempts to explain what is not there but what should
9 be there. You know, why did the neighbor not say, I
10 have just been raped, is what she tells him? Why does
11 no one else in this apartment complex hear these
12 screams?

13 Why is there no physical evidence to show that
14 he broke into this house? Why is there no physical
15 evidence to show this was a violent sexual assault?
16 Here's why, let me try. Let me try. It didn't happen,
17 how is that? You don't have to explain away the
18 absence of these things. It's a horse, not a zebra.

19 Here is what this case is really about, it's
20 what she says. It's her word against his. And two
21 things that I'm willing to admit. Why would he run?
22 Why run? We all would like to think what we would do,
23 and what all reasonable people would do in such a
24 circumstance, would be to go to the police and say, I
25 have nothing to hide.

1 But the unfortunate reality is different people
2 have different backgrounds from different places and
3 they react differently to different things. And does
4 the fact that he was not willing to, right off the bat,
5 allow himself to get tossed into jail where as you've
6 heard he waited for two years, does that fact that he
7 didn't want to wait in jail two years for his day in
8 court, does that somehow make her story make sense?
9 Does that somehow make those picture make sense? Does
10 that somehow make the lack of findings from the SANE
11 nurse make sense? No.

12 And here is the bigger problem. Bring it up for
13 them. Why would she lie? Why lie? If this was
14 consensual, if they were having this ongoing thing, why
15 would she make it up? I don't know. Who knows.

16 You know, in all of the animal kingdom, the human
17 animal and the most mysterious. In the Greeks, ancient
18 Greeks said that it was our ability to rationalize that
19 separated us from nonhuman animals.

20 Well our ability to be rational also brings with it our
21 ability to be irrational.

22 And in matters of intimacy, sex, if there is
23 anything that makes people less than rational, it's
24 that. And does it matter why? If the evidence doesn't
25 show you that what she is telling you is the truth,

1 does it matter why she would lie?

2 Well, also, okay why not from the beginning say
3 it was him? If you are mad at him, if you are angry at
4 him, because he slighted you, because you are now a
5 person scorned, why not just say it was the boy across
6 the way, it was Joseph.

7 I mean at some point do you really care why the
8 boy cries wolf? Does it matter? But I can give you an
9 explanation. Is it just a coincidence that she calls
10 the police when she sees Joseph with his girlfriend?
11 And that was the last straw. She now knows for sure he
12 is not coming back. This is over. And that is when
13 she decides to call the police.

14 You remember also that her initial description
15 was 5'10", 235 pounds. You've seen Joseph. He is not
16 5'10", 235 pounds. She got angry at him, called the
17 police, didn't think she was really going to go through
18 with it until she saw him with his girlfriend and said,
19 that's him.

20 And if that is not plausible to you, I want to
21 show you one other photograph, two more. State's 2 and
22 State's 1 again. You can't see them so well, but
23 you'll have those back with you. What are these right
24 here? You see it better here. What is that? You can
25 tell from the scale in this picture. What are these

1 next to her tank-top, next to her shorts?

2 Those are her hoop earrings that no one said Joseph
3 tore from her ears. That no one said were taken off in
4 a violent struggle that just happened to end up next to
5 her bedclothes, her tank-top and her shorts.

6 I will tell you what this photograph looks like.
7 It looks like the morning after a night that Joseph
8 described on the couch. Her earrings right next to her
9 bedclothes. She took them off like she took off her
10 clothes. Right there.

11 And they're not on the bedside table where you
12 would take them off before you go to sleep, they're on
13 the floor with the same clothes.

14 This idea that somehow, okay, he doesn't call
15 her by the right name. The State gets reply rebuttal.
16 They can put up witnesses after Joseph testified. They
17 could call her back. Nobody called me, nobody called
18 me Van or Vanda. Where is that witness? They could
19 have called those people.

20 Look, as complicated as some of this is, it
21 really doesn't have to be. Either you believe her,
22 almost like Ms. Herring-Lash said, either you believe
23 her or you don't. Either you believe her beyond a
24 reasonable doubt or you don't.

25 I hate it every now and then I have to sound

1 like a lawyer. Why beyond a reasonable doubt? I don't
2 know if you've served on a jury before, or how familiar
3 you are with the legal system. In civil cases when
4 it's just money, it's more likely than not,
5 preponderance of the evidence.

6 When there are children are involved, and
7 custody of children, it becomes a little harder for the
8 person who's trying to take the children away, a
9 heightened standard, clear and convincing evidence.

10 This is higher, beyond a reasonable doubt.
11 Beyond a reasonable doubt. Why is that? Because we
12 are talking about loss of freedom, loss of liberty.

13 You are about to make the most important
14 decision that you are ever going to make in someone
15 else's life, Joseph's. It's the most important
16 decision that anybody is going to make in his life, but
17 it's also one of the most important decisions that you
18 are ever going to make in your own life as well.

19 If you've ever read bedtime stories to children,
20 walked on the beach and felt the cool surf between your
21 toes and the warm sand, they don't want him to feel
22 those things anymore. They want to take them away from
23 him. That's why it's proof beyond a reasonable doubt.

24 Because all of those things will be gone.
25 Children's first steps, a child's first love.

1 Graduation.

2 MR. FINCH: Your Honor, I object.

3 THE COURT: Sustained.

4 It is improper to argue punishment; Mr. Butler.

5 Ladies and gentlemen, you are to disregard Mr.

6 Butler's last comment. You are to give it absolutely

7 no consideration in your deliberations.

8 MR. BUTLER: Note my objection to represent the
9 defense, due process.

10 THE COURT: It is noted and overruled.

11 Punishment is improperly argued to a jury.

12 Proceed.

13 MR. BUTLER: It's the most important decision
14 that you are about to make in your own life. Because
15 you don't get, once you render your verdict, to go
16 back. There are no recounts. There are no do-overs.

17 You can't call me -- and believe me this happens
18 -- and say, you know, I was thinking about some of the
19 things that you said and I want to change my vote. No.
20 This is it. You only get one time to get it right.
21 And it's like the Judge said at the beginning of the
22 trial, nobody can come behind you and question your
23 verdict.

24 You might see on television somebody gets a new
25 trial because of an error the lawyers made, or because

1 of something that a judge has done. But never because
2 of the decision that you've made. Once you render it,
3 it exists forever and a day, etched in stone and in
4 blood and you can't change it and nobody else can
5 change it.

6 And it's not a popularity contest. It's not
7 about winning or losing. You took an oath to apply the
8 law of the State of South Carolina, whether you agree
9 with it or not. Everybody along this process takes an
10 oath. The lawyers, the judges, the witnesses, and
11 that's to ensure one thing, justice is done. Because
12 there are no winners or losers when justice is done, we
13 all win.

14 And justice in this case, unless the word of one
15 person is sufficient in matters of such significance,
16 unless the implausible and contradictory are enough to
17 deprive somebody of freedom, justice in this case is
18 one thing and one thing only and that's not guilty.
19 Thank you.

20 THE COURT: Ladies and gentlemen, why don't you
21 stand up for me and stretch a little bit and get your
22 blood circulating.

23 Does anyone need to go to the restroom or is
24 everyone comfortable. Everybody is?

25 State may proceed.

1 MR. FINCH: Thank you, Your Honor, may it please
2 the Court.

3 THE COURT: Yes, sir.

4 MR. FINCH: Mr. Butler is right about one thing,
5 we are talking about two stories here. We are talking
6 about the story told by LaVanda Alicia Joyner, and the
7 other story told by the defendant, Mr. Graddick.

8 Mr. Butler used a couple of words over and over
9 again. I lost count how many times he said it, lost
10 count of how many times he said it didn't happen. But
11 it did happen. And the words he used were implausible,
12 contradictory, didn't make sense, impossible, cause you
13 to believe things that are fantastic.

14 It a perfect explanation of Mr. Graddick's story
15 that you heard yesterday. And it's just that, a story.
16 Something he made up. It's a lie.

17 It's a lie because that's all he has. Because
18 when we talk about the story Ms. Joyner tells, it's
19 corroborated by circumstantial evidence, other witness
20 accounts, testimony, photographs.

21 I'd like to go through the elements of that
22 story with you. You have been here for two days
23 hearing the testimony. You are on your third day now.

24 To recap Ms. Joyner grows up in Moncks Corner,
25 graduates from a local high school, joins the Army, is

1 honorably discharged. And works at the National Guard.
2 Then she is also working at the call center, T-Mobile.
3 Two jobs, a boyfriend, living on her own.

4 Moves to [REDACTED] because she thinks it
5 will be safe. It's a gated community. It's a place
6 where she can be independent.

7 On Father's Day 2008 she mourned the loss of her
8 father, and then celebrated with her boyfriend. She
9 told you about that. Her boyfriend left, he had to
10 work the next morning, she went to bed on the couch.
11 Went to sleep on the couch watching TV.

12 Then she wake up to the defendant. She doesn't
13 know it's him. Even though she's seen him before, she
14 doesn't know it's him. He has got a T-shirt on his
15 face. He has got socks on his hands. She wakes up
16 with one of those hands on her mouth and she struggles.

17 She struggles to figure out what is going on.
18 She struggles to get free. She struggles to be safe.
19 But she isn't safe. He's bigger, he's stronger and he
20 gets her on to the floor. Then he gets her face-down
21 in the couch. And he rapes her from behind.

22 At some point during this the thoughts are
23 running through her mind, what should I do? Should I
24 keep fighting? If I do, will I die? If I die, when
25 will my mother find me? How many days before my mother

1 finds my body? What can I do?

2 There is something I can see. There is
3 something that is going to tell me who this person is.
4 Something that if I live, I can point to something and
5 say, that's the person who did this to me.

6 A watch. A watch on the armrest of that couch
7 was all she could see when he's forcing her head down.
8 But she can see that watch. She takes note of the
9 watch. As much detail as she can remember about the
10 watch. And some shoes, but that's all she gets.

11 When he finishes, puts her hands behind her
12 back, takes her upstairs. Wasn't a mystery as to was
13 upstairs, he lived across the street. All of the
14 apartments are the same. Takes her upstairs to the
15 bathroom. We don't know why he did that, it doesn't
16 matter why. But he did.

17 He took her up there and that's where her fear
18 turned to anger. And she started to fight back. Maybe
19 that's when the training from the Army kicked in.
20 Maybe that's just what happens when Ms. Joyner is put
21 in that situation where somebody has taken from her
22 what is hers.

23 Not something on the kitchen table, not
24 something in a wallet or a purse, that she offered all
25 those things to the defendant. Take anything you want,

1 but she never said, take me. But he did. And he
2 didn't care.

3 So now she is angry. And she is fighting back.
4 And she told you what she said, just let me get my hand
5 on you. Maybe that's not something that anybody here
6 can imagine themselves saying, or even being in that
7 same position. But she told you that from the stand.
8 She chased him out of that house.

9 Mr. Butler said nobody sees her running around
10 naked, nobody screams. Yeah, they did. The neighbor.
11 You remember Preston Thompson. You remember, he didn't
12 want to be here. Didn't want any part of this. The
13 guy had no reason to lie to you. He told you she was
14 half naked outside crying and he gave her a blanket.

15 Then she calls the police. She calls 911, just
16 like Mr. Thompson told you she did. He gave her his
17 phone. Then she goes back in and she calls her
18 boyfriend, and she calls her mom.

19 She can't tell her mom what happened. She says,
20 mom, please come. Her mother, on her way to church,
21 turns the car around. She doesn't need to know what
22 happened. She can hear it in her daughter's voice.
23 She can hear it in the sobs. She can hear like a
24 mother can hear a daughter reaching out for help,
25 reaching out to be cared for.

1 So she goes. While she is on her way, the
2 police arrive. And then the house is filled with
3 police. Her face, her injuries are photographed. And
4 she has to tell people what just happened to her. The
5 most humiliating and invasive and terrifying experience
6 of her life.

7 And then they take her to go through an invasive
8 exam, to have the genital swabs by strangers. All
9 along this she doesn't say, it was Joseph Graddick.
10 Hey, hey, wait, I know who did this, it was Joseph
11 Graddick. Or, hey, hey, it was Joe. Or it was J. Or
12 any other name she could think of. Or even the guy
13 across the way. The guy who lives 35 feet away with
14 that girl whose name I don't know. She could have told
15 them at any point in time but she didn't. Because she
16 didn't know him.

17 A few days later she sees him again. She
18 doesn't see him -- my recollection of the testimony,
19 rely on your own, but my recollection of the testimony
20 is that she doesn't see him with the girlfriend. It
21 doesn't matter anyway.

22 It wasn't the reason to now suddenly spring the
23 trap that she had set earlier as to, I'm going to set
24 this guy up for rape. No, she was telling the truth.
25 She didn't know what happened.

1 But she sees the defendant by himself staring at
2 her, keeping his eyes on her vehicle as she drives.
3 Looking, and when she turns around still looking. So
4 she drives around to check for the watch. And sure
5 enough, there it is.

6 Then she recognizes, I have seen that guy
7 before, that's the guy from across. That's the guy
8 with the girlfriend. The guy I wave to. The guy I
9 say, hey, what's up, because that's what neighbors do.

10 So she calls the police again. And they come to
11 see if they can identify the suspect, get information.
12 They go to speak to Kandie Dunham, the woman he refers
13 to only as his baby Mama. She is uncooperative. She
14 denies even knowing him.

15 Eventually they learn who he is to her, and get
16 a search warrant to confirm the name. Then a year
17 after it sent, the DNA results come back. One year,
18 that's how long it takes. They confirm the name,
19 Joseph Graddick.

20 By then he has been gone a long time. He was
21 out of that life he had been living. Out of that life
22 he told you about. That ideal situation on Father's
23 Day where he wakes up and his kids cook for him, they
24 read for him, it was an ideal situation.
25 Well that's also an implausible story, full of

1 contradictions, full of convenience for him. I asked
2 him how old his kids were at the time, 3- and
3 4-year-old kids cooking, reading to him. It's a lie.
4 It's a story.

5 Now he's gone to Atlanta, been gone since a
6 couple days after he got away from the police on the
7 19th. Never once saw those kids again, those kids he
8 so glowing told you about yesterday. Didn't ask them
9 to come to Atlanta, didn't hear any of that.

10 What brought him back from Atlanta? Extradition.
11 He got arrested. Georgia talks to South Carolina,
12 South Carolina talks to Georgia, he is back. He told
13 you about that. You learned a lot about Joseph
14 Graddick yesterday. You learned he has a family, a
15 mom, a grandmother, a brother, they are sitting right
16 over there. Learned all about that.

17 Everybody has a mother. Everybody has a
18 grandmother. Ms. Joyner has a mother. And she has got
19 a grandmother too. Everybody has got a family. This
20 isn't about people's families, it's about what Mr.
21 Graddick did to Ms. Joyner on June 16th, 2008. It's
22 about him burglarizing her home, raping her and
23 kidnapping her.

24 You also heard the story yesterday Mr. Graddick
25 had to tell you. I have eluded to it a couple of

1 times, but that story was essentially that this is all
2 trumped up. Ms. Joyner made all this up because he was
3 the last stop on his, it's over with you and me tour.

4 I think I counted three different women that Mr.
5 Graddick supposedly went door-to-door to let everybody
6 have their last change with him and say it's over. And
7 she, the one who had been with him for maybe four
8 weeks, had four encounters with him, she is the one who
9 freaked out. She ran out of the house naked.

10 Or is it, no, she ran out because he was running
11 but then he was walking. Contradictions,
12 implausibility, impossibility, that didn't happen.

13 You also heard me talking to Mr. Graddick, and
14 how he didn't have answers for certain things. Like if
15 she was so enraged, and if all she wanted to do was
16 blame him for some fictitious act, why she wouldn't
17 just have named him in the first place or identified
18 him? She never identified him as Joseph Graddick. Not
19 one time.

20 The DNA did it, the evidence in the house taken
21 from the search warrant did it. All she said is,
22 that's the watch, that's the guy wearing the watch.
23 That's all she ever said.

24 If this was a woman scorned, even without any
25 real reason, it does not make any sense because that

1 didn't happen. She was only 35 feet away, by his own
2 estimation. She could have walked over the next day
3 and told Ms. Dunham, hey, your man has been stepping
4 out on you with me, just so you know.

5 And this is what I think, you can think whatever
6 you want, whatever they want to say, but that's the
7 first thing that he was afraid of, the biggest thing he
8 was afraid of and it never happened.

9 Because normally if that's the situation in a
10 consensual relationship, it just goes awry, things just
11 break up, and you're the woman scorned and you know the
12 other woman, and she would have had to have known
13 because she's right there, you go to that first woman
14 and say, let me tell you something about that man.

15 That didn't happen either, because that doesn't
16 make sense and that doesn't match. His story was a
17 lie. A lie. And he had to. He had to think of a
18 story. Because in these kind of cases there are only
19 two ways to go; wasn't me or it wasn't rape.

20 We heard Lindsay Thompson mathematically rule
21 out anybody else in this universe or the other. So
22 what's the only thing left is, it wasn't rape, she
23 wanted it.

24 You are the judges of the credibility in this
25 case, the believability. You've heard the witnesses.

1 You've listened to the testimony. You've seen the
2 exhibits. You can judge the demeanor of people and the
3 reasons or motives they have for lying.

4 LaVanda Alicia Joyner has no reason to lie to
5 you. She has no reason to lie to the police. Check
6 her story against all the circumstantial evidence
7 offered in this case. And check it against the
8 testimony of other people.

9 Mrs. Joyner, Alicia's mom, she doesn't know
10 anyone in this case. She just knows her daughter was
11 incredibly upset the morning of June 16th, 2008. So
12 much that she went to her immediately.

13 Tony Middleton, veteran police officer, the
14 first to arrive, describes how upset she was. He had
15 to calm her down just so he could figure out what
16 happened. But also talked about, remember back to what
17 he saw happened? He describes that screen as being
18 pried off, and the window was unlocked.

19 It's interesting that Mr. Butler, when touching
20 on a couple things about where's the mud, where's the
21 mud here and there. But even with Mr. Graddick's own
22 story, he entered, he walked in, he walked out, there
23 was no mud on the floor there. No mud in front of the
24 door.

25 Red herrings, distractions, things to keep you

1 away from focusing on the truth. Because we do have
2 two stories here. We have the truth, and we have the
3 lies told to you by Mr. Graddick.

4 Crime scene recovered the screwdriver that
5 Alicia knows wasn't hers. Hers is electric. There is
6 no reason for her to lie about what kind of screwdriver
7 she had. Crime scene took pictures of her injuries.
8 You'll have the pictures, look them over.

9 A half-moon cut right here, shaped like a
10 fingernail on this side of the cheek. Have a look at
11 it. She told you she still bears a scar from that.
12 Corroborates the story of a hand on her mouth.
13 scratches to her neck corroborate the story. Swollen
14 around her eyes, swollen to her face corroborate her
15 story.

16 Faye LeBoeuf missed those injuries. Yep. She
17 admitted that. She was focused on the genital area.
18 She found no injury there. Seems odd that defense
19 bemoan lack of injuries. Well, this person should have
20 been more injured. That doesn't excuse it because you
21 are not more injured.

22 Ms. LeBoeuf also told you that the norm, 85
23 percent or more sexual assault cases there is no
24 injury. Think back, it also jives with the statement
25 and the story and the history given by Ms. Joyner.

1 Also think back to what she told you. She
2 stopped struggling, she stopped fighting because maybe
3 that would save her life. Maybe this would just be
4 over. Maybe he would leave. Maybe she would still be
5 alive in the morning.

6 Alicia moved right after this happened. The
7 management money, the management company refunded her
8 money, a year lease. She paid over, gave her back her
9 deposit. But again, the strongest piece of
10 corroborating evidence comes from someone who really
11 wanted nothing to do with this, Preston Thompson.

12 She ran outside naked, half-naked, she still had
13 that shirt on, screaming for help. Mr. Butler was
14 wrong in that nobody heard that. She banged on the
15 door, and he said nobody saw that or heard that. Well
16 Mr. Thompson saw that and he opened door. Saw her
17 screaming, saw her asking for help, saw her crying. He
18 gave her a blanket and a phone to call the police,
19 which she did.

20 He told you he didn't want to testify. We don't
21 know why he didn't want to testify. It's not important
22 why he didn't want to testify. But he did. And he told
23 you the truth. Because he didn't have any reason to
24 lie to you. He didn't have any reason to make up a
25 story. He wasn't choosing a side, he was choosing the

1 truth. He just didn't want to be involved.

2 she is not running around half-naked outside
3 banging on the neighbor's door that she has never met.
4 A woman with a good education, experience, two jobs.
5 She is not running around banging on the doors because
6 some guy she may have known for up to a month cut off
7 their once-a-week fling. That's implausible, that's a
8 contradiction, and that doesn't make sense, and that is
9 not what happened.

10 what did happen to Ms. Joyner is everyone's
11 nightmare. To be awoken by a stranger, he'd obviously
12 watched her house and knew she was alone, and then
13 raped. Thinking it was going to end in her death. You
14 sleep where you think you are safe because you are most
15 vulnerable.

16 Mrs. Joyner, Alicia's mom, told you, she tries
17 to flee from these thoughts. She tries to keep the
18 memory of this away. But every so often it comes back
19 up. And she can't talk to her, she can't talk about
20 it, her mom can't talk to her about it. Neither of
21 them can because it's a nightmare, but a nightmare that
22 can end today.

23 Ms. Herring-Lash discussed reasonable doubt with
24 you. And that is the State's burden. Justifiably a
25 high burden. However, the State's position is we have

1 met that burden.

2 On Monday morning when you came in here to
3 perform jury service, you didn't know anything about
4 this case. You didn't know anything about me, any of
5 the attorneys here, you didn't know anything.

6 If you believe that this happened, we have met
7 our burden. The evidence is overwhelming. And it
8 corroborate Ms. Joyner's version of events.

9 The defendant's lie is not cause for reasonable
10 doubt. It's not even reasonable. This happened
11 exactly the way Ms. Joyner told you it did, and the
12 evidence supports that. The evidence leads you to only
13 one appropriate verdict, guilty.

14 THE COURT: Ladies and gentlemen, stand up for
15 me again and stretch a little bit to get your blood
16 circulating.

17 Does anyone need to go to the restroom?

18 Everybody comfortable? Okay.

19 During this trial, ladies and gentlemen, you and
20 I have certain duties to perform. As the trial judge
21 it is my responsibility to preside over the trial of
22 this case. I also have the duty to rule upon or pass
23 upon the admissibility of evidence which has been
24 offered during the course of this trial.

25 You are to consider only the competent evidence

1 which has been placed before you. And you are to
2 disregard and disabuse from your mind any testimony
3 ordered stricken from the record in this case.

4 You are to consider only the testimony which has
5 been presented from the witness stand, together with
6 any exhibits which have been made a part of the record
7 in this case, as well as any stipulations of counsel
8 made into the record.

9 And I will explain to you, you heard Mr. Finch
10 publish a stipulation. A stipulation is an agreement
11 between the attorneys, and it requires no further
12 proof.

13 I have the additional duty to charge -- as I've
14 told you charge and instructions are interchangeable
15 terms -- I have the additional duty to charge you on
16 the law applicable to this case. As the presiding
17 judge I'm the sole judge of the law in this case. And
18 it is your duties, as jurors, to accept and apply the
19 law precisely as I now state it to you.

20 If you have a preconceived idea as to what the
21 law is or what the law ought to be in a case, or in
22 this case, and it should not agree with what I now tell
23 you the law is, you are obligated under the oath which
24 you have taken to abandoned this preconception on your
25 part because you are sworn to accept the law and apply

1 the law precisely as I now state it to you.

2 In every case tried in this court before a jury,
3 the jury becomes the sole and exclusive judges of the
4 facts. You are the judges of the facts in this case.
5 This Court is the judge of the law.

6 The constitution of our State has declared that
7 a trial judge shall not intimate, state, comment upon
8 or make any statement to a trial jury about the facts
9 in a case. Since you the jury are the sole judges of
10 the facts in this case, you are not to infer anything
11 from what I have said during the progress of this trial
12 in ruling upon the admissibility of evidence or
13 otherwise, or anything that I now say to you during the
14 course of this instruction, that I have any opinion
15 about the facts in this case.

16 The law does not allow me to have an opinion
17 about the facts. The law -- this is a matter solely
18 for you, the jury, to determine. As juror, then, it is
19 your duty, as I have instructed, to determine the
20 effect, the value, the weight, and the truth of the
21 evidence presented to you during this trial.

22 Necessarily, you must assess the credibility of
23 witnesses who have testified. Credibility is simply a
24 legalistic term meaning the believability of each
25 witness who has presented testimony. It becomes your

1 duty as jurors to analyze and to evaluate the evidence,
2 and determine that evidence which convinces of you its
3 truth.

4 I instruct you that in determining the question
5 of the credibility or believability of witnesses who
6 have testified, you may believe one witness as against
7 several witnesses, or several witnesses as against one
8 witness.

9 You may believe a part of the testimony of a
10 witness, and rejected the remaining part of the
11 testimony of that same witness. If you have a good and
12 sound reason, you may believe the testimony of a
13 witness in its entirety, or reject the testimony of a
14 witness in its entirety.

15 You may consider whether any witness has
16 exhibited to you any interest, any bias, any prejudice,
17 or other motive in this case. You may consider the
18 demeanor of a witness, that is the manner and
19 appearance of the witness from the witness stand. You
20 have but one objective, ladies and gentlemen, to seek
21 the truth regardless of its source.

22 Our rules of evidence do not ordinarily permit
23 witnesses to testify to opinions or conclusions. An
24 exception to this rule exists for witnesses we all
25 expert witnesses. A witness who by their education,

1 training and experience, have become an expert in some
2 art, science, profession or calling, may state an
3 opinion as to relevant and material matters in which
4 the witness claims to be an expert, and may also state
5 the reasons given for that opinion.

6 You should consider any expert opinion received
7 in evidence in this case like any other evidence. Give
8 it the weight you think it deserves.

9 If you decide that the opinion of an expert witness is
10 not based on sufficient education and experience, or if
11 you conclude that the reasons given in support of the
12 opinion are not sound, or that the opinion is
13 outweighed by other evidence, you may disregard the
14 opinion entirely.

15 An expert witness's testimony is to be given no
16 greater weight than that of other witnesses simply
17 because the witness is an expert. Further, you are not
18 required to accept an expert's opinion, even though it
19 is not contradicted.

20 There are two types of evidence, ladies and
21 gentlemen, which are usually presented during a trial;
22 direct evidence and circumstantial evidence. Direct
23 evidence is the testimony of a person who asserts or
24 claims to have actual knowledge of a fact, such as an
25 eyewitness. Circumstantial evidence is proof of a

1 chain of facts and circumstances indicating the
2 existence of a fact.

3 The law makes absolutely no distinction between
4 the weight or value to be given to either direct or
5 circumstantial evidence. Nor is a greater degree of
6 certainty required of circumstantial evidence than of
7 direct evidence.

8 You should weigh all of the evidence in this
9 case. After weighing all of the evidence, if you are
10 not convinced of the guilt of the defendant beyond a
11 reasonable doubt, you must give the defendant the
12 benefit of that doubt and find him not guilty.

13 Conversely, if you are convinced of the guilt of
14 the defendant beyond a reasonable doubt, then you must
15 find him guilty.

16 I instruct you now that the fact that the
17 defendant was arrested, charged and indicted is not
18 evidence in this case, and cannot be considered by you
19 as evidence of guilt in this case. Nor does it create
20 any presumption or inference of guilt.

21 This documentation, ladies and gentlemen, is
22 simply the formal written instrument which contains the
23 charge or charges made against a defendant. It simply
24 serves as the formal document by which the case is
25 processed or brought into this court.

1 The defendant has pled not guilty to the
2 indictments. And that plea casts the burden on the
3 State to prove the defendant guilty. A person charged
4 with committing a criminal offense in South Carolina is
5 never required to prove himself innocent.

6 I instruct you, Madam Forelady, ladies and
7 gentlemen of the jury, that it is a cardinal and
8 important rule of the law of evidence that the
9 defendant in a criminal trial, no matter what the
10 seriousness of the charge or charges made against him
11 may be, will always be presumed to be innocent of the
12 crime for which he is indicted, unless his guilt has
13 been proven by evidence satisfying you of that guilt
14 beyond a reasonable doubt.

15 This presumption of innocence does not cease
16 when you retire to deliberate, but it accompanies the
17 defendant from the time of his appearance, throughout
18 the trial, until you reach a verdict in this case.

19 Our Supreme Court has said that the presumption
20 of innocence is like a robe of righteousness placed
21 about the shoulders of the defendant. And it remains
22 with him and assigns him to that class, the innocent,
23 until that presumptive robe of righteousness has been
24 stripped from his person by evidence satisfying you of
25 that guilt beyond a reasonable doubt.

1 The presumption of innocence is not mere legal
2 theory, it is not just a legal phrase. It is a
3 substantial right to which every defendant is entitled
4 unless you, the jury, are satisfied from the evidence
5 of his guilt beyond a reasonable doubt.

6 The State has the burden of proving the
7 defendant guilty beyond a reasonable doubt. Some of
8 you may have served as jurors in civil cases where you
9 were told that it is only necessary to prove that a
10 fact is more likely true than not true. Such as by the
11 greater weight or preponderance of the evidence.

12 In criminal cases, the state's proof must more
13 powerful than that. It must be beyond a reasonable
14 doubt. Proof beyond a reasonable doubt is proof that
15 leaves you firmly convinced of the defendant's guilt.
16 There are very few things in this world that we know
17 that absolute certainty. And in criminal cases, the
18 law does not require proof that overcomes every
19 possible doubt.

20 If based on your consideration of the evidence
21 you are firmly convinced that the defendant is guilty
22 of the crime charged, you must find the defendant
23 guilty. If on the other hand you think there is a real
24 possibility that the defendant is not guilty, you must
25 give the defendant the benefit of that doubt and find

1 him not guilty.

2 The defendant is charged with kidnapping. The
3 State must prove beyond a reasonable doubt that the
4 defendant knowingly and unlawfully seized, confined,
5 inveigled, decoyed, kidnapped, abducted or carried away
6 another person without authority of law.

7 To do a thing unlawfully is to do it willfully
8 against the law. Knowingly means with knowledge
9 consciously, not accidentally. Seize means to take
10 hold of suddenly or forcibly. Confine means to limit,
11 restrict, or enclose within bounds, imprison or shut or
12 keep in.

13 Inveigle means to lure, entice, or lead astray
14 by false representations, promises, or other deceitful
15 means. Decoy means to lure by, or as if by decoy. A
16 decoy is something to entice a person into a trap.

17 Kidnapped is to remove a person against his or
18 her will by unlawful force or by fraud. Abduct means
19 to carry off secretly or by force for an illegal
20 purpose. Carry away means to remove.

21 The State does not have to prove that the
22 defendant did all of these things. Instead, if you
23 find beyond a reasonable doubt that the defendant did
24 any of these things, you may find the defendant guilty
25 of kidnapping.

1 Something done without authority of law is
2 something which the law does not sanction, permit,
3 allow, condone or provide justification for. The
4 kidnapping does not have to be for any purpose, for any
5 personal or monetary gain, or for any illegal purpose,
6 but it may be for any reason whatsoever.

7 The defendant is charged with first degree
8 burglary. The State must prove beyond a reasonable
9 doubt that the defendant entered a dwelling without
10 consent. A dwelling is any building or portion of a
11 building in which a person ordinarily sleeps.

12 A building constructed as a dwelling that has
13 never been occupied, cannot be considered a dwelling
14 for purposes of burglary. But a building is a
15 dwelling, even if the residents are temporarily absent
16 from the building.

17 In order to prove that the defendant entered a
18 dwelling, the State does not have to show that the
19 defendant's entire body entered the dwelling. The
20 smallest entry is sufficient. It may be any part of
21 the body, such as a hand or foot, or even an instrument
22 such as a hook or other instrument.

23 In addition, the State does not have to prove
24 that force was used to gain entry. If a person enters
25 a building by using deception, artifice, trick or

1 misrepresentation to get consent to enter, this is an
2 entry without consent.

3 Next, the State must prove beyond a reasonable
4 doubt that the defendant intended to commit a crime;
5 either a felony or a misdemeanor at the time of the
6 entry. The mere entry into a dwelling without consent
7 is not burglary. If the intent to commit a crime is
8 formed after the entry, it is not burglary.

9 On the other hand, if the defendant intended to commit
10 a crime at the time of the entry, it is a burglary even
11 if the intent was abandoned after the entry. It does
12 not matter that the intended crime was not completed.

13 Intent maybe shown by acts and conduct of the
14 defendant, and other circumstances from which you may
15 naturally and reasonably infer intent.

16 Finally, the State must prove beyond a
17 reasonable doubt that when entering, while in the
18 dwelling, or when fleeing, the defendant or accomplice
19 was armed with a deadly weapon or explosive.

20 A deadly weapon is any article, instrument or
21 substance which is likely to cause death or great
22 bodily harm. Whether an instrument has been used as a
23 deadly weapon depends on the facts and circumstances of
24 each case.

25 The following are examples of instruments which

1 may be deadly weapons: A pistol, a shotgun, a rifle, a
2 dirk, a dagger, a knife, a slingshot, metal knuckles, a
3 razor, gasoline, a firebomb or Molotov cocktail, and
4 lighter fluid.

5 A gun may be a deadly weapon, even if it is not
6 operating. Ordinary objects may become deadly weapons
7 when the facts show they have been used to inflict
8 serious bodily harm or death.

9 Ladies and gentlemen, these are simply
10 evidentiary facts to be taken into consideration by
11 you, along with the other evidence in the case. And to
12 be given the effect, value and weight you decide it
13 should have.

14 Or when entering, while in the dwelling or when
15 fleeing the defendant or an accomplice caused physical
16 injury to anyone not participating in the crime. Or
17 when entering, while in the dwelling or fleeing, the
18 defendant or an accomplice used or threatened to use a
19 dangerous object.

20 If you find, ladies and gentlemen, that the
21 State has failed to prove beyond a reasonable doubt
22 that the defendant committed first degree burglary, you
23 may consider whether the State has proven beyond a
24 reasonable doubt that the defendant committed second
25 degree burglary.

1 Second degree burglary includes all of the
2 elements of first degree burglary except the
3 circumstances of aggravation. To prove second degree
4 burglary, the State must first prove beyond a
5 reasonable doubt that the defendant entered a dwelling
6 without consent.

7 Again, as I have explained, a dwelling is any
8 building or portion of a building in which a person
9 ordinarily sleeps. A building constructed as a
10 dwelling that has never been occupied cannot be
11 considered a dwelling for purposes of burglary. But a
12 building is a dwelling, even if the residents are
13 temporarily absent from the building.

14 In order to prove that the defendant entered the
15 dwelling, the State does not have to show that the
16 defendant's entire body entered the building. The
17 smallest entry, as I have explained, is sufficient. It
18 may be any part of the body, such as a hand or foot.
19 Or even an instrument, such as a hook or other
20 instrument.

21 In addition, the State does not have to prove
22 that force was used to gain entry. If a person enters
23 a dwelling by using deception, artifice, trick or
24 misrepresentation to get consent to enter, this is an
25 entry without consent.

1 Next the State must prove beyond a reasonable
2 doubt that the defendant intended to commit a crime,
3 either a felony or a misdemeanor, at the time of the
4 entry to be guilty of burglary.

5 The mere entry into a dwelling without consent
6 is not burglary. If the intent to commit a crime is
7 formed after the entry, it is not burglary. On the
8 other hand, if the defendant intends to commit a crime
9 at the time of the entry, it is a burglary even if the
10 intent was abandoned after the entry. It does not
11 matter that the intended crime was not committed.

12 Again, as I have explained, intent may be shown
13 by acts and conduct of the defendant, and other
14 circumstances from which you may naturally and
15 reasonably infer intent.

16 The defendant is charged with criminal sexual
17 conduct in the first degree. The first element which
18 the State must prove beyond a reasonable doubt is that
19 the defendant engaged in a sexual battery with the
20 victim.

21 A sexual battery is sexual intercourse,
22 cunnilingus, fellatio, anal intercourse, or any
23 intrusion, however slight, of any part of a person's
24 body, or of any object into the genital or anal
25 openings of another person's body, except when the

1 intrusion is accomplished for medically recognized
2 treatment or diagnostic purposes.

3 If you find that the State has not shown beyond
4 a reasonable doubt that a sexual battery occurred, you
5 would stop deliberating and your verdict would have to
6 be not guilty.

7 If you find that a sexual battery did occur, you
8 must then decide whether the State has proven beyond a
9 reasonable doubt that the defendant used aggravated
10 force to accomplish the sexual battery. Aggravated
11 force means the use of physical force or physical
12 violence of a high and aggravated nature to overcome
13 the victim. This includes the threat of using a deadly
14 weapon.

15 Or, the victim submitted to sexual battery while
16 the victim was also the victim of forcible confinement,
17 kidnapping, robbery, extortion, burglary, house
18 breaking, or any other similar act or offense.

19 I instruct you, ladies and gentlemen, that South
20 Carolina code section 16-3-657 provides that the
21 testimony of the victim in a criminal sexual conduct
22 prosecution need not be corroborated, pursuant to
23 16-3-652 through 16-3-658.

24 I instruct you, ladies and gentlemen, that if
25 you find that the State has not proven that the

1 defendant is guilty of criminal sexual conduct in the
2 first degree, you may then determine whether the State
3 has proven that the defendant is guilty of assault and
4 battery of a high and aggravated nature.

5 Assault and battery of a high and aggravated nature
6 includes all of the elements of criminal sexual conduct
7 in the first degree. But, in addition, the State must
8 prove beyond a reasonable doubt an aggravating
9 circumstance.

10 Assault and battery of a high and aggravated
11 nature is an unlawful act of violent injury to the
12 person of another, accompanied by circumstances of
13 aggravation.

14 An assault occurs when a person unlawfully
15 attempts or offers to commit a violent injury upon
16 another person, and had the present ability to complete
17 the attempted injury.

18 An assault is the intentional creation of a
19 reasonable fear of immediately bodily harm. It is not
20 necessary that the attempted injury or harm actually
21 take place. For example, if I walk up to you, and when
22 we are within arm's reach I draw back to hit you, that
23 is an assault.

24 A battery is the unlawful touching of another
25 person by a person who has committed the assault. An

1 unlawful touching can be caused by a part of the
2 accused body, or by any object the accused puts in
3 motion.

4 A battery is the completion of the assault by
5 using or applying force to another person; however
6 slight, in a rude, angry or resentful manner without
7 legal justification for doing so. Using my earlier
8 example, if I carried through the assault by hitting
9 you, then that is a battery.

10 The State must also prove a circumstance of
11 aggravation. Circumstances of aggravation include the
12 use of a deadly weapon; the intent to commit a felony;
13 the infliction of serious bodily injury; a great
14 disparity between the ages or physical conditions of
15 the parties; a difference in the genders of the
16 parties; the taking of indecent liberties or
17 familiarities with a female through the use of force;
18 the purposeful infliction of shame and disgrace; and
19 the resistance of lawful authorities. These
20 are only examples of circumstances of aggravation.
21 Again, ladies and gentlemen, I instruct you, these are
22 simply evidentiary facts to be taken into consideration
23 by you, along with the other evidence in the case, and
24 to be given the weight you decide it should have.

25 I instruct you, ladies and gentlemen, that the

1 defendant has raised the defense that the victim
2 voluntarily consented to the sexual intercourse. The
3 defendant does not have to prove that the victim
4 consented, instead the State must prove beyond a
5 reasonable doubt that the victim did not consent.

6 If you find that the victim consented to the
7 sexual intercourse, you must find the defendant not
8 guilty.

9 Ladies and gentlemen, you have heard argument
10 and testimony concerning any potential penalty a person
11 can serve, or potentially freedom deprived, for the
12 crimes alleged in the indictments. In determining the
13 guilt or innocence of the defendant, you cannot
14 consider any possible penalty for any particular crime.

15 The punishment for the crimes is a matter for
16 the Court to determine and is a matter of law, and
17 should never be considered by you in any manner
18 whatsoever in arriving at a fair and impartial verdict
19 as to the guilt or innocence of the defendant.

20 There are several indictments in this case, they
21 allege three separate offenses. Indictment
22 2010-GS-10-2295, kidnapping; 2011-3096, burglary in the
23 first degree; and 2011-3100, criminal sexual conduct in
24 the first degree.

25 Each indictment, ladies and gentlemen, charges a

1 separate and distinct offense. You must decide each
2 indictment separately on the evidence and the law
3 applicable to it, uninfluenced by your decision as to
4 any other indictment.

5 The defendant may be convicted or acquitted on
6 any or all of the offenses charged. You will be asked
7 to write a separate verdict of guilty or not guilty for
8 each indictment.

9 Ladies and gentlemen, you have been selected as
10 fair and impartial jurors, sworn to impartially try the
11 facts of this case. And when you comply with your oath
12 to do so, then no one will have the right to criticize
13 your verdicts, and you will have fully discharged your
14 duties as jurors in this case.

15 You should not be influenced by opinions, or
16 expressions of opinions if any, which you may have
17 heard outside of the evidence of this case. But you
18 are to decide this case according to the sworn
19 testimony that you have heard, along with the other
20 evidence that has been introduced.

21 There are several possible verdicts in this
22 case. And you don't have to try to write those down
23 because there are verdict forms that will be sent back
24 with you during your deliberations. And they are as
25 follows.

1 As to indictment 2010-GS-10-2295. We the jury,
2 by unanimous consent, find the defendant guilty or
3 kidnapping, or not guilty.

4 As to indictment 2011-GS-10-3096. We the jury,
5 by unanimous consent, find the defendant guilty of
6 burglary first degree; or as to the lesser included
7 offense, guilty of burglary second degree; or not
8 guilty.

9 As to indictment 2011-GS-10-3100. We the jury,
10 by unanimous consent, find the defendant guilty of
11 criminal sexual conduct first degree; or as to the
12 lesser included offense, guilty of assault and battery
13 of a high and aggravated nature; or not guilty.

14 Again, ladies and gentlemen, there is absolutely
15 no significance whatsoever to the order in which these
16 verdicts or the potential options are stated, it's
17 simply that one must be stated first. Ladies and
18 gentlemen, your verdict must be a unanimous one, which
19 means that all 12 of you must agree in order to reach a
20 verdict.

21 Once the jury has reached a verdict on each
22 indictment, Madam Forelady, it is your responsibility
23 to fill out the verdict form, and to sign and date the
24 form.

25 Once the jury has completed its deliberations

1 and reached a verdict on each indictment, it is also
2 your responsibility to advise -- and I mean in total,
3 not as you do each one -- to advise the bailiffs that
4 the jury has reached its verdict and to -- and at that
5 time you will be brought back into the courtroom for
6 the presentation of those verdicts.

7 Ladies and gentlemen, if you have any questions
8 during deliberations, it is also your Foreperson's
9 responsibility to write out those questions.

10 I need to advise you that if you have any
11 questions, there will be a delay in our response.
12 That's because there is a procedure that we must follow
13 in answering your questions. So if you have any
14 questions, please know that there will be a delay in
15 our response, and that we are not ignoring you.

16 I'm going to ask and remind you once again that
17 your verdict must be a unanimous one, which means that
18 all 12 of you must agree.

19 I'm going to ask that you return to your jury
20 room. Do not yet begin your deliberations. I have
21 some matters of law to take up with the attorneys which
22 might require further instruction or clarification of
23 an instruction.

24 However, if there is no further instruction, we
25 will send in your notebooks, the evidence and we will

1 excuse the alternate. And at that time you will be
2 allowed to begin your deliberations.

3 If you would go with the bailiffs for me,
4 please.

5 (Whereupon, the jurors exit the courtroom.)

6 THE COURT: Are there any exceptions to the
7 instructions from the State?

8 MR. FINCH: No, Your Honor.

9 THE COURT: From the defense?

10 MR. BUTLER: Judge, I did have one question, and
11 possible exception depending on how good my hearing is.
12 At the beginning of Your Honor's definition of assault
13 and battery of a high and aggravated nature, I thought
14 I heard you say, assault and battery of a high and
15 aggravated nature includes all elements of criminal
16 sexual conduct in the first degree, but with the
17 additional circumstances of aggravation, or something
18 like that.

19 THE COURT: You know what, and I caught it as I
20 read it. And I'm trying -- I tried to figure out how I
21 could correct it.

22 And I struggled with this all day yesterday,
23 because the case law basically says that. It really
24 doesn't distinguish what the difference is between
25 ABHAN and CSC, except that -- it really doesn't give a

1 fluid definition for why it's a lesser included except
2 that sexual battery is an assault and battery because
3 it's an unwarranted touching.

4 And then when you add in the circumstances of
5 aggravation, which is taking indecent liberties with a
6 female. And the actual language that is used is the
7 intent to commit a felony; the infliction of serious
8 bodily injury; a great disparity between the ages or
9 physical conditions of the parties.

10 And the relevant portion, the taking of indecent
11 liberties or familiarities with a female by the use of
12 force. It's almost the same, but the case law does not
13 distinguish or say that -- because I looked all day
14 yesterday trying to find the language that says --
15 because usually when you have a lesser included it
16 says, it includes all of these but this element, and
17 requires this additional element, or doesn't require
18 this additional element.

19 And to tell you the truth, as I read it in the
20 case that stands for the proposition that it is a
21 lesser included offense, it really didn't make much
22 sense to me except that it said that sexual battery is
23 an unwarranted assault and with circumstances of
24 aggravation.

25 which comes under -- they're almost identical in

1 a way because you have to prove, for CSC, aggravated
2 force. which means the use of physical force or
3 physical violence of a high and aggravated nature to
4 overcome the victim. So it's almost a parallel
5 definition. The only difference is one is common law
6 and one is codified.

7 And I tried to find some language that said --
8 that made the distinction, and I couldn't find any.
9 And I don't know of any other way -- I think it's very
10 clear, though, however from the instruction that to
11 find a CSC first you have to find all of these things
12 which is that a sexual battery occurred. If a sexual
13 battery didn't occur, you stop and you don't deliberate
14 any further about it, he is not guilty.

15 But if you find that a sexual battery occurred,
16 which we have already defined, then you look at these
17 other things under the statute. which is aggravated
18 force, which means the use of force or physical
19 violence of a high and aggravated nature; or that they
20 submitted to the sexual battery while they were the
21 victim of forcible confinement, kidnapping, robbery,
22 extortion or burglary.

23 And I tried to split that hair during lunch
24 yesterday and I really had a difficult time. I
25 couldn't find a case that said what we would normally

1 look for in terms of distinguishing a lesser included
2 offense.

3 But I will be glad to entertain any language
4 that the you or the State might -- I think adding
5 anything to it, the conclusion I came to yesterday, is
6 it would make it more convoluted.

7 MR. BUTLER: I appreciate the difficulty because
8 I agree with the Court, because it's not a true lesser
9 included in the way we were all taught it becomes
10 difficult.

11 My concern is the way that this jury was
12 instructed makes CSC first a lesser included of ABHAN.
13 If ABHAN is everything that CSC first is, with the
14 additional requirements of circumstances of
15 aggravation, that would mean CSC first is a lesser
16 included of ABHAN which is the opposite.

17 THE COURT: Well, no, not actually. Because
18 really what it is is they're synonymous; ones common
19 law, ones codified. And the problem is they really are
20 the same elements.

21 MR. BUTLER: Yes, ma'am.

22 THE COURT: I don't know why -- to tell you the
23 truth it really isn't a true lesser included. I know
24 that's heresy to say it. But I think out of an
25 abundance of caution, really to benefit defendants, it

1 was made a lesser include because it was common law.

2 Is ABHAN a misdemeanor?

3 MR. BUTLER: Yes, ma'am.

4 THE COURT: And a misdemeanor carries 10 years.

5 MR. BUTLER: Zero to 10.

6 THE COURT: I think just out of an abundance of
7 caution to be fair to defendants it was made -- really
8 it's almost painful to read the decision --

9 MR. BUTLER: Yes, ma'am.

10 THE COURT: -- that says that. Like I said,
11 it's probably heresy for me to say that. It was
12 painful for me to read yesterday.

13 MR. BUTLER: Yes, ma'am. I myself can't imagine
14 where there would be a sexual battery and circumstances
15 of aggravation where it wouldn't then be a CSC first.

16 THE COURT: No because to have assault and
17 battery, assault and battery is an unwarranted touching
18 with force, and threat of force, with circumstances of
19 aggravation.

20 And the circumstances of aggravation really
21 could be -- how do you define indecent liberties with a
22 woman?

23 MR. BUTLER: Something other than --

24 THE COURT: No, it's sex. It could be sex. It
25 clearly could be sex.

1 MR. BUTLER: Yes, ma'am.

2 THE COURT: Indecent liberties with a woman
3 could clearly be sex or we wouldn't have so many things
4 pleading down to ABHAN from a CSC first because you
5 wouldn't be able to allocute to the elements.

6 MR. BUTLER: Yes, ma'am. Well I think I have to
7 object to that portion of the charge.

8 THE COURT: Well I've given you the opportunity
9 to give me some alternative language, I will be glad to
10 consider it.

11 MR. BUTLER: I would ask that it be re-charged
12 without that portion that says, includes all elements
13 of criminal sexual conduct in the first degree.

14 THE COURT: Well how else would you say it?
15 Because you have to clarify as to the lesser included.

16 MR. BUTLER: I would ask that you just -- it's a
17 lesser included without that part. And just then
18 define assault and battery of a high and --

19 THE COURT: I'm not going to re-read it. I will
20 tell them that they are to disregard any reference that
21 ABHAN has all the elements of criminal sexual conduct
22 in the first degree.

23 MR. BUTLER: Yes, ma'am.

24 THE COURT: Is that acceptable?

25 MR. BUTLER: Yes, ma'am.

1 THE COURT: Is that acceptable to the State?

2 MR. FINCH: Yes, Your Honor.

3 THE COURT: Please bring in the jury for me.

4 (Whereupon, the jurors enter the courtroom.)

5 THE COURT: Ladies and gentlemen, I need to
6 clarify an instruction that I gave to you. I
7 referenced and said to you that criminal -- that
8 assault and battery of a high and aggravated nature
9 includes all of the elements of criminal sexual conduct
10 in the first degree and I need to correct that, it does
11 not.

12 So you are to disregard any reference that
13 criminal sexual -- that assault and battery of a high
14 and aggravated nature includes all of the elements of
15 criminal sexual conduct in the first degree.

16 With that additional instruction I have a matter
17 of law that I need to take up with the attorneys.
18 Again it should be brief.

19 During the break please do not discuss the case,
20 please leave your notepads in your seats.

21 And if there are no further instruction we will
22 send your notepads, the evidence, we will dismiss the
23 alternate. And I asked the clerk to have your lunch
24 here by noon.

25 Even when we dismiss the alternate we will have

1 you hang around. The least we can do is feed you.

2 If you would go with the bailiff for me, please.

3 (Whereupon, the jurors exit the courtroom.)

4 THE COURT: You may be seated.

5 Are there any exceptions to the additional
6 instruction from the State?

7 MR. FINCH: No, Your Honor.

8 THE COURT: From the defense?

9 MR. BUTLER: No, ma'am.

10 THE COURT: Okay. Please give all the evidence
11 to the bailiff. And you can collect the notebooks and
12 bring me the alternate.

13 (Whereupon, the alternate juror enters the
14 courtroom.)

15 THE COURT: Sir, we want to thank you for your
16 time and your attention to this case. Being an
17 alternate is kind of thankless, but I hope that this
18 experience has been educational for you. You are going
19 to get a bit of a reprieve. We are going to pick some
20 juries today but I'm not going to send you back to the
21 pool, I'm going to excuse you because I think you have
22 served us well and I will cut you a little break.

23 You are welcome to stay if you like. But you're
24 welcome to leave. You are welcome to discuss the case
25 as well, but I would ask that you not do that until

1 after you are excused on Friday.

2 And if someone, some conversation should be
3 unwelcome to you, please let the clerk's office know so
4 that we can take the appropriate action to protect your
5 privacy. If you wouldn't mind hanging around so that
6 we can at least give you your lunch. Then as soon as
7 your lunch gets here, you are welcome to leave.

8 Have a wonderful day. Thank you so much.

9 A JUROR: Thank you.

10 (Whereupon, the alternate juror exits the
11 courtroom.)

12 THE COURT: Is there anything before we recess
13 while the jury is deliberating, from the State?

14 MR. FINCH: No, ma'am.

15 THE COURT: From the defense?

16 MR. BUTLER: No, ma'am.

17 THE COURT: Okay. The record should reflect the
18 jury has begun its deliberations at 11:22 a.m.

19 (Whereupon, a recess was taken.)

20 THE COURT: I have another note.

21 I have a note from the jury that says -- why did
22 they take this apart?

23 Bear with me one second. They took apart the
24 first note that they sent and I need to figure out how
25 to remedy that so the record will be accurate as to

1 what was given to them.

2 okay. The next note that I received says, may
3 we have a definition of first degree burglary, second
4 degree burglary, kidnapping, first degree criminal
5 sexual conduct, assault and battery. A copy of the
6 PowerPoint would be sufficient.

7 Now I am going to re-instruct them on each of
8 these things. And I'm going to also instruct them that
9 the PowerPoint is demonstrative evidence only, it is in
10 the nature of argument, and it is not -- that we cannot
11 give that to them.

12 Is there any exception from the State?

13 MR. FINCH: No.

14 THE COURT: From the defense?

15 MR. BUTLER: No, ma'am.

16 (Whereupon, the jurors enter the courtroom.)

17 THE COURT: Ladies and gentlemen, I received
18 your note and I'm going to take these in reverse order.
19 I'm going to re-instruct you as you have requested on
20 first degree burglary, second degree burglary,
21 kidnapping, first degree criminal sexual conduct, and
22 assault and battery or a high and aggravated nature.

23 As regards the PowerPoint, the PowerPoint is not
24 evidence. It is used as what we call demonstratively
25 for the purposes of argument. So it is not evidence.

1 So we are not allowed by the rules of evidence to give
2 that to you. So I just wanted to answer that question
3 for you preliminarily.

4 The defendant is charged with kidnapping. The
5 State must prove beyond a reasonable doubt that the
6 defendant knowingly and unlawfully seized, confined,
7 inveigled, decoyed, kidnapped, abducted or carried away
8 another person without authority of law.

9 To do a thing unlawfully is to do it willfully
10 against the law. Knowingly means with knowledge,
11 consciously, not accidentally. Seize means to hold --
12 to take hold of suddenly or forcibly. Confined means
13 to limit, restrict, or enclose within bounds, imprison
14 or shut or keep in.

15 Inveigle means to lure, entice, or lead astray
16 by false representation, promises or other deceitful
17 means. Decoy means to lure by or as if by decoy. A
18 decoy is something to entice a person into a trap.

19 Kidnap is to remove a person against his will by
20 unlawful force or by fraud. Abduct means to carry off
21 secretly or by force for an illegal purpose. Carry
22 away means to remove.

23 The State does not have to prove that the
24 defendant did all of these things. Instead, if you
25 find beyond a reasonable doubt that the defendant did

1 any of these things, you may find the defendant guilty
2 of kidnapping.

3 Something done without authority of law is
4 something which the law does not sanction, permit,
5 allow, condone, or provide justification for. The
6 kidnapping does not have to be for any personal or
7 monetary gain, or for any illegal purpose, but may be
8 for any reason whatsoever.

9 The defendant is charged with first degree
10 burglary. The State must prove beyond a reasonable
11 doubt that the defendant entered a dwelling without
12 consent.

13 A dwelling is any building or portion of a
14 building in which a person ordinarily sleeps. A
15 building constructed as a dwelling that has never been
16 occupied, cannot be considered a dwelling for purposes
17 of burglary. But a building is a dwelling, even if the
18 residents are temporarily absent from the building.

19 In order to prove that the defendant entered the
20 dwelling, the State does not have to show that the
21 defendant's entire body entered the dwelling, the
22 smallest entry is sufficient. It may be any part of
23 the body, such as a hand or foot, or even an instrument
24 such as a hook or other instrument.

25 In addition, the State does not have to prove

1 that force was used to gain entry. If a person enters
2 a building by using deception, artifice, trick or
3 misrepresentation to get consent to enter, this is an
4 entry without consent.

5 Next the State must prove beyond a reasonable
6 doubt that the defendant intended to commit a crime,
7 either a felony or a misdemeanor, at the time of the
8 entry. The mere entry into a dwelling without consent
9 is not burglary.

10 If the intent to commit a crime is formed after
11 the entry, it is not burglary. On the other hand, if
12 the defendant intended to commit a crime at the time of
13 the entry, it is a burglary, even if the intent was
14 abandoned after the entry.

15 It does not matter with the intended crime was
16 not completed. Intent may be shown by acts and conduct
17 of the defendant, and other circumstances from which
18 you may naturally and reasonably infer intent.

19 Finally, the State must prove beyond a
20 reasonable doubt one of the following. That when
21 entering, while in the dwelling, or when fleeing, the
22 defendant or an accomplice was armed with a deadly
23 weapon or explosive. A deadly weapon is any article,
24 instrument or substances which is likely to cause death
25 or great bodily harm.

1 Whether an instrument has been used as a deadly
2 weapon depends on the facts and circumstances of each
3 case. The following are examples of instruments which
4 may be deadly weapons. A pistol, a shotgun, a rifle, a
5 dirk, a dagger, a knife, a slingshot, metal knuckles, a
6 razor, gasoline, a firebomb or Molotov cocktail, and
7 lighter fluid.

8 A gun may be a deadly weapon even if it is not
9 operating. Ordinary objects may become deadly weapons
10 when the facts show that they have been used to inflict
11 serious bodily harm or death.

12 These are simply evidentiary facts to be taken
13 into consideration by you, along with the other
14 evidence in the case, and to be given the effect, value
15 and weight you decide it should have.

16 Or when entering, while in the dwelling, or when
17 fleeing, the defendant or an accomplice caused physical
18 injury to anyone not participating in the crime.

19 Or when entering, while in the dwelling, or when
20 fleeing, the defendant or accomplice used or threatened
21 to use a dangerous object.

22 If you find that the State has failed to prove
23 beyond a reasonable doubt that the defendant committed
24 first degree burglary, you may consider whether the
25 State has proven beyond a reasonable doubt that the

1 defendant committed second degree burglary.

2 Second degree burglary includes all of the
3 elements of first degree burglary, except the
4 circumstances of aggravation. To prove second degree
5 burglary, the State must first prove beyond a
6 reasonable doubt that the defendant entered a dwelling
7 without consent.

8 And as I have explained, a dwelling is any
9 building or portion of a building in which a person
10 ordinarily sleeps. A building constructed as a
11 dwelling that has never been occupied cannot be
12 considered a dwelling for purposes of burglary. But a
13 building is a dwelling, even if the residents are
14 temporarily absent from the building.

15 In order to prove that the defendant entered the
16 dwelling, the State does not have to show that the
17 defendant's entire body entered the building. The
18 smallest entry is sufficient. It may be any part of
19 the body, such as a hand or foot, or even an instrument
20 such as a hook or other instrument.

21 In addition, the State does not have to prove
22 that force was used to gain entry. If a person enters
23 a dwelling by using deception, artifice, trick or
24 misrepresentation to get consent to enter, this is an
25 entry without consent.

1 Next, the State must prove beyond a reasonable
2 doubt that the defendant intended to commit a crime,
3 either a felony or a misdemeanor, at the time of the
4 entry to be guilty of burglary.

5 The mere entry into a building without consent
6 is not burglary. If the intent to commit a crime is
7 formed after the entry, it is not burglary.

8 On the other hand, if the defendant intended to
9 commit a crime at the time of the entry it is a
10 burglary, even if the intent was abandoned after the
11 entry. It does not matter that the intended crime was
12 not completed.

13 Intent may be shown by acts and conduct of the
14 defendant, and other circumstances from which you may
15 naturally and reasonably infer intent.

16 The defendant is charged with criminal sexual
17 conduct in the first degree. The first element which
18 the State must prove beyond a reasonable doubt is that
19 that defendant engaged in a sexual battery with the
20 victim. A sexual battery is sexual intercourse,
21 cunnilingus, fellatio, anal intercourse, or any
22 intrusion, however slight, of any part of a person's
23 body, or any object into the genital or anal openings
24 of another person's body, except when the intrusion is
25 accomplished for medically recognized treatment for

1 diagnostic purposes.

2 If you find that the State has not shown beyond
3 a reasonable doubt that a sexual battery occurred, you
4 would stop deliberating and your verdict would have to
5 be not guilty.

6 If you find that a sexual battery did occur, you
7 must then decide whether the State has proven beyond a
8 reasonable doubt that the defendant used aggravated
9 force to accomplish the sexual battery.

10 Aggravated force means the use of physical force or
11 physical violence of a high and aggravated nature to
12 overcome the victim.

13 This includes the threat of using a deadly
14 weapon. Or that the victim submitted to sexual battery
15 while the victim was also the victim of forcible
16 confinement, kidnapping, robbery, extortion, burglary,
17 house breaking, or any other similar act or offense.

18 Pursuant to South Carolina code section
19 16-3-657, the testimony of the victim need not be
20 corroborated in prosecutions for criminal sexual
21 conduct.

22 If you find that the State has not proven that
23 the defendant is guilty of criminal sexual conduct in
24 the first degree, you may then determine whether the
25 State has proven that the defendant is guilty of

1 assault and battery of a high and aggravated nature.

2 Assault and battery of a high and aggravated
3 nature is an unlawful act of violent injury to the
4 person of another accompanied by circumstances of
5 aggravation. An assault occurs when a person unlawful
6 attempts or offers to commit a violent injury upon
7 another person, and had the present ability to complete
8 the attempted injury.

9 An assault is the intentional creation of a
10 reasonable fear of immediate bodily harm. It is not
11 necessary that the attempted injury or harm actually
12 take place. For example, if I walk up to you, and when
13 we are within arm's reach I draw back to hit you, that
14 is an assault.

15 A battery is the unlawful touching of another
16 person by a person who has committed the assault. An
17 unlawful touching can be caused by a part of the
18 accused body, or by any object the accused puts in
19 motion. A battery is the completion of the assault by
20 using or applying force to another person, however
21 slight, in a rude, angry or resentful manner, without
22 legal justification for doing so.

23 Using my earlier example, if I carry through the
24 assault by hitting you, then that is a battery.

25 The state must also proof a circumstance of

1 aggravation. Circumstances of aggravation include the
2 use of a deadly weapon; the intent to commit a felony;
3 the infliction of serious bodily injury; a great
4 disparity between the ages or physical conditions of
5 the parties; a difference in the genders of the
6 parties; the taking of indecent liberties or
7 familiarities with a female through the use of force;
8 the purposeful infliction of shame and disgrace; and
9 the resistance of lawful authorities.

10 These are only examples of circumstance of
11 aggravation. These, ladies and gentlemen, are simply
12 evidentiary facts to be taken into consideration by
13 you, along with the other evidence in the case, and to
14 be given the effect, value and weight you decide it
15 should have.

16 The defendant has raised the defense that the
17 victim voluntarily consented to the sexual intercourse.
18 The defendant does not have to prove that the victim
19 consented. Instead, the State must prove beyond a
20 reasonable doubt that the victim did not consent.

21 If you find that the victim consented sexual
22 intercourse, you must find the defendant not guilty.

23 Ladies and gentlemen, that will conclude the
24 additional instruction. If you need anything further,
25 please do not hesitate to let the bailiffs know and we

1 will accommodate your request immediately.

2 If you would go with the bailiffs, please.

3 (Whereupon, the jurors exit the courtroom.)

4 THE COURT: You may be seated.

5 Are there any exceptions from the State?

6 MR. FINCH: No, Your Honor.

7 THE COURT: From the defense?

8 MR. BUTLER: No, ma'am.

9 THE COURT: Okay.

10 (Whereupon, a recess was taken.)

11 THE COURT: Are we ready to proceed from the
12 State?

13 MR. FINCH: Yes, ma'am.

14 THE COURT: From the defense?

15 MR. BUTLER: Yes, ma'am.

16 THE COURT: Please bring in the jury.

17 (Whereupon, the jurors enter the courtroom.)

18 THE COURT: You may be seated.

19 Madam Forelady, is it correct that the jury has
20 reached a verdict?

21 A JUROR: Yes, Your Honor, we have.

22 THE COURT: If you would give the verdict forms
23 to the bailiff for me, please.

24 If the defendant would stand for the publication
25 of the verdicts.

1 THE CLERK: The verdict forms in the matter of
2 the State of South Carolina versus Joseph Richard Gene
3 Graddick, defendant. As to indictment number
4 2011-GS-10-3100. We the jury, by unanimous consent,
5 find the defendant guilty of criminal sexual conduct
6 first degree. Signed by the foreperson of the jury on
7 July 13, 2011.

8 As to indictment number 2010-GS-10-2295. We the
9 jury, by unanimous consent, find the defendant guilty
10 of kidnapping. Signed by the foreperson of the jury on
11 July 13, 2011.

12 As to indictment number 2011-GS-10-3096. We the
13 jury, by unanimous consent, find the defendant guilty
14 of burglary in the first degree. Signed by the
15 foreperson on July 13, 2011.

16 Ladies and gentlemen of the jury, if these were
17 your verdicts, please raise your right hand.

18 Thank you. Please let the record reflect that
19 all 12 jurors raised their right hand.

20 THE COURT: Thank you.

21 Is there any request to poll the jury from the
22 State?

23 MR. FINCH: No, Your Honor.

24 THE COURT: From the defense?

25 MR. BUTLER: Yes, Your Honor.

1 THE COURT: Please proceed with polling the
2 jury.

3 Ladies and gentlemen, if you would give the
4 clerk your undivided attention.

5 You may proceed when you are ready.

6 THE CLERK: Ladies and gentlemen, what we are
7 going to do is called polling the jury. When I call
8 your name, if you'll please raise your hand, I will
9 acknowledge you, you can put your hand down.

10 I will then ask you two questions. Please
11 respond verbally to these two questions.

12 Juror number 185. Were those your verdicts?

13 A JUROR: Yes, sir.

14 THE CLERK: Are they still your verdicts?

15 A JUROR: Yes, sir.

16 THE CLERK: Thank you.

17 Juror number 153. Were those your verdicts?

18 A JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 A JUROR: Yes.

21 THE CLERK: Thank you.

22 Juror number 289. Were those your verdicts?

23 A JUROR: Yes, sir.

24 THE CLERK: Are they still your verdicts?

25 A JUROR: Yes, sir.

1 THE CLERK: Thank you.

2 Juror number 167. Were those your verdicts?

3 A JUROR: Yes, sir.

4 THE CLERK: Are they still your verdicts?

5 A JUROR: Yes, sir.

6 THE CLERK: Thank you.

7 Juror number 261. Were those your verdicts?

8 A JUROR: Yes, sir.

9 THE CLERK: Are they still your verdicts?

10 A JUROR: Yes, sir.

11 THE COURT: Thank you.

12 Juror number 36. Were those your verdicts?

13 A JUROR: Yes, sir.

14 THE CLERK: Are they still your verdicts?

15 A JUROR: Yes, sir.

16 THE CLERK: Thank you.

17 Jury number 8. Were those your verdicts?

18 A JUROR: Yes, sir.

19 THE CLERK: Are they still your verdicts?

20 A JUROR: Yes, sir.

21 THE CLERK: Thank you.

22 Juror number 70. Were those your verdicts?

23 A JUROR: Yes, sir.

24 THE CLERK: Are those still your verdicts?

25 A JUROR: Yes, sir.

1 THE CLERK: Thank you.

2 Juror number 90. Were those your verdicts?

3 A JUROR: Yes, sir.

4 THE CLERK: Are they still your verdicts?

5 A JUROR: Yes, sir.

6 THE CLERK: Thank you.

7 Juror number 96. Were those your verdicts?

8 A JUROR: Yes, sir.

9 THE CLERK: Are they still your verdicts?

10 A JUROR: Yes, sir.

11 THE CLERK: Thank you.

12 Juror number 32. Were those your verdicts?

13 A JUROR: Yes, sir.

14 THE CLERK: Are they still your verdicts?

15 A JUROR: Yes, sir.

16 THE CLERK: Thank you..

17 Juror number 69. Were those your verdicts?

18 A JUROR: Yes.

19 THE CLERK: Are they still your verdicts?

20 A JUROR: Yes.

21 THE CLERK: Thank you.

22 Was there any juror whose number I did not call,
23 please raise your hand.

24 Thank you.

25 Your Honor, the jury has been polled and the

1 verdicts stand.

2 THE COURT: Thank you.

3 Madam Forelady, ladies and gentlemen, I am going
4 to excuse you for the remainder of the week because you
5 have been with us Monday through Wednesday, and I think
6 that you have served us ably.

7 I picked another jury which I started, and I
8 probably am going to pick another jury on Friday. But
9 you all will not have to call in anymore this week,
10 because I feel you have satisfied your obligation to
11 us. So I'm going to let you all go on with your day.

12 If you need a work excuse, I believe the clerk
13 staff has already gone, but if you absolutely need one,
14 we can get one for you today before you leave.
15 However, if you do not need a work excuse, those will
16 be mailed to you, along with your checks.

17 You are welcome to discuss this verdict, but I
18 would ask that you not do that until the entire panel
19 is dismissed on Friday. By the same token, if someone
20 should persist in trying to speak with you, and it goes
21 beyond your comfort level, please make us aware of it
22 by contacting the clerk's office so that we can take
23 the appropriate action to protect your privacy.

24 You are welcome to remain for sentencing if you
25 would like. You are also welcome to be excused for the

1 remainder of the evening.

2 I hope that jury service has been educational
3 for you. I hope that you learned that it's nothing
4 like television. I'm happy every time I have jurors
5 serve because it gives you the opportunity to know how
6 very important you are to the system.

7 We hold court, out of 52 weeks, 42 weeks a year.
8 That excludes -- actually we hold it more than that,
9 I'm just counting for myself, excluding vacation and
10 holidays. And the majority of that time it is jury
11 trials. We do have non-jury terms of court where the
12 court acts as the fact finder, but the majority of we
13 do the jury acts as the fact finders.

14 So I hope you know how very valuable you are to
15 us. We would not be able to do what we do every day
16 without you all being willing to make the sacrifice
17 both to your personal and your professional lives and
18 being here with us to perform this very valuable
19 service.

20 If you want to remain for sentencing, please let
21 the bailiff know and we will bring you back into the
22 courtroom and seat you in the jury box for that
23 process. If not, you will be excused.

24 If any of you want to be escorted to the garage,
25 let us know and we will also make those arrangements

1 likewise.

2 I hope you all have a wonderful evening. You're
3 excuse with the Court's profound thanks.

4 I will hear post-trial motions in a moment. If
5 you will get the sentencing sheets ready for me.

6 (Whereupon, a recess was taken.)

7 THE COURT: Any post-trial motions from the
8 State?

9 MR. FINCH: None from the State.

10 THE COURT: From the defense?

11 MR. BUTLER: No, ma'am.

12 THE COURT: Do we have the sentence sheets?

13 MR. FINCH: I do, I just need to sign it.

14 THE COURT: Is there anything further from the
15 State?

16 MR. FINCH: Your Honor, the victim would like to
17 speak prior to sentencing.

18 THE COURT: Absolutely.

19 Please state your name for the record.

20 Just so that you all know, we had the foreperson
21 sign the original indictment.

22 Yes, ma'am.

23 THE VICTIM: LaVanda Alicia Joyner.

24 I just would like to say that I feel that it has
25 been a long time. I'm just so glad that it's over.

1 And I hope that the defendant has learned a valuable
2 lesson.

3 What you have done to me, doesn't nobody
4 deserves it to be done to them. For you to stand up
5 here in front of God, put your hand on the bible, and
6 tell that lie, that shows me that you have no soul and
7 you have no remorse. But I pray that you find God.

8 I already forgave you, but God has the last say.
9 And you have to deal with that at the end of the day.

10 And I appreciate everything everyone has done.

11 THE COURT: Thank you very much, ma'am.

12 Does the defendant have any record other than
13 what has already been indicated, which was a 2004 PWID
14 cocaine base; 2004 possession of cocaine. Then 2004
15 PWID cocaine, two in March and one in November; is that
16 accurate?

17 MR. FINCH: I believe it's one in March and one
18 in November.

19 THE COURT: Okay, I misunderstood. So PWID
20 cocaine base?

21 MR. FINCH: Yes.

22 THE COURT: In March of '04. And PWID cocaine
23 in 11 of '04?

24 MR. FINCH: Yes, ma'am.

25 THE COURT: Okay.

1 MR. FINCH: And out of Georgia there was a
2 burglary, a residential burglary.

3 THE COURT: But you all couldn't determine what
4 that was, whether it was a trespass or a burglary.

5 MR. FINCH: I believe it was pled down to a
6 trespass. There was an assault and battery, which I
7 believe was pled down to a simple assault.

8 THE COURT: What year was that?

9 MR. FINCH: I believe that was 2009.

10 THE COURT: I had an '09 burglary in Georgia
11 that was pled down to a trespass. And you're saying
12 assault and battery?

13 MR. FINCH: Yes. It was part of the same event.

14 THE COURT: Then he pled to simple assault in
15 '09 as well as part of the same event? Is that
16 accurate, Mr. Butler?

17 MR. FINCH: Yes.

18 MR. BUTLER: The State would know better than I
19 would.

20 MS. HERRING-LASH: He pled down to a battery,
21 Your Honor, a misdemeanor.

22 THE COURT: A misdemeanor battery. Which is, I
23 think, the equivalent of our simple assault.

24 MR. FINCH: Yes.

25 THE COURT: Is there anything further from the

1 State?

2 MR. FINCH: Regarding sentencing?

3 THE COURT: Yes, sir.

4 MR. FINCH: Well, given that two of the charges
5 carry 30 years, one carries up to life, the State would
6 request 30 years.

7 THE COURT: Mr. Butler.

8 MR. BUTLER: Judge, I guess the verdict and the
9 facts speak for themselves. You heard a little bit
10 about Joseph's background. He is 31 years old, has two
11 children, and is from this area.

12 THE COURT: What are the ages of those children?

13 MR. BUTLER: Six and seven.

14 THE COURT: What are their sexes? Female or
15 male?

16 MR. BUTLER: He has got one daughter and one
17 son.

18 This is always the most difficult part of my job
19 to try to give mitigation for something my client has
20 maintained his innocence about. But we respect the
21 jury's verdict. They obviously took their job
22 seriously. I suspect their deliberations were longer
23 than the combined relevant testimony in the case.

24 That being said, he has no prior record for
25 anything violent. This is obviously a very serious

1 crime and an unfortunate situation. And he is not as
2 young as some of my clients, so a very lengthy sentence
3 will put him into his twilight.

4 I don't think that you have to give him 30
5 years. Any sentence is an 85 percent sentence and a
6 strike. I would think something less than 30 would be
7 appropriate. Somewhere in the range of 15 to 20.

8 Beg the Court's indulgence.

9 THE COURT: Uh-hum.

10 MR. BUTLER: Your Honor, Mr. Graddick indicates
11 he does not wish to address the Court.

12 THE COURT: Is there any member -- I see his
13 family members are no longer present.

14 MR. BUTLER: They could not be here today.

15 THE COURT: I'm not holding that against him. I
16 just asked in the event that they wanted to address the
17 court. But when I looked up I realized that they were
18 not present.

19 MR. BUTLER: Yes, ma'am.

20 THE COURT: Anything further from the State?

21 MR. FINCH: No.

22 THE COURT: Give me one moment.

23 I know what I wanted to ask. Does he need drug
24 treatment?

25 MR. BUTLER: No, ma'am.

1 THE COURT: So drugs did not play any part?

2 MR. BUTLER: No, ma'am.

3 THE COURT: So the drug charges he had? He was
4 selling drugs or what was he doing?

5 MR. BUTLER: Beg the Court's indulgence. I
6 guess --

7 THE COURT: I'm just asking. Again that is not
8 something I'm going to hold against him, but if he
9 needs treatment he needs to be filtered into that
10 portion of the system that will give him that.

11 MR. BUTLER: He indicates to me that he does
12 not.

13 THE COURT: Okay. Although now they tell me
14 they evaluate everybody and everybody gets it for four
15 weeks or something, I don't know, if it's available.
16 If the resources are available.

17 I don't think it's a full four weeks. I think
18 it's two or three weeks. But now I can't remember
19 accurately.

20 Sir, if you would stand for sentencing.

21 Sir, on the offense of having been found guilty
22 by the jury of each offense. On 2010-GS-10-2295,
23 kidnapping; 2011-GS-10-3096, burglary in the first
24 degree; and 2011-3100, which is criminal sexual conduct
25 first degree.

1 I also need to advise you, sir, that before you
2 are released on the criminal sexual conduct first
3 degree, you will have to register as a sex offender.
4 And they will give you further instructions regarding
5 that after -- at the time that you are to max-out of
6 your sentence.

7 In addition to that I need to advise you that
8 you will have to be evaluated to determine if you
9 should be committed as a sexual violent predator and
10 receive treatment under the civil commitment. I need
11 to advise you of that as well.

12 Do you understand?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: On each of offense, sir, you are
15 sentenced to the state department of corrections -- how
16 long has he been in jail? That is the other questions
17 I needed to ask.

18 MR. BUTLER: I don't know when he was served the
19 warrants in Georgia. September of '08.

20 THE COURT: He has been in jail since '08?

21 THE DEFENDANT: October of '09.

22 MR. BUTLER: In our jail. But I think he was
23 served with the warrants in Georgia before then.

24 THE COURT: So he was in Georgia for how long, a
25 month?

1 MR. BUTLER: No. September of '08, if that's
2 when he was served with it.

3 THE COURT: So he sat in Georgia for almost a
4 year before they extradited him? But he had charges
5 pending?

6 MS. HERRING-LASH: He had charges.

7 THE COURT: He wouldn't get any credit for those
8 charges. If he was serving pre-detention time in
9 Georgia, then that's what he -- I don't know. They'd
10 have to work it out, the department of corrections.
11 But I don't want to guarantee him he is going to get
12 that. I was just curious.

13 MR. BUTLER: Yes, ma'am. In any case, he has
14 been incarcerated continuously since September of '08.

15 THE COURT: Sir, on each these offenses you are
16 sentenced to the state department of corrections for a
17 period of 17 years. These sentences are concurrent
18 with one another. You'll get credit for any time that
19 you've served. That is to be calculated by the
20 department of probation, pardon and parole pursuant to
21 24-13-40 -- by the department of corrections, I'm
22 sorry, pursuant to 24-13-40.

23 Again the Court can make no assurances or
24 guarantees as to what time you are entitled to. That
25 is only to be calculated by the department of

1 corrections. And at the time of your reception and
2 evaluation they will go through all of that with you.

3 Anything further for the record from the State?

4 MR. FINCH: No, Your Honor.

5 THE COURT: From the defense?

6 MR. BUTLER: No, ma'am.

7 THE COURT: Thank you very much. Have a good
8 evening.

9 (Whereupon, the proceedings in this matter
10 before the Court were adjourned.)

11 * * * * *

C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial
Circuit of the State of South Carolina, do hereby
certify that the foregoing is a true, accurate, and
complete transcript of record, and of all the
proceedings had and evidence introduced in the above
captioned case, relative to appeal, in the Circuit
Court for South Carolina, on the indicated date.

I do further certify that I am neither
of kin, counsel, nor interest to any party hereto.

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

WITNESSES

SHAWN PATRICK

North Charleston Police Department

AGENCY CASE NUMBER

2008026754

ARREST WARRANT NUMBER

K300906

DATE OF ARREST

October 13, 2009

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 06 2010

VERDICT

GUILTY

Foreperson of Petit Jury

Date:

INDICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2010

THE STATE

vs.

JOSEPH RICHARD GRADDICK

DOB:

B/M

Indictment for

Kidnapping

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

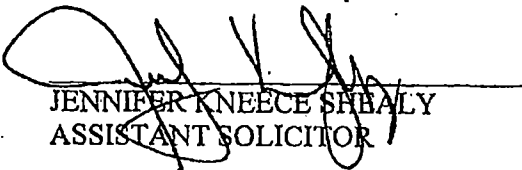
INDICTMENT

At a Court of General Sessions, convened on April 5, 2010 the Grand Jurors of Charleston County present upon their oath:

Kidnapping

That in Charleston County, South Carolina, on or about June 16, 2008, the Defendant, JOSEPH RICHARD GRADDICK, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Lavanda Joyner, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided:


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

395

 COUNTY OF Charleston
 STATE VS.
JOSEPH RICHARD GRADDICK

AKA:

Race: BLACK Sex: M Age: 31DOB: SS#

Address:

City, State, Zip: NORTH CHARLES, SC 294050000DL#: SID#: SC01143537*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: KidnappingINDICTMENT/CASE#: 2010GS1002295A/W#: K300906Date of Offense: 6/16/2008S.C. Code §: 16-03-0910CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kneece Shealy, Jennifer78223 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$, plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2011-GS-10-3096; 3100
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114(BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:
☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk during probation.
Clerk of Court/ Deputy Clerk CallieCourt Reporter: Anne Meyer

SCCA/217 (03/2011)

Presiding Judge A.R. JeffersonJudge Code: 2128Sentence Date: 7/13/11

JKS20091006034

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008026754

ARREST WARRANT NUMBER

DIRIND1380

DATE OF ARREST

May 9, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: MAY 11 2011

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 07/13/2011

INDICT

DOCKET NO. 2011GS1003096

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2011

THE STATE

vs.

JOSEPH RICHARD GRADDICK

DOB:

B/M

Indictment for

Burglary, 1st Degree

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

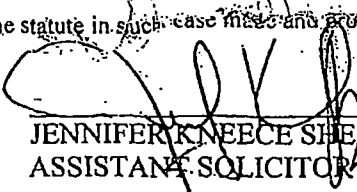
INDICTMENT

At a Court of General Sessions, convened on May 9, 2011 the Grand Jurors of Charleston County present upon their oath:

Burglary, 1st Degree

That in Charleston County, South Carolina, on or about June 16, 2008, the Defendant JOSEPH RICHARD GRADDICK, did enter the dwelling of Lavanda Joyner, located at _____ without consent and with the intent to commit a crime therein. That, in addition, the entry occurred at night and/or the defendant was armed with a deadly weapon and/or the defendant caused physical injury to a person not a participant in the crime and /or the defendant used or threatened the use of a dangerous instrument and/or the burglary is committed by a person with a prior record of two or more convictions for burglary; in violation of Section 16-11-311 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 JENNIFER KNEECE SHEALY
 ASSISTANT SOLICITOR

COUNTY OF Charleston
 STATE VS.
Joseph Richard Graddick
 AKA:
 Race: BLACK Sex: M Age: 31
 DOB: SS#:
 Address:
 City, State, Zip:
 DL#: SID#: SC01143537

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Burglary / Burglary (After June 20, 1985) - First degree

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Kneece Shealy, Jennifer 78223 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-10-2295; 2011-GS-10-3100
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Callie
 Court Reporter: Anne Meyer
 SCCA/217 (03/2011)

INDICTMENT/CASE#: 2011GS1003096
 A/W#: DIRIND1380
 Date of Offense: 5/11/2011
 S.C. Code § 16-11-0311
 CDR Code #: 0079

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

PTUP
 days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning
 \$ paid to Public Defender Fund
 Other:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge A.R. Jefferson
 Judge Code: 2128
 Sentence Date: 7/13/11

JKS20091006034

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008026754

ARREST WARRANT NUMBER

DIRIND1381

DATE OF ARREST

May 9, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: MAY 11 2011

VERDICT

GUilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1003100

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2011

THE STATE

vs.

JOSEPH RICHARD GRADDICK

DOB:

B/M

Indictment for

Criminal Sexual Conduct, 1st Degree

399

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

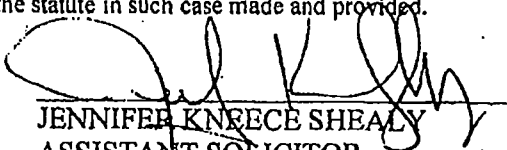
INDICTMENT

At a Court of General Sessions, convened on May 9, 2011 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct, 1st Degree

That in Charleston County, South Carolina, on or about June 16, 2008, the Defendant, JOSEPH RICHARD GRADDICK, did commit a sexual battery upon the victim, Lavanda Joyner, to wit: sexual intercourse, without her consent, and with the use of aggravated force, and/or with the victim's submission to the sexual battery under circumstances where the victim is also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

COUNTY OF Charleston
STATE VS.Joseph Richard GraddickINDICTMENT/CASE#: 2011GS1003100A/W#: DIRIND1381Date of Offense: 5/11/2011S.C. Code §: 16-03-0652CDR Code #: 0160

AKA:

Race: BLACK Sex: M Age: 31DOB: SS#:

Address:

City, State, Zip:

DL#: SID#: SC01143537*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct - First degree

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kneece Shealy, Jennifer78223
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 17 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2010-GS-10-2295; 2011-GS-10-3096☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$5.00

\$

\$3.90

\$

\$133.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT;

V.

JOSEPH RICHARD GRADDICK,

APPELLANT

Appellate Case No. 2011-196526

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

RECEIVED
AUG 28 2012
SC Court of Appeals

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TABLE OF AUTHORITIES

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<u>State v. Vaughn</u> , 362 S.C. 163, 607 S.E.2d 72 (2004)	7

STATEMENT OF ISSUE ON APPEAL

By sustaining the prosecutor's objection and ordering the jury to disregard a portion of Appellant's closing argument, did the trial judge violate Appellant's right to due process when Appellant properly argued the high burden of proof to the jury and the facts in evidence?

STATEMENT OF THE CASE

A Charleston County Grand Jury indicted Appellant for kidnapping (2010-GS-10-2295), burglary in the first degree (2011-GS-10-3096), and criminal sexual conduct in the first degree (2011-GS-10-3100). Indictments. Appellant proceeded to a trial before the Honorable Deadra L. Jefferson and a jury on July 11, 2011. Tr. 1. Timothy Finch and Deborah Herring-Lash represented the state, and Beattie Butler represented Appellant. Tr. 1. The jury found Appellant guilty as charged. Tr. 376, ll. 1-15. The judge then sentenced Appellant to seventeen years on each count, but ordered the sentences to run concurrently. Tr. 389, ll. 15-18.

Appellant filed a timely notice of appeal. This brief follows.

ARGUMENT

By sustaining the prosecutor's objection and ordering the jury to disregard a portion of Appellant's closing argument, the trial judge violated Appellant's right to due process when Appellant properly argued the high burden of proof to the jury and the facts in evidence.

During closing argument, Appellant explained the very high burden of proof that the state must prove in criminal matters. Appellant explained that in civil cases, if the jury finds the plaintiff proved the allegations by a preponderance of the evidence, then the jury renders a verdict in favor of the plaintiff. Appellant further explained that in order to change custody of a child, a person must prove the case by clear and convincing evidence. Criminal cases involved the highest burden of proof – beyond a reasonable doubt – because such cases involve the “loss of freedom, loss of liberty.” Tr. 319, ll. 112.

Following this theme, Appellant argued as follows:

If you've ever read bedtime stories to children, walked on the beach and felt the cool surf between your toes and the warm sand, they don't want him to feel those things anymore. They want to take them away from him. That's why it's proof beyond a reasonable doubt.
Because all of those things will be gone. Children's first steps, a child's first love. Graduation.

Tr. 319, l. 19 – Tr. 320, l.1. Without stating a basis, the state objected. Tr. 320, l. 2. The trial judge sustained the objection, stating, “It is improper to argue punishment, Mr. Butler. Ladies and gentlemen, you are to disregard Mr. Butler's last comment. You are to give it absolutely no consideration in your deliberations.” Tr. 320, ll. 4-7. Appellant responded, “Note my object to represent the defense, due process.” Tr. 320, ll. 8-9. The trial judge retorted “It is noted and overruled. Punishment is improperly argued to a jury.” Tr. 320, ll. 10-11.

Earlier in the proceedings, Appellant testified in his defense. The incident allegedly took place the day after Father's Day. Appellant explained that on Father's Day, he got up with his children who made breakfast for him. Tr. 254, l. 24 – Tr. 255, l. 3. Afterwards, he and the children played, watched cartoons, and read books. Tr. 255, ll. 2-6. The mother of Appellant's children, Fulvia Kandie Dunham, also testified. She testified that she and Appellant had only one child together, but that Appellant treated her daughter as his own. Tr. 123, ll. 1-5.

Although the trial judge's pronouncement of the state of the law in South Carolina was correct, the judge misapplied that law to the facts presented. "The function of the jury is to determine whether a defendant is guilty or not guilty." Thus, "[t]he rule in this State is that ordinarily the jury is not concerned with the punishment fixed by law, nor with the discretion of the court in deciding upon the sentence." State v. Brooks, 271 S.C. 355, 358-359, 247 S.E.2d 436, 438 (1978)(citing State v. Pulley, 216 S.C. 552, 59 S.E.2d 155 (1950)). When a criminal defendant's attorney asked the jury to "[t]hink of the kind of world that we would live in if people were found guilty, put in jail because of what somebody thought," this Court held the trial judge correctly sustained the prosecutor's objection to the argument because it improperly placed sentencing considerations before the jury. State v. Dildine, 306 S.C. 198, 410 S.E.2d 597 (Ct. App. 1991). Unlike the arguments presented in Brooks and Dildine, Appellant's closing argument did not present issues of sentencing to the jury. Rather, Appellant argued facts in evidence and explained the justification for the high burden placed upon the prosecution.

Closing arguments "must be confined to the evidence in the record and the reasonable inferences that may be drawn from the evidence." State v. Vaughn, 362 S.C.

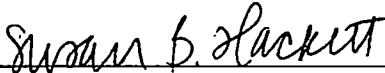
163, 607 S.E.2d 72 (2004)(citing State v. Copeland, 321 S.C. 318, 324, 468 S.E.2d 620, 624 (1996)). Appellant testified that he had children and had shared special moments with his children, such as the events surrounding Father's Day. He testified that his children prepared him breakfast to celebrate the special day. Afterwards, he and the children watched cartoons, played, and read books. Thus, Appellant's argument to the jury concerning reading bedtime stories, observing a child's first steps, helping a child through his or her first love, and beaming with pride at a child's graduation were issues properly argued during closing because those were facts in evidence. Appellant used the facts in evidence to explain why the burden of proof in criminal matters is beyond a reasonable doubt. The burden of proof in criminal cases is beyond a reasonable doubt "owing to the great tenderness of the law for the liberty and life of the accused." Brown v. Atlanta & C. Air Line Ry. Co., 19 S.C. 39, 44 (1883); see also Franklin v. Catoe, 346 S.C. 563, 573-574, 552 S.E.2d 718, 724 (2001)(explaining "the fundamental goal of the criminal justice system [is] that no citizen forfeit his life or liberty unless found guilty beyond a reasonable doubt").

The trial judge erred by sustaining the prosecutor's objection to Appellant's closing argument and instructing the jury to disregard Appellant's statements. Appellant's argument was appropriate as it related to facts in evidence and explained why the legal system requires the prosecution to prove every element of the offense beyond a reasonable doubt.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of August, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH RICHARD GRADDICK,

APPELLANT

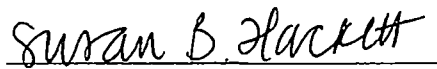
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Richard Graddick states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Deadra L. Jefferson, which was held on July 13, 2011, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Joseph Richard Graddick.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of August, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge.

THE STATE,

RESPONDENT,

V.

JOSEPH RICHARD GRADDICK,

APPELLANT

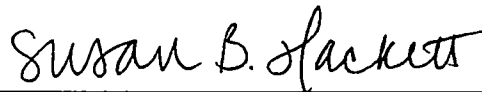
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) Entire trial transcript;
- (2) True-billed indictments; and
- (3) Sentence sheets

I certify that this designation contains no matter which is irrelevant to this appeal.

August 28th, 2012



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

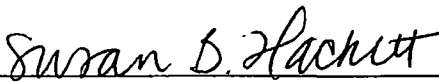
V.

JOSEPH RICHARD GRADDICK,

APPELLANT

CERTIFICATE OF SERVICE

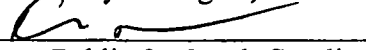
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and on Joseph Richard Graddick, #262619 at Lieber Correctional Institution, this 28th day of August, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of August, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 2, 2013.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Joseph Richard Graddick, Appellant.

Appellate Case No. 2011-196526

Appeal From Charleston County
Deadra L. Jefferson, Circuit Court Judge

Unpublished Opinion No. 2013-UP-228
Submitted April 1, 2013 – Filed May 29, 2013

APPEAL DISMISSED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, and Senior
Assistant Deputy Attorney General Salley W. Elliott, all
of Columbia; and Solicitor Scarlett A. Wilson, of
Charleston, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, THOMAS, and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The Grose Law Firm, LLC

404 Main Street, Greenwood, South Carolina 29646

E. Charles Grose, Jr.
Phone: 864-538-4466 Fax: 864-538-4405
E-mail: chasgrose@gmail.com
Web: GroseLawFirm.com

May 9, 2014

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Ste. 106
Charleston, SC 29401

Re: Mr. Joseph Richard Graddick
Application for Post-Conviction Relief

Dear Ms. Armstrong:

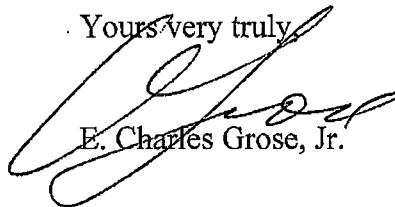
Enclosed for filing please find the original and three copies of Mr. Graddick's Application for Post-Conviction Relief. Please clock and file this in the Charleston County Clerk of Court and return the copies to me in the enclosed, postage pre-paid, return envelope.

Because this action is for post-conviction relief, I understand the filing fee is waived even though appointment of counsel is not necessary. See Clerk of Court Manual, Chapter 6.1.4(A).

Thank your for you attention to this matter.

With kindest regards, I am

Yours very truly,



E. Charles Grose, Jr.

ECG/law

Enclosures

cc: Mr. Joseph R. Graddick

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

Joseph Richard Graddick, SCDC# 262619

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 10-

Submitted By: Charles Grose

Address: 404 Main Street, Greenwood, SC 29646

SC Bar #: 66063

Telephone #: 864-538-4466

Fax #: 864-538-4405

Other:

E-mail: charles@groselawfirm.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☐ Breach of Contract (140)	20 -CP- -	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☒ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex /Other		☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of State Depositions (650)		
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		
	☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: May 9, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR.**
 Failure to do so may affect your case or may result in sanctions.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Joseph Richard Graddick, SCDC# 262619)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leiber Correctional Institute
2. Name and location of Court which imposed sentence The Honorable Deadra L. Jefferson imposed sentence in the Charleston County Court of General Sessions.
3. Name(s) of co-defendant(s) (if any) None.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010-GS-10-2295 for kidnapping;
 - (b) 2011-GS-10-3096 for first degree burglary; and
 - (c) 2011-GS-10-3100 for first degree criminal sexual conduct.
5. The date upon which sentence was imposed and the terms of the sentence: All sentences were imposed on July 13, 2011 and are concurrent.

Revised 3/2003

6. Check whether a finding of guilty was made:
- (a) after a plea of guilty No.
 - (b) after a plea of not guilty Yes.
 - (c) after a plea of nolo contendere No.
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: South Carolina Court of Appeals
 - (b) the result in each such Court to which you appealed: The convictions and sentences were affirmed.
 - (c) the date of each such result: May 29, 2013
 - (d) if known, citations of any written opinion or orders entered pursuant to such results: State v. Graddick, Ct. App. Unpublished Op. No. 2013-UP-228 (filed May 29, 2013).
9. If you answered "no" to (7), state your reasons for not so appealing: N/A.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant was denied effective assistance of trial counsel in violation of the Sixth Amendment of the United States Constitution and Article I, Section 14 of the South Constitution.
 - (b) Applicant was denied effective assistance of appellate counsel in violation of the Sixth Amendment of the United States Constitution and Article I, Section 14 of the South Constitution.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) (1) Trial counsel failed to investigate;
 - (2) Trial counsel failed to object when the solicitor elicited testimony from witness, including Fulvia Kandie Dunham and Jason Forsythe, that Applicant was in the Charleston County Detention Center, when that testimony constituted improper character evidence;
 - (3) Trial counsel failed to included in his objection to testimony by Police Officer Gerooge Van Tine about statements made by Fulvia Kandie Dunham, which were

inadmissible hearsay and violated the Confrontation Clause, that Ms. Dunham was never given an opportunity to admit, deny, or explain her purported statements pursuant to Rule 613, SCRE.

(4) Trial counsel failed to present available evidence and witnesses;

(5) Trial counsel failed to object to improper jury instructions, when such instructions were prejudicial under the facts of this case, it wit:

(a) stating that the testimony of an alleged victim in a criminal sexual conduct case need not be corroborated; and

(b) stating, "You have but one objective . . . to seek the truth regardless of its source."

(b) (1) Appellate counsel failed to brief the the improper admission of testimony by Police Officer Geroge Van Tine about

(a) someone at the Subway alerting the suspect that law enforcement was there, and

(b) statements made by Fulvia Kandie Dunham, which were inadmissible hearsay and violated the Confrontation Clause, when Ms. Dunham was never given an opportunity to admit, deny, or explain the statements.

(2) Appellate counsel should not have filed a *Anders* brief regarding the trial judge limiting defense counsel's closing argument, but rather should have more thoroughly briefed the issue to include an argument that counsel was arguing the alleged victim's motive to fabricate the allegations.

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:

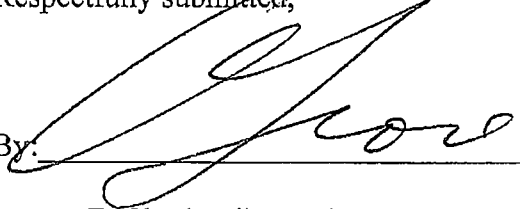
(a) the specific nature thereof: N/A.

(b) the name and location of the Court in which each was filed: N/A.

- (c) the disposition thereof: N/A.
 - (d) the date of each such disposition: N/A.
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A.
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: N/A.
 - (b) the proceedings in which each ground was raised: N/A.
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:
- The grounds identified in number 10 pertain to ineffective assistance of trial and appellate counsel. This PCR is the first opportunity to raise those grounds.
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. Beattie Butler, Charleston County Public Defender's Office, 101 Meeting St., 5th Floor Charleston, SC 29401.
 - ii. Susan Hackett, S.C. Office of Appellate Defense, 1330 Lady Street, Suite 401 Columbia, SC 29201.
 - iii. The undersigned counsel assisted with preparing this petition.
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial and Sentencing
 - ii. Direct appeal

- iii. This petition.
19. State clearly the relief you seek in filing this application:
New Trial.
20. Are you now under sentence from any other court that you have not challenged?
2009-GS-10-1401 for strong arm robbery.

Respectfully submitted,

By: 

E. Charles Grose, Jr.
Attorney for the Petitioners
The Grose Law Firm, LLC.
404 Main Street
Greenwood, SC 29646
(864) 538-4466

Attorney for Applicant

STATE OF SOUTH CAROLINA

County of Dorchester

VERIFICATION

I, **Joseph Richard Graddick**, 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.

Joseph Graddick

SWORN to and subscribed before me this

day of MAY, 2014

[Signature] (L.S.)
Notary Public

My Commission Expires: 5/31/2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2014-CP-10-3018

Joseph Richard Graddick, #262619,
Applicant,

v.

RETURN

State of South Carolina,
Respondent.

The Respondent, making its Return to the application for post-conviction relief (PCR) filed May 12, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the April 2010 and May 2011 terms of the Charleston County Grand Jury for kidnapping (2011-GS-10-2295), burglary- first degree (2011-GS-10-3096), and criminal sexual conduct- first degree (2011-GS-10-3100). The Applicant was represented by Beattie Butler, Esquire.

On July 11-13, 2011, the Applicant proceeded to trial and was found guilty. The Applicant was sentenced by the Honorable Deadra L. Jefferson to confinement for a period of seventeen years on all charges. The Applicant's convictions are to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Susan Hackett, Esquire, of the Office of Appellate Defense. The Applicant's convictions and sentences

were dismissed pursuant to Anders by the Court of Appeals on May 29, 2013. The Remittitur was issued on June 20, 2013.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to investigate.
 - b. Failure to object to improper character evidence.
 - c. Failure to object to inadmissible hearsay.
 - d. Failure to present available evidence and witnesses.
 - e. Failure to object to improper jury instruction.
2. Ineffective assistance of appellate counsel.
 - a. Failed to brief improper admission of testimony by police officer George Van Tine.
 - b. Should not have filed an Anders.

III.

The Applicant alleges he received ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant 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, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also alleges ineffective assistance of appellate counsel. A defendant is entitled to effective assistance of appellate counsel. Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983). "For judges to second-guess

reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy..." Jones, 463 U.S. at 754, 103 S.Ct. 3308.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask 1) whether appellate counsel's performance was deficient, and 2) whether Respondent was prejudiced by appellate counsel's deficient performance. Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not herein before either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signature on the following page.]

Respectfully submitted,

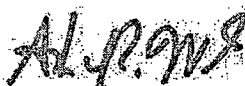
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

APR 22ND 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2014-CP-10-3018

JOSEPH R. GRADDICK, #262619

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

E. Charles Grose, Jr., Esquire
404 Main Street
Greenwood, SC 29646

DATED this 22nd day of April, 2015

Sara B. Moore
Sara B. Moore, Legal Assistant
For Respondent

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EXAMINATION

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1 THE COURT: You may proceed.

2 MS. OLIVE: Thank you, Your Honor. This is the case
3 of Joseph Graddick, 2014-CP-10-3018. Mr. Graddick was
4 indicted in April of 2010 and May 2011 for kidnapping,
5 burglary, first degree, and criminal sexual conduct in the
6 first degree. He was represented by Beattie Butler on those
7 charges.

8 On July 11th through the 13th, 2011, he proceeded to
9 trial where he was found guilty of all charges. He was
10 sentenced by Judge Deadra Jefferson to 17 years on all
11 charges to be served concurrently. Timely notice of appeal
12 was filed on his behalf and appeal was -- he was represented
13 by Susan Hackett on that appeal. She filed an Anders brief.
14 The appeal was dismissed pursuant to the Anders brief May
15 29th, 2013.

16 The remittitur was returned on June 20th, 2013. He
17 filed this application for post-conviction relief on May
18 12th, 2014, alleging several allegations of ineffective
19 assistance, as well as ineffective assistance of appellate
20 counsel. He is present in the courtroom today and
21 represented by Charles Grose. I will turn it over to
22 Mr. Grose.

23 THE COURT: Mr. Grose.

24 MR. GROSE: Your Honor, just before we start,
25 there's one very minor amendment that needs to be made to the

1 application. In paragraph --

2 THE COURT: Just a minute. Did you file the
3 remittitur?

4 MR. GROSE: No. This issue kind of came to my
5 attention in the last few days, but it relates to something
6 that was already in the application.

7 THE COURT: I have the application.

8 MR. GROSE: Okay. All right. In paragraph
9 11(a)5 --

10 THE COURT: 11(a)?

11 MR. GROSE: We allege trial counsel should have
12 objected to instruction that testimony of a victim in a
13 criminal sexual conduct case need not be corroborated. There
14 is an objection at 251 of the transcript, lines 12 through
15 22. I still don't believe that preserves the issue that
16 needed to be preserved, but if the Court decides that it does
17 preserve it, then we would add to paragraph 11. We would add
18 a number 3 that says that appellate counsel should have
19 briefed that instruction on appeal if it was preserved.

20 THE COURT: Wasn't that the statute in effect at the
21 time of the trial?

22 MR. GROSE: It was. But despite what appears in the
23 record, it wasn't mandatory that the judge charge that
24 statute. So --

25 THE COURT: All right. I've got it.

1 MR. GROSE: I call Beattie Butler. It's page 251,
2 lines 12 through 22.

3 MS. OLIVE: I believe it's 252.

4 MR. GROSE: There's a big number 252 and a little
5 number 251. I think 251 is the actual transcript. The 252
6 is probably what was the record on appeal from the direct
7 appeal.

8 BEATTIE BUTLER,
9 having been duly sworn, testifies as follows:

10 THE CLERK: Please state your first and last name.
11 And spell your last loudly and clearly into the microphone.

12 THE WITNESS: Beattie B-u-t-l-e-r.

13 DIRECT EXAMINATION

14 BY MR. GROSE:

15 Q. I know you just did this in another hearing, but to
16 make our record here, can you summarize your education and
17 employment history.

18 A. Education starting where?

19 Q. College.

20 A. I went to the University of the South, which is
21 known as Sewanee in Tennessee. Received a bachelor's degree
22 in philosophy in 1991. I went to the University of South
23 Carolina. Received a master's degree in philosophy in 1993.
24 I received my law degree from University of South Carolina in
25 1996.

1 I was an assistant public defender in Lexington
2 County for a year and a half. Assistant public defender for
3 five years in Richland County. And at different times,
4 either the director of litigation or the chief litigator for
5 the Charleston County Public Defender's Office for 12 years.
6 And then for the last two years, I have been working
7 part-time while handling medical issues.

8 Q. And when you were at the Charleston County Public
9 Defender's Office, your responsibilities included carrying a
10 caseload?

11 A. Yes.

12 Q. And as part of that caseload responsibility, did you
13 handle major felonies?

14 A. Yes.

15 Q. And did you represent Joseph Graddick?

16 A. I did.

17 Q. And do you recall the charges that you represented
18 Mr. Graddick on?

19 A. Kidnapping, first-degree burglary, first-degree
20 criminal sexual conduct.

21 Q. And I want to go -- it's not entirely relevant to
22 the issues in this case, necessarily, but just to put into
23 context, he also had a prior charge, pending charge of
24 strong-arm robbery, I believe?

25 A. I did not recall that, but I do understand that

1 now.

2 Q. Okay. In the cases that we are here about today,
3 the burglary, first-degree, the kidnapping, and the
4 first-degree criminal sexual conduct, did that go to a jury
5 trial?

6 A. Yes.

7 Q. And do you recall the basic allegations of that
8 case?

9 A. Yes.

10 Q. And what were those?

11 A. A woman that lived in an apartment complex that --
12 and, again, like the last case, I apologize, I'm going
13 strictly from memory and the discussions that you and I have
14 had and I've had with the Attorney General. A woman lived in
15 an apartment complex. I believe that Mr. Graddick's
16 girlfriend lived in the same complex. She says that she's
17 asleep on the couch--

18 Q. When you say "she", explain.

19 A. Complainant is asleep on the couch. And she's
20 awakened. And at some point, I want to say led upstairs, or
21 maybe the sexual assault happened on the couch that she
22 alleged. And seems like someone tries to take someone
23 upstairs. I can't recall. And the suspect flees. Then
24 later, she sees -- she recalls that the suspect had a
25 distinct watch, large watch. And she sees -- I believe it's

1 the complainant, I'm not positive, sees Mr. Graddick at the
2 Subway with the watch, and then calls 911, I believe. That's
3 best I can do.

4 Q. Okay. And that's the allegations from the State's
5 side or the complaining witness?

6 A. Yes, yes.

7 Q. Now, did Mr. Graddick have a different account of
8 the events?

9 A. I can't remember if he gave a statement to police or
10 not, but I recall the defense that we put up, and that he
11 testified to, was that he knew the woman and that they were
12 in some way romantically involved, and that the act was
13 consensual. And then when he informed her he didn't want to
14 see her anymore, that she became upset.

15 Q. And do you recall whether or not you argued that
16 some of the factual circumstances were consistent with
17 Mr. Graddick's testimony?

18 A. Yes. You know, as I'm sitting here, some of this is
19 coming back to me. I'm recalling photographs of the
20 apartment, maybe the living room, and her earrings or
21 something were on a nightstand. And I remember seeing that
22 and thinking that that didn't look like a sexual assault.

23 Q. Okay. And the -- of course, the record will reflect
24 itself as to what the photographs showed and what you argued,
25 but is it significant in this case that there were two

1 contradictory opposing accounts of what happened?

2 A. Yes.

3 Q. And why is that?

4 A. Well, I mean, it's a he said/she said, you know, but
5 most sexual assaults are, except that there really wasn't any
6 physical evidence. For example, I believe that the rape
7 trauma person testified -- or the SANE nurse testified there
8 was no physical trauma. I think there was DNA from the rape
9 kit. Of course, that doesn't negate consent, but the
10 apartment was in order. She was not injured. I don't think
11 anybody heard her scream.

12 Q. And despite the fact that there was testimony that
13 she had screamed outdoors in an apartment complex?

14 A. She testified to that, but nobody heard it.

15 Q. Exactly.

16 A. Okay, yes.

17 Q. Is it fair to say that credibility was a central
18 issue for the jury to resolve in this case?

19 A. Yes.

20 Q. I want to shift gears and ask you some specific
21 questions with regards to parts of the trial. Do you have a
22 copy of the transcript with you?

23 A. I do not.

24 Q. When you were getting ready to be sworn in, we were
25 having a discussion about there being two numbers on there.

1 I'm going to use the small numbers, because that's what's on
2 the copy that I'm looking at here. So maybe we will be on
3 the same page.

4 A. Okay.

5 Q. Now, earlier I asked you questions about putting it
6 into context that Mr. Graddick had the prior strong-arm
7 robbery case.

8 A. Yeah, I remember you asking me that, yeah.

9 Q. Okay. And there was also a period of time between
10 the allegations in the home invasion rape case, the date of
11 those allegations, and when he was actually arrested?

12 A. Yes, I recall that.

13 Q. And do you recall that Mr. Graddick was detained at
14 the detention center pretrial?

15 A. Yes. And I also -- correct me if I am wrong, but he
16 left the state and they picked him up in Atlanta to bring him
17 back?

18 Q. So he was not out on bond?

19 A. Right.

20 Q. Okay. And, of course, the majority of people do get
21 out on bond before trial, even in serious cases?

22 A. I don't know if I would say the majority of them,
23 but I only handled cases that were of this nature and most of
24 my clients were in jail.

25 Q. And do you recall whether or not there was some

1 testimony at trial about whether or not Mr. Graddick was in
2 jail during pretrial period prior to trial?

3 A. I don't recall the testimony.

4 Q. All right. I'm going to refer you to page -- and
5 using small numbers -- page 121. And I believe this is in
6 Candy Dunham's testimony?

7 A. That's the complainant?

8 Q. No, Candy Dunham is Mr. Graddick's girlfriend at the
9 time that lived across from the complaining witness.

10 A. Okay.

11 Q. Okay. And if you look again at line 22 and go over
12 to 122 to the first two lines, would you agree that this is
13 sort of a vague reference to being in jail?

14 A. Yes.

15 Q. But it doesn't specifically cite the detention
16 center, does it?

17 A. Right.

18 Q. And being a vague reference, that's sometimes
19 terminology that you see lawyers or people in the criminal
20 justice system use, correct?

21 A. Right.

22 Q. If you go over to page 126, looking at lines 2 to
23 11, you are asking Ms. Dunham some questions about when she
24 saw Mr. Graddick, correct?

25 A. Let me look at that. Okay.

1 Q. And, of course, it refers on Line 3 to the fact that
2 he had been arrested?

3 A. Yes.

4 Q. And at that point, that still is just a general --
5 he had been arrested for these particular crimes?

6 THE COURT: Where are you?

7 MR. GROSE: I'm sorry. Line 124 -- I'm sorry, page
8 124, the question --

9 THE COURT: Little 124?

10 MR. GROSE: Little 124, yes, sir.

11 THE COURT: Line 3?

12 MR. GROSE: Yes, sir.

13 THE COURT: I got it.

14 BY MR. GROSE:

15 Q. Of course, everybody that is arrested, that doesn't
16 mean they are in jail pretrial detention, correct?

17 A. Yes, sir.

18 Q. Now, if you flip over to page 128 and 129, this is
19 in redirect at this point. And there's again, some questions
20 about when Ms. Dunham saw Mr. Graddick after these
21 allegations arose. And at line 24 she repeats, in Charleston
22 County, correct?

23 A. Which page?

24 Q. 126, the small number.

25 A. Yes.

1 Q. Okay. And the question at line 25 is: What do you
2 mean by Charleston County?

3 Correct?

4 A. Right.

5 Q. At that point she says: The jailhouse.

6 A. Correct.

7 Q. At this point, it's no longer just a vague
8 reference. This is a reference to actually being in
9 custody?

10 A. Right.

11 Q. Okay. If you go over to page 218, and this is
12 during the testimony of Jason Forsythe, who was one of the
13 police officers.

14 THE COURT: The one we just did, that's direct
15 examination by the State?

16 MR. GROSE: That was redirect.

17 THE COURT: Redirect by the State?

18 MR. GROSE: Yes, sir.

19 THE COURT: All right. Now, your next number?

20 MR. GROSE: Next number is 128, lines 1 through 11.

21 THE COURT: 128, 1 through 11. That's direct
22 examination?

23 MR. GROSE: Yes, sir.

24 THE COURT: We have two solicitors?

25 MR. GROSE: Yes, sir.

1 THE COURT: Okay. Go ahead.

2 BY MR. GROSE:

3 Q. And you mentioned earlier that there was DNA
4 evidence that wasn't dispositive on the issue of consent?

5 A. Right.

6 Q. And this witness, Officer Forsyth, is the one who
7 collected the DNA sample from Mr. Graddick.

8 A. Okay.

9 Q. And in this discussion at page 218, lines 1 through
10 11, he goes into the -- the officer goes into the fact that
11 he took the swab at the detention center and that
12 Mr. Graddick was incarcerated?

13 A. Right.

14 Q. Okay. So from two witnesses, we have direct
15 references to Mr. Graddick's pretrial detention?

16 A. Right.

17 Q. Okay. Did you object to either of those
18 testimony?

19 A. From the transcript, it appears I did not.

20 Q. Oftentimes we go to great lengths to try to make
21 sure jurors don't know someone is in pretrial detention,
22 don't we?

23 A. I can't say that I always do. And I am not saying I
24 shouldn't, but I can't say that I always do go to great
25 lengths to make sure they don't know they are in jail.

1 Q. Well, I mean, Mr. Graddick is in a SCDC uniform, but
2 there's no jury. If he was before a jury, he would be in
3 street clothes.

4 A. A few exceptions, but almost always, yes.

5 Q. Oftentimes, people brought from the detention center
6 to the courthouse are in chains, right?

7 A. Yes.

8 Q. And we make certain that the chains are removed
9 before they come into the courtroom?

10 A. Yes.

11 Q. And we try to make certain that jurors and
12 defendants don't pass each other when they are coming and
13 going from the courthouse? Defendants in custody, I mean.

14 A. Defendants passing who?

15 Q. That was a bad question on my part. We try to make
16 certain at courthouses that jurors don't encounter in-custody
17 defendants?

18 A. Oh, yes.

19 Q. And all that is because jurors knowing that the
20 defendant is in custody could be prejudicial?

21 A. Yes.

22 Q. Okay. And the fact that a defendant is in custody,
23 could that have an effect on how the juror views that
24 defendant's credibility?

25 A. Yes. I think, at least in my mind, there's a little

1 more to it, is that it's not only that. But I agree with you
2 on those points. But it's also that somebody just looks more
3 like a criminal when they are in their jail uniforms and the
4 shackles. And it's psychological, even if unwitting effect
5 on the juror that they see them that way. But, also, yes, I
6 guess all else being equal, we would rather them not know
7 that they were incarcerated.

8 Q. And when the jury finds out that somebody is
9 incarcerated, they don't know if they are incarcerated on
10 just that offense or more than one offense?

11 A. That's true.

12 Q. I want to shift gears and ask you about the officer
13 or investigator's testimony. And, again, using the small
14 numbers, you could go to page 155. And, actually, if you
15 could, just review 155 through 157 -- I'm sorry, actually,
16 through 159.

17 A. Okay.

18 Q. And then skip over to 164. Look at 164 and 165.

19 A. Can I ask you a question?

20 Q. Yes.

21 A. Who is the "her" being referenced? I understand
22 this a patrol officer testifying, said, "I told her", line
23 12, "I told her we couldn't locate the suspect inside the
24 subway."

25 Q. Okay. I think the first "her" they are referring to

1 is complaining witness. And the complaining witness is going
2 to give Officer Vantine some information and then he's going
3 to talk about what he did with regard to interviewing, Ms.
4 Dunham, who we talked about was Mr. Graddick's girlfriend at
5 the time?

6 A. Okay. How far did you want me to go in the first
7 one, 159?

8 Q. Yes, about midway down 159.

9 A. I will let you know when I'm there. Okay.

10 Q. All right. And then if you go to page 164, at line
11 12, and review through the next page to the end of the direct
12 examination.

13 A. Okay.

14 Q. Now, as an initial matter, I guess, the solicitor
15 was eliciting from Officer Vantine what he did during his
16 investigation?

17 A. Right.

18 Q. But the solicitor was also asking for statements
19 that were made, right?

20 A. Right.

21 Q. And can you summarize for us the types of statements
22 that the solicitor got out in those exchanges?

23 A. The one that was most damaging to me was that I
24 think -- I guess it's the second person, who is the
25 girlfriend, says that -- identifies that was Mr. Graddick and

1 he just ran away.

2 Q. Okay. And just to kind of clinching it up, the
3 complaining witness tells the officer that she thought
4 somebody alerted the suspect?

5 A. Right.

6 Q. And you objected there?

7 A. Right.

8 Q. And then Officer Vantine goes to Ms. Dunham and
9 that's where she gets the suspect's name and they get into a
10 conversation about her not being cooperative?

11 A. Right.

12 Q. And not answering the questions?

13 A. Right.

14 Q. And you said this part was, you thought,
15 particularly damaging?

16 A. Yes, because --

17 Q. And before you go on, you objected to all of this,
18 right?

19 A. Yes. I objected on the grounds of hearsay and
20 confrontation clause throughout.

21 Q. And if you could explain why you were making those
22 objections.

23 A. Well, because a couple of things. It would be
24 evidence of flight, which would be evidence -- can be taken
25 as evidence of guilt. And it's evidence that the girlfriend,

1 Ms. Dunham, was alerting Mr. Graddick to the presence of the
2 police, which could also be seen as her consciousness of his
3 guilt, and that shouldn't come from another witness.

4 Q. Okay. And the fact that she was providing
5 information gets into statements that she was making?

6 A. Right.

7 Q. Okay. And I can refer you back to Ms. Dunham's
8 testimony. And I'm looking at page 121. But her testimony
9 was fairly brief. Do you recall whether Ms. Dunham testified
10 about the specifics of any of these statements?

11 A. No. I don't recall. I just -- I do not recall
12 whether she did or not.

13 Q. And when you made those objections, I think you
14 already testified, you made like a series of objections?

15 A. Yes.

16 Q. So that's evidence that that's something you felt
17 pretty strongly about?

18 A. Yes. And from reading this, it's frustrating,
19 because I shouldn't have to keep objecting. And at some
20 point, the judge is saying, just say what you did. So it's
21 almost like the judge is agreeing with me at some point. The
22 judge is saying, just say what you did, don't say the
23 statement, just say what you did as a result of hearing it.

24 Q. And she did finally sustain the objection?

25 A. She does finally, when they keep going. But at some

1 point, even though the witness is being instructed "just say
2 what you did," they keep slipping into what was said. And
3 then she's overruling my objection. So if you saw me chuckle
4 when I was reading it, it's frustrating.

5 Q. And, of course, there was no curative instruction to
6 disregard those statements?

7 A. Right. And I don't gather that there would have
8 been, because the judge -- when they come out, says this is
9 part of their investigation, it's part of their
10 investigation, so it comes in, and says there's Supreme Court
11 precedent to that effect, but doesn't name any case.

12 Q. All right. And, of course, this potentially
13 implicates both the hearsay rule and the confrontation
14 clause?

15 A. Right.

16 Q. And even though Ms. Dunham was an available witness,
17 even after proffer to use prior statements, you still have to
18 follow the rules of evidence?

19 A. Yes.

20 Q. You can't just say, the witness is here in the room
21 and then read out what they had said?

22 A. Right, right.

23 Q. Okay. You may or may not know this. Do you know if
24 these areas of objections were appealed?

25 A. Well, I shouldn't say my recollection. I know just

1 from reading over materials for today that an Anders brief
2 was filed, so, no.

3 Q. Do you know if it was on this issue or another
4 issue?

5 A. No. I remember now it was my inability to make a
6 portion of my closing argument.

7 Q. All right. And I want to shift gears again and I
8 want to talk about the jury instruction. I want to start
9 talking about the no-corroboration instruction. And if you
10 could look at page 251, I don't remember the line numbers,
11 but it was in the second half of the page.

12 A. Yes, I see it.

13 Q. Okay. And this was during a charge conference.

14 A. It would appear so, yes.

15 Q. And at that point, did you make an objection to
16 charging that statutory section?

17 A. Yes.

18 Q. Okay.

19 THE COURT: What page is that?

20 MR. GROSE: That's 251, Your Honor.

21 THE WITNESS: Line 12, 251.

22 BY MR. GROSE:

23 Q. 12 through 22 or 24.

24 A. I've got it.

25 Q. Did you set forth the reason as to why you thought

1 that charge was objectionable?

2 A. I did not. And I'm a bit surprised that I didn't.
3 If I had to come up with a reason, I could come up with one.
4 It's not a strategy reason. It's dealing with a -- let me
5 see how I can put this tactfully. It's how I have to deal
6 sometimes with this particular judge.

7 Q. And there's been some tension between you and her
8 before?

9 A. I have to make my words count, because I don't
10 always get to say as many things as I would like.

11 Q. All right. Now, this particular jury instruction,
12 that has been a hot issue for a long time, hasn't it?

13 A. Yes.

14 Q. How long have you been taking issue with that
15 instruction?

16 A. I was trying to remember the first time that I
17 raised it. And I was still in Richland County. And so my
18 best guess, that that would have been 1999 or 2000.

19 Q. Just going back to your employment history, Richland
20 was your job before you came to Charleston?

21 A. Right.

22 Q. And why is that jury instruction objectionable?

23 A. The instruction is that the testimony of a
24 complainant in a sexual assault case need not be
25 corroborated. That principle of law was never intended to be

1 a jury instruction. It was -- at the time of the statute,
2 was enacted a substantive element of the charge of rape. And
3 it was based on an anachronistic, for lack of a better word,
4 sexist theory of psychology if a woman was actually raped,
5 she surely would complain about it. And if she didn't
6 complain about it, that meant that it didn't happen.

7 So when the State wanted to prosecute somebody on
8 the charge of sexual assault, they had to not only prove that
9 the assault happened, but that the woman also complained
10 about it. They would have to corroborate it.

11 Well, we don't have that requirement anymore,
12 because it was just stupid. So when that was gone, it didn't
13 make any sense, really, to charge the jury that, because
14 that's not a requirement anymore. And I think in the past, I
15 had had written briefs and maybe even law review articles
16 that I submitted. The reason that it's so dangerous is that,
17 especially in this case where I'm arguing that there's no
18 corroboration, it's just he said/she said. It invites the
19 State to say, well, they don't have to have corroboration,
20 and leave the impression that somehow a sexual assault case
21 is different, that the standard of proof is lower for the
22 State in that case.

23 But the truth of the matter is that the testimony of
24 a victim in any case need not be corroborated. So I had been
25 objecting to this for, like I said, since maybe 2000. And

1 I'm surprised that the same explanation I just gave does not
2 appear here, but it does not.

3 Q. And we looked through the transcript. The judge
4 actually instructed this twice, didn't she?

5 A. I don't recall that.

6 Q. If you would look at page 349, lines 19 to 23.

7 A. Yes.

8 Q. And so she instructed that section there

9 A. Yes.

10 THE COURT: 3 what?

11 MR. GROSE: I'm sorry?

12 THE COURT: 349?

13 MR. GROSE: 349, 19 to 23.

14 THE COURT: Okay. Got it.

15 BY MR. GROSE:.

16 Q. And if you go over to page 365, look at lines 2 to
17 6, this is when the judge is actually summarizing the
18 substance of a note that she got from the jurors.

19 A. Page 365?

20 MR. GROSE: 365, line 2.

21 THE COURT: Ms. Grose, I don't mean to interrupt
22 you, but going back to this 349 instruction on the
23 corroboration issue, is there any objection by Mr. Beattie to
24 that instruction?

25 MR. GROSE: Not at that point, no.

1 THE COURT: As a result of a charge conference or
2 anything like that?

3 MR. GROSE: Well, there was the charge conference
4 where he made the objection that we just discussed on page
5 251. That was, obviously, before the judge charged the law.
6 And then on 349, she gives that instruction. There was an
7 opportunity to object after that.

8 There were objections made, but it was to the
9 assault and battery of a high and aggravated nature charge
10 that was -- there was an error in that, which the judge
11 corrected.

12 Then on 365, just to try to move it along, there was
13 a note where the jurors requested to hear the definitions of
14 first-degree burglary, second-degree burglary, kidnapping,
15 first-degree criminal sexual assault and assault and battery.

16 And then on page 372, at lines 18 to 21, the judge
17 charged Section 16-3-657 a second time. And then there was
18 another opportunity to object. And no objections were lodged
19 at that point.

20 BY MR. GROSE:

21 Q. Now, going back to what you said earlier about
22 motions and possibly articles that you have done, the public
23 defender community in South Carolina has grown over the
24 years, but it's still a pretty small community, isn't it?

25 A. Yes.

1 Q. Did you ever have any interaction with the attorneys
2 of appellate defense on this particular issue?

3 A. I would like to think that I was clever enough to
4 come up with it on my own, but I can't swear that I did. I
5 think we've all been talking about it for a while.

6 Q. At seminars?

7 A. The PD conference seminars amongst ourselves. Now,
8 I may have come up with it. I'm just saying I can't say for
9 sure I did.

10 Q. It's an issue that's been circulating around
11 since --

12 A. Yes.

13 Q. -- at least when you were in Richland County?

14 A. Yes. And it was reinforced at some point when the
15 issue was raised. And I won't know the name of the case, but
16 Justice Pleicones issued a very strong dissent and laid out,
17 more or less, I think, the argument that I had been making.

18 Q. Would that be *State v. Rayfield*?

19 A. That sounds right.

20 Q. And that was a 2006 case?

21 A. If you say so. I don't remember.

22 Q. Okay. And that was a case that did not reverse the
23 conviction based on that instruction, but it kind of gave
24 some caution to the bench and the bar about how to use it?

25 A. Right. And I had used that dissent persuasion after

1 the case to have a judge in that case, Judge McDonald,
2 following -- being influenced by the defense and finding the
3 dissent in that case and finding the reasoning sound, I'm
4 going to charge, but I'm not going to let you put it up on
5 the PowerPoint, I'm not going to let you say, well, it's not
6 corroborated and doesn't have to be, but she did charge it.

7 Q. And even though it was in the statute, after
8 *Rayfield*, it was not considered a mandatory instruction, was
9 it?

10 A. Right, that's right, it was not.

11 Q. I want to shift gears and talk about the other jury
12 instruction issue. And first thing I want you to do is look
13 at page 40, at lines 6 through 11.

14 A. Can I ask? Is this the opening instruction by the
15 court?

16 Q. Right. This where the judge says you will then be
17 in a position to determine what the true facts are and apply
18 the law to those facts and then render a true and just
19 verdict in this case.

20 A. Okay. I see this.

21 Q. 49, this is actually during the State's opening
22 instructions. And they there ask the jury -- not opening
23 instruction, opening argument -- ask the jury to come back
24 with a verdict that speaks the truth, the truth about what
25 happened to the complaining witness.

1 A. Yes, I see that.

2 Q. Then on page 338, beginning at the end of line 19
3 through 21, the judge instructs: You have but one objective,
4 ladies and gentlemen, to seek the truth regardless of its
5 source.

6 A. Yes.

7 Q. Did you object to either of that opening instruction
8 by the judge or the closing instruction?

9 A. I did not.

10 Q. Does this instruction have a possibility of lowering
11 the burden of proof?

12 A. That never has occurred to me. Could I ask you to
13 explain that a little more?

14 Q. Okay. Well, the burden of proof, what a jury's
15 function is to determine whether the State has met the burden
16 of proof beyond a reasonable doubt.

17 A. Okay.

18 Q. Is that correct?

19 A. Yes.

20 Q. All right. And so the truth in any particular case
21 may not be what can be proven beyond a reasonable doubt.

22 A. Yes. All right. I follow that, and would agree
23 with that, that your goal is to find the truth, that should
24 be coupled with the burden of proof, which is beyond a
25 reasonable doubt, because you could establish -- you could

1 find the truth to a preponderance of the evidence, but that
2 wouldn't be sufficient to convict.

3 Q. All right. And regardless of its source, does that
4 part of the instruction have any concerns to you?

5 A. No. But if you explain, I will tell you whether I
6 can agree with you or not.

7 Q. Does it seem like it could possibly expand beyond
8 the record?

9 A. I guess so. I guess so, yes.

10 Q. Now, one objection that you did make, which is not
11 an issue here, but I want to draw a parallel, was to the
12 *Grippon* circumstantial evidence instruction.

13 A. Right.

14 Q. I believe you requested the *Edwards* instruction.

15 A. Yes.

16 Q. And if you trace that line of cases back far enough,
17 there's concerns with circumstantial evidence about requiring
18 the jurors to search -- even just search the record for an
19 explanation, right? Even with *Edwards*, you have to be
20 careful that you are not tasking the jury with doing
21 essentially what the State's obligation is?

22 A. Right.

23 Q. Okay. And do you see how those concerns with the
24 *Grippon* -- the old concerns with the circumstantial evidence
25 charge and the search for the truth kind of parallel and have

1 some of the same concerns?

2 A. Yes, I would agree with that.

3 Q. Now, there was some discussion -- again, changing
4 the subject. I want to go to your closing argument. Do you
5 remember what it was that drew the objection from the State?

6 A. Yes.

7 Q. What was that?

8 A. It was -- well, can you point me out and then I will
9 remember the rest of it. Hold on.

10 Q. I do not have that cite in front of me, but if you
11 wanted me to, I could probably come to it pretty quick. It's
12 near the very end of your argument.

13 A. Yes. Okay. Okay. It's on 319, page 19 -- I mean,
14 line 19: If you've ever read a bedtime story to your
15 children, walked on the beach, you felt the cool beach
16 between your toes, they don't want him to feel those things
17 anymore, meaning the State, they want to take them away from
18 him, that's why it's proof beyond a reasonable doubt.

19 So I'm appealing to what the consequences are of a
20 criminal conviction, as opposed to a civil judgment or civil
21 verdict.

22 Q. And was your intention to argue any particular
23 punishment?

24 A. No. Those are just -- I'm appealing to things that
25 would resonate with a jury beyond just saying he's going to

1 lose his freedom?

2 Q. And in this case, there was also some evidence that
3 the complaining witness might have wanted to take away
4 Mr. Graddick's freedom?

5 A. Yes.

6 Q. In fact, if you look at Mr. Graddick's testimony
7 somewhere in the 262 to -- I'm sorry, 263, lines 1 through
8 18 --

9 A. Okay.

10 Q. And Mr. Graddick does testify that between the day
11 of the allegations and the Subway incident, that the
12 complaining witness had called him and told him that he was
13 going to go to jail for rape.

14 A. Right.

15 Q. And so it would also be the complaining witness
16 having a motive to take away Mr. Graddick's liberty?

17 A. Right.

18 Q. And that's something that you can also argue how the
19 jury should resolve the credibility issues?

20 A. Say that last part again.

21 Q. Well, the fact that the jury has to resolve the
22 credibility issues, we've agreed to that?

23 A. Right.

24 Q. And a jury could say, I don't know who to believe?

25 A. Right.

1 Q. And then they would have to find Mr. Graddick not
2 guilty under the burden of proof, right?

3 A. If they don't know whom to believe.

4 Q. Right.

5 A. I agree with that.

6 Q. That kind of gets back to the ideal, we don't always
7 know what the truth is, but we do need to determine whether
8 the State can meet their burden of proof?

9 A. That's the way it should work, yes.

10 Q. Do you feel as though you should have been allowed
11 to make that argument?

12 A. Well, yeah, that's why I made it. I don't believe
13 it was going just -- there's no way to talk about deprivation
14 of freedom without talking about punishment.

15 Q. At least in the abstract way?

16 A. Right.

17 Q. But you weren't going to say anything like, if you
18 convict him, he's going 20, at least 15 years in prison for
19 burglary first?

20 A. No.

21 Q. Do you think that's an issue that should have been
22 appealable on the merits?

23 A. Yes.

24 MR. GROSE: Beg the Court's indulgence for a moment.
25 Thank you, Your Honor. That's all I have at this time.

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MS. OLIVE:

4 Q. Thank you, Your Honor. May it please the Court.
5 Mr. Butler, I'm going to ask you some -- a few just kind of
6 basic questions first and then go into these specific
7 allegations. You testified before that you practiced law for
8 about 18 years?

9 A. Well, 20, technically. Last two have been on and
10 off.

11 Q. And were you appointed or retained in this case?

12 A. Appointed through the public defender's office.

13 Q. Do you recall at what point you became involved, in
14 terms of how soon before he went to trial did you begin
15 representing him?

16 A. I would have gotten the file shortly after he was
17 arrested. And hopefully seen him, unless I was in trial,
18 would have seen him within a matter of days after getting the
19 file.

20 Q. Do you recall how many times you met with
21 Mr. Graddick in preparing this case?

22 A. I do not.

23 Q. Let me back up. I'm going to ask you the same
24 question I asked you last time. Do you have your file with
25 you in this case?

1 A. I do not.

2 Q. Have you reviewed that file in preparation for the
3 hearing today?

4 A. I have not. I take it back. Charles had it and I
5 reviewed it briefly in the hallway this morning.

6 Q. Okay.

7 A. But what was not -- what I didn't see, anyway, were
8 my notes that would have shown the visits. I didn't see
9 those. So I'm not sure that he has those.

10 Q. But he has your complete file?

11 A. Well, no. I just said I don't think he has all of
12 it, but he had the discovery and some investigative notes.

13 Q. Is it your understanding he received that file from
14 the public defender's office?

15 A. I would assume so.

16 Q. Okay. And when I subpoenaed you to appear in court
17 today, did I ask you to bring your file with you?

18 A. Like I said, I didn't get the subpoenas, but that's
19 because I'm between addresses, so ...

20 Q. Have you testified at a PCR hearing before?

21 A. I have testified at PCR hearings dozen of times.

22 Q. Do we generally ask you to bring your file with you?

23 A. Yes.

24 Q. So you reviewed that file briefly before the hearing
25 today?

1 A. Yes.

2 Q. Okay. Do you recall what your trial strategy was in
3 this case?

4 A. I do. I think I recall it primarily from having the
5 discussions with you and Mr. Grose. But that it was a he
6 said/she said case. And if what she had said was true, there
7 should have been more evidence to corroborate what she had
8 said.

9 Q. Okay. Let's talk about that. So she testified at
10 trial, right?

11 A. Yes.

12 Q. She testified that she was asleep on her couch and
13 had awoken to someone over her?

14 A. Yes.

15 Q. Okay. And she didn't know this person?

16 A. Right.

17 Q. And she was able to look for some details about this
18 person and noticed that they had a large bold-face watch on,
19 right?

20 A. Right.

21 Q. And fast-forward to the Subway incident. That's
22 when she saw him again. And she called the police because
23 she identified this watch, right?

24 A. Yes.

25 Q. Okay. Now, her testimony about what happened was

1 that she was awoken. He sexually assaulted her. And
2 afterwards, there was some struggle at the bathroom. He
3 walked her upstairs. There was some struggle at the
4 bathroom. He was trying to shove her in. And, eventually,
5 he got away and she ran after him. This is when she was
6 screaming and she said no one heard her. She was running
7 around the apartment complex?

8 A. Okay. That sounds familiar.

9 Q. Do you remember what she was clothed with at that
10 point?

11 A. I do not.

12 Q. Would you disagree that she was clothed in only a
13 tank top?

14 A. No. If you tell me that, I have no reason to doubt
15 it.

16 Q. Okay. Do you recall that she also testified she
17 went to a neighbor's house?

18 A. Yes.

19 Q. Okay. And she knocked on their door?

20 A. Yes, I think so, yes.

21 Q. Okay. And that neighbor also testified at trial?

22 A. I don't recall that, but I don't disagree if you
23 tell me so.

24 Q. Okay. Do you recall that neighbor testifying -- do
25 you recall that neighbor testifying that he provided her with

1 a blanket because she was naked from the waist down?

2 A. I don't recall that, but I don't dispute it
3 either.

4 Q. Okay. Would you say that would be consistent with
5 her testimony that she ran out of the house with no bottoms
6 on and ran to a neighbor's house and knocked on the door
7 asking to use the phone, and he provided her with a blanket
8 because she was not clothed?

9 A. Would the neighbor's testimony be consistent with
10 what she said, is that what you are asking?

11 Q. Right.

12 A. Yes.

13 Q. Do you recall whether a police investigator also
14 testified when he arrived at the scene, she was wearing a
15 blanket over her?

16 A. I don't recall, but I don't have any reason to doubt
17 it.

18 Q. Okay. And you said this was a he said/she said, but
19 we've got a neighbor who was testifying that this woman comes
20 to his house visibly upset and clothed only on the top of her
21 body.

22 A. Right.

23 Q. Beg the Court's indulgence. And a rape kit was
24 performed, right?

25 A. Yes.

1 Q. And that did reveal that ultimately after obtaining
2 the buccal swab, et cetera, that did reveal that that DNA was
3 a match?

4 A. Yes.

5 Q. Beg the Court's indulgence. Okay. And the victim
6 had also -- do you recall whether there was a weapon involved
7 in this?

8 A. I don't recall one way or the other. You know, if
9 you told me that there was an allegation of a screwdriver or
10 something, sometimes my cases run together.

11 Q. Do you still have the transcript up there?

12 A. I do.

13 Q. Okay. I'm going to refer you to -- and I'm going by
14 the record page number, so that would be the large number.
15 I'm sorry about the confusion.

16 A. No, that's fine.

17 Q. But page 60 through 61, I'm going to direct your
18 attention to that. That is the victim's testimony.

19 A. Okay.

20 Q. Do you recall whether she -- and I'm also going to
21 refer you to page 65.

22 A. Well, first on 60 and 61, what lines?

23 Q. Just generally, she's describing the scene.

24 A. Okay. And then you say 65? Oh, I see: Put a sharp
25 object against the back of my neck.

1 Q. Right. And she said she thought that he had a
2 knife?

3 A. Yes.

4 Q. And you said something about a screwdriver. Is it
5 your recollection that a screwdriver was recovered from the
6 house?

7 A. I don't recall that, but I wouldn't dispute it
8 either.

9 Q. Nevertheless, the victim testified that she was
10 assaulted with a weapon?

11 A. Yes.

12 Q. Okay. And there was also testimony that the screen
13 was pried away from the back kitchen window and that was -- I
14 will refer you to page 104. And that would have been Officer
15 Tony Middleton's testimony. And that's lines 19 through 21.

16 A. Yes.

17 Q. Okay. He testified he did not talk to any
18 neighbors, Mr. Middleton didn't?

19 A. I don't recall that.

20 Q. Okay. I'm going to move on. Do you recall whether
21 he testified about the victim mentioning a screwdriver?

22 A. I do not.

23 Q. I'm sorry. I'm going to refer you to page 105, line
24 20.

25 A. Yes. The screwdriver was on the floor near the end

1 of the sofa.

2 Q. So we have the victim's testimony that an assault
3 occurred, as well as the weapon that she alleged he used,
4 held against her throat?

5 A. She said sharp object. They find a screwdriver at
6 the scene. I can see how you can make that inference, yes.

7 Q. Do you recall whether you questioned the nurse who
8 performed the sexual assault kit? Do you recall questioning
9 her about whether she noted any injuries on the victim?

10 A. I don't, but I would assume I did if there were
11 none.

12 Q. Okay. And she testified that she did not note any
13 injuries to the victim's body?

14 A. Yeah, that's what I thought.

15 Q. And going back to your trial strategy, do you recall
16 what your strategy was in this case?

17 A. I think it would have been, like I said, that it was
18 his word against hers, and that her word was, as to the
19 assault, was not corroborated.

20 Q. Okay. Did it have to do with them having an
21 association with one another?

22 A. Oh, well, yeah, meaning the factual theory was that
23 that's just what Mr. Graddick testified to, was that they
24 knew each other and were somehow involved.

25 Q. Because there was obviously physical evidence that

1 at least his DNA was inside of her?

2 A. That's correct.

3 Q. And, Mr. Butler, did Mr. Graddick provide you with
4 any leads for investigation purposes? Specifically, did he
5 provide you with any witnesses that could testify in his
6 defense?

7 A. I do not recall one way or another. But if he had
8 provided me any names, I have a very good investigator and we
9 would have talked to him.

10 Q. But you don't recall him providing you with any
11 names?

12 A. I don't recall, but that's not to say that he
13 didn't.

14 Q. Okay. And if your investigator -- you testified
15 that your investigator, you would have at least reached out
16 to these witnesses?

17 A. Yes.

18 Q. And then you would have made a determination at that
19 point about whether to call them?

20 A. Yes.

21 Q. Generally, since you don't recall specifically, if
22 you have a fact witness that can assist your client at trial,
23 would you call them?

24 A. Yes.

25 Q. Generally, do you have a reason why you would not

1 call a witness to testify?

2 A. I wouldn't call a witness to testify if they didn't
3 help the case. And even if they helped only a little bit,
4 but brought with them some baggage; then I might not want to
5 call them. I also might not want to call -- this wouldn't
6 have been a factor in this case, but if they add very little
7 and I put up no evidence and I wanted to preserve last
8 argument, I might not put up a witness. But he testified, so
9 that wasn't a factor here.

10 Q. Did you feel you had sufficient time to meet with
11 Mr. Graddick before trial?

12 A. Yes.

13 Q. Do you feel you had sufficient time to prepare his
14 case for trial?

15 A. Yes.

16 Q. Do you generally do legal research prior to a
17 criminal trial?

18 A. Yes, to the point that I get made fun of for doing
19 it, which always struck me as odd.

20 Q. So does that mean that it would be thorough?

21 A. Yes.

22 Q. Do you generally make objections at trial where you
23 feel -- let me rephrase that. Did you make objections in
24 this trial?

25 A. Yes.

1 Q. And, Mr. Butler, have you represented criminal
2 defendants on these charges before, on kidnapping, burglary
3 first, and criminal sexual conduct, first degree?

4 A. Yes.

5 Q. And how many cases had you tried prior to this,
6 would you say?

7 A. Prior, I couldn't tell you, but total 50 roughly.

8 Q. Now, regarding the questions that came up about the
9 reference that Mr. Graddick was either incarcerated or in the
10 detention center at a certain time, and we've already
11 established that or you agreed that you did not object when
12 that testimony came in, did you feel at the time that there
13 was a reason to object?

14 A. I can't say one way or the other. The first time
15 when it says "Charleston County", I mean, the juries wouldn't
16 know that means the detention center. I'm sure I knew what
17 it was, but later when it was made explicit, in hindsight, I
18 probably should have objected. I can't think of any
19 strategic reason why I didn't.

20 Q. Hindsight you should have objected, but at the time,
21 is that something that would have struck you -- was that
22 something at the time that struck you as objectionable?

23 A. Must not have, because I didn't object. So I would
24 say no.

25 Q. And when the officer said that he was incarcerated

1 at the time, he wasn't -- I mean, that wasn't a response to
2 the State asking him if he was incarcerated, right?

3 A. Transcript could speak for itself, I guess. I don't
4 have that right in front of me.

5 Q. You testified you did make objections based on
6 hearsay and violation of confrontation clause during Officer
7 Vantine's testimony?

8 A. Yes.

9 Q. And you did object to the judge giving the
10 corroboration -- the statement about corroboration during
11 instruction, did you not?

12 A. I did.

13 Q. And regarding the other instructions, specifically
14 the truth-seeking instructions, are those standard
15 instructions that are typically given in a trial?

16 A. Yes.

17 Q. Did it occur to you or did you feel that those were
18 objectionable at the time?

19 A. No.

20 Q. And the judge still properly instructed them on the
21 State's burden of proof, did she not?

22 A. I assumed so. I don't remember what charge she
23 gave.

24 Q. Is it your recollection they were standard charges
25 in terms of State's burden of proof?

1 A. Yes.

2 Q. Do you recall at the time -- with the exception --
3 there was an objection to the ABHAN charge. She mentioned
4 SCDC again. Is that what you recall?

5 A. I don't remember that. Y'all have mentioned it, but
6 I don't recall that.

7 Q. But there was an objection to the ABHAN charge. And
8 she essentially -- beg the Court's indulgence, Your Honor.
9 I'm going to refer you to page 357 of the transcript. And
10 that would be lines 10 through 18, just having you refresh
11 your memory as to ABHAN.

12 A. Okay. Okay. I see that.

13 Q. And the case on page 362, ultimately, there's some
14 discussion about that charge. And the Court fashions a
15 remedy for your objection on page 352, line 19 through 22.

16 A. Well, she fashions a remedy, but doesn't look like
17 it's the one I asked for, but, yes.

18 Q. And I apologize if that was inartfully said.

19 A. No, that's okay.

20 Q. She addressed your objection by not recharging them,
21 but instructing them to disregard that second reference.

22 A. Right.

23 Q. And I just ask that to say, you made an initial
24 objection to the corroboration charge. And after the judge
25 gave the charges, you raised a different objection based on

1 the way that she gave the ABHAN charge?

2 A. Right. I didn't know she was going to charge it
3 that way, so I didn't know to object until she said it.

4 Q. Right. Other than those objections, did you feel
5 that her charges on a whole advised the jury correctly as to
6 the law?

7 A. I couldn't say that without reading through the
8 whole thing.

9 Q. If you had not felt that way, would you have
10 objected?

11 A. Yes.

12 Q. And in terms of your argument and the objection that
13 was made concerning the consequences or concerning the
14 reference to punishment of Mr. Graddick, did that objection
15 prevent you from arguing -- well, you were still able to
16 argue that the State had to meet its burden of proof,
17 correct?

18 A. Yes.

19 MS. OLIVE: Beg the Court's indulgence. That's all
20 the questions I have. Thank you.

21 THE COURT: You may proceed.

22 MR. GROSE: They made fun of me about legal research
23 too.

24 THE COURT: I've never known you to be unprepared.
25

REDIRECT EXAMINATION

BY MR. GROSE:

Q. Well, she asked you some questions about the DNA.

A. Right.

Q. And the DNA really is not a definitive issue in this case, is it?

A. Doesn't mean anything if the defense is consent, if that's what you mean, yeah.

Q. Somebody in the lab at the State Law Enforcement Division came and talked about consent versus nonconsent?

A. No.

Q. She also asked you some questions about corroboration. And one of them had to do with the neighbor or the complaining witness knocking on her door, right?

A. Right.

Q. At the same time that neighbor also wasn't able to corroborate hearing her scream outside, was he?

A. Right.

Q. And she asked you about the medical exam. If you would go to page 1, or really the top of 184, small number 184, which is where your cross-examination begins.

A. Okay.

Q. And one of the questions was about the screwdriver. If you can just read over at least the next to midway down, 186.

1 A. Okay.

2 Q. Through the end of 186.

3 A. Okay. Okay.

4 Q. The attorney general asked you about, I believe,
5 Officer Middleton, whether he heard about a screwdriver. But
6 you also brought that question up to the sexual assault
7 examiner, right?

8 A. Right.

9 Q. And you've done a lot of these cases. They
10 typically want to know if a weapon was used, don't they?

11 A. Yes. It can make a SCDC a first if there's, for
12 lack of a better way of putting it, an aggravating
13 circumstance maybe. The use of a weapon can make a criminal
14 sexual conduct a first degree.

15 Q. All right. And that was part of the theory here,
16 right?

17 A. Yes.

18 Q. And they have forms that make sure they do these
19 exams, ask the same information all the time?

20 A. Right.

21 Q. And she didn't know anything about a sharp object or
22 a screwdriver?

23 A. I can just tell you that my question was, the
24 complainant made no mention to you, the nurse, about a
25 screwdriver or other sharp object or a knife being held to

1 her throat, and she said, no, she just said that he had a
2 screwdriver.

3 Q. But didn't say anything about it being used as a
4 weapon?

5 A. Right, being used as a weapon.

6 Q. You proceeded to ask her a number of questions about
7 trauma.

8 A. Right.

9 Q. And, again, those are things on the forms, right?

10 A. Right.

11 Q. In this case, I think there was allegations that the
12 complaining witness was awakened on the couch and fell on the
13 carpeted floor and then sex was forced on her, right?

14 A. I don't remember specifically that, but I don't
15 dispute it either.

16 Q. Okay. Well, just going through the next few pages,
17 I mean, you do ask about abrasions, trauma, carpet burns and
18 that sort of thing, right?

19 A. Right.

20 Q. So while we might be able to pick through this
21 record and find some things that corroborated or didn't
22 corroborate, this was certainly a case where there was two
23 competing stories?

24 A. Right. And when I say hers was not corroborated,
25 perhaps I'm using that term too generally. But what I mean

1 is, the physical evidence, the scene itself, as I recall, and
2 the lack of injuries to her body and vaginal area.

3 Q. This certainly wasn't the case of overwhelming
4 evidence?

5 A. Right.

6 Q. I mean, you testified earlier today in a hearing,
7 and there was some questions about overwhelming evidence in
8 that case. This is different than that?

9 A. Right. And I have to ask you, was there an Allen
10 charge in this case?

11 Q. I don't believe so, but I could be corrected on
12 that.

13 A. I have a bunch of them I'm trying to keep straight
14 in my head. But no, to answer your question, this was not a
15 case of overwhelming evidence of guilt.

16 Q. And you were asked questions about calling a witness
17 or not calling a witness. And there was a reference to the
18 last argument. But I think you indicated that concern was
19 not applicable here.

20 A. Right.

21 Q. I think you also said, turning to the questions
22 about Mr. Graddick's pretrial incarceration, you made a
23 distinction between the more vague reference of Charleston
24 County to when they actually got into the fact that he was
25 incarcerated?

1 A. Right.

2 Q. And just to go to that, just real quick, there was a
3 question about the police officer, whether or not the State
4 initiated that. If you could look at page 218, 1 through 11.

5 A. Yes. But, you know, what also -- there's another
6 one that I just happened to see. On 126 at the bottom, in
7 Charleston County: What do you mean Charleston County, at
8 the jailhouse; top of 127.

9 Q. I was going to go back to that. That was when Ms.
10 Dunham was testifying, right?

11 A. Right.

12 Q. And in that, the State specifically elicited the
13 information about the jailhouse?

14 A. Yes.

15 Q. And to explain what the vague reference to
16 Charleston County now, so if the jurors were having a doubt
17 or unsure of what that meant, that doubt was removed?

18 A. Right.

19 Q. And then on 218, while it's true that the officer is
20 the first one to mention the detention center and the first
21 one to mention incarceration, this could have been handled
22 differently, couldn't it?

23 A. Yes.

24 Q. I mean, it could have -- maybe just through better
25 witness preparation.

1 MS. OLIVE: Your Honor, I object to counsel
2 testifying.

3 THE COURT: Overruled. Go ahead.

4 BY MR. GROSE:

5 Q. Through better witness preparation, they could have
6 gotten this testimony out. I mean, only thing that was issue
7 was he got a DNA sample?

8 A. Right.

9 Q. From Mr. Graddick?

10 A. Right.

11 Q. That proved something that ultimately wasn't an
12 issue?

13 A. That's correct.

14 Q. But then this witness became a vehicle for the
15 incarceration?

16 A. Right.

17 Q. And I believe you testified that you had no
18 strategic reason for not objecting to that?

19 A. That's correct.

20 Q. With regard to the truth seeking, do you know what
21 *State v. Alexkey* might say on that issue?

22 A. I do not.

23 Q. And with regard to the no-cross-examination
24 instruction, it certainly has been your practice before and
25 since this case to preserve that right?

1 A. Yes.

2 Q. And to preserve it with an explanation as to why
3 it's an objectionable charge?

4 A. Yeah, and the same way I did here today.

5 Q. Okay. The same explanation you gave today, right?

6 A. Yes.

7 Q. Do you feel as though the objection that you made
8 during the charge conference was adequate to preserve that
9 issue for appeal?

10 A. I knew you were going to ask me that. And I don't
11 know. I'm not an appellate lawyer, so I can't say whether it
12 was adequate to preserve it. I can say I could have said
13 more. And I'm at a loss myself as to why I didn't. Only
14 because I know that I have said basically what I said today
15 on this same issue, both before and after this case. And why
16 I didn't go into the same amount of detail here, I can't
17 really say.

18 Q. And if it was preserved, you would have wanted it to
19 be included in the brief?

20 A. Yes, especially since later, I can't remember if
21 it's Supreme Court or Court of Appeals, ultimately agrees
22 with me, or all of us that have been raising this issue. So,
23 yes, definitely should have been raised.

24 MR. GROSE: Beg the Court's indulgence, but I think
25 that's it.

1 BY MR. GROSE:

2 Q. And just one thing real quick. On the hearsay
3 confrontation clause issue, that's definitely something that
4 you thought was preserved?

5 A. Yes.

6 MR. GROSE: Nothing further.

7 THE COURT: Anything further of this witness?

8 MS. OLIVE: Nothing further from the State.

9 THE COURT: You may come down, sir.

10 MR. GROSE: I would call Mr. Graddick.

11 JOSEPH RICHARD GRADDICK,

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your first and last name,
14 and spell your last loudly and clearly into the microphone.

15 MR. GROSE: Can you state your name for the record
16 and spell your last name for the court reporter.

17 THE WITNESS: Joseph Richard Graddick,
18 G-r-a-d-d-i-c-k.

19 DIRECT EXAMINATION

20 BY MR. GROSE:

21 Q. You are the applicant in this case; is that
22 correct?

23 A. Yes, sir.

24 Q. Do you remember your jury trial?

25 A. Most of it.

1 Q. And did you testify in that trial?

2 A. Yes, sir.

3 Q. And you've heard some discussions today about what
4 your testimony was. Has it been summarized fairly
5 accurately?

6 A. Yes, sir.

7 Q. And, of course, you had testified that this was a
8 situation involving consent?

9 A. Yes, sir.

10 Q. And I believe you testified that you had known the
11 complaining witness prior to the night that these allegations
12 came up?

13 A. Yes, sir.

14 Q. Had you been to her apartment before?

15 A. Yes, a few times.

16 Q. And I believe that you had testified to that at the
17 trial?

18 A. Yes, sir.

19 Q. And had you also seen her on other occasions?

20 A. Yes, sir.

21 Q. Was there a night prior to this incident where you
22 and the complaining witness had an argument?

23 A. Yes, sir.

24 MR. GROSE: And can you hear him well enough, Your
25 Honor?

1 THE COURT: Can you pull the chair up a little bit?

2 That's better. Okay.

3 BY MR. GROSE:

4 Q. And where did that other incident where there was an
5 argument, where did that occur at?

6 A. In the same apartment complex about 200 yards from
7 where I was residing at.

8 Q. And you were residing with Candy Dunham?

9 A. Yes, sir.

10 Q. And Ms. Dunham lived directly across from the
11 apartment where the complaining witness was?

12 A. Yes, sir.

13 Q. So this other incident was, did you say, 200 yards
14 away?

15 A. Yeah.

16 Q. Same apartment complex?

17 A. Same apartment complex, yeah.

18 Q. And what happened?

19 A. Me and my younger brother was in another apartment
20 seeing some other females when Lavanda (ph.) came in, had
21 words with the person that was renting out that apartment,
22 and then left. Said a few words to me, some profane words,
23 accusing words, and then left. Went back to the apartment
24 that she stayed in, where my brother's car was parked and my
25 car was parked. Me and my brother made plans to go back to

1 my mother's house in Goose Creek.

2 And during that time, I go to my car, and she's
3 sitting in that area by my car, like, you ain't going nowhere
4 until we talk, you ain't this, you ain't that. And I'm like,
5 move, get out of the way, watch out, get out of the way.

6 So me and her got in a physical altercation prior to
7 this incident that we are speaking of happened. Me and my
8 brother got in our car and left.

9 Q. And what was Lavona upset about?

10 A. Me seeing another female besides seeing -- besides
11 my girlfriend at the time.

12 Q. And, in fact, there was some testimony at trial that
13 at some point, Candy was upset with you about the same type
14 of stuff, correct?

15 A. Yes, sir.

16 Q. Now, you and your brother were inside another
17 apartment?

18 A. Yes, sir.

19 Q. Okay. What is your brother's name?

20 A. Leroy Graddick.

21 Q. Is he here today?

22 A. Yes, sir.

23 Q. And did he see Lavanda at that apartment?

24 A. Yes, sir.

25 Q. And then this argument resumed in the parking lot,

1 right?

2 A. Yeah.

3 Q. And where was your car parked in relationship to
4 your brother's car?

5 A. Parked backwards right next to his.

6 Q. So they were like side-by-side?

7 A. Yes.

8 Q. Did your brother witness this argument too?

9 A. Yes, sir.

10 Q. And this was prior to the night where the
11 allegations arose?

12 A. Yes, sir.

13 Q. Do you recall how long it was before that?

14 A. Maybe it was over a month, because it was around the
15 death of my sister, so over a month.

16 Q. When you say the death of your sister, what is her
17 name?

18 A. Dorinda Nicole Graddick.

19 Q. When did she pass away?

20 A. 2008, I'm not sure which month it was, maybe August,
21 June, between June and August.

22 Q. So whatever date it was, that was something that you
23 could kind of place it?

24 A. Yeah.

25 Q. And you probably remember that more in terms of sort

1 of the sequence of your life events?

2 A. I mean, I remember it because the Nissan Maxima that
3 my brother was driving at the time was the car that my sister
4 used to drive. And after she passed, he started driving
5 it.

6 Q. The car that he had the night that Lavanda came to
7 this other apartment and then there was the discussion in the
8 parking lot, your brother had taken over your sister's car by
9 then?

10 A. Yes, sir.

11 Q. Okay. All right. That's all I have.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MS. OLIVE:

15 Q. Mr. Graddick, you did testify at trial, right?

16 A. Yes, ma'am.

17 Q. And you testified that you had known Lavanda
18 previously?

19 A. Yes, ma'am.

20 Q. Did you tell your attorney about Leroy Graddick?

21 A. I ain't seen him but the first time he came and told
22 me he was my lawyer and maybe a week before I went to
23 trial.

24 Q. Okay. But did you tell him about Leroy Graddick?

25 A. I told him about witnesses. I don't remember. It

1 was awhile ago. I don't know who I told about.

2 Q. You don't have a specific recollection about whether
3 you told him about your brother, Leroy Graddick?

4 A. No, I ain't never got a chance to really speak to
5 nobody clearly about the situation during that time from the
6 time I was incarcerated until the time I was in the county
7 jail until my trial period.

8 Q. But you did see your attorney?

9 A. Yeah, two times, yes, ma'am.

10 Q. Wouldn't that have been something important you
11 would have wanted to tell him?

12 A. Yeah, after I thought about it.

13 Q. But you didn't tell him though, did you?

14 A. No. After I thought about it, I was like, well,
15 this is really happening, I need to figure out what I need to
16 do. So at the time it wasn't clear to me that this was
17 really even happening, like, she was really going to do
18 something like that. So I wasn't worried about it.

19 MS. OLIVE: Thank you. That's all the questions I
20 have.

21 REDIRECT EXAMINATION

22 BY MR. GROSE:

23 Q. Did you represent yourself in this case?

24 A. I can't really say. I mean, being that I didn't do
25 some studying back then, yeah.

1 Q. You were looking for your lawyer to decide what was
2 important, weren't you?

3 A. Yes, sir.

4 MR. GROSE: That's all I have.

5 THE COURT: Recross?

6 MS. OLIVE: Nothing further.

7 MR. GROSE: I call Leroy Graddick.

8 MS. OLIVE: Your Honor, at this time, I'm
9 respectfully objecting to Leroy Graddick's testimony. I was
10 just informed about this witness last week. And I was just
11 given his name this weekend. I have not had an opportunity
12 to look into any criminal background of his. If Your Honor
13 sees fit to leave the record open to allow me time to do
14 that, but I'm not going to be able to cross-examine him about
15 any past convictions. So I don't have those available to
16 me.

17 THE COURT: I will do that, but you can ask or maybe
18 Mr. Grose will ask him.

19 MS. OLIVE: Thank you, Your Honor.

20 THE COURT: Come on around.

21 MR. GROSE: Just for the record, there was no
22 discovery ordered in this case, so there's been no
23 interrogatories or request to produce.
24
25

1 LEROY ANTHONY GRADDICK,
2 having been duly sworn, testifies as follows:

3 THE CLERK: Please state your first and last name,
4 and spell your last loudly and clearly into the microphone.

5 DIRECT EXAMINATION

6 BY MR. GROSE:

7 A. Leroy Anthony Graddick, G-R-A-D-D-I-C-K.

8 Q. Mr. Graddick, are you related to my client, Joseph
9 Graddick?

10 A. Yes, sir.

11 Q. And how are you related?

12 A. He's my big brother.

13 Q. So, obviously, you've known him all of your life?

14 A. Yes, sir.

15 Q. Did you all grow up together?

16 A. Yeah. He basically raised me; just like my father,
17 basically.

18 THE COURT: Speak up a little bit. I didn't hear
19 you. What did you say?

20 THE WITNESS: I said basically he's my big
21 brother/father.

22 THE COURT: Okay.

23 BY MR. GROSE:

24 Q. Are you employed?

25 A. Yes, sir.

1 Q. Where do you work?

2 A. AT&T.

3 Q. What do you do for AT&T?

4 A. I'm a service tech.

5 Q. How long have you had that job?

6 A. Three years now. Been in college since doing that
7 now.

8 Q. And they asked about whether or not you have a
9 record. Do you have a criminal record?

10 A. No, sir.

11 Q. Do you recall an incident that happened at the
12 apartment complex?

13 A. Yeah. Yes, it was long time ago, but I remember.

14 Q. Okay. How was that -- what was the timing of that
15 incident in relationship to your sister's death?

16 A. It had to happen like right after my sister's death,
17 or while she was in the hospital, because I had the car. You
18 know, that was one of the things that was given to me when
19 she was sick to make it back and forth to college, because
20 she was taking me before that.

21 Q. And what college was that?

22 A. South Carolina State University.

23 Q. That's in Orangeburg?

24 A. Yes, sir.

25 Q. And do you recall a woman coming to an apartment

1 where you and your brother were?

2 A. Yes, I remember that.

3 Q. And what happened?

4 A. She just basically flipped out because me and my
5 brother was seeing different females. You know, he was
6 probably seeing her prior to it, but just a big altercation
7 and just got physical.

8 Q. And did something happen actually at the apartment?

9 A. With who?

10 Q. Between your brother and this woman?

11 A. Yeah, they just got in an altercation, curse words
12 and, you know, pushing and stuff.

13 Q. And then did that resume in the parking lot?

14 A. I mean, for a little awhile. And then we ended up
15 leaving.

16 Q. Okay. Was this a woman that you knew?

17 A. I saw her a couple times, but I didn't know her,
18 like, personally. I mean, because my brother, we talked to a
19 lot of females, you know, coming up. So it wasn't like I
20 seen her every day, but I seen her.

21 Q. And you do remember this incident taking place?

22 A. Definitely remember. It was crazy. And I was a
23 little younger then. So flashbacks always come in my head
24 from the incident.

25 MR. GROSE: That's all I have. Please answer any

1 questions they have.

2 CROSS-EXAMINATION

3 BY MS. OLIVE:

4 Q. Mr. Graddick, you have no criminal record?

5 A. No criminal record.

6 Q. And you said you had seen this woman a couple of
7 times?

8 A. Yeah, I seen her.

9 Q. Just around the apartment complex or --

10 A. No, with my brother.

11 Q. But you never approached Mr. Graddick's attorney to
12 testify that you could provide testimony in court?

13 A. No, because, I mean, one, he was a public defender.
14 He probably wasn't reaching deeper in the situation, to be
15 honest with you. I didn't think he really did his job the
16 way he was supposed to.

17 Q. You say that because your brother got convicted?

18 A. No, I say that because everything wasn't brought
19 together.

20 Q. But, again, you never went to him and told him that
21 you had this information?

22 A. No, I never was -- no, he never came to me and asked
23 me to come and talk to him.

24 MS. OLIVE: Okay. Thank you. That's all the
25 questions I have.

1 THE COURT: You didn't testify at the first trial,
2 did you?

3 THE WITNESS: No, no.

4 THE COURT: Okay.

5 MR. GROSE: Nothing further, Your Honor.

6 THE COURT: All right. You can come down, sir. You
7 are excused.

8 (Whereupon the witness is excused.)

9 MR. GROSE: Your Honor, at this point, the only
10 witness that I'm aware of that is left, they may have others,
11 is Susan Hackett. And we've gone back and forth as to who
12 would call her or not call her. I have no problem in calling
13 her, but she was the one that we were going to do by Skype.
14 So we probably need a short break, and I would like to use
15 the restroom, to set that up, and that would conclude our
16 presentation. I don't know what they have.

17 THE COURT: All right. Just for the record, do you
18 plan to call any other witnesses?

19 MS. OLIVE: I may call Mr. Butler in rebuttal, but
20 other than that, no, other than Ms. Hackett, which if
21 Mr. Grose is going to call her --

22 THE COURT: Why don't we take a short break. Talk
23 to Mr. Butler. We might go ahead and get that done. Let him
24 go if you plan to call him.

25 MS. OLIVE: Thank you, Your Honor.

1 THE COURT: And then we will -- how are we going to
2 Skype this thing?

3 MS. OLIVE: Your Honor, this courtroom is not
4 equipped with any, like, screen to view it that way, but I
5 was just going to put my computer up there or wherever it is
6 best for Your Honor to see and I've got, you know, the
7 software and everything on my computer. And I was going to
8 call her on Skype.

9 THE COURT: Okay. She's on notice?

10 MS. OLIVE: Yes, Your Honor, I've been e-mailing
11 her.

12 THE COURT: All right. Let's take about ten
13 minutes.

14 (Whereupon, a recess takes place.)

15 MS. OLIVE: Your Honor, I just need one more minute.
16 I'm having --

17 THE COURT: Technical difficulties?

18 MS. OLIVE: Yes.

19 (A recess transpired.)

20 SUSAN HACKETT,

21 having been duly sworn, testifies as follows:

22 DIRECT EXAMINATION

23 BY MR. GROSE:

24 Q. Can you see me all right?

25 A. I can.

1 Q. Okay. Could you state your full name for the record
2 and spell your last name for the court reporter.

3 A. Susan Hackett, H-a-c-k-e-t-t.

4 Q. And could you summarize your educational experience
5 since college and your professional experience?

6 A. Sure. I graduated from Winthrop University in 2000.
7 I went to the University of South Carolina from 2000 to 2003.
8 I then clerked for the Honorable Deadra L. Jefferson for one
9 year. I then worked with Blume Weyble & Lominack for a
10 couple of years. I worked for the Center for Capital
11 Litigation for a year. And then I worked for the Office of
12 Disciplinary Counsel for three years. And now I've been at
13 the Office of Appellate Defense for five years.

14 Q. Okay. And as part of your responsibilities at
15 Appellate Defense, did you represent Joseph Graddick?

16 A. I did.

17 Q. One of the grounds that we list in the application
18 has to do with the testimony of Officer George Vantine. Have
19 you had a chance to review Mr. Vantine's testimony?

20 A. I have.

21 Q. Okay. And do you recall the part where the
22 complaining witness notified Officer Vantine that somebody
23 had alerted Mr. Graddick to the police's presence at a Subway
24 restaurant?

25 A. I do recall that testimony from the police

1 officer.

2 Q. Okay. And there was an objection to that?

3 A. Correct. Mr. Butler interposed a hearsay and
4 confrontation clause objection.

5 Q. And then also in Officer Vantine's testimony, he
6 went into conversations that he had with a woman by the name
7 of Candy Dunham?

8 A. That's right.

9 Q. And from that, the State elicited information about
10 how they obtained Mr. Graddick's name and how Ms. Dunham was
11 uncooperative and wouldn't answer their questions?

12 A. That's correct.

13 Q. And there was also a series of objections to that
14 testimony?

15 A. Right. Mr. Butler objected under hearsay and
16 confrontation clause.

17 Q. Was that issue appealed?

18 A. I did not raise that issue on appeal.

19 Q. And can you tell us why not?

20 A. Well, it appeared that the ruling was only as to
21 hearsay. I did not see a ruling on the confrontation clause
22 objection, which would have limited my ability to raise the
23 issue only as to hearsay.

24 I'm assuming we are talking about both of those
25 areas of testimony?

1 Q. Yes, ma'am.

2 A. Both of those areas were ruled admissible by Judge
3 Jefferson regarding what some people call investigative
4 hearsay, which is a bit of a misnomer. But it's essentially
5 under *State v. Brown* that the testimony is not being offered
6 for the truth of the matter asserted, but just to show law
7 enforcement took a particular course of action.

8 Q. Okay. And though the confrontation clause objection
9 actually brings that up to a constitutional level, doesn't
10 it?

11 A. Right. The objection being interposed as
12 confrontation clause would make it a federal constitution
13 issue.

14 Q. And the *Brown* case that you just discussed didn't
15 address the confrontation clause issue, did it?

16 A. Not to my recollection. I believe that *Brown* is
17 solely about the South Carolina rules of evidence and the
18 hearsay rules.

19 Q. Okay. And even after *Brown* and some of the other
20 cases, which include -- if you can bear with me for just a
21 second -- the *German v. State* case from 1996, not everything
22 comes in under this, you know, investigative purpose
23 exception, does it?

24 A. No, it does not.

25 Q. So it's one thing to ask a witness, did you talk --