

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Honorable G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No.: 2018-000065

David Lee Meggett,

Petitioner,

vs.

State of South Carolina,

Respondent.

APPENDIX
VOLUME I OF II

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State of South Carolina)
County of Charleston)
State of South Carolina,)
Plaintiff,)
vs.)
David Lee Meggett,)
Defendant.)

Court of General Sessions
Ninth Judicial Circuit

Case No. 2009-GS-10-04829
2009-GS-10-04830

TRANSCRIPT OF RECORD

November 8, 9, 10, 2010

Charleston, South Carolina

B E F O R E:

The Hon. Kristi Lea Harrington, Judge, and a Jury

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

Culver Kidd, Esq.
Chad Simpson, Esq.
Attorneys for the State

Beattie Butler, Esq.
Alicia Penn, Esq.
Attorneys for the Defendant

Brenda Cooley
Circuit Court Reporter

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* * *

(The exhibits are retained by the clerk of court, with exception of State's Exhibit No. 24, cell phone, withdrawn and retained by solicitor's office.)

BATSON LISTCOUNTY: CharlestonTRIAL DATE: November 8, 9, 10, 2010CASE NO.: 2009-GS-10-04829
2009-GS-10-04830JUDGE:
The Hon. Kristi Lea HarringtonSTATE: State of South Carolina

vs.STATE'S ATTORNEYS:
Chad Simpson, Esq.
Culver Kidd, Esq.DEFENDANT: David Lee MeggettDEFENSE ATTORNEYS:
Beattie Butler, Esq.
Alicia Penn, Esq.COURT REPORTER:
Brenda Cooley

<u>JUROR NO.</u>	<u>JUROR NAME</u>	<u>RACE</u>	<u>SEX</u>	<u>STRIKES</u>		<u>SEATED</u>
				<u>STATE</u>	<u>DEFENSE</u>	
281	Anita Waring	B	F			X
120	Nicholas Helms	W	M		X	
131	Karen Huett	W	F			X
161	James Lloyd III	W	M			X
125	Teresa Holder	W	F		X	
105	Elizabeth Gourdin	W	F		X	
134	Margaret Jennings	B	F	X		
37	Jerry Campbell, Jr.	B	M			X
286	Lillian Whaley	B	F			X
40	Susan Caron	W	F		X	
222	Tony Ritchie, Jr.	W	M			X
214	Elizabeth Jenkins	B	F	X		
114	Karen Harant	W	F		X	
206	Robert Poe	W	M	X		
233	Shilpa Shah	W	F		X	
278	Colleen White Walker	B	F			X
218	Linda Randazzo	W	F		X	
246	Anthony Smith	B	M	X		
96	Tara Gerardi	W	F		X	
50	Rex Conner	W	M		X	
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72	Nanette Edwards	W	F		X	
274	Rebecca Truesdell	W	F			X
183	Andrew Myers	B	M	X		
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68	Paul Drayton	B	M			X
300	Thomas Zollars	W	M			X
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152	Kenan Koll	W	F			X
31	Joshua Burrill	W	M			X

1 (On Monday, November 8, 2010, the defendant
2 being present with counsel, the trial convenes at
3 approximately 10:15 a.m., and the following proceedings
4 were had:)

5 THE COURT: All right. I understand the
6 defense has a motion.

7 MR. BUTLER: Yes, ma'am. Unfortunately,
8 because of developments within the last 30 minutes I'd
9 say, I feel compelled on my client's behalf to ask for a
10 continuance.

11 Just briefly, this case involves allegations
12 of sexual assault by my client. The complainant in the
13 case is, both parties agree, an acquaintance, that both
14 the defendant and the complainant knew one another.
15 Also, both parties agree that the complainant and my
16 client had consensual sex on occasion prior to the
17 incident. The only issue in the matter to be tried
18 today is whether the sex that occurred on the incident
19 date was consensual or by force.

20 I have related to the state that my client
21 maintains and would maintain that they had consensual
22 sex on several prior occasions. I filed a motion in
23 that regard, just gave the state written notice we plan
24 to introduce that through my client.

25 I also understand from the complainant, the

1 complainant adamantly denies there was any other
2 consensual sex other than the one occasion she's told
3 the state about.

4 This weekend I met with Mr. Meggett and
5 Ms. Penn, my co-counsel, met with Mr. Meggett at great
6 length and went over the first time in any detail the
7 state's DNA evidence. We hadn't had any thorough
8 discussions about that up until Saturday.

9 This morning is the first time I met with my
10 client again, and he raised the issue of whether we
11 could test the DNA -- test for DNA on a comforter in his
12 sister's house on his nephew's bed where he is adamant
13 that he and the complainant had consensual sex in the
14 months leading up to the incident.

15 I know it comes at the eleventh hour, and
16 it's unfortunate. However, I think that evidence, if
17 there, would be critical to the defense because this
18 really is for all practical purposes a he said/she said
19 case. He admits to having sex with her, so proving sex
20 is not going to be an issue. She says they only did it
21 once; however, he says that they had sex several times.

22 Prior consent is admissible despite the rape
23 shield to prove consent on the date of the incident
24 where the one issue in this case is assessing her
25 credibility. For that reason, I think I have to request

1 a continuance so we can try to get that comforter
2 tested.

3 I've spoken with his sister. His sister says
4 the comforter is in storage, that she can get it. I
5 know that there's a private lab in Atlanta I could send
6 it to.

7 And just by way of the case's history, this
8 case was noticed for trial some months before. Perhaps
9 Mr. Simpson will know exactly when. We were not where
10 we are now, but we had a tentative trial date. I had
11 all the evidence, I had reviewed all the evidence, and
12 there was no probative DNA evidence at all at that point
13 from the rape protocol kit. The rape protocol kit that
14 contained the vaginal smears and swabs from the
15 plaintiff had no DNA from -- of my client.

16 Mr. Simpson, in reviewing the evidence
17 relating to the comforter that was taken from the
18 victim's bed at the incident location, had that sent off
19 and had that tested, and that tested positive for my
20 client's DNA.

21 I am asking to be allowed to do the same
22 thing they were allowed to do.

23 This happens routinely. By virtue of their
24 being in control, when something comes up they just
25 don't call the case. I don't know, I don't think it was

1 any cause for delay or purposeful on their part when it
2 happened to them. It's certainly not the case. I'm
3 ready to go. My client is ready to go. He's never
4 expressed any reservation about going to trial. He's
5 never expressed any reservation about my capability in
6 defending him. We have a wonderful attorney-client
7 relationship.

8 For what it's worth, I think he really thinks
9 that the evidence would be there, so I feel like I have
10 to ask for a continuance.

11 THE COURT: Mr. Butler, so the record is
12 clear, where is the comforter now?

13 MR. BUTLER: I spoke to his sister for maybe
14 three or four minutes. She says it's in storage. I
15 know where to get it.

16 THE COURT: And when you mentioned the lab in
17 Atlanta, assuming that I would grant your motion, do you
18 know what the turnaround time for processing that
19 comforter would be?

20 MR. BUTLER: No. This is something we looked
21 up on the internet moments ago. I know they have a
22 private lab. I do not know how long that would take,
23 but whether we did it through SLED or a private lab it's
24 going to be weeks. So it's not going to be able to go
25 forward if the Court allows me to pursue that evidence.

1 THE COURT: Thank you.

2 Mr. Simpson, I'll be happy to hear from you.

3 MR. SIMPSON: Thank you, Your Honor.

4 This incident, alleged incident, occurred on
5 January 13th of 2009. We are at this juncture nearing
6 almost the two-year mark between when Mr. Meggett was
7 charged and arrested to this day. As Mr. Butler
8 mentioned, this is the first time anything has been
9 raised about how we may or may not find DNA on a blanket
10 which, you know, that set of facts has nothing to do
11 with the incident we are here to try today other than
12 the corollary connection Mr. Butler explained to the
13 Court.

14 As to the prior trial docket, I just want to
15 clarify a little bit. This case has never appeared on
16 -- at least to my knowledge, on an initial trial docket.
17 We were working with the defense as to a possible date,
18 looking into the case. And, yes, Mr. Butler is correct
19 we wanted to explore some further investigation, have
20 some other things sent to SLED. The case was never set
21 on a trial docket for any previous date, at least in my
22 memory, until this date.

23 We have, as Your Honor is aware, a priority
24 trial docket. The purpose of the docket is to let
25 defense counsel and their clients know as far in advance

1 as is practical when the state is anticipating calling a
2 case. This priority docket came out and was sent to
3 Mr. Butler's office, to the best of my recollection,
4 either late May or early June. There have been months
5 before this that the case has been the first up case for
6 trial and months where this issue could have been
7 raised.

8 And I just point out to Your Honor the
9 complete speculative nature of this evidence. We're
10 talking about a comforter from a prior incident that
11 doesn't involve what we're -- doesn't involve the
12 incident we're here today to try. We cannot consent to
13 this continuance, and we're asking Your Honor to deny
14 this motion. Thank you.

15 THE COURT: Any response?

16 MR. BUTLER: The only thing I would respond
17 is to say I think all parties agree that this evidence
18 would be relevant and admissible. Specifically as to
19 whether or not it's going to be there, I only have my
20 client's word, but I don't know what else I would have.
21 I'm not sure I -- she says it didn't happen; he says it
22 did. She agrees I have had -- never had sex with him
23 but one other prior. So evidence to the contrary that I
24 would be able to get in, I think it would be critical.
25 So I don't think it's corollary or collateral.

1 THE COURT: Mr. Butler, would the absence of
2 DNA on the comforter be admissible, as well?

3 MR. BUTLER: Yes. I think if he says they
4 had sex on this comforter and with her and there should
5 be evidence and if it's not there, then, yes, the state
6 would be able to use that to rebut our claims.

7 THE COURT: At this time based upon the
8 testimony and the argument of counsel, the argument of
9 counsel presented for the motion for continuance, I am
10 denying the defendant's request and the motion for
11 continuance based upon the fact that the case has been
12 on the trial docket, the incident occurred approximately
13 -- well, January 13th of 2009, the speculative nature
14 that there may be something on the comforter, the fact
15 that the comforter does not have anything to do with the
16 case at hand other than the fact that it would have
17 something to do -- other than the fact that the victim
18 and the defendant had had a prior sexual relationship.
19 The state has indicated that Mr. Butler agrees that that
20 testimony will come in that she admits to having sex on
21 a prior time.

22 Based upon all of those considerations, I am
23 denying your motion for continuance. I note your
24 objection for the record, Mr. Butler.

25 Anything before we bring in the jury panel?

1 MR. SIMPSON: Nothing from the state, Your
2 Honor.

3 MR. BUTLER: Your Honor has the voir dire we
4 submitted?

5 THE COURT: I do. Is there any objection to
6 the state's requested voir dire?

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

8 (Mr. Butler and Mr. Kidd confer.)

9 MR. BUTLER: No.

10 THE COURT: Mr. Simpson, any objection to the
11 defendant's proposed voir dire?

12 MR. SIMPSON: No, Your Honor. The state has
13 no objection to defendant's voir dire.

14 THE COURT: Does your client waive criminal
15 arraignment?

16 MR. BUTLER: Yes, ma'am.

17 THE COURT: Any objection to the Court
18 reading aloud the allegations contained in the
19 indictment?

20 MR. BUTLER: No, ma'am.

21 THE COURT: We will select two alternates for
22 this matter, and what is your understanding as to how
23 many challenges?

24 MR. KIDD: Five and ten, Your Honor, is my
25 understanding.

1 THE COURT: That's your understanding?

2 MR. BUTLER: Yes, ma'am.

3 THE COURT: You agree with that. Thank you.

4 Let's bring in the jury panel.

5 (Whereupon, the jury panel enters the
6 courtroom at approximately 10:25 a.m.)

7 THE COURT: Good morning, ladies and
8 gentlemen. I am Judge Kristi Harrington, and it is a
9 pleasure having you in my courtroom here today.

10 Ladies and gentlemen, just as I had indicated
11 to you during the general qualifications, this is my
12 court reporter, and she is taking down everything that I
13 say and you say, so it is important that you speak very
14 loudly.

15 I will also give you an opportunity after
16 several questions and at the end to come forward and
17 speak with me in private if there's any questions that I
18 ask you. As I just qualified you generally, I had just
19 asked some general questions. These cases are -- the
20 questions that I am now going to ask are very case
21 specific.

22 Ladies and gentlemen, the case that we are
23 about to try is the case of The State vs. David Lee
24 Meggett.

25 Mr. Butler, I'm going to ask you to stand,

1 introduce yourself, your client, and any persons that
2 will be assisting you here today.

3 MR. BUTLER: Good morning. My name is
4 Beattie Butler. I'm a lawyer in the Public Defender's
5 Office.

6 This is my client, David Meggett.

7 Alicia Penn is a lawyer in our office. She
8 will be assisting me.

9 THE COURT: Thank you.

10 Ladies and gentlemen, Mr. Meggett has been
11 charged with an indictment with -- and the charge on the
12 indictment is criminal sexual conduct in the first
13 degree. He's also been charged with an indictment with
14 burglary in the first degree.

15 Ladies and gentlemen, an indictment is simply
16 the formal document that brings us here today. It is in
17 no way evidence of any of the allegations that it
18 contains.

19 Ladies and gentlemen, the state alleges that
20 in Charleston County on or about January 13th, 2009,
21 that David Lee Meggett did commit a sexual battery upon
22 the victim, Stacy Hooper, without her consent and with
23 the use of aggravated force; to wit: Defendant did make
24 entry into the residence without the consent of the
25 victim who was asleep inside and did pin down the victim

1 to commit the crime, all in violation of Section
2 16-3-652 of the Code of Laws of South Carolina as
3 Amended.

4 The state further alleges that in Charleston
5 County on or about January 13th, 2009, the defendant,
6 David Lee Meggett, did during the nighttime enter the
7 dwelling of Stacy Hooper located at 4232 Grimke Avenue
8 in North Charleston, South Carolina, without consent and
9 with the intent to commit a crime therein in violation
10 of Section 16-11-311 of the South Carolina Code of Laws
11 1976 as Amended.

12 Ladies and gentlemen, is there any member of
13 the jury panel that knows anything about this charge
14 other than what I have just read to you; or do you have
15 any relationship, you're related by blood, marriage,
16 close personal friend, ever been represented by either
17 Mr. Butler or Ms. Penn; or you are related by blood,
18 marriage, close personal friend, have any business,
19 personal, or professional dealing with Mr. Meggett? If
20 so, please stand at this time.

21 (There was no response.)

22 THE COURT: Thank you. There are none.

23 Mr. Simpson, if you would please stand,
24 introduce yourself and any persons that will be
25 assisting you throughout this trial.

1 MR. SIMPSON: Thank you, Your Honor.

2 Good morning. My name is Chad Simpson.

3 Trying this case with me is Culver Kidd. We're both
4 prosecutors for the Ninth Circuit Solicitor's Office.
5 Scarlett Wilson is the elected solicitor for that
6 circuit. You may also see from time to time our
7 investigator, Sherry Niblock, coming in and out of the
8 courtroom. Thank you.

9 THE COURT: Is there any member of the jury
10 panel related by blood, marriage, close personal friend,
11 ever have any business, personal, or professional
12 dealings or ever been represented by or had any matters
13 handled by either Mr. Simpson or Mr. Kidd? If so,
14 please stand.

15 (There was no response.)

16 THE COURT: Thank you. There are none.

17 Is there any member of the jury panel that
18 has ever had any matters handled by the Ninth Circuit
19 Solicitor's Office which is Berkeley and Charleston
20 County or by the Charleston County Public Defender's
21 Office? If so, please stand.

22 Yes, sir. Your jury number and name?

23 A POTENTIAL JUROR: 312, Bruce Olson.

24 THE COURT: All right. And, sir, tell me a
25 little bit more. You've had matters handled by which

1 office?

2 MR. OLSON: The Charleston County Solicitor's
3 Office.

4 THE COURT: All right. And is there anything
5 about those matters being handled by the Solicitor's
6 Office that will affect your ability to be fair and
7 impartial in this case?

8 MR. OLSON: Hard to say.

9 THE COURT: Mr. Olson, it is important both
10 the state and the defendant deserve a juror who is
11 uninfluenced by anything other than the testimony
12 presented by the witness stand and then you would take
13 that testimony, apply the law as the Court gives it.

14 Mr. Olson, I understand that, and I do the
15 same thing. I oftentimes say I believe so or I think so
16 or maybe. Do you think that there is anything about
17 your matters being handled by the Solicitor's Office
18 that will affect your ability to be fair and impartial
19 in this trial?

20 MR. OLSON: I would have to say yes.

21 THE COURT: All right. And you are Juror
22 312?

23 MR. OLSON: 312.

24 THE COURT: All right. Mr. Olson, I need you
25 to remain in the courtroom for a short while until we

1 complete these matters, but you do not have to answer
2 any further questions regarding this case.

3 MR. OLSON: Thank you.

4 THE COURT: Thank you.

5 Is there anyone else? Yes, ma'am.

6 A POTENTIAL JUROR: Um...

7 THE COURT: I need your jury number and your
8 name.

9 A POTENTIAL JUROR: 223, Shakera Robinson.

10 THE COURT: All right. Ms. Robinson, you
11 have -- please share with us. You've had matters
12 handled by either the Solicitor's Office or the PD's
13 Office?

14 MS. ROBINSON: Yeah. Charleston County.

15 THE COURT: And which office?

16 MS. ROBINSON: Charleston County.

17 THE COURT: The Solicitor's Office or the
18 PD's Office?

19 MS. ROBINSON: Oh. I think Solicitor.

20 THE COURT: All right. And is there anything
21 about you having a matter handled by -- by the
22 Solicitor's Office that will affect your ability to be
23 fair and impartial in this case?

24 MS. ROBINSON: Yes, ma'am.

25 THE COURT: It will affect your ability to be

1 fair and impartial in this case?

2 MS. ROBINSON: I think so.

3 THE COURT: Okay. And, again, I need a yes
4 or a no.

5 MS. ROBINSON: Yes.

6 THE COURT: All right. And your jury number?

7 MS. ROBINSON: 223.

8 THE COURT: Ma'am, same -- same request. I
9 need you to remain with us, and but you do not have to
10 answer any more questions regarding this matter. Thank
11 you.

12 Is there anyone else?

13 (There was no response.)

14 THE COURT: Thank you. There are none.

15 Ladies and gentlemen, I am now going to call
16 a list of potential witnesses who may be called to
17 testify in this case. If you are related by blood,
18 marriage, close personal friend, ever have any business,
19 personal, or professional dealings with any of these
20 individuals, please stand:

21 Stacy Hooper; April Rice; Officer Robert
22 Gooding, North Charleston police department; Sergeant
23 Eric Jourdan, North Charleston police department; Susan
24 K. Johnson with T-Mobile;

25 Officer Sadler, North Charleston police

1 department; Officer McNeil, North Charleston police
2 department; Officer K. Murphy, North Charleston police
3 department;

4 Sergeant Hallman, North Charleston police
5 department; Officer Alex Teachy, North Charleston police
6 department; Officer Laura Reynolds, North Charleston
7 police department;

8 Nikki Perry, State Law Enforcement Division;
9 Amy Stevens, State Law Enforcement Division; Sheree
10 Brown, State Law Enforcement Division; Doris Yarborough,
11 State Law Enforcement Division; Patricia Crooks, State
12 Law Enforcement Division; Betty Butler, State Law
13 Enforcement Division; Jennifer Clayton, State Law
14 Enforcement Division;

15 Faye LeBoeuf, Northwoods Women's Center;
16 Detective Randy Gray, North Charleston police
17 department; Angie Bunker, North Charleston police
18 department; Dr. Joseph Bianco, St. Francis Hospital;
19 Dr. Patrick Kelly, St. Francis Hospital;

20 Detective Kelly Spears, North Charleston
21 police department; Brandy Soles; Jeanine Loveland; Kelli
22 Williams.

23 If you are related by blood, marriage, close
24 personal friends, have any business, professional or
25 personal dealings with any of those individuals, please

1 stand.

2 Yes, ma'am. Your jury number and name.

3 A POTENTIAL JUROR: 59, Elizabeth Deaton.

4 Elizabeth Deaton.

5 THE COURT: Yes, ma'am.

6 MS. DEATON: And I don't actually have -- I
7 work for a doctor's office, and I see their names come
8 across my desk. I do have contact with paperwork but
9 not with them directly.

10 THE COURT: And you are referring to
11 Dr. Bianco and Dr. Kelly?

12 MS. DEATON: Right. Yes, ma'am.

13 THE COURT: All right. And is there anything
14 about you seeing their names on this paperwork that will
15 affect your ability to be fair and impartial in this
16 case?

17 MS. DEATON: No, ma'am.

18 THE COURT: And your jury number?

19 MS. DEATON: Fifty-nine.

20 THE COURT: Ms.?

21 MS. DEATON: Deaton.

22 THE COURT: Deaton. Thank you.

23 Yes, sir. Your jury number and name.

24 A POTENTIAL JUROR: I am Juror 50, and my
25 name is Rex Conner, and I also work for Roper

1 St. Francis, and I know those doctors just from hearing
2 their names at the hospital.

3 THE COURT: Tell me what you do at Roper
4 St. Francis.

5 MR. CONNER: I'm the director of the
6 physician billing department.

7 THE COURT: All right. And is there anything
8 about you being employed with St. Francis and being
9 familiar with the two doctors' names that will affect
10 your ability to be fair and impartial in this case?

11 MR. CONNER: No, ma'am.

12 THE COURT: Your juror number and name?

13 MR. CONNER: Fifty, Rex Conner.

14 THE COURT: Thank you, Mr. Conner.
15 Yes, ma'am.

16 A POTENTIAL JUROR: 319, Rebecca Staples.
17 I'm a labor and delivery nurse at the Medical
18 University, and Faye LeBeouf will call us when she sends
19 us patients. So I know her name, but I don't...

20 THE COURT: All right. The same question to
21 you. Is there anything about her calling you and you
22 having interaction with her through your employment that
23 will affect your ability to be fair and impartial in
24 this case?

25 MS. STAPLES: No, ma'am.

1 THE COURT: Your jury number and name?

2 MS. STAPLES: 319, Rebecca Staples.

3 THE COURT: Thank you, Ms. Staples.

4 Yes, ma'am.

5 A POTENTIAL JUROR: Number five, Kathleen

6 Allen. I know a Kelly Williams, but I don't know if

7 it's the Kelly Williams you're referring to.

8 THE COURT: I have a Kelly J. Williams. Let
9 me ask you this way. Your Kelly Williams, is it a male
10 or female?

11 MS. ALLEN: Female.

12 THE COURT: And how do you know Ms. Williams?

13 MS. ALLEN: She's a business associate.

14 She's one of my vendors.

15 THE COURT: All right. And what does she do?

16 MS. ALLEN: She's a florist.

17 THE COURT: All right.

18 MR. SIMPSON: I don't believe it's the same
19 person.

20 THE COURT: All right. Just out of an
21 abundance of caution, is there anything -- assuming that
22 it would be the same Kelly Williams, is there anything
23 about your relationship with that individual that you
24 know, Ms. Kelly Williams, that would affect your ability
25 to be fair and impartial in this case?

1 MS. ALLEN: (Shakes head from side to side.)

2 THE COURT: And you are jury number?

3 MS. ALLEN: Five, Kathleen Allen.

4 THE COURT: Thank you.

5 Yes, ma'am.

6 A POTENTIAL JUROR: I'm Juror 105, Elizabeth
7 Gourdin, and I know Dr. Patrick Kelly.

8 THE COURT: All right. And do you know
9 Dr. Kelly in a professional or a personal setting?

10 MS. GOURDIN: Personal.

11 THE COURT: In a personal setting? Is there
12 anything about your personal relationship with Dr. Kelly
13 that would affect your ability to be fair and impartial
14 in this case?

15 MS. GOURDIN: No, ma'am.

16 THE COURT: Jury number?

17 MS. GOURDIN: 105, Elizabeth Gourdin.

18 THE COURT: Thank you.

19 Yes, sir.

20 A POTENTIAL JUROR: 222, Tony Ritchie. I
21 work for a private ambulance service, but I do not
22 recognize either name, but I occasionally do go in
23 St. Francis emergency room.

24 THE COURT: All right. And, sir, tell me --
25 do you drive there, and what is your occupation?

1 MR. RITCHIE: I'm a driver.

2 THE COURT: All right. And is there anything
3 about your occupation and going to St. Francis Hospital,
4 perhaps interacting with those doctors, that would
5 affect your ability to be fair and impartial in this
6 case?

7 MR. RITCHIE: No, ma'am.

8 THE COURT: All right. Jury number?

9 MR. RITCHIE: 222, Tony Ritchie.

10 THE COURT: Thank you, Mr. Ritchie.

11 Is there anyone else?

12 (There was no response.)

13 THE COURT: Thank you. There are none.

14 Is there any member of the jury panel who has
15 ever been employed by or currently employed by, a family
16 member employed by or a very close friend employed by
17 either North Charleston police department, State Law
18 Enforcement Division that's also known as SLED,
19 St. Francis Hospital, or Northwoods Women's Center? If
20 so, please stand.

21 Yes, ma'am. Your jury number and name.

22 A POTENTIAL JUROR: 313, Kimberly Perrineau
23 Jackson, and my husband works for St. Francis Hospital
24 in the operating room.

25 THE COURT: And what -- I didn't hear. Where

1 does he work?

2 MS. PERRINEAU JACKSON: He works at
3 St. Francis Hospital.

4 THE COURT: And what does he do at
5 St. Francis?

6 MS. PERRINEAU JACKSON: He's a nurse in the
7 operating room.

8 THE COURT: All right. Is there anything
9 about your husband being employed with St. Francis that
10 will affect your ability to be fair and impartial in
11 this case?

12 MS. PERRINEAU JACKSON: No.

13 THE COURT: All right. 313, Ms. Jackson?

14 MS. PERRINEAU JACKSON: Yes.

15 THE COURT: Thank you.

16 Yes, ma'am, Ms. Gourdin.

17 MS. GOURDIN: 105, juror number 105. My
18 husband is a physician at Roper St. Francis Hospital.

19 THE COURT: Is there anything about your
20 husband's occupation that will affect your ability to be
21 fair and impartial in this case?

22 MS. GOURDIN: No, ma'am.

23 THE COURT: Juror 105? Thank you.

24 Yes, ma'am.

25 A POTENTIAL JUROR: Okay. I'm number -- Gail

1 Fisher, number 85. I sort of do know City of North
2 Charleston Police Chief Zumalt. I have my own business,
3 run my own business, and have had audience with
4 Mr. Eugene Ott. And I work very closely with him and
5 Council over there a lot, especially with Mr. Ott and
6 the City of Charleston police department police chief,
7 the mayor. So if you want to ask me if I can be -- for
8 instance, for them, the detectives coming in and
9 everything going on at the City of North Charleston,
10 with the police chief and all that, I don't know. So I
11 do work pretty closely with Mr. Ott and the Council.

12 THE COURT: All right. Ma'am, with all those
13 names that you've shared with us, is there anything
14 about your occupation and your interaction with your
15 business with those people that will affect your ability
16 to be fair and impartial in this case?

17 MS. FISHER: Um, maybe not directly, but the
18 persons at City of North Charleston policemen -- I mean,
19 I could be fired by the City of Charleston, though.

20 THE COURT: All right.

21 MS. FISHER: I can be verified through the
22 City of North Charleston.

23 THE COURT: All right. Well, I'm going to
24 stop you right there, all right? And you are Juror 85,
25 Ms. Fisher?

1 MS. FISHER: Can I go now?

2 THE COURT: All right. I'm going to excuse
3 you from the trial of this case. You do not have to
4 answer any more questions regarding this matter, but I
5 need you to stay with us. You look like you're ready to
6 bolt out. You're going to stay with us for just a few
7 more moments; all right?

8 MS. FISHER: Yes, ma'am.

9 THE COURT: You don't have to answer any more
10 questions. Thank you.

11 Yes, ma'am.

12 A POTENTIAL JUROR: I'm Juror 181, Elizabeth
13 Murray. My brother is an occupational therapist at
14 St. Francis.

15 THE COURT: All right. Is there anything
16 about your brother's occupation that will affect your
17 ability to be fair and impartial in this case?

18 MS. MURRAY: No.

19 THE COURT: Juror 181, Ms.?

20 MS. MURRAY: Murray.

21 THE COURT: Murray. Thank you.

22 Yes, ma'am.

23 A POTENTIAL JUROR: Juror 278, and I'm a
24 dietarian (phonetic). I work at St. Francis, also.

25 THE COURT: All right. Is there anything

1 about your employment with St. Francis that will affect
2 your ability to be fair and impartial in this case?

3 MS. WALKER: No, ma'am.

4 THE COURT: All right. Thank you. Your jury
5 number and name one more time before you sit down?

6 MS. WALKER: Colleen Walker, jury number 278.

7 THE COURT: Thank you, Ms. Walker.

8 A POTENTIAL JUROR: I'm 50, Rex Conner. I
9 work for Roper St. Francis, and I'm also close friends
10 with some of them.

11 THE COURT: Is there anything about your
12 occupation with St. Francis that will affect your
13 ability to be fair and impartial in this case?

14 MR. CONNER: No, ma'am.

15 THE COURT: Thank you.

16 MR. CONNER: Fifty, and Rex Conner.

17 THE COURT: Thank you.

18 Yes, sir.

19 A POTENTIAL JUROR: Juror number 168, Derek
20 Mathis. I've got a close personal friend who's a nurse
21 at St. Francis. Her name is Lauren Stein.

22 THE COURT: And the same question to you. Is
23 there anything about your relationship with that
24 individual that will affect your ability to be fair and
25 impartial in this case?

1 MR. MATHIS: No, ma'am.

2 THE COURT: Juror number and name?

3 MR. MATHIS: 168, Derek Mathis.

4 THE COURT: Thank you.

5 Is there anyone else?

6 (There was no response.)

7 THE COURT: Thank you. There are none.

8 Is there any member of the jury panel or a
9 member of your immediate family that belongs to a
10 victim's rights or law enforcement organization such as
11 Citizens Against Violent Crime, People Against Rape,
12 Mothers Against Drunk Driving, anything of that nature?
13 If so, please stand.

14 Yes, sir. Your jury number and name?

15 A POTENTIAL JUROR: Juror number 168, Derek
16 Mathis. My mom is a member of Mothers Against Drunk
17 Driving.

18 THE COURT: And is there anything about your
19 mother's involvement in Mothers Against Drunk Driving
20 that will affect your ability to be fair and impartial
21 in this case?

22 MR. MATHIS: No, ma'am.

23 THE COURT: All right.

24 MR. MATHIS: Juror number 168, Derek Mathis.

25 THE COURT: Thank you, Mr. Mathis.

1 Is there anyone else?

2 (There was no response.)

3 THE COURT: Thank you. There are none.

4 Is there any member of the jury panel who has
5 ever served on a jury before? If so, please stand.

6 All right. We'll start here. Ma'am, my
7 questions to you are how long -- what type of jury did
8 you serve on?

9 A POTENTIAL JUROR: It was in Magistrate's
10 Court.

11 THE COURT: All right. And tell me your jury
12 number and name.

13 MS. ODOM: 196, Janet Odom.

14 THE COURT: All right. And it was in
15 Magistrate's Court?

16 MS. ODOM: Yes.

17 THE COURT: And what was the nature of the
18 case?

19 MS. ODOM: It was a break-in into a
20 convenience store, a robbery.

21 THE COURT: Was there anything about serving
22 on that jury that will -- serving on that jury that will
23 affect your ability to be fair and impartial in this
24 case?

25 MS. ODOM: No.

1 THE COURT: All right. Jury number and name?

2 MS. ODOM: 196, Janet Odom.

3 THE COURT: Thank you.

4 Yes, ma'am, your jury number and name?

5 A POTENTIAL JUROR: My name is Lillian

6 Whaley, Juror 286. I served on a criminal case, I think
7 about 15 years ago.

8 THE COURT: And was that here in Circuit
9 Court? Was it in Circuit Court or Magistrate's Court?

10 MS. WHALEY: Circuit Court.

11 THE COURT: All right. And did you reach a
12 verdict?

13 MS. WHALEY: Yes, we did.

14 THE COURT: All right. And, ma'am, was there
15 anything about your experience serving on a jury that
16 will affect your ability to be fair and impartial in
17 this case?

18 MS. WHALEY: No, ma'am.

19 THE COURT: All right. Ms. Whaley, your jury
20 number?

21 MS. WHALEY: 286.

22 THE COURT: Thank you.

23 Yes, ma'am.

24 A POTENTIAL JUROR: My name is Susan

25 Seabrook, 317, and I served on a jury in court in Mount

1 Pleasant.

2 THE COURT: All right. And what type of
3 court was that?

4 MS. SEABROOK: I don't -- I don't remember.
5 It involved alcohol and a fight.

6 THE COURT: Was there anything about your
7 service on that jury that would affect your ability to
8 be fair and impartial in this case?

9 MS. SEABROOK: No, ma'am.

10 THE COURT: And, Ms. Seabrook, your jury
11 number?

12 MS. SEABROOK: 317.

13 THE COURT: Thank you.

14 Yes, ma'am.

15 A POTENTIAL JUROR: Elizabeth Deaton, juror
16 number 59. I was also in a Magistrate Court for a drug
17 case. I didn't get to see the verdict or anything. And
18 years ago I did Circuit Court here downtown, the old
19 courthouse.

20 THE COURT: What type of case did you serve
21 on in Circuit Court?

22 MS. DEATON: It was a check fraud.

23 THE COURT: Was there anything about those
24 two jury experiences that would affect your ability to
25 be fair and impartial in this case, Ms. Deaton?

1 MS. DEATON: No, ma'am.

2 THE COURT: Thank you.

3 A POTENTIAL JUROR: Karen Harant, number 114.

4 I served on several juries probably about six years ago,
5 an insurance case, a DWI, and an accident with injuries.

6 THE COURT: And was that here in Circuit
7 Court?

8 MS. HARANT: I don't remember which courts.
9 They were Charleston County, Charleston City.

10 THE COURT: Is there anything about your
11 service on those juries that would affect your ability
12 to be fair and impartial in this case?

13 MS. HARANT: No.

14 THE COURT: All right. Your jury number?

15 MS. HARANT: 114, Karen Harant.

16 THE COURT: Thank you.

17 Yes, sir.

18 A POTENTIAL JUROR: Jerold Slesinger, 242,
19 Magistrate Court quite a few years ago.

20 THE COURT: Anything about that service, sir,
21 that would affect your ability to be fair and impartial
22 in this case?

23 MR. SLESINGER: No.

24 THE COURT: All right. Your jury number?

25 MR. SLESINGER: 242.

1 THE COURT: Thank you.

2 Yes, ma'am.

3 A POTENTIAL JUROR: Gail Thorn, 270. It's
4 been about five years in North Charleston. It was a
5 child abuse case that I was on.

6 THE COURT: Was there anything about that
7 experience that would affect your ability to be fair and
8 impartial in this case?

9 MS. THORN: No.

10 THE COURT: Ms. Thorn, you are jury number?

11 MS. THORN: 270.

12 THE COURT: Thank you.

13 Yes, ma'am.

14 A POTENTIAL JUROR: 274, Rebecca Truesdell.
15 Mount Pleasant Magistrate's Court for -- I'm not sure.

16 THE COURT: Anything about that experience
17 that would affect your ability to be fair and impartial
18 in this case?

19 MS. TRUESDELL: No.

20 THE COURT: All right. And your jury number
21 and name?

22 MS. TRUESDELL: 274, Rebecca Truesdell.

23 THE COURT: Thank you, Ms. Truesdell.

24 Yes, ma'am.

25 A POTENTIAL JUROR: Juror 278. It was quite

1 a few years ago. It was an automobile accident.

2 THE COURT: All right. Here in Circuit
3 Court?

4 MS. WALKER: Yes, ma'am.

5 THE COURT: All right. Was there anything
6 about you serving on that jury that would affect your
7 ability to be fair and impartial in this case?

8 MS. WALKER: No, ma'am.

9 THE COURT: Thank you, Ms. Walker.

10 Yes, sir.

11 A POTENTIAL JUROR: Thomas Zollars, number
12 300. I served on a jury about 30 years ago, next door
13 here and I guess in the old courthouse, and it involved
14 a traffic accident and people trying to get damage
15 against the people that ran into them. I don't remember
16 what court it was now.

17 THE COURT: Anything about that experience
18 that would affect your ability to be fair and impartial
19 in this case?

20 MR. ZOLLARS: No, ma'am.

21 THE COURT: All right. Thank you. Your jury
22 number again, sir?

23 MR. ZOLLARS: 300, Tom Zollars.

24 THE COURT: Thank you.

25 Yes, ma'am.

1 A POTENTIAL JUROR: Juror number 40, my name
2 is Susan Caron. I think it was about 13 years ago I
3 served. I think it was Magistrate's Court in Charleston
4 County, and I can't even really remember the case, but
5 it -- it was a trial, and it was dropped or whatever,
6 and we went home.

7 THE COURT: Anything about that experience
8 that would affect your ability to be fair and impartial
9 in this case?

10 MS. CARON: No, ma'am.

11 THE COURT: All right. Thank you.

12 Ms. Staples.

13 MS. STAPLES: Rebecca Staples, number 319. I
14 was in a courtroom, I don't know which one, it was in
15 Roanoke, Virginia, about 23 years ago. It was a
16 breaking, entering, and robbing a store, a mom-and-pop
17 store.

18 THE COURT: Anything about serving on that
19 jury that would affect your ability to be fair and
20 impartial in this case?

21 MS. STAPLES: No, ma'am.

22 THE COURT: Thank you.

23 MS. STAPLES: Juror 319.

24 THE COURT: Thank you, Ms. Staples.

25 Is there anyone else?

1 (There was no response.)

2 THE COURT: Thank you. There are none.

3 Ladies and gentlemen, I now have a series of
4 questions that I have determined you will need to come
5 forward and speak with me should you answer these
6 questions, so please listen very carefully. I'm going
7 to ask several questions.

8 Ladies and gentlemen, has anyone on the jury
9 panel ever had a family member or a close friend who is
10 currently incarcerated in a state or federal prison?
11 Have you or a member of your family or a very close
12 personal friend ever been accused of a sexual offense?
13 Have you or a member of your immediate family ever been
14 the victim of a violent crime?

15 And, ladies and gentlemen, if there is some
16 reason that based upon what we have discussed so far or
17 that based upon your own personal needs this week for
18 whatever reason that you feel that based upon those
19 things you would not be able to be a fair and impartial
20 juror, for whatever religious, personal, or moral
21 beliefs that you may have, if you need to answer any of
22 those questions or for whatever other concerns that you
23 need to speak with me in private -- and as you now all
24 now know, it's not necessarily private, my court
25 reporter is taking down everything that you share with

1 me -- but now is the time if you'll move to the center
2 and the bailiffs will assist you.

3 THE BAILIFF: Juror number five.

4 (The following on-the-record bench conference
5 was had in the presence of the jury panel but out of the
6 hearing of the jury panel:)

7 MS. ALLEN: I have a niece that was asleep in
8 her home, and someone broke in and raped her.

9 THE COURT: All right. And you've heard the
10 allegations contained in the indictment. Is there
11 anything about what you've shared with the Court that
12 will affect your ability to be fair and impartial in
13 this case?

14 MS. ALLEN: Define that for me? I mean,
15 obviously, as soon I heard that, I thought of that
16 incident. Now, I -- I think I could be fair and
17 impartial, but that is -- that is obviously...

18 THE COURT: And, Ms. Allen, just as I had
19 indicated previously, it is very important to both the
20 defendant and the state that a juror is able to listen
21 to the testimony as presented from the witness stand,
22 apply the law as the Court gives it, and render a
23 verdict based upon those things free from any outside
24 influences. Will you be able to do that?

25 MS. ALLEN: Yes, I believe so.

1 THE COURT: Okay. I'm going to ask you one
2 more time only because ---

3 MS. ALLEN: I know.

4 THE COURT: And the answer, it's not
5 important what the answer is.

6 MS. ALLEN: I know.

7 THE COURT: I just need an answer, a yes or
8 no. I do the same thing. I tend to say I think so or I
9 believe so or I may so. Will you be able to set aside
10 what you have shared with the Court ---

11 MS. ALLEN: And make a decision based on the
12 testimony.

13 THE COURT: --- based on the testimony and
14 applying the law as the Court gives it to you ---

15 MS. ALLEN: Yes.

16 THE COURT: --- free from outside influences?

17 MS. ALLEN: Yes.

18 THE COURT: All right, Ms. Allen. Thank you.

19 (Ms. Allen returns to the audience.)

20 MR. BUTLER: Objection, challenge for cause.

21 THE COURT REPORTER: I can't hear you. You
22 need to speak up, please.

23 THE COURT: Okay. Juror number five,
24 challenge for cause.

25 (Said bench conference being concluded, the

1 following proceedings were had:)

2 THE BAILIFF: Juror number 274, Your Honor.

3 (The following on-the-record bench conference
4 was had in the presence of the jury panel but out of the
5 hearing of the jury panel:)

6 THE COURT: Yes, ma'am.

7 MS. TRUESDELL: My elder sister is in jail
8 for drunk driving with injuries.

9 THE COURT: Okay. Was that here in
10 Charleston County or somewhere else?

11 MS. TRUESDELL: Florida.

12 THE COURT: All right.

13 MS. TRUESDELL: Let's see. My son-in-law
14 just got off probation. It was a drug charge or
15 something.

16 THE COURT: Was that here in Charleston
17 County or somewhere else?

18 MS. TRUESDELL: Yes, ma'am.

19 THE COURT: All right. Who was his defense
20 attorney?

21 MS. TRUESDELL: I couldn't really tell you.

22 THE COURT: Okay. And do you know who
23 prosecuted him?

24 MS. TRUESDELL: Um, it was the girl who's
25 still the...

1 THE COURT: Okay. And is he -- did he go to
2 trial or plead guilty?

3 MS. TRUESDELL: Yes, ma'am, it was a trial.
4 And he had to do -- you know, he had a probation officer
5 and had to go through all kind of things.

6 THE COURT: All right. Is there anything
7 about that that will affect your ability to be fair and
8 impartial in this case?

9 MS. TRUESDELL: No.

10 THE COURT: All right.

11 MS. TRUESDELL: Okay. I've got another one.
12 In the mid-sixties, I worked for the Post Office.

13 THE COURT: Yes, ma'am.

14 MS. TRUESDELL: And my supervisor assaulted
15 me.

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

18 MS. TRUESDELL: In the mid-sixties, I worked
19 for the Post Office, and my supervisor assaulted me, and
20 at trial we went to -- there was kind of a court thing,
21 and it finally went to management, and Judge Carr
22 (phonetic) just apologized.

23 THE COURT: All right. Is there anything
24 about that that will affect your ability to be fair and
25 impartial in this case?

1 MS. TRUESDELL: No.

2 THE COURT: All right.

3 MS. TRUESDELL: I just didn't want to get
4 disqualified because I didn't tell you.

5 THE COURT: All right. Thank you. Tell me
6 your juror number and name.

7 MS. TRUESDELL: 274, Rebecca Truesdell.

8 THE COURT: Thank you, Ms. Truesdell.

9 (Said bench conference being concluded, the
10 following proceedings were had:)

11 THE BAILIFF: Juror number 96, Your Honor.

12 (The following on-the-record bench conference
13 was had in the presence of the jury panel but out of the
14 hearing of the jury panel:)

15 MS. GERARDI: I had a cousin that was
16 murdered 1980 in Manhattan, Kansas ---

17 THE COURT: Okay.

18 MS. GERARDI: --- by a black man. She worked
19 in a place where they served -- she -- her and another
20 lady were murdered. He's currently -- since they don't
21 have the death penalty, he's sentenced to life in prison
22 in Kansas.

23 THE COURT: Is there anything about what
24 you've just shared with the Court that will affect your
25 ability to be fair and impartial in this case?

1 MS. GERARDI: I would think no.

2 THE COURT: Okay. And I need a yes or no
3 answer. It doesn't matter ---

4 MS. GERARDI: No.

5 THE COURT: Okay. Let me ask the question
6 this way so it won't be interrupted, okay? Will you be
7 able to listen to the facts from the witness stand,
8 apply the law as the Court gives it, and render a
9 verdict based only on those things?

10 MS. GERARDI: Yes.

11 THE COURT: All right. Your jury number and
12 name?

13 MS. GERARDI: 96, Tara Gerardi.

14 THE COURT: All right. Thank you. You will
15 remain.

16 (Said bench conference being concluded, the
17 following proceedings were had:)

18 THE BAILIFF: Juror number 171, Your Honor.

19 (The following on-the-record bench conference
20 was had in the presence of the jury panel but out of the
21 hearing of the jury panel:)

22 THE COURT: Yes, sir. How are you today?

23 MR. MCKINLEY: I'm fine. How about you?

24 THE COURT: Good.

25 MR. MCKINLEY: I have a cousin that's

1 currently incarcerated.

2 THE COURT: Your cousin is incarcerated?

3 MR. MCKINLEY: Yeah. He's in Columbia.

4 THE COURT: In Columbia? What's he
5 incarcerated for?

6 MR. MCKINLEY: Drugs.

7 THE COURT: All right. And, sir, was he
8 prosecuted in this county or somewhere else?

9 MR. MCKINLEY: I'm not sure. I know some of
10 it. I think it was here.

11 THE COURT: Okay. And is there anything
12 about what you just shared with the Court that will
13 affect your ability to be fair and impartial in this
14 case?

15 MR. MCKINLEY: No, ma'am. And this is just
16 for people currently or people that have been in jail?

17 THE COURT: If you would share with me
18 whatever you want to share.

19 MR. MCKINLEY: Okay. Well, my father was,
20 also.

21 THE COURT: Sir, can you step up just a
22 little bit.

23 MR. MCKINLEY: All right. My father was in
24 jail, but it was a -- I mean, the jail -- I mean, the
25 case was thrown out, but he was...

1 THE COURT: And what was he arrested for?

2 MR. MCKINLEY: I think domestic combined with
3 a resisting arrest.

4 THE COURT: All right. And was that here in
5 Charleston County ---

6 MR. MCKINLEY: Yes, ma'am.

7 THE COURT: --- or somewhere else?

8 MR. MCKINLEY: In Charleston.

9 THE COURT: And about how long ago was that,
10 sir?

11 MR. MCKINLEY: About five or six years ago.

12 THE COURT: Okay. Is there anything about
13 that that will affect your ability to be fair and
14 impartial in this case?

15 MR. MCKINLEY: That may. I'd say yes.

16 THE COURT: Okay. You say, yes, it will
17 affect?

18 MR. MCKINLEY: Anything about it, you know,
19 anything about male and female violence and all that
20 kind of thing.

21 THE COURT: All right, sir. Your jury number
22 and name?

23 MR. MCKINLEY: 171, Vernon McKinley.

24 THE COURT: Last name again?

25 MR. MCKINLEY: McKinley.

1 THE COURT: McKinley?

2 MR. MCKINLEY: Yes, ma'am.

3 THE COURT: Mr. McKinley, I'm going to excuse
4 you from the trial of this case. You need to stay with
5 us, and then you'll get further instructions. You don't
6 have to answer any more questions regarding this matter.

7 MR. MCKINLEY: Okay.

8 THE COURT: Thank you, Mr. McKinley.

9 (Said bench conference being concluded, the
10 following proceedings were had:)

11 THE BAILLIFF: Juror number 134, Your Honor.

12 (The following on-the-record bench conference
13 was had in the presence of the jury panel but out of the
14 hearing of the jury panel:)

15 MS. JENNINGS: Hi.

16 THE COURT: Good morning. How are you?

17 MS. JENNINGS: Okay. My problem is I've got
18 a daughter in prison.

19 THE COURT: You have a what?

20 MS. JENNINGS: Daughter in prison.

21 THE COURT: A daughter in prison?

22 MS. JENNINGS: And I've got family members in
23 there, too.

24 THE COURT: Okay. What is your daughter in
25 prison for?

1 MS. JENNINGS: Killing her baby.

2 THE COURT: Okay. And was that here in
3 Charleston County or somewhere else? Charleston County?

4 MS. JENNINGS: In Dorchester County.

5 THE COURT: Okay. And how long ago was
6 that?

7 MS. JENNINGS: Maybe about ten years ago.

8 THE COURT: Okay. And is there anything
9 about that that will affect your ability to be fair and
10 impartial in this case?

11 MS. JENNINGS: Well, right now I'm being
12 treated a lot for high blood pressure and everything.

13 THE COURT: Okay.

14 MS. JENNINGS: And I want to -- I get real
15 stressed out easy.

16 THE COURT: Okay. I'm not understanding you.
17 I'm going to need you to speak a little more loudly for
18 me, okay?

19 MS. JENNINGS: Okay.

20 THE COURT: I've got that you're -- you're on
21 high blood pressure medicine, right?

22 MS. JENNINGS: Yeah. I feel okay.

23 THE COURT: Okay. And does that affect your
24 ability to render efficient jury service? Is that what
25 you're telling me, or were you just letting me know?

1 MS. JENNINGS: I get -- I just get easy --
2 nervous real easy.

3 THE COURT: Okay. All right. And when you
4 get nervous, what does that do?

5 MS. JENNINGS: I start shaking like. I'm a
6 nervous person.

7 THE COURT: Okay. All right. If we take a
8 break every so often, does that help you?

9 MS. JENNINGS: Yeah, it probably will.

10 THE COURT: Okay. Well, I'm going to have
11 you stay with us. Tell me your juror number again?

12 MS. JENNINGS: 134.

13 THE COURT: All right. Thank you.

14 (Said bench conference being concluded, the
15 following proceedings were had:)

16 THE COURT: 134 will remain.

17 THE BAILIFF: Juror number 214, Your Honor.

18 (The following on-the-record bench conference
19 was had in the presence of the jury panel but out of the
20 hearing of the jury panel:)

21 THE COURT: Yes, ma'am.

22 MS. PUSHA JENKINS: My father is in prison.

23 THE COURT: Was that from Charleston County
24 or somewhere else?

25 MS. PUSHA JENKINS: I don't know.

1 THE COURT: Okay. How long has he been
2 incarcerated?

3 MS. PUSHA JENKINS: About two years now.

4 THE COURT: All right. Is there anything
5 about that that will affect your ability to be fair and
6 impartial in this case?

7 MS. PUSHA JENKINS: No, ma'am.

8 THE COURT: All right. And juror?

9 MS. PUSHA JENKINS: 214.

10 THE COURT: I'm going to have you stay with
11 us. Thank you.

12 (Said bench conference being concluded, the
13 following proceedings were had:)

14 THE COURT: Juror 214 will remain.

15 THE BAILIFF: Juror number 305, Your Honor.

16 (The following on-the-record bench conference
17 was had in the presence of the jury panel but out of the
18 hearing of the jury panel:)

19 THE COURT: How are you?

20 MR. COOK: Okay. I just want to -- past with
21 this and stuff. I was put in psych wards when I was 16
22 for anorexia and stuff and had a lot of problems with
23 that. My momma's been in 15 years because of alleged
24 stuff when she was young. And there's a Katrina claim.
25 You know, I was dating here like three or four years

1 ago, and I went through the courts here with her. She's
2 in San Diego now, and I got her to actually go to the
3 courts here in Charleston about him being her father --
4 her stepfather when she was ten.

5 THE COURT: Okay. All right, sir. You have
6 shared a lot of information with me.

7 MR. COOK: That's -- yeah.

8 THE COURT: And is there anything that you
9 shared with me that would affect your ability to be fair
10 and impartial in this case?

11 MR. COOK: I -- yeah, it's -- yeah. There'd
12 be quite a bit actually.

13 THE COURT: All right. All right. I'm going
14 to excuse you from the trial of this case.

15 MR. COOK: All right.

16 THE COURT: I need you to stay with us in the
17 courtroom, and but you don't have to answer any more
18 questions. And you are 301?

19 MR. COOK: 305.

20 THE COURT: 305.

21 (Said bench conference being concluded, the
22 following proceedings were had:)

23 THE COURT: 305 is excused.

24 THE BAILIFF: Juror number 313, Your Honor.

25 (The following on-the-record bench conference

1 was had in the presence of the jury panel but out of the
2 hearing of the jury panel:)

3 THE COURT: Yes, ma'am.

4 MS. PERRINEAU JACKSON: My name is Kimberly
5 Perrineau Jackson.

6 THE COURT: Okay.

7 MS. PERRINEAU JACKSON: And I -- my mom and
8 dad were victims of a violent crime. They had a
9 robbery. And I also have ---

10 THE COURT: All right. Let me ask you about
11 -- was that here in Charleston County or somewhere
12 else?

13 MS. PERRINEAU JACKSON: In Charleston.

14 THE COURT: All right. And how long ago was
15 that?

16 MS. PERRINEAU JACKSON: Around five years
17 ago.

18 THE COURT: All right. Is there anything
19 about that that would affect your ability to be fair and
20 impartial in this case?

21 MS. PERRINEAU JACKSON: Not that.

22 THE COURT: Okay. All right.

23 MS. PERRINEAU JACKSON: And I also have an
24 uncle that just got out of jail a few years ago for
25 murder.

1 THE COURT: All right.

2 MS. PERRINEAU JACKSON: For two people.

3 THE COURT: All right. Was that here in
4 Charleston County or somewhere else?

5 MS. PERRINEAU JACKSON: It was here.

6 THE COURT: All right. And is there anything
7 about that that would affect your ability to be fair and
8 impartial in this case?

9 MS. PERRINEAU JACKSON: Yes, it would.

10 THE COURT: All right. All right. I'm going
11 to excuse you from the trial of this case. What was
12 your uncle's name?

13 MS. PERRINEAU JACKSON: Robert Simmons.

14 THE COURT: All right. Thank you.

15 MS. PERRINEAU JACKSON: Okay.

16 THE COURT: I need you to stay with us.
17 You'll receive further instructions, but you don't have
18 to answer any more questions. Thank you.

19 (Said bench conference being concluded, the
20 following proceedings were had:)

21 THE BAILIFF: Juror number 72, Your Honor.

22 (The following on-the-record bench conference
23 was had in the presence of the jury panel but out of the
24 hearing of the jury panel:)

25 THE COURT: How are you?

1 MS. EDWARDS: Okay. I have a friend and a
2 coworker of my husband's who's husband is my coworker
3 was -- tried -- tried to sexually assault her daughter.
4 He was convicted and was on probation, and he started
5 stalking her, and about a month ago they sent him to
6 jail for six months. And this is my coworker, the one
7 that was sent to jail. Totally is so raw for me right
8 now that...

9 THE COURT: Okay. Is there anything about
10 what you just shared with the Court that would affect
11 your ability to be fair and impartial in this case?

12 MS. EDWARDS: I would like to say no, but in
13 my heart of hearts I don't know, until I heard what was
14 going on now.

15 THE COURT: Will you be able to listen to the
16 facts as presented from the witness stand and any
17 exhibits that are made part of the record, apply the law
18 as the Court gives it, and render a verdict based upon
19 those things?

20 MS. EDWARDS: Yes, ma'am, I think so.

21 THE COURT: Okay. And I'm going to ask you
22 -- it needs to be a yes or no. And I do it myself; I
23 think so, I believe so. Okay? Would you be able to
24 listen to the facts as presented by the witness stand,
25 apply the law as the Court gives it, and render a

1 verdict based on that?

2 MS. EDWARDS: Yes.

3 THE COURT: All right. Your jury number and
4 name?

5 MS. EDWARDS: 72, Nanette Edwards.

6 THE COURT: All right. Thank you,
7 Ms. Edwards.

8 (Said bench conference being concluded, the
9 following proceedings were had:)

10 THE COURT: 72 will remain.

11 THE BAILIFF: Juror number 125, Your Honor.

12 (The following on-the-record bench conference
13 was had in the presence of the jury panel but out of the
14 hearing of the jury panel:)

15 MS. HOLDER: I'm a victim of a violent crime.

16 THE COURT: Okay. And tell me -- I need you
17 to -- so that she can hear you. Tell me what type of
18 crime.

19 MS. HOLDER: My husband was murdered.

20 THE COURT: All right.

21 MS. HOLDER: In his sleep.

22 THE COURT: All right. And was that here in
23 Charleston County?

24 MS. HOLDER: No. It was in Texas.

25 THE COURT: All right. Is there anything

1 about that that would affect your ability to be fair and
2 impartial in this case?

3 MS. HOLDER: No.

4 THE COURT: All right. You'll be able to
5 listen to the facts from the witness stand, apply the
6 law as the Court gives it, and render a verdict based
7 upon those things?

8 MS. HOLDER: Yes.

9 THE COURT: All right. Your jury number and
10 name?

11 MS. HOLDER: 125, Teresa Holder.

12 THE COURT: Thank you.

13 (Said bench conference being concluded, the
14 following proceedings were had:)

15 THE COURT: 125 will remain.

16 THE BAILIFF: Juror number 120, Your Honor.

17 (The following on-the-record bench conference
18 was had in the presence of the jury panel but out of the
19 hearing of the jury panel:)

20 THE COURT: Yes, sir.

21 MR. HELMS: My wife was sexually assaulted
22 back in high school several years ago before we met.

23 THE COURT: All right. Were charges brought
24 against the individual?

25 MR. HELMS: I think so, but I don't know the

1 outcome. I wasn't involved in the case at all.

2 THE COURT: Was that here in Charleston
3 County or somewhere else?

4 MR. HELMS: Memphis, Tennessee.

5 THE COURT: All right. Is there anything
6 about what you've shared with the Court that would
7 affect your ability to be fair and impartial in this
8 case?

9 MR. HELMS: No, ma'am.

10 THE COURT: All right. Your jury number and
11 name?

12 MR. HELMS: 120, Nicholas Helms.

13 THE COURT: All right. Thank you, Mr. Helms.

14 (Said bench conference being concluded, the
15 following proceedings were had:)

16 THE COURT: 120 will remain.

17 Is there anyone else?

18 (There was no response.)

19 (The following bench conference was had on
20 the record in the presence of the jury panel but out of
21 the hearing of the jury panel:)

22 THE COURT: Any further questions from the
23 state?

24 MR. SIMPSON: No, ma'am.

25 THE COURT: All right. Let's go ahead and do

1 the challenge. Mr. Butler is making a challenge for
2 cause against Ms. Allen. I believe she's number five.
3 She was, I believe, the first juror that came up and
4 indicated -- Mr. Butler, I'll be happy to hear from
5 you.

6 MR. BUTLER: She said that her niece was the
7 victim of a home invasion and rape. She didn't use the
8 word "home invasion," but she said it happened at night
9 at her house which is exactly what the allegations are
10 in this case.

11 She said as soon as she heard the
12 allegations, she, quote, thinks -- she thought of that
13 incident. And then it took three times before she
14 finally said she could give you just a yes or no answer.
15 She said she thinks she can be fair, thinks so, believes
16 so.

17 Given the similarities and that she said she
18 immediately thought of her past situation, I move to
19 have her removed for cause.

20 THE COURT: I'll be happy to hear from you.

21 MR. SIMPSON: I believe she indicated she
22 could be a fair and impartial juror, and I think if
23 Mr. Butler has a problem with her as a juror he can
24 exercise one of his ten strikes.

25 THE COURT: I'm going to excuse her for cause

1 based upon the similar nature and the fact that I did
2 have to inquire several times. All right.

3 Anything else? Any other questions?

4 Anything else?

5 MR. SIMPSON: Not at this time.

6 MR. BUTLER: No.

7 THE COURT: All right. Thank you.

8 (Said bench conference being concluded, the
9 following proceedings were had:)

10 THE COURT: All right. There's no additional
11 questions from the state or from the defendant. Any
12 objection to the clerk drawing the jury at this time?

13 MR. SIMPSON: None from the state, Your
14 Honor.

15 MR. BUTLER: No, ma'am.

16 THE COURT: Madam clerk.

17 THE CLERK: Okay. Ladies and gentlemen, if
18 you hear your name and juror number called, if you'll
19 please come to the front podium, turn around and face
20 both parties. You will hear me ask the state what say
21 you for the state. If they say please present the
22 juror, then I'll say what say you for the defendant, and
23 they will either say please present the juror which
24 means you've been selected or they'll say please strike
25 the juror which means you need to take your seat back in

1 the audience. If either side strikes, that means you
2 have not been selected and please have a seat back in
3 the audience.

4 Juror number 281, Anita Waring.

5 (Black female approaches.)

6 THE CLERK: What say you for the state?

7 MR. SIMPSON: Please present this juror.

8 THE CLERK: What say you for the defense?

9 MR. BUTLER: Please seat Ms. Waring.

10 THE CLERK: Ms. Waring, if you'll please have
11 a seat in the jury-box. You have been selected as a
12 juror in the trial of this case.

13 Juror number 120, Nicholas Helms.

14 (White male approaches.)

15 THE CLERK: What say you for the state?

16 MR. SIMPSON: Please present this juror.

17 THE CLERK: What say you for the defense?

18 MR. BUTLER: Please excuse Mr. Helms.

19 THE CLERK: Okay. Mr. Helms, if you'll have
20 a seat back in the audience. You have not been selected
21 as a juror in the trial of this case.

22 Juror number 131, Karen Huett.

23 (White female approaches.)

24 THE CLERK: What say you for the state?

25 MR. SIMPSON: Please present this juror.

1 THE CLERK: What say you for the defense?

2 (Mr. Butler and the defendant confer.)

3 MR. BUTLER: Please seat Ms. Huett.

4 THE CLERK: Ms. Huett, if you'll have a seat
5 in the jury-box. You have been selected as a juror in
6 the trial of this case.

7 Juror number 161, James Lloyd, the Third.

8 (White male approaches.)

9 THE CLERK: What say you for the state?

10 MR. SIMPSON: Please present this juror.

11 THE CLERK: What say you for the defense?

12 MR. BUTLER: Please seat Mr. Lloyd.

13 THE CLERK: Mr. Lloyd, if you'll please have
14 a seat in the jury-box. You have been selected as a
15 juror in the trial of this case.

16 Juror number 125, Teresa Holder.

17 (White female approaches.)

18 THE CLERK: Ma'am, you need to bring your
19 things with you.

20 What say you for the state?

21 MR. SIMPSON: Please present this juror.

22 THE CLERK: What say you for the defense?

23 MR. BUTLER: Please excuse Ms. Holder.

24 THE CLERK: Ms. Holder, if you'll have a seat
25 back in the audience. You have not been selected as a

1 juror in the trial of this case.

2 Juror number 105, Elizabeth Gourdin.

3 (White female approaches.)

4 THE CLERK: What say you for the state?

5 MR. SIMPSON: Please present this juror.

6 THE CLERK: What say you for the defense?

7 MR. BUTLER: Please excuse Ms. Gourdin.

8 THE CLERK: Ms. Gourdin, if you'll have a
9 seat back in the audience. You have not been selected
10 as a juror in the trial of this case.

11 That was three strikes for the defense.

12 Juror number 134, Margaret Jennings.

13 (Black female approaches.)

14 THE CLERK: What say you for the state?

15 MR. SIMPSON: Please excuse this juror.

16 THE CLERK: Okay. Ms. Jennings, if you'll
17 have a seat back in the audience. You have not been
18 selected as a juror in the trial of this case.

19 Juror number 37, Jerry Campbell, Jr.

20 (Black male approaches.)

21 THE CLERK: What say you for the state?

22 MR. SIMPSON: Please present this juror.

23 THE CLERK: What say you for the defense?

24 (Mr. Butler and the defendant confer.)

25 MR. BUTLER: Please seat Mr. Campbell.

1 THE CLERK: Okay. Mr. Campbell, if you'll
2 have a seat in the jury-box. You have been selected as
3 a juror in the trial of this case.

4 Juror number 286, Lillian Whaley.

5 (Black female approaches.)

6 THE CLERK: What say you for the state?

7 MR. SIMPSON: Please present this juror.

8 THE CLERK: What say you for the defense?

9 MR. BUTLER: Please seat Ms. Whaley.

10 THE CLERK: Okay. Ms. Whaley, if you'll have
11 a seat in the jury-box. You have been selected as a
12 juror in the trial of this case.

13 Juror number 40, Susan Caron.

14 (White female approaches.)

15 THE CLERK: What say you for the state?

16 MR. SIMPSON: Please present this juror.

17 THE CLERK: What say you for the defense?

18 MR. BUTLER: Beg the Court's indulgence one
19 moment, please.

20 Please excuse the juror.

21 THE CLERK: Ms. Caron, if you'll have a seat
22 back in the audience. You have not been selected as a
23 juror in the trial of this case.

24 That is four strikes for the defense.

25 Juror number 222, Tony Ritchie, Jr.

1 (White male approaches.)

2 THE CLERK: What say you for the state?

3 MR. SIMPSON: Please present this juror.

4 THE CLERK: What say you for the defense?

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

6 THE COURT: Yes, sir.

7 (Mr. Butler, Ms. Penn, and the defendant
8 confer.)

9 MR. BUTLER: Please seat Mr. Ritchie.

10 THE CLERK: Okay. Mr. Ritchie, if you'll
11 have a seat in the jury-box. You have been selected as
12 a juror in the trial of this case.

13 Juror number 214, Elizabeth Jenkins.

14 (Black female approaches.)

15 THE CLERK: What say you for the state?

16 MR. SIMPSON: Please excuse this juror.

17 THE CLERK: Okay. Ms. Jenkins, if you'll
18 have a seat back in the audience. You have not been
19 selected as a juror in the trial of this case.

20 That's two strikes for the state.

21 Juror number 114, Karen Harant.

22 (White female approaches.)

23 THE CLERK: What say you for the state?

24 MR. SIMPSON: Please present this juror.

25 THE CLERK: What say you for the defense?

1 MR. BUTLER: Beg the Court's indulgence one
2 moment, please.

3 (Mr. Butler, Ms. Penn, and the defendant
4 confer.)

5 MR. BUTLER: Please excuse Ms. Harant from
6 the trial of the case.

7 THE CLERK: Ms. Harant, if you'll have a seat
8 back in the audience.

9 That's five strikes for the defense.

10 Juror number 206, Robert Poe.

11 (White male approaches.)

12 THE CLERK: What say you for the state?

13 MR. SIMPSON: Please seat Mr. Poe.

14 THE CLERK: What say ---

15 MR. SIMPSON: Please excuse. I'm sorry. I
16 got lost. My apologies.

17 THE CLERK: I'm sorry?

18 MR. SIMPSON: Please excuse this juror.

19 THE CLERK: Okay. Mr. Poe, if you'll have a
20 seat back in the audience. You have not been selected
21 as a juror for the trial of this case.

22 That's three strikes for the state.

23 Juror number 233, Shilpa Shah.

24 (White female approaches.)

25 THE CLERK: What say you for the state?

1 MR. SIMPSON: Please present this juror.

2 THE CLERK: What say you for the defense?

3 MR. BUTLER: Please excuse Ms. Shah.

4 THE CLERK: Ms. Shah, if you'll have a seat
5 back in the audience. You have not been selected as a
6 juror.

7 Juror number 278, Colleen White Walker.

8 (Black female approaches.)

9 THE CLERK: What say you for the state?

10 MR. SIMPSON: Court's indulgence.

11 THE COURT: Yes, sir.

12 MR. SIMPSON: Please present this juror.

13 THE CLERK: What say you for the defense?

14 (Mr. Butler, Ms. Penn, and the defendant
15 confer.)

16 MR. BUTLER: Please seat Ms. Walker.

17 THE CLERK: Ms. Walker, if you'll have a seat
18 in the jury-box. You have been selected as a juror in
19 the trial of this case.

20 Juror number 218, Linda Randazzo.

21 (White female approaches.)

22 THE CLERK: What say you for the state?

23 MR. SIMPSON: Please present this juror.

24 THE CLERK: What say you for the defense?

25 MR. BUTLER: Please excuse Ms. Randazzo.

1 THE CLERK: Okay. Ms. Randazzo, if you'll
2 have a seat back in the audience. You have not been
3 selected as a juror.

4 That's seven strikes for the defense.
5 Juror number 246, Anthony Smith.

6 (Black male approaches.)

7 THE CLERK: What say you for the state?
8 (Mr. Simpson and Mr. Kidd confer.)

9 MR. SIMPSON: Please excuse this juror.

10 THE CLERK: Okay. Mr. Smith, if you'll have
11 a seat back in the audience. You have not been selected
12 as a juror.

13 That's four strikes for the state.
14 Juror number 96, Tara Gerardi.

15 (White female approaches.)

16 THE CLERK: What say you for the state?
17 (Mr. Simpson and Mr. Kidd confer.)

18 MR. SIMPSON: Please present this juror.

19 THE CLERK: What say you for the defense?

20 MR. BUTLER: Please excuse Ms. Gerardi.

21 THE CLERK: Okay. Ms. Gerardi, if you'll
22 have a seat back in the audience. You have not been
23 selected as a juror in this case.

24 Juror number 50, Rex Conner.

25 (White male approaches.)

1 THE CLERK: What say you for the state?

2 MR. SIMPSON: Please present this juror.

3 THE CLERK: What say you for the defense?

4 MR. BUTLER: Please excuse Mr. Conner.

5 THE CLERK: Mr. Conner, if you'll have a seat
6 back in the audience. You have not been selected.

7 That is nine strikes for the defense.

8 Juror number 292, Therrell Williams, Jr.

9 (White male approaches.)

10 THE CLERK: What say you for the state?

11 MR. SIMPSON: Court's indulgence.

12 THE COURT: Yes, sir.

13 (Mr. Simpson and Mr. Kidd confer.)

14 (Mr. Butler, Ms. Penn, and the defendant
15 confer.)

16 MR. SIMPSON: Your Honor, may we approach
17 about the juror?

18 THE COURT: You may.

19 (There was an off-the-record bench conference
20 in the presence of the jury panel but out of the hearing
21 of the jury panel.)

22 (Said bench conference being concluded, the
23 following proceedings were had:)

24 THE COURT: Mr. Williams, please approach.

25 (Mr. Williams approaches the bench.)

1 (There was an off-the-record bench conference
2 in the presence of the jury panel but out of the hearing
3 of the jury panel.)

4 (Said bench conference being concluded, the
5 following proceedings were had:)

6 (Mr. Williams returns to the podium.)

7 THE COURT: All right. Mr. Williams, I need
8 for you to just stay right there. Thank you. I
9 appreciate your patience.

10 Mr. Simpson.

11 MR. SIMPSON: Please present this juror.

12 THE CLERK: What say you for the defense?

13 MR. BUTLER: Please seat Mr. Williams.

14 THE CLERK: Okay. Mr. Williams, if you'll
15 have a seat in the jury-box. You have been selected as
16 a juror in the trial of this case.

17 Juror number 72, Nanette Edwards.

18 (White female approaches.)

19 THE CLERK: What say you for the state?

20 MR. SIMPSON: Please seat the juror.

21 THE CLERK: What say you for the defense?

22 MR. BUTLER: Please excuse Ms. Edwards.

23 THE CLERK: Okay. Ms. Edwards, if you'll
24 have a seat back in the audience. You have not been
25 selected as a juror for the trial of this case.

1 And the defense has struck its tenth juror.
2 Juror number 274, Rebecca Truesdell.
3 (White female approaches.)
4 THE CLERK: What say you for the state?
5 MR. SIMMONS: Please present this juror.
6 THE COURT: Any challenge from the defense?
7 MR. BUTLER: No, ma'am.
8 THE CLERK: Ms. Truesdell, if you'll have a
9 seat in the jury-box. You've been selected as a juror
10 in the trial of this case.
11 Juror number 183, Andrew Myers.
12 (Black male approaches.)
13 THE CLERK: What say you for the state?
14 MR. SIMPSON: Please excuse this juror.
15 THE CLERK: Mr. Myers, if you'll have a seat
16 back in the audience. You have not been selected as a
17 juror.
18 And that is the fifth strike for the state.
19 Juror number 240, Cassaundra Singleton.
20 (Black female approaches.)
21 THE CLERK: Any challenge from the state?
22 MR. SIMPSON: No challenge.
23 THE CLERK: Any challenge from the defense?
24 MR. BUTLER: No, ma'am.
25 THE COURT: Okay. Ms. Singleton, if you'll

1 have a seat in the jury-box. You have been selected as
2 a juror in the trial of this case.

3 Juror number 68, Paul Drayton.

4 (Black male approaches.)

5 MR. SIMPSON: Could I have the number again,
6 please?

7 THE CLERK: Sixty-eight. Any challenge from
8 the state?

9 MR. SIMPSON: No challenge from the state.

10 THE CLERK: Any challenge from the defense?

11 MR. BUTLER: No, ma'am.

12 THE CLERK: Mr. Drayton, if you'll have a
13 seat in the jury-box. You've been selected as a juror
14 in the trial of this case.

15 Juror number 300, Thomas Zollars.

16 (White male approaches.)

17 THE CLERK: Any challenge from the state?

18 MR. SIMPSON: No challenge from the state.

19 THE CLERK: Any challenge from the defense?

20 MR. BUTLER: No, ma'am.

21 THE CLERK: Mr. Zollars, if you'll have a
22 seat in the jury-box. You have been selected as a juror
23 in the trial of this case.

24 Now we'll be striking for the first
25 alternate. Strikes are one and two.

1 Juror number 152, Kenan Koll.

2 (White female approaches.)

3 THE CLERK: What say you for the state?

4 MR. SIMPSON: Please present this juror.

5 THE CLERK: What say you for the defense?

6 MR. BUTLER: Please seat Ms. Koll.

7 THE CLERK: Ms. Koll, if you'll have a seat
8 in the jury-box. You've been selected as an alternate
9 in the trial of this case.

10 Now striking for the second alternate.

11 Juror number 31, Joshua Burrill.

12 (White male approaches.)

13 THE CLERK: What say you for the state?

14 MR. SIMPSON: Please present this juror.

15 THE CLERK: What say you for the defense?

16 MR. BUTLER: Please seat Mr. Burrill.

17 THE CLERK: Okay. Mr. Burrill, if you'll
18 have a seat. You've been selected as the second
19 alternate in the trial of this case.

20 Your Honor, the jury is seated.

21 THE COURT: Any motions or matters pertaining
22 to the jury as selected from the state?

23 (Mr. Simpson and Mr. Kidd confer.)

24 MR. SIMPSON: No, Your Honor, not from the
25 state.

1 THE COURT: From the defendant?

2 MR. BUTLER: No, ma'am.

3 THE COURT: Ladies and gentlemen, you have
4 been selected as the jury to try this case. We are
5 going to excuse you for just a moment. The bailiffs
6 will take you to the jury deliberation room, and I will
7 receive you back in this courtroom in just a few
8 moments.

9 (Whereupon, the jury goes to the jury room at
10 approximately 11:33 a.m.)

11 THE COURT: You may be seated.

12 Outside the presence of the jury, any motions
13 or matters?

14 MR. SIMPSON: No, Your Honor.

15 THE COURT: And from the defendant?

16 MR. BUTLER: No, ma'am.

17 THE COURT: Ladies and gentlemen, you are not
18 selected as the jury in this case. As such, you are
19 excused for the afternoon. Ladies and gentlemen, you
20 must call back after 6:00 p.m. to receive instructions
21 for the remainder of the week.

22 Ladies and gentlemen, let me thank you for
23 your service to Charleston County. None of us in this
24 courtroom could do our jobs if it were not for you
25 showing up here today.

1 Ladies and gentlemen, I remind you that jury
2 service is for the remainder of the week, and we have
3 the call-in system to attempt to alleviate any
4 inconvenience that you may have from showing up, but it
5 is important that you call back and follow the
6 instructions for the remainder of the week.

7 Thank you and have a wonderful day, and I
8 hope to see some of you back in my courtroom later in
9 the week perhaps. Thank you. You are excused.

10 (Whereupon, the jury panel is excused at
11 approximately 11:35 a.m.)

12 THE COURT: Mr. Butler and Mr. Simpson, just
13 for scheduling for lunch, would you approach.

14 (There was an off-the-record bench
15 conference.)

16 (Said bench conference being concluded, the
17 following proceedings were had:)

18 THE COURT: All right.

19 MR. BUTLER: May it please the Court. We
20 have subpoenaed witnesses, and now I'm hearing they're
21 not outside.

22 THE COURT: All right.

23 MR. BUTLER: So can I send Ms. Penn to go
24 find out?

25 THE COURT: Yes. We will break accordingly

1 so that we can accommodate you. We may break for lunch
2 and then come back early if that facilitates having the
3 witnesses here.

4 (Ms. Penn leaves the courtroom.)

5 THE COURT: All right. Please rise for the
6 jury.

7 (Whereupon, the jury enters the courtroom at
8 approximately 11:37 a.m.)

9 THE BAILLIFF: All jurors are seated.

10 THE COURT: Thank you. Please be seated.

11 Ladies and gentlemen, I am going to give you
12 just a general overview and my general opening and then
13 we're going to break for lunch.

14 Ladies and gentlemen, as you noticed, when
15 you came back in the courtroom all of the members of the
16 audience and all the parties involved were standing.
17 The reason for this is now you are the judges of the
18 facts in this case, and out of respect for your new
19 position that all the parties involved and all the
20 members of the audience will be standing when you come
21 in and exit the courtroom and will remain standing until
22 all fourteen of you are seated.

23 Ladies and gentlemen, we're going -- I'm
24 going to give you a general overview.

25 When we return, you will be allowed to take

1 notes. We did not pass the notes out -- notebooks out
2 at this time, but you will be allowed to take notes
3 during the progression of this trial. I caution jurors
4 because some of us were much better note-takers in
5 school than others, and just remember your notes are for
6 you. One juror's notes are no more accurate or correct
7 than another juror's notes. We will collect the
8 notebooks at night, lock them in a secure place, and
9 return them to you in the morning.

10 Ladies and gentlemen, as I indicated to you
11 during the general opening, the case that we are about
12 to try is the case of The State vs. David Lee Meggett.
13 Before we begin this trial, I wanted to take this
14 opportunity to explain to you what this trial is about,
15 because most people don't have the opportunity to come
16 into court as you are doing now.

17 Most people think when watching television or
18 movies or reading books that trials are full of high
19 drama, intense action, and riveting circumstances.
20 While all of these things may be true at times, this
21 trial is not for entertainment. It is a fundamental
22 part of our democracy. It is a search for the truth in
23 an effort to make sure that justice is done between the
24 parties before you here today.

25 Searching for the truth is often slow,

1 repetitive, and deliberate, the opposite of what you may
2 have seen in books or TV or watched on television or
3 seen in movies. This courtroom is a place of honor
4 dedicated to the protection and the preservation of
5 citizen's rights through what many have called the
6 greatest justice system ever created.

7 The attorneys that are appearing before you
8 are advocates for the parties they represent, but first
9 and foremost they are officers of this Court. They are
10 sworn to uphold the integrity and the fairness of our
11 judicial system and to help you in the search for the
12 truth. You should expect them to be ethical, competent,
13 and professional in the representation of their -- of
14 their clients' interests.

15 Ladies and gentlemen, I will now administer
16 to you the oath.

17 Madam Clerk.

18 THE CLERK: Ladies and gentlemen, if you'll
19 please stand and raise your right hand.

20 (Whereupon, the jury is duly sworn by the
21 clerk.)

22 THE CLERK: Thank you. You may have a seat.

23 THE COURT: Ladies and gentlemen, under the
24 oath that you have just taken, you are also expected to
25 be professional, reasonable, and ethical. I wish to

1 thank you again for accepting the important
2 responsibility of jury service and for your contribution
3 here today to our justice system.

4 What I say to you now is intended to serve as
5 an introduction to the trial of this case. These
6 remarks are not a charge on the law. I will instruct
7 you on the law applicable to this case before you retire
8 to consider your verdict. This is merely an explanation
9 of the procedure that we will follow in this trial so
10 that you may be better able to understand what we are
11 doing here today.

12 The defendant is charged by an indictment,
13 and as I indicated to you, the indictment is merely the
14 document that brings us to court here today. He is
15 charged with an indictment for criminal sexual conduct
16 in the first degree and burglary in the first degree,
17 the elements of which will be explained to you later.
18 The indictment is simply the charge by which the case is
19 brought into this court. It is not in any sense
20 evidence of the allegations that it contains.

21 The defendant has pled not guilty to each
22 indictment, and the state therefore then has the burden
23 of proving each of the elements of the indictment beyond
24 a reasonable doubt. It will be your duty, ladies and
25 gentlemen, to decide whether the state has met that

1 burden.

2 Your purpose as jurors is to find and
3 determine the facts. You are the sole judge of the
4 facts in this case, and if any time I make any comment
5 regarding the facts you must disregard it. You are to
6 determine the facts from the testimony that you hear and
7 any other evidence that is introduced in court.

8 It is up to you to determine the inferences
9 that you feel may be properly drawn from the evidence.
10 It is especially important that you perform your duty of
11 determining the facts diligently and conscientiously
12 because ordinarily there is no way to correct an
13 erroneous determination of the facts by a jury.

14 On the other hand and with equal emphasis,
15 the same law that makes you the judges of the facts in
16 this case makes me the judge of the law. The law as
17 given by this Court is the only law that you may
18 consider. You must accept it and follow it even though
19 you may disagree with the law. I cannot tell you what
20 the facts are, and you cannot disagree with me about
21 what the law is or what the law should be.

22 Your job is to take the law as I give it to
23 you and apply the facts as you find them from the
24 testimony of the witnesses and any other evidence that
25 is introduced. After doing this, you will render your

1 verdict, a true and just verdict under -- under the
2 solemn oath that you just took as jurors.

3 Until I advise you to begin your
4 deliberations you must not discuss this case with
5 anyone. That includes your fellow jurors, your friends,
6 your family members, and anyone else involved in this
7 case. Ladies and gentlemen, this includes face-to-face
8 discussions as well as those by telephone, e-mail, text,
9 blogs, or any other method of communication. After this
10 case is submitted to you, you must discuss it only in
11 the jury room and only with your fellow jurors.

12 The attorneys and the parties involved in
13 this case have been advised that they are not to talk to
14 you at all. This includes face-to-face discussions, as
15 well, and if you see any of the attorneys or parties
16 involved in this case in the hallway and they do not say
17 hello to you, please do not think they're being rude.
18 They're following the Court's instructions.

19 During the trial do not read, watch, listen
20 to any news accounts regarding this case should there be
21 any. This includes anything that may be in the
22 newspapers, on the internet, radio, or the television.
23 You must not consider anything that you may have read or
24 heard about this case outside of the courtroom whether
25 before or during the trial.

1 It is important that you keep an open mind
2 and not decide any issue in this case until all of the
3 evidence has been presented, the parties have made their
4 closing argument, and I have instructed you on the law
5 applicable to this case. It is your solemn
6 responsibility to determine the guilt or innocence of
7 the defendant, and your verdict must be based solely on
8 the evidence as it is presented to you during this trial
9 and on the law as I instruct you during and at the close
10 of this trial.

11 Ladies and gentlemen, when we return from
12 lunch, the solicitor will make what is called an opening
13 statement in which the solicitor will explain to you the
14 issues in this case or at least what the solicitor
15 thinks the issues are. The attorney for the defendant
16 may also make an opening statement although he is not
17 required to do so.

18 What the attorneys tell you during their
19 opening statements is not evidence in this case. It is
20 their contention as to what the issues are. The
21 evidence in this case will be presented to you by the
22 testimony of sworn witnesses from the witness stand as
23 well as any exhibits that may be introduced into
24 evidence.

25 From time to time you may hear one of the

1 attorneys say, Your Honor, I believe we have a question
2 of law, a matter of law, or I might find it necessary to
3 ask the attorneys to approach or to excuse you from the
4 courtroom for a short while. Ladies and gentlemen,
5 please do not speculate or guess as to what we are
6 talking about and please do not think we are hiding
7 anything from you. Ladies and gentlemen, as I indicated
8 to you, I cannot make any comment regarding the facts in
9 this case, but sometimes it is necessary when I make a
10 ruling on the law to make some comment on the facts. I
11 will excuse you from the courtroom so that nothing I say
12 will influence you as to the facts of this case.

13 Ladies and gentlemen, in determining what the
14 true facts are in this case, you must decide whether or
15 not the testimony of the witnesses is believable. It
16 will be my responsibility to rule as a matter of law as
17 to whether certain testimony is admissible at all; but
18 once the testimony is admitted, whether or not you
19 believe it is solely for you to determine.

20 In deciding whether to believe a witness you
21 have the right to consider the interest of any witness,
22 the bias of any witness, the prejudice of any witness,
23 the opportunity for that witness to have seen the
24 matters and things about which the witness may testify
25 as well as the way the witness acts on the witness

1 stand.

2 You have the right to consider anything that
3 is in the record that will help you evaluate the
4 testimony of the witnesses. That means it's your duty
5 to pay close attention to the witnesses, to observe the
6 witnesses, to listen to the witnesses, as well as to pay
7 close attention to the attorneys and to the Court.

8 Please do not let your thoughts wander, but
9 give strict attention to all of the testimony in this
10 case so at the end of the testimony, after the arguments
11 of counsel, and the charge on the law by the Court you
12 will be in a position to determine what the true facts
13 are and to apply the law to those facts and render a
14 true and just verdict.

15 Mr. Ritchie, you have been selected as the
16 spokesperson here in court today. As such, you are the
17 foreperson, the jury spokesperson, and you are
18 responsible for writing the verdict. I will give you
19 further instructions about that at the conclusion of the
20 case.

21 Ladies and gentlemen, as a reminder one more
22 time, until you have been discharged concerning this
23 case you may not perform any investigation, research, or
24 experiment of any kind on your own either individually
25 or as a group.

1 Do not consult any dictionaries for the
2 meaning of any words or any encyclopedias for general
3 information on the subjects of the trial.

4 Do not look up anything on the internet
5 concerning this case or any of the people involved.
6 Ladies and gentlemen, that includes the defendant, the
7 witnesses, the attorneys involved, as well as the judge.

8 Do not go to the scene where any of the
9 events that are the subject of this trial are alleged to
10 have taken place or use internet maps or Google Earth or
11 any other program or device to search for or review any
12 place discussed during this case.

13 Ladies and gentlemen, until you are
14 discharged from service you must not have any
15 discussions about this case or make any entry on
16 Facebook, My Space, Link-Friend, or any other internet
17 social media site. That includes all other forms of
18 oral, written, and any electronic communication, and
19 that includes but is not limited to twittering,
20 e-mailing, blogging, and texting.

21 Ladies and gentlemen, please understand that
22 I am giving these directions as part of my
23 responsibility to ensure fairness to all of the parties
24 in this case. That fairness would be compromised and
25 your actions could jeopardize the results of this trial

1 if you violate these instructions.

2 Ladies and gentlemen, that is my admonition,
3 and so when I indicate to you please remember my
4 admonition, those -- that is my admonition.

5 Ladies and gentlemen, we are going to recess
6 for lunch. Please be back in your jury room. We will
7 begin promptly at 2:30.

8 Please rise for the jury.

9 You are excused. Thank you.

10 (Whereupon, the jury leaves the courtroom at
11 approximately 11:50 a.m.)

12 THE COURT: Thank you. Be seated.

13 Are we prepared to go forward with the
14 suppression hearing now, or do we wish to break for
15 lunch and resume at 2:00?

16 MR. BUTLER: Can we take five minutes so I
17 can make a call? I think we -- I'm hoping we'll be able
18 to. I subpoenaed every North Charleston police officer
19 involved in this case just so they'd be here, and they
20 were supposed to be here this morning.

21 MR. SIMPSON: I can work with Mr. Butler on
22 getting the witnesses here.

23 THE COURT: All right.

24 MR. SIMPSON: After lunch would probably be
25 easier.

1 THE COURT: All right.

2 MR. BUTLER: Well, they may very well be
3 here. I don't know.

4 THE COURT: All right. Step outside and
5 let's see. Thank you.

6 MR. BUTLER: Thank you.

7 (Mr. Butler leaves the courtroom.)

8 MR. KIDD: Judge, may I approach on an
9 unrelated matter?

10 THE COURT: You may.

11 (There was an off-the-record bench
12 discussion.)

13 (Said bench discussion being concluded, the
14 following proceedings were had:)

15 MR. SIMPSON: Your Honor, may I approach the
16 court reporter?

17 THE COURT: You may.

18 (Mr. Butler and Ms. Penn return to the
19 courtroom.)

20 MR. BUTLER: They were subpoenaed to be here.
21 None of them are here. I don't know if that's because
22 they don't respond to defense attorney's subpoenas, but
23 I'm told that one is on his way and we can't find the
24 others. So I guess we'll -- my apologies to the extent
25 it's our fault, but we will I guess have that

1 hearing ---

2 THE COURT: Okay. We're going to break for
3 lunch. We'll be back at 2:00. Mr. Butler, I want a
4 copy of the subpoena.

5 MR. BUTLER: Yes, ma'am.

6 THE COURT: And I want to know what service,
7 and I want to know why they weren't here.

8 MR. BUTLER: Yes, ma'am.

9 MR. SIMPSON: Your Honor, if I may, they are
10 -- both witnesses I think he intends to call are also
11 subpoenaed by us. We would have had them here. The
12 first I've heard of the delay. We would have had them
13 here.

14 THE COURT: But, Mr. Simpson, if Mr. Butler
15 had subpoenaed them, then they needed to comply with his
16 subpoena, as well.

17 MR. SIMPSON: Okay.

18 THE COURT: It's not their choice to decide
19 whether or not to show up if they are subpoenaed to be
20 here.

21 MR. SIMPSON: I certainly understand, Your
22 Honor.

23 THE COURT: All right.

24 MR. SIMPSON: I think there may be some
25 miscommunications when they asked us ---

1 THE COURT: We'll clarify that. We will
2 clarify that, too, Mr. Simpson. We'll be here at 2:00
3 to begin. Thank you.

4 MR. SIMPSON: Okay. Thank you.

5 (A lunch recess is taken at approximately
6 11:55 a.m.)

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AFTERNOON SESSION

(The trial reconvenes at approximately 2:00 p.m., the defendant being present with counsel, and the following proceedings were had:)

THE COURT: Thank you. Be seated.

All right. Counsel, we're ready to proceed on the motion to suppress; is that correct?

MR. BUTLER: I think so.

MR. SIMPSON: Your Honor, Officer Sadler is in route. He is on his way here. I just went outside looking for him. He's not here yet at the moment. Officer Gooding, the other witness Mr. Butler indicated he might want, is present, but I think -- I don't think Mr. Butler is going to call Officer Gooding at this point, only if needed, depending on the testimony ---

THE COURT: Mr. Butler, who do you need ---

MR. SIMPSON: --- of Sadler.

THE COURT: --- for your motion to suppress?

MR. BUTLER: Sadler. And depending upon what Sadler said, I had Gooding here just in case. I have some housekeeping routine things we can do first if that pleases the Court.

THE COURT: Well, I am not pleased, Mr. Simpson, that we were -- we broke so that your witness could be here, or a witness could be here, and

1 he's not here. Where is he coming from, Mr. Simpson?

2 MR. SIMPSON: North Charleston, Your Honor.

3 And like I said, he's in route. We contacted him
4 immediately after we broke, to get on his way down here,
5 and I will certainly inform the Court the second that he
6 arrives. And if I could, may I step out for one second
7 to see ---

8 THE COURT: No, Mr. Simpson, we have ---

9 MR. SIMPSON: --- if he has walked in in the
10 meantime?

11 THE COURT: No.

12 MR. SIMPSON: Okay.

13 THE COURT: Mr. Simpson, we have the other
14 matters to attend to.

15 MR. SIMPSON: Okay. Thank you.

16 THE COURT: Mr. Butler.

17 MR. BUTLER: Judge, just routinely, I move
18 that all witnesses be sequestered except those that are
19 exempt from sequestration by statute. I believe the
20 state agrees with that position.

21 THE COURT: All right. Any objection to the
22 rule of sequestration being invoked, Mr. Simpson?

23 MR. SIMPSON: None, Your Honor.

24 THE COURT: And who are you planning on
25 coming at the table, at the table with you?

1 MR. SIMPSON: Our case agent is Detective
2 Randy Gray, but we're not going to ask that he be seated
3 with us.

4 THE COURT: All right. The rule of
5 sequestration is invoked.

6 Anything further, Mr. Butler?

7 MR. BUTLER: Yes, ma'am. As indicated to the
8 parties before, I have a motion to prevent the state or
9 the Court from referring to the complainant in this case
10 by the term "victim."

11 Although for us that's a technical term in
12 the law, it means something to the jury. It's our
13 position that it invades the province of the jury.
14 She's only a victim if they decide she is.

15 We'd ask the Court and the state and law
16 enforcement to either call her by her name or the
17 complainant instead of using the word "victim."

18 THE COURT: Mr. Butler, do you have any case
19 law that supports that position?

20 MR. BUTLER: Not specifically as applied to
21 that term, no, but just the general proposition of
22 invading the province of the jury.

23 THE COURT: All right. Mr. Simpson, your
24 position as to that request?

25 MR. SIMPSON: Your Honor, I don't think such

1 semantics are necessary. We would have no objection to
2 a charge given by the Court that they're not to assume
3 anything by that terminology. However, you know, as you
4 know from your years on the bench, that is the term by
5 which prosecutors, law enforcement, that it -- always
6 referred to the complainant by. We think it would just
7 be overly burdensome to have them up there thinking
8 about what words they can use for someone, but we would
9 have no objection for the Court to give a charge that
10 they are -- that the jury isn't to infer anything from
11 the language of "victim" or "complainant."

12 THE COURT: Okay. Mr. Butler, any response
13 to that?

14 MR. BUTLER: I just think that draws even
15 more attention to it. I mean, that's better than
16 nothing, but I think it draws more attention to it.

17 THE COURT: Mr. Butler, I am denying your
18 request to request that the witnesses refer to -- or do
19 not refer to the victim as the victim.

20 I will include in my general charge, just as
21 the allegations contained in the indictment are not to
22 be considered evidence, the terminology used with --
23 with reference to the term "defendant" as well as
24 "victim" are merely descriptors and are to be given no
25 significance whatsoever.

1 MR. BUTLER: Thank you, Judge.

2 I need to renew my motions under Rule Five
3 and Brady, asking if the Court -- if the state in
4 preparing their witnesses for trial have uncovered any
5 other evidence that would be discoverable by the
6 defense.

7 THE COURT: Any response to that,
8 Mr. Simpson?

9 MR. SIMPSON: Your Honor, only to say that,
10 you know, as anything that even in default might be
11 discoverable in this trial we've done our best to keep
12 Mr. Butler appraised of that. I don't believe we have
13 anything material that has not been handed over to him.

14 THE COURT: All right. Mr. Simpson, just as
15 I may use that qualification when I'm doing the jury,
16 have you turned over everything under Rule Five that you
17 believe you need to turn over?

18 MR. SIMPSON: I believe, Your Honor, we have
19 turned over everything except an incident report dealing
20 with one of the priors which I don't believe at this
21 time would even be questionable relevance, but we'll get
22 that to Mr. Butler without any delay.

23 THE COURT: Mr. Butler, is that answer
24 satisfactory at this time?

25 MR. BUTLER: Yes, Your Honor.

1 THE COURT: All right. And your next
2 housekeeping matter?

3 MR. BUTLER: Yes, ma'am. I think we're all
4 in agreement, but just so it's on the record, there'll
5 be no reference to the fact that Mr. Meggett declined to
6 give a statement to law enforcement upon arrest and
7 declined to consent to give DNA samples, and we would
8 object to any testimony about that under *Doyle vs. Ohio*.

9 MR. SIMPSON: Understood by the state. No
10 objection.

11 THE COURT: All right. Anything further?

12 MR. BUTLER: Just a couple more.

13 That there be no -- make sure that all the
14 state's witnesses have been instructed not to refer to
15 any other incidents, arrests, convictions, complaints
16 from any other alleged victims other than those involved
17 in this case or the one involved in this case.

18 MR. SIMPSON: Your Honor, until such time as
19 the Court would deem them admissible and if we get to
20 that juncture, understood.

21 THE COURT: All right. Thank you.

22 MR. BUTLER: And this is one we haven't
23 discussed, and I think that we're probably in agreement
24 on it anyway, but we've made some effort to prevent some
25 of Mr. Meggett's history from being aired. Consistent

1 with all of our interest in this case being able to
2 proceed smoothly, we would move to exclude from evidence
3 any reference to Mr. Meggett's NFL history, his status
4 as a professional athlete, his history with any of
5 several NFL football teams. I don't think it would be
6 relevant. I think it's prejudicial. And I also don't
7 think that there's anybody that could testify to it for
8 the state anyway, that as far as I can tell from the
9 discovery the complainant in the case didn't even know
10 about it. So we would move to keep that evidence out
11 should it be coming in.

12 MR. SIMPSON: Your Honor, we aren't intending
13 in our case in chief to present any evidence of
14 Mr. Meggett's history in the NFL unless the trial should
15 proceed in such a way where that might become relevant.
16 We would certainly bring it back up to the Court before
17 we present anything on that.

18 THE COURT: All right. Thank you,
19 Mr. Simpson.

20 MR. BUTLER: And, lastly, in meeting with
21 Mr. McLeod we were instructed not to get into any legal
22 definitions in our opening, and I know that that's
23 somewhat routine, and I almost never do. In this case I
24 would ask the Court to be able to say, oh, just a
25 sentence or two about the crime of burglary because in

1 this case I think that even on our version of events the
2 common layman's understanding of burglary could allow
3 someone to think that we are admitting that he's guilty.

4 So I would like the Court's permission to say
5 a sentence or two about the intent requirement of
6 burglary in my opening statement. I know it's going to
7 be charged much better than I could ever say it in two
8 or three days; but jurors, from all the studies, start
9 making up their minds early, and I would like the
10 Court's permission to define burglary for the jury.

11 MR. SIMPSON: Your Honor, I don't think
12 there's any -- any law -- I know we can't argue in --
13 argue law in the opening, but I don't think there's any
14 law that would prevent Mr. Butler from talking about the
15 basic elements of an alleged crime. I would have no
16 objection to that.

17 THE COURT: Mr. Butler, how are you going to
18 define burglary?

19 MR. BUTLER: Unlawful entry or entry without
20 consent with the intent to commit a crime inside. It's
21 the intent requirement that I want to specify, probably
22 about all I'd say.

23 THE COURT: All right. You may. Thank you.

24 MR. BUTLER: And that's it. And I would like
25 now to call Officer Sadler if he's here.

1 THE COURT: I have one outstanding motion as
2 to the admissibility of prior sexual conduct. Did y'all
3 stipulate to that?

4 MR. SIMPSON: I'm sorry, Your Honor. Officer
5 Sadler is coming through security now. We just found
6 that out, but I didn't...

7 THE COURT: All right. I have a motion filed
8 by Mr. Butler -- oh, I'm sorry -- by Mr. Simpson for
9 in-camera hearing addressing the admissibility of prior
10 sexual conduct. Has that been consented to?

11 MR. SIMPSON: No, Your Honor. I would like
12 that addressed pretrial.

13 MR. BUTLER: I can take care of that now
14 and speak whenever the Court -- whenever the Court
15 pleases.

16 THE COURT: All right. Well, since we're
17 waiting on Mr. Sadler, let's -- let's address it.

18 MR. BUTLER: The state has taken the position
19 that the rape shield statute bars any introduction of
20 evidence concerning the complainant's sexual history.

21 In this case, the evidence is that she had
22 consensual sex with my client several times. My
23 understanding from the state is that she admits to one
24 prior incident of consensual sex but not the others.

25 I, at Mr. Simpson's request, put that in

1 writing in a formal notice, I guess, of intent to do so.

2 The statute, if it applies, requires now an
3 offer of proof, I believe. My position is that I can't
4 imagine that it would ever prevent a defendant from
5 testifying in his own defense, but to the extent it
6 applies we will comply.

7 And I'm prepared to say that my client will
8 testify that he and Ms. Hooper had consensual sex six or
9 eight times before in the months leading up to this
10 incident, at the incident location several times, at his
11 home in Summerville, and his sister's home in North
12 Charleston.

13 THE COURT: Mr. Simpson.

14 MR. SIMPSON: Well, Your Honor, our position,
15 and reading right from the rape shield statute: If the
16 defendant proposes to offer evidence described in
17 subsection one -- and I think we both admit that this is
18 the type of evidence subsection one describes -- the
19 defendant prior to presenting his defense shall file a
20 written motion, which Mr. Butler has done, and an offer
21 of proof, which we interpret to be a proffer of the
22 evidence that they wish to get into in trial. During --
23 and the statute order -- the court shall order an
24 in-camera hearing to determine whether this proposed
25 order -- evidence is admissible.

1 Again, the state's main concern with the
2 statute has to do with the details. We just heard more
3 details than we've ever heard from Mr. Butler, but we
4 think the statute requires that Mr. Butler present as a
5 proffer in whatever manner he deems necessary to the
6 Court so the Court can determine whether or not this
7 evidence is admissible.

8 THE COURT: Mr. Simpson, is it your position
9 that we need to have the in-camera hearing now or at
10 such time that the defense becomes relevant?

11 MR. SIMPSON: Before -- prior to any of the
12 evidence being presented in front of that jury an
13 in-camera hearing is required by the statute. That's
14 the state's position.

15 THE COURT: Okay. Mr. Butler.

16 MR. BUTLER: Yes. I guess here's where we
17 disagree.

18 The statute makes perfect sense, and I
19 understand it. It's so that you're -- that the other
20 side is not sandbagged and you're not stuck having to
21 unring the bell if otherwise inadmissible evidence came
22 in.

23 We all agree that this evidence comes in. He
24 agrees that it's an exception to the rape shield
25 statute. There's no reason for us to have to -- for me

1 to have to put my client on the stand to hear exactly
2 what I just said. I don't think the sort of detail that
3 Mr. Simpson is asking.-- asking of us is required by the
4 statute.

5 I have to tell you what it is, who's going to
6 say it, so that I don't slip up and say something in
7 opening or cross of a witness or I just throw a witness
8 up there that then derails the trial completely.

9 Mr. Simpson agrees that the defendant can
10 testify to these facts. I'll be shocked if what it
11 required before a defendant can testify, as his
12 constitutional right is to do, before he can testify
13 that I have to put him on the stand to say exactly what
14 I just said, and I would object to the extent that it
15 applies to us. The offer of proof is what I just said.

16 THE COURT: Any response, Mr. Simpson?

17 MR. SIMPSON: Well, Your Honor, again, our
18 concern, as Mr. Butler put it, is of being sandbagged.
19 And already this morning we got an example where --
20 where some specific details of these prior conduct,
21 conduct got tacked between the defendant and the victim
22 in this case, were just dropped on us, this whole thing
23 with the nephew's comforter and things happening at the
24 nephew's house. Mr. Butler needs to offer every detail
25 known to the defense about this evidence for the Court

1 to rule on its admissibility at this time.

2 If the testimony is going to be limited to
3 details he just shared with both the state and the
4 Court, then we can move on from this issue, but I don't
5 want any testimony on the stand that the Court has not
6 heard and the state has not heard pretrial as required
7 by the rape shield statute.

8 THE COURT: All right. Mr. Butler, is it
9 your position that you are limiting your statements
10 regarding prior sexual conduct to the details that
11 you've just indicated?

12 MR. BUTLER: I won't probably even get into
13 -- into that much detail, but yes, definitely no more
14 than that.

15 MR. SIMPSON: And I would note, Your Honor,
16 that we heard no evidence of when these alleged prior
17 conducts are meant to have happened, so I don't want any
18 details coming out on the stand about when these things
19 occurred. About frequency, I believe given was six to
20 eight or four to eight.

21 THE COURT: Six to eight times.

22 MR. SIMPSON: If we could, at what -- when?
23 And what locations? I mean, what time frame are we
24 talking about? These are the details that the -- that's
25 why the rape shield statute requires a pretrial hearing

1 so these details can be put out there for the Court and
2 for the state.

3 THE COURT: All right. And, Mr. Butler, the
4 offer of proof, other than the six to eight times, that
5 I believe that the statute requires, what testimony can
6 you present as to the offer of proof regarding those six
7 to eight times? Do you have any more information that
8 -- regarding that?

9 MR. BUTLER: It will all come from my client.
10 Every bit of it will come from my client.

11 I guess the -- the disagreement I have with
12 Mr. Simpson is that he makes it seem as if this were a
13 discovery tool, and it's not.

14 And the statute does not say I have to give
15 him -- the alibi notice requirement, that's so that they
16 can go investigate, okay? This isn't the alibi motion
17 requirement. And interestingly, the alibi notice
18 requirement says none of this limits a defendant's
19 testimony because the defendant has the absolute right
20 to testify in his own defense despite any sort of
21 procedural hoops that he would have to jump through.

22 So I don't believe the statute requires us to
23 give them all those details. If I had them, I'd give
24 them to him, but I don't want to box myself in, either.

25 But what I still can't get past is the state

1 agrees that the evidence is admissible. So if they have
2 an objection to it, then let's hear the objection to it.

3 Is it character evidence? Is it irrelevant?
4 Is it barred by rape shield? No, it's not. He just
5 thinks that I have to call him to the stand to say those
6 things, and I adamantly disagree with that.

7 THE COURT: Mr. Butler, you agree that you
8 will not during any cross-examination of any of the
9 witnesses, prior to your client taking the stand,
10 inquire other than the six to eight times?

11 MR. BUTLER: Yes. That's correct.

12 THE COURT: All right. Thank you.

13 All right. Officer Sadler is here?

14 (Officer Sadler enters the courtroom.)

15 THE COURT: Officer Sadler, please come
16 forward and be sworn.

17 OFFICER BRIAN SADLER,
18 being first duly sworn by the clerk, is examined and
19 testifies as follows:

20 THE CLERK: Thank you. If you'll have seat,
21 please. And for the record if you'll please state your
22 full name, spelling your last.

23 THE WITNESS: Brian Gregory Sadler,
24 S-A-D-L-E-R.

25 MR. BUTLER: Your Honor, may I approach the

1 court reporter, please?

2 THE COURT: You may.

3 MR. BUTLER: Just mark this for I.D., please.

4 (Defendant's Exhibit No. 1, additional
5 narrative report - Officer Sadler, is marked for
6 identification.)

7 MR. BUTLER: May it please the Court.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION (IN CAMERA)

10 BY MR. BUTLER:

11 Q. Good afternoon, Officer.

12 A. Good afternoon.

13 Q. I show you what's defendant's one for
14 identification. Do you recognize that document?

15 A. I do.

16 Q. I want to ask you some questions about that
17 document and your involvement in this case. Do you
18 remember your involvement in this case?

19 A. I do.

20 Q. Okay. And from your report can -- I can't tell
21 from your report. What time did you arrive on the
22 scene; do you know?

23 A. From the report I cannot tell what time I arrived
24 on the scene.

25 Q. Do you recall where the defendant was when you

- 1 arrived at the scene?
- 2 A. No, I do not.
- 3 Q. Okay. You were not present when he was arrested?
- 4 A. I was outside the facility.
- 5 Q. Okay.
- 6 A. I didn't see him exactly.
- 7 Q. He was arrested inside the hospital, correct?
- 8 A. I'm not a hundred percent sure on that.
- 9 Q. Okay, that's fine. Fair enough. Your report
- 10 indicates that you conducted a search incident to
- 11 arrest; is that right?
- 12 A. That's what it states.
- 13 Q. Okay. And is that what you recall?
- 14 A. We conducted what was a search incident to
- 15 arrest; however, we had to inventory the vehicle because
- 16 the driver was being arrested.
- 17 Q. Okay.
- 18 A. Per policy.
- 19 Q. The car was parked lawfully, correct?
- 20 A. I do believe so.
- 21 Q. In Roper St. Francis Hospital, correct?
- 22 A. That'd be correct.
- 23 Q. And it wasn't posing a hazard to other drivers,
- 24 right?
- 25 A. It was not posing a hazard, no.

1 Q. And you looked in only the passenger compartment
2 or the trunk or both?

3 A. We conducted an inventory of the whole entire
4 vehicle.

5 Q. You didn't take anything except the towels out of
6 the vehicle, though, right?

7 A. I believe so. I'm not sure.

8 Q. Okay. And the only information you had at that
9 point was that he had been arrested and that you could
10 then search the car?

11 A. I knew that he was arrested and the vehicle was
12 going to be towed.

13 Q. Okay. You knew nothing else?

14 A. Nothing else at that time.

15 Q. You had no information about the case other than
16 he had been arrested and the vehicle was going to be
17 towed?

18 A. I knew that he had been arrested, and I knew the
19 charge, what he was being arrested for, and I knew just
20 general knowledge about a sexual assault.

21 Q. And the only thing -- when you do a search
22 incident to arrest, you're then allowed to go in the
23 passenger compartment of the car and look for evidence.
24 That's your understanding, right?

25 A. That is correct.

1 Q. And that's what you did in this case?

2 A. We looked in the passenger car and then we
3 conducted an inventory of the vehicle, deferring to
4 departmental policy.

5 Q. Okay. I mean, you keep saying that, but it was
6 an inventory, but you were looking for evidence. That's
7 why you took the towels?

8 A. No. We -- inventory is to ensure that nothing is
9 mistaken and taken out of the vehicle or vandalized, to
10 protect the department and to protect the person who
11 owns the vehicle and the property.

12 Q. All right. The used towels, the only thing that
13 were taken from the trunk as far as you're aware?

14 A. As far as I'm aware.

15 Q. Okay. And why would you take that to protect the
16 interest of the property owner?

17 A. Also included in the inventory, if contraband or
18 evidence is uncovered...

19 Q. Okay.

20 A. --- take that.

21 Q. Okay. So you seized those as evidence?

22 A. I believe, correct.

23 Q. Okay.

24 A. Yes.

25 Q. But you knew nothing other than there was a

1 sexual assault? That's it?

2 A. Correct.

3 MR. BUTLER: Got it. That's all I have.

4 CROSS-EXAMINATION (IN CAMERA)

5 BY MR. SIMPSON:

6 Q. Now, Officer Sadler, you knew that an arrest had
7 been made?

8 A. Correct.

9 Q. You knew the nature of that charge?

10 A. Correct.

11 Q. You knew there was a sexual assault?

12 A. Correct.

13 Q. And your understanding -- did you know that the
14 defendant was a recent occupant of that vehicle?

15 A. I did.

16 Q. Did you know that was the vehicle that he had
17 driven to the -- what location was this?

18 A. Roper Northwoods Hospital.

19 Q. And you knew that was the vehicle he had driven
20 there?

21 A. That's correct.

22 Q. And, again, you knew he was a recent occupant of
23 that vehicle?

24 A. That's correct.

25 Q. What's North Charleston policy regarding when an

1 arrest is made and you have an unoccupied vehicle ---

2 A. We have ---

3 Q. --- associated with that arrest?

4 A. We have to tow the vehicle to ensure that the
5 vehicle doesn't get damaged. Also, to protect the
6 department to make sure that the owner of the vehicle
7 doesn't claim that something was taken out of the
8 vehicle, we list the property. And any evidence,
9 contraband, or high value items we have to log into
10 evidence.

11 Q. And if the -- and through the course of
12 performing this inventory if you come across an item you
13 think even has a possibility of being -- having some
14 evidentiary value to the case, what do you do then?

15 A. We -- in regards to this case, we called our
16 crime scene technician out who then photographed and
17 placed it into evidence as possible evidence.

18 Q. And Mr. Butler asked you if you seized the
19 towels. Did you personally seize the towels?

20 A. When we opened the trunk, we saw the towels in
21 there. We called our crime scene technician. She
22 photographed the towels, and then she collected the
23 towels and placed them in evidence.

24 Q. So when you saw the towels, you thought they
25 might be relevant to the case?

1 A. That is correct.

2 Q. And why did you think they might be relevant to
3 the case?

4 A. In reference to a sexual assault, it is a
5 possibility that he could have used that for any number
6 of things, wiping himself off, cleaning up, any hiding
7 the crime.

8 Q. And it was your understanding, again, under North
9 Charleston police department policy that this car needed
10 to be towed?

11 A. Yes.

12 Q. And inventoried pursuant to that tow?

13 A. That's correct.

14 Q. Now, in your report you do also reference this as
15 a search incident to arrest. You stated that you knew
16 an arrest had been made. Is your understanding that
17 when an arrest is made of a recent occupant of the
18 vehicle the law allows you to search incident to that?

19 A. That is correct.

20 Q. And was it also your understanding at the time
21 that once an arrest has been made that that arrest was
22 based on probable cause?

23 A. That is correct.

24 Q. And, again, you had personal knowledge that the
25 defendant was a recent occupant of that vehicle?

1 A. That is correct.

2 MR. SIMPSON: Court's indulgence.

3 THE COURT: Yes, sir.

4 MR. SIMPSON: The state has nothing further
5 of this witness.

6 MR. BUTLER: A brief follow up.

7 THE COURT: Yes, sir.

8 REDIRECT EXAMINATION (IN CAMERA)

9 BY MR. BUTLER:

10 Q. Your report indicates a search incident to
11 arrest, and today you talked about an inventory search.
12 Have you talked to anybody about this specific issue
13 today...

14 A. No, I have not.

15 Q. --- on that? Okay. And was there any reason
16 that you could not have secured the vehicle and gotten a
17 search warrant at that point?

18 A. Can you rephrase the question?

19 Q. Is there any reason that you could not have just
20 secured the vehicle -- I mean, he's arrested, right?

21 A. Correct.

22 Q. Someone else has the keys, right? Anything to
23 prevent you from getting a warrant at that point?

24 A. Well, our policy states when the driver is
25 arrested we don't -- we have to tow the vehicle.

1 However, we could have left an officer there, but that
2 would tie up an officer, and we had calls pending, and
3 it's just the easier and faster method.

4 Q. It's easier and faster to tow it as opposed to
5 getting a warrant?

6 A. As to us having an officer go and get a judge,
7 sign an affidavit and get the warrant, then come all the
8 way back to the vehicle and have an officer standing by
9 the car wasting time.

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

11 THE COURT: Yes, sir.

12 MR. BUTLER: Approach the court reporter?

13 THE COURT: Yes.

14 (Defendant's Exhibit No. 2, photo - towels in
15 trunk, is marked for identification.)

16 MR. BUTLER: If it please the Court.

17 BY MR. BUTLER:

18 Q. Defendant's two for I.D., do you recognize that
19 as the trunk of the defendant's vehicle that night?

20 A. It looks similar. Looks like that, yes, sir.

21 Q. One of the reasons that you said that you have to
22 inventory, do an inventory search of a vehicle, is to
23 protect the property interest of the owner of the
24 vehicle; is that right?

25 A. Correct.

1 Q. I mean, you see that there's a bag with his
2 personal belongings here, correct?

3 A. Correct.

4 Q. It's a Louis Vuitton bag?

5 A. I don't know the brand.

6 Q. Did you seize that bag?

7 A. I am not sure. I don't have any of that
8 information in front of me.

9 Q. And this looks like a bag with someone's personal
10 effects, correct?

11 A. It would appear so.

12 Q. All right. Do you recall seizing that bag?

13 A. I do not believe so. I don't know.

14 Q. The only thing that you're aware of that was
15 seized were the towels?

16 A. That is correct.

17 MR. BUTLER: That's all I have.

18 MR. SIMPSON: A brief follow up, Your Honor.

19 RECROSS-EXAMINATION (IN CAMERA)

20 BY MR. SIMPSON:

21 Q. Now, Officer, when we talk about inventory and
22 items, are we talking about seizing them or are we
23 talking about noting them for the owner of the vehicle?

24 A. Noting them for the owner. That way they can't
25 say that something was stolen from the vehicle.

1 Q. Okay. And you testified earlier that this is
2 North Charleston procedure, correct?

3 A. That is correct.

4 Q. And do you follow procedure when you're ---

5 A. That is correct.

6 Q. --- on the job?

7 MR. SIMPSON: Thank you. No further
8 questions.

9 MR. BUTLER: I have no follow up.

10 THE COURT: All right. Officer Sadler, you
11 may step down.

12 THE WITNESS: Thank you, Your Honor.

13 (The witness leaves the witness stand.)

14 THE COURT: Anything further? Any other
15 witnesses?

16 MR. BUTLER: No, ma'am.

17 MR. SIMPSON: No, Your Honor.

18 THE COURT: All right. Mr. Butler, you are
19 -- this motion is to suppress the towels in its
20 entirety?

21 MR. BUTLER: Yes. And I characterize it that
22 way even though it's the state's burden when there is a
23 warrantless search of a defendant's property resulting
24 in evidence that they intend to use at trial. It is the
25 state's burden to prove that evidence or a search falls

1 within an exception.

2 I have two cases I want to talk about today.
3 One is *State vs. Brown*, 698 S.E.2d 811, which cites
4 *State vs. Weaver*: The burden of establishing the
5 existence of circumstances constituting an exception to
6 general prohibition against warrantless search is upon
7 the state.

8 Beg the Court's indulgence.

9 THE COURT: Yes, sir.

10 MR. BUTLER: And I would like to talk about
11 *Brown* in a little more detail. May I approach, Your
12 Honor?

13 THE COURT: You may.

14 MR. BUTLER: Passing up to the Court *State*
15 *v. Brown* and also *Arizona vs. Gant*, a Supreme Court case
16 from last year, 129 S.E. (sic) 2d 1710.

17 I gather from the state's questioning we all
18 agree that this really was not a search incident to
19 arrest, but I'll speak to that briefly.

20 A search incident to arrest allows for the
21 officer's safety. Once a person is arrested, a search
22 of the wingspan of from where the person was arrested,
23 that area. *Chimel vs. California* is the old case law we
24 all had to learn in law school. That was then applied
25 to vehicles. *Belton vs. New York*, *Belton vs. New York*

1 City, you're limited to the interior of the car.

2 But Mr. Meggett was not arrested in the car.
3 He's arrested in the hospital. So from the beginning
4 it's not a search incident to arrest.

5 Afterwards, in the *Gant* case, just last year,
6 once the defendant is arrested there is no exigent
7 circumstances, no reason to do a search incident to
8 arrest. So it's not a search incident to arrest.

9 They clearly do not have probable cause at
10 that point to go into the trunk. All he knows is that
11 there's a sexual assault, and that's it, and that the
12 defendant drove the car there. No reason to think that
13 he's going to find evidence in the trunk other than that
14 the client was driving the car. That's it.

15 Nobody is saying he took towels. Nobody's
16 saying he took towels from the incident. Nobody's
17 saying he took towels from the incident location and had
18 them in the car. So it wouldn't satisfy a probable
19 cause standard, either.

20 Probable cause for an arrest, which
21 Mr. Simpson asked that during his cross-examination of
22 the witness, probable cause for arrest is not the same
23 thing as probable cause to search. Probable cause to
24 arrest would be a component of probable cause to search.

25 There has to be probable cause to believe

1 that evidence of the crime would be found in the
2 location to be searched. That's the nexus requirement.
3 The U.S. Supreme Court case on that is *Zurcher vs.*
4 *Stanford Press*. No reason for them to think that
5 there's any evidence in the trunk. They were going on a
6 fishing expedition, plain and simple.

7 Now, as for it being an inventory search,
8 *Brown* speaks to that, as well. *Brown* is our version of
9 *Arizona v. Gant*. It does a very excellent explanation
10 of that law. I don't think *Gant* applies, but it tells
11 you when you can go places beyond the interior of the
12 car even if it would be a search incident to arrest.
13 You have to either have probable cause or there has to
14 be some other exception, and they address whether or not
15 it was a suitable inventory search in that case.

16 In that case -- beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 MR. BUTLER: The state tried to say that when
19 they found drugs in the driver's duffel bag that it was
20 a search -- an inventory search of the vehicle, and the
21 court disagreed.

22 And the very last paragraph of *Brown* -- well,
23 I take it back. On the next to the last page, in the
24 last paragraph -- and we've just got Lexis. I don't
25 know why they don't put page numbers. My apologies for

1 that. But on the next to last page, the last sentence
2 of the last paragraph:

3 Standardized criteria or a established
4 routine must regulate the opening of containers found
5 during inventory searches is based on the principle that
6 an inventory search must not be a ruse for general
7 rummaging in order to discover incriminating evidence.

8 He admitted to me that he was looking for
9 evidence at that point. He says, yeah, it's an
10 inventory search, but I'm also looking for evidence.
11 You can't conflate those two ideas. If it's an
12 inventory search, he's not looking for evidence.

13 Mr. Simpson got up and said, well, if you
14 stumble across some evidence you're allowed to seize it.

15 But he has no reason to think that that's
16 evidence of anything. They were clearly looking for the
17 evidence. There was no reason they couldn't get a
18 warrant.

19 And just to hide behind it was an inventory
20 search -- by the way, it's not what the report says.
21 It's a search incident to arrest, to the extent that
22 matters. If you can hide behind that, then it would
23 make the probable cause requirement of vehicles obsolete
24 because you could always just say, well, it was an
25 inventory search, we arrested the driver, we were going

1 to take the car.

2 Well, it's not like it's on the freeway.
3 It's not like it's blocking traffic. It's right there
4 in the parking lot. There's no reason they couldn't get
5 a warrant.

6 Now, if the Court's -- earlier I had a
7 separate motion for this evidence. And if it helps the
8 Court understand the context in which this arises, my
9 client's DNA is on the towel. The victim's DNA is not
10 on the towel. My client's DNA is mixed with a third
11 person on the towel in the same spot. His DNA and
12 someone else's, it's a mixture of his and someone else.

13 There's two towels in the car that as far as
14 I can tell are both just regular white towels. My
15 understanding from discussions with Mr. Simpson is the
16 victim cannot say those are definitely the towels but
17 that they look like towels she may have had.

18 We're not -- we're not saying that he didn't
19 have sex with her. So I really in some ways don't care
20 about the towels, except for this. This is the reason I
21 really care about them. It's mixed with his DNA and
22 someone else's, and I don't want the jury to speculate
23 as to what that could be. It's not hers.

24 We think we're going to be able to prove
25 through my client and from the DNA analyst they didn't

1 come from the incident location, they weren't taken from
2 there.

3 He had them in the trunk. The photograph
4 will show that he's got cleaning agents to clean his car
5 and a bucket, and what he would testify to if he had to
6 is that the towels were there to help wash his car,
7 which makes perfect sense.

8 If it was just his DNA on it, I probably
9 wouldn't care. If it was his DNA and her DNA, probably
10 wouldn't care. We agree that he -- we admit that he had
11 sex with her. But it's his DNA mixed with someone
12 else's, and I don't want the jury speculating what that
13 -- what that could mean.

14 Now, I know this has nothing to do with the
15 Fourth Amendment issue, but I want to give Your Honor
16 the context as to why I care about these towels.

17 We would also have an objection under 403
18 and 404.

19 That's all I have.

20 MR. SIMPSON: Thank you, Your Honor. We
21 would disagree strongly with several contentions that
22 Mr. Butler just made.

23 First of all, the fact is that under
24 U.S. v. Carroll you have the recognition of the
25 automobile exception to the warrant requirement, which

1 talks about how the reduced expectation of privacy and
2 the mobility of a vehicle, of an automobile, makes it
3 such where the police can search an automobile without
4 a warrant if they have probable cause.

5 You heard testimony from the officer that he
6 knew at that time Mr. Meggett was a recent occupant of
7 that vehicle. And by "recent," he had just driven it to
8 the hospital. He knew an arrest had been made. He knew
9 the nature of that arrest, for criminal sexual conduct.
10 And under *Carroll vs. U.S.*, with all of that in mind and
11 the totality of the circumstances, had probable cause
12 to search that vehicle and any compartment of that
13 vehicle where evidence of the alleged crime might have
14 occurred.

15 Secondly, we also disagree with Mr. Butler as
16 to whether or not this was a valid search incident to
17 arrest. *U.S. v. Gant*, the case that Mr. Butler cites,
18 makes it very clear that you can search an automobile if
19 you are looking for evidence of the alleged crime.

20 And in *U.S. v. Gant*, as we all know, he got a
21 DUS, driving under suspension, and the Supreme Court
22 held that there was no logical reason to think that
23 further evidence of a driving under suspension might be
24 found in that car.

25 However, there is a logical inference that

1 evidence of a criminal sexual conduct might be found in
2 that car, and a great example is this case. They found
3 it, the towels in the back of the trunk.

4 Lastly, Your Honor -- and I'm glad Mr. Butler
5 brought up *State vs. Brown*. In *State vs. Brown* they did
6 exclude the evidence, and in the last section they do
7 talk about an inventory search and the doctrine of
8 inevitable discovery.

9 What happened in *Brown* is that they heard no
10 testimony in *Brown*. And if you read that section, it's
11 clear that -- that the officer was following
12 standardized procedures, he was following North
13 Charleston policy, that the -- under that policy this
14 vehicle was going to be towed, it was going to be
15 inventoried. If that's the case and if the court hears
16 evidence of that, under *State vs. Brown*, then the
17 doctrine of inevitable discovery would apply.

18 And, again, I pointed out that inventory in a
19 search means listing, you know, the items in the car.
20 It doesn't mean seizing them. And if in the course of
21 an inventory search they find any item that might have
22 some reference to the case, then of course it's going to
23 be seized by crime scene. That's not rummaging for
24 evidence. That's seizing evidence when you come across
25 it in an inventory search.

1 Lastly, as to the towels, and obviously we're
2 going to be disagreeing at trial as to what in fact the
3 DNA shows. It shows in several places on this towel the
4 DNA of Mr. Meggett. We'll have testimony that it was
5 DNA from semen. And, yes, they found a very -- another
6 minor contributor for which there are hundreds of
7 logical explanations that do not preclude it from being
8 the towel used in the present case. Again, that's not
9 relevant really to the search issue, but I just bring
10 that up because Mr. Butler addressed it.

11 Thank you, Your Honor.

12 THE COURT: Mr. Butler, your response.

13 MR. BUTLER: Just briefly.

14 With respect to *Gant* and a search incident to
15 arrest, if the nature of the offense in and of itself
16 will allow a search of the vehicle, the language that
17 Mr. Simpson quoted, *Gant* does say that; but that's still
18 limited to the interior of the car, not the trunk.

19 And again I apologize for the pre-pagination,
20 but the second, third, fourth, the fifth page of the
21 copy that I handed the Court -- no -- sixth, the first
22 full paragraph:

23 Although it does not follow from *Chimel*, we
24 also conclude circumstances unique to the vehicle
25 context justifies search incident to a lawful arrest

1 when it is reasonable to believe the evidence relevant
2 to the crime of the arrest might be found in the
3 vehicle. It's the language that Mr. Simpson quoted.

4 In other words, if you pull up to somebody
5 and he's smoking marijuana in the car, you can search
6 the interior of the car, okay? All right.

7 In many cases, as when a recent occupant is
8 arrested for a traffic violation, there will be no
9 reasonable basis to believe the vehicle contains
10 relevant evidence. That in itself, you're not going to
11 find further evidence of the DUS.

12 But now going back to Mr. Simpson's, the case
13 he wants to appeal to: But in others, including *Belton*
14 and *Thornton* -- those are cases where the nature of the
15 arrest will allow a search of the car -- the offense of
16 arrest will supply a basis for searching the passenger
17 compartment of an arrestee's vehicle and any containers
18 therein.

19 Not the trunk. The search incident to arrest
20 exception has never extended to the trunk. Absent *Gant*,
21 it does not get to the trunk. They have to have
22 separate probable cause to get to the trunk.

23 Yet *U.S. vs. Carroll*, if there is separate
24 probable cause, they don't need a warrant. I agree with
25 that, but this isn't probable cause.

1 If all he knew was that a person was charged
2 with criminal sexual conduct or murder and if they had
3 ridden in the car that justified a search of the trunk,
4 that would all -- that would do away with the nexus
5 requirement.

6 There is a nexus requirement for probable
7 cause for search of any home or vehicle or any other
8 container. There has to be reason to suspect there will
9 be evidence found in the place.

10 And our position is that this officer wasn't
11 told anything about towels, wasn't told anything about
12 the nature of -- other than it was a sexual offense,
13 wasn't told where it happened, how long ago it had
14 happened.

15 He says search incident to arrest on his
16 report, goes in the trunk, now wants to say it's an
17 inventory search, that's fine; but he doesn't know
18 anything other than that the defendant drove that car
19 and that he was arrested for a sexual crime. That would
20 never withstand a warrant that said that, it would never
21 withstand Fourth Amendment scrutiny, and this is no
22 different. Would that be sufficient for a magistrate to
23 issue a warrant for probable cause? No.

24 He was driving the car. Someone says that he
25 committed a sexual offense before. We don't know when.

1 No one is saying that he took towels from the location,
2 that he used a towel.

3 That would just be license to go through his
4 car as a whole, which is what they did. They just
5 happened to take the towel.

6 THE COURT: And, Mr. Butler, what about the
7 doctrine of inevitable discovery? Does that apply here?

8 MR. BUTLER: I don't think so because the
9 only -- the only other option would be the inventory
10 search, but an inventory search, as Brown says, cannot
11 be used as a ruse to look for evidence.

12 I asked him, and I asked him that question
13 for a reason. You're operating under the assumption
14 that when you make an arrest you can search the car for
15 evidence? And he said yeah. Well, that's wrong.

16 You know, of all the things he took -- and if
17 it's not in that photograph, there's another one. There
18 are condoms in the trunk. He didn't take those.

19 And if you're just listing the things that
20 are -- that you would say is in the car to prevent
21 someone from later saying they're stolen, then why take
22 the towels?

23 They were looking for evidence. They -- he
24 said it. He thought that he -- his mistake was he
25 thought a search incident to arrest gave him license to

1 look for evidence in the trunk, and this idea of an
2 inventory search is an afterthought.

3 THE COURT: I'll allow you brief rebuttal,
4 Mr. Simpson.

5 MR. SIMPSON: Well, Your Honor, we just
6 repeated earlier, we believe there was probable cause
7 that occurred on the search of the trunk given the
8 nature of the offense of a criminal sexual conduct.

9 The facts themselves point to that fact and
10 that he did know enough surrounding this case to know
11 that a towel was relevant or it would never have been
12 noted by him and pointed out to crime scene. He knew it
13 was a CSC. He knew the defendant was a recent occupant.
14 He knew there had been an arrest based on probable cause
15 of the defendant.

16 And I would like to point out a case that I
17 didn't point out earlier which is the *U.S. v. Thornton*
18 which says that the search incident to arrest of an
19 automobile also applies to a recent occupant as well as
20 someone arrested in the car. This was, first and
21 foremost, he had probable cause to go into that trunk.

22 Furthermore, as he testified, the policy of
23 North Charleston police department was to tow and
24 inventory the car, invoking the inevitable discovery
25 doctrine, Your Honor. The towels should not be excluded

1 in the present case.

2 Thank you.

3 THE COURT: All right. Counsel, I am going
4 to take -- I'm going to review the cases that you have
5 presented. I'm going to take this matter under
6 advisement. We're going to begin with opening
7 statements. There is to be no mention of the towels
8 that were obtained from the trunk until I've issued my
9 ruling.

10 We'll take ten minutes in order for everybody
11 to get situated. We'll be at ease. Thank you.

12 (A break is taken at approximately 2:45 p.m.)

13 (The trial reconvenes at approximately
14 2:55 p.m., the defendant being present with counsel, and
15 the following proceedings were had:)

16 THE COURT: Anything before we bring in the
17 jury, Mr. Simpson?

18 MR. SIMPSON: Nothing from the state, Your
19 Honor.

20 THE COURT: Mr. Butler, anything before we
21 bring in the jury?

22 MR. BUTLER: No, ma'am.

23 THE COURT: All right. Bring in the jury.
24 Please rise for the jury.

25 (Whereupon, the jury enters the courtroom at

1 approximately 2:55 p.m.)

2 THE BAILIFF: The jurors are seated, Your
3 Honor.

4 THE COURT: Thank you. Please be seated.

5 Ladies and gentlemen, please give your
6 attention to the opening statements from the solicitor.

7 Mr. Kidd.

8 MR. KIDD: May it please the Court.

9 THE COURT: Yes, sir.

10 MR. KIDD: Mr. Butler.

11 OPENING STATEMENT

12 BY MR. KIDD:

13 Ladies and gentlemen of the jury, before we
14 selected our jury today and you were sitting in the back
15 of the courtroom with the rest of the panel and Judge
16 Harrington read the charges that we're here for today
17 out to you, I noticed a common change of expression on a
18 lot of faces. That's because what we're dealing with
19 here, criminal sexual conduct in the first degree, is
20 rape, and it's a despicable crime.

21 It's a crime about power. It's a crime about
22 control. Least of which, it is a crime about sexual
23 gratification. It's a crime about the defendant's
24 desire to have power and control over another person,
25 and it's about the fulfillment of that desire. It's

1 physical size and brute force.

2 Moreover, it's about that same power and
3 control in regards to the victim. It's about the loss
4 of power, the loss of control. It's about the inability
5 to determine what does and does not happen to her own
6 body. It's about the loss of a sense of security and
7 the sense of safety in one's own home. It's that which
8 makes these crimes so heinous. It's that which has
9 changed Stacy Hooper forever.

10 On January 12th, 2009, Stacy Hooper had
11 recently returned to Charleston. She was a student at
12 the College of Charleston. She was getting settled into
13 her North Charleston home which she was renting. She
14 got registered for classes that day. And after a long
15 day, she fell asleep early. She fell asleep around 6:00
16 p.m., and she forgot to lock her door.

17 She was awoken around midnight with a man
18 sitting on the foot of her bed whom she knew by the name
19 of Mike. It turns out Mike is this defendant, David
20 Meggett.

21 He questioned her about a \$200 debt which she
22 owed him. She told him she was unable to pay him that
23 day, she would pay him later. That's when he said he
24 was going to take a down payment now, pulled the covers
25 off of her, climbed on top of her, forcibly removed her

1 clothes, choked her to the brink of consciousness,
2 pinned her arm behind her back, and he raped her.

3 I want to talk to you about a couple of
4 things which we're going to hear about over the next few
5 days, one of which is a legal term which is kicked
6 around a good bit in criminal court. It's called beyond
7 a reasonable doubt, and that's the state's burden of
8 proof. That's our burden of proof.

9 There's a couple of things I want you to
10 think about when you think of beyond a reasonable doubt.
11 It doesn't mean beyond all doubt. There's very little
12 in this world that's absolutely certain. It's that
13 which leaves you firmly convinced of the defendant's
14 guilt. And if we provide enough evidence to which you
15 are firmly convinced he's guilty of criminal sexual
16 conduct in the first degree and burglary in the first
17 degree, you must return a guilty verdict.

18 And I want to talk a little bit briefly about
19 the evidence that we expect to show you and you can
20 expect to hear.

21 The things that I say, things that
22 Mr. Simpson says, and the things that the defense
23 attorneys say are not evidence. Evidence comes from
24 witnesses on that chair and from items that we introduce
25 and admit as evidence.

1 You're going to hear from Stacy Hooper.
2 She's going to recount the events of that day and that
3 night. You're going to hear from the officers who
4 responded to the hospital a few hours after the rape.
5 You're going to hear from the officers who responded to
6 her residence to collect evidence. You're going to hear
7 from the doctors who treated her injuries, and you're
8 going to hear from a DNA analyst who's going to tell you
9 that David Meggett's DNA, his semen, was recovered from
10 the comforter from her bedroom.

11 And when we put all that evidence together,
12 it's going to show a picture for you. It's going to
13 paint a picture that corroborates one another. The
14 physical evidence, the testimonial evidence, it all fits
15 together. And when you hear all that evidence, we're
16 going to come back to you at the conclusion of this
17 trial and we're going to ask you to return a verdict.

18 We're going to ask you to return a verdict
19 that brings closure to Stacy Hooper, we're going to ask
20 you for a verdict that enforces the law of South
21 Carolina, and we're going to ask you for a verdict that
22 prevents Mr. Meggett from doing something like this
23 again. We're going to ask you for a verdict which the
24 evidence demands, and we're going to ask you to return a
25 verdict of guilty of criminal sexual conduct in the

1 first degree and guilty of burglary in the first degree.

2 Thank you.

3 THE COURT: Mr. Butler.

4 OPENING STATEMENT

5 BY MR. BUTLER:

6 In the early morning hours of January 13th,
7 2009, David Meggett, my client, found himself at 4232
8 Grimke Street in North Charleston, and it was a house
9 which he was very familiar. He'd been there many times.
10 He found himself with Stacy Hooper, a woman with whom he
11 was very familiar, been with her many times. And she
12 was upset, she was crying for what he had done to her,
13 and he apologized and he asked for her forgiveness
14 because she was his friend and he hurt her.

15 He hurt her, and she was crying, and he was
16 sorry. She wasn't crying because he raped her, he
17 wasn't apologizing for burglarizing her house, because
18 he didn't do either of those two things.

19 And later when he calls her on the phone
20 while she was at the emergency room, David Meggett
21 apologized and asked for forgiveness, and he asked her
22 can I please come to the emergency room and sit with you
23 while you wait. But it wasn't because he raped her or
24 burglarized her house, because he didn't.

25 Stacy Hooper and David Meggett, my client,

1 met several months before this night through Stacy's
2 girlfriend. She had a girlfriend, a romantic
3 girlfriend. She called her her wife, Skylar. And they
4 were all friends, Stacy, Sky or Skylar, and David. They
5 hung out together. They watched movies at Sky and
6 Stacy's house. David came over often. He never
7 knocked. The door was never locked.

8 And the house, 4232 Grimke, is the type of
9 house where the doors are always open, and people from
10 different walks of life come and go, different hours of
11 day, different times of night. Some visitors came just
12 to pass the time. Other people, other people stayed a
13 while. It's a temporary shelter for, I don't know, the
14 wayward and the wandering. David knew many of them, and
15 they all knew him. He was a welcome guest in that
16 house.

17 And it wasn't a particularly nice house.
18 You'll see photographs of it. It's not in the best part
19 of town. Actually, some might say it was barely
20 habitable for some people.

21 Then Sky, Skylar, Stacy's girlfriend, wife,
22 they broke up, and Sky moved back to New York where
23 she's from and left Stacy with all the bills. They were
24 all in Sky's name, the electric, the cable, the rent.

25 And Stacy began to call David, and he helped

1 her out. He helped her out before. He helped her fix
2 her car early in the morning downtown when she called
3 him. They had each other's phone numbers in their
4 phones. He tried to help her find a job because she had
5 no income. And when she couldn't pay the bills, he
6 loaned her money, the money she couldn't pay back.

7 And at some point, Stacy and David struck a
8 sort of less than desirable but informal arrangement.
9 They began to sleep together, and David would forgive
10 her debt, and it had happened more than once.

11 Stacy would later tell authorities that it
12 happened only once, but it happened more than once. And
13 the one time she's talking about is not the night of the
14 incident.

15 So he would help her, but she still needed
16 more money. And at some point David refused to give her
17 any more money, didn't want her to go deeper in the hole
18 till she paid him back what she already owed him. But
19 she couldn't pay him back. She didn't pay him back.

20 January the 13th, late at night, early in the
21 morning, David came by just as he'd always done many
22 times before. Walked in because the door was unlocked,
23 as he'd done many times before. Asked could he see
24 about the money. And when she didn't have the money,
25 they went back to their old ways and their old

1 arrangement, and they had sex, consensual sex.

2 It didn't last long. David soon into it
3 realized that this arrangement wasn't working for him
4 and that he wanted the money that he was owed, and he
5 stopped. He said I don't want to do this anymore, I
6 want the money that you owe me.

7 Stacy said she no longer owed him any money
8 because they had just slept together. They didn't agree
9 whether the debt still was outstanding or whether it had
10 been paid. She said, well, I slept with you, I don't
11 owe you anything. He says, well, you really didn't.

12 And they argued, and names were called, and
13 then it became physical. And what David did then was
14 wrong. Bigger, stronger, shoved Stacy and he pushed
15 her, and he hurt her, and it was wrong and he knew it.

16 But when David left, Stacy didn't call the
17 police. She didn't call 9-1-1. She called her mother.
18 After that, she didn't call the police, she didn't call
19 9-1-1, she went to the hospital.

20 And when she was there, she said that David,
21 who she knew as Mike, had raped her. She said that he
22 straddled her with his body, holding her down with the
23 weight of his body, choking her with his hand, but she
24 fought him she said. He pinned her arm down with one
25 hand and held her down with his arm across her body with

1 his weight, ripped her pants off, forced her legs open
2 and forced himself inside her.

3 And the doctors performed a full exam, head
4 to toe, like you would expect. There were no bruises to
5 her arms. There were no injuries to her legs. There
6 were no bruises or injuries to her chest, her head, her
7 face. She had a bruise on her chin where David pushed
8 her. She had an abrasion to her vagina from consensual
9 sex with him but no bruises to her thighs, her hips, her
10 ankles, her knees, her back, her stomach, nothing.

11 And none of David's DNA was inside her, and
12 the reason for that is because David didn't finish. He
13 was quick to change his mind. And the reason for so few
14 injuries, unlike what you would expect, is because it
15 just didn't happen. What happened, they had sex.

16 And I'm telling you the state is going to go
17 to great lengths to prove to you that they had sex, with
18 the DNA and the forensics and of all of that. I'm
19 telling you they had sex. They don't need to prove it.
20 It happened.

21 They had sex, and Stacy thought that squared
22 their debt, and David didn't, and that's it. That's
23 what happened.

24 And this is my client, David Meggett. And
25 when he walked in to the emergency room at Roper

1 hospital, teeming with police waiting to arrest him, a
2 uniformed officer came to him and said who are you here
3 to see. He didn't run. He didn't hide. He didn't lie.
4 He didn't make anything up. He said I'm here to see my
5 friend Stacy.

6 He asked to come see her, and the reason he
7 did that was because he knew he hurt her physically and
8 hurt her feelings, but he knew he didn't rape her. He
9 knew he had nothing to be worried about because he
10 didn't.

11 He didn't rape her, and he didn't burglarize
12 her house, and if at the close of this case those are
13 the only two charges that will be submitted to you, I'm
14 going to ask you to find him not guilty because he's
15 not.

16 Thank you.

17 THE COURT: If you'll pass out the notepads.

18 (Notepads are provided to the jury.)

19 THE COURT: State, call your first witness.

20 MR. KIDD: May we approach briefly, Your
21 Honor?

22 THE COURT: You may.

23 (There was an off-the-record bench conference
24 in the presence of the jury but out of the hearing of
25 the jury.)

1 (Said bench conference being concluded, the
2 following proceedings were had:)

3 MR. KIDD: The state calls Stacy Hooper.

4 STACY HOOPER,
5 being first duly sworn by the clerk, is examined and
6 testifies as follows:

7 THE CLERK: Thank you. You may have a seat.
8 And for the record if you'll state your full name,
9 spelling your last.

10 THE WITNESS: Stacy Deneen Hooper,
11 H-O-O-P-E-R.

12 THE COURT: Mr. Kidd.

13 MR. KIDD: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. KIDD:

16 Q. Good afternoon, Stacy. How are you feeling
17 today?

18 A. Not so great.

19 Q. Are you nervous?

20 A. Yeah.

21 Q. Understandable. Start off easy. Where do you
22 currently live?

23 A. South Carolina.

24 Q. And when did you first come to Charleston?

25 A. In 2005, around August.

1 Q. August 2005. And for what reason did you come to
2 Charleston?

3 A. Go to college.

4 Q. Go to college. And what were you in college for?

5 A. Theatre.

6 Q. Say that again?

7 A. Theatre.

8 Q. Theatre. We're going to move forward a little.
9 bit. When did you first move in to North Charleston?

10 A. North Charleston, um...

11 Q. Was that also Street?

12 A. On Grimke, my sophomore year, so it had to be
13 2007.

14 Q. 2007. And who did you live there with?

15 A. At the time my ex-wife Sky.

16 Q. And when -- tell the jury a little bit. When did
17 you -- when did you and Sky break up?

18 A. It was around May of 2008.

19 Q. May of 2008. In January of 2009, who lived in
20 the Grimke Street residence?

21 A. It was only me at that time.

22 Q. Only you. When was the first time that you met
23 the defendant, David Meggett?

24 A. Maybe April of 2008.

25 Q. April of 2008. And did you know him by the name

1 of David Meggett?

2 A. No.

3 Q. What did you know him by?

4 A. Mike.

5 Q. Did you know of any last name?

6 A. No, sir.

7 THE COURT REPORTER: I'm sorry, repeat that?

8 THE WITNESS: I said "no, sir."

9 BY MR. KIDD:

10 Q. Were you employed during this time, or were you
11 just in school?

12 A. Can you repeat the question?

13 Q. Were you -- at this time in January of 2009, were
14 you working or were you just in school?

15 A. Just in school.

16 Q. And once again, when did you first meet Mike or
17 David Meggett?

18 A. Around -- around April of 2008.

19 Q. And how did you meet him?

20 A. Through my ex-wife.

21 Q. And do you know how she knew him?

22 A. The day I met him, he just showed up at my house
23 after I got off work, and he said that he knew Sky. And
24 she told me that they met when he -- she was sitting
25 outside smoking and he was walking by.

1 Q. And so this was obviously not in January of 2009.
2 This was back in April of '08?

3 A. Yes, sir.

4 Q. And you said you were working. Where were you
5 working then?

6 A. I was working in landscaping for the City.

7 Q. How often would you see Mike or David Meggett?

8 A. At first, when Sky was still around, he'd be
9 there several times a week, mostly hanging out with her.

10 Q. Were they just friends?

11 A. As far as I know.

12 Q. And I want to get right to it. Did you ever have
13 a romantic relationship with Mike?

14 A. What do you mean by romantic?

15 Q. Well, did you ever get intimate with Mike?

16 A. Intimate, like sexually?

17 Q. Yes.

18 A. I had sex with him one time.

19 Q. And why did you do that?

20 A. At that time, it was about a month after Sky
21 left, and I was -- I had been drinking a lot, and it was
22 a bad decision, and it started, and before it could even
23 get fully started I got nauseous and told him to get off
24 of me.

25 Q. And did he?

1 A. Yes.

2 Q. After Sky left, about how often would you see
3 Mike?

4 A. Maybe once every couple months.

5 Q. Did he ever loan you money?

6 A. Yes.

7 Q. Under what circumstances?

8 A. It was about a month after she left, Sky left,
9 that the power was cut off, because she was on
10 disability and it was in her name and I was -- I didn't
11 have a job at the time. So I was doing side work,
12 scrapping metal, just trying to get it in my name. And
13 he was there at the time. He was helping me do that
14 because my car was broke down. And I just couldn't come
15 up with the money, and he offered to help me.

16 Q. Is that the only time he lent you money?

17 A. Yes.

18 Q. How much money did he lend you?

19 A. \$200.

20 Q. Do you remember about when that was?

21 A. It was around June.

22 Q. June of 2008?

23 A. Yes.

24 Q. Was there a time between June of 2008 and January
25 of 2009 that you left Charleston?

1 A. Yes.

2 Q. Where did you go?

3 A. I went back home in Greer.

4 Q. How long did you stay there?

5 A. Almost a month.

6 MR. KIDD: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. KIDD: Your Honor, may I approach the
9 court reporter?

10 THE COURT: You may.

11 MR. KIDD: Please go ahead and pre-mark all
12 these.

13 (State's Exhibit No. 1, photo - 4232 Grimke
14 Street front exterior, is marked for identification.)

15 (State's Exhibit No. 2, photo - 4232 Grimke
16 Street side front exterior, is marked for
17 identification.)

18 (State's Exhibit No. 3, photo - 4232 Grimke
19 Street back and side exterior, is marked for
20 identification.)

21 (State's Exhibit No. 4, photo - bedroom, is
22 marked for identification.)

23 BY MR. KIDD:

24 Q. Ms. Hooper, I'm going to show you what's been
25 marked as state's exhibits one through four for purposes

1 of identification. Can you take a look at those
2 photographs for me, please?

3 A. (The witness complies.)

4 Q. Do you recognize those photos?

5 A. Yes, sir. Yes, sir.

6 Q. What are these photos of? Well, let's start with
7 number one. What is number one a picture of?

8 A. That's the front of my house.

9 Q. And number two?

10 A. That's the side of my house.

11 Q. And number three?

12 A. That's the side where the side door would be.

13 Q. And number four?

14 A. That's the entrance to my bedroom.

15 Q. Do these photos accurately reflect what the house
16 and your bedroom looked like in January of 2009?

17 A. Yes, sir.

18 MR. KIDD: Your Honor, at this time we would
19 like to move state's one through four into evidence.

20 THE COURT: Any objection?

21 MR. BUTLER: No objection.

22 THE COURT: State's one through four into
23 evidence without objection. You may publish.

24 MR. KIDD: Thank you, Your Honor.

25 (State's Exhibits No. 1, 2, 3, and 4,

1 previously marked for identification, are received in
2 evidence.)

3 BY MR. KIDD:

4 Q. All right, Stacy. I'm going to have you look at
5 the photograph behind you. That's state's exhibit
6 number one. Could you tell the jury what that's a
7 picture of?

8 A. That's the outside gate and then a front door of
9 where -- Street where I lived.

10 Q. Okay. And I'm going to show you what's marked as
11 state's exhibit number two. Can you tell the jury about
12 that photograph?

13 A. Yes. That's the side front, away from the -- the
14 other door would be on this side, but this is the front.
15 The tree is blocking it, but that's the front of the
16 house from like a side angle.

17 Q. I'm going to show you what's been marked as
18 state's exhibit number three. Can you tell the jury
19 about that photograph?

20 A. This right over here, that would be where the
21 backdoor or side door would be. And that's where the
22 front -- that's the front of the house, and this would
23 be the side where the door is.

24 Q. Where would your bedroom be located?

25 A. You really can't see it in this photo.

1 Q. Okay.

2 A. But if you went further back that way, like right
3 past the covering for the side door, there would be a
4 window and that would be the window to my room.

5 Q. Before I go to this last photo, when you
6 testified earlier that you went home for a month, when
7 did you return to Charleston?

8 A. The Sunday before that happened, so it would be
9 the 12th of January.

10 Q. So you returned to Charleston the same day as
11 this incident?

12 A. The day before, the Sunday before.

13 Q. The Sunday before. I'm going to show you what's
14 been marked as state's exhibit number four. Do you
15 recognize that photograph? Do you recognize that?

16 A. Yes. That's the entranceway to my bedroom and my
17 bed and my TV. I was just kind of still getting
18 situated again. So that's my bedroom.

19 Q. All right. Now, I want to take you to January
20 12th, 2009. Can you tell the jury what you were doing
21 that day?

22 A. January 12th? That Sunday?

23 Q. That's the day that -- the day leading up to this
24 event.

25 A. Well, that Sunday I drove home. I drove from my

1 home in Greer down to my home in Charleston which is the
2 Grimke Road. I went to sleep because I had an early
3 morning on the 12th. That Monday, and on the 13th that
4 Monday, I went -- I woke up at about seven o'clock
5 because I still had to get my classes together and I had
6 to get all my books and financial aid situated, get
7 everything in line so I could go to school the next day.

8 Q. Okay. Now, what time did you go to sleep that
9 night?

10 A. Well, I got in at about 6:00, and I just walked
11 into the house and tossed down my bookbag and changed
12 into pajamas and lay down on my bed just to relax. So
13 it would be around 6:00.

14 Q. Did you fall asleep?

15 A. Yes, accidentally.

16 Q. Can you tell the jury what happened next?

17 A. Next thing I remember is I woke up at about
18 12:45, I know that because I looked at the clock, and I
19 saw him sitting -- I saw Mike sitting at the edge of the
20 bed and -- can I ask a question? How explicit do you
21 want me to be?

22 Q. I just want you to tell the truth.

23 A. All right.

24 Q. How did you feel when you saw him at the edge of
25 the bed?

- 1 A. I was scared because I didn't know why he was
2 there.
- 3 Q. Did he have permission to enter your house?
- 4 A. No.
- 5 Q. Did you invite him over that evening?
- 6 A. No.
- 7 Q. And how did you feel when you saw him on the edge
8 of your bed?
- 9 A. I was scared and confused.
- 10 Q. What happened next?
- 11 A. I asked him what the hell he was doing there or
12 doing here, and he stared off for a minute. And I'm
13 curled up against the wall and under the covers. And he
14 said -- he asked me about the money. He goes, do you
15 have the money that I borrowed -- that you borrowed?
16 And I said, I'll get my FAFSA Friday and you'll get your
17 \$200.
- 18 Q. What's FAFSA?
- 19 A. FAFSA is student aid for -- it's just money to
20 help kids go to college.
- 21 Q. And so I didn't mean to cut you off. So you told
22 him you'd get the money for him on Friday?
- 23 A. Yes.
- 24 Q. And then what did he say?
- 25 A. He moved toward me and he said he was going to

1 take the down payment now.

2 Q. And what did he do?

3 A. He pulled my covers away, and he grabbed me at
4 the neck and held me like this (demonstrating), sort of
5 against the wall, sort of against the bed, and he
6 straddled me, and with one arm he took off -- he was
7 trying to take off my pants, but I was fighting him, so
8 it was harder for him. And I was cussing at him, and I
9 called him an asshole and to fuck off and to leave me
10 the hell alone. And he wouldn't. He just kept -- kept
11 getting like tighter and tighter around my neck.

12 Q. Could you breathe?

13 A. No. And I kept fighting him, and he finally
14 got my pants off, and he forced my legs open because
15 he... (crying)

16 Q. It's all right. Take your time. We'll move on
17 to something else real quick.

18 A. No, we're okay.

19 Q. Well, how tall are you?

20 A. Five-seven.

21 Q. How much do you weigh?

22 A. 130 pounds.

23 Q. Is Mike significantly bigger than you are?

24 A. Yes.

25 Q. If you need a glass of water or something, too,

- 1 right there, or a break.
- 2 A. Yeah. (The witness gets water.)
- 3 Q. So -- all right.
- 4 A. Would you like me to continue?
- 5 Q. Pick back up, yes.
- 6 A. Okay. Well, when he did that, he asked me if I
- 7 had any condoms, and I told him that no. My exact words
- 8 were no, I don't have a condom, I'm a fucking lesbian.
- 9 And he pushed my legs apart with his knee, and then he
- 10 pushed himself into me. And I told him to leave me the
- 11 fuck alone and go away, and that's when he pulled my arm
- 12 behind my back like this (demonstrating), and he pulled
- 13 it up and he held it there, and he said friends don't
- 14 call friends assholes, and he told me -- he said
- 15 apologize.
- 16 Q. He wanted you to apologize to him?
- 17 A. (The witness nods head up and down.) And he just
- 18 kept choking me harder. So I didn't know what else to
- 19 do, so I apologized. Then he let go of my arm, and I
- 20 guess he had finished.
- 21 Q. Do you know if he ejaculated?
- 22 A. No.
- 23 Q. How long would you say it lasted from the time
- 24 that he sat on the bed, on that foot of the bed, until
- 25 he got off of you?

- 1 A. Maybe 15 minutes.
- 2 Q. What happened when he got off of you?
- 3 A. He asked me where some towels were.
- 4 Q. And what did you do?
- 5 A. I told him I don't know, probably in the closet,
- 6 and then he threw -- threw my pants at me, the ones he
- 7 tore off me.
- 8 Q. How long did he stay there?
- 9 A. After that?
- 10 Q. Uh-huh.
- 11 A. He went into the closet and I guess grabbed a
- 12 towel, and popped his head in and said I'm going, and
- 13 walked right out.
- 14 Q. And what did you do next?
- 15 A. I ran in to make sure all my windows and doors
- 16 were locked, and I called my mom.
- 17 Q. How did you feel?
- 18 A. I was scared because I didn't know where he was.
- 19 I didn't know if he was going to come back and try to
- 20 hurt me.
- 21 Q. What did you do next?
- 22 A. I thought about going -- calling the cops, but I
- 23 didn't know where he was. I didn't see which direction
- 24 he left, so I didn't want him to get there before they
- 25 did. So I talked to my mom, and she told me to go to

1 the hospital. So I talked to her until I got in my car
2 and locked all my doors and went by around, and I drove
3 myself up to Roper's, around Roper's St. North (sic).

4 Q. When you were at the hospital, did you see a
5 doctor?

6 A. Yes, sir.

7 Q. What did you tell them?

8 A. I told them I was raped.

9 Q. At some point did the police show up?

10 A. Yeah.

11 Q. Can you tell the jury what happened when you were
12 with the police in the hospital?

13 A. Well, I was in the room, and they were checking
14 my neck and my arm to see if anything had been badly
15 damaged. And I was giving a statement to one of the
16 police officers. I didn't catch his name. And he
17 called. I received an unknown number.

18 Q. You received a phone call?

19 A. Yes, sir.

20 Q. And right before we get to the phone call, where
21 were you hurting?

22 A. My shoulder and my neck. That was the most pain.

23 Q. Who called you?

24 A. Mike.

25 Q. So you answered the call?

1 A. Yes.

2 Q. What did he say?

3 A. He asked me what I was doing, and he said he was
4 sorry.

5 Q. Who was in the room with you during that phone
6 call?

7 A. One of the officers.

8 Q. Did he call you again?

9 A. Yeah. He said -- he tried to get me to leave,
10 and I told him that I was hurting. And he said that if
11 I was hurting in a couple of days he'd bring me back to
12 the hospital. And then he was like, well, I'll call you
13 back.

14 Then a few minutes later he called me back, and
15 he still tried to get me to leave, and he asked -- he
16 kept asking me what are you going to tell the doctors,
17 and I told him I don't know. And then again he was just
18 like, okay, I'll call you back.

19 And a few minutes later after that, he called me
20 back, and he was like -- he tried to convince me to
21 leave again, and I told him I was already in the back
22 and they were -- you know, I was about to see a doctor.

23 And he's like, well, what are you going to tell
24 them?

25 I said I don't know.

1 And then he was like, well, if you're not going
2 to leave can I at least come sit up there with you?

3 And I said, sure, whatever.

4 Q. And why did you say that was okay that he come up
5 there?

6 A. Because the police were there.

7 Q. Did you know at that point the police were going
8 to arrest him if he showed up?

9 A. Yes.

10 Q. And did he show up?

11 A. Yes.

12 Q. How do you know that he showed up?

13 A. When he showed up, they brought two forms of I.D.
14 I believe it was a North Carolina and a South Carolina
15 driver's license, and they showed it to me and -- and
16 asked me to I.D. it. I said that's him, but that's not
17 the name I know him by.

18 Q. Did you then go to a different, a separate
19 hospital?

20 A. Yes. One of the officers brought me over to the
21 Women's -- to MUSC Women's Center.

22 Q. And what was done there?

23 A. A rape kit and they gave me medicine for possible
24 STD's.

25 Q. What was that experience like?

1 A. Horrible.

2 MR. KIDD: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 BY MR. KIDD:

5 Q. A couple things we might have skipped over a
6 little bit. Back at the Grimke Street, after he left
7 and you locked the door behind him, did he say anything
8 else to you before he actually left the scene?

9 A. I went back into my room when I was calling my
10 mom after I checked the doors and windows, and he
11 knocked on the window, and he said that was wrong, I
12 fucked up, don't worry about the \$200.

13 Q. And I know it's difficult to talk about, but
14 unfortunately we have to sometimes be explicit. When
15 you said earlier that he entered you, he had sex with
16 you?

17 A. Yes.

18 Q. He penetrated you?

19 A. Yes.

20 Q. Now, I want to talk a little bit more about the
21 first time that you said you kind of had an awkward
22 sexual encounter with him. Where did that occur?

23 A. At

24 Q. At Street?

25 A. Yes.

1 Q. How long before this incident did that take
2 place?

3 A. About nine months before that.

4 Q. What was going on that day?

5 A. We had been drinking. And I was actually staying
6 in the room upstairs. And we were just hanging out, and
7 we were drinking socially together, and I had too much
8 to drink. And for some reason it started going that
9 way, and as soon as -- would you like me to be fully
10 explicit?

11 Q. (Mr. Kidd nods head up and down.)

12 A. As soon as his penis started to enter me, I felt
13 nauseous and I told him I couldn't do it.

14 Q. And he stopped at that point?

15 A. Uh-huh.

16 Q. Was there anyone else at that residence that day?

17 A. No. My roommates were away at that time.

18 Q. When you say you had roommates, did you still
19 have roommates in January of 2009?

20 A. No, sir.

21 Q. But back when this first encounter occurred, you
22 had roommates back then?

23 A. Yes.

24 MR. KIDD: Your Honor, if we may approach?

25 THE COURT: You may.

1 (There was an off-the-record bench conference
2 in the presence of the jury but out of the hearing of
3 the jury.)

4 (Said bench conference being concluded, the
5 following proceedings were had:)

6 MR. KIDD: Court's indulgence for one moment.

7 THE COURT: Yes, sir.

8 BY MR. KIDD:

9 Q. I want to talk a little bit about -- I want to
10 back up a little bit about another point first. Did you
11 have Mike's -- did you have Mike's telephone number?

12 A. Yes.

13 Q. Did y'all talk on the phone often?

14 A. Every now and then.

15 Q. When you say every now and then, do you mean
16 daily? weekly? monthly? What do you mean?

17 A. Monthly, if that.

18 Q. In the month that you were gone, leading up to
19 this, did you talk to him on the phone any?

20 A. Not at all.

21 Q. When you got back in town, did you tell him you
22 were back in town?

23 A. No.

24 Q. Do you recognize him in the courtroom today?

25 A. Honestly, I can't see past the podium.

1 Q. Could you stand up?

2 A. Yes. (The witness complies.) Yes.

3 Q. Can you tell the jury what he's wearing?

4 A. I'll look again.

5 Q. That's all right.

6 A. A dark suit with what looks to be a purple shirt
7 and a tie.

8 MR. KIDD: Just for the record that the
9 witness identified Mr. Meggett.

10 THE COURT: The record will reflect.

11 BY MR. KIDD:

12 Q. Do you know what color the towels were that he
13 used that evening?

14 MR. BUTLER: Objection, lack of foundation.
15 Can we approach?

16 THE COURT: You may.

17 (There was an off-the-record bench conference
18 in the presence of the jury but out of the hearing of
19 the jury.)

20 (Said bench conference being concluded, the
21 following proceedings were had:)

22 THE COURT: Sustained. Rephrase.

23 BY MR. KIDD:

24 Q. When you testified earlier that he asked for a
25 towel, did he get a towel do you know? If you don't

1 know, that's fine, as well.

2 A. As far as I know, he did.

3 Q. Do you know where in your house he got a towel
4 from?

5 A. It would have been the closet in the hallway.

6 Q. Did you ever see a towel in his hands?

7 A. No.

8 Q. Do you know if he left with a towel or towels
9 that evening?

10 A. Well, after he left my room looking for a towel,
11 when he passed my room again he just said I'm out. He
12 didn't really come into the room, and I didn't really
13 get a good look at him.

14 MR. KIDD: Court's indulgence.

15 THE COURT: Yes, sir.

16 BY MR. KIDD:

17 Q. At that point you were living alone; is that
18 correct?

19 A. Uh-huh.

20 Q. Did you own any plain white towels?

21 A. Yes.

22 MR. KIDD: Court's indulgence.

23 THE COURT: Yes, sir.

24 BY MR. KIDD:

25 Q. Was there any identifying characteristics to

1 those towels that you owned, or were they just kind of
2 garden variety towels?

3 A. As far as I can remember them, like garden
4 variety, yeah.

5 Q. I want to show you again what's been marked as
6 state's exhibit number four. Give it just a couple of
7 seconds till it warms up behind you. Okay. What is
8 that blanket on your bed, the plaid one?

9 A. The plaid one? There? (pointing)

10 Q. Right. What is that?

11 A. Can you rephrase your question?

12 Q. I mean, is that your -- is that your bedding? Is
13 that your sheets and comforter?

14 A. Yes.

15 Q. The first time that you and Mike had your sexual
16 encounter, did he ejaculate then?

17 A. I'm not certain.

18 Q. How long did that last the first time?

19 A. The first time that me and him had sex?

20 Q. Correct.

21 A. It lasted no more than a few seconds before I
22 told him to get off of me because I was nauseous.

23 Q. Was it on that same bed?

24 A. No.

25 Q. Was that green plaid comforter on the bed at...

1 A. No.

2 Q. Do you know what kind of car Mike drove?

3 A. I'm not certain which car he drove all the time.
4 He drove several different cars.

5 MR. KIDD: Court's indulgence, please.

6 THE COURT: Yes, sir.

7 MR. KIDD: Please answer any questions
8 defense counsel may have for you.

9 MR. BUTLER: May we approach?

10 THE COURT: You may.

11 (There was an off-the-record bench conference
12 in the presence of the jury but out of the hearing of
13 the jury.)

14 (Said bench conference being concluded, the
15 following proceedings were had:)

16 MR. BUTLER: May I approach the court
17 reporter, Your Honor?

18 THE COURT: You may.

19 (Defendant's Exhibit No. 3, photo - TV in
20 bedroom, is marked for identification.)

21 (Defendant's Exhibit No. 4, photo - bedroom,
22 is marked for identification.)

23 (Defendant's Exhibit No. 5, photo - bedroom,
24 is marked for identification.)

25 (Defendant's Exhibit No. 6, photo - bedroom,

1 is marked for identification.)

2 (Defendant's Exhibit No. 7, photo - interior
3 stairway, is marked for identification.)

4 (Defendant's Exhibit No. 8, photo - plaid
5 comforter, is marked for identification.)

6 (Defendant's Exhibit No. 9, photo - plaid
7 comforter, is marked for identification.)

8 (Defendant's Exhibit No. 10, photo - bed, is
9 marked for identification.)

10 (Defendant's Exhibit No. 11, photo - interior
11 stairway and room, is marked for identification.)

12 (Defendant's Exhibit No. 12, photo - 4232
13 Grimke Street exterior, is marked for identification.)

14 MR. BUTLER: May it please the Court.

15 THE COURT: Yes, sir.

16 CROSS-EXAMINATION

17 BY MR. BUTLER:

18 Q. Ms. Hooper, I have to ask you a few questions,
19 please. I want to talk to you first about your house at
20 4232 Grimke, okay?

21 MR. BUTLER: May I approach the witness?

22 THE COURT: You may.

23 BY MR. BUTLER:

24 Q. I'm going to show you defendant's exhibits three
25 through 12. And if you don't mind, please just look

1 through those and tell me if you can recognize those.

2 A. (The witness complies.)

3 Q. Ms. Hooper, do you recognize those photographs?

4 A. Yes, sir.

5 Q. Are those the inside of your house at

6

7 A. Yes, sir.

8 Q. And one photo of the exterior of the house; is
9 that right?

10 A. Yes, sir.

11 Q. I'm showing you defendant's ten.

12 MR. KIDD: Object unless they be admitted
13 before.

14 MR. BUTLER: Oh, I'm sorry. Move to admit
15 defendant's three through 12, please.

16 THE COURT: Any objection?

17 MR. KIDD: No objection, Your Honor.

18 THE COURT: Defendant's three through 12 into
19 evidence without objection. You may now publish,
20 Mr. Butler.

21 (Defendant's Exhibits No. 3 through 12,
22 previously marked for identification, are received in
23 evidence.)

24 BY MR. BUTLER:

25 Q. If you'll turn around, if you see the defendant's

1 ten, that's your bed that we talked about earlier,
2 correct?

3 A. Yes, sir.

4 Q. Defendant's nine, another picture of the same
5 bed, same time, correct?

6 A. Yes, sir.

7 Q. Defendant's eight, another picture of the same
8 bed at the same time, correct?

9 A. Yes, sir.

10 Q. And defendant's six, do you recognize that as the
11 same bed at the same time?

12 A. Yes, sir.

13 Q. And you see over on the left that's an extension
14 cord; is that right?

15 A. Yes, sir.

16 Q. And that's going from your bedroom to the outside
17 window? Right here?

18 A. I do not recall that.

19 Q. Okay. Well, let me show you state's four. Can
20 you see it better there?

21 A. Yeah.

22 Q. You have the power strip here and an extension
23 cord coming -- you've got the television plugged in here
24 into the power strip and then the extension cord going
25 out the window, correct?

1 A. Yes, sir.

2 Q. Okay. And defendant's 12, do you recognize that
3 as the exterior side of your house on Grimke Street?

4 A. That's the outside, but it was not like that when
5 that -- during that time.

6 Q. And this would be further down the house. It
7 would be past your window. In other words, your window
8 would be, as I'm looking at this image, further off to
9 the right?

10 A. Yes.

11 Q. Okay. And do you see this extension cord here?

12 A. Yes.

13 Q. Is that the extension cord coming out of your
14 window?

15 A. Yes.

16 Q. Okay. And that extension cord was coming out of
17 your window and plugged into the garage in the back; is
18 that right?

19 A. Yes.

20 Q. And that was ---

21 A. I believe so.

22 Q. --- because you didn't have electricity in your
23 house at that time, correct?

24 A. I believe so.

25 Q. But you were able to use the separate meter, the

1 garage in the back, when your electricity was turned
2 off?

3 A. Yes.

4 Q. And defendant's five, that's the side of your
5 bed? Is that right?

6 A. Uh-huh.

7 Q. Defendant's three, that shows the television
8 plugged into the power strip we talked about a minute
9 ago, correct?

10 A. Yes.

11 Q. Defendant's four, what part of the house is this,
12 please?

13 A. I don't recall, honestly.

14 Q. Defendant's seven, that's the stairwell in front
15 of the front door and once you walk in it goes to the
16 upstairs?

17 A. Yes, sir.

18 Q. And there's a loft upstairs?

19 A. Yes, sir.

20 Q. With a daybed?

21 A. Yes, sir.

22 Q. And then a full bed on the other side?

23 A. Yes, sir.

24 Q. And it's separated by a wall?

25 A. Yes, sir.

- 1 Q. With a half bath, right?
- 2 A. Yes, sir.
- 3 Q. And defendant's 11, that's just another picture
- 4 of the same part of the house?
- 5 A. Yeah.
- 6 Q. Who was a guy named Pirate that you knew? Do you
- 7 know a guy named Pirate?
- 8 A. That was a nickname for one of my friends, yes.
- 9 Q. Okay. And Pirate stayed at 4232 Grimke some?
- 10 A. Every now and then.
- 11 Q. Okay. And Jonathan, a friend of yours that
- 12 stayed at 4232 Grimke some?
- 13 A. Yes, sir.
- 14 Q. And Spider, a friend of yours that stayed there,
- 15 as well?
- 16 A. Stewart.
- 17 Q. Say it again?
- 18 A. Stewart.
- 19 Q. Stewart. Did he go by Spider?
- 20 A. Yes, sir.
- 21 Q. Okay. And they were -- and did you have a lease
- 22 for this house?
- 23 A. Yes.
- 24 Q. You did, but they weren't on the lease?
- 25 A. No.

1 Q. They would just stay there sometimes?

2 A. They moved in to help me with the rent.

3 Q. Okay. You were having trouble with the rent, so
4 you took on some roommates, Spider, Jonathan, and
5 Pirate?

6 A. Yes.

7 Q. And you talked a little bit about Sky. Sky was
8 your girlfriend, and you considered her your wife?

9 A. Yes, sir.

10 Q. And Mr. Meggett knew all of those people, too,
11 correct?

12 A. Yes.

13 Q. He knew Sky, Eric -- oh, I know. Eric was the
14 next-door neighbor, right?

15 A. Eric? Yes.

16 Q. Tall guy with the glasses?

17 A. Yes.

18 Q. Okay. Pirate, Jonathan, Sky, Eric, Spider,
19 Mr. Meggett knew all of them, right?

20 A. As far as I know. I suppose.

21 Q. He would hang out over there some, watch movies
22 with you people and your friends?

23 A. Yes.

24 Q. And before Sky moved out -- Sky collected
25 disability, right?

- 1 A. Yes, sir.
- 2 Q. And she paid most of the bills?
- 3 A. Yes, sir.
- 4 Q. And when y'all broke up and she moved out, all
5 the bills were in her name?
- 6 A. Yes, sir.
- 7 Q. And the bills weren't getting paid, were they?
- 8 A. No.
- 9 Q. And sometimes service would get disconnected?
- 10 A. If it was.
- 11 Q. Okay. And Mr. Meggett would lend you money?
- 12 A. He lent me money one time.
- 13 Q. Okay. And you weren't working?
- 14 A. I was searching for a job.
- 15 Q. Okay. And he helped you with that; did he not?
- 16 A. Yes.
- 17 Q. He brought you job applications?
- 18 A. No.
- 19 Q. He brought you want ads from the paper?
- 20 A. No.
- 21 Q. Okay. Well, you said that he helped you. How
22 did he help you in that respect?
- 23 A. Because my car was broke down, he would drive me
24 around places.
- 25 Q. Okay.

- 1 A. To help me find -- look for a job.
- 2 Q. Okay. So when you needed a ride, he would give
- 3 you a ride?
- 4 A. Yes, when he offered. I never asked him.
- 5 Q. He helped fix your car at one point, right?
- 6 A. No.
- 7 Q. He never did?
- 8 A. No.
- 9 Q. You drove an older Chevy?
- 10 A. Older Chevy?
- 11 Q. Is that what you drove at the time?
- 12 A. I drove a Buick at that time.
- 13 Q. Buick, okay. An older one?
- 14 A. Early 90's.
- 15 Q. Okay. And he never helped fix the fuel pump in
- 16 that car?
- 17 A. It never got fixed. My grandfather had to come
- 18 and tow it after the incident.
- 19 Q. He tried to help you fix it?
- 20 A. He tried to.
- 21 Q. Okay.
- 22 A. On one occasion.
- 23 Q. You called him in the middle of the night and he
- 24 met you downtown?
- 25 A. No, sir.

1 Q. How did that happen?

2 A. I had gotten it to my house, and I was working on
3 it in the day, and he had come over to hang out, and he
4 wanted to see if he could help. We couldn't figure out
5 how to get it fixed, so I ended up having to call my
6 grandfather for him to tow it back later on.

7 Q. Okay. You mentioned that he tried to help you
8 when you were trying to -- you were trying to salvage
9 some things; is that right?

10 A. Yes, sir.

11 Q. And he rented a U-Haul for you?

12 A. He said he had a U-Haul and I could use it. I
13 didn't ask him to do that.

14 Q. I know. But he did, and -- and you did, and you
15 took him up on it, correct?

16 A. To my knowledge, he already had the U-Haul and
17 said that I could use it, seeing how he didn't have to
18 have it back till the next day.

19 Q. I understand. He helped you load and drive the
20 truck?

21 A. Yes.

22 Q. Okay. Drove it to wherever you needed to drive
23 it to get rid of the things?

24 A. Yes, sir.

25 Q. During this time when things got tough, you

1 relied upon him to some extent for some things, right?

2 A. What do you mean rely?

3 Q. Well, I mean, you know, it's good to have friends
4 that you can call when you need some things. You
5 depended upon him some; is that right?

6 A. I wouldn't say depended, no.

7 Q. But you could count on him if you needed him?

8 A. Yes.

9 Q. He helped you?

10 A. Yes.

11 Q. And he came by your house fairly regularly?

12 A. When Sky was around, yes.

13 Q. Okay. And the door wasn't always locked,
14 correct?

15 A. Once again, when Sky was around, no, it wasn't.

16 Q. Well, and this night it wasn't locked, correct?

17 A. What night?

18 Q. The night of the 13th?

19 A. Night of the 13th? No.

20 Q. Night of the 12th, morning of the 13th, it was
21 not locked?

22 A. No.

23 Q. And the neighborhood you lived in, it's not the
24 best neighborhood, is it?

25 A. No, sir.

- 1 Q. Probably a good idea to lock the door, right?
- 2 A. Yes, sir.
- 3 Q. But you didn't always keep it locked when Sky was
- 4 there and this night, right?
- 5 A. Correct.
- 6 Q. Are there other break-ins at that house?
- 7 A. No.
- 8 Q. And you had no other roommates. You had
- 9 roommates after Sky moved out, then you had some
- 10 roommates that weren't on the lease but that would help
- 11 you some, but then they all moved out, too, by what,
- 12 late October?
- 13 A. Something like that, yes.
- 14 Q. All right. So late October and November and
- 15 December, you don't have anybody helping you with the
- 16 rent?
- 17 A. No.
- 18 Q. Right? And the power was off?
- 19 A. Not at that time, no, it wasn't.
- 20 Q. Not till January it was off?
- 21 A. No. It was still on. He helped me in June.
- 22 Q. He helped you in June?
- 23 A. Yes.
- 24 Q. But you don't have power January 12th because
- 25 you've got the extension cord out the window back to the

- 1 garage, right?
- 2 A. I honestly don't know about that.
- 3 Q. Okay.
- 4 A. I told my roommates -- they left right around the
- 5 time I left to go home for break, and I told them to be
- 6 gone by the time I got back.
- 7 Q. Okay. So they certainly weren't paying the
- 8 bills?
- 9 A. Apparently not.
- 10 Q. All right. So I take it then that you've never
- 11 been anywhere with Mr. Meggett other than your house on
- 12 Grimke Street?
- 13 A. I went with a ride -- on a ride with him one
- 14 time.
- 15 Q. And where was that?
- 16 A. He was driving around, just showing me -- he
- 17 showed me where his sister lived. He didn't bring me
- 18 in. He just drove past it, and we went back to my
- 19 house.
- 20 Q. Okay. So you didn't go inside his sister's
- 21 house?
- 22 A. No, sir.
- 23 Q. And I take it then you've never been to his house
- 24 in Summerville?
- 25 A. No, sir.

1 Q. You never visited a woman in North Carolina that
2 you met online and then took the bus back to Summerville
3 and stayed with him?

4 A. No. I did visit a woman in North Carolina. I
5 didn't come back to stay with him. I went back to my
6 house.

7 Q. Okay. Well, how would he have known about that?

8 A. I had roommates at the time of me visiting her,
9 and he had shown up around that time and I told him that
10 I was heading to North Carolina to go stay with someone
11 and I was going to be back a certain day.

12 Q. All right. And I have to ask you about the time
13 that you talked about earlier where you and Mr. Meggett
14 had consensual sex in your house. That would be
15 upstairs?

16 A. Yes, sir.

17 Q. It was at night?

18 A. Yes.

19 Q. And it was dark?

20 A. Yes, sir.

21 Q. Okay. And on the night of the 12th, the early
22 morning of the 13th, that obviously was at night?

23 A. Yes, sir.

24 Q. And it was dark?

25 A. Yes, sir.

1 Q. All right. You have several tattoos, don't you?

2 A. Yes, sir.

3 Q. You have a big one on your hip? Right?

4 A. Yes, sir.

5 Q. And then you have one on your wrist; is that
6 right?

7 A. Yes, sir.

8 Q. The time that you discussed earlier that you had
9 consensual sex with Mr. Meggett, that would have been in
10 August? Is that right? August of 2008?

11 A. It sounds about right.

12 Q. Okay. And you didn't have male partners again
13 after that?

14 A. After that? No.

15 Q. All right. So prior to November -- I mean --
16 sorry. Prior to January 12th-13th, the last time you
17 had been with a male partner was August?

18 A. Yes.

19 Q. The time that you had consensual sex with
20 Mr. Meggett, how old were you?

21 A. Twenty.

22 Q. Twenty. And you understood that he was in his
23 early forties?

24 A. No, sir.

25 Q. You did not?

1 A. I didn't know his age at all. He never told me
2 anything he did, how old he was, his last name, nothing
3 about himself.

4 Q. All right. I want to talk about the night of the
5 12th and the early morning hours of the 13th, okay? The
6 first thing he asked you about was the money, right?

7 A. Yes, sir.

8 Q. All right. And when he woke you up and asked you
9 about the money, you didn't yell get out of my house,
10 did you?

11 A. No. I asked him what -- what the hell he was
12 doing there.

13 Q. You didn't say I'm calling the police, did you?

14 A. No.

15 Q. He was, if not a friend, your acquaintance,
16 right?

17 A. Yes.

18 Q. When you arrived at the emergency room -- you
19 never called 9-1-1; is that right?

20 A. That's right.

21 Q. And you never called the police?

22 A. That's right.

23 Q. When you got to the emergency room, hospital
24 staff called the police; is that your understanding?

25 A. Yes, sir.

- 1 Q. And an officer talked to you, right?
- 2 A. Uh-huh.
- 3 Q. And he wanted to know what happened?
- 4 A. Yes, sir.
- 5 Q. And you wanted to help him, right?
- 6 A. Uh-huh.
- 7 Q. You wanted to tell him what happened, right?
- 8 A. Yes, sir.
- 9 Q. And I understand that you were upset, and he did
- 10 the best he could to calm you down, right?
- 11 A. Yes, sir.
- 12 Q. He had you tell him everything just verbally
- 13 first, right?
- 14 A. Yes, sir.
- 15 Q. And then you gave a written statement; is that
- 16 correct?
- 17 A. Yes, sir.
- 18 Q. Did you write it, or did he write it for you?
- 19 A. He wrote it.
- 20 Q. Okay. And then he allowed you to read over it,
- 21 right?
- 22 A. Yes, sir.
- 23 Q. And he wanted you to make sure that everything
- 24 that you said was correct. Right?
- 25 A. Yes, sir.

1 Q. And he told you if you made any mistakes, correct
2 them?

3 A. Yes, sir.

4 Q. If you left anything out, add it now. Right?

5 A. Yes, sir.

6 Q. And you did that. You reviewed it, and then you
7 signed it and said this is my statement, this is what
8 happened. Right?

9 A. Yes, sir.

10 Q. When you talked to -- you said you don't remember
11 his name. So Officer Gooding, does that sound familiar?

12 A. Honestly, I never caught their name, his name.

13 Q. You never told them anything about this statement
14 that you say Mr. Meggett said about I'm getting a down
15 payment now, did you?

16 A. No.

17 Q. After you reviewed the statement, you didn't say,
18 oh, I forgot to put that in here, he said I need to get
19 a down payment, did you?

20 A. No, sir. Can I say something, please?

21 Q. Well, I -- if you need to explain that answer.

22 A. Yes, sir.

23 Q. Okay. You can explain it.

24 A. All right. The reason I didn't say that, I was
25 still flustered and scared.

1 Q. I understand.

2 A. He had been calling me. And there was a second
3 statement taken from Sergeant Spears at the police
4 department, and it goes into that.

5 Q. She spoke to you at ten o'clock the next day and
6 you told her that, right?

7 A. Yes.

8 Q. Okay. You didn't say anything about when he was
9 calling you he was trying to get you to leave the
10 hospital, did you?

11 A. I told them that. I'm not sure if it's in the
12 statement.

13 MR. BUTLER: May I approach the court
14 reporter, Judge?

15 THE COURT: You may.

16 MR. BUTLER: These are for I.D.

17 (Defendant's Exhibit No. 13, witness
18 statement - Stacy Hooper, two pages, is marked for
19 identification.)

20 (Defendant's Exhibit No. 14, witness
21 statement - Stacy Hooper, seven pages, is marked for
22 identification.)

23 MR. BUTLER: May I approach the witness, Your
24 Honor?

25 THE COURT: You may.

1 BY MR. BUTLER:

2 Q. I want to show you defendant's 13 for
3 identification only and ask if you recognize that as the
4 statement that you gave Officer Gooding, the first
5 statement.

6 A. (The witness reviews exhibit.) Yes.

7 Q. That's it?

8 A. He left out some things.

9 Q. I understand.

10 A. And I tried to add them in, but I was so
11 flustered.

12 Q. Okay. So you didn't tell him that Mr. Meggett
13 tried to get you to leave the hospital, or you forgot?

14 A. That statement had already been written.

15 Q. Okay.

16 THE COURT: Ms. Hooper, I'm going to need you
17 to speak into the microphone.

18 THE WITNESS: Oh. Sorry.

19 BY MR. BUTLER:

20 Q. Well, and then later you give a second statement.
21 I ask you if you recognize defendant's 14 for I.D.

22 A. (The witness reviews exhibit.) Yes, sir.

23 Q. Okay. Now -- may I hold it, please. That's a
24 longer, more detailed statement than your first one.
25 It's seven pages, right?

- 1 A. Yes, sir.
- 2 Q. And this is given at ten o'clock the next
3 morning; is that right?
- 4 A. Yes, sir.
- 5 Q. Okay. I want you to take -- take your time, and
6 I want you to read through and tell me if you told
7 Detective Spears that Mr. Meggett was trying to get you
8 to leave the hospital.
- 9 A. (The witness further reviews exhibit.) Yes, sir.
- 10 Q. You didn't tell Detective Spears that, did you?
- 11 A. No, but the officer could hear it.
- 12 Q. Yes, ma'am. And you told them, though, several
13 times that -- that he was calling you, saying he was
14 sorry, right? He said that?
- 15 A. Yes, sir.
- 16 Q. And that he couldn't sleep, right?
- 17 A. Yes, sir.
- 18 Q. And he was asking you to forgive him, right?
- 19 A. Yes, sir.
- 20 Q. And then it was he that wanted to come and sit
21 with you, right?
- 22 A. Yes, sir.
- 23 Q. That was his idea?
- 24 A. The officers tried -- the first two times that he
25 called me, the officers tried to get me to coax him to

1 come up there, but because I didn't know what would
2 happen -- I knew that he might want to come up there,
3 so I just -- I told him to hold on. And the third time
4 he called, he asked -- he said he was sorry, again, and
5 he asked if he could come sit with me, and I
6 said whatever.

7 Q. All right. But he obviously doesn't know that
8 the police are telling you to get him there, right?

9 A. No.

10 Q. He doesn't know that. So when he says to you can
11 I come sit with you while the doctors treat you, he's
12 doing that not knowing that officers are there and not
13 knowing that they're telling you to get him there,
14 right?

15 MR. KIDD: Objection, speculation.

16 MR. BUTLER: No. She's present.

17 THE COURT: Counsel.

18 (There was an off-the-record bench conference
19 in the presence of the jury but out of the hearing of
20 the jury.)

21 (Said bench conference being concluded, the
22 following proceedings were had:)

23 THE COURT: Mr. Butler, please rephrase your
24 question.

25 BY MR. BUTLER:

1 Q. When you're talking to Mr. Meggett, he -- he
2 can't hear you talking to the police?

3 A. No, sir.

4 Q. Okay. And he, on his own, says may I come and
5 stay with you and sit with you. Right?

6 A. Yes, sir.

7 Q. Okay. And the officer could hear Mr. Meggett's
8 end of the conversation, as well, right? And like you
9 told Detective Spears, he called three times and the
10 officer was able to hear him say he was sorry and for me
11 to forgive him. Right?

12 A. Yes.

13 Q. That's what he was saying?

14 A. Yes.

15 Q. You told the officer that he ripped the sheets
16 from the bed; is that right?

17 A. Uh-huh.

18 MR. BUTLER: Judge, can we approach?

19 THE COURT: You may.

20 (There was an off-the-record bench conference
21 in the presence of the jury but out of the hearing of
22 the jury.)

23 (Said bench conference being concluded, the
24 following proceedings were had:)

25 MR. BUTLER: May it please the Court.

1 THE COURT: Yes, sir.

2 BY MR. BUTLER:

3 Q. You told Officer Gooding that he, Mr. Meggett,
4 ripped the sheets from the bed; is that right?

5 A. Yes, sir.

6 Q. And that he, quote, ripped your pants off. Is
7 that right?

8 A. Yes.

9 Q. And you told Detective Spears he straddled you,
10 right?

11 A. He straddled one of my legs.

12 Q. One of your legs. Held you down with the weight
13 of his body?

14 A. Uh-huh.

15 Q. And he grabbed your throat with one hand?

16 A. Yes, sir.

17 Q. And he tried to pull your pants off with the
18 other hand?

19 A. Yes, sir.

20 Q. You had a piercing at the time, did you not, in
21 your lip? Is that right?

22 MR. KIDD: Objection, Your Honor. Relevance.

23 MR. BUTLER: I can respond if you'd like.

24 THE COURT: She may answer.

25 BY MR. BUTLER:

- 1 Q. You had a piercing at the time in your lip?
- 2 A. Yes.
- 3 Q. And you told the detective that he pinned your
- 4 arm behind your back; is that right?
- 5 A. Yes.
- 6 Q. And he placed his arm over the front of you to
- 7 hold you down, and I'm assuming with his forearm; is
- 8 that right?
- 9 A. Yes.
- 10 Q. And you started to fight him. Right?
- 11 A. I was already fighting him.
- 12 Q. Okay. So you were already fighting him and you
- 13 continued to fight him; is that right?
- 14 A. Yes, sir.
- 15 Q. Trying to stop him, right?
- 16 A. Yes, sir.
- 17 Q. And during all this, he's able to get his pants
- 18 off, right?
- 19 A. He had already unbuttoned his pants. He didn't
- 20 take his pants off.
- 21 Q. You say that he asked for a condom, right?
- 22 A. Yes.
- 23 Q. The first time that you had sex with him, was a
- 24 condom used?
- 25 A. Yes.

- 1 Q. But he stopped suddenly this time, didn't he?
- 2 A. Which time? The rape or the...
- 3 Q. The night of the 12th and the morning of the
- 4 13th, he stopped suddenly?
- 5 A. No.
- 6 Q. He didn't finish? He didn't ejaculate?
- 7 A. He didn't ejaculate, no.
- 8 Q. Okay. And you don't think that during the
- 9 fighting that he was injured, right?
- 10 A. Not to my knowledge.
- 11 Q. Say it again? I'm sorry.
- 12 A. Not to my knowledge.
- 13 Q. He wasn't bleeding that you were aware of, right?
- 14 A. Not to my knowledge.
- 15 Q. And after he left, you locked the door?
- 16 A. Uh-huh.
- 17 Q. And you laid down. Right?
- 18 A. I was more in the fetal position, calling my mom.
- 19 Q. And you were crying and upset?
- 20 A. Uh-huh.
- 21 Q. And he knew that, right?
- 22 A. Yes.
- 23 Q. Because he came outside your window and
- 24 apologized, didn't he?
- 25 A.. Yes.

1 Q. And you said on direct that you were worried
2 because you didn't know where he was, but he was
3 outside; is that right?

4 A. Yes.

5 Q. But you didn't call 9-1-1, did you?

6 A. After he left my window, I heard him get in his
7 car and crank up the car, but I didn't know which way he
8 left and I didn't know where he was going. I was afraid
9 that if I tried to call 9-1-1 he would get back before
10 the cops did.

11 Q. I understand. But while he was outside your
12 window you didn't call, either?

13 A. No. I was afraid he was going to come back in
14 somehow.

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

16 THE COURT: Yes, sir.

17 (Mr. Butler and Ms. Penn confer.)

18 MR. BUTLER: That's all I have. Thank you.

19 THE COURT: Redirect?

20 MR. KIDD: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. KIDD:

23 Q. First I want to talk about the two -- your two
24 statements.

25 A. Yes.

1 MR. KIDD: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 BY MR. KIDD:

5 Q. And these are marked for identification as
6 defendant's exhibit 13 and 14, and those are the same
7 two exhibits that Mr. Butler just showed you, and those
8 are the exhibits -- I mean, those are the statements
9 which you made to police officers. Is that right?

10 A. Yes, sir.

11 Q. Okay. Now, the first one -- I'm sorry, I forgot
12 which number it was. The two-page one, is that the
13 first statement you made?

14 A. Yes, sir.

15 Q. When did you make that statement?

16 A. At the hospital.

17 Q. Do you remember about what time it was?

18 A. It was a little after 1:00. It was soon after I
19 got to the hospital.

20 Q. Okay. Was that before the phone calls from Mike
21 or from David Meggett started coming? Do you remember?

22 A. The phone calls started happening right around
23 the end of this.

24 Q. Right around the end of that statement?

25 A. Yes.

1 Q. Okay. What was your demeanor like while you were
2 giving this statement?

3 A. I was scared.

4 Q. You were scared?

5 A. And I didn't know if he had given me anything or
6 if my arm was broke or what kind of damage he did to my
7 neck.

8 Q. That's understandable. The second statement,
9 when did you give that statement?

10 A. The next morning with Sergeant Spears.

11 Q. What time of the morning was it?

12 A. I don't remember. I didn't say.

13 Q. You can refer to the statement.

14 A. The statement? 10:00 a.m.

15 Q. 10:00 a.m. Did you get much sleep that night?

16 A. No.

17 Q. So you were at Roper, giving this statement at
18 1:00 a.m. ---

19 MR. BUTLER: Objection, leading.

20 THE COURT: Let him finish the question.

21 BY MR. KIDD:

22 Q. At what time were you giving this statement?

23 A. Around 1:00 a.m.

24 Q. And how long after you give the statement did you
25 remain at Roper?

1 A. Just about 30 or 45 minutes.

2 Q. Okay. And where did you go after that?

3 A. To the Women's Center.

4 Q. The Women's Center?

5 A. Yes.

6 Q. Do you remember about how long you were at the
7 Women's Center that night?

8 A. About an hour, hour and a half, two hours.

9 Q. So I'm not asking for specific times, but about
10 what time did you leave the Women's Center that night?

11 A. Give me a second to try to think about it.

12 Q. Take your time.

13 A. Probably around 4:00.

14 Q. Around 4:00 a.m. Do you remember where you spent
15 the night that night?

16 A. I really didn't sleep at all. I went to my
17 friends' house, my neighbors. They were good friends.
18 And I told them what had happened. When -- it was in
19 the morning by that time. And I woke them up, and I
20 told them what happened, and they told me that they
21 weren't going to let me go back to my house because it
22 wasn't safe.

23 Q. And when you were at North Charleston police
24 department giving this statement, were you calm or more
25 collected than you were when you gave the first

1 statement?

2 A. Not that much.

3 MR. KIDD: Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. KIDD: Your Honor, at this time the state
6 would like to move defense exhibit 13 and 14 into
7 evidence. I guess we could re-mark them a state's
8 exhibit if that would...

9 MR. BUTLER: No.

10 THE COURT: Any objection?

11 MR. BUTLER: They're hearsay.

12 THE COURT: All right. Counsel approach.

13 (There was an off-the-record bench conference
14 in the presence of the jury but out of the hearing of
15 the jury.)

16 (Said bench conference being concluded, the
17 following proceedings were had:)

18 THE COURT: Sustained.

19 BY MR. KIDD:

20 Q. During cross-examination, Mr. Butler asked you if
21 he ripped the pants off of you. Did he actually tear
22 the pants you were wearing?

23 A. No, sir.

24 Q. So he took them off?

25 A. More like yanked them off.

1 Q. And we're talking about the night of the 12th,
2 the early morning of the 13th. Do you know whether the
3 defendant ejaculated or not?

4 A. Not to my knowledge. I don't know, actually.

5 Q. So if he did, he didn't ejaculate on you?

6 A. (There was no response.)

7 Q. Well, you don't know whether he did or did not?

8 A. No, sir.

9 Q. How long after you got to Roper did you tell them
10 that you had been raped?

11 A. I went through the door straight up to the front
12 counter and told them.

13 Q. So immediately?

14 A. Immediately.

15 Q. Were you drinking that night?

16 A. No.

17 Q. Did you have any bruising as a result?

18 A. Yes, sir.

19 Q. Where was your bruising?

20 A. A handprint on my neck, around like that
21 (indicating).

22 Q. Was your shoulder hurt?

23 A. (The witness nods head up and down.)

24 MR. BUTLER: I object at this point. Beyond
25 the scope of my cross.

1 THE COURT: I'm going to allow it.

2 Ms. Hooper, though, I do need you to answer
3 out loud all of your responses.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Thank you.

6 BY MR. KIDD:

7 Q. Did your shoulder hurt?

8 A. Yes, sir.

9 Q. What caused your shoulder to hurt?

10 A. When Mike took my arm behind my back and he
11 placed it right here, only the other way like that, and
12 pulled it up (demonstrating).

13 Q. How long did it hurt?

14 A. About a month.

15 Q. And was the one consensual time that you and Mike
16 attempted to have sex, was that the only time anything
17 like that had ever happened?

18 MR. BUTLER: Objection. Leading and asked
19 and answered already.

20 THE COURT: Rephrase your question.
21 Sustained as to leading.

22 BY MR. KIDD:

23 Q. How many times did you and Mike have consensual
24 sex?

25 A. One time.

1 MR. KIDD: No further questions.

2 THE COURT: Mr. Butler.

3 MR. BUTLER: No, ma'am.

4 THE COURT: Ms. Hooper, you may step down.

5 THE WITNESS: Thank you.

6 (The witness is excused from the witness
7 stand.)

8 THE COURT: All right. Counsel, approach
9 just for scheduling.

10 (There was an off-the-record bench conference
11 in the presence of the jury but out of the hearing of
12 the jury.)

13 (Said bench conference being concluded, the
14 following proceedings were had:)

15 THE COURT: Ladies and gentlemen, this is an
16 appropriate time for us to break for the evening hour.
17 Typically I try to break as close to 5:00 as possible.
18 I know some of you have some childcare concerns. So we
19 try to break as close to 5:00 as possible, and since
20 it's a quarter till, calling the next witness would not
21 accomplish that goal.

22 Ladies and gentlemen, I just want to remind
23 you, since we are ready for the evening hour, until you
24 have been discharged from service in this case you may
25 not perform any investigation, research, or experiment

1 of any kind on your own either individually or as a
2 group concerning this case.

3 Do not consult any dictionaries for the
4 meaning of any words or any encyclopedias for general
5 information on the subjects of this trial.

6 Do not look up anything on the internet
7 concerning this case or any of the people involved.
8 And, ladies and gentlemen, that includes the defendant,
9 any of the witnesses, the lawyers, as well as the judge.

10 Do not go to the scene where any of the
11 events that are the subject of this trial are alleged to
12 have taken place or use internet maps or Google or any
13 other program or device to search for or view any place
14 discussed during this case.

15 Until you are discharged, ladies and
16 gentlemen, you must not have any discussions about this
17 case or make any entry on Facebook, My Space,
18 Link-Friend, or any other social internet media site.
19 That includes all other forms of oral, written, and
20 electronic communications, including twitter, e-mail,
21 blogging, and texting.

22 Ladies and gentlemen, do not read, watch,
23 listen to any news accounts should there be any
24 regarding this case.

25 Ladies and gentlemen, again, please

1 understand that I am giving these directions as part of
2 my responsibility to ensure fairness to all of the
3 parties in this case. That fairness would be
4 compromised and your actions could jeopardize the
5 results of this trial if you violate these instructions.

6 Ladies and gentlemen, take this opportunity
7 to go home, don't read, watch, listen to any -- any
8 television this evening. Do not -- go ahead, put down
9 your Blackberries for the evening.

10 And, ladies and gentlemen, I know you're
11 going to go home and your significant other is going to
12 ask you what have you done today, and you may say that
13 judge said I cannot talk about my day until my service
14 to Charleston County is complete.

15 Ladies and gentlemen, please be back in your
16 jury room at 10:00 a.m. There are some matters
17 unrelated to this case that I must take up outside of
18 your presence earlier in the morning, and so we will
19 begin promptly at 10:00 a.m. Have a wonderful evening.

20 Please rise for the jury.

21 (Whereupon, the jury leaves the courtroom at
22 approximately 4:45 p.m.)

23 THE COURT: Thank you. Please be seated.

24 Anything before we break for the evening?

25 MR. SIMPSON: Nothing from the state, Your

1 Honor.

2 MR. BUTLER: No, ma'am.

3 THE COURT: All right. We'll begin at 9:45
4 in the morning to address any other issues, and we'll
5 begin with the trial promptly at 10:00. Thank you.
6 Have a wonderful evening.

7 (Whereupon, at approximately 4:50 p.m., the
8 trial is recessed to the following day, Tuesday,
9 November 9, 2010, at 9:45 a.m.)

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1 (On Tuesday, November 9, 2010, the defendant
2 being present with counsel, the trial reconvenes at
3 approximately 9:45 a.m., and the following proceedings
4 were had:)

5 THE COURT: Please be seated.

6 All right. Counsel, anything? We're still
7 waiting on four jurors. Anything -- are we waiting on
8 Mr. Kidd?

9 MR. SIMPSON: Mr. Kidd just went -- he's
10 helping to bring up some evidence, but we can proceed,
11 Your Honor.

12 THE COURT: Okay. Anything, Mr. Butler?

13 MR. BUTLER: I just wanted to place some
14 documents on the record and pass them up to the Court
15 pursuant to my motion from yesterday.

16 THE COURT: All right. Mr. Butler, that's
17 what my -- my next thing is I'm going to rule on that
18 motion, and I apologize for not doing it last evening.
19 It just -- that slipped my mind before we got off the
20 bench and broke for the afternoon. I do not need any
21 additional, but you may make those part of the record.

22 MR. BUTLER: Okay. And just so that I can be
23 clear as to why I'm asking the Court to consider these
24 is the only documents that I had in discovery were this:
25 The officer did a search incident to arrest. I was

1 prepared for that, had them all ready. I also was
2 fairly competent that my relief position was right. For
3 the first time I hear it's an inventory search. I
4 happen to know the law on that, it's in the same case,
5 but in the interim I wanted to find, and I did, North
6 Charleston's police department policy and procedure
7 manual and ask to make it part of the record.

8 THE COURT: And that will be Court exhibit
9 one.

10 (Court's Exhibit No. 1, North Charleston
11 police department policy and procedure manual, is marked
12 for identification.)

13 MR. BUTLER: And, specifically, on page six,
14 item number seven, inventory searches, Subsection B, the
15 following requirements must be met: The vehicle must be
16 taken into custody. In this case, the vehicle was not
17 taken into custody prior to the search. And the
18 inventory must be done pursuant to the written policy
19 and procedures of the department. May I pass this up?

20 THE COURT: I am not going to consider it.

21 MR. BUTLER: Okay.

22 THE COURT: Thank you. But it is part of the
23 record. Thank you.

24 MR. BUTLER: And a transcript from the
25 federal district court in Charleston, *United States*

1 vs. Defendant Arline. On page 26, the officer for the
2 North Charleston police department is questioned:
3 You testified today that North Charleston policy is
4 that when the driver of a vehicle is the sole occupant
5 of the vehicle, North Charleston policy is to tow the
6 vehicle and inventory it -- which is consistent with
7 yesterday's testimony. Question: Is that the actual
8 written policy in the North Charleston policy and
9 procedural manual?

10 And the answer from the North Charleston officer is:
11 No, it's not.

12 And I ask that this also be ---

13 THE COURT: That will be Court's two. Thank
14 you.

15 MR. BUTLER: --- made part of the record.

16 (Court's Exhibit No. 2, copy of partial
17 transcript, *U.S. vs. Jocquinn Arline*, suppression
18 hearing 10/20/10, is marked for identification.)

19 MR. BUTLER: And also consistent with our
20 position yesterday but prior to testimony from the
21 complainant in the case, I want to appeal to her own
22 testimony which would not lay the foundation for the
23 relevance of the towels. She was not able to describe
24 the towels. She was not able to say that Mr. Meggett
25 left with any towels, only that he asked for one. So

1 for all those reasons.

2 THE COURT: Mr. Butler, at this time, though,
3 based upon your motion to suppress, my analysis needs to
4 only be ---

5 MR. BUTLER: Yes, ma'am.

6 THE COURT: --- whether or not ---

7 MR. BUTLER: Yes, ma'am.

8 THE COURT: --- and assuming that I were to
9 deny your motion to suppress, those things have happened
10 outside ---

11 MR. BUTLER: Yes, ma'am.

12 THE COURT: --- as well.

13 MR. BUTLER: Thank you.

14 THE COURT: All right. Thank you.

15 Mr. Simpson, I did not consider Court's one
16 and two, but just for the record, in anticipation of a
17 ruling and for appeal issues, I allowed Mr. Butler to
18 mark those two as exhibits. I do not need any
19 additional argument. Thank you.

20 MR. SIMPSON: Understood, Your Honor. Thank
21 you.

22 THE COURT: Based upon the testimony that was
23 presented by the officer yesterday, the vehicle was
24 searched without a warrant. And as both parties
25 indicated, this is per se unreasonable unless it falls

1 within several recognized exceptions, the Court's
2 exception that -- or search incident to arrest or an
3 inventory search of the automobile exception.

4 I find that neither exception is applicable
5 to the facts as presented. The state has failed to meet
6 its burden of proof as to the admissibility of the
7 towels.

8 The defendant was arrested inside of the
9 hospital and taken into custody. The vehicle was parked
10 in the hospital parking lot. And under these
11 circumstances, the law enforcement officer should have
12 and indeed testified that they could have obtained a
13 search warrant, but it would have been inconvenient for
14 them to do so.

15 Because no warrant was obtained and no
16 exception applies, the towels will be suppressed. Your
17 motion is granted.

18 Note your exception for the record,
19 Mr. Simpson.

20 Anything before we bring in the jury?

21 MR. SIMPSON: Nothing from the state, Your
22 Honor.

23 MR. BUTLER: No, ma'am.

24 THE COURT: I don't know if all of our jurors
25 are there. Hold on.

1 (The Court and the bailiff confer.)

2 THE COURT: All right. We'll be at ease
3 until -- we're still missing four jurors. Thank you.

4 (The trial is in recess at approximately
5 10:00 a.m.)

6 (State's Exhibit No. 16, buccal swab -
7 defendant, is marked for identification.)

8 (State's Exhibit No. 17, photo - defendant's
9 car, is marked for identification.)

10 (State's Exhibit No. 18, photo - towels in
11 trunk, is marked for identification.)

12 (State's Exhibit No. 19, SLED DNA report and
13 chain of custody, is marked for identification.)

14 (State's Exhibit No. 20, T-Mobile phone
15 records, is marked for identification.)

16 (State's Exhibit No. 21, search warrant for
17 phone records, is marked for identification.)

18 (State's Exhibit No. 22, medical report -
19 Dr. Bianco, is marked for identification.)

20 (State's Exhibit No. 23, medical report -
21 Dr. Kelly, is marked for identification.)

22 (State's Exhibit No. 24, cell phone, is
23 marked for identification.)

24 (State's Exhibit No. 25, search warrant for
25 buccal swab of defendant, is marked for identification.)

1 (State's Exhibit No. 26, medical report -
2 Faye LeBoeuf, is marked for identification.)

3 (The trial reconvenes at approximately
4 10:10 a.m., the defendant being present with counsel,
5 and the following proceedings were had:)

6 THE COURT: Thank you. Please be seated.
7 Please rise for the jury.

8 (Whereupon, the jury enters the courtroom at
9 approximately 10:10 a.m.)

10 THE BAILIFF: The jurors are present, Your
11 Honor.

12 THE COURT: Thank you.

13 Thank you. Please be seated.

14 Good morning, ladies and gentlemen of the
15 jury, Mr. Foreman. Did every member of the jury comply
16 with my admonitions over the last -- over the evening
17 hours not to read, watch, listen to any news accounts,
18 not to tweet, twitter, Facebook, etc., regarding this
19 case? If you did not comply with the Court's
20 instructions, please raise your hand.

21 (Whereupon, no juror raises their hand.)

22 THE COURT: Thank you. Please let the record
23 reflect that all jurors have followed the Court's
24 admonition.

25 Mr. Simpson, please call your next witness.

1 MR. SIMPSON: Thank you, Your Honor. The
2 state calls April Rice.

3 (Ms. Rice enters the courtroom.)

4 APRIL RICE,
5 being first duly sworn by the clerk, is examined and
6 testifies as follows:

7 THE CLERK: Thank you. You may have a seat.
8 And for the record if you'll please state your full
9 name, spelling your last.

10 THE WITNESS: April Deneen Rice, R-I-C-E.

11 DIRECT EXAMINATION

12 BY MR. SIMPSON:

13 Q. Good morning, Ms. Rice.

14 A. Good morning.

15 Q. Ms. Rice, where do you live?

16 A. , South Carolina.

17 Q. And how old are you?

18 A. I'm 43.

19 Q. And do you have any children?

20 A. I have three.

21 Q. Is one of your children Stacy Hooper?

22 A. Yes.

23 Q. What generally is Stacy usually like? What's her
24 personality?

25 A. She likes theatre. She's pretty active, sports.

1 Q. Is she generally a calm person?

2 A. Pretty calm.

3 Q. And getting right to why you're here today,
4 Ms. Rice, do you remember getting a phone call in the
5 early morning hours of January 13th, 2009, from Stacy
6 Hooper?

7 A. Yes.

8 Q. Can you describe your daughter's demeanor when
9 you answered that phone?

10 A. She was crying, and she said she had been raped.

11 Q. And was there anything about her -- her voice
12 that was a little different than the calm demeanor you
13 know her as?

14 A. It was totally different. She was just very
15 upset.

16 Q. Okay. Were you asleep when you received that
17 call?

18 A. Yes.

19 Q. How long from when you -- when you answered that
20 call did it take before you realized something was
21 wrong?

22 A. As soon as I answered.

23 Q. And how did you realize that so quickly?

24 A. Because she doesn't call that late. I don't get
25 calls that late unless something is wrong.

1 Q. And is it common for you to receive a call from
2 your daughter when she was in such a state of distress?

3 A. I only get called like that -- I mean, I get
4 other calls, but she calls me first thing.

5 Q. Could you understand everything she was saying to
6 you?

7 A. Not at first, but once I realized that she was
8 crying, and then I said just calm down, and she told me
9 what had happened.

10 Q. And what advice did you give her when she told
11 you what happened?

12 A. I told her that she needed to go to the hospital
13 immediately.

14 Q. Did she tell you she was going to the hospital?

15 A. Yes. I stayed on the phone with her.

16 Q. As she...

17 A. Got ready to go. And I told her she needed to go
18 straight ahead there.

19 Q. Why was it so hard to understand what she was
20 saying right at first?

21 A. Because she was so upset. She was crying, and I
22 just couldn't hardly understand what she was saying for
23 her crying.

24 MR. SIMPSON: Ms. Rice, please answer any
25 questions that the defense may have for you.

1 THE WITNESS: Okay.

2 THE COURT: Mr. Butler.

3 MR. BUTLER: Please the Court.

4 CROSS-EXAMINATION

5 BY MR. BUTLER:

6 Q. Good morning, Ms. Rice. I just have a few quick
7 questions.

8 A. All right.

9 Q. Had you ever been to the house that Stacy was
10 staying in on Grimke Street in North Charleston?

11 A. No.

12 Q. You'd never seen photographs of it?

13 A. No.

14 Q. You didn't know the condition of that location?

15 A. No.

16 Q. Or how she was living?

17 A. No.

18 Q. Had you ever met or been told about her friend
19 Spider?

20 A. She had mentioned him.

21 Q. Okay. What about Pirate?

22 A. Yeah, she had mentioned.

23 Q. Okay. Sky, Skylar, her girlfriend?

24 A. Yes.

25 Q. Okay. Did you know that she was having trouble

1 paying her bills?

2 A. I knew she was having some trouble, but her
3 father helped her.

4 Q. Okay. And she never mentioned to you an
5 acquaintance or a friend Mike, Mr. Meggett?

6 A. No.

7 Q. Never did?

8 A. No.

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

10 THE COURT: Yes, sir.

11 (Mr. Butler and the defendant confer.)

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

13 ma'am.

14 MR. SIMPSON: Just briefly.

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. SIMPSON:

18 Q. So your daughter had -- she told you about her
19 friends and the people she was spending time with?

20 A. Yes.

21 Q. But no mention of a David Meggett?

22 A. No.

23 Q. No mention of a Mike?

24 A. No.

25 Q. No mention of any romantic involvement with some

1 individual?

2 A. No.

3 MR. SIMPSON: Nothing further, Your Honor.

4 THE COURT: Recross?

5 MR. BUTLER: No, ma'am.

6 THE COURT: Ms. Rice, you may step down. You
7 may remain in the courtroom or you may leave the
8 courtroom. Thank you.

9 THE WITNESS: Okay.. Thank you.

10 (The witness is excused from the witness
11 stand.)

12 THE COURT: Call your next witness.

13 MR. SIMPSON: Thank you, Your Honor. The
14 state calls Officer Robert Gooding.

15 (Officer Gooding enters the courtroom.)

16 OFFICER ROBERT GOODING,
17 being first duly sworn by the clerk, is examined and
18 testifies as follows:

19 THE CLERK: Thank you. You may have a seat.
20 And for the record if you'll please state your full
21 name, spelling your last.

22 THE WITNESS: It's Patrolman Robert Gooding.
23 The last name is spelled G-O-O-D-I-N-G.

24 THE COURT: Mr. Simpson.

25 MR. SIMPSON: Thank you, Your Honor.

DIRECT EXAMINATION

1
2 BY MR. SIMPSON:

3 Q. Good morning, Officer Gooding. How are you?

4 A. I'm doing well.

5 Q. What agency do you work for?

6 A. The City of North Charleston Police Department.

7 Q. And how long have you worked for that agency?

8 A. A little over three years.

9 Q. And do you recall, getting right to why you're
10 here today, becoming involved in an investigation in the
11 early morning hours of January 13th, 2009?

12 A. I do.

13 Q. And can you please describe for the jury how your
14 involvement in that investigation took place?

15 A. On that night I was dispatched to Roper
16 Northwoods Hospital for a report of a rape.

17 Q. And where is Northwoods Roper Hospital?

18 A. It's located off of Mall Drive right next to
19 Northwoods Mall which is in the City of North
20 Charleston.

21 Q. The City of North Charleston is in Charleston
22 County, right?

23 A. Yes.

24 Q. Please explain to the jury in some detail once
25 you arrived at Roper Hospital Northwoods what happened

1 and what took place.

2 A. When I arrived there, they -- the hospital staff
3 brought me to room five and at that time that's where I
4 met Ms. Hooper.

5 Q. Let me just pause for a second. What was
6 Ms. Hooper's demeanor?

7 A. It was -- I'd have to describe it maybe like sad.
8 Her face was down. She really couldn't look at me that
9 much in the face. Just it was like a -- like a sad
10 type.

11 Q. Upset?

12 A. Right.

13 Q. And did you then talk to Stacy?

14 A. I did.

15 Q. Did she tell you what had happened to her that
16 evening?

17 A. Ms. Hooper advised ---

18 MR. BUTLER: Objection, hearsay.

19 BY MR. SIMPSON:

20 Q. Just yes or no.

21 A. Yes.

22 Q. And where were you in the hospital when you were
23 talking with Stacy?

24 A. That would be room five.

25 Q. And who all was with you in the room when you

- 1 were talking?
- 2 A. Myself, Ms. Hooper, and Sergeant Jourdan.
- 3 Q. Was he there right at the beginning?
- 4 A. He got there just a minute or two after I did.
- 5 Q. Was it quiet in the hospital room?
- 6 A. In the room I was in, yes, it was.
- 7 Q. So you weren't in like a waiting room or anything
- 8 like that?
- 9 A. No, sir.
- 10 Q. It was a private room?
- 11 A. Yes, sir.
- 12 Q. While you were in the room with Ms. Hooper, did
- 13 Ms. Hooper receive any phone calls?
- 14 A. She did.
- 15 Q. And did she indicate to you who those phone calls
- 16 were from?
- 17 A. She stated it was from Mike and the -- the person
- 18 that she had stated had -- who had raped her.
- 19 Q. And what was her reaction to her phone
- 20 ringing ---
- 21 A. She ---
- 22 Q. --- from the person?
- 23 A. She's -- she kind of -- she looked at me and she
- 24 said, you know, he keeps calling, he keeps calling.
- 25 Q. And what advice at that time did you give

1 Ms. Hooper?

2 A. I asked her if, you know, she would answer and,
3 you know, see if we could get him to come to us.

4 Q. Okay. See if he could come up to the hospital?

5 A.. That's correct.

6 Q. Did she tell you the defendant's phone number?

7 A. She did. I believe it's...

8 Q. Would it refresh your recollection if you could
9 refer to your report?

10 A. Yes. That would great.

11 MR. SIMPSON: Your Honor, may I approach the
12 court reporter?

13 THE COURT: You may.

14 (State's Exhibit No. 27, police report
15 narrative - Officer Gooding, is marked for
16 identification.)

17 BY MR. SIMPSON:

18 Q. Officer, I'm handing you what's been marked for
19 I.D. only as state's 27. Do you recognize the language
20 in that report?

21 A. This is my narrative to my report.

22 Q. Okay. And take a moment if you want to look over
23 that and let me know if you were told the defendant's
24 phone number.

25 A. That's correct.

- 1 Q. And what number was that?
- 2 A.
- 3 Q.
- 4 A. That's correct.
- 5 Q. Did Stacy Hooper eventually answer the phone as
- 6 you instructed her to do?
- 7 A. She did.
- 8 Q. And, again, she had been instructed to do what?
- 9 A. I had asked her if she could convince him into
- 10 coming to the -- to the hospital.
- 11 Q. And when she answered the phone could you hear
- 12 what Stacy was saying?
- 13 A. I could.
- 14 Q. Could you hear what the voice on the other end of
- 15 the phone was saying?
- 16 A. Some of it.
- 17 Q. Okay. And please describe for the jury the
- 18 things you heard from the voice calling Ms. Hooper.
- 19 A. From the voice calling, the only thing that I
- 20 could hear from the phone itself was him saying I'm
- 21 sorry. And that was it.
- 22 Q. And this was a cell phone call, correct?
- 23 A. That's correct.
- 24 Q. But in a -- the room was quiet?
- 25 A. Yes.

1 Q. And you could hear some of the other person on
2 the phone?

3 A. That's correct.

4 Q. Did Stacy do as you instructed her to do and say
5 come -- come sit with me?

6 A. She did.

7 Q. And how did things proceed after that point?

8 A. Once she hung up the phone, the -- one of the
9 nurses from the very front come up and advised me that
10 there was a gentleman here to see her. I then went to
11 the front, met with that person, and at that time I
12 asked him who he was here to see and he stated Stacy.

13 Q. And how did you proceed from that point?

14 A. At that time I detained him for investigational
15 purposes. I obtained his I.D. card and brought that
16 back to Ms. Hooper while another officer stayed with
17 him.

18 Q. Is that person who came into the hospital, is he
19 present in the courtroom today?

20 A. The person that I detained?

21 Q. Right.

22 A. Yes, he is.

23 Q. And is it the defendant sitting at the table
24 here?

25 A. Yes, it is.

1 Q. You just stated you took the defendant's
2 I.D. card?

3 A. That's correct.

4 Q. And what did you do with that I.D. card?

5 A. I went back to Ms. Hooper's room to see if this
6 was the gentleman who she was talking about. I showed
7 her the picture I.D., and she said, yes, that's Mike.

8 Q. Okay. Any hesitation?

9 A. No.

10 Q. She said this is the gentleman we've been talking
11 about?

12 A. That's correct.

13 Q. At that time was Mr. Meggett placed under arrest?

14 A. He was.

15 MR. SIMPSON: Officer Gooding, please answer
16 any questions the defense counsel may have for you.

17 THE WITNESS: Yes, sir.

18 THE COURT: Mr. Butler.

19 CROSS-EXAMINATION

20 BY MR. BUTLER:

21 Q. Good morning, Officer.

22 A. Good morning.

23 Q. You had the opportunity to observe Mr. Meggett,
24 his appearance?

25 A. Yes.

- 1 Q. All right. And inside the hospital?
- 2 A. Well, in the waiting room.
- 3 Q. In the waiting room. And you, yourself, arrested
- 4 him?
- 5 A. Yes. I was the one that placed handcuffs on him.
- 6 Q. Noticed no injuries on his face?
- 7 A. No.
- 8 Q. No injuries on his neck?
- 9 A. No.
- 10 Q. To his hands?
- 11 A. No.
- 12 Q. Forearms?
- 13 A. No.
- 14 Q. No scrapes, no scratches?
- 15 A. No.
- 16 Q. And I'm assuming that you had your uniform on
- 17 when you saw him?
- 18 A. That's correct.
- 19 Q. And he didn't run. Right?
- 20 A. No.
- 21 Q. He didn't turn and walk away from you?
- 22 A. No.
- 23 Q. And when you asked who he was there to see, he
- 24 said my friend Stacy?
- 25 A. That's correct.

1 MR. BUTLER: Thank you.

2 THE COURT: Redirect?

3 MR. SIMPSON: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. So you observed, obviously, the defendant as you
7 were making this I.D. and arrest?

8 A. Yes.

9 Q. You didn't observe any injuries on him?

10 A. No.

11 Q. This is January, correct?

12 A. That's correct.

13 Q. What kind of clothing was he wearing?

14 A. I couldn't tell you.

15 Q. Fair to say he was dressed as in winter?

16 A. Yeah. He was in clothing, yes.

17 Q. Okay. Is Mr. Meggett a large person?

18 A. Define large for me. What do you mean?

19 Q. Is he a built guy? Is he ---

20 A. Yes.

21 Q. --- strong?

22 A. Yes. Yes.

23 MR. SIMPSON: Nothing further, Your Honor.

24 THE COURT: Recross?

25 MR. BUTLER: No, ma'am.

1 THE COURT: Officer, you may step down. Feel
2 free to remain in the courtroom, but you're also free to
3 leave.

4 THE WITNESS: Okay. Thank you.

5 (The witness is excused from the witness
6 stand.)

7 THE COURT: Call your next witness.

8 MR. SIMPSON: Thank you, Your Honor. The
9 state calls Sergeant Eric Jourdan from the North
10 Charleston police department.

11 (Sergeant Jourdan enters the courtroom.)

12 SERGEANT ERIC MICHAEL JOURDAN,
13 being first duly sworn by the clerk, is examined and
14 testifies as follows:

15 THE CLERK: Thank you. You may have a seat.
16 And for the record if you'll please state your full
17 name, spelling your last.

18 THE WITNESS: Eric Michael Jourdan,
19 J-O-U-R-D-A-N.

20 THE COURT: Mr. Simpson.

21 MR. SIMPSON: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q. Sergeant Jourdan, what agency do you work for?

25 A. The City of North Charleston Police Department.

1 Q. And how long have you been with that agency?

2 A. Twenty-four years.

3 Q. And your rank is sergeant, correct?

4 A. Sergeant, yes.

5 Q. Is that a high rank in the police department?

6 A. Yes.

7 Q. Sergeant, getting directly to why you're here
8 today, do you recall becoming involved in an
9 investigation on January the 13th, 2009?

10 A. Yes, I do.

11 Q. And under what circumstances, if you could
12 describe for the jury how you became involved and how
13 you proceeded in that investigation?

14 A. Certainly. On this particular night I was the
15 midnight shift uniformed patrol supervisor for the
16 precinct. Around I believe the early morning hours,
17 possibly around three o'clock, one of my officers was
18 dispatched to the Roper Northwoods emergency room in
19 North Charleston to meet with a victim of an assault.
20 The officer was Officer Robert Gooding who responded to
21 the initial call.

22 After Officer Gooding arrived and spoke with the
23 female victim, he telephoned me and informed me that the
24 victim was making a report of a sexual assault. With
25 that, I then responded to the emergency room to find out

1 what had occurred and to check on the condition of the
2 victim.

3 Q. And when you got to the emergency room where was
4 Stacy Hooper located?

5 A. She was in an examination room.

6 Q. Was that a private room?

7 A. Yes, it was.

8 Q. Did you go to the room?

9 A. Yes, I did.

10 Q. And who all was present in that room?

11 A. At that time it was just Ms. Hooper and Officer
12 Gooding.

13 Q. At any time when you were in that private room,
14 did Ms. Hooper receive any phone calls on her cell
15 phone?

16 A. Yes, she did.

17 Q. Did she indicate to you who the phone calls were
18 from?

19 A. Yes. She indicated that it was him or it was --
20 I think she referred to him as Mike is what she referred
21 to the person.

22 Q. Did you and Officer Gooding, with that
23 information, instruct Stacy Hooper in how you wanted her
24 to proceed?

25 A. She answered the phone, and we could hear like --

1 again, it was a private room. It was just three of us
2 in the room. We could overhear the conversation through
3 the phone.

4 She was saying that she was at the hospital, the
5 emergency room, and that she was hurt. And it was a
6 male, a male on the other end of the phone, and he was
7 apologizing. He was saying that he was sorry and that
8 he wanted to come to the hospital.

9 And when we heard that, we indicated for her,
10 with, you know, mouthing or indicating, to encourage him
11 to come to the hospital.

12 Q. And I believe you testified to this, but about
13 what time did you arrive approximately at the
14 hospital?

15 A. About 3:30 a.m.

16 Q. Okay. And how long approximately were you there
17 in the room with Ms. Hooper?

18 A. Probably 15 minutes or so.

19 Q. After you had heard -- did Ms. Hooper or did you
20 hear the other voice on the phone indicate that they
21 were in fact going to come up to the hospital?

22 A. Yes. He said that he wanted to come to the
23 hospital. So, and we thought that -- that perhaps he
24 was going to come to the hospital where she was.

25 Q. Now, at any point in these conversations was it

1 let known to the person on the other end of that phone
2 that the police were there?

3 A. No.

4 Q. So the idea, in fact, was that he wouldn't know
5 that the police were there waiting for him?

6 A. Correct.

7 Q. After this occurred in the emergency room and the
8 phone calls that you overheard, how did you proceed at
9 that point?

10 A. After that, I arranged for additional patrol
11 units to come to the area of the emergency rooms which
12 is located across from Northwoods Mall if you're
13 familiar with that area in North -- in North Charleston.
14 I requested a couple of more patrol units to basically
15 stake out the emergency room. Officer Gooding ---

16 Q. Let me stop you for a second. When you say stake
17 out, does that mean surround the hospital with the blue
18 lights going?

19 A. No.

20 Q. Is it an idea of a stakeout to be somewhat
21 secretive in nature?

22 A. Yes, out of sight. Officer Gooding was to remain
23 in the emergency room with the victim and be alerted by
24 the hospital security or employees of the hospital if
25 somebody came in inquiring about Ms. Hooper.

1 Q. So you didn't have uniformed officers posted at
2 both -- at the doors, standing there?

3 A. No.

4 Q. And, again, is the whole idea to be somewhat
5 secretive in a situation like that?

6 A. Yes.

7 Q. Did you leave the area of the hospital prior to
8 the arrival of Mr. Meggett?

9 A. Yes, I did.

10 Q. And where did you go?

11 A. I went to Ms. Hooper's residence on
12 Street.

13 Q. Had she given you -- how were you going to get
14 into that residence?

15 A. I had asked her for a key to the house and
16 permission to enter her residence.

17 Q. She gave you that permission?

18 A. Yes, she did.

19 Q. And about how far was it from the hospital to
20 Stacy's house approximately?

21 A. Four or five miles.

22 Q. Not a long drive?

23 A. No.

24 Q. Did crime scene arrive after you had arrived to
25 : Street?

1 A. Yes, they did.

2 Q. Okay. And what crime scene tech was assigned to
3 process that scene?

4 A. Kelly -- I'm sorry. Crime Scene Investigator
5 Kelly Murphy.

6 Q. Okay. Did you assist her in processing that
7 scene?

8 A. No. Myself and Officer Monroe, one of our K-9
9 officers, he and I first made entry into her residence,
10 and we conducted a search of the residence to make sure
11 that no one was inside. Once we had determined that
12 there was nobody inside the residence, Investigator
13 Murphy came in and proceeded to the bedroom which
14 Ms. Hooper had described to us.

15 Q. So you did establish that at that time that
16 Stacy's in the hospital no one else was at the house,
17 correct?

18 A. When we arrived, no.

19 Q. And did eventually Officer Murphy with crime
20 scene arrive?

21 A. Yes, she did.

22 MR. SIMPSON: Sergeant Jourdan, please answer
23 any questions defense counsel might have for you.

24 THE WITNESS: Certainly.

25 THE COURT: Mr. Butler.

CROSS-EXAMINATION

1
2 BY MR. BUTLER:

3 Q. Good morning, Sergeant.

4 A. Good morning, sir.

5 Q. At the crime scene at the -- when you were there
6 with crime scene at the incident location on Grimke
7 Street, no sign of any forced entry at that location,
8 right?

9 A. None that I had noticed, no.

10 Q. And you're familiar with that neighborhood?

11 A. Yes.

12 Q. It's a high crime area?

13 A. It could -- it could be described that way, yes.

14 Q. Well, you'd know better than any of us. I mean,
15 you can describe it how you want. I mean, is it
16 moderately high? medium? I don't know.

17 A. There are crimes committed in that area, yes.

18 Q. Okay. You were never in Mr. Meggett's presence,
19 were you?

20 A. No, I was not.

21 Q. And just so it's clear, the idea of coming to the
22 emergency room was Mr. Meggett's? He volunteers that
23 when you're hearing that over the phone?

24 A. Yes. He said he wanted to come to the hospital.

25 MR. BUTLER: Okay. Thank you.

1 MR. SIMPSON: No redirect, Your Honor.

2 THE COURT: Sergeant, you may step down. You
3 may remain with us, but you also may be excused.

4 THE WITNESS: Thank you, Your Honor.

5 (The witness is excused from the witness
6 stand.)

7 THE COURT: Call your next witness.

8 MR. SIMPSON: The state calls Kelly Murphy.

9 (Officer Kelly Murphy enters the courtroom.)

10 OFFICER KELLY MURPHY,
11 being first duly sworn by the clerk, is examined and
12 testifies as follows:

13 THE CLERK: Thank you. You may have a seat.
14 And for the record if you'll please state your full
15 name, spelling your last.

16 THE WITNESS: Kelly Murphy, M-U-R-P-H-Y.

17 THE COURT: Mr. Simpson.

18 MR. SIMPSON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. SIMPSON:

21 Q. Good morning, Ms. Murphy.

22 A. Good morning.

23 Q. Can you tell the jury where it is that you're
24 employed?

25 A. With the North Charleston police department's

1 crime scene unit.

2 Q. And how long have you been employed with the
3 crime scene unit?

4 A. About three years.

5 Q. Do you have a title?

6 A. Crime scene investigator.

7 Q. Crime scene investigator? Generally what are
8 your duties as a crime scene investigator?

9 A. Respond to any crime, any scene of a crime, to
10 include burglaries, robberies, shootings, sexual
11 assaults, any crime that I'm called to photograph the
12 scene; collect any evidence, package that evidence; and
13 if there's any DNA evidence that needs to be further
14 processed, package it and send it to SLED.

15 Q. Do you -- just to get right to it, do you recall
16 being involved with an incident early in the morning on
17 January 13th, 2009?

18 A. Yes, sir.

19 Q. Where did you respond?

20 A. I responded to a residence on Street. The
21 address was

22 Q. Is that in Charleston County?

23 A. It is.

24 Q. Who was present at Street when you arrived
25 there?

1 A. Upon my arrival, Sergeant Jourdan with the police
2 department and Lieutenant Widmer (phonetic) and one
3 other patrol officer.

4 Q. Can you tell the jury about what was going on
5 when you got there?

6 A. When I arrived on the scene, I was informed by
7 Sergeant Jourdan that a sexual assault had occurred at
8 this residence and that the victim had transported
9 herself to the hospital and was being treated and we
10 were given permission by the victim to search the
11 residence to find and establish the crime scene.

12 Q. So your duty at that point is just to preserve
13 evidence?

14 A. Preserve and collect evidence, yes, sir.

15 Q. Preserve and collect evidence. And when you
16 collect evidence where do you -- what do you do with
17 it?

18 A. It is collected and transported back to the North
19 Charleston police department and packaged and lodged in
20 to the property room.

21 Q. Do you take photographs?

22 A. I do.

23 Q. Do you take a photograph before you collect
24 evidence?

25 A. I take photographs as soon as I arrive on scene

1 to show how the scene was upon my arrival, and if I find
2 other evidence throughout the investigation I'll
3 photograph it as it's found.

4 MR. SIMPSON: May I approach the court
5 reporter, Your Honor?

6 THE COURT: You may.

7 BY MR. SIMPSON:

8 Q. I'm just going to show you what's been admitted
9 into evidence as state's exhibits one through four. See
10 if you recognize these photos.

11 A. Yes, sir.

12 Q. And what are those photos?

13 A. Three of them are the exterior of the residence
14 on Grimke Street, and one photograph is the bedroom that
15 the alleged sexual assault took place in.

16 Q. And did you take those photographs?

17 A. I did.

18 MR. SIMPSON: Court's indulgence for one
19 moment.

20 THE COURT: Yes, sir.

21 BY MR. SIMPSON:

22 Q. If I could direct your attention to the
23 photograph behind you, that's state's exhibit number
24 four. Did you take -- is that one of the photographs I
25 just showed you?

1 A. Yes, sir.

2 Q. Can I direct your attention to the bed. Did you
3 collect any evidence from that bed?

4 A. I did. I collected a -- the green and blue plaid
5 comforter as well as a white blanket.

6 Q. Okay. And when you collected that evidence, do
7 you put it in some sort of container? What do you do
8 with it?

9 A. Those were packaged in large paper evidence
10 bags.

11 Q. And where do you take it at that point?

12 A. Those were then taken directly back to North
13 Charleston City Hall and lodged into the evidence room.

14 Q. Can you tell the jury a little bit about the
15 evidence room? Is that a secure location?

16 A. It is. It is a secure location that only the
17 evidence custodians have access to.

18 MR. SIMPSON: May I approach, Your Honor?

19 THE COURT: You may.

20 (State's Exhibit No. 28, comforter, is marked
21 for identification.)

22 BY MR. SIMPSON:

23 Q. Excuse me, it's kind of bulky, but I'm going to
24 show you what's been marked as state's exhibit number 28
25 for identification purposes only. Can you take a look

1 at that for me?

2 A. (The witness reviews exhibit.)

3 Q. I apologize. It's sealed up in there, but...

4 A. Yeah.

5 Q. Can you recognize what's in this bag?

6 A. It's the green and blue plaid comforter.

7 Q. Is there something on it that makes it ---

8 A. Besides me, it's the marking. It's the bag that
9 I submitted with the evidence tag that I submitted to
10 the property room.

11 Q. And that would be the green and plaid comforter
12 that's in that photograph there?

13 A. Yes, sir.

14 MR. SIMPSON: Your Honor, at this time the
15 state would like to move exhibit number 28 into
16 evidence.

17 THE COURT: Any objection?

18 MR. BUTLER: No objection.

19 THE COURT: State's 28 into evidence without
20 objection.

21 (State's Exhibit No. 28, previously marked
22 for identification, is received in evidence.)

23 BY MR. SIMPSON:

24 Q. And so you packaged that comforter and you logged
25 it into evidence at North Charleston evidence room; is

1 that correct?

2 A. Yes, sir.

3 Q. And you did the same with a white blanket?

4 A. A white blanket taken off that same bed.

5 MR. SIMPSON: Court's indulgence.

6 THE COURT: Yes, sir.

7 MR. SIMPSON: No further questions.

8 THE COURT: Mr. Butler.

9 MR. BUTLER: May it please the Court.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. BUTLER:

13 Q. Good morning.

14 A. Good morning.

15 Q. Do you go by Officer?

16 A. Ms. Murphy.

17 Q. Crime Scene Technician?

18 A. Just call me Ms. Murphy.

19 Q. Okay, Ms. Murphy. Do you mind if I call you

20 Ms. Murphy?

21 A. No, that's fine.

22 Q. Thank you. You took all the photographs at the
23 crime scene taken by North Charleston? They were taken
24 by you; is that correct?

25 A. The ones at the crime scene, yes, sir.

1 MR. BUTLER: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 BY MR. BUTLER:

5 Q. Defendant's four, five, six, seven, eight, nine
6 and ten, let me ask you if you recognize those.

7 A. Yes, sir.

8 Q. And what are they?

9 A. Five of them are photographs of the bedroom the
10 incident took place in, one is a photograph of another
11 bedroom in the residence, and one is of the living room
12 of the residence.

13 Q. Okay. And you took all those?

14 A. I did.

15 Q. And part of your job as a crime scene technician
16 is to document evidence at the scene. Right?

17 A. Yes, sir.

18 Q. And by document, I mean record, right, and
19 preserve?

20 A. Yes, sir.

21 Q. You want to either photograph or draw diagrams or
22 write a report what the scene looked like when you
23 arrived?

24 A. Yes, sir.

25 Q. So that later there can be no issue of

1 contamination of evidence, for example?

2 A. Correct.

3 Q. Or that the crime scene had been disturbed, for
4 example?

5 A. Correct.

6 Q. You want to get it in its raw, pristine state as
7 it was when you got there..

8 A. Correct.

9 Q. Right? And that's what you did. Right?

10 A. Yes, sir.

11 (There was off-the-record discussion
12 regarding the projection equipment.)

13 BY MR. BUTLER:

14 Q. You recognize defendant's six, and that shows the
15 bed that you photographed?

16 A. Yes, sir.

17 Q. As it was when you arrived?

18 A. Yes, sir.

19 Q. And so when you arrived, this ashtray full of
20 cigarettes would have been just like that?

21 A. Yes, sir.

22 Q. And this pill bottle sitting on its side on a CD
23 would have been just like that ---

24 A. Yes, sir.

25 Q. --- when you arrived? Defendant's eight, a close

1 up showing the cigarettes and the ashtray?

2 A. Yes, sir.

3 Q. And showing the sheet on the bed? I know it was
4 taken off here, but more or less on the bed. Is that
5 right?

6 A. Yes, sir.

7 Q. And there are other items there, too. There's a
8 bag of M&Ms, correct?

9 A. Yes, sir.

10 Q. A CD, a box of cigarettes, a tube of some sort
11 here?

12 A. Yes, sir.

13 Q. And defendant's five, showing another angle of
14 the bed and I guess a table that's next to the bed?

15 A. Yes, sir. That table was right next to the door
16 as you entered the bedroom.

17 Q. Okay. And defendant's four, you said this is
18 another room in the house?

19 A. Yes, sir. That would be the other bedroom. I
20 believe it was at the end of the hallway as soon as you
21 walked in.

22 Q. And defendant's seven, the stairwell as you go up
23 to the upstairs?

24 A. That's the living room as I walked in through the
25 side door that I entered the residence in.

1 Q. Is it fair to say that this location was in a
2 state of some disarray when you arrived?

3 A. Yes, sir.

4 Q. Throughout the house?

5 A. Yes, sir.

6 Q. It was not neat and tidy?

7 A. No, sir.

8 Q. Tell me what an alternative light source is and
9 how you use that to test for the presence of biological
10 evidence.

11 A. An alternative light source is an instrument we
12 use. It gives us different wavelengths of light to help
13 illuminate biological evidence on a crime scene. It can
14 illuminate semen. It can illuminate saliva. It can
15 also be used to determine whether money is counterfeit
16 or not. If you just -- different wavelengths of light
17 allow different things to be illuminated.

18 Q. There are different wavelengths of light. We're
19 used to whatever this is, white light?

20 A. Yes, sir.

21 Q. If you use a different wavelength, it will look
22 different and certain proteins will fluoresce or
23 luminesce...

24 A. Correct.

25 Q. --- under a different light source?

1 A. Correct.

2 Q. If you wanted to get really nervous, take one
3 into your kitchen or your bathroom and you'll see things
4 all over the place that you normally don't see?

5 A. Correct.

6 Q. Right? And you did that with the bedding in this
7 case?

8 A. I did.

9 Q. At the crime scene?

10 A. Yes, sir.

11 Q. And found no biological samples with the
12 alternative light source?

13 A. No, sir. None were found.

14 Q. None?

15 A. (The witness shakes head from side to side.)

16 Q. Did you collect the complainant's pants in this
17 case, or was that somebody else?

18 A. I did not, no, sir.

19 Q. No signs of forced entry?

20 A. No, sir, not that I recall. I was waiting
21 outside while the officers clear the -- cleared the
22 residence, so you'd have to ask one of them.

23 MR. BUTLER: That's all I have. Thank you
24 very much.

25 MR. SIMPSON: Very briefly, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. SIMPSON:

3 Q. Ms. Murphy, when you -- can you tell the jury a
4 little bit, a little more detail, about how you use that
5 alternative light source? Did you use it on both sides
6 of the blanket?

7 A. First of all, you have to black out the room, so
8 all lights were turned off. And you break white light
9 down into the color spectrum, and you use different
10 wavelengths looking for different items as I mentioned
11 before, and you need to put on a special pair of goggles
12 that allow you to see the illumination.

13 So all the lights were turned off. I took the
14 ultraviolet light source which is the one that would be
15 most helpful in this situation, scanned over all of the
16 bed sheets as they were when I got there, and then I do
17 flip them over and check any of the sheets underneath
18 the top comforter, the backside of the comforter,
19 anything like that. So the entire bed was searched.

20 Q. Is it a foolproof method for testing for
21 biological fluids?

22 A. It is not foolproof. That is why although I did
23 not find any samples I still collected both the
24 comforter and the white blanket off the bed.

25 MR. SIMPSON: No further questions.

1 MR. BUTLER: No, ma'am.

2 THE COURT: Ms. Murphy, you may step down.
3 You may stay with us, but you are excused. Thank you.

4 (The witness is excused from the witness
5 stand.)

6 THE COURT: Call your next witness.

7 MR. KIDD: The state calls Sergeant Hallman.
8 (Sergeant Hallman enters the courtroom.)

9 SERGEANT AL HALLMAN,
10 being first duly sworn by the clerk, is examined and
11 testifies as follows:

12 THE CLERK: Thank you. You may have a seat.
13 And for the record if you'll please state your full
14 name, spelling your last.

15 THE WITNESS: Al Hallman, H-A-L-L-M-A-N.

16 THE COURT: Mr. Kidd.

17 MR. KIDD: Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MR. KIDD:

20 Q. Good morning, Sergeant Hallman. How are you
21 doing?

22 A. Good morning.

23 Q. Can you tell the jury briefly where it is you're
24 employed?

25 A. I'm employed with the City of North Charleston

1 Police Department.

2 Q. And do you have a title at North Charleston
3 Police Department?

4 A. Yeah. Currently I am the line supervisor of the
5 patrol division.

6 Q. Was that the same job that you had in January of
7 2009?

8 A. No, sir. I was the supervisor of the forensic
9 investigations unit.

10 Q. And just to get right to it, and we'll probably
11 be brief, did you have an opportunity to get involved
12 with a sexual assault investigation on January 13th,
13 2009?

14 A. Yes, sir, I did.

15 Q. Could you tell the jury what you did involved in
16 that case?

17 A. I had received a request to respond to our
18 detective division in reference to collecting a buccal
19 swab or a saliva swab for DNA purposes from a defendant
20 -- from a suspect involved in the case.

21 Q. Do you know who that suspect was?

22 A. David Meggett.

23 Q. And can you tell the jury a little bit about how
24 do you collect a buccal swab?

25 A. A buccal swab is basically, for all for intent

1 purposes, a glorified Q-Tip. It's a sponge-tip
2 applicator that comes prepackaged and it's sterile. We
3 take the applicator, and we advise the person that we're
4 collecting the DNA from to open his mouth, and we swab
5 both sides of his mouth between his gumline to collect a
6 DNA sample.

7 Q. And you did that in this case?

8 A. Yes, sir.

9 Q. And what do you do with the buccal swab once you
10 wipe the inside of a suspect's mouth?

11 A. The swab is placed in a sterile forensic swab
12 dryer to where it is dried, then it is packaged in a
13 paper envelope and sealed and sent for -- to the lab for
14 analysis.

15 MR. KIDD: Court's indulgence.

16 THE COURT: Yes, sir.

17 BY MR. KIDD:

18 Q. I'm going to show you what's been marked for
19 identification purposes only as state's exhibit
20 number 16, and see if you recognize that.

21 A. Yes. This is the envelope that I packaged the
22 swab in once it was dried.

23 Q. You said once it was dried. What's the drying
24 process? How does that take place?

25 A. As I stated, it's placed in a forensic dryer.

1 It's allowed to dry with air circulating throughout the
2 dryer. And once it is dried -- it sometimes takes
3 anywhere from an hour to three hours. Once it's dry, it
4 is removed from the dryer, secured in a paper envelope
5 and -- and sealed and packaged.

6 Q. And where is that dryer located?

7 A. In our forensic lab.

8 Q. And where is the forensic lab located?

9 A. Within -- within the City of North Charleston
10 Police Department.

11 Q. All right. So the same place where you took the
12 buccal swab?

13 A. Yes.

14 Q. Okay. So you take the buccal swab, you put it in
15 the dryer, once it dries you package it?

16 A. Correct.

17 Q. Okay. And then once it's packaged what do you do
18 with it?

19 A. Then it is sent to SLED or whatever agency is
20 going to be conducting the DNA examinations.

21 Q. Do you log it into an evidence room first or...

22 A. Yes. It's placed in our property room, pending
23 the transport from our property investigator up to SLED
24 or whatever other lab is handling the process.

25 Q. And did you do that in this case?

1 A. Yes, I did.

2 MR. KIDD: May I approach, Your Honor? Your
3 Honor, at this time we'd like to move state's exhibit
4 number 16 into evidence.

5 MR. BUTLER: No objection.

6 THE COURT: State's 16 into evidence without
7 objection.

8 (State's Exhibit No. 16, previously marked
9 for identification, is received in evidence.)

10 MR. KIDD: No further questions, Your Honor.

11 THE COURT: Mr. Butler.

12 MR. BUTLER: No questions.

13 THE COURT: Sergeant, you may step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: You are free to remain with us,
16 but you are excused. Thank you.

17 THE WITNESS: Thank you.

18 (The witness is excused from the witness
19 stand.)

20 THE COURT: Call your next witness.

21 MR. SIMPSON: Thank you, Your Honor. The
22 state calls Detective Randy Gray.

23 (Detective Gray enters the courtroom.)

24 DETECTIVE RANDY LEE GRAY,

25 being first duly sworn by the clerk, is examined and

1 testifies as follows:

2 THE CLERK: Thank you. You may have a seat.

3 And for the record if you'll please state your full
4 name, spelling your last.

5 THE WITNESS: My name is Randy Lee Gray,
6 G-R-A-Y.

7 DIRECT EXAMINATION

8 BY MR. SIMPSON:

9 Q. Good morning, Mr. Gray, Detective.

10 A. Good morning.

11 Q. What is your occupation?

12 A. I am a police officer with the North Charleston
13 police department.

14 Q. What rank?

15 A. PFC.

16 Q. Do you recall becoming involved in a case during
17 the early morning hours of January 13th, 2009?

18 A. I do.

19 Q. And how did you become involved in this case?

20 A. I received a page at approximately 4:45 a.m. on
21 the 13th, messaging me and telling me to call Sergeant
22 Spears.

23 Q. And did you call Sergeant Spears?

24 A. Yes, I did.

25 Q. And how did you respond to that call?

1 A. She advised me briefly that we had an incident
2 and she wanted me to respond to North Charleston City
3 Hall.

4 Q. North Charleston City Hall, is that also police
5 headquarters?

6 A. Yes.

7 Q. All right. Were you in the detective division at
8 that time?

9 A. Yes, I was.

10 Q. And is that, in short, your office?

11 A. Yes.

12 Q. And around what time did you get to the detective
13 division that night?

14 A. Approximately 5:20, 5:30.

15 Q. And can you describe a little bit to the jury the
16 role in the case that you took over once you arrived?

17 A. When I responded, I was directed by Sergeant
18 Spears to gather information from the reporting
19 officers.

20 Q. Did you also have the opportunity to obtain some
21 search warrants?

22 A. Yes, I did. At the direction of Sergeant Spears,
23 she tasked me with drafting up search warrants where
24 they were needed.

25 Q. What information did these search warrants seek?

1 A. One search warrant was for a buccal swab, and the
2 other search warrant was for phone records.

3 Q. What's a buccal swab?

4 A. It's a device that's used to swab the inside of
5 an individual's mouth. It's like a Q-Tip type object.

6 Q. And to what purpose? What's the aim of doing it?

7 A. To obtain a DNA sample.

8 Q. And did a magistrate sign a search warrant
9 authorizing you to do that with David Meggett?

10 A. Yes.

11 Q. And did you proceed with another officer to
12 accomplish that search warrant?

13 A. Yes, I did.

14 Q. And who was that officer?

15 A. That was Sergeant Al Hallman of the crime scene
16 unit.

17 Q. Detective Gray, I'm handing you what's been
18 marked for I.D. only as state's 25.

19 A. Okay.

20 MR. SIMPSON: May I approach?

21 THE COURT: You may.

22 BY MR. SIMPSON:

23 Q. Does that item look familiar to you?

24 A. Yes, it does.

25 Q. And what is that?

1 A. This is a search warrant for the buccal swab for
2 the DNA.

3 Q. And you said that was -- was carried out. Who
4 carried out the search warrant?

5 A. Sergeant Hallman did in my presence.

6 Q. In your presence?

7 A. Yes.

8 Q. Is the person that you executed that search
9 warrant or that search warrant was executed by Sergeant
10 Hallman in your presence, is that individual present in
11 the courtroom today?

12 A. Hm...

13 Q. The person you executed the search warrant on for
14 the buccal swab?

15 A. (The witness stands at witness stand.) I don't
16 have my glasses on. I can't -- I'm not sure.

17 Q. Moving to the second search warrant that you
18 referenced, what was the object of that search warrant?

19 A. The second search warrant?

20 Q. Yes, sir.

21 A. Was a search warrant for the defendant's phone
22 records.

23 MR. SIMPSON: May I approach the witness,
24 Your Honor?

25 THE COURT: You may.

1 BY MR. SIMPSON:

2 Q. Detective, I've handed you what's been marked for
3 I.D. only as state's exhibit 21.

4 A. Okay.

5 Q. Does that look familiar to you?

6 A. Yes, it does.

7 Q. Can you tell the jury specifically what documents
8 you were requesting and from whom in that search
9 warrant?

10 A. Requesting a detailed phone record of the
11 defendant's phone record from T-Mobile.

12 Q. And what phone number was that?

13 A. The phone number would be

14 Q. 1757. And what information were you requesting
15 from T-Mobile in regard to that phone?

16 A. A record of all incoming/outgoing calls to
17 include all in-going and outgoing text messages,
18 starting at 9:00 p.m. on January 12th, 2009, and ending
19 at 8:00 a.m. on January 13th, 2009.

20 Q. And, Detective Gray, whose phone number was
21 --?

22 A. That would be the defendant's.

23 Q. Does that phone number match a phone found on the
24 defendant in this case?

25 A. Yes.

1 Q. Was that search warrant approved by a magistrate?

2 A. Yes, it was.

3 Q. And once that was signed and approved by a
4 magistrate, how did you proceed?

5 A. I then took the search warrant and faxed it off
6 to the legal compliance department of T-Mobile.

7 Q. And that is an office within the business of
8 T-Mobile?

9 A. Yes, it is. I mean, their legal compliance,
10 there are different -- in different states.

11 Q. Okay. What was the purpose of obtaining these
12 phone records from T-Mobile?

13 A. It was alleged that the defendant made several
14 calls to the victim while she was at the hospital with
15 North Charleston police officers, and the warrant was to
16 confirm that the calls were made from the defendant's
17 phone.

18 Q. Did T-Mobile respond to your request?

19 A. Yes, they did.

20 Q. And through what -- how did they respond to your
21 request?

22 A. By fax.

23 Q. And when did you receive that fax?

24 A. January 15th, 2009, according to the cover sheet.

25 MR. SIMPSON: Permission to approach, Your

1 Honor?

2 THE COURT: You may.

3 BY MR. SIMPSON:

4 Q. Detective Gray, I've handed you what's been
5 marked for I.D. only as state's exhibit 20. Can you
6 identify that item for the jury?

7 A. This is the search warrant return for the phone
8 records.

9 Q. Is that what you were faxed by T-Mobile?

10 A. Yes.

11 Q. And did that contain the information that you had
12 requested from T-Mobile through the search warrant?

13 A. Yes.

14 Q. Detective Gray, did Stacy Hooper indicate to
15 North Charleston police department what her phone number
16 was at the time?

17 A. Yes, she did. According to a statement given to
18 Detective Spears and myself, as well as in other reports
19 officers have written, her number at the time was
20 864-787-1807.

21 Q. Detective Gray, did the records you received from
22 T-Mobile indicate that calls were made from David
23 Meggett's phone to Stacy Hooper's phone during the time
24 frame that you requested from T-Mobile?

25 A. Yes.

1 Q. At what times were the calls made, and what was
2 the duration of the calls?

3 A. There was a call made at 3:10 a.m. for
4 approximately two minutes; 3:14 a.m. for approximately
5 one minute; 3:36 a.m., that one lasted about six
6 minutes; 3:48 a.m., three minutes; and 4:01, and that
7 lasted approximately one minute.

8 Q. And those times, those are in the a.m.?

9 A. Yes, all of them a.m.

10 Q. And, Detective, as the detective on this case,
11 what's the significance of those calls and the time?

12 A. They fit with the approximate time that Stacy
13 Hooper's at the hospital with other officers who
14 overheard the calls from the defendant.

15 Q. Detective, I want to move now to January the
16 14th, the day following the incident.

17 A. Uh-huh.

18 Q. On January the 14th, did you have an occasion to
19 meet Stacy Hooper?

20 A. Yes, I did.

21 Q. And under what circumstances?

22 A. On January 14th, 2009, she came in on her own to
23 show that the injuries around her neck had begun to
24 become more visible, more prominent, darker.

25 Q. Detective Gray, did you observe those injuries to

1 Stacy Hooper's neck?

2 A. Yes, I did.

3 Q. Can you describe those injuries to the jury that
4 you observed?

5 A. Just prominent dark bruising around her neck.

6 Q. What part of the neck if you could just indicate?

7 A. This area here (indicating).

8 Q. Detective Gray, when you personally observed
9 those injuries to Ms. Hooper, how did you proceed?

10 A. I then called down to crime scene unit to make
11 sure that there was somebody present so that I could
12 escort Ms. Hooper down there and have photographs taken.

13 Q. Did you escort Ms. Hooper down to crime scene?

14 A. Yes, I did.

15 Q. And, again, what was the purpose of escorting her
16 down there?

17 A. So we could have a visible photographic record of
18 her injuries.

19 Q. Detective Gray, as we prepared together for this
20 trial, did the North Charleston police department come
21 to a determination regarding the photographs of
22 Ms. Hooper?

23 A. It was determined that sometime between the
24 taking the photographs and today that the -- that the
25 photographs have been misplaced and cannot be located.

1 Q. So the photographs you're referring to of Stacy
2 Hooper on January 14th are not here in the courtroom?

3 A. Correct.

4 Q. And cannot be located at this time?

5 A. No, sir.

6 Q. Detective Gray, did you observe injuries to Stacy
7 Hooper?

8 A. Yes, I did.

9 Q. And, again, what injuries did you observe on the
10 person of Stacy Hooper?

11 A. Bruising around her neck.

12 MR. SIMPSON: Detective Gray, please answer
13 any questions Mr. Butler may have.

14 THE WITNESS: Okay.

15 THE COURT: Mr. Butler.

16 MR. BUTLER: Court's indulgence.

17 THE COURT: Yes, sir.

18 (Mr. Simpson and Mr. Butler confer.)

19 CROSS-EXAMINATION

20 BY MR. BUTLER:

21 Q. Good morning, Detective.

22 A. Good morning.

23 Q. On the early morning hours of the 13th you were
24 with Mr. Meggett after he was arrested?

25 A. Yes. I was in the third part of the detective

- 1 bay.
- 2 Q. Okay.
- 3 A. And he was in the interview -- interview room.
- 4 Q. And you were in there with him. Right?
- 5 A. Yes.
- 6 Q. Okay. And you're trained to look for evidence
- 7 even where other people might not, correct?
- 8 A. Yes.
- 9 Q. Physical characteristics of a suspect or in this
- 10 case, as you've testified to, a complainant can be
- 11 important?
- 12 A. Uh-huh.
- 13 Q. And you note those things and observe them,
- 14 right?
- 15 A. Yes.
- 16 Q. Noted no injuries to Mr. Meggett, right?
- 17 A. No.
- 18 Q. No scratches to his face or his neck, right?
- 19 A. No.
- 20 Q. None to his hands or his arms, right?
- 21 A. No.
- 22 Q. No scratches, abrasions, scrapes, anything?
- 23 A. No.
- 24 Q. Were you considered the primary in this case?
- 25 A. Yes. I was assigned by Detective Spears.

1 Q. And as the primary, you sort of oversee the
2 investigation?

3 A. Whatever the sergeant wants me to do.

4 Q. Okay. But you're in charge more or less?

5 A. To a degree, yes.

6 Q. All right. Well, all of the witness statements,
7 police reports, you don't go collect all those yourself
8 personally, right?

9 A. No. In this instance they were all brought to
10 me.

11 Q. All right. They're all brought to you and you
12 keep the case jacket?

13 A. Yes.

14 Q. The case file?

15 A. Yes.

16 Q. Okay. If you think something further needs to be
17 done, you direct someone else to do it perhaps?

18 A. Yes.

19 Q. But whatever gets done gets brought back to you?

20 A. Yes.

21 Q. Okay. And you know how the discovery process
22 works. You have witness statements, police reports,
23 everything that you do, and that goes into a case file,
24 right?

25 A. Uh-huh.

1 Q. And that goes to the prosecutor, right?

2 A. Yes.

3 Q. And that ultimately comes to the defense lawyer,
4 right?

5 A. Right.

6 Q. Okay. Nowhere in your case file is there any
7 mention of a person named Spider, is there?

8 A. No.

9 Q. Or Pirate?

10 A. No.

11 Q. Or a diagram or floor plan of the incident
12 location on Street?

13 A. No, I did not see anything like that.

14 Q. Or a person named Jonathan or a person named
15 Eric?

16 A. No.

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

18 THE COURT: Yes, sir.

19 (Mr. Butler reviews exhibits.)

20 BY MR. BUTLER:

21 Q. No mention of a person named Sky or Skylar?

22 A. No, sir.

23 Q. No photographs or descriptions or mention of the
24 complainant's tattoos?

25 A. No.

1 Q. And the phone records that you received were only
2 for the 12th and the 13th. Right?

3 A. The 13th.

4 Q. The 13th?

5 A. I'm sorry. It was the 12th, 12th and 13th.

6 Q. So if anyone wanted to document a history of
7 calls in the months leading prior to that, we wouldn't
8 have those. Right?

9 A. I'm sorry. Repeat the question?

10 Q. We wouldn't have -- if somebody wanted to
11 document or evidence of the history of phone
12 transactions between Mr. Meggett and the complainant in
13 this case, Ms. Hooper, we wouldn't have that, would we?

14 A. It would have to be requested.

15 Q. Okay. And you didn't ask for her phone records,
16 just his?

17 A. Right.

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

19 THE COURT: Yes, sir.

20 (Mr. Butler and Mr. Simpson confer.)

21 BY MR. BUTLER:

22 Q. You didn't collect Ms. Hooper's clothes, did you?

23 A. Um...

24 Q. That she was wearing on the 13th?

25 A. Um, collected a green in color hoody and a black

1 and red colored pair of sweatpants.

2 Q. You did collect those?

3 A. Yes. And I turned them in to evidence.

4 MR. BUTLER: May I approach?

5 THE COURT: You may.

6 MR. BUTLER: For evidence.

7 (Defendant's Exhibit No. 15, victim's
8 clothing - hoody and sweatpants, is marked for
9 identification.)

10 BY MR. BUTLER:

11 Q. I'm showing you defendant's 15 and ask you to
12 open that bag and tell me if you recognize those items.

13 A. Open it?

14 Q. Please.

15 A. (The witness opens exhibit bag.)

16 Q. And this is what?

17 A. That is the green hoody sweater.

18 Q. Okay. That you collected that Ms. Hooper's
19 wearing on the 13th?

20 A. Yes.

21 Q. And what else?

22 A. Um, black letter -- sweatpants, with red
23 letters...

24 THE COURT REPORTER: I'm sorry, please speak
25 up. I can't hear you.

1 THE WITNESS: I'm sorry. Black with red
2 lettering sweatpants.

3 BY MR. BUTLER:

4 Q. These two that she was wearing?

5 A. Yes, sir.

6 MR. BUTLER: Move defendant's 15 into
7 evidence, please.

8 MR. SIMPSON: No objection, Your Honor.

9 THE COURT: Defendant's 15 into evidence
10 without objection.

11 (Defendant's Exhibit No. 15, previously
12 marked for identification, is received in evidence.)

13 MR. BUTLER: That's all I have. Thank you.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. SIMPSON:

17 Q. Detective, you testified earlier that you
18 accompanied someone to perform a buccal swab on the
19 suspect, David Meggett?

20 A. Yes.

21 Q. And that your glasses weren't on, that you
22 couldn't see if the defendant was in the courtroom?

23 A. I don't have them here today.

24 Q. Would it help you if you got a closer look to
25 possibly identify the person ---

1 A. Sure.

2 Q. --- you served the buccal swab on?

3 MR. BUTLER: If it'll help, I'll stipulate
4 that he took a sample from Mr. Meggett.

5 MR. SIMPSON: That would suffice. Thank you,
6 Your Honor, Mr. Butler.

7 THE COURT: Ladies and gentlemen, a
8 stipulation is simply an agreement between the two
9 parties, and so in this case the defense has stipulated
10 that Detective Gray did in fact take a buccal swab from
11 Mr. Meggett.

12 MR. SIMPSON: Thank you, Your Honor. I have
13 nothing further.

14 THE COURT: Recross?

15 MR. BUTLER: No, ma'am.

16 THE COURT: Detective, you may step down.
17 You may remain with us, but you are also free to leave.
18 Thank you.

19 THE WITNESS: Thank you very much.

20 (The witness is excused from the witness
21 stand.)

22 THE COURT: Ladies and gentlemen, this is an
23 appropriate time for us to take our midmorning break.
24 Do not begin your deliberations. Do not discuss this
25 case amongst yourselves. We'll take about ten minutes.

1 Please rise for the jury.

2 MR. KIDD: May we approach, Your Honor?

3 THE COURT: You may.

4 You may leave your notepads in your chair.

5 (Whereupon, the jury goes to the jury room at
6 approximately 11:15 a.m.)

7 THE COURT: Be seated.

8 Counsel, you may approach.

9 (There was an off-the-record bench
10 conference.)

11 (Said bench conference being concluded, the
12 following proceedings were had:)

13 THE COURT: Counsel, do you have a
14 written-out stipulation as to the DNA?

15 MR. SIMPSON: Yes, Your Honor. What I was
16 going to propose -- I just have to omit some things
17 based on the towels. If we just agree, I'll rewrite it
18 during the lunch break.

19 MR. BUTLER: I don't know if a document is
20 necessary. I don't mean to interrupt him. I'm not
21 going to object to anything coming in with DNA. I'm not
22 going to. I'm saying that as an officer of the Court.
23 I'll sign whatever he wants me to sign. I just don't
24 know if it's necessary. I mean, this document had the
25 evidence that's now excluded. Whatever -- whatever is

1 easiest, I'm happy to do, but I'm not going to object to
2 any -- any chain issue at all.

3 MR. SIMPSON: I was going to suggest we go
4 ahead and publish it. You know, whether or not he's
5 able to sign it, I don't know, and then I'll do a new
6 copy with all the irrelevant stuff omitted from it over
7 the lunch break.

8 THE COURT: Let me see.

9 MR. SIMPSON: What I was going to omit, Your
10 Honor, is this, obviously this is not necessary and of
11 course the reference to the towels, and publish the rest
12 of it.

13 (Document tendered to the Court.)

14 THE COURT: Mr. Butler, any objection to
15 Mr. Simpson reading...

16 MR. BUTLER: May I see it, please?

17 (Mr. Butler reviews document.)

18 MR. BUTLER: Yes, that's fine.

19 THE COURT: All right. So what I'm going to
20 do, we'll just bring in the jury and publish your
21 stipulation, and then I'll let them go for lunch until
22 1:00.

23 MR. SIMPSON: Yes, Your Honor. Thank you.

24 THE COURT: All right. Let's bring in the
25 jury.

1 THE BAILIFF: Some in the restroom right now,
2 Judge.

3 THE COURT: All right. Counsel approach just
4 for scheduling. ...

5 (There was an off-the-record bench
6 conference.)

7 (Said bench conference being concluded, the
8 following proceedings were had:)

9 THE COURT: Please swear Mr. Meggett.

10 DAVID LEE MEGGETT,
11 is duly sworn by the clerk.

12 THE CLERK: Thank you. You may put your hand
13 down.

14 THE COURT: Mr. Meggett, I'm going to take
15 this opportunity. The state has not rested, but as soon
16 as we bring the jury in we're going to break for lunch,
17 and so I'm going to give you the lunch hour to discuss
18 your right to testify with your attorney over the lunch
19 hour. So I'm going to explain to you certain of your
20 rights. If you do not understand anything I say, please
21 let me know, and if you need for me to explain anything
22 further, just please let me know. Do you understand
23 that?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: You have the right to claim the

1 protections given to you by the Fifth Amendment to the
2 Constitution of the United States. This amendment
3 states in part that no person shall be compelled in any
4 criminal case to be a witness against himself. This
5 means you cannot be required to testify in this case.
6 You have the right to testify on your own behalf;
7 however, no one can make you testify. This is a
8 personal right, and no one can waive this right except
9 for you.

10 If you decide to testify, you will be subject
11 to the same rules that govern other witnesses, and you
12 may be examined and cross-examined on any relevant issue
13 in this case.

14 In addition, if you have any convictions
15 involving dishonesty or false statement or for crimes
16 punishable by imprisonment for more than one year and I
17 determine that the probative value of admitting this
18 evidence outweighs its prejudicial effect to you, the
19 solicitor will be able to introduce your record to
20 attack your credibility.

21 If you decide to testify, this decision on
22 your part must be freely, voluntarily, and intelligently
23 made with the knowledge of the protections given to you
24 by the Fifth Amendment and the consequences of your
25 decision to testify.

1 If you decide not to testify, I will instruct
2 the jurors that they cannot give the fact that you did
3 not testify any consideration whatsoever and that there
4 is to be absolutely no prejudice to you because you did
5 not testify.

6 It is left entirely up to you whether or not
7 you testify. You may talk with your attorneys, your
8 family, your friends, or anyone else, but the final
9 decision will be left entirely up to you.

10 Do you understand what I have explained to
11 you?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And so after the -- after the
14 close of the state's case and any motions, I will
15 inquire whether or not you wish to testify, Mr. Meggett.
16 I do not need that response at this time. Thank you.
17 You may be seated.

18 THE BAILLIFF: They're ready.

19 THE COURT: All right. We're going to bring
20 in the jury, Mr. Simpson, then you will read your
21 stipulation, and then we will recess until 1:00 p.m.

22 MR. SIMPSON: Thank you, Your Honor.

23 THE COURT: Thank you.

24 (Whereupon, the jury enters the courtroom at
25 approximately 11:25 a.m.)

1 THE BAILLIFF: The jurors are present, Your
2 Honor.

3 THE COURT: Thank you.

4 Thank you. Please be seated.

5 Ladies and gentlemen, during your break the
6 parties have entered into a stipulation. As I indicated
7 to you -- I thought we were missing a juror. As I had
8 indicated to you before our break, a stipulation is
9 simply an agreement between the parties, and in this
10 case the agreement between the parties has resulted in
11 the state not having to call to the witness stand as
12 many witnesses.

13 Mr. Simpson.

14 MR. SIMPSON: Thank you, Your Honor.

15 Ladies and gentlemen of the jury, in the
16 present case the state and the defense agree that from
17 the recovery and seizure of the following items to their
18 testing by SLED DNA analyst Jennifer Clayton, all
19 requisite legal procedures regarding their physical
20 custody and proper chain of evidence were adhered to:

21 one, the green and blue plaid comforter
22 seized at 4232 Grimke Street, North Charleston, on
23 January 13th, 2009; two, the SANE kit performed on Stacy
24 Hooper by Faye LeBoeuf on 1/13/2009; three, the buccal
25 swab taken from the defendant on 1/13/2009.

1 Because the state and the defense agree that
2 a proper chain of evidence can be established on these
3 items, testimony establishing the chain of evidence on
4 these items is not necessary in the present trial.

5 THE COURT: Any objection to the stipulation
6 as read, Mr. Butler?

7 MR. BUTLER: No, ma'am.

8 THE COURT: And, ladies and gentlemen, with
9 that we're going to take -- go ahead and break for
10 lunch. Please be back in your jury room at 1:00 p.m.

11 Ladies and gentlemen, please remember my
12 admonition. Do not discuss this case amongst
13 yourselves. Do not read, watch, listen to any news
14 accounts regarding this case should there be any. Do
15 not do any independent research. Do not look up
16 anything on the internet. Do not post anything on
17 Facebook, My Space, or any such social network regarding
18 this case.

19 Thank you. Have a wonderful lunch.

20 Please rise for the jury.

21 (Whereupon, the jury leaves the courtroom at
22 approximately 11:28 a.m.)

23 THE COURT: Thank you. Be seated.

24 Anything before we break for lunch?

25 Mr. Simpson?

1 (Mr. Simpson and Mr. Butler confer.)

2 MR. BUTLER: Just because it might help my
3 discussions with Mr. Meggett...

4 MR. SIMPSON: Mr. -- go ahead.

5 MR. BUTLER: No, you can go ahead.

6 MR. SIMPSON: Mr. Meggett has a misdemeanor
7 conviction in North Carolina for a sexual battery. It
8 is a misdemeanor offense. I don't think it meets the --
9 rises to the threshold of possible penalties to meet the
10 automatic impeachment. However, we, of course, reserve
11 the right, should the door be opened in any way
12 whatsoever, to seek to introduce that and several other
13 prior incidents, but as to what Mr. Beattie --
14 Mr. Butler was asking me about, we don't think that
15 would trigger the automatic Rule 609 impeachment with a
16 prior conviction.

17 THE COURT: All right. I agree. Thank you.

18 MR. BUTLER: That helps. Thank you.

19 THE COURT: All right. With that, if there's
20 nothing further, we'll begin at 1:00 p.m. Thank you.

21 (A lunch recess is taken at approximately
22 11:32 a.m.)

23

24

25

AFTERNOON SESSION

(The trial reconvenes at approximately 1:10 p.m., the defendant being present with counsel, and the following proceedings were had:)

THE COURT: Thank you. Be seated.

Anything before we bring in the jury?

MR. KIDD: Judge, if we could just have a few seconds. Our witnesses just arrived and we're informing them not to mention anything to do with the towels. So if I can take one second so that information can be conveyed, then we'll be ready.

THE COURT: Thank you.

(Mr. Simpson and Mr. Kidd confer.)

MR. KIDD: I believe that they're notified now.

THE COURT: Okay. All right.

All right. Let's bring in the jury.

(Whereupon, the jury enters the courtroom at approximately 1:10 p.m.)

THE BAILLIFF: The jurors are present, Your Honor.

THE COURT: Thank you. Please be seated.

Mr. Simpson, call your next witness.

MR. SIMPSON: Thank you, Your Honor.

MR. KIDD: The state calls Betty Butler.

1 (Ms. Butler enters the courtroom.)

2 BETTY WALKER BUTLER,

3 being first duly sworn by the clerk, is examined and
4 testifies as follows:

5 THE CLERK: Thank you. You may have a seat.
6 And for the record if you'll please state your full
7 name, spelling your last.

8 THE WITNESS: Betty Walker Butler,
9 B-U-T-L-E-R.

10 MR. KIDD: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. KIDD:

13 Q. Good afternoon, Ms. Butler. How are you today?

14 A. Good afternoon. Fine, thank you.

15 Q. Could you tell the jury where it is you're
16 employed?

17 A. I'm employed with the South Carolina State Law
18 Enforcement Division, also known as SLED.

19 Q. And how long have you been employed by SLED?

20 A. Over 15 years.

21 Q. And can you tell the jury what your duties are at
22 SLED?

23 A. My duties are -- at SLED is as a forensic
24 technician. What I do, I look for the -- do a
25 presumptive test for blood, semen, hair, fibers, glass,

1 skin cells, sweat, or anything that would be of value to
2 the case.

3 Q. And before you get involved in a case, do you
4 ever have -- do you ever know that your -- what results
5 will show one way or the other?

6 A. No, not before I get involved. No.

7 Q. So all that you're looking for is the evidence
8 that's brought to you and what you can find on it?

9 A. That's correct.

10 MR. KIDD: If I may approach the witness?

11 THE COURT: Yes, sir.

12 BY MR. KIDD:

13 Q. I'm going to show you what's been marked as
14 state's exhibit number 19 for identification purposes.
15 Do you recognize that document?

16 A. I recognize it, but it's not mine.

17 Q. All right. Correct. Through your duties with
18 SLED, did you have a chance to deal with evidence
19 regarding The State vs. David Meggett?

20 A. Yes, I did.

21 Q. And I'm going to show you what's been marked as
22 state's exhibit number 28, and this is a rather big
23 item, but if you could look at that for me. Do you
24 recognize that item? I apologize. It's real bulky.

25 A. Yes, I do.

1 Q. And how do you recognize that item?

2 A. The reason why I recognize this item, everything
3 that's come in we have to give it an item number, which
4 is our item number 7.0, my initials BWB, with the lab
5 number L091598, with the date that I process it.

6 Q. And can you tell the jury what you did with that
7 item?

8 A. This particular item which is our item number 7.0
9 -- zero, which we describe as a comforter, I was looking
10 for the presence of hair and possible for semen.

11 Q. Did you find the presence of either one of those
12 substances?

13 A. Yes, I did.

14 Q. What did you find?

15 A. I took two cuttings -- three cuttings from here,
16 seven-point -- which I have 7.1, 7.2, 7.3, and also hair
17 which is 7.4.

18 Q. And when you say -- I'm sorry. I'll take that
19 off your hands. Thank you. When you say you took
20 cuttings, tell the jury what you mean when you say you
21 took cuttings from that item.

22 A. When I received that particular item, I was
23 looking for the presence of possible semen and hair.
24 What I do, I do a visual test, I lay it down on the
25 table, and I scrape all the -- the fibers or possible

1 debris off of it, collect that into a envelope. Then I
2 put it onto a stand. We close -- we turn all the lights
3 off, and we use what I would refer as goggles and an
4 alternate light source, looking for the presence of
5 semen. Everything that fluoresce, we have -- we have
6 to circle and test. And in all the surface that I
7 circled on that particular comforter, I only received
8 three cuttings that came back as positive for possible
9 semen.

10 When I say positive, once we do a chemical test
11 the swab would turn like a purple type of stain, then
12 I know that it's a possibility of semen is on that
13 particular cutting.

14 Q. Can you tell the jury a little bit about that
15 test? What is that? Is it a -- what is that test for?

16 A. That test is a test for possible semen. There's
17 sometimes there's negative testing, but when you see --
18 when you swab a particular cutting or a spot as to that
19 fluoresce -- I use a light -- once we put a chemical
20 test on it, it will turn purple if it has a possibility
21 of semen on it.

22 Q. And if you -- when you were making those swabs,
23 were those on the comforter itself or were those on your
24 cuttings?

25 A. It was the comforter itself.

1 Q. And so would I be correct to say that then when
2 you've had those positive matches that's when you would
3 make a cutting of that area?

4 A. Yes.

5 Q. Okay.

6 MR. KIDD: May I mark these, please.

7 (State's Exhibit No. 29, SLED Item No. 7.1
8 from comforter, is marked for identification.)

9 (State's Exhibit No. 30, SLED Item No. 7.2
10 from comforter, is marked for identification.)

11 (State's Exhibit No. 31, SLED Item No. 7.3
12 from comforter, is marked for identification.)

13 BY MR. KIDD:

14 Q. Ms. Butler, I'm going to now show you what's been
15 marked for identification purposes only as state's
16 number 29, 30, and 31. Do you recognize those, those
17 items?

18 A. Yes, I do.

19 Q. And what are those items?

20 A. These items are the cuttings I made from the
21 comforter and the hair that I collected from the
22 comforter.

23 Q. How can you tell that those are your cuttings
24 from the comforter?

25 A. When we take a cutting from the comforter, we

1 always put it into an envelope similar to this. We
2 close it up. We put the item number, because every
3 cutting gets its own item -- a number, which is 7.1,
4 7.2, 7.3. We make a description from the comforter. We
5 check with the cutting for possible semen. We close it
6 up, put our -- put my initials and the date. We also
7 put it into a heat -- a heat-sealed pouch like this,
8 close it up, put my initials and the date, and I have to
9 sign and date with the lab number on it.

10 Q. Ms. Butler, can you explain to the jury a little
11 bit about that number system? I believe you said the
12 comforter was item number seven. Why does then those
13 items get the 7.1, 7.2?

14 A. Every item, every cutting, has to have its own
15 number to track it through the system. The comforter
16 which is 7.1 (sic), and then every item -- everything
17 that you take after that has to have its own number,
18 which is 7.1, 7.2, 7.3, and then 7.4, so it can be
19 tracked through our LIMS system.

20 Q. Okay. And so those items 7.1, 7.2, and 7.3,
21 after you made those cuttings, what did you do with
22 them?

23 A. I sealed it in this envelope, initial and date.
24 I put it in this heat-sealed pouch, close it up, seal it
25 up, put my initials, the date, and I sign it and date

1 it. And after that, I gave it to -- I put it into what
2 we call DNA 5-E. I have a drawer in a locked room where
3 a forensic technician and DNA analyst has access to. We
4 go and we put this into our drawer, lock -- you know,
5 lock the room, so Jennifer can get it.

6 Q. And who is Jennifer?

7 A. Jennifer Clayton is the analyst working on the
8 case.

9 Q. So, and just so I get your testimony and make it
10 straight in my head, so you put it in a locked drawer
11 where Ms. Clayton will then come pick it up?

12 A. That's correct.

13 MR. KIDD: Okay. I have no further
14 questions. If you'll answer any questions Mr. Butler
15 has for you.

16 THE COURT: Mr. Butler.

17 CROSS-EXAMINATION

18 BY MR. BUTLER:

19 Q. Good afternoon.

20 A. Good afternoon.

21 Q. Ms. Butler.

22 A. Good afternoon.

23 Q. Would you believe that people get you and I
24 confused? My parents had a sense of humor and named me
25 Beattie, and I get mail for Betty Butler all the time.

1 A. All the time?

2 Q. How about that? I also -- I just want to ask you
3 one question. You got -- you did get a hair from the
4 comforter, as well; is that right?

5 A. That's correct.

6 Q. And that was sent on to SLED for testing also?

7 A. That's correct.

8 MR. BUTLER: Thank you very much.

9 MR. KIDD: No further questions.

10 THE COURT: Ms. Butler, you may step down.

11 THE WITNESS: Thank you.

12 (The witness is excused from the witness
13 stand.)

14 THE COURT: Call your next witness.

15 MR. KIDD: The state calls Jennifer Clayton.

16 (Ms. Clayton enters the courtroom.)

17 JENNIFER CLAYTON,

18 being first duly sworn by the clerk, is examined and
19 testifies as follows:

20 THE CLERK: Thank you. You may have a seat.
21 And for the record if you'll please state your full
22 name, spelling your last.

23 THE WITNESS: Jennifer Clayton,

24 C-L-A-Y-T-O-N.

25 MR. KIDD: Thank you, Your Honor.

DIRECT EXAMINATION

1
2 BY MR. KIDD:

3 Q. Good afternoon, Ms. Clayton. Can you tell the
4 jury what your occupation is?

5 A. I am a DNA analyst with the South Carolina Law
6 Enforcement Division, also known as SLED.

7 Q. And how long have you been employed at SLED?

8 A. I've been employed with SLED approximately eight
9 years. I originally started as a technician. I worked
10 as a technician for two years, and I've been an analyst
11 for six.

12 Q. And can you describe to the jury what your duties
13 and responsibilities with SLED are?

14 A. As a DNA analyst, when evidence comes into the
15 DNA department that may contain biological evidence or
16 DNA evidence, I will test for body fluids and then
17 develop a DNA profile from evidence. I can develop a
18 DNA profile from evidence and develop a DNA profile from
19 a known standard. A standard is a DNA profile that's
20 known to belong to an individual. Typically, it's
21 either a buccal swab which is a swab taken from inside
22 their cheeks or a blood sample that is drawn. And I'm
23 able to determine if the sample from the DNA profile
24 developed from evidence matches DNA profiles developed
25 from standards.

1 Q. Can you tell the jury a little bit about your
2 educational background?

3 A. I earned a bachelor's of science in biology from
4 the University of North Carolina at Chapel Hill. I've
5 also taken classes at SC State and USC. My coursework
6 includes biochemistry, genetics, molecular biology, and
7 statistics. After hiring on as a DNA analyst, I
8 completed a one-year training program under another
9 qualified analyst and worked casework under his
10 supervision before I was allowed to do casework on my
11 own.

12 Q. So is it safe to say that your formal education
13 included the study of DNA?

14 A. Yes.

15 Q. And in that education and training process, did
16 you have the opportunity to have hands-on experience in
17 handling and testing for DNA?

18 A. During the hands-on training under the qualified
19 analyst?

20 Q. Sure.

21 A. Yes.

22 Q. Have you testified in court as a DNA expert in
23 the past?

24 A. Yes, I have.

25 Q. About how many times?

1 A. Approximately 20 times.

2 Q. Can you describe to the jury what DNA is?

3 A. DNA is a long chain chemical that's found in
4 every cell of the body with the exception of red blood
5 cells. We get half of our DNA from our mom and half of
6 our DNA from our dad. And we're able to -- in forensic
7 science, we're able to develop a DNA profile from that
8 DNA. And with the exception of identical siblings, no
9 two people have exactly the same DNA profile, and that's
10 what makes it useful as a forensic tool.

11 Q. So where in DNA -- where in humans is DNA found?

12 A. It's found every -- basically every cell in the
13 body with the exception of red blood cells. It's found
14 in the nucleus which is kind of the core of the cell.

15 Q. What sort of methods do you use, or what kind of
16 DNA testing methods are there and which ones do you
17 utilize?

18 A. We use STR-PCR DNA analysis which is short tandem
19 repeat polymerase chain reaction DNA analysis. It's a
20 method that's widely accepted within the world. It's
21 used both here and in other -- other countries for
22 forensic testing.

23 Q. And briefly and as simplistically as possible,
24 because it's far over my head, can you briefly describe
25 how that PCR method of DNA testing works?

1 A. Yes. When a DNA sample is extracted it's
2 typically on something, like on a cotton swab or on a
3 piece of fabric. So the first step is to get the cells,
4 get the DNA off of the substrate, whatever it's on, and
5 break open those cells and separate the DNA from
6 everything else, the little pieces of fabric, the other
7 parts of the cell, and so that what I have left for my
8 testing purposes is DNA in liquid in a tube.

9 At that point there is a particular amount of DNA
10 that we need to test. If there is too much DNA when we
11 put it on our instrument, then the instrument will get
12 confused. It won't be able to identify what's a real
13 peak, what's not a real peak, and the data is
14 un-interpretable. If there's not enough DNA, it will be
15 too low for the instrument to detect it. It will just
16 flat line and not give a result.

17 So the next step is to determine how much DNA is
18 present. So I'll run it on a separate instrument that
19 determines how much DNA is present, and then I will
20 adjust the concentration of the DNA, and then I will use
21 the kit that we commonly use. It's the Identifiler Kit.
22 It's just a brand name for the kit. And that kit makes
23 multiple copies of particular areas of the DNA. We
24 don't copy the entire DNA strand. We just copy sections
25 of the DNA. So it makes lots and lots of copies of the

1 areas we're interested in and tags them with a dye that
2 the instrument will be able to detect.

3 Then the instrument -- the samples are loaded
4 onto the instrument and run on the instrument, and the
5 instrument then gives an electronic data result which
6 we're able to interpret as DNA profiles.

7 Q. Do you utilize controls?

8 A. Yes. We use both positive controls and negative
9 controls. The positive control is a ---

10 Q. And let me stop you real quick. Can you tell the
11 jury what a control is first?

12 A. Yes. A control is to determine two things; one,
13 to make sure that you're testing work correctly and,
14 two, to ensure that you have not introduced a
15 contaminant.

16 The positive control is to ensure that your test
17 worked correctly. It's used during the amplification
18 part -- part, portion of the testing when you're making
19 lots and lots of copies of the DNA, and it's run on the
20 instrument with all of the other samples. It has a
21 known DNA profile. So if the instrument gives a profile
22 that does not match for that sample, then we know
23 something went wrong with the testing and that I need to
24 go back and re-amplify or determine what went wrong with
25 the test that the instrument gave an incorrect result.

1 So none of the associated samples can be used, either,
2 because clearly there's -- there's an issue.

3 The negative controls are to ensure that any
4 possible contaminant can be detected. Negative controls
5 consist of the reagents that are used, but no DNA is
6 added to those samples. So they should be -- they
7 should give no result on the instrument.

8 If there are peaks, indications of DNA
9 profile in the reagent blanks, then that would be an
10 indication that somewhere along the line a contaminant
11 was introduced to the reagent blank and possibly one of
12 the samples in which case the samples have to be
13 re-amped to determine at what point it was introduced.

14 And if the result, the contaminant in the
15 reagent blank, is reproducible, then the -- all samples
16 have to be scrapped. We have to start back. We have to
17 go back to the original samples, cut new samples, go
18 through the entire process all over again of
19 re-extracting it, re-quantitating the DNA, and
20 re-amplifying the DNA to run it on the instrument.

21 Samples where a reagent blank has been
22 contaminated cannot be used for interpretation or
23 reported.

24 Q. How do you read the results that you get from
25 those PCR tests?

1 A. How do I read the results?

2 Q. Yeah. How are they read?

3 A. The information from the -- run on the instrument
4 is recorded as digital information. We then use a
5 program called GeneMapper which converts the electronic
6 data to a visual interpretation which consists of peaks
7 with numbers associated with those peaks which -- and
8 those numbers correspond to the size of the piece of DNA
9 at a particular location that's being tested. And so
10 what we get is a printout with a set of peaks and a
11 number associated for each peak that's within the
12 acceptable range for the peak heights.

13 Q. Can you tell the jury what a no result is?

14 A. No result? A no result is when the instrument --
15 the DNA is run on the instrument that would typically
16 detect the DNA and give a DNA profile. In the instance
17 of no results, that means that either there was no DNA
18 in the sample or that it was such a low level that the
19 sample was -- that the instrument was unable to detect
20 it within the acceptable peak height range.

21 Q. What about an inconclusive result?

22 A. An inconclusive result would be when -- I'm
23 trying to think of the best way to describe this.

24 Sometimes there is a atypical result. One
25 example would be an off-ladder result. A ladder is used

1 to determine which numbers are associated with which
2 peaks, and the ladder includes the most common numbers
3 that you would expect to see in a DNA profile. There
4 are other numbers that are less common, and those will
5 be typed as an off-ladder if they're not found in the
6 ladder.

7 To verify an off-ladder, the sample has to be
8 re-injected and -- to verify it, or if it's -- the
9 analyst determines that's not necessary, then they can
10 "inc" (phonetic) that location or call that one location
11 inconclusive.

12 So whenever there's a question about what a
13 result is in a particular location, then that result
14 would be inconclusive.

15 Q. And what about an exclusion?

16 A. An exclusion is a -- when a comparison is made
17 between a known DNA profile and a sample, a sample
18 question -- a question sample, for instance, a piece of
19 evidence -- excuse me. Let me start over.

20 When a DNA profile is developed from a piece of
21 evidence, it can then be compared to a standard. If the
22 sample does not match, then the individual that donated
23 that standard is excluded as the contributor of that DNA
24 profile. They could not have donated that DNA profile
25 to the sample.

1 Q. And a match?

2 A. A match is when you compare a DNA profile
3 developed from evidence and a DNA profile developed from
4 a standard and those two samples match, they have the
5 same DNA profile, then that would be a DNA -- that would
6 be a match. The DNA profile from the evidence matches
7 the DNA profile developed from the individual in
8 question.

9 If I may, I think I may have answered a
10 different question than what you intended me to answer
11 with the inconclusive.

12 Q. Okay. Explain that.

13 A. Okay. The answer that I gave for inconclusive is
14 when we mark inconclusive on the table for the results
15 of the DNA developed. I think you may be referring to
16 when we write in our results "inconclusive," that a
17 sample is inconclusive for interpretation? Is that...

18 Q. Correct.

19 A. Okay. That is when -- when we determine a sample
20 to be inconclusive for reliable interpretation, what
21 that means is that the instrument did detect some
22 information for the sample, but it detected so little
23 information and gave us such a limited result that I
24 don't want to make a conclusion based on that. There's
25 too many people that could be included.

1 And it's possible at that point when the sample
2 is so low level that the entire result's not from one
3 individual. It could be that one number came from one
4 person and one number came from another person.

5 And because there's a question of whether the
6 sample is from one person or multiple people at a very
7 low level and because so many people could possibly be
8 included, then we don't make a result. We don't make an
9 interpretation. We say it's inconclusive for reliable
10 interpretation.

11 Q. Can anything in a DNA sample make -- or can
12 anything make DNA in a sample change from one type to
13 another?

14 A. Could you repeat that question, please?

15 Q. Well, like is there anything in your testing
16 process that could alter the results of the DNA?

17 A. No. There is nothing in our testing process that
18 alters DNA other than, you know, making copies of the
19 sections that we're interested in.

20 Q. Do you and do your laboratory go under
21 proficiency testing?

22 A. Yes. We are given a DNA proficiency every 180
23 days.

24 Q. What are the results of your proficiency tests?

25 A. I have passed all of my proficiency testing.

1 Q. Does your laboratory hold any licenses or...

2 A. We are an accredited laboratory. We are an ASCLD
3 accredited laboratory or ASCLD/LAB accredited. What
4 that means is that we have an external agency come in
5 and audit our lab. They look at our reports, they look
6 at the way -- our protocols, the way that we work our
7 cases, to determine that the way that we are processing
8 our evidence is correct and that there's no indication
9 that we're making false conclusions or that we're doing
10 work that is -- is not acceptable.

11 Q. All right. And we'll get to this case in just a
12 minute. I want to talk about one other thing. Can you
13 describe to the jury a little bit about population
14 frequencies and what they are?

15 A. Okay. Population statistics is what is used to
16 add a weight to a match. We often -- the weight of how
17 likely it is that if you went out or if someone went out
18 and chose one person at random from the population what
19 is the probability that that one person if you developed
20 their DNA profile and developed a profile from another
21 item that those two items would happen to have the same
22 DNA profile, and that's -- that adds weight to the
23 match.

24 What is used is, the statistic is based on the
25 DNA profiles that we develop, and we use a population

1 database that is owned and controlled by the FBI.

2 MR. KIDD: Your Honor, at this time I'd like
3 to move Ms. Clayton as an expert in DNA analysis.

4 THE COURT: Any objection?

5 MR. BUTLER: No, Your Honor.

6 THE COURT: Ladies and gentlemen, normally a
7 person cannot give opinion testimony. Normally, when a
8 person testifies they must testify as to either what
9 they saw or heard or sensed by smell or something of
10 that nature. There is an exception when someone is
11 qualified because of their education and experience.
12 They are then permitted to give their opinion in certain
13 areas if the Court qualifies them that way.

14 Mr. Kidd, what are you asking Ms. Clayton to
15 be qualified as an expert in?

16 MR. KIDD: DNA analysis.

17 THE COURT: This witness will be qualified in
18 the area of DNA analysis to give opinion testimony in
19 that area. That does not mean that you must accept the
20 opinion. It is simply evidence for you to use in any
21 way that you see fit.

22 Mr. Kidd.

23 MR. KIDD: Thank you, Your Honor.

24 BY MR. KIDD:

25 Q. Ms. Clayton, did you ever receive evidence in the

1 case -- in the case versus -- State v. David Meggett?

2 A. Yes, I did.

3 MR. KIDD: If I may approach, Your Honor?

4 THE COURT: You may.

5 BY MR. KIDD:

6 Q. I'm first going to show you what has been marked
7 as state's exhibit number 16. Well, actually, before
8 you comment on that, did you generate a report in this
9 case?

10 A. Yes. I generated two reports.

11 Q. Okay. And I see that you have a copy there, but
12 I'm going to show you what's been marked for
13 identification purposes as state's exhibit number 19.
14 Do you recognize that?

15 A. Okay. All right. Yes, I do.

16 Q. Okay. And what is that?

17 A. This -- excuse me. This is a copy of the second
18 report that I issued.

19 Q. Okay. And then I'll get back to where I was. I
20 believe I showed you -- absolutely, you've done a lot of
21 talking.

22 A. (The witness gets glass of water.)

23 Q. Okay. So now I'm going to show you what's been
24 marked as state's exhibit number 16. Can you tell the
25 jury what that is?

1 A. State's exhibit number 16 is SLED item number
2 two. It is a buccal standard from David Lee Meggett. I
3 recognize the item because it has the lab number
4 associated with this case, as well as the item number,
5 and it has my initials and the date of when I resealed
6 the package after my analysis. And the SLED lab number,
7 the item number, and the -- and my initials are also
8 written on the pouch for the actual buccal swab, the
9 envelope for the actual buccal swab.

10 Q. Did you develop a DNA profile for that standard?

11 A. Yes, I did.

12 Q. Now I'd like to show you...

13 MR. KIDD: May I approach the court reporter?

14 THE COURT: You may.

15 (State's Exhibit No. 32, SLED sexual assault
16 kit, is marked for identification.)

17 BY MR. KIDD:

18 Q. Now I'd like to show you what's been marked as
19 state's exhibit number 32 for identification purposes.
20 Do you recognize that item?

21 A. Yes, I do. Again ---

22 Q. And ---

23 A. I'm sorry.

24 Q. Go ahead.

25 A. It has the SLED lab number, the item number, and

1 initials, and my date and the initials on the seal where
2 I sealed it when I was finished with my analysis.

3 Q. And can you tell the jury what that is?

4 A. This is a sexual assault kit, evidence collection
5 kit, from Stacy Deneen Hooper.

6 Q. Within that kit is there a standard for
7 Ms. Hooper?

8 A. Yes, there is.

9 Q. And did you do a DNA profile for that standard of
10 Ms. Hooper?

11 A. Yes, I did.

12 Q. And is that profile laid out in your report?

13 A. Yes, it is.

14 Q. Okay. I'm now going to show you state's exhibits
15 number 29, number 30, and number 31. See if you
16 recognize those items.

17 A. Yes, I do.

18 Q. Can you tell the jury what those three items are?

19 A. Yes. State's exhibit 29 is SLED item number --
20 number 7.1, and state's exhibit 30 is SLED item 7.2, and
21 state's exhibit 31 is SLED item number 7.3. These were
22 all cuttings taken from a comforter.

23 Q. And did you -- what sort of tests did you run on
24 those cuttings?

25 A. The first thing that I did with these items was

1 test it for the possible presence of semen.

2 Q. Can you tell the jury what kind of -- what that
3 test entails and what it is?

4 A. Yes. We can test for bodily fluids. In this
5 particular case, I tested for the presence of semen.

6 The test that I used looks for a protein that's
7 found in high concentrations in male semen. It's called
8 P30, it's a protein, and if it tests positive that
9 indicates the presence of semen. We don't determine
10 semen to be identified unless there is a second
11 supporting factor such as another serology test such as
12 the acid phosphatase test -- acid phosphatase tests for
13 a different protein found in semen -- or if a male
14 profile is developed from the male fraction of the DNA
15 extract during the DNA analysis process. If a male
16 profile is developed from the male fraction, then semen
17 is identified in that sample.

18 Q. Were both of those testing types utilized on
19 these cuttings or...

20 A. May I review my notes?

21 Q. Absolutely.

22 A. Thank you. Yes. I apologize for the delay.
23 Yes, they were tested with both.

24 Q. And what were the results of those tests?

25 A. They were positive. The A.P. spot was positive,

1 the P30 testing was positive, and a male profile was
2 identified.

3 Q. And is that on all three of those cuttings or two
4 of those cuttings?

5 A. That was on all three of those cuttings.

6 Q. Okay. Were you able to then develop a DNA
7 profile from those cuttings?

8 A. Yes, I was.

9 Q. And what were the -- on all three of those
10 cuttings were you able to develop a DNA profile?

11 A. Yes, I was.

12 Q. And were you able to compare the DNA profile
13 developed from those cuttings to the standards that you
14 had from Ms. Hooper's rape kit and the buccal swab taken
15 from Mr. Meggett?

16 A. Yes, I was.

17 Q. And can you tell the jury about the results of
18 that analysis?

19 A. Okay. The results for each sample were slightly
20 different.

21 The -- I did what is called a differential
22 extraction. That is a type of extraction or separation
23 that is done with samples that may contain semen or
24 spermatozoa. Spermatozoa has a harder cell wall to
25 break open than regular cells. And so what we do first

1 is, for skin cells, we break open -- I break open all
2 those cells with the extraction process and take that
3 fraction and separate it out. And then I, in the second
4 stage, try to break open all of the spermatozoa cells
5 and get a separate DNA profile from those, in -- in the
6 hopes that if they're -- if there are two individuals,
7 one leaving behind skin cells and the other leaving
8 behind spermatozoa, that I will be able to develop a
9 clean profile from each individual. So that is the type
10 of testing that I did for these particular samples.

11 For SLED item 7.1, which is state's exhibit
12 29, the DNA profile developed from the sperm fraction
13 was a mixture of at least two individuals. The DNA
14 profile developed from the major contributor matched the
15 DNA profile of David Meggett. Stacy Hooper was excluded
16 as a contributor to this mixture. And then the partial
17 DNA profile developed from the non-sperm fraction which
18 would contain the skin cells is insufficient for
19 reliable interpretation.

20 Item 7.2, which is state's exhibit 30, the
21 DNA obtained from the sperm fraction of that item was
22 also a mixture of at least two individuals. The DNA
23 profile developed from the major contributor matched
24 David Meggett. The partial DNA profile developed from
25 the minor contributor is from an unidentified individual

1 and does not match Stacy Hooper. The partial DNA
2 profile developed from the non-sperm fraction is
3 insufficient for reliable interpretation.

4 The DNA profile developed from item 7.3,
5 which was state's exhibit 31 -- and in this case I wrote
6 it as one conclusion because the results were the same
7 in -- in both fractions. The DNA profile developed from
8 item 7.3 matches the DNA profile of David Meggett.

9 The probability of randomly selecting an
10 unrelated individual having a DNA -- excuse me -- having
11 a DNA profile matching these items is approximately one
12 in eleven quintillion.

13 THE COURT REPORTER: One in eleven...

14 THE WITNESS: Quintillion,

15 Q-U-I-N-T-I-L-L-I-O-N.

16 BY MR. KIDD:

17 Q. And that's a big number?

18 A. Yes. I should clarify, though, on 7.3 I said the
19 result was the same for both fractions. It actually was
20 not the same, but there was nothing to indicate a second
21 individual, so it was written as one result. The
22 complete profile was found in the semen fraction.

23 Q. And I want to talk a little bit about, like,
24 touch DNA.

25 A. Okay.

1 Q. Can you explain to the jury a little bit about
2 touch DNA? Like if I rub my hand on a surface, can I
3 leave my DNA on it?

4 A. Yes.

5 Q. So would it be reasonable to think if someone --
6 someone's DNA would be on their bedding?

7 A. Yes.

8 Q. But at the same time, would you be surprised if
9 it was not found from your -- in your cuttings?

10 A. Not necessarily.

11 MR. KIDD: Beg the Court's indulgence.

12 THE COURT: Yes, sir.

13 BY MR. KIDD:

14 Q. And just to oversimplify all your testimony here,
15 David Meggett's DNA was found on the cuttings from the
16 comforter, taken from the green -- from the green plaid
17 comforter. Is that correct?

18 A. Yes. I never actually saw the comforter, so I
19 don't know what the pattern is; but in my report it's
20 described as it was sent to me as cuttings from a green
21 and blue comforter, yes.

22 MR. BUTLER: May we approach?

23 THE COURT: You may.

24 (There was an off-the-record bench conference
25 in the presence of the jury but out of the hearing of

1 the jury.)

2 (Said bench conference being concluded, the
3 following proceedings were had:)

4 THE COURT: Ladies and gentlemen, we're going
5 to take a short recess. Do not begin your
6 deliberations. Do not discuss this case amongst
7 yourselves.

8 Please rise for the jury.

9 (Whereupon, the jury goes to the jury room at
10 approximately 1:55 p.m.)

11 THE COURT: Be seated.

12 We're going to take a ten-minute break,
13 Ms. Clayton. Please do not discuss your testimony with
14 either the state or the defense attorney. Thank you.

15 THE WITNESS: Okay.

16 THE COURT: We'll be at ease ten minutes.
17 Thank you.

18 (A break is taken at approximately 1:55 p.m.)

19 (The trial reconvenes at approximately
20 2:05 p.m., the defendant being present with counsel, and
21 the following proceedings were had:)

22 THE COURT: Please be seated.

23 Anything before we bring in the jury?

24 MR. BUTLER: No. Thank you for allowing me
25 that break. I know it was only me. I'm making sure

1 that we have a black dry erase marker.

2 (There is off-the-record discussion regarding
3 the dry erase marker.)

4 MR. BUTLER: Thank you very much.

5 THE COURT: All right. Let's bring in the
6 jury.

7 THE BAILIFF: They're not ready yet, Your
8 Honor.

9 THE COURT: They're not ready? Well, all
10 right. Have a seat.

11 (There is off-the-record discussion.)

12 THE BAILIFF: They're ready, Judge.

13 THE COURT: All right. Bring them in.
14 Please rise for the jury.

15 (Whereupon, the jury enters the courtroom at
16 approximately 2:10 p.m.)

17 THE BAILIFF: The jurors are present, Your
18 Honor.

19 THE COURT: Thank you. Please be seated.
20 Mr. Butler, your witness.

21 MR. BUTLER: Thank you.

22 CROSS-EXAMINATION

23 BY MR. BUTLER:

24 Q. Good afternoon. Should I give you the
25 designation of Agent? Agent Clayton or Ms. Clayton?

- 1 A. That's fine or you can just call me Ms. Clayton.
- 2 Q. Whatever you prefer. Ms. Clayton?
- 3 A. Ms. Clayton is fine.
- 4 Q. Okay. I want to ask you about some other tests
- 5 that you performed. Mr. Kidd asked you about tests that
- 6 were performed on the comforter, correct?
- 7 A. That's correct.
- 8 Q. You also performed tests that were done from the
- 9 rape protocol kit; is that right?
- 10 A. That's correct.
- 11 Q. That would have been tests performed on the
- 12 vaginal swab taken from Ms. Hooper at the hospital the
- 13 night of the incident, correct?
- 14 A. That is one of the items tested, correct.
- 15 Q. And that would be item number 1.3, correct?
- 16 A. SLED item number 1.3, correct.
- 17 Q. And 1.3, the vaginal swabs which would be swabs
- 18 from inside the vagina of...
- 19 A. That's correct. The nurse would have collected
- 20 those.
- 21 Q. And no DNA in that sample, correct?
- 22 A. No, that's not correct. There was DNA in that
- 23 sample.
- 24 Q. I'm sorry. None of the defendant's DNA?
- 25 A. That's correct.

1 Q. Mr. Meggett's DNA was not in that sample?

2 A. Correct. I did not develop a DNA profile from
3 David Meggett from that sample.

4 Q. All right. And the fingernail clippings, what
5 numbers are those?

6 A. The fingernail clippings would be SLED item
7 numbers 1.7.1 as the right fingernail scrapings. SLED
8 item number 1.7.2 is the left fingernail scrapings.

9 Q. And no DNA of Mr. Meggett under the fingernails
10 of Ms. Hooper?

11 A. No DNA profile was developed from David Meggett
12 from the fingernails, no.

13 Q. And I want to ask you about -- you said 7.4, that
14 you collected a hair from the comforter. Correct?

15 A. Several hairs were collected from the
16 comforter ---

17 Q. Submitted to you?

18 A. --- comforter and submitted to me, correct.

19 Q. And 7.4 is a hair of an unknown male, not David
20 Meggett?

21 A. Let me verify which sample that is. SLED item
22 7.4.2 which would be one of the hairs. The hair item
23 would have been 7.4. I want to say parent item; that's
24 the item that the sub-item came from. 7.4 was debris
25 collection collected by Betty Butler. She put all the

1 debris into an envelope, sealed it, and sent it to me.

2 I then looked at the debris to determine if there
3 were any hairs that had enough tissue on the root to
4 possibly develop a DNA profile. I took three hairs to
5 DNA. One of those was items 7.4.2, and from that I
6 developed a DNA profile. It is from an unidentified
7 male individual and does not match David Meggett.

8 Q. And the samples that you talked about on direct,
9 those all come from the comforter, right, 7.1 and 7.2
10 and 7.3?

11 A. Correct.

12 Q. Okay. And 7.1, taken from the comforter, is
13 David Meggett's DNA and an unknown third person?

14 A. Let's see. That's correct.

15 Q. Okay. And likewise with 7.2?

16 A. That's correct.

17 Q. And when we talk about -- and Ms. Hooper's DNA is
18 not found in -- on the comforter at all?

19 A. It is not found on the cuttings that I tested,
20 correct.

21 Q. On the samples that you were given from the
22 comforter, Ms. Hooper's DNA was not on them?

23 A. No.

24 Q. Okay. And the sample 7.1 and 7.2 are mixtures,
25 meaning that you've got a cutting that's taken from --

1 that's taken from the comforter, and on the specific
2 spots that the cutting is taken from that you were given
3 you have Mr. Meggett's DNA mixed with a third person?

4 A. As in a third person not Stacy Hooper?

5 Q. Not Stacy Hooper.

6 A. That's correct.

7 Q. All right. And those two spots are also the only
8 spots on the comforter that you're given, so the only
9 spots that we know of where there are anybody -- where
10 there is anyone's DNA other than -- let me say that a
11 different way. We have no evidence of this unknown
12 person's DNA anywhere other than where the cutting is
13 taken from 7.1 and 7.2?

14 A. Could you repeat that question for me?

15 Q. These are the only places that the DNA of the
16 third person is found?

17 A. There is a third person found at those two
18 cuttings, yes. I did not find the third person in 7.3.
19 And I would have to -- could I have a moment to look?

20 Q. Sure. Take your time.

21 A. Yes. And I cannot determine if it's from -- if
22 the minor contributor to 7.1 is the same minor
23 contributor to 7.3.

24 Q. Okay. Let me ask that one then as long as you
25 bring it up. You can't rule out that it's from the same

1 person? They all line up?

2 A. For the minor contributor?

3 Q. Right. You can't -- you can't exclude them as
4 having been made from the same person?

5 A. There are indications -- let's see. There are
6 indications that it may be from two separate
7 individuals, but... (The witness further reviews
8 document.) Yes, there are -- there are indications that
9 there are -- that it could be from two individuals.
10 However, there's not enough information to state
11 conclusively one way or another.

12 Q. Okay. Can you show me what you're talking about?
13 I've been -- far too much time thinking I'll figure that
14 out. Let me see.

15 A. Okay. So, see, there's a 14 and 15. He's --
16 there's a 12 there. So, yes, those don't -- that would
17 be an indication that it could be two separate
18 individuals.

19 Q. All right. Right, but don't ---

20 A. For the minor contributor.

21 Q. Where is Mr. Meggett's sample?

22 A. Oh. Mr. Meggett is the same in both samples,
23 correct.

24 Q. Right.

25 A. So Mr. Meggett is...

1 THE COURT REPORTER: Repeat that?

2 THE WITNESS: Mr. Meggett -- Mr. Meggett is
3 the major contributor in both samples, that's correct.

4 BY MR. BUTLER:

5 Q. And so where you're seeing that it could be two
6 people in 7.1 and 2 is where?

7 A. The minor contributor.

8 Q. The minor contributor is 14 and 15. There's no
9 14 and 15 in 7.2?

10 A. Well, in the -- in the male fraction.

11 Q. Okay.

12 A. There's a 12 present. There's no 14 and 15
13 present in the male fraction. There is a -- there's --
14 of 7.2. There is a 14 and 15 present in 7.1. So that
15 would be an indication that the minor contributor to the
16 male fraction of 7.1 could be a different individual
17 than the minor contributor in the male fraction in 7.2.

18 Q. Unless the 13 comes from Mr. Meggett, because
19 he's 11 and 13 at 7-point -- at that ---

20 A. Yes.

21 Q. --- at the 8, right?

22 A. The 11 and 13 from -- the 11 and 13 in both
23 samples. David Meggett has an 11 and 13. So in both
24 samples, 11 and 13 ---

25 Q. Okay.

1 A. --- comes from David Meggett. There could be a
2 minor contributor hidden underneath this 13 if that's
3 the question you're asking.

4 Q. Yeah, I think that's what I'm asking. You can't
5 rule out that this was made by the same person, that the
6 minor contributor in each sample is the same person,
7 conclusively exclude them?

8 A. There are indications that it is from two
9 individuals.

10 Q. Okay. Okay. In any case, a mixture can happen
11 when you get the sample one of two ways. The two
12 people's DNA, in whatever form they come in, are already
13 combined when they end up on a sample that you're given,
14 right, in this case the comforter? They're either mixed
15 by the time that they get to the comforter, right?

16 A. Okay.

17 Q. Or one person's DNA just happens to be deposited
18 on the same space on the same comforter where someone
19 else's DNA already is. Those are the two ways, right?

20 A. Yes. It could be that a sample with DNA mixed
21 from two individuals is deposited on it.

22 For instance, if you have a mixture, two
23 individuals' blood gets mixed and then is dripped on a
24 surface, then both individuals' DNA is deposited on the
25 surface at the same time; or it's possible that one

1 individual could come and handle an item or, say, spit
2 on an item or somehow deposit their DNA on the surface
3 and then later another individual through contact or
4 bodily fluid could deposit their DNA at a later time.

5 Q. With respect to the first example where they're
6 already mixed, that's common in cases where there's
7 sexual activity? Two people's DNA is mixed, it ends up
8 at the same place on the -- on the same space at the
9 same time, right?

10 A. That would be one way for it to be deposited,
11 correct.

12 Q. Okay. And in this case you're aware of no other
13 DNA on the comforter that belongs to this unknown person
14 anywhere except 7.1 and 7.2?

15 A. The only -- I tested three samples, I developed a
16 full profile on 7.1 and 7.2, and those were the only
17 samples I tested.

18 Q. Okay. Thank you. And, again, in the samples
19 from the comforter, nothing from Ms. Hooper?

20 A. Not from the samples that I tested, correct.

21 Q. And then the mixtures, those are David Meggett
22 and some unknown person?

23 A. Yes.

24 Q. Okay. And the fingernail clippings, only
25 Ms. Hooper; and the vaginal swabs, only Ms. Hooper?

1 A. Correct.

2 Q. Okay. I want to talk to you just a little bit
3 about DNA evidence in general. It's over the, what,
4 last 10-15 years become extremely popular in forensic
5 science?

6 A. That's correct. It has been used since the 80's
7 in criminal investigations.

8 Q. Very powerful in evidence in investigating and
9 prosecuting criminal offenses?

10 A. It can be, yes.

11 Q. And the reason that it can be so powerful is that
12 you can get a lot of information about -- from a very
13 small amount of biological material?

14 A. Yes. It is possible to get -- develop a DNA
15 profile from a small amount of biological material.

16 Q. The technology is extremely sensitive?

17 A. Yes, it is sensitive.

18 Q. Things that are invisible to the naked eye and
19 some other devices, you can use to extract information
20 from to link to a person?

21 A. DNA can be obtained from samples that are
22 invisible to the naked eye, correct.

23 Q. But that's all they do is identify the person to
24 whom the sample belonged to, right?

25 A. It can be used to match it to a standard, yes,

1 assuming that the individual doesn't have an identical
2 sibling.

3 Q. And the technology today will allow you to get
4 that information from not only much smaller samples but
5 older samples, as well?

6 A. That's correct. It -- yes.

7 Q. And the science does not tell you when the DNA
8 was deposited on the object, right?

9 A. No, it does not.

10 Q. Doesn't tell you when it got there or how it got
11 there?

12 A. No, it does not.

13 Q. The circumstances under which it got there?

14 A. No, it does not.

15 Q. You're a forensic scientist?

16 A. Correct.

17 Q. So that means that you're a scientist and that
18 you're part of law enforcement, as well, in your field?

19 A. That's correct.

20 Q. So you understand that not all crimes are
21 identity crimes or what we might say a "who done it"?

22 A. That's correct.

23 Q. Okay. Where it's a who done it, DNA can be very
24 persuasive, powerful evidence, right?

25 A. That's correct.

1 Q. Literally astronomical numbers. What was the
2 number in this case?

3 A. One in 11 quintillion.

4 Q. You'd have to go to another planet and find an
5 intelligent life force -- form to get that many people,
6 right?

7 A. Yes.

8 Q. I mean, how many people on Planet Earth?

9 A. Approximately 6.6 billion.

10 Q. Okay. How many times would that fit into the
11 number that you gave in this case?

12 A. Oh, I would need a paper and pencil.

13 Q. Oh, come on, it's easy.

14 A. It's easy? Yeah.

15 Q. I have no idea. A lot?

16 A. It's a lot.

17 Q. A lot.

18 A. It is a lot.

19 Q. Okay. But with respect to the probability of in
20 a murder case whether it was self-defense, DNA tells you
21 nothing?

22 A. That's correct.

23 Q. Whether or not it was an accident, DNA tells you
24 nothing?

25 A. DNA in itself cannot determine that, no.

1 Q. And in a sexual assault case, whether it was
2 consensual or by force DNA tells you nothing?

3 A. It cannot tell you that. That's correct.

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

5 THE COURT: Yes, sir.

6 MR. BUTLER: That's all I have. Thank you.

7 THE COURT: Redirect?

8 MR. KIDD: Very briefly.

9 REDIRECT EXAMINATION

10 BY MR. KIDD:

11 Q. Mr. Butler asked you about the rape protocol
12 kit. I want to talk about that real briefly. You said
13 that -- and I'm just going to go over Mr. Butler's
14 thing, I'm not going to change it, but I'll just track
15 it.

16 On 1.3, that's the rape protocol kit, is that
17 correct, or the vaginal swab?

18 A. That is the vaginal swab from the kit, correct.

19 Q. And you said that there was DNA found, but what
20 DNA did you find on that swab?

21 A. The DNA profile developed from that swab was from
22 Stacy Hooper.

23 Q. And that would make logical sense that when you
24 swab Stacy Hooper that you get Stacy Hooper's DNA,
25 right?

1 A. That's correct.

2 Q. Did you perform a test for the presence of semen?

3 A. Yes, I did.

4 Q. And what were the results of that test from the
5 vaginal swab?

6 A. There was semen indicated. I did the P30 test
7 which tests for the protein found in -- in high
8 concentrations in semen, and the result was positive.

9 Q. So, and just so we're right or just so we get
10 this square, you tested for semen and found it, but you
11 couldn't get a DNA profile. Can you explain why that
12 is?

13 A. Well, semen was indicated, and as said, as I said
14 before, we have to have a second supporting test, either
15 an acid phosphatase test or a male profile in the male
16 fraction to confirm the presence of semen.

17 There is two possible reasons that we would get
18 semen indicated but no DNA profile developed from a male
19 individual.

20 The first possibility is while the test is
21 designed to only detect semen because P30 is found in
22 such high concentrations, it can be found in other body
23 fluids but at much lower concentrations, at a
24 concentration that is not normally detected by the test
25 and would not expect to be detected by the test. It is

1 possible that the body fluid could have an unusually
2 high concentration of P30 and be minimally detected by
3 the test.

4 The other possibility is that there is semen
5 present and that is in fact why the P30 test was
6 positive, that semen was detected, but it's at such a
7 low concentration that it was not possible to develop a
8 male DNA profile from it because, as I said before, the
9 instrument that we use has a minimum threshold of
10 detection. There has to be a minimum amount of DNA
11 present before it can detect it.

12 Q. And can you put a timestamp on DNA?

13 A. No, I cannot.

14 Q. So if I plucked out a hair and laid it and left
15 it on this table, would you be able to test it today for
16 DNA; and if it was still there a year from now, would
17 you still be able to test it for DNA?

18 A. If DNA is in a ideal conditions, which would be a
19 dry -- a cool, dry environment, not exposed to heat, not
20 exposed to moisture, not exposed to ultraviolet light --
21 light or chemicals, then, yes, it can be stored for long
22 lengths of time and still be tested.

23 Q. So if a DNA mixture or whether it be semen or
24 saliva or just skin cells gets onto a bedsheet and
25 whether or not those conditions are ideal, could they

1 stay on that bedsheet for a period of time and still be
2 tested for DNA?

3 A. Yes.

4 Q. I want you to talk a little bit about when you
5 say you could have a major contributor versus a minor
6 contributor. Can you explain the difference between
7 that for the jury?

8 A. Okay. When we get a mixture, when a -- when a
9 mixture of DNA is deposited on an item, sometimes we're
10 -- I am able to determine a major contributor and a
11 minor contributor. What that means is that the major
12 contributor deposited more DNA on the item, so when the
13 DNA was extracted it gave a stronger signal on the
14 instrument. And so I was able to determine that the DNA
15 from the major contributor, that profile, matched David
16 Meggett.

17 Q. And so under that logic then, the minor
18 contributor would have contributed much less DNA to that
19 sample?

20 A. Correct.

21 MR. KIDD: Court's indulgence.

22 THE COURT: Yes, sir.

23 BY MR. KIDD:

24 Q. And so the minor contributor or contributors on
25 your samples could have deposited that DNA to those

1 sample areas at a completely separate time, day, or
2 place, as long as it ended up on that sample, than the
3 major contributor?

4 A. That's correct.

5 MR. KIDD: No further questions.

6 THE COURT: Recross?

7 MR. BUTLER: Just briefly.

8 RECROSS-EXAMINATION

9 BY MR. BUTLER:

10 Q. On the difference between the terms you used,
11 "identified" and "indicated," make sure I understand.
12 The presumptive test for semen on 1.3, semen is only
13 indicated and not identified?

14 A. That is correct.

15 Q. All right. Identified means you've confirmed its
16 presence?

17 A. That is correct.

18 Q. Indicated means you haven't confirmed it by your
19 own internal standards?

20 A. That's correct.

21 Q. All right. And the reason for that is P30 is
22 found -- is that a protein?

23 A. Yes, that's correct.

24 Q. And it is a protein that is found in semen, but
25 it's also found in other things, as well?

1 A. That's correct.

2 MR. BUTLER: Got it. Thank you.

3 THE COURT: Ms. Clayton, you may step down.

4 Thank you. Ms. Clayton, please make sure that you leave
5 the exhibits with my court reporter.

6 THE WITNESS: Okay.

7 THE COURT: Thank you.

8 (The witness is excused from the witness
9 stand.)

10 THE COURT: Call your next witness.

11 MR. SIMPSON: Thank you, Your Honor. The
12 state calls Faye LeBeouf.

13 (Ms. LeBeouf enters the courtroom.)

14 FAYE LEBEOUF, CNM,
15 being first duly sworn by the clerk, is examined and
16 testifies as follows:

17 THE CLERK: Thank you. You may have a seat.
18 And for the record if you'll please state your full
19 name, spelling your last.

20 THE WITNESS: Faye LeBoeuf, L-E-B-O-E-U-F as
21 in Frank.

22 MR. SIMPSON: Thank you, Your Honor.

23 DIRECT EXAMINATION

24 BY MR. SIMPSON:

25 Q. Ms. LeBoeuf, good afternoon.

1 A. Good afternoon.

2 Q. What line of work are you in?

3 A. I am employed by the Medical University of South
4 Carolina as a certified nurse-midwife.

5 Q. And do you have any specific -- specific areas of
6 medical specialty regarding that employment?

7 A. My medical special -- or my nursing specialty is
8 midwifery or women's health. I also have a subspecialty
9 of sexual assault.

10 Q. And how long have you been practicing in this
11 area?

12 A. As a certified nurse-midwife I've been practicing
13 for 23 years and as a sexual assault nurse examiner for
14 eight years.

15 Q. Is there an abbreviation we usually use for that
16 type of nurse involving sexual assaults?

17 A. More known as a SANE nurse.

18 Q. What does that stand for?

19 A. Sexual Assault Nurse Examiner.

20 Q. And do some of your current and past duties
21 include performing sexual assault examinations on
22 females who have reported a -- being victim of a sexual
23 assault?

24 A. It does.

25 Q. And if you had to approximate, how many such

1 examinations have you performed over your career?

2 A. Over a thousand.

3 Q. Now, what kind of educational background do you
4 have to become a certified SANE nurse?

5 A. I took a 40-hour classroom course, I spent some
6 time with law enforcement, and I performed over ten
7 exams with a preceptor.

8 Q. Is that in addition to being a certified nurse?

9 A. To be a certified nurse-midwife, I graduated from
10 a program that my specialty was midwifery.

11 Q. Have you ever been qualified as an expert in
12 testimony in court before?

13 A. Yes, sir.

14 Q. How many times if you had to approximate?

15 A. Approximately 12.

16 Q. Approximately 12.

17 MR. SIMPSON: Your Honor, at this point we
18 would move to qualify Faye LeBeouf as an expert in
19 sexual assault examination.

20 MR. BUTLER: No objection.

21 THE COURT: This witness will be qualified in
22 the area as in the expert of -- as an expert in the area
23 of sexual assault examination.

24 Mr. Simpson.

25 MR. SIMPSON: Thank you, Your Honor.

1 BY MR. SIMPSON:

2 Q. Ms. LeBeouf, do you recall being involved in an
3 alleged sexual assault upon a Stacy Hooper back in
4 January of 2009?

5 A. Yes, sir.

6 Q. And under what circumstances did you become
7 involved in this case?

8 A. I was the SANE nurse that was on call that night.

9 Q. And when a SANE nurse is on call, what does that
10 mean if you could explain to the jury?

11 A. A sexual assault nurse examiner, we would take
12 call from anywhere from 8 to 24 hours at a time. Any
13 victim that came through, whether it be male or female,
14 we would be called out to do a sexual assault
15 examination and evidence collection.

16 Q. And, again, you said you've done many of these
17 examinations before?

18 A. Yes, sir.

19 Q. And could you walk the jury through, please, what
20 would take place in a standard sexual assault
21 examination?

22 A. For each victim that comes through, we do a
23 medical history to find out if there is any medical
24 problems, if they're allergic to anything, and then we
25 go through the sexual assault history with them, and we

1 ask them to tell us what happened. We have specific
2 questions that SLED has set up for us that they want
3 answered, and we get those answered, and then we go into
4 a separate room where we do a complete physical
5 examination from head to toe, collecting evidence that
6 SLED has set out for us, and then we give them
7 medications.

8 Q. Do you conduct a pelvic exam as part of that
9 process?

10 A. Yes, sir.

11 Q. Is the pelvic exam an important part of the
12 examination process?

13 A. Yes, sir.

14 Q. And did you perform a pelvic exam in the present
15 case with Stacy Hooper?

16 A. Yes, I did.

17 Q. Could you please recount for the jury what
18 observations you made in making that pelvic exam on
19 Ms. Hooper?

20 A. When I did her pelvic exam, there is an area
21 called the posterior fourchette which is like a little
22 well just before going into the -- into the vagina.
23 There was a small abrasion there which is similar to a
24 rug burn. That is not always -- it's not there on a
25 normal female.

1 Q. And what does the term "abrasion" mean under --
2 in medical terminology?

3 A. It's where the top layer of skin is taken off.

4 Q. And are vaginal abrasions consistent with a
5 forced sexual assault?

6 A. They were consistent with her history.

7 Q. Does resistance by a female to sex, does that
8 increase the likelihood of abrasions to the vagina?

9 A. It could.

10 Q. Okay. And in what way?

11 A. Just the trauma itself, the force in that area on
12 the tissue, there might have been a lack of lubrication,
13 position.

14 Q. Can you point out anything to the jury in your
15 opinion regarding the timing of this abrasion that you
16 observed?

17 A. Well, I did ask her. One of the questions is
18 have you had sexual activity within the last seven days.
19 She denied any sexual activity within that time frame.

20 Q. And consensual sexual activity, correct?

21 A. Yes, sir.

22 Q. She did report a sexual assault, correct?

23 A. Right. Consensual sex.

24 Q. Can you tell the jury a little bit about, in your
25 experience, that area of the female anatomy and its

1 tendency to heal?

2 A. Usually if there's abrasions that are not deep,
3 they're very superficial, they heal within 24 to 72
4 hours after.

5 Q. And so with you observing this vaginal abrasion,
6 and I understand you can't with any degree of certainty
7 put a time to it, but did you make any conclusions as to
8 how recent that abrasion was?

9 A. It would have been within the time frame that I
10 saw her.

11 Q. Do you ask victims of sexual assault if they had
12 urinated between the assault and the time that you're
13 doing your exam?

14 A. Yes, sir.

15 Q. And why do you ask that question?

16 A. There is a possibility that evidence could be
17 wiped away with toilet tissue. It could be washed away
18 with the urine as it came out.

19 Q. Did Ms. Hooper report any urination between the
20 time of her assault and the time you did your exam?

21 A. Yes, sir.

22 Q. And that would lessen the likelihood of the
23 findings of sperm in the vaginal area?

24 A. It could, yes, sir.

25 MR. SIMPSON: Court's indulgence.

1 THE COURT: Yes, sir.

2 BY MR. SIMPSON:

3 Q. Ms. LeBeouf, the abrasion that you observed, you
4 said the posterior fourchette, what part of the female
5 anatomy is that again?

6 A. It's like a little well just prior to going into
7 the vagina.

8 Q. So if we were looking at, say, a clock face, to
9 use a crude comparison, we would be looking at?

10 A. When we look at the vagina, we look at it as a
11 clock with twelve o'clock being where the clitoris is,
12 six o'clock is down towards where the anus is, and then
13 three and nine o'clock.

14 Q. And, again, the abrasion, that means that
15 friction had caused skin to peel away, be removed?

16 A. Yes, sir.

17 Q. Where -- I apologize. Where on the clock face
18 was the abrasion that you observed?

19 A. It was about six o'clock in the posterior
20 fourchette.

21 MR. SIMPSON: Thank you, Ms. LeBoeuf. Please
22 answer any questions Mr. Butler may have for you.

23 THE COURT: Mr. Butler.

24 MR. BUTLER: Please the Court.

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. BUTLER:

3 Q. Ms. LeBeouf, you talked today about your
4 findings, an abrasion to Ms. Hooper's posterior
5 fourchette, right?

6 A. Yes, sir.

7 Q. Abrasions are not the only kinds of injuries that
8 you look for?

9 A. That's true, uh-huh.

10 Q. And the posterior fourchette is not the only
11 place that you look to?

12 A. That's true, uh-huh.

13 Q. And an abrasion of this sort, first of all, this
14 is something that's not necessarily visible with the
15 naked eye, right?

16 A. Right.

17 Q. You have to use a colposcope?

18 A. Yes, sir.

19 Q. And what is that?

20 A. It is a -- like a microscope, it has a magnifier
21 on it. You look through it similar to a microscope, and
22 it brings -- you can magnify anything that you need to
23 look at.

24 Q. And there are different degrees of magnification,
25 right?

- 1 A. Yes, sir.
- 2 Q. And this one you had to magnify how many times to
3 see it?
- 4 A. That's the normal setting, 3.75.
- 5 Q. 3.75 times. And she was not complaining of any
6 pain there, was she?
- 7 A. No, sir.
- 8 Q. Okay. And there are other areas that you look to
9 in the pelvic exam for injuries, right?
- 10 A. Yes, sir.
- 11 Q. Okay. And can I have you just, if you wouldn't
12 mind, diagram the areas that you look to in the pelvic
13 exam so we can discuss that, please.
- 14 A. And may I use...
- 15 Q. Write on the board here.
- 16 A. Can I use my...
- 17 Q. Oh, please. Please do.
- 18 A. (The witness goes to board and draws diagram.)
- 19 Q. Okay. If you would you resume your seat, I meant
20 to ask you one other question. I'm sorry.
- 21 A. (The witness remains at board.)
- 22 Q. You've testified that what you observed was
23 consistent with Ms. Hooper's history which means it's
24 consistent with what she told you?
- 25 A. Yes, sir.

1 Q. Right? But it's also consistent with a lot of
2 other things, right?

3 A. Yes, sir.

4 Q. Okay. This sort of injury could be consistent
5 with consensual intercourse?

6 A. It could.

7 Q. And in everyday life?

8 A. Yes, sir.

9 Q. Okay. And are you familiar with the *Journal of*
10 *Forensic Nursing* in your field?

11 A. Yes, sir.

12 Q. And are you familiar with a study done by
13 Anderson, McClain, and Riviello?

14 A. (The witness nods head up and down.)

15 Q. Okay. So would you agree with those doctors when
16 they write in the summer of 2006, comparing the findings
17 of Slaughter, that's another test: It appears that the
18 posterior fourchette is the most vulnerable injury
19 following intercourse regardless of if there is consent.
20 In the present study, investigators identified no
21 statistical difference in the frequency of injuries to
22 the posterior fourchette between the two groups, meaning
23 consensual and nonconsensual sex.

24 A. That's true.

25 Q. Is that how you read that?

1 A. Yes, sir.

2 Q. That means that injuries to this area are equally
3 common in consensual situations and nonconsensual?

4 A. That's true.

5 Q. Okay. Now, tell me the other areas, please, that
6 you -- that look to for injury.

7 A. Well, we look -- these, this is the labia majora
8 and minora. The majora is on the outer. The minora is
9 on the inside.

10 Q. Okay. Before you get to the Latin, what's the
11 labia?

12 A. The lips.

13 Q. Okay. And this is the female anatomy; this is
14 the vagina?

15 A. The vagina.

16 Q. Okay.

17 A. Looking at it. So we look at the lips to see if
18 there's any trauma to the lips. We look at the
19 posterior fourchette which is here. We look at the
20 hymen which is like an elastic band that the penis goes
21 through to get into the vaginal area. We look at that.
22 We look at the tissue that's around it. We look at the
23 urethra where the urine comes out. We also look at the
24 anus to make sure that there's no trauma there. And
25 then you can look with the colposcope inside the vagina

1 at the cervix to see if there's any trauma to the cervix
2 or the walls of the vagina.

3 Q. Okay. And types of injuries beyond abrasions,
4 there are lacerations?

5 A. Yes, sir.

6 Q. And what are those?

7 A. They're cuts made that are not with a sharp
8 object.

9 Q. Okay. Tears?

10 A. Yes, sir.

11 Q. And what are tears?

12 A. They're tears like a tearing of the paper or
13 tearing of something.

14 Q. The tissue in this area is sensitive?

15 A. It is.

16 Q. All right. And it can be injured in consensual
17 or nonconsensual activity?

18 A. That is true.

19 Q. And so it can tear? There can be lacerations?

20 A. Yes.

21 Q. You can see contusions?

22 A. Yes, sir.

23 Q. Bruising?

24 A. Yes, sir.

25 Q. Anything else?

- 1 A. Redness.
- 2 Q. Redness. Swelling?
- 3 A. Yes, sir.
- 4 Q. And you look for all of that?
- 5 A. Yes, sir.
- 6 Q. And you document that in your report?
- 7 A. Yes, sir.
- 8 Q. All right. So, and you also look to the inner
- 9 thigh?
- 10 A. Yes, sir.
- 11 Q. Right? Because that's an area where you might
- 12 find trauma?
- 13 A. Yes, sir.
- 14 Q. All right. Any findings of bruising on the inner
- 15 thigh?
- 16 A. No, sir.
- 17 Q. Contusions to the inner thigh?
- 18 A. No, sir.
- 19 Q. Redness? Swelling?
- 20 A. No, sir.
- 21 Q. Lacerations? Tears?
- 22 A. No, sir.
- 23 Q. None, okay. The perineum, where is that again?
- 24 A. This area through here, down towards the anus.
- 25 Q. Any bruising there?

- 1 A. No, sir.
- 2 Q. Lacerations?
- 3 A. No, sir.
- 4 Q. Tears?
- 5 A. No, sir.
- 6 Q. Redness?
- 7 A. No, sir.
- 8 Q. Swelling?
- 9 A. No, sir.
- 10 Q. The labia majora, tell me what that is, again,
11 please.
- 12 A. The outer part of the lip.
- 13 Q. You look there for trauma and injury?
- 14 A. Yes, sir.
- 15 Q. All right. None there?
- 16 A. No, sir.
- 17 Q. No swelling?
- 18 A. No, sir.
- 19 Q. No tearing?
- 20 A. No, sir.
- 21 Q. No contusions?
- 22 A. No, sir.
- 23 Q. No trauma at all?
- 24 A. No, sir.
- 25 Q. Likewise with the labia minora?

- 1 A. Yes, sir.
- 2 Q. And where is that?
- 3 A. That's the inner part.
- 4 Q. Okay. Likewise with the clitoris?
- 5 A. Yes, sir.
- 6 Q. The vaginal wall, right?
- 7 A. Right, yes, sir.
- 8 Q. What is the perihymenal tissue?
- 9 A. That's more on children, but it's the area...
- 10 Q. Okay. The hymen, as well?
- 11 A. Yes, sir.
- 12 Q. None of those injuries that we've talked about in
- 13 any of those areas?
- 14 A. No, sir.
- 15 Q. You're going to have to help me with this one,
- 16 the fossa...
- 17 A. Navicularis. That's on children.
- 18 Q. Okay, only on children. Anus and cervix, you
- 19 look for all those things?
- 20 A. Yes, sir.
- 21 Q. No injuries of any of those that we've described
- 22 in those areas?
- 23 A. No, sir.
- 24 Q. Okay. And because you're a nurse, you look at
- 25 the entire body, right?

1 A. Yes, sir.

2 Q. From head to toe?

3 A. Yes, sir.

4 Q. For any of the injuries that we've described?

5 THE COURT: Ms. LeBoeuf, you may have a seat.

6 MR. BUTLER: You may sit. I'm sorry.

7 (The witness returns to the witness stand.)

8 BY MR. BUTLER:

9 Q. You look from head to toe for any of the injuries
10 that we've described?

11 A. Yes, sir.

12 Q. Right? And you have these diagrams in your
13 report, as well?

14 A. Yes, I do.

15 Q. All right. No injuries to her face that you
16 documented?

17 A. No. Just piercings.

18 Q. She had a piercing to her lip; is that right?
19 Her front lip? Lower lip?

20 A. Her lower lip, yes, sir.

21 Q. And you sometimes do see injuries associated with
22 -- with piercings; do you not?

23 A. On occasion.

24 Q. Okay. No injury to her chest?

25 A. No, sir.

- 1 Q. To her abdomen?
- 2 A. No, sir.
- 3 Q. To her tops of her legs?
- 4 A. No, sir.
- 5 Q. To her lower legs?
- 6 A. No, sir.
- 7 Q. To her back?
- 8 A. No, sir.
- 9 Q. Backs of her legs?
- 10 A. No, sir.
- 11 Q. Her hands or feet?
- 12 A. No, sir.
- 13 Q. And you're not just going by memory. You have a
- 14 report where you look to all of these things. It's 12
- 15 pages. Right?
- 16 A. Yes, sir.
- 17 Q. You test for the presence of sperm, and you found
- 18 none, right?
- 19 A. That is true.
- 20 MR. BUTLER: Beg the Court's indulgence.
- 21 THE COURT: Yes, sir.
- 22 BY MR. BUTLER:
- 23 Q. Oh. Mr. Simpson asked you if she reported that
- 24 having had gone to the bathroom, and you ask that
- 25 because it affects the likelihood of getting a sample,

1 right?

2 A. Yes, sir.

3 Q. That's not the only thing you ask, though, is it?

4 A. No, sir.

5 Q. All right. You want to know if they've showered
6 or bathed?

7 A. That's true.

8 Q. She had not?

9 A. She had not.

10 Q. You wanted to know if she had changed clothes?

11 A. Right.

12 Q. She had not. Right?

13 A. Right.

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

15 THE COURT: Yes, sir.

16 BY MR. BUTLER:

17 Q. Oh. And she was unsure if Mr. Meggett had
18 ejaculated, right?

19 A. Right.

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

21 That's all I have. Thank you.

22 MR. SIMPSON: Thank you, Your Honor.

23 REDIRECT EXAMINATION

24 BY MR. SIMPSON:

25 Q. Ms. LeBeouf, you -- Mr. Beatty went through any

1 number of the injuries possible in a sexual assault to
2 the vaginal area. Do you see those injuries in every
3 sexual assault exam you do?

4 A. No, sir.

5 Q. The tearing in every sexual assault?

6 A. No, sir.

7 Q. The redness in every sexual assault?

8 A. No, sir.

9 Q. Do you even see the abrasions to the posterior
10 fourchette in every sexual assault?

11 A. No, sir.

12 Q. He pointed out to you that consensual sex can,
13 and pointed out a study that shows this, can result in
14 abrasions to the posterior fourchette, correct?

15 A. Yes, sir.

16 Q. Would that have to be more forceful sex?

17 A. Consensual assault -- consensual sex can
18 sometimes be forceful, so it's hard to...

19 Q. Hard to make that determination?

20 A. That determination, yes, sir.

21 Q. But it -- within reason that, you know, more
22 gentle sex would not have that abrasion but forceful sex
23 would?

24 A. It could, yes, sir.

25 Q. And so in the -- and I believe you said you

1 approximated about a thousand, correct?

2 A. Yes, sir.

3 Q. Sexual assault exams? These injuries to each
4 area of the labia, and we won't go through them all
5 again, but you don't see those injuries in every ---

6 MR. BUTLER: Objection, leading at this
7 point.

8 THE COURT: Rephrase your question,
9 Mr. Simpson.

10 BY MR. SIMPSON:

11 Q. Do you see those types of injuries in every
12 sexual assault?

13 A. No, I do not.

14 MR. SIMPSON: No further questions.

15 MR. BUTLER: A brief follow up.

16 RECROSS-EXAMINATION

17 BY MR. BUTLER:

18 Q. Of course, when you see patients, they're
19 claiming sexual assaults, right?

20 A. Alleged, yes, sir.

21 Q. Right, okay. And it would be hard to determine
22 at that point a standard by which to compare known
23 versus consensual, right?

24 A. That's true, yes, sir.

25 Q. You only see people that have claimed to have

1 been sexually assaulted?

2 A. When I do sexual assault exams, yes, sir.

3 Q. Right, okay. And just so it's clear as to the
4 study that I read to you from the forensic *Journal of*
5 *Forensic Nursing*, that quote that I asked you and you
6 agreed with didn't just say that this can happen, an
7 injury to the posterior fourchette can occur in
8 consensual sex; it said it occurs equally in both
9 consensual and nonconsensual circumstances. Right?

10 A. Right.

11 MR. BUTLER: That's all I have. Thank you.

12 THE COURT: Ms. LeBeouf, you may step down.
13 You're free to remain with us, but you're also free to
14 leave. Thank you.

15 THE WITNESS: Thank you.

16 (The witness is excused from the witness
17 stand.)

18 THE COURT: Call your next witness.

19 MR. SIMPSON: Thank you, Your Honor. The
20 state calls Joseph Bianco.

21 (Dr. Bianco enters the courtroom.)

22 JOSEPH BIANCO, M.D.,

23 being first duly sworn by the clerk, is examined and
24 testifies as follows:

25 THE CLERK: Thank you. You may have a seat.

1 And for the record if you'll please state your full
2 name, spelling your last.

3 THE WITNESS: Joseph Bianco, B-I-A-N-C-O.

4 DIRECT EXAMINATION

5 BY MR. SIMPSON:

6 Q. Dr. Bianco, good afternoon. What kind of
7 medicine do you practice, Doctor?

8 A. Emergency medicine.

9 Q. And who is your present employer?

10 A. Roper Emergency Physicians.

11 Q. And how long have you been with them?

12 A. Right at 13 years.

13 Q. And, now, what is your educational background to
14 qualify for that position?

15 A. Four and a half years of college, four years of
16 medical school, and three years of residency before you
17 get to practice.

18 Q. And does training continue in your field even
19 after you become a doctor, an M.D.?

20 A. Of course.

21 Q. And can you just explain briefly about how that
22 training continues?

23 A. The state requires us to get at least 20 hours a
24 year in continuing education. Most of us get a lot more
25 than that.

1 Q. And you said you're currently working as an
2 E.R. doctor, correct?

3 A. Uh-huh.

4 Q. In emergency medicine?

5 A. That's all I do.

6 Q. And what are just generally speaking your duties
7 as an E.R. doctor?

8 A. Basically take care of any and all patients that
9 come into the emergency room, from anything from a
10 scratch or a cough or whatever they perceive is wrong
11 with them to people that are dying.

12 Q. And just approximately how many patients would an
13 E.R. doc see in a typical shift at the E.R.?

14 A. It varies depending upon where you're working at,
15 but probably anywhere from ten patients to 35 patients,
16 30-35 patients.

17 Q. And a record -- are records kept, documenting the
18 patient's visit while they were there and your
19 observations?

20 A. Yes, they are.

21 Q. Do you recall seeing a patient named Stacy Hooper
22 in the early morning hours of January 13th, 2009?

23 A. If that's the person that's involved in this
24 case, yes.

25 Q. Would it refresh your recollection at all if you

1 could refer to your report in this matter?

2 A. Yes.

3 MR. SIMPSON: Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. SIMPSON: Your Honor, may I approach?

6 THE COURT: You may.

7 BY MR. SIMPSON:

8 Q. Now, Doctor, I'm handing you what's been marked
9 for I.D. only as state's 22. Do you recognize that
10 report?

11 A. Let me get my glasses out. Yes, I do.

12 Q. And, Doctor, is that the report documenting Stacy
13 Hooper's visit to you on January 13th of 2009?

14 A. Yes, it is.

15 Q. Doctor, what were Stacy Hooper's medical
16 complaints that formed the basis of her visit to you
17 that night?

18 A. It was a sexual assault.

19 Q. Did she give any specific complaints of areas of
20 her body that were in pain that evening?

21 A. Yes, she did. Her arm and her jaw.

22 Q. And did you personally observe any injury that
23 night consistent with those complaints of pain?

24 A. My recollection is strictly from the chart,
25 although I do remember the patient, and I marked

1 basically she had a mark or a tenderness on her jaw.

2 Q. And that was visible by you, confirming that that
3 injury was there?

4 A. Yes. I wouldn't have put it down unless it was
5 -- unless I -- unless I saw it or palpated it.

6 Q. And what do you mean by palpate it?

7 A. Feel it.

8 Q. And you actually note that on your report,
9 correct?

10 A. Yes, I did.

11 Q. And are they generic diagrams *per se* of the human
12 face, human body, where you mark your observations?

13 A. That is correct.

14 Q. And you did indicate the injury you just
15 explained to the jury?

16 A. On the face, yes. I indicated it in two
17 different spots.

18 MR. SIMPSON: Your Honor, at this point -- I
19 apologize I didn't cover this earlier. We would like to
20 qualify Dr. Bianco as an expert in emergency medicine.

21 MR. BUTLER: No objection.

22 THE COURT: This witness will be qualified as
23 an expert in emergency medicine.

24 Your witness.

25 BY MR. SIMPSON:

1 Q. Doctor, in your medical opinion were the injuries
2 that you noted in your report to Stacy Hooper consistent
3 with being squeezed or grabbed in the face and neck
4 area?

5 A. It would be.

6 Q. And did Ms. Hooper complain of any other pain
7 other than in the face and the neck?

8 A. She complained about arm pain.

9 Q. And can you give us any more specificity to that?

10 A. No, I really can't. Let me just read the rest of
11 the chart. (The witness further reviews exhibit.)

12 I do not have anything else charted on there
13 about her pain except for the initial chief complaint
14 and the -- what she said happened.

15 Q. And, now, Doctor, let me ask you, what does the
16 medical term "contusion" mean?

17 A. That's a bruise.

18 Q. And did you note in your report, if I could refer
19 you to page -- the note at the bottom of page ten, but I
20 don't believe it's actually the tenth, tenth page we
21 have. The section called clinical impression?

22 A. Yes. It says contusion, jaw, arms.

23 Q. And you said a contusion is bruising?

24 A. Bruise, yes.

25 Q. And you noted a contusion to the jaw area and the

1 arm?

2 A. That is correct. That was the diagnosis.

3 Q. Doctor, is a person's height and a person's
4 weight typically noted in a -- as basic information in a
5 medical report?

6 A. Usually in the nursing section it is.

7 Q. Does the report in front of you note Stacy
8 Hooper's height and weight?

9 A. Yes, it does. Five feet seven inches height and
10 a weight of 115 pounds.

11 MR. SIMPSON: Court's indulgence.

12 THE COURT: Yes, sir.

13 MR. SIMPSON: Doctor, thank you. Please
14 answer any questions Mr. Butler may have for you.

15 THE COURT: Mr. Butler.

16 CROSS-EXAMINATION

17 BY MR. BUTLER:

18 Q. Good afternoon, Doctor. You have your report in
19 front of you?

20 A. I do.

21 Q. The only complaints were tenderness in the jaw
22 and a problem with her arm, correct?

23 A. Well, the chief complaint was the sexual assault,
24 but the context was arm and jaw pain.

25 Q. I'm talking about the physical symptoms that

1 she's displaying. I understand why she was there, but
2 the only physical complaints that she had, if I
3 understand, tenderness in her jaw and something with her
4 arm that you can't specify?

5 A. Well, that and the fact that she was tearful.

6 Q. Okay. And like all doctors, you treat the whole
7 person, right?

8 A. That is correct.

9 Q. And you have standard questions that you ask and
10 standard areas that you look towards a person's body for
11 the presence of injury, right?

12 A. Correct.

13 Q. And your report is a report that's a filled-out
14 form, correct?

15 A. Correct.

16 Q. Okay. And there is a section on the third page,
17 injuries and pain, the first column in the middle?

18 A. Which page?

19 Q. It's going to be page two in the upper left-hand
20 corner. I'm sorry.

21 MR. BUTLER: May I approach the witness?

22 THE WITNESS: Oh.

23 THE COURT: You may.

24 BY MR. BUTLER:

25 Q. This right here. Right there.

- 1 A. Okay. Yes.
- 2 Q. You with me?
- 3 A. Right. This is the nursing record.
- 4 Q. No complaints or injuries to her head, face,
- 5 nose, mouth, right?
- 6 A. Injuries, it says jaw, neck. That's what it
- 7 says, jaw and neck.
- 8 Q. I read that the -- the jaw is written in as an
- 9 explanation to neck? Is that one way of reading that?
- 10 A. I don't know.
- 11 Q. Okay.
- 12 A. I did not do this. This would have been the
- 13 nurse filling this form out.
- 14 Q. No injuries noted to the shoulder, right? Do you
- 15 see there's right and left?
- 16 A. Yes.
- 17 Q. No injury to the right or left shoulder?
- 18 A. There is nothing else marked in that area. That
- 19 is correct.
- 20 Q. And that's thorough, is it not?
- 21 A. I'm sorry?
- 22 MR. SIMPSON: Objection, Your Honor.
- 23 MR. BUTLER: Thorough?
- 24 THE COURT: What's the basis?
- 25 MR. SIMPSON: Speculating on the exam a nurse

1 gave. He's not -- no personal knowledge of this.

2 THE COURT: If he knows, he may answer.

3 BY MR. BUTLER:

4 Q. The form is thorough? Shoulder, hip, arm, thigh.
5 Tell me if I'm reading this incorrectly.

6 A. No. The form is correct. The form lists lots of
7 different areas where you can be injured. That is
8 correct.

9 Q. Elbow, knee, forearm, leg, wrist, ankle, hand,
10 foot, fingers, toes, all of those are on the form?

11 A. Correct.

12 Q. No notation of injury in any of them, right or
13 left?

14 A. None in that little area, no. You're correct.

15 Q. In the column on the right, there's a head and
16 face area on the same page? Head and face, they check
17 for different sorts of injuries, lacerations, abrasions,
18 swelling, hematomas, ecchymosis, right?

19 A. I'm sorry. Can you tell me where you're at?

20 Q. Sure. (Pointing).

21 A. Okay. In that area she has written in
22 complaining of left-sided jaw pain.

23 Q. But nothing else? None of those other injuries?

24 A. No.

25 Q. And she was prescribed Lortab for pain?

1 A. Yes, that is correct.

2 Q. And Ibuprofen for swelling?

3 A. Ibuprofen and Lortab is generally what I
4 prescribe for injuries.

5 Q. And she was not admitted to the hospital?

6 A. No. She -- as is our standard protocol, she is
7 sent to what's called a SANE nurse, a sexual assault
8 nurse who does a specialized exam for evidence.

9 Q. There's a notation referencing Xanax. Would you
10 have prescribed that to her, or is that a list of her
11 medications?

12 A. Can you tell me what page you're on?

13 Q. Sure. (Pointing).

14 A. Oh, okay. That would be... (The witness further
15 reviews document.) That would be her medicines.

16 MR. BUTLER: Okay. Beg the Court's
17 indulgence.

18 THE COURT: Yes, sir.

19 BY MR. BUTLER:

20 Q. And on that same page, a notation "PMD." What
21 does that stand for?

22 A. Primary medical doctor.

23 Q. Palmetto Behavioral Health?

24 A. Palmetto Behavioral Health.

25 Q. And that's who prescribed her the Xanax?

1 A. That's what she is -- one of the meds that she's
2 taking.

3 Q. And what is Xanax prescribed for?

4 A. Xanax is a -- what we call an anxiolytic drug,
5 which means for people that have anxiety it tends to
6 calm them down. If you're pulling up to a bridge high
7 in the air and you feel like you can't go across, people
8 can take Xanax. It's a very quick acting medicine. In
9 15 minutes or so, they can drive across the bridge.

10 Q. Somebody who's prone to be anxious can take Xanax
11 to calm them?

12 A. Yes.

13 Q. That was what she was already on before she came
14 to see you?

15 A. That was her past medical history, that is
16 correct, and her medicine.

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

18 THE COURT: Yes, sir.

19 MR. BUTLER: That's all I have. Thank you,
20 Doctor.

21 MR. SIMPSON: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. SIMPSON:

24 Q. Doctor, nurses' charts aside, you observed a
25 contusion to the shoulder of Stacy Hooper on that night?

1 A. I think to her jaw.

2 Q. To her jaw ---

3 A. And her arm.

4 Q. --- and arm. I apologize. To her jaw and arm?

5 A. Yes.

6 MR. SIMPSON: Nothing further, Your Honor.

7 THE COURT: Mr. Butler?

8 MR. BUTLER: Nothing. Thank you.

9 THE COURT: Dr. Bianco, you may step down.

10 Thank you.

11 (The witness is excused from the witness
12 stand.)

13 THE COURT: Call your next witness.

14 MR. KIDD: The state calls Dr. Kelly.

15 Your Honor, I believe the witness went to the
16 restroom. I apologize. So it might just be one second.
17 I apologize.

18 MR. SIMPSON: Your Honor, we're going to call
19 another short witness.

20 THE COURT: All right.

21 MR. SIMPSON: The state calls Susan
22 K. Johnson.

23 Your Honor, may I approach the court
24 reporter?

25 THE COURT: You may.

1 (Ms. Johnson enters the courtroom.)

2 SUSAN K. JOHNSON,

3 being first duly sworn by the clerk, is examined and

4 testifies as follows:

5 THE CLERK: Thank you. You may have a seat.

6 And for the record if you'll please state your full

7 name, spelling your last.

8 THE WITNESS: Sure. Susan Johnson,

9 J-O-H-N-S-O-N.

10 DIRECT EXAMINATION

11 BY MR. SIMPSON:

12 Q. Good afternoon, Ms. Johnson.

13 A. Good afternoon.

14 Q. Where do you live?

15 A. New York.

16 Q. And who do you work for?

17 A. T-Mobile.

18 Q. And what kind of company is T-Mobile?

19 A. A cellular telephone company.

20 Q. And what is your position for T-Mobile?

21 A. I am the custodian of records.

22 Q. And what duties does that position entail?

23 A. We respond to subpoena compliance from various
24 agencies.

25 Q. And how does your business go about responding to

1 subpoenas or search warrants from law enforcement
2 agencies?

3 A. We pull the information electronically and then
4 either fax it or e-mail it or send it through the mail.

5 Q. And are these records maintained in the course of
6 T-Mobile's regularly conducted business?

7 A. Yes, they are.

8 Q. What information typically is law enforcement
9 seeking and can T-Mobile respond to?

10 A. Normally, subscriber information, call detail
11 records, as well as cell site information.

12 Q. And do you recall receiving a subpoena in the
13 present case, a search warrant in the present case?

14 A. Yes.

15 Q. And how did you respond to that search warrant?

16 A. I believe through fax or e-mail.

17 Q. And do you recall what specifically -- what
18 specific information that search was requesting from
19 T-Mobile?

20 A. I believe it was subscriber information as well
21 as call detail records.

22 Q. And do you recall at all for what number that
23 request was for?

24 A. No, I do not recall.

25 MR. SIMPSON: Your Honor, may I approach the

1 court reporter?

2 THE COURT: You may.

3 BY MR. SIMPSON:

4 Q. Would it refresh your recollection if you saw the
5 search warrant?

6 A. Yes.

7 Q. I'm handing the witness what's been marked for
8 I.D. only as state's exhibit 21. Does that look
9 familiar to you, Ms. Johnson?

10 A. Yes.

11 Q. And what specific information is that search
12 warrant requesting from T-Mobile?

13 A. Subscriber information as well as call detail
14 records for phone number

15 Q. And what is the time frame being requested?

16 A. January 12th, 2009, through January 13th, 2009.

17 Q. And did your office respond to that search
18 warrant?

19 A. Yes, we did.

20 MR. SIMPSON: Your Honor, may I approach the
21 witness?

22 THE COURT: You may.

23 BY MR. SIMPSON:

24 Q. Handing the witness what's been marked for
25 identification only as state's exhibit 20. Ms. Johnson,

1 does that look familiar to you?

2 A. Yes, it does.

3 Q. And could you describe for the jury what that is?

4 A. It is subscriber information as well as call
5 detail records.

6 Q. And that is for what number?

7 A. 843-303-1757.

8 Q. And once you have compiled that information as a
9 result of the search warrant, what did you do with it?

10 A. It was returned back to the D.A.'s office.

11 Q. To the requesting agency?

12 A. Correct.

13 Q. And would that have been done by fax?

14 A. Yes.

15 Q. Is your fax cover sheet in fact included as part
16 of that exhibit?

17 A. Yes, it is.

18 MR. SIMPSON: Your Honor, at this point the
19 state would move exhibit 20 into evidence in this case.

20 THE COURT: Any objection?

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

22 THE COURT: Yes, sir.

23 MR. SIMPSON: May we approach, Your Honor?

24 THE COURT: You may.

25 (Mr. Butler and Mr. Simpson confer.)

1 MR. SIMPSON: Your Honor, by consent the
2 parties have scaled down the exhibit to the singular
3 page addressing the file that was relevant.

4 THE COURT: All right. And you are going to
5 mark that as twenty-eight or seven?

6 MR. SIMPSON: State's 20.

7 THE COURT: State's 20 into evidence without
8 objection.

9 MR. BUTLER: That's correct.

10 (State's Exhibit No. 20, previously marked
11 for identification, is received in evidence.)

12 MR. SIMPSON: The state has no further
13 questions of this witness. Please answer any questions
14 Mr. Butler may have for you, Ms. Johnson.

15 MR. BUTLER: I have none. Thank you.

16 THE COURT: You may step down. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: You are excused.

19 (The witness is excused from the witness
20 stand.)

21 MR. KIDD: The state calls Dr. Kelly.

22 (Dr. Kelly enters the courtroom.)

23 PATRICK JOSEPH KELLY, M.D.,
24 being first duly sworn by the clerk, is examined and
25 testifies as follows:

1 THE CLERK: Thank you. You may have a seat.
2 And for the record if you'll state your full name,
3 spelling your last.

4 THE WITNESS: My full name is Patrick Joseph
5 Kelly, K-E-L-L-Y.

6 DIRECT EXAMINATION

7 BY MR. KIDD:

8 Q. Good afternoon, Dr. Kelly.

9 A. Good afternoon.

10 Q. I appreciate your being here, and I'll try to get
11 right to the point. Can you tell the jury where you're
12 employed?

13 A. I'm employed with Roper Emergency Physicians.

14 Q. And how long have you worked for Roper?

15 A. Since 1991.

16 Q. Can you briefly go through your educational
17 training to become a doctor?

18 A. Yes, sir. I went to medical school here in
19 Charleston for four years. I did a flexible internship
20 in Chicago. I returned and paid back two years to the
21 South Carolina DHEC in Kingstree, South Carolina, and
22 then I went back and completed three years of emergency
23 medicine.

24 Q. Do you specialize in any specific area?

25 A. Emergency medicine.

1 Q. Emergency medicine. Do you recall ever treating
2 a patient named Stacy Hooper?

3 A. Vaguely.

4 Q. Would it help your recollection if I showed you
5 the report?

6 A. Yes, sir.

7 MR. KIDD: May I approach, Your Honor?

8 THE COURT: You may.

9 BY MR. KIDD:

10 Q. I'm going to show you what's been marked as
11 state's exhibit number 23. Take your time and review
12 that document.

13 A. All right, sir.

14 Q. And do you recognize that document?

15 A. Yes, I do.

16 Q. And can you tell the jury what that is?

17 A. It's her emergency record from 3/28/09.

18 Q. So that would be March 28th, 2009?

19 A. Correct.

20 Q. What was the chief complaint that Ms. Hooper had
21 when she came to see you?

22 A. She complained of right shoulder pain.

23 Q. And did you have the opportunity to look at and
24 diagnose that shoulder?

25 A. Yes.

1 Q. And what did you determine?

2 A. I determined that she had a right shoulder
3 strain, and she had an Xray that was reviewed by me that
4 was negative.

5 Q. Did you prescribe her any medicine or give her
6 any treatment?

7 A. Yes. When she arrived she was quite agitated,
8 and I gave her Ativan which is a mild tranquilizer.

9 Q. Did you put her in a sling?

10 A. I'll have to remember. (The witness further
11 reviews exhibit.) Yes, we did.

12 Q. Was she in pain?

13 A. Yes, she was.

14 Q. Is there a way -- did they note how much pain she
15 was in?

16 A. Yes. They documented that her current pain level
17 was 9 to 10 out of 10. That was on her nursing note.

18 Q. Do you recall if she had full mobility in that
19 shoulder?

20 A. I'm reviewing my exam. Just a moment.

21 Q. Take your time.

22 A. She had full range of motion passively, but when
23 she moved it on her own she had significant pain, and
24 she was tender to palpation.

25 Q. When you say tender to palpation, what is

1 palpation?

2 A. When you touch it.

3 Q. So it was tender to touch, and if you were moving
4 the arm around you could move it all around, but she
5 couldn't move it around on her own?

6 A. Correct.

7 Q. Was an MRI done?

8 A. An MRI had previously been recommended according
9 to the notes that I recorded, and she was sent to a
10 specialist in order to get that.

11 Q. Did you prescribe her any medicines other than
12 that Ativan?

13 A. Yes. She was given Motrin 800 to take three
14 times a day. That's an antiinflammatory for pain. I
15 also wrote her for Xanax 0.5 milligrams to take three
16 times a day, and that, again, is for anxiety.

17 Q. Is anxiety something that could be attributed
18 with posttraumatic stress?

19 A. Sure.

20 Q. Would Ativan be something that you could
21 prescribe to someone in a posttraumatic stress
22 situation?

23 A. Yes, for a short period of time. There are
24 longer-acting meds.

25 Q. What was her demeanor like if you recall?

1 A. Looking at how she arrived, with her vital signs,
2 she was tachycardic, so she was anxious. I documented
3 that she was in a moderate amount of pain. And... (The
4 witness further reviews exhibit.)

5 Q. When you discharged Ms. Hooper, do you then
6 reassess her pain level?

7 A. Yes. Her pain level had dropped to a six.

8 Q. Did you make any notation about where on the
9 shoulder or what part of the shoulder was injured?

10 A. Documented on the E.R. record as the anterior
11 portion.

12 Q. And where on the shoulder is the anterior
13 portion?

14 A. Anterior, right in here (indicating).

15 Q. On the front side?

16 A. Front side.

17 Q. Of her right shoulder?

18 A. Correct.

19 Q. Would an injury to the front side of the right
20 shoulder be consistent with a torquing of the arm in a
21 backward motion?

22 A. It's possible.

23 MR. KIDD: Beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 MR. KIDD: Can you please answer any

1 questions Mr. Butler would have for you.

2 THE WITNESS: Sure.

3 CROSS-EXAMINATION

4 BY MR. BUTLER:

5 Q. Good afternoon, Doctor. You saw Ms. Hooper March
6 28th, 2009, correct?

7 A. Correct.

8 Q. And on that date she was agitated and you gave
9 her Ativan to calm her down?

10 A. Correct.

11 Q. And imaging either by Xray or MRI was negative?

12 A. I did the Xray. The MRI is a more sensitive
13 that's not done emergently on her shoulder.

14 Q. But in any case, negative meaning there was no
15 fracture, no dislocation?

16 A. Correct.

17 Q. Okay. And do you have...

18 MR. BUTLER: May I approach?

19 THE COURT: You may.

20 BY MR. BUTLER:

21 Q. --- this part of the record?

22 A. Yes.

23 Q. Okay. And what is this? Is this a discharge
24 summary?

25 A. It is a discharge instruction sheet. This

1 patient was also seen by Paul Jacques (phonetic) who is
2 one of the physician's assistants, and he printed up
3 these discharge instructions.

4 Q. And the same date when you -- the same time you
5 saw her?

6 A. Correct.

7 Q. All right. "The physician feels that a
8 significant portion of your health problem is being
9 caused by anxiety." That's what that says, correct?

10 A. Correct.

11 MR. BUTLER: That's all I have. Thank you.

12 THE COURT: Redirect?

13 MR. KIDD: Just briefly.

14 REDIRECT EXAMINATION

15 BY MR. KIDD:

16 Q. First, first we'll deal with -- Xrays are
17 typically used to determine injuries to bones; is that
18 correct?

19 A. Correct.

20 Q. Can they be used to determine muscle or ligament
21 or tendon damage?

22 A. If there is an obvious separation in a joint,
23 yes, but otherwise no.

24 Q. So if there was a minor injury to, say, a rotator
25 cuff or a labrum or any other -- or another shoulder ---

1 MR. BUTLER: Object to leading.

2 THE COURT: Let him finish his question.

3 BY MR. KIDD:

4 Q. Is an Xray less likely to be able to see an
5 injury to a -- a tissue injury to the inside of a
6 shoulder?

7 A. Correct.

8 Q. And an MRI or more sensitive equipment would be
9 more likely to uncover...

10 A. Correct.

11 Q. --- an injury of that nature?

12 A. Yes, sir.

13 Q. And, finally, the fact that the patient was
14 anxious does not mean she did not have the injury, does
15 it?

16 A. No, sir.

17 MR. KIDD: No further questions.

18 THE COURT: Recross?

19 MR. BUTLER: No, ma'am.

20 THE COURT: Dr. Kelly, you may step down.

21 You're free to remain with us, but you're also excused.

22 THE WITNESS: Thank you.

23 (The witness is excused from the witness
24 stand.)

25 THE COURT: Call your next witness.

1 MR. SIMPSON: Your Honor, at this time the
2 state rests.

3 (The state rests.)

4 THE COURT: Thank you.

5 Ladies and gentlemen, that indicates to the
6 Court there's a matter of law that I must take up
7 outside of your presence. Do not begin your
8 deliberations. Do not discuss this case amongst
9 yourselves.

10 Please rise for the jury.

11 (Whereupon, the jury goes to the jury room at
12 approximately 3:25 p.m.)

13 THE COURT: Please be seated.

14 Any motions or matters, Mr. Butler?

15 MR. BUTLER: I have to make my standard
16 motion for a directed verdict pursuant to Rule 19. I
17 won't go through what that standard is. Your Honor is
18 well aware of it.

19 I do think that the -- there's a decent
20 argument to be made for the burglary. The victim
21 testifies that when he comes in he's asking for the
22 money that he owes her -- she owes him. That would be
23 all I have to say in that respect.

24 THE COURT: Mr. Simpson.

25 MR. SIMPSON: Thank you, Your Honor.

1 Again ---

2 THE COURT: And, Mr. Simpson, you know how I
3 like for you to give those statements?

4 MR. SIMPSON: To address each element, yes,
5 Your Honor.

6 THE COURT: Yes. So each -- each one. Let's
7 start with the CSC first.

8 MR. SIMPSON: Thank you, Your Honor.

9 You've heard evidence of a sexual battery,
10 the first element of CSC first, that this was not
11 consensual, that there was evidence presented of
12 penetration. So the sexual battery element is met.

13 The next element would be that such battery
14 was accomplished through aggravated force. I believe
15 the case law makes it clear that the determination of
16 whether it is a mere force without aggravation as
17 opposed to aggravated force is a jury issue. And
18 certainly cases have determined that alleged force, even
19 less graphic and as forceful as is alleged in this case,
20 has met that burden at least to the degree of putting it
21 in front of a jury and letting the jury determine
22 whether we have a case here where force is used or
23 aggravated force is used.

24 As to the burglary, Your Honor, obviously
25 burglary first degree requires an entry into a dwelling.

1 I think we've certainly heard evidence that 4232 Grimke
2 Street was Ms. Hooper's dwelling. The defendant did
3 enter it. Ms. Hooper, through her testimony, was asleep
4 at that time. She did testify the defendant did not
5 have permission to enter her residence at that time.

6 That leaves the only element and the only
7 element Mr. Butler addressed is that of intent. As Your
8 Honor will explain to the jury and does in almost every
9 jury charge, intent is not something we can look into
10 someone's head and prove that way. It's instead
11 inferred from the circumstances. I believe the
12 testimony established there was some brief comment by
13 the defendant regarding a debt or money, but then
14 relatively quickly this moved from that conversation to
15 the sexual assault. I think there is certainly
16 circumstantial evidence of intent, and of course
17 circumstantial evidence is what we always have for
18 intent.

19 I think all the elements -- there has been
20 evidence presented of each element of every crime. We
21 ask it be denied, the defense directed verdict motion.

22 THE COURT: Any response, Mr. Butler?

23 MR. BUTLER: No, ma'am.

24 THE COURT: Based upon my review of the
25 testimony that has been presented, I deny your motion

1 for a directed verdict on both indictments. The state
2 has presented evidence of criminal sexual conduct, that
3 the defendant engaged in a sexual battery with the
4 victim, that there was aggravated force used to
5 accomplish the sexual battery, that the defendant
6 entered a dwelling without the consent of Ms. Hooper
7 with the intent to commit a crime therein. The state
8 has also proven the elements of -- that each was
9 committed within Charleston County. Deny your motions
10 at this time.

11 Mr. Butler, with that, does your client plan
12 to testify at this time? Have you had opportunity to
13 speak with him?

14 MR. BUTLER: We have, but unfortunately that
15 opportunity was cut short, and here's where I am. I
16 don't know that we've made a final determination. And
17 it's 3:30 now. If we decided not to put up a case, my
18 understanding from earlier discussions is that we would
19 not be arguing and charging. I'd hate to have to make a
20 decision now; but it seems to me that if I said no and
21 overnight we changed our minds, I feel certain that we
22 would be -- at least ask that he be able to testify
23 tomorrow. I'm not trying to play games. I'm just...

24 THE COURT: Right.

25 MR. BUTLER: --- trying to...

1 THE COURT: Mr. Butler, I will give you ten
2 minutes to meet with your client. My intention today is
3 to finish with testimony if at all practical. It is
4 3:30. We will break. You will have an opportunity to
5 meet with Mr. Meggett to discuss whether or not he will
6 testify. At that point you will need to inform the
7 Court whether or not you will be presenting evidence,
8 presenting a case at this time.

9 MR. BUTLER: And if his decision at this time
10 is no, then we will have to rest now and he cannot
11 testify in the morning?

12 THE COURT: That is correct.

13 MR. BUTLER: Okay.

14 THE COURT: All right.

15 MR. BUTLER: I'll speak with him in the room
16 designated for such a meeting.

17 THE COURT: All right. Mr. Butler, I will
18 give you 15 minutes. Let's break till 3:45.

19 MR. BUTLER: Thank you.

20 THE COURT: Thank you.

21 (A break is taken at approximately 3:30 p.m.)

22 (The trial reconvenes at approximately
23 3:45 p.m., the defendant being present with counsel, and
24 the following proceedings were had:)

25 THE COURT: All right. Mr. Meggett, please

1 rise.

2 (The defendant complies.)

3 THE COURT: I remind you that you're still
4 under oath. Mr. Meggett, have you had time to discuss
5 with your attorney whether or not you should testify?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you have any additional
8 questions for this Court or for your attorney concerning
9 whether or not you should testify?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Have you made a decision whether
12 or not you will testify?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And what is that decision?

15 THE DEFENDANT: No, I won't.

16 THE COURT: All right. Thank you.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Mr. Meggett, you may be seated.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: Mr. Butler, based upon that,
21 does your client have any additional witnesses to
22 present?

23 MR. BUTLER: No, ma'am.

24 THE COURT: And with that, do you rest?

25 MR. BUTLER: Yes, ma'am.

1 THE COURT: All right. And as I indicated,
2 we will begin in the morning with closings and
3 instructions. I will allow you before -- we'll bring
4 the jury in, to rest, and I will give them the
5 admonition not to review this case, not to discuss this
6 case, etc., and we will begin at 9:30 in the morning.

7 Let's bring in the jury.

8 (Whereupon, the jury enters the courtroom at
9 approximately 3:50 p.m.)

10 THE BAILIFF: The jurors are present, Your
11 Honor.

12 THE COURT: Thank you. Please be seated.
13 Mr. Butler.

14 MR. BUTLER: The defense rests.

15 (The defense rests.)

16 THE COURT: Ladies and gentlemen, at this
17 time you have now heard all of the testimony and
18 received into evidence all the exhibits that will be
19 made part of the record in this case.

20 Ladies and gentlemen, I indicated to you that
21 we like to break as close to 5:00 as possible, and due
22 to the hour we're going to go ahead and break.

23 The remaining parts of the trial that are
24 left are closing arguments on behalf of counsel as well
25 as the instruction on the law by the Court.

1 Ladies and gentlemen, please remember my
2 admonition. We're going to break for the evening. We
3 will begin at 9:30 in the morning with closing arguments
4 from counsel.

5 Ladies and gentlemen, please, again, remember
6 my admonition. Please do not read, watch, listen to any
7 news accounts should there be any regarding this case.
8 Do not discuss this case either in any written form or
9 amongst yourselves or when you go home.

10 Ladies and gentlemen, you are -- we are
11 adjourning for the evening. I will see you back in your
12 jury room at 9:30 in the morning.

13 Please rise.

14 (Whereupon, the jury leaves the courtroom at
15 approximately 3:53 p.m.)

16 THE COURT: Thank you. Be seated.

17 All right. Outside the presence of the jury,
18 Mr. Butler, are you requesting any lesser included?

19 MR. BUTLER: Yes, ma'am.

20 THE COURT: All right. And what lesser
21 includeds are you requesting at this time?

22 MR. BUTLER: Criminal sexual conduct in the
23 third degree, and assault and battery of a high and
24 aggravated nature.

25 The case I believe that says ABHAN is a

1 lesser included is *State vs. Nickie White*, but I can
2 definitely find that.

3 THE COURT: All right. And any lesser
4 included as to burglary in the first degree?

5 MR. BUTLER: I don't think that -- I haven't
6 thought about it, but I don't think that I could even
7 come up with, as creative as I can be, an argument for
8 why there would be -- it's either a burglary or not, and
9 all the evidence is it's at nighttime. So I don't think
10 that would be appropriate.

11 THE COURT: And, Mr. Butler, any additional
12 charges?

13 MR. BUTLER: Yes, ma'am. And I'm kind of
14 doing this on the fly, and I apologize, but I don't
15 think any of us expected to be finished so soon.

16 I have a special request for intent required
17 for burglary that comes directly from Judge Anderson's
18 charge book. I had my paralegal do this while we were
19 in trial, so she did not type the cites for it, but I
20 can get them, but it comes right out of his charge book.

21 THE COURT: Yes, sir.

22 MR. BUTLER: That one.

23 And the defense of consent, I have been
24 looking for this, and I cannot find one. This is one
25 that Judge Young charged, and I have his original charge

1 that he gave. It didn't make its way down here to me.
2 And I didn't know if it would be appropriate. I was
3 going to at the appropriate time see if I could ask
4 Judge Young where he got this from another case that I
5 tried with him. I have his actual charge that he gives
6 us, and I got it from his charge, but because it's what
7 he read to the jury it doesn't have the authority in it.
8 I don't know if the Court has its own consent charge.
9 Let me pass these up. I'm sorry.

10 THE COURT: Let me take a look.

11 Have you reviewed what Mr. Butler is passing
12 up, Mr. Simpson?

13 MR. SIMPSON: I'm just getting it as you are
14 and would respectfully request that I have at least
15 until the morning to discuss the efficacy of these
16 charges.

17 The state would probably be asking that
18 neither -- none of the offenses, even lesser includeds,
19 that are going to be in front of the jury are unusual.
20 I am sure Your Honor has a standard charge that she
21 gives on every burglary case and every CSC case, and
22 we're probably going to be asking that you just stick
23 with your sufficient standard charge and no special
24 instruction be given in this case.

25 But I just received these requests as you

1 did, Your Honor, and would like to look at them
2 overnight.

3 THE COURT: All right. And, Mr. Butler, my
4 research indicates that CSC third is not a lesser
5 included, and you indicated that you had some case law.
6 That was *White*?

7 MR. BUTLER: That is ABHAN.

8 THE COURT: Oh, I'm sorry.

9 MR. BUTLER: The *State vs. Nickie White* is
10 ABHAN.

11 And I think -- and maybe I'm recalling
12 discussions that Mr. Simpson and I had, that I thought
13 we agreed because the question of force whether it be
14 aggravated or -- oh, I know what it is. I know the
15 problem. There's two forms of CSC third. There is a
16 CSC third where the -- where the complainant does not
17 have the capacity to consent either because of
18 intoxication or mental incapacity, but there is another
19 CSC third which is nonconsensual intercourse that is
20 forced or coerced but that's not aggravated force or
21 coercion. That's the other CSC. That CSC third is
22 definitely a lesser included.

23 MR. SIMPSON: Your Honor, I have a case to
24 that effect.

25 THE COURT: All right. I'll be happy to see

1 that one.

2 MR. SIMPSON: And then I think -- and I think
3 we're right. I'm looking over the statute. The problem
4 that so many CSC thirds tend to be the intoxicated or a
5 mentally impaired victim, we both agree that's not even
6 relevant to the present case. But there is a lesser
7 charged case of whether or not it's force used without
8 aggravating circumstances. And I have that case, Your
9 Honor. I just need to find it.

10 (Mr. Butler and Mr. Simpson confer.)

11 MR. SIMPSON: I can have that case for you
12 tomorrow, Your Honor, but Mr. Beattie is correct. I
13 mean, our understanding of those two statutes is -- is
14 the same.

15 THE COURT: All right. And you agree,
16 Mr. Simpson, with the CSC third as well as the ABHAN?

17 MR. SIMPSON: Yeah. Well, we reserve the
18 right, Your Honor, to bring up further argument. The
19 ABHAN was kind of just sprung on me. I wasn't expecting
20 that. I don't anticipate that we'll be contesting those
21 as lesser included, but I would like overnight to kind
22 of mull that over if that's okay.

23 THE COURT: All right. Based upon what I
24 have heard and my understanding of the case law and your
25 consenting to the CSC third, I will include CSC third

1 and ABHAN as a lesser included.

2 Mr. Simpson, I will hear you on the ABHAN if
3 you object in the morning.

4 MR. SIMPSON: Okay.

5 THE COURT: However, just for preparation
6 purposes, unless there is some case law that you say
7 that indicates it is not, my reading is that it is. All
8 right? And so I will be including it as a lesser charge
9 -- lesser included unless you provide contrary case law.

10 MR. SIMPSON: Understood, Your Honor. And
11 just to make -- to make the other decision easier, *State*
12 *vs. Lindsey*, 355 S.C. 15 from 2003, I don't believe they
13 actually come out in that case and say CSC third is a
14 lesser, but they discuss a case where similar
15 circumstances and whether or not the jury had to have
16 evidence of the aggravating force as opposed to just
17 regular force called for in CSC third.

18 And, obviously, I think there will be consent
19 on this, as well, that the section of CSC third
20 involving an intoxicated or other mentally impaired
21 individual would not. We would not want that charge.
22 It would just be superfluous and confusing, part of the
23 CSC statute that deals with that scenario.

24 THE COURT: All right. And, Mr. Butler, my
25 intent charge is very similar to the one that -- the

1 jury charge that you passed up.

2 Anything, any other requests, Mr. Butler?

3 MR. BUTLER: So does that mean you will not
4 charge the one that I submitted?

5 THE COURT: Mine is similar to this one.

6 MR. BUTLER: Okay.

7 THE COURT: All right. And I have not had an
8 opportunity to review ---

9 MR. BUTLER: Okay.

10 THE COURT: --- the additional one. We will
11 have a charge conference at 9:00 a.m.

12 MR. BUTLER: Does anybody object if I e-mail
13 Judge Young and ask him where the consent charge came
14 from?

15 THE COURT: I do not.

16 MR. SIMPSON: No.

17 THE COURT: It is not the standard consent
18 charge that is in the bench books that we receive.

19 MR. BUTLER: It very well ---

20 THE COURT: So I don't know. He must have
21 crafted it himself.

22 MR. BUTLER: It very well may be. I don't
23 know. I just looked in Judge Anderson's charge book,
24 and I couldn't find one at all. So it might be the very
25 one. I don't know.

1 THE COURT: And in an unrelated matter,
2 Mr. Simpson, the jury panel is coming back at 10:00. If
3 we have another matter on the docket, too, we can select
4 another jury tomorrow.

5 MR. SIMPSON: Okay. I will tell Ms. Shealy.
6 She's taking care of the docket this week, but I'll have
7 her here in the morning.

8 THE COURT: All right. I'll see you all at
9 nine o'clock to go over the charges, and the jury will
10 be back at 9:30. Thank you. Have a wonderful evening.

11 (Whereupon, at approximately 4:00 p.m., the
12 trial is recessed to the following day, Wednesday,
13 November 10, 2010 at 9:00 a.m.)
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1 (On Wednesday, November 10, 2010, the trial
2 reconvenes at approximately 9:47 a.m., the defendant
3 being present with counsel, and the following
4 proceedings were had:)

5 THE COURT: Good morning. Please be seated.
6 Thank you for your patience. Since we were waiting on
7 all the jurors, we had a charge conference in chambers.
8 Anything before we bring in the jury,
9 Mr. Simpson?

10 MR. SIMPSON: Yes, Your Honor, just briefly.
11 And I apologize I didn't discuss this issue in chambers,
12 but it slipped my mind. I only raise this issue out of
13 -- you know, typically I do not like objecting during
14 opposing counsel's closing argument.

15 THE COURT: Yes, sir.

16 MR. SIMPSON: There were some assertions,
17 some factual assertions made during Mr. Butler's opening
18 statement. We've now reached the case of closing, and I
19 just want to make sure. The law states counsel's
20 closing arguments are to be confined to evidence
21 presented at trial and the reasonable inferences
22 therefrom. I want to make sure we avoid any essentially
23 testifying for the defendant in a closing argument.
24 Talking about facts, the prior sexual conduct, and
25 everything which are not in the record is not reasonable

1 inferences from our record at trial.

2 THE COURT: All right. And, Mr. Simpson, I
3 appreciate your bringing that to the Court's attention.
4 I'm assuming that Mr. Butler who has been practicing a
5 long time will follow the rules of evidence, and feel
6 free to object, Mr. Simpson, if he does not. Thank you.

7 Anything before we bring in the jury from the
8 defendant?

9 MR. BUTLER: No, ma'am.

10 THE COURT: All right. And you have last
11 close, Mr. Butler?

12 MR. BUTLER: Yes, ma'am.

13 MR. SIMPSON: No, Your Honor.

14 MR. BUTLER: No, actually -- I'm sorry. No,
15 I do not, because I put in some exhibits. They get to
16 go last.

17 THE COURT: Thank you.

18 And, Mr. Simpson, are you doing the close on
19 behalf of the state?

20 MR. SIMPSON: I am, Your Honor.

21 THE COURT: All right. And are you waiving
22 first close?

23 MR. SIMPSON: The state does waive any
24 opening on the law, closing on the law.

25 THE COURT: All right. Thank you.

1 Let's bring in the jury.

2 (Whereupon, the jury enters the courtroom at
3 approximately 9:50 a.m.)

4 THE BAILIFF: All present, Your Honor.

5 THE COURT: Thank you. Good morning. Please
6 be seated.

7 Ladies and gentlemen of the jury, just as I
8 did yesterday morning, I'm going to inquire if every
9 juror has followed the Court's admonition not to read,
10 watch, listen to any news accounts should there be any
11 regarding this case, not to have any discussions either
12 directly or indirectly, or have someone contact you. If
13 any juror was unable to follow the Court's instructions,
14 please raise your hand at this time.

15 (Whereupon, no juror raises their hand.)

16 THE COURT: Thank you. The court record will
17 reflect that all the jurors have followed the Court's
18 admonition.

19 Ladies and gentlemen, we have now reached the
20 stage of the trial where you will hear closing arguments
21 from both parties. Ladies and gentlemen, just as I
22 instructed you that opening statements are not to be
23 considered evidence in this case, neither are closing
24 arguments.

25 After you have heard closing arguments on

1 behalf of the state and the defendant, I will instruct
2 you on the law applicable to this case.

3 Ladies and gentlemen, the evidence that has
4 been admitted into evidence in this case will go back
5 with you to the jury room to assist you in your
6 deliberations.

7 Ladies and gentlemen, please give your strict
8 attention.

9 Mr. Butler.

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

11 THE COURT: Yes, sir.

12 MR. BUTLER: May it please the Court.

13 THE COURT: Yes, sir.

14 CLOSING ARGUMENT

15 BY MR. BUTLER:

16 I've often thought that there's much that we
17 can learn from artists, people who by virtue of their
18 creative talents and skills can make us see things
19 differently and allow us to make sense out of things
20 that otherwise don't make sense, make things fit that
21 otherwise don't, make things logical that are otherwise
22 nonsensical, create worlds that allow us to make sense
23 out of the uncomfortable, those things that make us
24 squirm and threaten our sense of well being, allow us to
25 find order in chaos.

1 How do they do that? Well, we stand back
2 from things that we don't like until there's part of it
3 that we don't see, or we squint to make things fuzzy so
4 that we don't see things exactly right. We view the
5 uncomfortable not directly but from the side or frame
6 only that part of the picture that we want to see and
7 ignore the rest. We use tinted glass, view the object
8 only in the brightest light or the darkest night so we
9 see only what we want to see and hear only what we want
10 to hear. Artists help us do that, and it's good. It's
11 therapeutic. It allows us to find the best in something
12 bad.

13 And we should do that in our own lives, as
14 well. As one person said, we should be the poets of our
15 own lives. And I agree with that, with one exception.
16 That way of thinking has no business in this room, not
17 today, not -- there is no way to take part of the truth
18 as a substitute for the whole.

19 We're not artists creating or imagining.
20 Instead, we should take our cues from the world of
21 science. In our pursuit of the truth, we have to look
22 at all of it, warts and all, no matter how well it sits
23 with us. And that should seem obvious to most of you, I
24 hope it is, but to them it's not. How can you cut and
25 paste and splice and edit and delete and improvise and

1 allow us to still reach the truth? This is not the
2 opportunity to exercise your creativity, show off your
3 artistic skills, but you've seen it. You've seen it
4 over the last couple of days, and it's just like this.
5 It's easy if you want to ignore the whole truth. I
6 could do it.

7 Stacy Hooper found herself alone in the dark
8 with a man she barely knew, a man she wouldn't be
9 involved with, a man she definitely wouldn't sleep with,
10 and he took advantage of her. Under the cover of night,
11 he crept into her house, violated the sanctity of her
12 home and violated her body. And he threatened her. He
13 said I have come to get a down payment. And when she
14 went to the hospital, the hospital documented her
15 injuries that showed that he choked her and pinned her
16 down. She was upset and crying.

17 And you saw her on the stand, how this has
18 affected her. She's still traumatized today and might
19 even suffer from posttraumatic stress disorder. And if
20 I forget to say something about that later, what you saw
21 yesterday from that doctor and elicited by the
22 prosecutor was an act of desperation from a lawyer
23 seeing his case going down the tubes. Posttraumatic
24 stress disorder? From an E.R. doctor? Please.

25 And he tried to prevent her from going to the

1 hospital. He tried to stop her from reporting. When he
2 got there, he wanted her to leave. And the DNA proves
3 that he did it. Nature's bar code, our Creator's
4 fingerprint, proves that he did. Well, if that was all
5 that you knew, maybe it would seem that clear. And if
6 they had their way, that's all you would have heard, but
7 that's an artist's rendition of what happened. It's an
8 edit. It's a cut and a paste and a splice. And it
9 wasn't by accident that it happened that way. It wasn't
10 just a coincidence that they presented it to you that
11 way.

12 Let me give you an example. State's four.
13 And you're not going to be able to see them as well as
14 you will when you have them back there. State's four, a
15 photograph of the bed where this assault supposedly
16 takes place. Okay. Well, you know, it's a bed, that's
17 all you really know, and it's messy, but that's the only
18 picture they presented.

19 Why did I have to show you defendant's six
20 which shows an ashtray full of cigarettes, a pill bottle
21 resting on its side on a flat surface on a CD? Why did
22 I have to show you defendant's eight, showing the same
23 thing? Defendant's ten. This isn't a bed that was
24 being slept in, with the sheet on it that supposedly was
25 ripped off. This isn't a bed that was being slept in.

1 It's not a bed where an assault took place. State's
2 nine -- I mean, defendant's nine.

3 And I didn't take these pictures. You heard.
4 North Charleston police department crime scene took
5 these pictures all at the same time.

6 Why did I have to show you that? Because
7 they didn't want you to see it because it doesn't fit
8 with what they say happened.

9 And it's not just that. The testimony from
10 the SANE nurse, Ms. LeBoeuf, well, yes, she had an
11 injury to her posterior fourchette. She used words like
12 "trauma" and "abrasion," and it sounds bad if you leave
13 it at that, but what did they leave out? Why did I have
14 to ask her? You know, they look for lacerations, tears,
15 redness, swelling, bruising, contusions, ecchymosis,
16 whatever that is, every inch of the body. Nothing.
17 They didn't tell you that.

18 And the abrasion of the posterior fourchette,
19 she didn't even feel it, because she didn't complain
20 about it. She didn't say that she was hurting there.
21 And they didn't tell you that she had to magnify it with
22 a colposcope, whatever that is, 3.75 times to even see
23 it. They didn't tell you that.

24 And they certainly didn't tell you about the
25 study that I had to bring you that says that that injury

1 occurs just as frequently in consensual sex with
2 nonconsensual. And did you see on redirect when the
3 prosecutor tried to make that mean creatively what he
4 wanted it to mean which was, oh, well, that just means
5 that this injury can happen with forced sex or
6 consensual sex? No. Remember I got back up and asked
7 her again. Not that it can happen, it happens equally
8 frequently whether the sex is forced or by consent.
9 That's the whole truth. That's not an edit. That's not
10 me being creative.

11 Well, but couldn't you have forcible rape
12 with little or no injuries? It's possible. How many
13 times did you hear that from their medical people? It
14 could happen, it's consistent with, which just means it
15 can happen, maybe. I stopped counting at about 20 when
16 I kept hearing those words. Those are the tools of an
17 artist trying to invent, much like brushes and canvas
18 and shades. Sure, it's possible that you could have a
19 sexual assault with no injuries. You know, maybe when
20 the victim freezes and is shellshocked and doesn't
21 fight.

22 But what does Stacy Hooper say? The last
23 time she had sex with a man was five months earlier.
24 She fought a bigger and stronger man for 15 minutes who
25 straddled her, who held her down and with one arm,

1 pinned her arm back with another, held her down with one
2 arm, managed somehow to tear her pants off in the
3 process, managed to get his own pants off in the
4 process, for 15 minutes, and the only evidence thereof
5 is a bruise to the jaw and some tenderness in her arm?
6 To believe that it happened that way is an exercise in
7 fiction and creativity. It just didn't happen.

8 Stacy Hooper, herself. I want to make it
9 clear to something about my questions of her and other
10 things that I presented. I am not and I'm not asking
11 you to call into question her lifestyle. Don't care at
12 all. The way she lives her life, unimportant. Her
13 choice of friends, Pirate and Spider, don't care. Her
14 choice of partners, doesn't matter. The neighborhood
15 she lives in, irrelevant. The cleanliness of her home
16 in and of itself, no. I'm not saying that she deserved
17 to be victimized because of any of those things. I
18 asked all of those questions and presented that to you
19 for a very specific purpose that I'll get to in a
20 minute.

21 I'm only asking you to judge one thing about
22 her; and that is, is she telling the truth about this
23 particular thing or, to sound like a lawyer, do you
24 believe her beyond a reasonable doubt when the quality
25 of another person's life, his freedom, is on the line?

1 That's it.

2 But I have to say that she, too, is going to
3 engage in her own artistic endeavors. She says that
4 Mr. Meggett said I'm here to get a down payment. That's
5 dramatic, and it's a threat. She doesn't tell the first
6 officer on the scene that. Doesn't tell anyone else
7 that until the next day. That in and of itself is a big
8 deal? By itself, probably not, but she adds other
9 things, too.

10 He was trying to get me to leave the
11 hospital. No. That's not in her statement to the
12 police. And, yes, I got it wrong the first time. It
13 couldn't have been in her first statement because the
14 calls hadn't happened then. They're right. That's my
15 mistake. But the next day, several-page statement,
16 nothing in there about he tried to get me to leave. All
17 she kept saying was he was apologizing, asking for
18 forgiveness.

19 When I pointed that out, she said, well, the
20 officer heard him. No. No, he didn't. Officer Gooding
21 said all he heard was apologies. And Sergeant Jourdan,
22 I didn't even have to ask him, he said it on direct:
23 Only thing I heard was the person on the other end of
24 the phone saying he was sorry. This thing about trying
25 to get her to leave or not go was out of the air.

1 Why is she reluctant to admit certain things,
2 too, certain things about her relationship with
3 Mr. Meggett or her situation as well? Didn't want to
4 admit at first that her electricity was off. When I
5 asked her about the extension cord out the window, she
6 said, well, I don't really remember that. But when I
7 showed her the other picture, oh, yeah, she didn't have
8 electricity. Why not; why not admit that?

9 What else was she not forthcoming about her
10 relationship with Mr. Meggett? Why is she trying to
11 distance herself from him?

12 Well, I only rode in the car once, she said,
13 past his sister's house. Well, I asked her a little
14 more. Helped you find jobs? Well, yeah, he drove me
15 around to some places. Well, which one is it? He
16 drives different cars sometimes. How do you know that?

17 He had never fixed my car. But when I pushed
18 her it's, well, he tried to fix it but couldn't. I
19 mean, what difference does it make whether he tried to
20 fix it or actually fixed it? The point is: They are
21 friends. They're not strangers. They know each other.

22 He didn't pay for a U-Haul. Well, he paid
23 for the U-Haul, but -- but he already had it anyway.
24 That's not the point. He's helping her move things.

25 He drove her. He helped her. What does that

1 mean? It means there's more to this relationship than
2 she is telling you. Who do you call when you need help
3 moving, when you can't find a job, when you need money
4 for bills? Do you call a stranger? You call a friend.

5 Her phone number is in his phone. She says
6 that it wasn't the same for her, but she knew his phone
7 number. She knew it was him calling.

8 Do you know how else you know there's more to
9 this relationship? My questions to her and her answers
10 about Spider, Pirate, Jonathan, Eric, the trip to North
11 Carolina to visit a girl that she met online, the
12 specific details of the layout of her house, her
13 tattoos, a big one on her hip and a small one on her
14 wrist. I didn't say tell me about your tattoos. I said
15 you have a tattoo, a big one on your wrist -- on your
16 hip, a small one on your wrist. You have a friend named
17 Spider and Pirate. The lead detective said none of that
18 anywhere in the police reports, witness statements. How
19 else would I know to ask her about that? Where would I
20 get that from?

21 There's a principle of science that says if
22 an animal quacks like a duck, walks like a duck, and
23 swims like a duck, it's a duck. It makes sense. Well,
24 likewise, if something doesn't quack like a duck and
25 doesn't swim or walk like a duck, it's not a duck.

1 Well, if a person doesn't act like a rapist
2 it's because they're not, and her own testimony speaks
3 to that. Rapists don't ask for condoms. Rapists don't
4 apologize and ask for forgiveness. And most
5 importantly, rapists don't stop, not once but twice. I
6 mean, before they finish? Isn't the physical
7 gratification the point? That's her own words.

8 And in case you're ever wondering why would
9 she sleep with him, I don't know, but she did. She
10 admitted that she did. One time before, a man twice her
11 age who she relies upon for money and other support, and
12 when she said stop he stopped. Rapists don't stop.
13 Rapists don't care. And you know that it happened this
14 time, too, that he stopped because she more or less says
15 so. No condom, but doesn't know whether he ejaculated.
16 If there's no condom, how would you not know that? But
17 the evidence says that, too.

18 Oh, and here's another good example of their
19 being creative. Their DNA analyst, State Law
20 Enforcement Division. I don't have a DNA analyst. I
21 don't have a DNA lab. They asked her only about the
22 cuttings from the comforter. But that's not the only
23 thing that she was asked to look at. She was asked to
24 look at what she looks at day in and day out, what her
25 job is, the swabs and samples taken from the rape

1 protocol kit that shows what? No DNA, none of
2 Mr. Meggett's DNA inside her, on her. Now, if this is
3 all about the truth, why did I have to bring you that?
4 Why didn't they?

5 They get to go last, and I don't get to
6 respond. You make sure that they explain to you why
7 they didn't get that testimony from that witness. You
8 make sure they explain to you why they didn't show you
9 those pictures and why I had to.

10 Oh, I forgot something else. Defendant's DNA
11 not under her fingernails. They looked for a reason.
12 She fought him, right? Not to mention that nobody sees
13 any injuries, no scratches, no scrapes, nothing. Do you
14 know why? Because it didn't happen, that's why. Well,
15 why did I have to bring you that?

16 And, you know, they try to get back up there
17 and say, oh, well, but the rape protocol evidence tested
18 positive for semen. No. No, because you leave it at
19 just that and don't ask her to explain. Indicated,
20 semen indicated. Well, then what do I get her to
21 explain? Well, that just means that that protein was
22 present, but it can be present in other things, too, and
23 when we tried to confirm that it was semen we couldn't
24 confirm it. Whoops. Nothing. Nothing. Nothing to
25 think that this thing happened the way she said it

1 happened.

2 But what does the comforter show?

3 Mr. Meggett's DNA mixed with Stacy Hooper? No, not
4 Stacy Hooper. Someone else.

5 And I guess, I mean, here's where they -- I
6 guess they'd have you believe that Mr. Meggett's DNA
7 from the comforter was deposited there on the early
8 morning hours of the 13th when this thing supposedly
9 happened and it just happened to land in the exact same
10 spot with somebody else's DNA. In the exact same spot
11 as someone else's DNA, but there's -- the third person's
12 DNA is nowhere else, and Stacy's is nowhere on that
13 comforter. Wrong.

14 Remember this, too? The crime scene analyst,
15 the alternative light source that looked for DNA on the
16 bedding and found none that night. Why is that? Well,
17 remember what the DNA analyst said. Well, with my
18 technology and my tools, I can find older samples. It
19 was old. It had been there. I'll tell you what that
20 evidence says, is that David Meggett had sex with
21 someone else there. Because there's no one else there
22 on the 13th, just Stacy.

23 What else didn't they show you? Someone
24 else's hair is on that, a man's hair. It's not David
25 Meggett's.

1 And what does all that mean? It means that
2 he stopped. He stopped before finishing, not like a
3 rapist, and he stopped not once but twice.

4 And I'll tell you what else rapists don't do.
5 They don't go to the emergency room and sit with the
6 victim or ask to do so. And they certainly don't, when
7 approached by a police officer in uniform, say I'm here
8 to see my friend Stacy. Is that a rapist? No.

9 Why did I want to show you the conditions of
10 the house on Grimke Street? The electricity is cut off.
11 She says no one's been in there since October, but
12 someone else's -- a man's hair is on her comforter.

13 Yeah, I wanted you to see how she was living,
14 and that doesn't make her a bad person, but she was in a
15 desperate situation and desperate times call for
16 desperate measures.

17 Her girlfriend who she considered her wife
18 moved out, moved away. She had to take on roommates
19 named Pirate -- Pirate and Spider. She had no money.
20 She couldn't pay her bills. She's practically camping
21 in that house.

22 Look at the pictures. You'll have them. In
23 a rough neighborhood. She couldn't identify one of the
24 pictures of her own house because it was such a wreck.
25 She was living desperately and not making good choices.

1 Sleeping with the door unlocked? First of
2 all, the bed doesn't look like a bed a woman would sleep
3 in, but would a woman living alone ever not lock that
4 door? Well, it wasn't locked, we know that, but this
5 was a house that was for flopping and crashing by
6 various people. People come and go all hours of the day
7 and night.

8 Well, what about how upset she was at the
9 time of the incident? Remember her mother said, you
10 know, she's normally calm and I could tell something was
11 wrong, she's usually not this anxious or upset. Same
12 thing from the emergency room, and when you saw her
13 testify, the same thing. Okay. And I guess that was
14 proof she's telling the truth because she's otherwise
15 calm and collected and not -- otherwise is an
16 emotionally, healthy person? Well, no.

17 There's nothing wrong, either -- let me just
18 make sure that I'm being clear. There's nothing wrong
19 with being anxiety prone. There's nothing wrong with
20 being prescribed an antianxiety medicine, Xanax. I
21 guarantee you I could use some from time to time
22 undoubtedly.

23 But when she goes to the emergency room,
24 she's already being prescribed Xanax. The emergency
25 room doctor said -- and if you remember, this is the guy

1 that really didn't want me asking him questions. And I
2 find myself sometimes wanting to apologize for having to
3 do so, but I'm not. And if I can't convince you that I
4 need to ask questions for David Meggett, I want you to
5 understand I have to ask those for you. Because if
6 there is something that you would need to know to make
7 this important decision and I don't ask the question,
8 it's my fault. I wish that E.R. doctor understood that.
9 I don't think he does.

10 But in any case, that she was already on
11 Xanax and that her primary care physician was Palmetto
12 Behavioral which is a psychiatric facility. And there's
13 nothing wrong with that, nothing at all. It just means
14 that you can't contribute -- you can't attribute the
15 emotion that you saw and the emotion that these other
16 witnesses described as something that happened on the
17 13th.

18 Not to mention three months later she goes
19 back to the emergency room, complaining about pain in
20 her arm. They do Xrays, they do an MRI, and they're
21 completely normal. Nothing wrong.

22 Now, how many times can they ask you to
23 ignore what's missing in a case but still believe that
24 this crime happened? How many times can they ask you
25 just to forget about what should be there but what's

1 not? I don't know, but not this many times.

2 Well, if the DNA's not there, doesn't mean it
3 didn't happen. When the injuries aren't there, doesn't
4 mean it didn't happen. Well, the Xrays and the MRIs are
5 there, doesn't mean it didn't happen. Yeah, but at some
6 point what reason is there to believe that it did?

7 And what does he do? He gives her two more
8 medicines to calm her down, three months later?

9 And what's the last thing you hear from the
10 state's case? What is it that she's told on discharge?
11 Quote, word for word, the physician feels that a
12 significant portion of your health problem is caused by
13 anxiety. Caused by it.

14 Well, and they said, well, could that be
15 posttraumatic stress disorder? Yeah. Posttraumatic
16 stress disorder, that's what the PTSD means. Soldiers
17 on the front lines, PTSD. If there was a mental health
18 professional anywhere on Planet Earth willing to
19 diagnose her as having posttraumatic stress disorder,
20 don't you know they would have brought that to you
21 instead of just floating the idea as some hypothesis,
22 some possibility from the emergency room doctor who saw
23 her for one time three months later? That is desperate
24 and shameful.

25 The bottom line is that Stacy Hooper had

1 issues before the 13th and after. It doesn't make her a
2 bad person. It just means that those things are
3 meaningless in this case.

4 Here is what they'd have you believe; that
5 David Meggett attacked and fought with and raped a woman
6 half his size, that he straddled her, he pinned her
7 down, he managed to rip off her pants, take off his own
8 pants, all the while fighting for 15 minutes, and but
9 for the tenderness to her arm and jaw leaves no sign of
10 injury from her head to her toes. Oh, well, except of
11 course the photo that would show -- well, well, whoops,
12 we don't have that.

13 How many excuses do they get? How many
14 excuses? They control the evidence; I don't. How many
15 excuses do they get? How many times can they say
16 forgive us for not being able to present to you what
17 should be here? I don't know, but not this many.

18 Leaves no physical evidence inside her or on
19 her anywhere, unless somehow his DNA mixed with someone
20 else is evidence of anything other than he had sex on
21 that comforter with someone else.

22 She doesn't call 9-1-1 or the police. Why?
23 Well, because she was traumatized. Okay, more excuses.
24 They've got an excuse for everything. Lack of injury,
25 well, it's possible.

1 Oh, and the explanation as to why you didn't
2 call the police? Didn't call the police because I was
3 afraid he would come back before the police got there?
4 I don't know why that means you don't call them. You
5 still would call them.

6 An excuse for everything. Lack of injury,
7 well, it's possible. Lack of his DNA, maybe. They'd
8 have you believe all of that only to then believe that
9 her attacker or rapist comes to the E.R. and basically
10 hands himself over to police. That is fantasy, it's
11 fiction, it doesn't make sense, and it doesn't make
12 sense because it didn't happen.

13 One of the things that we are fond of, all of
14 us that work in the courthouse, is saying that this
15 isn't like television. And it's not. In a bunch of
16 different ways, it's not like TV or novels or movies.
17 In real life there are always loose ends. There are
18 always questions that don't get answered. We would like
19 for things to always end up nice and tidy and everything
20 make sense; but in this case, like in many, there are
21 things we'll never know.

22 Whose DNA is that mixed with David Meggett's
23 on the comforter? It wasn't Stacy Hooper's. Whose
24 hair, the male hairs on the comforter that's not David
25 Meggett's? Why would Stacy, a woman who likes women,

1 and that's fine, have consensual sex with a man twice
2 her age from a different walk of life? Don't know,
3 don't, but we know she did because she admitted that she
4 did.

5 And we may never know, but it doesn't matter.
6 Because the reason there are so many unanswered
7 questions in this case, the reason that things don't add
8 up, the reason that the state is left to explain what's
9 not there but what should be, is because they are wrong.
10 That's why.

11 They have taken a square peg and they are
12 trying to fit it in a round hole, and it is making a
13 mess, and they are asking you to clean it up. No. It's
14 their problem. It's the state's burden, as it should be
15 when they want to put a person in prison. And you heard
16 Mr. Culver (sic) in his opening statement: Act so that
17 he never ever, ever, ever does this again. They're not
18 playing.

19 Before the state, with all its resources, the
20 North Charleston police department, the State Law
21 Enforcement Division, before they can take a person away
22 from his family and off the streets, they need to be
23 able to prove to you that this happened the way they say
24 it happened beyond a reasonable doubt, and that's the
25 way it's supposed to be. And the reason that they

1 haven't is because it didn't happen.

2 I'll have to say just a few things about the
3 law, which, you know, I guess is my job. The judge is
4 going to charge you on a bunch of different things, but
5 I want to make sure that you understand what burglary
6 is.

7 Burglary is not just going into someone's
8 house when you're not specifically invited right then.
9 It's not even going into someone's house and committing
10 a crime. Burglary, and the judge will tell you, is
11 unlawful entry into a person's house with the intent to
12 commit a crime at the time you go in. If a person goes
13 into someone's house looking for them and sees something
14 that they like and take it, that's not burglary. It's
15 another crime, but it's not burglary.

16 The person that's guilty of burglary enters
17 the residence with the intent to commit a crime at the
18 time they go in. We know that's not the case here.
19 Even on her own testimony, she says he's asking for
20 money. It's not a burglary. It's not even close.

21 Consent, the state's going to have to
22 disprove consent. They have to prove that she didn't
23 consent to whatever it was that happened beyond a
24 reasonable doubt.

25 You've got some lesser included charges that

1 you'll be asked to consider. He's only indicted on
2 first degree criminal sexual conduct. Mr. Simpson and
3 the judge will explain that better than I will. He's
4 not guilty of that charge for all the reasons that I've
5 said.

6 If you think that he was somehow less than
7 gentlemanly at some point, that those injuries mean that
8 he roughed her up, you could draw that conclusion. It's
9 a lesser included of aggravated assault. You can
10 consider that charge. Assault and battery of a high and
11 aggravated nature, if anything, that's what this is.
12 You'll also be able to consider a lesser charge of
13 criminal sexual conduct in the third degree. It's up to
14 you.

15 But here's what you're left with. When you
16 strip away all that they've created and all that they've
17 added, when you add all that they've left out, you're
18 left with one thing and that's her word. She said that
19 it happened. That's it. That's really all they can say
20 in closing, you should believe it happened because she
21 said it, because there's nothing else to back that up.
22 Nothing.

23 And, you know, every time a person is charged
24 with a crime, someone said they did it. Every time a
25 person is convicted of a crime, even wrongfully

1 convicted, someone said they did it. That's every case.
2 And that's why we don't rely on the word of just one
3 person. That's why we have to look to the evidence
4 that's not subject to bias, the evidence that's not
5 willing to fabricate or invent, the evidence that's not
6 subject to misperception.

7 The physical evidence, if it's not there it's
8 not there because it didn't happen. It's just her word.
9 And it's he said/she said, but what she said flies in
10 the face of logic, common sense, and the laws of
11 physics.

12 And you might be saying, well, if you say
13 it's he said/she said, well, we didn't hear what he
14 says. Well, you're right, you didn't. And the judge is
15 going to tell you that in this case, like any criminal
16 case, you cannot hold it against the defendant that he
17 did not testify.

18 And there's a reason for that. It's natural
19 when people testify and they stumble over words or they
20 get nervous, it's natural for you who's assessing their
21 credibility to think that means something. So we don't
22 make people do that. You know, I don't know, but you
23 might not can tell, because I do this for a living, but
24 I'm nervous now talking to you and I'm not facing
25 prison.

1 So we don't make people give their version of
2 events, but what could he add? You know, when the
3 state's case ends with a doctor and the last thing you
4 hear is all the problems are in your head, what else do
5 you need to know?

6 I'm almost finished, I promise.

7 You're about to make one of the most
8 important decisions that you will ever make in your own
9 life. Yeah, it's the most important decision that
10 anyone is going to make in David Meggett's life, but
11 yours too. The quality of another human's being life --
12 human being's life, a man's freedom, is resting in your
13 hands; and because of that, they needed to present a
14 case, the full case, not -- not even half, not one-fifth
15 of a case, not one-fifth of the truth, a case to you
16 that makes sense.

17 When those asking you to send a person, a
18 son, a father, to prison, when they don't care about the
19 truth how can you? When they don't care about all the
20 truth, how can they expect you to? Don't show me what
21 doesn't fit with what I already know. Don't tell me
22 things that don't add up. I don't want to hear it.
23 That's what they did, and now they want you to sign off
24 on it.

25 They need to give you evidence that allows

1 you to render a verdict, not that you can live with, not
2 that you can tolerate, but that you can be proud of.
3 And they haven't done that because they can't, and they
4 can't because it didn't happen.

5 And you've got one chance and only one chance
6 to get this right: There are many misconceptions about
7 a criminal trial. There are no recounts after your
8 verdict. There are no do-overs. You might hear of
9 somebody getting a new trial after an appeal. No.
10 Another court may sit in judgment of the things I've
11 done or what the judge has done, but nobody questions
12 your verdict. Once you have passed your verdict, it
13 exists forever, in blood and in stone, and nobody can
14 question it, and they certainly can't undo it. One
15 chance and today is the day to get it right.

16 And it is a decision that you must reach not
17 only collectively as a group but individually, each of
18 you. You own it. It is your verdict as a group, but
19 also personally to yourself individually it is yours.
20 And amongst you, I implore you to respect that with your
21 fellow juror. Each one of you is entitled to your own
22 view of the evidence and what it means to you
23 personally, and nobody can take that from you. Nobody
24 can take that from you in this pursuit of truth and
25 justice. And that's what this room is about.

1 And the truth is never found by ignoring
2 what's missing. Truth is never found by filling in the
3 blanks, leaps of faith, asking you to embrace
4 contradiction. It doesn't depend upon possibilities or
5 maybes or likelihoods. The search for the truth will
6 never ask you to ignore the physically impossible. It
7 certainly is not arrived at by only presenting a small
8 part of what they say happened. And you make sure they
9 explain to you why they didn't present all that
10 evidence.

11 And, finally, justice is not about winning
12 and losing. There are no losers when justice is done.
13 And that's what this room is about. And justice today
14 is one thing, and it's the same for you as it is for
15 David Meggett. It's that he is not guilty of burglary
16 in the first degree and he is not guilty of criminal
17 sexual conduct in the first degree.

18 Thank you.

19 THE COURT: Mr. Simpson.

20 MR. SIMPSON: Thank you, Your Honor.

21 CLOSING ARGUMENT

22 BY MR. SIMPSON:

23 It is ironic, ladies and gentlemen, that
24 Mr. Butler starts his opening statement with a
25 soliloquy, very eloquent, he's a great lawyer, on

1 artistry and creativity because with the artist's brush
2 he sweeps away all that is there. And what is there is
3 testimonial evidence, fitting testimonial evidence which
4 matches physical evidence which shows beyond a
5 reasonable doubt that on January 13th, 2009, David
6 Meggett raped and stole the human dignity from the
7 victim Stacy Hooper.

8 I'd like to start how we always like to start
9 in closing by thanking you. I know you weren't excited
10 when you got the notice in the mail to serve jury duty
11 this week. Thank you for your attention. I thank you
12 for being here with us. I think you understand at this
13 point how important your role is, and on behalf of
14 myself and the Court and I'm sure Mr. Butler, we thank
15 you for being here this week.

16 The defendant, David Meggett, is charged with
17 burglary in the first degree. We're going to talk about
18 the elements of that, and we're going tell you exactly
19 why he's guilty of burglary in the first degree.

20 He's also charged with criminal sexual
21 conduct in the first degree, and that's the legal term,
22 but the term we use every day is rape. He is charged
23 with raping Stacy Hooper.

24 Rape is often called the crime of darkness.
25 It's called the crime of darkness not only because of

1 the heart and soul it takes to commit such a crime, but
2 the crime of darkness because it happens in dark places.
3 It happens at night, in the woods, in back alleys, and
4 like this case in the back bedroom, where there are no
5 people to see it and there are no people to hear the
6 cries.

7 Mr. Butler made a point about television.
8 I'm going to make the same point. We think we know what
9 rape is. We think we know it from TV. When we picture
10 a rape we think of some upper middle class woman, nicely
11 dressed, walking to her car when some stranger jumps
12 from a bush and attacks, attacks her and rapes her.
13 That's not rape. That's TV rape. That's Hollywood
14 rape.

15 What you have seen in this case is rape.
16 What you have heard about is rape, and what you have
17 heard about, matched with the physical evidence, is what
18 rape is in the real world.

19 In 2009, Stacy Hooper met David Meggett, but
20 let's stop right there. Let's stop before we even begin
21 because Stacy Hooper didn't meet David Meggett. Didn't.
22 She met this man. Hi, I'm David Meggett; is that what
23 happened? No. Mike, a fake name, a false name.

24 Mr. Butler made a lot of points he didn't act
25 like a rapist. I submit to you absolutely. The

1 predator in nature seeks out the sick and the weak, and
2 that's precisely what David Meggett did in this case.

3 Stranger rapes do occur, rarely. Rapes
4 happen from people who someone knows, who the victim
5 knows, and a defendant, a rapist, lays that groundwork.
6 And when Stacy Hooper met David Meggett, she met him as
7 Mike. Mike is not a nickname. Mike is a false
8 identity, not -- Mike is a fake name.

9 And so their relationship developed as casual
10 friends, even to the point where Stacy Hooper admits to
11 having a prior sexual conduct with the defendant. And,
12 again, I want to stop the story and address that.

13 Mr. Butler made all sorts of lavish claims
14 about Stacy Hooper being -- you know, trying to hide
15 things, being inconsistent. No, ladies and gentlemen.
16 No, she did not.

17 When asked on the night of the rape and when
18 talking to us and when talking to you, she was asked
19 have you ever had any prior sexual conduct with this
20 defendant. And so I stop and ask you right now. What
21 the defense wants you to believe is that this is a ruse,
22 this is a lie, this is a tall tale. What does the liar
23 say at that point? If this is a ruse, if this is all
24 made up when the police come to the liar, have you had
25 any prior sexual engagement, what does the liar say?

1 Oh, no. No, no. What does somebody who's being honest
2 say, someone like Stacy Hooper, from the get-go?
3 Admits.

4 Stacy Hooper is a lesbian, and I agree with
5 Mr. Butler that that is irrelevant. If you've ever
6 known anyone dealing with homosexuality, especially as a
7 young person, society puts a lot of pressure on them to
8 be normal, to act like everybody else. And as a young
9 person, sometimes they try to act like everybody else,
10 do what everybody else does. So you have this prior
11 awkward sexual encounter with David Meggett. She said
12 it didn't feel right and we stopped.

13 And she told you about that. The liar
14 doesn't tell you about that. The liar who's creating
15 some complicated ruse that Mr. Butler wants you to
16 believe doesn't say, yeah, we had a prior sexual
17 conduct. But she's told you that, and that goes to her
18 credibility. That goes to her truthfulness.

19 On January 12th, 2009, Stacy Hooper went to
20 sleep in her home. And the law protects the home.
21 We're going to talk about that with burglary. She had a
22 busy day. School was starting back up. She went to
23 sleep in her bed in her home until the early morning
24 hours of January 13th she awoke because David Meggett
25 was sitting on her bed. There was an exchange about

1 money, but David Meggett came in that house with a
2 purpose. You heard there was this exchange, well, I
3 want my money. I don't have it, I'll get it to you in
4 two days. Bam, sexual assault. That wasn't thanking
5 her for the money. He's there to commit an assault upon
6 Stacy Hooper.

7 Let's talk about the injuries for a second
8 because Stacy Hooper's story about what happened that
9 night is backed up by every bit of information you have
10 heard about these injuries.

11 Mr. Butler with his artist's brush can pass
12 over it and say, oh, there weren't any injuries to the
13 knee, were there? To the toes? To the arm? No, but
14 where were the injuries? Exactly where you would expect
15 them to be based on Stacy Hooper's recounting of that
16 assault.

17 I was choked, I could hardly breathe. Doctor
18 Bianco, injuries to the throat (indicating). Detective
19 Gray, injuries to the throat (indicating). Dr. Bianco,
20 soreness to the arm.

21 He took my arm and he pulled it up behind my
22 back, to the point where she had a strain. Two months
23 later in front of Dr. Kelly, still complaining about a
24 severe strain.

25 And let's talk about another little piece of

1 artistry from the defense in this. He said to you, oh,
2 you heard it from the doctor it was all in her head.
3 That is not what you heard from the doctor. What you
4 heard from the doctor is I diagnosed a severe strain to
5 the front part of her right arm consistent with that arm
6 being pulled up behind her back.

7 And, yes, she also suffers from anxiety, as
8 Mr. Butler told you and we'll address later. A lot of
9 people suffer from anxiety. Anxiety is not a mental
10 disorder that causes untruth. It's just a level of high
11 stress.

12 You heard from no doctor that these injuries
13 were all in her head. You heard from each doctor that
14 she had injuries, she had severe pain, and they were
15 consistent with exactly what we expected them to be from
16 her story. Injuries to the throat, injuries to the neck
17 from being choked, and injuries to the front and her
18 shoulder from having her arm -- and she held it up to
19 you like this but said it was behind her back -- having
20 that arm wrenched behind her back.

21 I want to address the photos for a second.
22 Detective Gray said Stacy Hooper came in on the 14th.
23 The injuries to her throat had gone from the redness,
24 gone from the grabbing, the initial injury, into
25 bruising that you could see around her neck, and so he

1 did what he should have done which is take -- taking her
2 to get photographs taken of those injuries to the
3 throat.

4 If you are upset that we don't have those
5 photographs for you, I guarantee you, you are not as
6 upset as I am about that. North Charleston police
7 department misplaced those photos, and I -- and I
8 apologize, I am angry about that, but what point would
9 those photos go to prove? What point? What factual
10 point in this case would those photos be helpful to the
11 point of whether or not her throat was injured? We know
12 her throat was injured.

13 Dr. Bianco is an E.R. doc. He does not work
14 for us. He does not work for the defense. He does not
15 have a dog in this fight. His job as an E.R. doc is to
16 see people and note their injuries. No motive to lie.
17 No dog in this fight. To look at a patient and note
18 what are the injuries I see on that patient, Dr. Bianco
19 noted those injuries.

20 We know those injuries are there. We know
21 them from Stacy Hooper. We know it from Detective Gray,
22 and we know it from a medical doctor who noted those
23 injuries. I wish we had those photos for you, ladies
24 and gentlemen. I am pissed that we do not, but we know
25 those injuries existed, and that is -- that is the fact

1 that those photos would go to.

2 There's DNA on the bed. Again, an artist at
3 work, a broad stroke of his brush, trying to make the
4 DNA evidence something that it wasn't. You heard about
5 the DNA evidence, what it was, and what you've heard is
6 it was David Meggett's sperm on top of the comforter
7 where the assault occurred.

8 Now, they used a -- they used a term, and
9 they used it scientifically, it's called a mixture, and
10 I think Jennifer Clayton was clear to you what that did
11 not mean. It doesn't mean that this microscopic piece
12 of DNA evidence from an unknown male was mixed up with
13 David Meggett's and then poured on to the comforter.
14 What it means is that they found a major contributor
15 which was matched to the quintillion to David Meggett's
16 sperm on top of that comforter and that, yes, at some
17 point, at some time they can't testify to, someone else
18 touched the comforter. It's a red herring. The
19 important part about what was found on that comforter
20 was David Meggett's sperm. And in the opening statement
21 Mr. Butler told you, yeah, they had sex on that bed.
22 That's been consented to.

23 Common sense says that after a person has
24 suffered through what Stacy Hooper had to suffer through
25 on that night they would be upset, they would be

1 hysterical, and the sad thing here is that Stacy Hooper,
2 a young girl, did what any young person would do. She
3 called up her mom. She called her mother, and her
4 mother testified, I've been raped, crying, hysterical.

5 How dare we now look back and look at a
6 victim who has been through what she did and say here's
7 what you should have done. You should have called the
8 police. If we were in that shoes, we would have called
9 the police. Her mom said, Honey, I care about you, go
10 to the hospital, go to the hospital.

11 She went straight to the hospital to take
12 care of herself. When she walked in there, she reported
13 it. The first thing she said, I have been raped. And
14 the police were called.

15 She acted like a human being. She had just
16 been raped, she had called her mom, and she went to the
17 hospital to get taken care of. How dare we look back
18 and say, oh, if it was me my first move would have been
19 to call the police.

20 Following this rape and sexual assault, David
21 Meggett, having satisfied his urge -- and, yes, we know
22 it was satisfied, his sperm is on the comforter --
23 immediately goes into damage control, because Mike had
24 groomed Stacy Hooper, with helping her out, you know,
25 paying this bill, which Stacy Hooper did not hide from

1 you, and the state is not hiding anything from you. She
2 sat right here, and she told you about that.

3 Having groomed her, having developed a
4 relationship, which is acting like a rapist, he goes
5 into damage control. Once that compulsion, once that
6 urge is satisfied, straight to damage control. I'm
7 sorry. We're friends, right? You don't owe me, don't
8 worry about that \$200, what I got -- doing whatever he
9 could do, saying whatever he could say, so Stacy Hooper
10 does not report the sexual assault.

11 David Meggett didn't know that the police
12 were at the hospital. Stacy Hooper told him I went to
13 the hospital, I've been hurt. But he wanted to be
14 there. He wanted to be there to make sure she did not
15 report this.

16 He calls. I'm sorry, I'm sorry, we're
17 friends, right?

18 Sorry for what? These are admissions, ladies
19 and gentlemen. Sorry for what?

20 The defense in their opening gave a story
21 that completely defies all common sense that, oh, they
22 had consexual (sic) -- consexual sex -- consensual sex
23 on the bed, he stops midway through and then assaults
24 her. Defies common sense.

25 He's sorry because he has just raped Stacy

1 Hooper. He is in damage control.

2 And he thinks, because he's picked his victim
3 -- and, Stacy, I mean no offense to this, but he picked
4 -- picked a poor girl, a young girl, a girl with very
5 little support, and he knows or thinks, anyway, that he
6 can still play it after he rapes her, to a point where
7 she'll just forgive him and this will all go away.
8 Damage control.

9 In case after case involving CSC, there is
10 one singular tactic that is employed by the defense, and
11 I don't fault Mr. Beattie for -- Mr. Butler for doing
12 it, but recognize it; and that is, attack the victim.

13 Attack the victim, call into question -- and
14 it's fine that Mr. Butler stands up here and goes I
15 don't mean to say anything. He -- that's precisely what
16 he means. Her history of medication, the fact that
17 she's poor, the fact that she lives in a house that
18 doesn't really look like a middle class home. Calls her
19 unstable, calls her a liar. In opening statement he
20 implied, although there's no evidence of this, that
21 somehow she's a prostitute, smear ---

22 MR. BUTLER: I'm sorry, I have to object.
23 *Doyle vs. Ohio*. It's burden shifting, and I'd like to
24 be heard at the appropriate time.

25 THE COURT: I will allow you to be heard at

1 the appropriate time.

2 Move on, Mr. Simpson.

3 MR. SIMPSON: Attack the victim, and that
4 gets to an important part which is motive. When you
5 hear from any witness, you are to ask yourself what
6 reason would this person have to lie? Why are we all
7 here? Why have we been through all of this? The sad
8 truth of our legal system is that when a woman or a
9 young girl like Stacy is raped, it doesn't happen once.
10 The crime happens, the trauma happens, then they have to
11 talk to the police about it and relive it. Then they
12 have to get, as you heard from Faye LeBeouf, every --
13 the most private parts of their body probed and
14 examined. Then they have to come and talk to
15 prosecutors several times and relive it again. Raped
16 again and again and again until the conclusion, sit in
17 this box in front of a full courtroom and twelve
18 complete strangers and relive that rape again, the most
19 private details of their life. Why would they go
20 through that? What motive does she have to sit here?
21 None. She is here today because this happened to her,
22 and she's seeking justice.

23 I want to talk briefly about the law of this
24 case.

25 The defendant is charged with burglary first

1 degree. A person is guilty of burglary in the first
2 degree when the person enters a dwelling without consent
3 -- this was Stacy (sic) home, certainly it was
4 a dwelling, he did not have permission to enter that
5 dwelling -- and with the intent to commit a crime once
6 he -- once they get in the dwelling.

7 We cannot look into a person's head, science
8 thankfully does not allow us to, and tell you and
9 scientifically say what they were thinking, but what we
10 do is you use your common sense. You look at all the
11 facts and circumstances that you now know about, and
12 you say why did David Meggett enter that house at
13 12:45 a.m. January 13th. The circumstances are there.
14 He entered that house to commit a CSC on Stacy Hooper.
15 And even if you believe the defense in the opening, he
16 entered that house to commit an assault.

17 Burglary, what makes burglary in the first
18 degree, and this is rather easy in this case, is that
19 the entering happens or the remaining in the house
20 occurs in the nighttime.

21 Criminal sexual conduct in the first degree,
22 a person is guilty of criminal sexual conduct in the
23 first degree if the actor engages in a sexual battery
24 with the victim. This is what a sexual battery is
25 defined in the law, sexual intercourse, and an expansive

1 definition, penetration however slight to a person's
2 body. Certainly that has been established in this case,
3 that a sexual battery occurred to Stacy Hooper.

4 We continue. A person is guilty of criminal
5 sexual conduct in the first degree if the actor engages
6 in a sexual battery with the victim and any one or more
7 of the following circumstances are proven.

8 And our circumstance in this case is the
9 actor uses aggravated force to accomplish a sexual
10 battery. Aggravated force, choking where a person can't
11 breathe, pulling the arm behind the back until you have
12 injuries to the front shoulder, aggravated force to
13 commit that sexual battery.

14 Aggravated force, again, means that the actor
15 uses physical force or physical violence of a high and
16 aggravated nature to overcome the victim. Again, the
17 choking, the pulling of the arm.

18 You'll also hear a lesser included, criminal
19 sexual conduct in the third degree. The actor just uses
20 force, force that's not aggravated. Force, a shove, a
21 grab, not a choke, not a pulling the arm so hard that
22 two months later she's still diagnosed with a severe
23 shoulder strain.

24 The physical violence used in this case was
25 of a high and aggravated nature, aggravated force, and

1 so we're asking you to find the defendant guilty of
2 criminal sexual conduct in the first degree, not the
3 third degree.

4 You'll also have the lesser included offense
5 of ABHAN, assault and battery of a high and aggravated
6 nature. That means you believe that Stacy Hooper was
7 assaulted, and that means that you believe Stacy Hooper
8 took this stand in tears, shaking and upset, and lied to
9 you about being raped that night even though there's
10 semen on the bed.

11 The proper verdict in this case is guilty of
12 CSC first and guilty of burglary in the first degree;
13 but no matter what crime you believe Mr. Meggett
14 intended, when he crossed that threshold he was
15 intending a crime, and that's the burglary.

16 Mr. Butler said to you, do something to be
17 proud of, you can be proud of today, and I'm going to
18 say the same thing. Rarely in life do we get a chance
19 to shed light on darkness. Rarely in life do we get a
20 chance on behalf of the community to do the right thing.
21 The right thing in this case, ladies and gentlemen, is
22 guilty of CSC first degree, guilty of burglary first
23 degree.

24 Thank you for your time.

25 THE COURT: Counsel approach.

1 (There was an off-the-record bench conference
2 in the presence of the jury but out of the hearing of
3 the jury.)

4 (Said bench conference being concluded, the
5 following proceedings were had:)

6 JURY CHARGE

7 THE COURT: All right. Ladies and gentlemen,
8 we have now reached the stage of the trial where I will
9 instruct you on the law applicable to this case.

10 Ladies and gentlemen, I remind you that
11 during this trial you and I have had certain duties to
12 perform. As the trial judge it is my responsibility to
13 preside over the trial of this case, and I also have the
14 duty to rule on the admissibility of the evidence
15 offered during this trial.

16 You are to consider only the competent
17 evidence before you. If there was any testimony that
18 was ordered stricken from the record, you must disregard
19 that testimony. You are to consider only the testimony
20 which has been presented from the witness stand, any
21 exhibits which have been made part of the record of this
22 case, as well as the stipulations of counsel.

23 I have the additional duty to charge you the
24 law applicable to this case. As the presiding judge, I
25 am the sole judge of the law in this case. It is your

1 duty as jurors to accept the law and apply the law as I
2 state it to you now.

3 If you have any idea as to what the law is or
4 what the law ought to be and it does not agree with what
5 I'm about to tell you, you must abandon your own ideas
6 because you are sworn to accept the law and apply the
7 law as I state it to you now.

8 In every case tried in this court before a
9 jury, the jury becomes the sole and exclusive judge of
10 the facts in this case. A trial judge cannot make any
11 comment on or statement to you regarding the facts in
12 this case. Since you, the jury, are the sole judge of
13 the facts in this case, you are not to infer from
14 anything that I have said or done during the progress of
15 this trial or anything that I say now during the charge
16 on the law that I have any facts or an opinion about the
17 facts in this case. The law does not allow me to have
18 an opinion about the facts in this case. This is a
19 matter solely for you, the jury, to determine. As
20 you're jurors, it is your duty to determine the effect,
21 value, weight, and the truth of the evidence that is
22 presented during this trial.

23 Ladies and gentlemen, the indictments in this
24 case allege several different offenses against the
25 defendant. The charges are, indictment number one,

1 2009-GS-10-4829, criminal sexual conduct in the first
2 degree; indictment number two, 2009-GS-10-4830, burglary
3 in the first degree. Each indictment charges a separate
4 and distinct offense. You must decide each indictment
5 separately on the evidence and the law applicable to it
6 uninfluenced by your decision as to any other
7 indictment. The defendant may be convicted or acquitted
8 on any or all of the offenses charged. You will be
9 asked to write a separate verdict of guilty or not
10 guilty for each indictment.

11 The indictments charge the defendant with
12 first degree sexual -- excuse me -- criminal sexual
13 conduct in the first degree and burglary in the first
14 degree. I remind you, the fact that the defendant was
15 arrested, charged, and indicted in this case is not
16 evidence in this case and not to be considered by you as
17 evidence of guilt in this case nor does it create any
18 presumption or inference of guilt. These documents are
19 simply the formal written instruments which contain the
20 charges made against the defendant. They are the formal
21 documents by which this case is brought into this court.

22 Just as the indictments in this case are not
23 evidence, any terminologies or labels used to refer to
24 the individuals involved in this case cannot be
25 considered as evidence. For example, the use of the

1 word "defendant" and "victim" are merely formal labels
2 and may not be considered by you as evidence in this
3 case.

4 The defendant has pled not guilty to each
5 indictment, and that plea puts the burden on the state
6 to prove the defendant guilty. A person charged with
7 committing a criminal offense in South Carolina is never
8 required to prove themselves innocent.

9 I charge you it is an important rule of the
10 law that the defendant in a criminal case, no matter
11 what the seriousness of the charge may be, will always
12 be presumed to be innocent of the crime for which the
13 indictment was issued unless guilt has been proven by
14 evidence satisfying you of that guilt beyond a
15 reasonable doubt.

16 The presumption of innocence does not end
17 when you begin your deliberations, but it accompanies
18 the defendant throughout the trial until you reach a
19 verdict of guilt based on the evidence satisfying you of
20 that guilt beyond a reasonable doubt.

21 The presumption of innocence is like a robe
22 of righteousness placed about the shoulders of the
23 defendant which remains with the defendant until it has
24 been stripped from the defendant by evidence satisfying
25 you of the defendant's guilt beyond a reasonable doubt.

1 The presumption of innocence is not mere
2 legal 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 of
5 the defendant's guilt beyond a reasonable doubt.

6 The state has the burden of proving the
7 defendant guilty beyond a reasonable doubt. Some of you
8 may have served as jurors in civil cases where you were
9 told that it was only necessary to prove that a fact is
10 more likely true than not true, such as by greater
11 weight or preponderance of the evidence. In criminal
12 cases, the state's proof must be more powerful than
13 that. It must be beyond a reasonable doubt.

14 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 with absolute certainty, and in criminal cases the law
18 does not require proof that overcomes every possible
19 doubt. If based on your consideration of the evidence
20 you are firmly convinced that the defendant is guilty of
21 the crimes charged, you must find the defendant guilty.
22 If, on the other hand, you think there is a real
23 possibility that the defendant is not guilty, you must
24 give the defendant the benefit of the doubt and find him
25 not guilty.

1 There are two types of evidence that are
2 generally presented during a trial, direct evidence and
3 circumstantial evidence.

4 Direct evidence is the testimony of a person
5 who claims to have actual knowledge of a fact, such as
6 an eyewitness. It is evidence which immediately
7 establishes the main fact to be proved.

8 Circumstantial evidence is proof of a chain
9 of facts and circumstances indicating the existence of a
10 fact. It is evidence which immediately establishes
11 collateral facts from which the main fact may be
12 inferred. Circumstantial evidence is based on inference
13 and not on personal observation or knowledge.

14 The law makes absolutely no distinction
15 between the weight or value to be given either direct or
16 circumstantial evidence nor is a greater degree of
17 certainty required of circumstantial evidence than that
18 of direct evidence. You should weigh all of the
19 evidence in this case, and after weighing all of the
20 evidence in this case if you are not convinced of the
21 guilt of the defendant beyond a reasonable doubt you
22 must find the defendant not guilty.

23 Necessarily, you must determine the
24 credibility of witnesses who have testified in this
25 case. Credibility simply means believability. It

1 becomes your duty as jurors to analyze and to evaluate
2 the evidence and determine which evidence convinces you
3 of its truth.

4 In determining the believability of the
5 witnesses who have testified in this case, you may
6 believe one witness over several witnesses or several
7 witnesses over one witness. You may believe a part of
8 the testimony of a witness and reject the remaining part
9 of the testimony of that same witness. You may believe
10 the testimony of a witness in its entirety or reject the
11 testimony of a witness in its entirety. You may
12 consider whether the witness has exhibited to you any
13 interest, bias, prejudice, or other motive in this case,
14 and you may also consider the appearance and the manner
15 of a witness while on the witness stand.

16 The rules of evidence ordinarily do not
17 permit witnesses to testify to opinions or to
18 conclusions. An exception to this rule exists for
19 witnesses we call expert witnesses. A witness who by
20 education and experience has become expert in some art,
21 science, profession, or calling may state an opinion as
22 to a relevant and material matter in which the witness
23 claims to be an expert and may also state the reasons
24 for the opinion.

25 You should consider any expert opinion

1 received in evidence in this case and like any other
2 evidence give it the weight that you think it deserves.
3 If you decide that the opinion of an expert witness is
4 not based on sufficient education or experience or if
5 you conclude that the reasons given in support of the
6 opinion are not sound or that the opinion is outweighed
7 by other evidence, you may disregard the opinion
8 entirely. An expert witness's testimony is to be given
9 no greater weight than that of other witnesses simply
10 because the witness is an expert. Further, you are not
11 required to accept an expert's opinion even though it is
12 not contradicted.

13 I instruct you and emphasize the fact that
14 the defendant did not testify is not a factor to be
15 considered by you in any way in your deliberation and in
16 your consideration on the question of the guilt or the
17 innocence of the defendant. It must not be considered
18 by you in any manner whatsoever. A defendant has a
19 constitutional right to remain silent, and the assertion
20 of this right must not be considered by you in your
21 deliberations.

22 I repeat: Under your oath you are to draw no
23 conclusion whatsoever from the fact that the defendant
24 in this case did not testify. The fact that this
25 defendant did not testify should not even be discussed

1 or considered in your jury room. The burden of proof,
2 as I have stated, is on the state. The defendant is not
3 required to prove his innocence. The burden of proof
4 remains on the state to prove guilt beyond a reasonable
5 doubt.

6 In order to establish criminal liability,
7 criminal intent is required. For example, the mental
8 state required to be proven by the state for a
9 particular crime might be purpose, intent, knowledge,
10 recklessness, criminal negligence. Criminal intent must
11 be proven by the state beyond a reasonable doubt.

12 Criminal intent is always a matter that must
13 be determined by the jury from the circumstances
14 surrounding the situation. There is no way to prove
15 intent to a mathematical certainty. There is no way
16 that medical science can dissect a person's brain and
17 determine what the person had in mind. So the law says
18 that criminal intent may be inferred from the
19 circumstances shown to have existed. This is how you
20 make a determination of whether or not the element
21 requiring intent was present. It is not necessary to
22 establish intent by direct and positive evidence, but
23 intent may be established by inference in the same way
24 as any other fact by taking into consideration the acts
25 of the parties and all the facts and circumstances of

1 the case.

2 Criminal intent is a mental state, a
3 conscious wrongdoing. It is up to you to determine what
4 the defendant intended to do based upon the
5 circumstances shown to have existed.

6 Criminal intent can arise from action or a
7 failure to act. It may arise from negligence,
8 recklessness, or an indifference to duty or to
9 consequences that is considered by the law to be the
10 equivalent of criminal intent.

11 The defendant is charged with criminal sexual
12 conduct in the first degree. The first element which
13 the state must prove beyond a reasonable doubt is that
14 the defendant engaged in a sexual battery with the
15 victim.

16 Sexual battery is sexual intercourse,
17 cunnilingus, fellatio, anal intercourse, or any
18 intrusion however slight of any part of a person's body
19 or of any object into the genital or anal openings of
20 another person's body except when the intrusion is
21 accomplished for medically recognized treatment or
22 diagnostic purposes.

23 The state must prove beyond a reasonable
24 doubt that the -- that the victim did not consent.

25 If you find that the state has not shown

1 beyond a reasonable doubt that a sexual battery
2 occurred, you would stop deliberating and your verdict
3 would be not guilty on the charge of criminal sexual
4 conduct in the first degree.

5 If you find that a sexual battery did occur,
6 you must then decide whether the state has proven beyond
7 a reasonable doubt one or more of the following
8 circumstances:

9 The defendant used aggravated force to
10 accomplish the sexual battery. Aggravated force means
11 the use of physical force or physical violence of a high
12 and aggravated nature to overcome the victim, this
13 includes the threat of using a deadly weapon, or the
14 victim submitted to sexual battery while the victim was
15 also the victim of forcible confinement, kidnapping,
16 robbery, extortion, burglary, housebreaking, or other
17 similar act or offense.

18 If you find that the -- that the state has
19 failed to prove beyond a reasonable doubt that the
20 defendant is guilty of criminal sexual conduct in the
21 first degree, you may then consider whether the state
22 has proven beyond a reasonable doubt that the defendant
23 is guilty of criminal sexual conduct in the third
24 degree.

25 The elements of criminal sexual conduct in

1 the third degree are essentially the same as the
2 elements of criminal sexual conduct in the first degree
3 only without the aggravating circumstances.

4 Thus, in order to prove criminal sexual
5 conduct in the third degree, the state must first prove
6 beyond a reasonable doubt that the defendant engaged in
7 a sexual battery which -- with the victim, which I have
8 defined previously.

9 If you find that the sexual -- that a sexual
10 battery did occur, you must then decide whether the
11 state has proven beyond a reasonable doubt that the
12 defendant used force or coercion without any aggravating
13 circumstances to accomplish the sexual battery.

14 Using force or coercion means to make the
15 victim follow a prescribed and dictated course to
16 inflict or impose or to force one's will on someone.

17 If you find that the state has failed to
18 prove beyond a reasonable doubt that the defendant is
19 guilty of criminal sexual conduct in the third degree,
20 you may consider the lesser included offense of assault
21 and battery of a high and aggravated nature.

22 Assault and battery of a high and aggravated
23 nature is an unlawful act, a violent injury to the
24 person of another accompanied by circumstances of
25 aggravation.

1 An assault occurs when a person unlawfully
2 attempts or offers to commit a violent injury upon
3 another person and had the present ability to complete
4 the attempted injury. An assault is the intentional
5 creation of a reasonable fear of immediate bodily harm.
6 It is not necessary that the attempted injury or harm
7 actually take place. For example, if I walk up to you
8 and when we are within arm's reach I draw back to hit
9 you, that is an assault.

10 A battery is the unlawful touching of another
11 person by a person who has committed the assault. An
12 unlawful touching can be caused by a part of the
13 accused's body or by any object the accused puts in
14 motion. A battery is the completion of the assault by
15 using or applying force to another person however slight
16 in a rude, angry, or resentful manner without legal
17 justification to do so.

18 The state must also prove a circumstance of
19 aggravation. Circumstances of aggravation include the
20 use of a deadly weapon, the intent to commit a felony,
21 the infliction of serious bodily injury, a great
22 disparity between the ages or physical conditions of the
23 parties, a difference in the genders of the parties, the
24 taking of indecent liberties or familiarities with a
25 female through the use of force, the purposeful

1 infliction of shame and disgrace, and the resistance of
2 lawful authorities. These are only examples of
3 circumstances of aggravation.

4 Ladies and gentlemen, the defendant is also
5 charged with first-degree burglary. First, the state
6 must prove beyond a reasonable doubt that the defendant
7 entered a dwelling without consent.

8 A dwelling is any building or portion of a
9 building in which a person ordinarily sleeps. A
10 building constructed as a dwelling that has never been
11 occupied cannot be considered a dwelling for purposes of
12 a burglary, but a building is a dwelling even if the
13 residents are temporarily absent from the building.

14 In addition, the state does not have to prove
15 that force was used to gain entry. If a person enters a
16 building by using deception, artifice, trick, or
17 misrepresentation to get consent to enter, this is an
18 entry without consent.

19 Next, the state must prove beyond a
20 reasonable doubt that the defendant intended to commit a
21 crime, either a felony or a misdemeanor, at the time of
22 the entry.

23 The mere entry into a dwelling without
24 consent is not burglary. If the intent to commit a
25 crime is formed after the entry, it is not burglary. On

1 the other hand, if the defendant intended to commit a
2 crime at the time of the entry, it is a burglary even if
3 the intent was abandoned after the entry. It does not
4 matter that the intended crime was not completed.

5 Intent may be shown by acts or conduct of the defendant
6 and other circumstances from which you may naturally and
7 reasonably infer intent.

8 Finally, the state must prove beyond a
9 reasonable doubt that the defendant when entering, while
10 in the dwelling, or when fleeing caused physical injury
11 to anyone not participating in the crime and/or the
12 defendant entered or remained in the dwelling in the
13 nighttime. Nighttime is the period between sunset and
14 sunrise during which there is not enough daylight to
15 recognize a person's face except by artificial light or
16 moonlight.

17 Ladies and gentlemen, there are two verdict
18 forms in this case. There is no significance at all in
19 the order that I read the verdict forms. It's simply
20 one must go first on the paper.

21 Ladies and gentlemen, in the Court of General
22 Sessions, Ninth Judicial District, State of South
23 Carolina vs. David Lee Meggett, defendant, on the count
24 of criminal sexual conduct in the first degree, number
25 one, we the jury find the defendant not guilty, or we

1 the jury find the defendant guilty of criminal sexual
2 conduct in the first degree or criminal sexual conduct
3 in the third degree or assault and battery of a high and
4 aggravated nature.

5 Mr. Foreman, you must sign the verdict form,
6 indicating it is the unanimous decision of the twelve
7 members of your jury. You will sign and date the
8 verdict form.

9 In the Court of General Sessions, Ninth
10 Judicial Circuit, State of South Carolina vs. David Lee
11 Meggett, on the count of burglary in the first degree,
12 we the jury find the defendant not guilty, or we the
13 jury find the defendant guilty.

14 Again, you must certify that this is the
15 unanimous decision of the jury. You will sign and date
16 the verdict form.

17 As I indicated, you must complete a separate
18 verdict form for each of the indictments charged.

19 Ladies and gentlemen, this will be the last
20 time that I say this to you. Do not begin your
21 deliberations, do not begin discussions amongst
22 yourselves.

23 We will be gathering the verdict forms and
24 the exhibits that will go back to you. Once that has
25 been accomplished, the bailiff will come into the jury

1 room and indicate that you may begin your deliberations.

2 To my two alternates, you have completed your
3 service to this trial at this time, but I will need you
4 to remain separate. They will put you in another jury
5 room, but you may not begin your deliberations or
6 discuss this case amongst yourselves until you are told
7 to do so, as well. I must make sure that all twelve are
8 able to begin deliberations before you are relieved.

9 Ladies and gentlemen, you are excused
10 momentarily.

11 Please rise for the jury.

12 (Whereupon, the jury goes to the jury room at
13 approximately 11:10 a.m.)

14 THE COURT: Please be seated.

15 Any objections to, additions to, the charge
16 as read? From the state?

17 MR. SIMPSON: Not from the state, Your Honor.

18 MR. BUTLER: Judge, I'm standing in agreement
19 with your Court's language on the state having to prove
20 that the victim did not consent. However, unless I
21 misheard, I only heard that described in the CSC first
22 charge but not in the CSC third charge. And you went
23 through all of the other elements of sexual battery, as
24 I understood it, in both CSC first and third, but I
25 didn't hear the portion on consent in the CSC third

1 charge. And maybe I missed it, but I need to at least
2 raise that.

3 THE COURT: I did not include it separately
4 in the CSC third. What I did indicate was that there
5 are all the elements with the exception that the state
6 did not have to prove force. So I believe that that
7 would be sufficient. Your objection is noted for the
8 record, however, Mr. Butler.

9 MR. BUTLER: Thank you.

10 THE COURT: We also -- so with that, there
11 are no additions or corrections?

12 MR. BUTLER: No, ma'am.

13 THE COURT: All right. Counsel, please come
14 and look at the verdict form before it goes back and
15 make sure the exhibits are prepared.

16 (Counsel review verdict forms.)

17 THE COURT: No objections to the verdict
18 form?

19 MR. BUTLER: No, ma'am.

20 MR. SIMPSON: No.

21 THE COURT: I show state's 1, 2, 3, 4, 16,
22 20, and 28 have been admitted, and defendant's 3, 4, 5,
23 6, 7, 8, 9, 10, 11, 12, and 15 have been admitted.

24 (Counsel review exhibits.)

25 THE COURT: All right. And with that...

1 MR. BUTLER: I need to put on the record...

2 THE COURT: I'm going to do that. Let me get
3 this information. All right.

4 (Whereupon, the jury begins deliberation at
5 approximately 11:15 a.m.)

6 THE COURT: All right. Thank you.

7 And, Mr. Butler, you made an objection during
8 Mr. Simpson's closing argument regarding burden
9 shifting. I'm assuming that you are requesting a
10 mistrial at this time based upon that. I will allow you
11 to fully articulate your argument.

12 MR. BUTLER: Thank you. And I just need for
13 the record to reflect that I also approached the bench
14 and we spoke at the bench.

15 In Mr. Simpson's closing he mentioned that
16 there was some failure to present any evidence on the
17 part of the defense, in some regard that I had suggested
18 that the complainant in this case was a prostitute. I
19 don't believe I ever used that -- I'm certain I didn't
20 use that word. It doesn't matter.

21 In any case, the appropriate jury charge, as
22 Your Honor had charged them at the beginning and the
23 end, is that the statements we make is not evidence. I
24 don't think it's any less burden shifting, any less of a
25 violation of *Doyle vs. Ohio*, for the state to comment on

1 the defense's lack of presenting evidence, and for that
2 reason I'd move -- and I think this is the box the
3 appellate courts have put me in, and I'm sorry if this
4 sounds like something out of *Alice in Wonderland*. I
5 have to move for a mistrial, and I have to move for a
6 curative instruction, and I have to also object to the
7 curative instruction as not curing the prejudice.

8 THE COURT: Any response, Mr. Simpson?

9 MR. SIMPSON: Yes, Your Honor.

10 I believe that *State v. Liberte and Sims*,
11 which, you know, kind of draws that line, makes it clear
12 that the solicitor can attack the credibility of a
13 defense. I think a large part of the defense presented
14 by Mr. Butler was to cast the victim in a negative
15 light. Now, as to the comment about prostitution, I
16 think the defense was in this case that this was a sex
17 for money type arrangement, and I was just attacking the
18 credibility of that defense. I don't think my comments
19 rise in any light to the degree of shifting the burden
20 of proof.

21 As to the curative instruction, I believe you
22 just thoroughly instructed the jury as to which party
23 carries the burden of proof in this case. I don't
24 believe that that was challenged in my closing. I
25 believe even if Your Honor were to believe that somehow

1 subtly that shifted the burden, I believe it was
2 addressed in your charge, as well.

3 THE COURT: Any response, Mr. Butler?

4 MR. BUTLER: Just so the record is clear, my
5 objection was not that he was mischaracterizing what I
6 said. I think he did, but that's not the objection.

7 The objection is, my recollection is, that
8 Mr. Simpson said something like you heard no testimony
9 about that or the defense presented no evidence of that.
10 That's the nature of my objection.

11 THE COURT: Based upon what I heard
12 Mr. Simpson indicate, I do not believe that that rose to
13 the level of burden shifting. I therefore decline to
14 give a curative instruction.

15 I decline your request for a mistrial. Both
16 in the Court's opening, I indicate that opening
17 statements as well as the closing are not to be
18 considered evidence, and right before you gave your
19 closing I also indicated that they are not to be
20 considered evidence.

21 I believe, Mr. Butler, that your arguments
22 are well preserved for appellate purposes.

23 Anything before we break, awaiting the
24 verdict?

25 MR. BUTLER: Are the alternates going to now

1 be dismissed?

2 THE COURT: I am going to make sure that the
3 -- the twelve are deliberating, just out of an abundance
4 of caution, and I will release the alternates at this
5 time.

6 MR. BUTLER: Thank you.

7 THE COURT: All right. Thank you.
8 Anything from the state?

9 MR. SIMPSON: Nothing from the state, Your
10 Honor.

11 THE COURT: All right. We'll await a
12 verdict. Thank you.

13 (The trial is in recess at approximately
14 11:17 a.m.)

15 (A note from the jury is received at
16 approximately 12:20 p.m.)

17 (Court's Exhibit No. 3, note from the jury,
18 is marked for identification.)

19 (The trial reconvenes at approximately
20 3:45 p.m., the defendant being present with counsel, and
21 the following proceedings were had:)

22 THE COURT: Please be seated.

23 Counsel, approach. I have a note.

24 (Court's Exhibit No. 4, note from the jury,
25 is marked for identification.)

1 (There was an off-the-record bench
2 conference.)

3 (Said bench conference being concluded, the
4 following proceedings were had:)

5 THE COURT: All right. We're going to bring
6 the jury in. I'm going to give the Allen charge.

7 (Whereupon, the jury enters the courtroom at
8 approximately 3:45 p.m.)

9 THE BAILIFF: All present, Your Honor.

10 THE COURT: Thank you. Please be seated.

11 Mr. Foreman, ladies and gentlemen of the
12 jury, I have received a note from you indicating that
13 you are unable to reach a verdict on one of the
14 indictments.

15 Ladies and gentlemen, you have stated that
16 you have been unable to reach an agreement or a verdict
17 on each indictment in this case. As I instructed you
18 earlier, each indictment must be considered separately
19 and a verdict of the jury must be unanimous.

20 When a matter is in dispute it is not always
21 easy for even two people to agree, and when twelve
22 people must agree it becomes that much more difficult.
23 In most cases, absolute certainty cannot be reached or
24 expected. However, you have a duty to make every
25 reasonable effort to reach a unanimous verdict on each

1 indictment.

2 In doing so, you should consult with one
3 another, express your own views, and listen to the
4 opinions of your fellow jurors. Tell each other how you
5 feel and why you feel that way. Please discuss your
6 differences with open minds.

7 Although the verdict of the jury must be
8 unanimous, every one of you has the right to your own
9 opinion. The verdict you agree to must be your own
10 verdict, the result of your own conviction, and you
11 should not give up your firmly held belief merely to be
12 in agreement with your fellow jurors.

13 The majority should consider the minority,
14 and the minority should consider the majority opinion.
15 You should carefully consider and respect the opinions
16 of each other and reevaluate your position with
17 reasonableness, correctness, and impartiality. You must
18 lay aside all outside matters and reexamine the
19 questions before -- before you based on the law and the
20 evidence before you in this case.

21 If you do not agree on a verdict in this
22 case, I must declare a mistrial on the indictment you
23 are unable to reach a verdict upon. In that case, it
24 does not mean anybody wins. It just means that at some
25 future time I will try this case with some other jury

1 sitting where you now sit, the same participants will
2 come, and the same lawyers will ask basically the same
3 questions and get basically the same answers, and we
4 will go through the whole process again.

5 You were selected in the same manner and from
6 the same source as any future jury will be, and there is
7 no reason for me to suppose that this case will ever be
8 submitted to twelve more intelligent, impartial,
9 conscientious, and competent jurors than you are or that
10 more or clearer evidence will be submitted from either
11 side or the other. I therefore ask you to return to
12 your deliberations at this time. You are excused.

13 Please rise for the jury.

14 (Whereupon, the jury goes to the jury room at
15 approximately 3:50 p.m.)

16 THE COURT: Thank you. Be seated. Anything
17 further as we await response from the jury?

18 MR. SIMPSON: Nothing from the state, Your
19 Honor.

20 MR. BUTLER: No, ma'am.

21 THE COURT: All right. We'll be at ease.

22 (The trial is in recess at approximately
23 3:50 p.m.)

24 (The trial reconvenes at approximately
25 4:40 p.m., the defendant being present with counsel, and

1 the following proceedings were had:)

2 THE COURT: Thank you. Please be seated.

3 I understand we have a verdict. Anything
4 before we bring in the jury?

5 MR. SIMPSON: Nothing from the state, Your
6 Honor.

7 MR. BUTLER: No, ma'am.

8 THE COURT: Bring in the jury.

9 (Whereupon, the jury enters the courtroom at
10 approximately 4:40 p.m.)

11 THE BAILIFF: All present, Your Honor.

12 THE COURT: Thank you. Please be seated.

13 Mr. Foreman, I understand that you have
14 reached a verdict. If you'll please give the verdict
15 forms to the bailiff.

16 (The foreman complies.)

17 THE COURT: Mr. Meggett, please rise.

18 (The defendant complies.)

19 THE CLERK: In the Court of General Sessions,
20 Ninth Judicial Circuit, The State of South Carolina,
21 County of Charleston, State of South Carolina vs. David
22 Lee Meggett, Defendant, verdict, on the count of
23 criminal sexual conduct in the first degree, we the jury
24 find the defendant guilty of criminal sexual conduct in
25 the first degree. I certify that this decision is the

1 unanimous decision of the jury, signed foreperson, Tony
2 W. Ritchie, Jr., foreperson, November 10th, 2010.

3 In the Court of General Sessions, Ninth
4 Judicial Circuit, State of South Carolina, County of
5 Charleston, State of South Carolina vs. David Lee
6 Meggett, on the count of burglary in the first degree,
7 we the jury find the defendant guilty. I certify that
8 this decision is the unanimous decision of the jury,
9 Tony A. Ritchie, Jr., foreperson, November 10th, 2010.

10 Mr. Foreperson, ladies and gentlemen of the
11 jury, is this your verdict -- if this is your verdict,
12 please raise your right hand.

13 (Whereupon, each member of the jury raises
14 their right hand.)

15 THE CLERK: Thank you. You may put it down.

16 Your Honor, the verdict stands.

17 THE COURT: Thank you.

18 Mr. Butler, anything further required of the
19 jury?

20 MR. BUTLER: Request to poll separately as to
21 each count, please.

22 THE CLERK: Ladies and gentlemen, I will read
23 each count, and I will ask you a question if this is
24 your verdict and if this is still your verdict. Please
25 answer appropriately.

1 As to indictment number 2009-GS-10-4829, on
2 the criminal -- on the count of criminal sexual conduct
3 in the first degree, we the jury find the defendant
4 guilty of criminal sexual conduct in the first degree:

5 Tony W. Ritchie, Jr., is this your verdict?

6 MR. RITCHIE: Yes, it is.

7 THE CLERK: Is this still your verdict?

8 MR. RITCHIE: Yes, it is.

9 THE CLERK: Thomas E. Zollars.

10 MR. ZOLLARS: Yes.

11 THE CLERK: Is this your verdict?

12 MR. ZOLLARS: Yes.

13 THE CLERK: Is this still your verdict?

14 MR. ZOLLARS: Yes.

15 THE CLERK: Paul L. Drayton, is this your
16 verdict?

17 MR. DRAYTON: Yes.

18 THE CLERK: Is this still your verdict?

19 MR. DRAYTON: Yes.

20 THE CLERK: Cassaundra Singleton, is this
21 your verdict?

22 MS. SINGLETON: Yes.

23 THE CLERK: Is this still your verdict?

24 MS. SINGLETON: Yes.

25 THE CLERK: Thank you.

1 Therrell L. Williams, Jr., is this your
2 verdict?

3 MR. WILLIAMS: Yes.

4 THE CLERK: Is this still your verdict?

5 MR. WILLIAMS: Yes.

6 THE CLERK: Rebecca C. Truesdell.

7 MS. TRUESDELL: Yes.

8 THE CLERK: Is this your verdict?

9 MS. TRUESDELL: Yes.

10 THE CLERK: Is this still your verdict?

11 MS. TRUESDELL: Yes.

12 THE CLERK: Anita Waring, is this your
13 verdict?

14 MS. WARING: Yes.

15 THE CLERK: Is this still your verdict?

16 MS. WARING: Yes.

17 THE CLERK: Karen Huett, is this your
18 verdict?

19 MS. HUETT: Yes.

20 THE CLERK: Is this still your verdict?

21 MS. HUETT: Yes.

22 THE CLERK: James H. Lloyd, the Third, is
23 this your verdict?

24 MR. LLOYD: Yes.

25 THE CLERK: Is this still your verdict?

1 MR. LLOYD: Yes.

2 THE CLERK: Jerry Campbell, Jr., is this your
3 verdict?

4 MR. CAMPBELL: Yes.

5 THE CLERK: Is this still your verdict?

6 MR. CAMPBELL: Yes.

7 THE CLERK: Lillian P. Whaley, is this your
8 verdict?

9 MS. WHALEY: Yes.

10 THE CLERK: Is this still your verdict?

11 MS. WHALEY: Yes.

12 THE CLERK: Colleen White Walker, is this
13 your verdict?

14 MS. WALKER: Yes.

15 THE CLERK: Is this still your verdict?

16 MS. WALKER: Yes.

17 THE CLERK: As to indictment number
18 2009-GS-10-4830, on the count of burglary in the first
19 degree, we the jury find the defendant guilty:

20 Is this your verdict, Tony W. Ritchie, Jr.?

21 MR. RITCHIE: Yes.

22 THE CLERK: Is this still your verdict?

23 MR. RITCHIE: Yes.

24 THE CLERK: Thomas E. Zollars, is this your
25 verdict?

1 MR. ZOLLARS: Yes.

2 THE CLERK: Is this still your verdict?

3 MR. ZOLLARS: Yes.

4 THE CLERK: Paul L. Drayton, is this your
5 verdict?

6 MR. DRAYTON: Yes.

7 THE CLERK: Is this still your verdict?

8 MR. DRAYTON: Yes.

9 THE CLERK: Cassaundra Singleton.

10 MS. SINGLETON: Yes.

11 THE CLERK: Is this your verdict?

12 MS. SINGLETON: Yes.

13 THE CLERK: Is this still your verdict?

14 MS. SINGLETON: Yes.

15 THE CLERK: Therrell L. Williams, Jr., is
16 this your verdict?

17 MR. WILLIAMS: Yes.

18 THE CLERK: Is this still your verdict?

19 MR. WILLIAMS: Yes.

20 THE CLERK: Rebecca C. Truesdell, is this
21 your verdict?

22 MS. TRUESDELL: Yes.

23 THE CLERK: Is this still your verdict?

24 MS. TRUESDELL: Yes.

25 THE CLERK: Anita E. Waring, is this your

1 verdict?
2 MS. WARING: Yes.
3 THE CLERK: Is this still your verdict?
4 MS. WARING: Yes.
5 THE CLERK: Karen M. Huett, is this your
6 verdict?
7 MS. HUETT: Yes.
8 THE CLERK: Is this still your verdict?
9 MS. HUETT: Yes.
10 THE CLERK: James H. Lloyd, the Third, is
11 this your verdict?
12 MR. LLOYD: Yes.
13 THE CLERK: Is this still your verdict?
14 MR. LLOYD: Yes.
15 THE CLERK: Jerry Campbell, Jr., is this your
16 verdict?
17 MR. CAMPBELL: Yes.
18 THE CLERK: Is this still your verdict?
19 MR. CAMPBELL: Yes.
20 THE CLERK: Lillian P. Whaley, is this your
21 verdict?
22 MS. WHALEY: Yes.
23 THE CLERK: Is this still your verdict?
24 MS. WHALEY: Yes.
25 THE CLERK: Your Honor, the jury has been

1 polled, and the verdict stands.

2 THE COURT: Thank you.

3 Anything further required of the jury?

4 MR. BUTLER: No, ma'am.

5 THE COURT: Anything further required of the
6 jury from the state?

7 MR. SIMPSON: No, Your Honor.

8 THE COURT: Mr. Meggett, you may have a
9 seat.

10 (The defendant complies.)

11 THE COURT: Are we prepared to go forward
12 with sentencing at this time?

13 MR. SIMPSON: The state is, Your Honor.

14 MR. BUTLER: Yes, ma'am.

15 THE COURT: Do you have the sentencing sheets
16 prepared?

17 MR. SIMPSON: I do, Your Honor. Your Honor,
18 may I approach.

19 THE COURT: You may.

20 (Documents tendered to the Court.)

21 THE COURT: Mr. Simpson, on burglary in the
22 first degree, what is the possible punishment?

23 MR. SIMPSON: The possible punishment, Your
24 Honor, is a range of fifteen to life.

25 THE COURT: And on criminal sexual conduct in

1 the first degree?

2 MR. SIMPSON: Zero to thirty years.

3 THE COURT: I have heard the facts,
4 Mr. Simpson. Is there anything else that the state
5 wishes to present?

6 MR. SIMPSON: Just briefly, Your Honor.

7 As you stated, you've been here all week,
8 you've heard the facts, the totality that was alleged in
9 this case.

10 You're also familiar with the history of the
11 defendant, Your Honor. You are aware that he has a
12 sexual battery conviction from North Carolina from I
13 believe 2006 if I'm not mistaken, as well as several
14 other allegations I won't get into. They are mere
15 allegations, but he does have a prior conviction for a
16 sexual battery in North Carolina.

17 We think that warrants a substantial
18 sentence. We'll leave it in the discretion of the
19 Court. Obviously, you've got a wide range here, and we
20 think it certainly demands that it be near the top end
21 of that range than the lower end, Your Honor.

22 THE COURT: All right. Does the victim wish
23 to address the Court at this time?

24 Ms. Hooper, if you'll please state your name
25 for the record and spell your last name.

1 MS. HOOPER: Stacy Deneen Hooper,
2 H-O-O-P-E-R.

3 THE COURT: Yes, Ms. Hooper.

4 MS. HOOPER: I just wanted to say what --
5 what it's done to me. I was in school, trying to finish
6 up my bachelor's degree in theatre when this happened,
7 and I had to quit school in order to go home so I would
8 feel safe. And now I don't know who I can trust, and I
9 don't even know -- some of my best friends, they feel
10 weird around me. They don't know if they can hug me
11 since this happened. And I don't want that -- I don't
12 want that to happen to anybody else.

13 THE COURT: Thank you, Ms. Hooper.

14 Does anyone else wish to address the Court
15 regarding sentencing?

16 MR. SIMPSON: The state has nothing further,
17 Your Honor.

18 THE COURT: Is Mr. Meggett on the sex
19 offender registry as a result of his probationary
20 sentence?

21 MR. SIMPSON: He is a registered sex offender
22 as a result of the prior sentence, Your Honor.

23 THE COURT: All right. Thank you.

24 Mr. Butler, I'll be happy to hear from you
25 regarding sentencing. Be happy to hear from anyone at

1 this time.

2 MR. BUTLER: Thank you, Judge.

3 This is always the hardest part of my job.
4 I'm used to giving mitigation at guilty pleas, but I've
5 never been able to figure out a way to give mitigation
6 after I've defended somebody that I think was, if not
7 innocent, not guilty. I respect the jury's verdict, of
8 course. I know it was a difficult decision, and they
9 put the time in, but I'm always at a loss for what to
10 say.

11 I also have to always advise my clients at
12 this stage not to speak because there's always the
13 chance of an appeal, and that's no disrespect at all to
14 the Court, but I always -- that's always my advice.

15 I believe that some of his family would like
16 to speak. Is that right? If you could stand, please,
17 and state your name for the Court.

18 MS. SIMMONS: My name is Cynthia Simmons, and
19 I'm -- I'm David's sister.

20 THE COURT: All right. Ms. Simmons, let me
21 interrupt you. I need you to spell your last name,
22 please.

23 MS. SIMMONS: S-I-M-M-O-N-S.

24 THE COURT: Thank you, Ms. Simmons.

25 MS. SIMMONS: I would like to say to the

1 Court that, you know, that we apologize for the things
2 that have happened, and I have to say that he is not a
3 bad person. I know that -- that we all make mistakes in
4 life, and none of us is perfect, but still yet he has
5 done some things that he is regretting. I know that he
6 has regret.

7 And throughout the trial, it was stated that,
8 you know, he said that he was sorry. So, I mean,
9 sometimes we do things that we can't take back, but yet
10 still life goes on, and we have to always remember
11 there's consequences behind the things that we do in
12 life.

13 And I would -- just would like to ask the
14 Court that you have mercy and lenience on him as you
15 give him his sentence because it's better for everyone.
16 And he has done what he did, and he is regretting what
17 he did, and I just hope that -- that you find it in your
18 heart to have some type of mercy on him along the way.

19 THE COURT: Thank you, Ms. Simmons.

20 MR. BUTLER: And, Judge, I'd say that he's 44
21 years old. He has several children.

22 The prior conviction, as I understand it, was
23 for a misdemeanor. I don't know the facts and
24 circumstances of that case. I believe he got probation
25 for it. I don't know what the requirements for -- for

1 registry were in North Carolina that would apply here.
2 But in any case, to be 44 years old and to only have a
3 misdemeanor conviction is extremely rare for my clients.

4 You do have a wide sentencing range, but you
5 don't have -- have much of a floor. You start at 15,
6 and that's 85 percent of 15, and 85 percent of 15 would
7 be 12 years and some change to put him out in his early
8 fifties. We'd ask the Court to please consider a
9 sentence somewhere along that range.

10 THE COURT: Mr. Butler, have you advised your
11 client of his appeal rights, that he must do so within
12 ten days of today's date?

13 MR. BUTLER: I have, and I will be filing his
14 appeal for him.

15 THE COURT: And, Mr. Butler, have you also
16 advised Mr. Meggett that these are both most serious
17 offenses and violent offenses?

18 MR. BUTLER: I have not.

19 THE COURT: All right. If you'll take that
20 opportunity so that he is fully advised before I impose
21 sentence.

22 (Mr. Butler and the defendant confer.)

23 MR. BUTLER: Yes, ma'am. He understands.

24 THE COURT: Mr. Meggett, anything you wish to
25 tell the Court before I impose sentence?

1 (Mr. Butler and the defendant confer.)

2 MR. BUTLER: He declines to speak at this
3 time.

4 THE COURT: All right. Anything further from
5 the state?

6 MR. SIMPSON: No, Your Honor.

7 THE COURT: Mr. Meggett.

8 (The defendant, Mr. Butler, and Ms. Penn
9 stand at counsel table.)

10 THE COURT: I have listened to the facts of
11 this case over the last three days. I have heard your
12 prior criminal record.

13 It's the order of the Court on indictment
14 2009-GS-10-4829 that you be committed to the State
15 Department of Corrections for a term of thirty years.
16 That is concurrent to 2009-GS-10-4830. You'll be given
17 credit for any time that you have served. You will be
18 placed on the sex offender registry.

19 Mr. Meggett, you have a right to appeal this
20 decision and the sentence that I have imposed, but you
21 must do so within ten days.

22 Good luck to you, sir.

23 Thank you.

24 Anything further required of the jury?

25 MR. SIMPSON: Nothing from the state, Your

1 Honor:

2 MR. BUTLER: None.

3 THE COURT: Ladies and gentlemen, you have
4 completed your service to this case. You've also
5 completed your service for the week. If you will please
6 wait in your jury deliberation room, I would like to
7 come and personally thank you for your service here in
8 Charleston County. You are excused.

9 (Whereupon, the jury is excused at
10 approximately 4:55 p.m.)

11 (The defendant is escorted from the
12 courtroom.)

13 THE COURT: Y'all may be seated.

14 Counsel, I would just like to take this
15 opportunity -- and I did not know that Mr. Meggett was
16 going to be escorted out, but if you'll please share
17 this with your client, as well. This was a very
18 difficult case on both sides. I just wish to thank the
19 attorneys for the state for your very professional
20 representation of the state's interest; and, Mr. Butler,
21 thank you for your zealous representation and as an
22 advocate for Mr. Meggett.

23 Thank you again for your courtesy and
24 professionalism to all the participants involved in the
25 courtroom, and good luck to you all. Thank you.

1 MR. BUTLER: Thank you.

2 MR. SIMPSON: Thank you, Your Honor.

3 MR. KIDD: Thank you Your Honor.

4 (Whereupon, the trial concludes at
5 approximately 4:55 p.m.)

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1 CERTIFICATE OF THE COURT REPORTER
2

3 I, the undersigned, Brenda Cooley, Circuit
4 Court Reporter for the Ninth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true and accurate transcript of record
7 of the proceedings had and the evidence introduced in
8 the hearing of the captioned case, pages 3 through
9 464, inclusive, relative to appeal, in the Court of
10 General Sessions for Charleston County, Charleston,
11 South Carolina, on the 8th, 9th, and 10th days of
12 November 2010.

13 I do further certify that I am neither of
14 kin, counsel, nor interest to any party hereto.
15

16
17 February 7, 2011
18

19 Brenda Cooley

20 Brenda Cooley

21 Circuit Court Reporter
22
23
24
25