

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Kristi Lea Harrington, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANDREW ALLSTON KIRKLAND,

APPELLANT

APPELLATE CASE NO. 2018-000254

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF CHARLESTON) CASE NO.2015-GS-10-06068

STATE OF SOUTH)
CAROLINA,)
Plaintiff,) Transcript of Record
vs.)
ANDREW ALLSTON) Date: February 5, 2018
KIRKLAND,) - February 7, 2018

Defendants.

* * * * *

B E F O R E:
The Honorable Kristi Harrington

* * * * *

Denise J. Lauder, RPR
Ninth Judicial Circuit

1 A P P E A R A N C E S

2

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21 (Defendant's Exhibits 1 - 6, 9, not identified or
22 introduced.)

23

24

25

1 (The following proceedings were held
2 February 5, 2018, in re: State v. Kirkland,
3 Charleston County General Sessions Court at 12:26
4 p.m.)

5 THE COURT: And you waive formal
6 arraignment?

7 MS. EUDY: We don't have any objection
8 to the indictment.

9 THE COURT: Solicitor, call your case.

10 MR. EVANS: Thank you. May it please
11 the Court.

12 State calls the State of South Carolina
13 v Andrew Allston Kirkland, Indictment
14 2015-GS-10-06068 for criminal sexual conduct in the
15 third degree.

16 THE COURT: Was there an offer made to
17 Mr. Kirkland?

18 MR. EVANS: Your Honor, the State
19 offered to plead to the charge as charged with a
20 recommendation of probation.

21 THE COURT: And what does criminal
22 sexual conduct in the degree carry?

23 MR. EVANS: It carries 0 to 10, Your
24 Honor, and mandatory sex offender registry.

25 THE COURT: Are you Andrew Allston

1 Kirkland?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Please stand to be sworn.

4 ANDREW ALLSTON KIRKLAND,

5 being first duly sworn, testified as follows:

6 THE COURT: Sir, you are here. We have
7 got jurors downstairs and we're getting ready to
8 pick your jury. And I understand an offer was
9 conveyed. Was that offer given to you?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And what -- I'm assuming
12 since we're here you have rejected that offer?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: You understand that if you
15 are found guilty by the jury, that the State is not
16 going to make that same recommendation?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And you still wish to go
19 forward?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Ms. Eudy, anything else we
22 need to place on the record?

23 MS. EUDY: I don't think we have
24 anything at this time.

25 THE COURT: And your client waives

1 formal arraignment?

2 MS. EUDY: We do.

3 THE COURT: Since there is no challenge
4 to the indictment, I will read the indictment to
5 the jury as is; is that correct?

6 MS. EUDY: Agreed.

7 THE COURT: Okay. Thank you. Please
8 be seated.

9 THE DEFENDANT: Yes.

10 THE COURT: And he's out on a PR bond?

11 MR. EVANS: That's correct.

12 THE COURT: What's the State's position
13 as to allowing him to remain on his PR bond?

14 MR. EVANS: I guess there's no bondsman
15 to contact, so I don't object to him staying out on
16 bond while in trial.

17 THE COURT: You do not object.

18 MR. EVANS: I do not object.

19 THE COURT: How long has he been out on
20 bond?

21 MR. EVANS: Since the day after he was
22 arrested back, I believe, in February of 2015.

23 MS. EUDY: January 15, 2015, was the
24 day he was arrested.

25 THE COURT: Okay. Sir, you understand

1 we will be taking breaks throughout the progress of
2 this trial and perhaps break over the evening hour.
3 If you do not show up, you understand that the
4 trial will continue in your absence.

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: And a warrant will issue
7 and I may hold you separately in contempt of court.
8 Do you understand?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Any questions about that?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Oftentimes defendants think
13 if they don't show up the trial will stop. That
14 will not be the case in this instance. Do you
15 understand?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. Thank you.

18 Anything before we bring in the jury?
19 From the State?

20 MR. EVANS: Nothing from the State.

21 MS. EUDY: No, Your Honor.

22 THE COURT: And strikes are five and
23 ten; is that correct?

24 MR. EVANS: That's correct.

25 THE COURT: Ms. Eudy, is that correct?

JURY SELECTION

1 MS. EUDY: Yes, correct.

2 (Jury Panel in, 11:29 p.m.)

3 THE COURT: Thank you. Good morning,
4 ladies and gentlemen. I'm Judge Kristi Harrington.
5 I am your resident judge for the Ninth Circuit,
6 which is Charleston and Berkeley. I understand
7 that every one of you has been qualified by Judge
8 Dennis.

9 I have the pleasure this week of
10 presiding over a term of general sessions,
11 otherwise known as criminal court. Ladies and
12 gentlemen, I will allow you an opportunity to come
13 and speak with me in private.

14 As I'm sure Judge Dennis explained to
15 you, we are a court of record. So this is my court
16 reporter; she is writing down everything that I say
17 as well as your responses. So at the end of all of
18 the questions that I have to ask you of you, I will
19 allow you to have an opportunity to come speak with
20 me in private with my court reporter. So please
21 don't think that you have to answer all of the
22 questions out loud.

23 Ladies and gentlemen, the case that we
24 are about to begin is the State of South Carolina v
25 Andrew Allston Kirkland. Mr. Kirkland is charged

JURY SELECTION

1 through an indictment, which is simply a piece of
2 paper that brings us here in court today. It is
3 not evidence of the allegations it contains.

4 Mr. Kirkland has been indicted for
5 criminal sexual conduct in the third degree. He
6 has pled not guilty to this indictment.

7 The State alleges that in Charleston
8 County, South Carolina, on or about December 7,
9 2014, the defendant, Andrew Allston Kirkland, did
10 commit a sexual battery upon the victim, Robyn
11 Dunn, through the use of force or coercion, and
12 that in the absence of aggravating circumstances
13 and/or when the Defendant knew or had reason to
14 know the victim was mentally defective, mentally
15 incapacitated, or physically helpless and
16 aggravated force or aggravated coercion was not
17 used to accomplish sexual battery.

18 This is in violation of Section
19 16-3-654, South Carolina Code of Laws, 1976, as
20 amended.

21 Is there any member of the jury panel
22 that knows anything about this case other than what
23 I have just read to you? If so, please stand.

24 Thank you. There are none.

25 Ladies and gentlemen, I'm now going to

JURY SELECTION

1 introduce to you the parties involved in this case.
2 Ms. Eudy, if you would please stand and introduce
3 your client, as well as any persons who will be
4 assisting you throughout the trial.

5 MS. EUDY: Thank you, Your Honor. My
6 name is Summer Eudy and I'm an attorney with Good
7 Law Group, and I have my partner Joe Good with me,
8 and we represent Andrew Allston Kirkland.

9 THE COURT: Thank you. Is there any
10 member of the jury panel related by blood,
11 marriage; close personal friend; ever have any
12 business, personal, or professional dealings, or
13 know Mr. Kirkland in any way? If so, please stand.

14 JURY PANEL: (None.)

15 THE COURT: Thank you. There are none.

16 Is there any member of the jury panel
17 related by blood, marriage; close personal friend;
18 ever have any business, personal, professional
19 dealings; or ever been represented by Ms. Eudy or
20 Mr. Good?

21 If so, please stand.

22 Yes, ma'am. Your name and juror name?

23 PROSPECTIVE JUROR: My name is
24 Katherine Simmons, Your Honor. I'm with Clawson
25 and Staubes, and Ms. Eudy used to practice with

JURY SELECTION

1 Clawson and Staubes.

2 THE COURT: Is there anything about
3 that that would affect your ability to be fair and
4 impartial in this case?

5 PROSPECTIVE JUROR: No, ma'am.

6 THE COURT: And your juror number.

7 PROSPECTIVE JUROR: 196.

8 THE COURT: Thank you.

9 THE CLERK: Your Honor, it's 296.

10 THE COURT: It's 296. Thank you.

11 PROSPECTIVE JUROR: Personal friends
12 with Joe Good.

13 THE COURT: And you are?

14 PROSPECTIVE JUROR: James Dye, 94.

15 THE COURT: And you're personal friends
16 with Mr. Good.

17 PROSPECTIVE JUROR: Correct.

18 THE COURT: How often do you see him?

19 PROSPECTIVE JUROR: Ten times a year.

20 THE COURT: Okay. And is there
21 anything about your relationship with Mr. Good that
22 would affect your ability to be fair and impartial
23 in this case?

24 PROSPECTIVE JUROR: No.

25 THE COURT: And you are Juror No. 94;

JURY SELECTION

1 is that correct?

2 PROSPECTIVE JUROR: That's correct.

3 THE COURT: Anyone else?

4 PROSPECTIVE JUROR: I'm a friend of Joe
5 Good's as well.

6 THE COURT: And you are?

7 PROSPECTIVE JUROR: 233, Sandra
8 Patrick.

9 THE COURT: When was the last time you
10 had seen Mr. Good?

11 PROSPECTIVE JUROR: Couple of years ago
12 probably.

13 THE COURT: Is there anything about
14 that that would affect your ability to be fair and
15 impartial in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you.

18 Anyone else? Thank you. There are
19 none.

20 Mr. Evans, if you would stand and
21 introduce yourself and any persons who will be
22 assisting you throughout this trial.

23 MR. EVANS: Thank you, Your Honor.
24 Good morning, ladies and gentlemen. My name is
25 Drew Evans. I am an assistant solicitor for your

JURY SELECTION

1 circuit solicitor, Scarlett A. Wilson. She's the
2 Circuit Court Solicitor for Charleston and Berkeley
3 Counties.

4 I will be assisted this week by Shannon
5 Elliott, who is another attorney in our office, as
6 well as Detective Jason Bowen of the Charleston
7 County Sheriff's Office.

8 THE COURT: Thank you. Is there any
9 member of the jury panel related by blood,
10 marriage; close personal friends; ever have any
11 business, personal, professional dealings or know
12 Mr. Evans or Ms. Elliott or deputy -- Detective
13 Bowen in any capacity? If so, please stand.

14 JURY PANEL: (None.)

15 THE COURT: Thank you. There are none.

16 Any member of the jury panel ever
17 worked either in the Good Law Firm or in the
18 solicitor's office in the Charleston County or
19 Berkeley County offices?

20 If so, please stand.

21 Yes, ma'am; your juror number and name?
22 296?

23 PROSPECTIVE JUROR: 296, Katherine
24 Simmons. I worked in the Berkeley Solicitor's
25 Office for two and a half years, and I did

JURY SELECTION

1 prosecute criminal sexual conduct cases.

2 THE COURT: When was that?

3 PROSPECTIVE JUROR: It's been a really
4 long time ago, Your Honor; 1990 to 1993.

5 THE COURT: It was before Ms. Wilson
6 took office, right?

7 PROSPECTIVE JUROR: Long before.

8 THE COURT: I'm going to ask you a
9 couple of questions because you told me a lot of
10 information. Is there anything about you working
11 for the Solicitor's Office previously that would
12 affect your ability to be fair and impartial in
13 this case?

14 PROSPECTIVE JUROR: I believe that it
15 would.

16 THE COURT: So I'm going to protect you
17 from the trial of this case.

18 And is everybody comfortable in their
19 chairs, in their seats for now? Please do not
20 answer any more questions regarding this case, but
21 I do need you to stay with us so I can give you
22 further instructions regarding your service for the
23 rest of the week.

24 PROSPECTIVE JUROR: Thank you.

25 THE COURT: Thank you, Ms. Simmons.

JURY SELECTION

1 Is there anyone else? Thank you.

2 There are none.

3 I'm going to call a list of witnesses
4 who may be called to testify in this case. If you
5 know these individuals in any capacity, related by
6 blood, marriage; close personal friend; have any
7 business, personal, or professional dealings with
8 the individuals, please stand as I call their
9 names.

10 Robyn Dunn; Lexi Allston; Jason Bowen
11 with the Charleston County Sheriff's Office; Paul
12 McManigault, Charleston County Sheriff's Office;
13 Shawn James, Charleston County Sheriff's Office;
14 Carol Miller, Beaufort Memorial Hospital; Carey
15 Tucker, Beaufort Memorial Hospital; Kathleen
16 Gill-Hopple with MUSC; and Katherine Leisy with
17 SLED, otherwise known as the South Carolina Law
18 Enforcement Division; Jaclynn McKay, also with
19 SLED; Chadrick Johnson; Dewey Kirkland; Kelly
20 Hylton with MUSC; and Karen Hughes with MUSC.

21 Anyone know any of these individuals in
22 any capacity?

23 PROSPECTIVE JUROR: I'm Juror 216,
24 Darren Mullinax. I'm a member of James Island Town
25 Council and I work with Shawn James, chairman of

JURY SELECTION

1 the neighborhood safety counsel.

2 THE COURT: Is there anything about you
3 knowing Deputy James that would affect your ability
4 to be fair and impartial in this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: And your name and juror
7 number?

8 PROSPECTIVE JUROR: 216, Darren
9 Mullinax.

10 THE COURT: And when was the last time
11 that you have seen Deputy James?

12 PROSPECTIVE JUROR: I see him twice a
13 month.

14 THE COURT: Have you ever discussed
15 this case?

16 PROSPECTIVE JUROR: No, not at all.

17 THE COURT: Ever discuss any cases with
18 him?

19 PROSPECTIVE JUROR: No. Only he just
20 tells us -- he's on -- talks to my committee
21 neighborhood safety and talks about in general
22 various, you know, things throughout James Island.

23 THE COURT: Thank you, sir.

24 PROSPECTIVE JUROR: Thank you.

25 THE COURT: Anyone else?

JURY SELECTION

1 Thank you. There are none.

2 Any member of the jury panel ever been
3 employed by the Charleston County Sheriff's Office,
4 a member of your family worked for the Charleston
5 County Sheriff's Office? If so, please stand.

6 Yes; your name and juror number.

7 PROSPECTIVE JUROR: Juror No. 8, Connie
8 Ambrose. I used to work for Charleston County
9 Sheriff's Office.

10 THE COURT: What did you do there?

11 PROSPECTIVE JUROR: I was a detention
12 officer and a court security officer.

13 THE COURT: Anything about that that
14 would affect your ability to be fair and impartial
15 in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Do you know any of the
18 officers that I called their names?

19 PROSPECTIVE JUROR: No.

20 THE COURT: And your juror number and
21 name?

22 PROSPECTIVE JUROR: Juror 8, Connie
23 Ambrose.

24 THE COURT: And how long have you been
25 separated from the sheriff's office?

JURY SELECTION

1 PROSPECTIVE JUROR: About 17 years.

2 THE COURT: All right. Thank you.

3 Yes, ma'am.

4 PROSPECTIVE JUROR: I worked for
5 Charleston County Police Department as a
6 telecommunicator 911 operator. And I think I left
7 there like in 1985, so it was a long time ago.

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

11 PROSPECTIVE JUROR: No.

12 THE COURT: And your number and name?

13 THE WITNESS: Jeanette Johnson, 159.

14 THE COURT: Thank you, Ms. Johnson.

15 Is there anyone else? Yes.

16 PROSPECTIVE JUROR: I'm number 74, Gail
17 Corvette. I'm employed by an organization that
18 teaches yoga to Charleston County employees, and I
19 have taught yoga at the 911 center and at the LEC.

20 THE COURT: Do you take their names as
21 you are doing yoga? Would you recognize these
22 individuals?

23 PROSPECTIVE JUROR: Just first names.

24 THE COURT: Let's assume for sake of
25 argument that Deputy James does yoga. Would there

JURY SELECTION

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

3 PROSPECTIVE JUROR: No.

4 THE COURT: All right. Thank you.
5 Your juror number?

6 PROSPECTIVE JUROR: 74.

7 THE COURT: Where else do you teach?

8 PROSPECTIVE JUROR: Pardon?

9 THE COURT: Where else do you teach
10 yoga?

11 PROSPECTIVE JUROR: Lots of Charleston
12 County offices, at the MUSC Wellness Center and
13 Longevity Fitness, and with private clients.

14 THE COURT: I have several witnesses
15 from MUSC. Did you recognize those names?

16 PROSPECTIVE JUROR: I don't recognize
17 those.

18 THE COURT: If those witnesses were to
19 come and you recognized their face, would there be
20 anything about you being a yoga instructor that
21 would affect your ability to be fair and impartial
22 in this case?

23 PROSPECTIVE JUROR: No, ma'am.

24 THE COURT: Juror number and name.

25 THE WITNESS: 74, Gail Corvette.

JURY SELECTION

1 THE COURT: Is there anyone else?

2 Thank you. There are none.

3 Is there any member of the jury panel
4 that has ever been treated at Beaufort Memorial
5 Hospital, ever been employed by Beaufort Memorial
6 Hospital, or a friend or family member been treated
7 or worked at the hospital?

8 If so, please stand.

9 Yes, ma'am; your name and juror number.

10 PROSPECTIVE JUROR: 327, Anna Wade. I
11 was born in Beaufort Memorial Hospital.

12 THE COURT: I'm not going to ask you
13 how long ago that was, but is there anything about
14 that that would affect your ability to be fair and
15 impartial in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: And there are two
18 individuals, Carol Miller and Carey Tucker who will
19 be testifying from that hospital. Is there
20 anything about that that would affect your ability
21 to be fair and impartial in this case?

22 PROSPECTIVE JUROR: No, not at all.

23 THE COURT: Juror number?

24 PROSPECTIVE JUROR: 327.

25 THE COURT: Anyone else?

JURY SELECTION

1 Thank you. There are none.

2 Is there any member of the jury panel
3 ever been employed by or currently employed with
4 MUSC? If so, please stand.

5 THE COURT: Yes, ma'am.

6 PROSPECTIVE JUROR: Number 144, Jessica
7 Heitmann, and I'm currently employed at MUSC.

8 THE COURT: And what do you do at MUSC?

9 PROSPECTIVE JUROR: I work with the
10 students in the library.

11 THE COURT: And do you happen to know
12 the witnesses, Kathleen Gill-Hopple and Kelly
13 Hylton and Karen Hughes?

14 PROSPECTIVE JUROR: I do not.

15 THE COURT: Anything about your
16 employment at MUSC that would affect your ability
17 to be fair and impartial in this case?

18 PROSPECTIVE JUROR: I don't believe so.

19 THE COURT: And your juror number?

20 PROSPECTIVE JUROR: 144.

21 THE COURT: And I do that same thing.
22 I need a yes or a no.

23 PROSPECTIVE JUROR: No.

24 THE COURT: Is there anything -- stand
25 up please. Is there anything about you working at

JURY SELECTION

1 MUSC and there are three potential witnesses from
2 MUSC that would affect your ability to be fair and
3 impartial in this case?

4 PROSPECTIVE JUROR: No, ma'am.

5 THE COURT: Thank you so much.

6 Starting over here, yes, ma'am.

7 PROSPECTIVE JUROR: Juror No. 2,
8 Cristin Adams and I'm ...

9 THE COURT REPORTER: I can't hear her,
10 Judge.

11 THE COURT: She said she was a family
12 medicine doctor.

13 I need you to speak loudly.

14 PROSPECTIVE JUROR: Sorry (inaudible)
15 employed by MUSC.

16 THE COURT: And do you know those three
17 individuals?

18 PROSPECTIVE JUROR: No.

19 THE COURT: Is there anything about
20 your employment at MUSC that would affect your
21 ability to be fair and impartial in this case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: And your juror number?

24 PROSPECTIVE JUROR: Two.

25 THE COURT: Thank you.

JURY SELECTION

1 Yes, sir.

2 PROSPECTIVE JUROR: Juror No. 20,
3 Nathan Bartlett. I'm employed with MUSC as an
4 analytics and reporting analyst.

5 THE COURT: Same question to you: Do
6 you know these three individuals?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Is there anything about
9 your employment at MUSC that will affect your
10 ability to be fair and impartial in this case?

11 PROSPECTIVE JUROR: No, ma'am.

12 THE COURT: And your number?

13 PROSPECTIVE JUROR: 20.

14 THE COURT: Thank you.

15 Yes, ma'am.

16 PROSPECTIVE JUROR: 74, Gail Corvette.
17 I teach yoga at MUSC Wellness Center.

18 THE COURT: Same question -- we went
19 over this as well.

20 PROSPECTIVE JUROR: No.

21 THE COURT: Do you know those
22 individuals?

23 PROSPECTIVE JUROR: No.

24 THE COURT: And will it affect your
25 ability to be fair and impartial in this case?

JURY SELECTION

1 PROSPECTIVE JUROR: I do not believe it
2 will.

3 THE COURT: And I need a yes or no.
4 Can you be the juror that both the State and the
5 defendant are looking for with the ability to
6 listen to the facts from the witness stand and
7 apply the law as the Court gives it and render a
8 verdict based upon those things?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: Thank you.

11 PROSPECTIVE JUROR: Juror No. 8, Connie
12 Ambrose. I used to work at MUSC as an
13 administrative assistant for ten years.

14 THE COURT: Do you know any of those
15 individuals?

16 PROSPECTIVE JUROR: No.

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

20 PROSPECTIVE JUROR: No.

21 THE COURT: Okay. Juror No. 8, thank
22 you.

23 Yes, ma'am.

24 PROSPECTIVE JUROR: Juror No. 159,
25 Jeanette Johnson. I worked there as a health heart

JURY SELECTION

1 center coordinator years ago.

2 THE COURT: Do you know any of those
3 individuals that I called their names?

4 PROSPECTIVE JUROR: No.

5 THE COURT: Anything about your
6 employment -- previous employment with MUSC that
7 would affect your ability to be fair and impartial
8 in this case?

9 PROSPECTIVE JUROR: No.

10 THE COURT: Thank you, Ms. Johnson.
11 Anyone else?

12 Thank you. There are none.

13 Any member of the jury panel ever been
14 employed with the South Carolina Law Enforcement
15 Division, any member of your family been employed
16 with South Carolina Law Enforcement Division? If
17 so, please stand.

18 Thank you. There are none.

19 Any member of the jury panel ever been
20 employed, currently, previously with any state,
21 local, federal, or military law enforcement agency?
22 If so, please stand.

23 Thank you. There are none.

24 Any member of the jury panel served as
25 a witness in a criminal case? Ever served as a

JURY SELECTION

1 witness in a criminal case? If so, please stand.

2 Yes, sir.

3 PROSPECTIVE JUROR: 336, Charles
4 Wethington.

5 THE COURT: And you served as a witness
6 in a criminal case?

7 PROSPECTIVE JUROR: I did.

8 THE COURT: Was that here in Charleston
9 County or somewhere else?

10 PROSPECTIVE JUROR: Brooklyn, New York.

11 THE COURT: And what was the charge
12 against the Defendant?

13 PROSPECTIVE JUROR: Illegal substance
14 importation to this country. He was bringing in
15 natural remedies that wasn't permitted by the DNA
16 or by the drug --

17 THE COURT: DEA.

18 PROSPECTIVE JUROR: DEA, sorry.
19 Nervous.

20 THE COURT: Is there anything about
21 that experience that will affect your ability to be
22 fair and impartial in this case?

23 PROSPECTIVE JUROR: No.

24 THE COURT: How long ago was that?

25 PROSPECTIVE JUROR: That was

JURY SELECTION

1 approximately 2005.

2 THE COURT: Okay. And your juror
3 number?

4 PROSPECTIVE JUROR: 336.

5 THE COURT: 336. Thank you.

6 PROSPECTIVE JUROR: Juror No. 127,
7 Ellen Grampus. I think it was in 2005, I was a
8 witness for a murder trial.

9 THE COURT: And where was that?

10 PROSPECTIVE JUROR: Charleston County.

11 THE COURT: And was there anything
12 about that experience that will affect your ability
13 to be fair and impartial in this case?

14 PROSPECTIVE JUROR: No.

15 THE COURT: And your juror number?

16 PROSPECTIVE JUROR: 127.

17 THE COURT: Thank you.

18 Is there anyone else?

19 Thank you. There are none.

20 Any member of the jury panel ever serve
21 on a grand jury or as a trial juror in any state,
22 federal, or local court before? So you previously
23 served on jury duty prior to this week. Please
24 stand.

25 Yes, ma'am.

JURY SELECTION

1 PROSPECTIVE JUROR: 74, Gail Corvette.
2 Atlanta, Georgia, about 1990.

3 THE COURT: And what type of case?

4 PROSPECTIVE JUROR: Murder trial.

5 THE COURT: And were you able to reach
6 a verdict?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What was the verdict?

9 PROSPECTIVE JUROR: Guilty.

10 THE COURT: Anything about that
11 experience that will affect your ability to be fair
12 and impartial in this case?

13 PROSPECTIVE JUROR: No.

14 THE COURT: Thank you.

15 PROSPECTIVE JUROR: Juror No. 76,
16 Martha Craftessig. I served in Charleston County
17 on a drug case.

18 THE COURT: And about how long ago was
19 that?

20 PROSPECTIVE JUROR: It's been a while.
21 Probably ten years.

22 THE COURT: Were you able to reach a
23 verdict?

24 PROSPECTIVE JUROR: Yes, we were.

25 THE COURT: What was that verdict?

JURY SELECTION

1 PROSPECTIVE JUROR: Guilty.

2 THE COURT: Is there anything about
3 that, that would affect your ability to be fair and
4 impartial in this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: And your juror number.

7 PROSPECTIVE JUROR: 76.

8 THE COURT: Yes, sir.

9 PROSPECTIVE JUROR: Juror 41, Gerald
10 Brown. I served in a murder case here in
11 Charleston County, and it was in '97.

12 THE COURT: Okay. And were you able to
13 reach a verdict?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: And what was that verdict?

16 PROSPECTIVE JUROR: Guilty.

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

20 PROSPECTIVE JUROR: No.

21 THE COURT: Juror number?

22 PROSPECTIVE JUROR: 41.

23 THE COURT: Yes, sir.

24 PROSPECTIVE JUROR: Juror No. 200. I
25 don't know if this counts, but I did serve on a

JURY SELECTION

1 jury to the end. It was a homeowners association
2 and shoddy construction.

3 THE COURT: All right. Were you able
4 to reach a verdict?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: And what was --

7 PROSPECTIVE JUROR: It was just an
8 award, bringing back to way it -- settlement.

9 THE COURT: So you ruled -- found in
10 favor of the plaintiff.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: And awarded money; is that
13 correct?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Anything about that that
16 would cause you not to be fair and impartial in
17 this case?

18 PROSPECTIVE JUROR: No.

19 THE COURT: All right. And your juror
20 number?

21 PROSPECTIVE JUROR: 200.

22 THE COURT: Thank you.

23 PROSPECTIVE JUROR: 348, Christopher
24 Young. I served in Charleston County five or six
25 years, a jury case, found guilty. I can't remember

JURY SELECTION

1 all the details.

2 THE COURT: Is there anything about
3 that would affect your ability to be fair and
4 impartial in this case?

5 PROSPECTIVE JUROR: No.

6 THE COURT: And your juror number?

7 PROSPECTIVE JUROR: 348.

8 THE COURT: Thank you.

9 Is there any member of the jury panel
10 or anyone related to you that has ever sought
11 assistance from, employed by, or perform voluntary
12 work for any center or program whose primary
13 purpose is treating the victims of sexual assault?

14 If so, please stand.

15 Mr. Young.

16 PROSPECTIVE JUROR: My wife was a
17 counselor at Dee Lowcountry child abuse for a few
18 years probably four or five years ago.

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

22 PROSPECTIVE JUROR: I don't know. Very
23 bad memories, so pretty partial on some of the
24 stories she brought home, just to be honest.

25 THE COURT: Well, we want you to be

JURY SELECTION

1 honest. You took an oath downstairs. I believe
2 that you're telling me the whole truth.

3 PROSPECTIVE JUROR: Yeah. A little
4 sympathy just let me say that.

5 THE COURT: Tell me juror number.

6 PROSPECTIVE JUROR: 348.

7 THE COURT: I'm going to excuse you
8 from the trial of this case. Please don't answer
9 any further questions, but I need you to stay with
10 us.

11 PROSPECTIVE JUROR: Thank you.

12 THE COURT: Thank you.

13 Is there anyone else?

14 Thank you. There are none.

15 PROSPECTIVE JUROR: I'm sorry what was
16 the question?

17 THE COURT: Have you received any
18 specialized training, volunteered for --

19 PROSPECTIVE JUROR: Yeah. I was an
20 intern.

21 THE COURT: Your juror number.

22 PROSPECTIVE JUROR: I'm sorry, 144. I
23 was an intern for a girls group home, girls that
24 were sexually abused.

25 THE COURT: Anything about that that

JURY SELECTION

1 will affect your ability to be fair and impartial
2 in this case?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Okay. Thank you.
5 Yes.

6 PROSPECTIVE JUROR: Can you finish that
7 question?

8 THE COURT: So I'll read it again. Has
9 any member of the jury panel or someone related to
10 you ever sought assistance from, been employed by,
11 or performed voluntary work for any center or
12 program whose primary purpose is treating victims
13 of sexual assault?

14 If so, please stand.

15 Ms. Johnson, are you standing?

16 PROSPECTIVE JUROR: Yes. 159, Jeanette
17 Johnson; advocate for PAR, People Against Rape.

18 THE COURT: Anything about that that
19 would keep you from being fair and impartial in
20 this case?

21 PROSPECTIVE JUROR: No.

22 THE COURT: Thank you, Ms. Johnson.

23 Anything else? Thank you. There are
24 none.

25 Ladies and gentlemen, I have a few

JURY SELECTION

1 questions that I believe need to be answered in
2 private, so I'm going to read these questions to
3 you, please listen very carefully. If you need to
4 answer them, I want you to come forward at the end
5 of the questions and we will answer them
6 individually in private.

7 Is there any member of the jury panel
8 ever been prosecuted by the Ninth Circuit
9 Solicitor's Office in any capacity? If so, I need
10 you to come forward at the appropriate time.

11 Is there any member of the jury panel
12 or a member of your family that's been personally
13 exposed to or been the victim of sexual assault as
14 a child or an adult, whether it was reported or
15 not, and -- so please come forward at the end of my
16 questions.

17 Is there any member of the jury panel
18 that has any personal, political, moral or
19 religious beliefs that you feel you would be unable
20 to be that fair and impartial juror?

21 If for whatever reason, based upon the
22 nature of my questions, the allegations contained
23 in the indictment, for whatever reason you feel
24 this is not the case for you, that you would be
25 unable to listen to the facts from the witness

JURY SELECTION

1 stand, apply the law as I give it to you and render
2 a verdict based only upon those things, free from
3 any outside religious, moral, personal beliefs that
4 you may hold.

5 If you need to answer any of my
6 previous questions or if there is just some reason
7 you need to speak with me, I'm happy to do so.
8 Please move to the center and the bailiffs will
9 assist you in coming forward.

10 THE BAILIFF: Number 349.

11 THE COURT: Sir.

12 PROSPECTIVE JUROR: My mother and
13 center -- both my mother and sister have been
14 victims for domestic violence.

15 THE COURT: Domestic abuse, physical or
16 sexual?

17 PROSPECTIVE JUROR: Both.

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

21 PROSPECTIVE JUROR: Yes, I believe so.

22 THE COURT: Okay. Tell me your juror
23 number.

24 PROSPECTIVE JUROR: 349.

25 THE COURT: 349 is protected from this

JURY SELECTION

1 case. Go back and have a seat.

2 THE BAILIFF: Juror 284.

3 PROSPECTIVE JUROR: I have a younger
4 sister who suffered sexual assault when she was
5 ten.

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

9 PROSPECTIVE JUROR: No.

10 THE COURT: All right. You will be
11 able to listen to the facts from the witness stand,
12 apply the law as I give it and render a verdict
13 based only upon those things?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Was the abuse reported?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Did it happen here or --

18 PROSPECTIVE JUROR: California.

19 THE COURT: Okay. And about how long
20 ago was that?

21 PROSPECTIVE JUROR: Twenty years.

22 THE COURT: And your juror number?

23 PROSPECTIVE JUROR: Number 284.

24 THE COURT: 284 will remain.

25 Thank you, sir.

JURY SELECTION

1 THE BAILIFF: 169.

2 (Not able to hear the conversation
3 between the Judge and the prospective juror.)

4 THE COURT: Juror number?

5 PROSPECTIVE JUROR: 169.

6 THE COURT: 169 is excused from the
7 trial of this case.

8 THE BAILIFF: 233.

9 PROSPECTIVE JUROR: My niece was raped
10 -- (Inaudible)

11 THE COURT: Was that here?

12 PROSPECTIVE JUROR: It was in Raleigh.

13 THE COURT: Was that case prosecuted?

14 PROSPECTIVE JUROR: It's being
15 completed, about to come to trial.

16 THE COURT: Okay. And is there
17 anything about what you've shared with us that
18 would affect your ability to be fair and impartial
19 in this case?

20 PROSPECTIVE JUROR: I don't think so.

21 THE COURT: So all I need is a yes or a
22 no.

23 PROSPECTIVE JUROR: No.

24 THE COURT: Okay. Let me ask you a
25 fresh question. Is there anything about what you

JURY SELECTION

1 shared with us that would affect your ability to
2 listen to the facts from the witness stand or the
3 law as the Court gives it and render a verdict
4 based upon those things?

5 PROSPECTIVE JUROR: No.

6 THE COURT: Okay. Tell me your juror
7 number.

8 PROSPECTIVE JUROR: 233.

9 THE COURT: 233 will remain.

10 THE BAILIFF: 118.

11 PROSPECTIVE JUROR: I was sexually
12 abused as a child.

13 THE COURT: And is there anything about
14 that that will affect your ability to be fair and
15 impartial in this case?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: The victim in this case is
18 not a minor. Would that --

19 PROSPECTIVE JUROR: It still would.

20 THE COURT: All right. Tell me your
21 juror number.

22 THE WITNESS: 118.

23 THE COURT: 118 is protected from the
24 trial of this case. Thank you.

25 THE BAILIFF: 291.

JURY SELECTION

1 THE COURT: Growing up my father
2 explained to me about how there was sexual assault,
3 and from details that he showed me, I don't believe
4 that I can be unbiased.

5 THE COURT: Juror number?

6 PROSPECTIVE JUROR: 291.

7 THE COURT: 291 is excused from the
8 trial of this case. Have a seat and stay with us.

9 THE BAILIFF: Juror 16.

10 THE COURT: Good morning.

11 PROSPECTIVE JUROR: How are you?

12 THE COURT: Good.

13 PROSPECTIVE JUROR: You had just said
14 about political views and whatnot. I'm kind of the
15 pro law type. I just wanted to be honest.

16 THE COURT: Okay. And so that's why I
17 asked that question the way I did. Would you be
18 able to listen to the facts from the witness stand
19 and apply the law as I give it to you and render a
20 verdict based upon those things?

21 PROSPECTIVE JUROR: I would think so.
22 I just wanted you to know --

23 THE COURT: And I think so and I hope
24 so too. But I need a juror who is able to do that.
25 Okay. You are able to set aside and follow the law

JURY SELECTION

1 as I give it to you based upon the facts as you
2 find them?

3 PROSPECTIVE JUROR: Yeah.

4 THE COURT: Tell me your juror number.

5 PROSPECTIVE JUROR: 216.

6 THE COURT: 216 will remain. Thank
7 you, sir.

8 THE BAILIFF: Juror 8.

9 THE COURT: How are you this morning?

10 PROSPECTIVE JUROR: I'm doing pretty
11 good. I work for Charleston County, so I provide
12 support for individuals with physical and mental
13 disabilities, and I don't think I can be impartial.

14 THE COURT: All right. You have been
15 in a lot of places. That's awesome. What's your
16 favorite?

17 PROSPECTIVE JUROR: I guess MUSC.

18 THE COURT: Uh-huh. All right. Thank
19 you for doing the work that you are doing. I know
20 it's tough. You're Juror No. 8?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Juror 8 is excused from the
23 trial of this case.

24 THE BAILIFF: Juror 322.

25 THE COURT: Mr. Evans, do you have any

JURY SELECTION

1 additional questions?

2 MR. EVANS: No other questions, Your
3 Honor.

4 THE COURT: Good afternoon.

5 PROSPECTIVE JUROR: Afternoon. Last
6 week my brother was arrested for domestic abuse,
7 fight with a girlfriend that he had trouble with.
8 And I don't know if this is important, but he was
9 arrested and --

10 THE COURT: Here in Charleston?

11 PROSPECTIVE JUROR: No, in New York.
12 But she beat him up and he got arrested so now he's
13 in -- through the whole process. I don't know what
14 is going to happen. I don't know if it will have
15 any effect or --

16 THE COURT: Well, only you will know.
17 Will you be able to listen to the facts from the
18 witness stand in this case, apply the law as I give
19 it, and render a verdict based on those things?

20 PROSPECTIVE JUROR: Yes, I think so.

21 THE COURT: Okay. So I just need a yes
22 or no. Are you the juror -- because both the State
23 and the defendant deserve a juror who is able to
24 listen to the facts from the witness stand, apply
25 the law as I give it to them, and render a verdict

JURY SELECTION

1 in this case? Can you be that juror?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: And your juror number?

4 PROSPECTIVE JUROR: 322.

5 THE COURT: 322 will remain.

6 Thank you, sir.

7 Is there anyone else?

8 Any challenges?

9 MR. EVANS: None from the State.

10 THE COURT: Any challenges?

11 MS. EUDY: No.

12 THE COURT: No additional questions?

13 MR. EVANS: No, ma'am.

14 MS. EUDY: No additional questions.

15 THE COURT: All right. Strikes are

16 five and ten, and two alternates.

17 State ready to proceed?

18 MR. EVANS: State's ready.

19 THE COURT: Defense ready?

20 MS. EUDY: Defense is ready.

21 THE CLERK: Ladies and gentlemen of the

22 jury, as I call your name and number, please stand,

23 pick up your belongings and come to the podium and

24 stand in front of the attorneys.

25 If you are selected as a juror, have a

JURY SELECTION

1 seat in the jury box. If you're not selected as a
2 juror, please return to your seat in the audience.

3 Juror 318, Lynda Tice. What say you
4 for the State?

5 MR. EVANS: Please present the juror.

6 THE CLERK: What say you for the
7 defense?

8 MS. EUDY: We will strike.

9 THE CLERK: Ma'am, you have not been
10 selected for the trial of this case. Please take a
11 seat.

12 PROSPECTIVE JUROR: Not selected.

13 THE COURT: Not selected. Have a seat.

14 THE CLERK: Juror 2, Cristin Adams.

15 THE COURT: What say you for the State?

16 MR. EVANS: Please present this juror.

17 THE CLERK: What say you for the
18 defense?

19 MS. EUDY: Please seat the juror.

20 THE CLERK: Ma'am, you have been
21 selected for the trial of this case. Please take a
22 seat in the jury box.

23 Juror 222, Sheldon Nicholsen. What say
24 you for the State?

25 MR. EVANS: Please present the juror.

JURY SELECTION

1 THE CLERK: What say you for the
2 defense?

3 MS. EUDY: Seat the juror.

4 THE CLERK: Sir, you have been selected
5 for the trial of this case. Please take a seat in
6 the jury box.

7 Juror 336, Charles Wethington.

8 What say you for the State?

9 MR. EVANS: Please present the juror.

10 THE CLERK: What say you for the
11 defense?

12 MS. EUDY: Strike the juror.

13 THE CLERK: Sir, you have not been
14 selected for the trial of this case. Please return
15 to your seat.

16 Juror 200, Robert McGuire.

17 What say you for the State?

18 MR. EVANS: Please present the juror.

19 THE CLERK: What say you for the
20 defense?

21 MS. EUDY: I would like to keep this
22 juror.

23 THE CLERK: Sir, you have been selected
24 for the trial of this case. Please have a seat in
25 the jury box.

JURY SELECTION

1 Juror 159, Jeanette Johnson.

2 What say you for the State?

3 MR. EVANS: Please present this juror.

4 THE CLERK: What say you for the
5 defense?

6 MS. EUDY: Seat the juror.

7 THE CLERK: Ma'am, you have been
8 selected for the trial of this case. Please have a
9 seat in the jury box.

10 Juror 283, Thomas Scott.

11 What say you for the State?

12 MR. EVANS: Excuse the juror.

13 THE CLERK: Please return to your seat.
14 You have been excused as a juror in the trial of
15 this case.

16 Juror 64, Emily Clark. What say you
17 for the State?

18 MR. EVANS: Present the juror.

19 THE CLERK: What say you for the
20 defense?

21 MS. EUDY: Please excuse the juror.

22 THE CLERK: Ma'am, you have not been
23 selected for the trial of this case. Please return
24 to your seat.

25 Defendants have exhausted three

JURY SELECTION

1 strikes.

2 Juror 179, Melissa Ringer.

3 What say you for the State?

4 MR. EVANS: Please present the juror.

5 THE CLERK: What say you for the

6 defense?

7 MS. EUDY: Please excuse the juror.

8 THE CLERK: Ma'am, you have not been

9 selected for the trial of this case. Please return

10 to your seat.

11 Juror 139, Thomas Hart.

12 What say you for the State?

13 MR. EVANS: Excuse the juror.

14 THE CLERK: You have not been selected

15 for the trial of this case. Please return to your

16 seat.

17 Juror No. 127, Ellen Grampus.

18 What say you for the State?

19 MR. EVANS: Present the juror.

20 THE CLERK: What say you for the

21 defense?

22 MS. EUDY: Please seat the juror.

23 THE CLERK: Ma'am, you have been

24 selected for the trial of this case. Please take a

25 seat in the jury box.

JURY SELECTION

1 Juror 41, Gerald Brown.

2 What say you for the State?

3 MR. EVANS: Please present the juror.

4 THE CLERK: What say you for the
5 defense?

6 MS. EUDY: Seat the juror.

7 THE CLERK: Ma'am, you have been
8 selected for the trial of this case. Please have a
9 seat in the jury box.

10 Juror No. 15, Caroline Baggett.

11 What say you for the State?

12 MR. EVANS: Present the juror.

13 THE CLERK: What say you for the
14 defense?

15 MS. EUDY: Please seat the juror.

16 THE CLERK: Ma'am, you have been
17 selected for the trial of this case. Please have a
18 seat in the jury box.

19 Juror No. 195, Curtis McCarthy.

20 What say you for the State?

21 MR. EVANS: Excuse the juror.

22 THE CLERK: You have not been selected
23 for the trial of this case. Please return to your
24 seat.

25 Juror No. 144, Jessica Heitmann.

JURY SELECTION

1 THE COURT: What say you for the State?

2 MR. EVANS: Present the juror.

3 THE CLERK: What say you for the
4 defense?

5 MS. EUDY: Please excuse this juror.

6 THE CLERK: Ma'am, you have not been
7 selected for the trial of this case. Please return
8 to your seat.

9 Defendant has exhausted five strikes.

10 Juror 10, Amanda Anderson. What say
11 you for the State?

12 MR. EVANS: Present the juror.

13 THE CLERK: What say you for the
14 defense?

15 MS. EUDY: Please excuse the juror.

16 THE CLERK: You have not been selected
17 for the trial of this case. Please return to your
18 seat.

19 Juror No. 74, Gail Corvette.

20 What say you for the State?

21 MR. EVANS: Please present this juror.

22 THE CLERK: What say you for the
23 defense?

24 MS. EUDY: Please excuse this juror.

25 THE CLERK: Ma'am, you have not been

JURY SELECTION

1 selected for the trial of this case. Please return
2 to your seat.

3 Juror No. 275, James Rusnock.

4 What say you for the State?

5 MR. EVANS: Present the juror.

6 THE CLERK: What say you for the
7 defense?

8 MS. EUDY: Seat the juror.

9 THE CLERK: You have been selected for
10 the trial of this case. Please have a seat in the
11 jury box.

12 Number 334, Wendy Weast.

13 What say you for the State?

14 MR. EVANS: Please present the juror.

15 THE CLERK: What say you for the
16 defense?

17 MS. EUDY: Strike this juror.

18 THE CLERK: Please return to your seat.
19 You have been excused as a juror in the trial of
20 this case.

21 Juror No. 20, Nathan Bartlett.

22 What say you for the State?

23 MR. EVANS: Present this juror.

24 THE CLERK: What say you for the
25 defense?

JURY SELECTION

1 MS. EUDY: Seat this juror.

2 THE CLERK: Please have a seat in the
3 jury box. You have been selected as a juror in the
4 trial of this case.

5 Juror No. 216, Darren Mullinax.

6 What say you for the State?

7 MR. EVANS: Excuse this juror.

8 THE CLERK: Please return to your seat.
9 You have been excused as a juror in the trial of
10 this case.

11 Four strikes for the State.

12 Juror 315, Terrance Taylor.

13 What say you for the State.

14 MR. EVANS: Present the juror.

15 THE CLERK: What say you for the
16 defense?

17 MS. EUDY: Seat the juror.

18 THE CLERK: You have been selected for
19 the trial of this case. Please take a seat in the
20 jury box.

21 Juror 239, Barry Pidgeon.

22 What say you for the State?

23 MR. EVANS: Excuse this juror.

24 THE CLERK: Please return to your seat.
25 You have been excused as a juror in the trial of

JURY SELECTION

1 this case.

2 Juror No. 322, Robert Turriago.

3 Any challenge from the State?

4 MR. EVANS: No challenge.

5 THE CLERK: What say you for the
6 defense?

7 MS. EUDY: Seat the juror.

8 THE CLERK: Please have a seat in the
9 jury box. You have been selected as a juror in the
10 trial of this case.

11 Juror No. 284, Trevor Scott.

12 Any challenge from the State?

13 MR. EVANS: None from the State.

14 THE CLERK: What say you for the
15 defense?

16 MS. EUDY: Please seat the juror.

17 THE CLERK: Please have a seat in the
18 jury box. You have been selected as a juror in the
19 trial of this case.

20 Selecting for the first alternate.

21 Juror 165, Marion King.

22 What say you for the State?

23 MR. EVANS: Please present this juror.

24 THE CLERK: What say you for the
25 defense?

JURY SELECTION

1 MS. EUDY: Please excuse the juror.

2 THE CLERK: Please return to your seat.

3 You have been excused as a juror in the trial of
4 this case.

5 Juror 249, Dominick Raguseo.

6 What say you for the State?

7 MR. EVANS: Present this juror.

8 THE CLERK: What say you for the
9 defense?

10 MS. EUDY: Seat the juror.

11 THE CLERK: Please have a seat in the
12 jury box. You have been selected as a juror in the
13 trial of this case.

14 Selecting for the second alternate.

15 Juror 228, Alexander Palyo.

16 What say you for the State?

17 MR. EVANS: I'm sorry, what number was
18 that?

19 THE CLERK: 228, Alexander Palyo.

20 What say you for the State?

21 MR. EVANS: Excuse the juror.

22 THE CLERK: Please return to your seat.
23 You have been excused as a juror in the trial of
24 this case.

25 Juror 265, Brian Riley.

JURY SELECTION

1 What say you for the State?

2 MR. EVANS: Present this juror.

3 THE CLERK: What say you for the
4 defense?

5 MS. EUDY: Seat this juror.

6 THE CLERK: You have been selected as
7 the second alternate for the trial of this case.
8 Please have a seat in the jury box.

9 THE COURT: Any motions or matters
10 pertaining to the jury as selected from the State?

11 MR. EVANS: None from the State, Your
12 Honor.

13 THE COURT: From the defendant.

14 MS. EUDY: Nothing from the defendant.

15 THE COURT: Ladies and gentlemen,
16 you've been selected as the jury to try this case.
17 Please be escorted to the jury room. I'll receive
18 you back in just a few moments.

19 (Jury out, 12:23 a.m.)

20 THE COURT: Outside the presence of the
21 jury, any motions or matters?

22 MR. EVANS: None from the State.

23 MS. EUDY: No, Your Honor.

24 THE COURT: Ladies and gentlemen, you
25 were not selected as the jury for this case.

1 Remember, your jury service is for the week. I
2 need you to call the hotline after 6:00 p.m. to
3 receive your instructions for the remainder of the
4 week. Thank you.

5 I may not see you. Thank you for your
6 contribution to our justice system and for your
7 service in Charleston County. Have a wonderful
8 afternoon. Thank you.

9 (Jury panel out, 12:24 p.m.)

10 THE COURT: What motions do we have
11 before we can begin the trial?

12 MR. EVANS: Your Honor, we filed a sort
13 of standard rape shield motion. The defense was
14 actually kind enough to provide me with, I think,
15 some Facebook things that they were intending to
16 cross the victim on. My position is, several of
17 those run afoul of the rape shield statute, and I
18 kind of questioned relevancy to the rest of them.
19 That's the only thing I would like you to take up.

20 MS. EUDY: Or maybe if he could just
21 tell me the ones that he's concerned about, I might
22 not have an issue and I'll just take those out.

23 THE COURT: All right.

24 MR. EVANS: I kind of questioned the
25 relevancy of all of them that I don't think run

1 afoul of the rape shield statute, Your Honor. We
2 can discuss that over the lunch break.

3 THE COURT: Okay. My question, I just
4 need to know how long are these motions going to
5 take?

6 MR. EVANS: Five to ten minutes, Your
7 Honor.

8 MS. EUDY: I have a motion to exclude
9 several things that I wouldn't think will take more
10 than 30 minutes total, if that.

11 THE COURT: What do you have?

12 MS. EUDY: I did a motion to exclude
13 certain testimony, and then the expert that they
14 just identified on Wednesday of last week. They
15 identified a SANE nurse expert that was not in any
16 way involved in the case and so I challenged that
17 identification based on timeliness and our
18 opportunity to appropriately respond.

19 We have somebody that may be able to
20 testify tomorrow if we can get to her tomorrow, but
21 we then will have to throw it together at the last
22 minute.

23 MR. EVANS: Some of her motions I don't
24 intend to -- some of the 404(b) I don't intend to
25 elicit any testimony for those. I don't think we

1 necessarily have to take any argument on --

2 THE COURT: To her motion in limine as
3 to 2, we don't need to hear any testimony?

4 MR. EVANS: Number 1, I guess we need
5 to take argument. Number 2, I don't intend to
6 elicit any testimony regarding that, Your Honor,
7 and have instructed my witnesses to do the same.
8 Number 3 --

9 THE COURT: Hold on. So, I can't help
10 but call -- and I tell -- I advised the jury, he is
11 the defendant and she is listed as the victim, but
12 I advise the jury they are just terms. All right.

13 MS. EUDY: Thank you.

14 THE COURT: So I cannot grant nor deny
15 your motion. It's -- they've already -- I've
16 already done that. So there is no way to get
17 around those -- that they're labels.

18 And you don't intend to call Number 2?

19 MR. EVANS: I don't intend to elicit
20 any testimony regarding that, Your Honor.

21 THE COURT: So your motion is granted
22 to the extent that you need me to reevaluate.

23 MR. EVANS: I'm sorry, reevaluate?

24 THE COURT: You plan not to call any --
25 you said any testimony. If something were to come

1 up --

2 MR. EVANS: It's possible they open the
3 door and we get into that, but --

4 THE COURT: Then let me know. Any
5 reference to any allegations that the defendant was
6 molested when he was five? Do you intend to --

7 MR. EVANS: Likewise, no.

8 THE COURT: Your motion is granted.
9 Four?

10 MR. EVANS: Likewise, Your Honor, no.

11 THE COURT: Number 4 is granted.
12 Number 5?

13 MR. EVANS: Your Honor, we received --
14 as I'm sure Your Honor is aware when you start
15 prepping these cases for trial and going through
16 the file, you start to realize there is some stuff
17 that law enforcement has that they haven't turned
18 over to you.

19 Specifically, I realized on last
20 Monday, or Tuesday, that I didn't have a CD of the
21 defendant's phone dump and I didn't have crime
22 scene photographs that were taken. We provided
23 those as soon as we got them which would have been
24 Tuesday. The photographs were actually -- the disk
25 we received from law enforcement was half complete

1 essentially.

2 So on Friday afternoon -- Friday
3 morning I received the full disk of crime scene
4 photos and turned those over to Ms. Eudy in person.
5 So, I mean, this was during the course of the trial
6 prep, that was just things that come up. And we
7 provided them to the defense as soon as we had
8 copies of them from law enforcement.

9 THE COURT: Okay.

10 MS. EUDY: Your Honor, if I may with
11 regard to the scene photos. If he does intend to
12 use those, I would like to see what he's going to
13 use. I got the CD originally Wednesday, and then
14 all of those weren't on there, and then I got the
15 rest of it on Friday.

16 And it's their duty to produce it
17 whether or not -- I can't help that law enforcement
18 didn't get it to them. My bigger issue is the
19 forensic data from the cell phone dump. I mean,
20 there is so much in there, there is no way that I
21 could have -- they, again, produced that on
22 Wednesday, but the thumb drive didn't work.

23 I came up and got a new thumb drive on
24 Friday, but there was no way I could look through
25 all of it.

1 I intend to use the contact entry for
2 Robyn Dunn. I think we all already knew that was
3 there because a screenshot was produced of it.

4 MR. EVANS: I don't intend to get into
5 the phone dump stuff, and I was just providing it
6 when I got a copy as part of our continuing Rule 5.
7 So I don't intend to introduce any data directly
8 from the phone dump, so I'm not sure that's going
9 to be an issue.

10 But, again, this isn't a case of
11 evidence that we were sitting on and didn't turn
12 over. I provided copies as soon as we received
13 them. And it's pretty standard, you know, when
14 you're prepping the trial the week before to get
15 additional evidence that you need to turn over
16 immediately.

17 THE COURT: So you don't plan to --

18 MR. EVANS: Not anything directly from
19 the phone dump. There is a text message that
20 Ms. Allston provided for a screen --

21 MS. EUDY: I have no objection to using
22 that.

23 MR. EVANS: -- to Detective Bowen, but
24 it was -- and he reviewed the phone dump and found
25 the text message in the phone dump, but I'm not

1 going to admit anything from the dump itself, Your
2 Honor.

3 MS. EUDY: Are you talking about the
4 screenshot that you --

5 MR. EVANS: Correct.

6 MS. EUDY: Like the one from the date
7 of the --

8 MR. EVANS: Uh-huh.

9 MS. EUDY: I don't have an objection to
10 that one. I just -- you know, it's an issue in
11 that there could be exculpatory evidence in there.
12 I don't know. I went through it as much as I
13 could, but it's not --

14 THE COURT: What are you asking me to
15 do?

16 MS. EUDY: I'm just stating that. If
17 he's not going to use any of it, I think we're
18 good. I -- just for the record, I think they have
19 a duty to disclose it timely. I don't think it's
20 going to cause an issue if he's not going to use
21 any of it. I think we're in agreement.

22 THE COURT: All right. And that is
23 your position.

24 MS. EUDY: Yes.

25 THE COURT: So at this point the motion

1 is granted, Mr. Evans, to the extent --

2 MR. EVANS: Regarding the photographs,
3 Your Honor, I do intend to admit some of the
4 photographs of the crime scene.

5 THE COURT: But as to the forensic
6 data?

7 MR. EVANS: Correct; none of that.

8 THE COURT: Tell me about the photos.
9 How come you didn't turn them over?

10 MR. EVANS: Your Honor, I didn't have
11 them until Tuesday. I made a copy on Tuesday
12 morning. It came to my attention that that disk
13 was about halfway complete. Once I got --
14 basically they put half of the photographs on the
15 disk that were taken.

16 And so once I got a full copy of the
17 photographs, I turned them over to Mr. Good on
18 Friday morning by hand.

19 So, again, this was a case of I got it
20 and turned it over as soon as I had it. I wasn't
21 sitting on it. It's crime scene photos taken later
22 in the evening the day of the incident.

23 I was just going to use them to help
24 the victim and Ms. Allston illustrate, you know,
25 the things they were talking about in the

1 testimony. I don't know how this would be
2 prejudicial to the defendant.

3 MS. EUDY: I think it's prejudicial in
4 that they did not timely turn them over. I haven't
5 had time to analyze -- the ones that are really
6 relevant are the photos that I didn't get until
7 Friday afternoon. The first half of the CD --

8 THE COURT: What do you want to do with
9 photos on the CD?

10 MS. EUDY: I'm asking you to exclude
11 them.

12 THE COURT: Let me see the photos.

13 MR. EVANS: I can show you the ones
14 that I intend to admit.

15 Beg the Court's indulgence.

16 MS. EUDY: I don't have a problem with
17 these actually.

18 THE COURT: I don't need to see them.
19 So are you withdrawing the CD photo request?

20 MS. EUDY: Well, for the record, I
21 would ask that it be limited to the photos that
22 were presented and we agreed on, which are a photo
23 of the living room, State's Exhibit 5; a photo of
24 the kitchen --

25 THE COURT: You just need to use the

1 numbers.

2 MS. EUDY: State's Exhibit 4, State's
3 Exhibit 3, State's Exhibit 2, and 1.

4 THE COURT: So 1 through 5 you have no
5 objection to.

6 MS. EUDY: Correct.

7 THE COURT: Okay. Are there others you
8 plan on introducing?

9 MR. EVANS: Not at this time, Your
10 Honor, but I don't want to say we get into the
11 middle of testimony and I think another photograph
12 needs to be introduced --

13 THE COURT: Just ask to approach and we
14 will take it up then.

15 MR. EVANS: -- and it would be from the
16 same set these came from as well.

17 THE COURT: Just go ahead and make sure
18 that the defense has all the photographs that you
19 intend to use.

20 MR. EVANS: They do, Your Honor, as of
21 Friday.

22 THE COURT: Okay. As to
23 Ms. Gill-Hopple?

24 MS. EUDY: Again, she was identified on
25 Wednesday the 31st of January, last week, as a

1 potential expert witness in the area of sexual
2 assault forensic examination via e-mail to us. She
3 was not in any way involved in the matter. She did
4 not examine the victim, to my knowledge.

5 She -- they tell me that she is going
6 to testify in general about what to expect or not
7 to expect for forensic exams. They provided a CV
8 and didn't have the correct telephone. I tried to
9 call and I got a text message back, you have the
10 wrong number. And then I e-mailed her trying to
11 contact her and I got an out-of-office response.

12 We ran around and got an expert that
13 may or may not be able to come to trial to refute
14 any expert testimony offered by Ms. --
15 Dr. Gill-Hopple. Based on the failure to timely
16 disclose, I would ask that she be excluded.

17 THE COURT: Okay. Tell me -- show me
18 the rule that says they have to disclose witness's
19 resume in a certain amount of time.

20 MS. EUDY: Under Rule 5, I believe that
21 there is -- to identify their witnesses within
22 30 days after receiving -- or ten days prior to
23 trial. And I believe, you know, with regard to
24 Rule 403, it would be overly prejudicial to allow
25 her to testify without us having adequate time to

1 research and meet with her and prepare adequate
2 responses to her testimony as well as preparing a
3 rebuttal expert.

4 THE COURT: Mr. Evans.

5 MR. EVANS: I mean, Your Honor kind of
6 hit the nail on the head. I don't believe we are
7 under any duty to disclose in a certain amount of
8 time. Regarding Dr. Gill-Hopple's testimony, the
9 victim went to Beaufort Memorial Hospital, as you
10 heard.

11 I was under the impression when we
12 began preparing this case that she had a SANE exam
13 done by a registered SANE nurse. Come to find out
14 last week, that's not the case. There was a
15 physician's assistant that performed a exam.

16 In light of that information, I decided
17 that Dr. Gill-Hopple would be able to help the jury
18 understand what to not and to expect in a sexual
19 assault exam, because, frankly, I don't believe
20 that Mr. Tucker who is the P.A. would be qualified
21 to testify to sexual assault.

22 THE COURT: Ms. Eudy, did you file a
23 request for Rule 5?

24 MS. EUDY: We did.

25 THE COURT: Does it request and state

1 any expert witnesses?

2 MS. EUDY: It does. And I don't have
3 it right in front of me, but I know that it does.
4 I looked at it before I -- after I got that
5 notification.

6 Additionally, I just want to, for the
7 record, state this was up for trial in October and
8 we agreed for a continuance, and this was a date
9 certain trial, and he's saying he didn't know until
10 last week. And I understand we all prepare last
11 minute, but, I mean, this is a really serious
12 issue --

13 THE COURT: They're all serious issues.
14 Mr. Evans.

15 MR. EVANS: Again, I disclosed the
16 expert witness in time once I decided I was going
17 to use the expert witness. These are kind of fluid
18 matters, and I was sort of dealing with it when I
19 realized that I would need an expert witness to
20 help the triers of fact.

21 I think any objection they have would
22 be cured by an in camera review of
23 Dr. Gill-Hopple's testimony --

24 THE COURT: Where is Dr. Gill-Hopple?

25 MR. EVANS: She is -- I was intending

1 to call her tomorrow morning. She is at MUSC in
2 Charleston.

3 THE COURT: Okay. Do you then --
4 hello?

5 MS. EUDY: I'm sorry. I just
6 remembered right before we started he said that
7 she'd had the flu and he may or may not be able to
8 get her here, and if she can't come he was going to
9 bring somebody else -- I can't even remember the
10 name -- who I know nothing about at all. I know a
11 little bit about Dr. Gill-Hopple.

12 MR. EVANS: And I heard from
13 Dr. Gill-Hopple and it would be her.

14 THE COURT: So can Dr. Gill-Hopple come
15 this afternoon so Ms. Eudy can talk to her?

16 MR. EVANS: I will find out.

17 THE COURT: Okay. Have we addressed
18 all pretrial matters?

19 MR. EVANS: Other than the rape shield
20 request.

21 THE COURT: I'm sure Ms. Eudy is going
22 to comply with the law.

23 MS. EUDY: I am.

24 MR. EVANS: I guess we will address
25 that on cross-examination --

1 THE COURT: Do I need to look at the
2 Facebook --

3 MR. EVANS: I would ask that you do,
4 Your Honor.

5 MS. EUDY: If you show me the ones, we
6 might be able to agree.

7 THE COURT: So I'm going to give them
8 until 2:00. You-all be back in an hour. Is that
9 enough time?

10 MR. EVANS: Yes, ma'am. May I
11 approach, Your Honor?

12 THE COURT: You may.
13 Let's bring in the jury.
14 (Jury in, 12:43 p.m.)

15 THE BAILIFF: All jurors are present.

16 THE COURT: Thank you. Be seated. We
17 are going to go ahead and take your lunch break.
18 When you return, we will begin the trial of the
19 case. Please utilize this clock up here on the
20 wall, and be back at 2:00 p.m. At 2:00 p.m.

21 Please remember you may not discuss
22 this case with anyone. You may not do any
23 independent research. I will give you further
24 instructions when I give you the charge when you
25 return, but simply put, don't begin discussing this

1 case. Don't look anything up on the Internet or
2 elsewhere. Everything that you know about this
3 case must come from the testimony that you hear.

4 If you violate these instructions, you
5 could jeopardize the outcome of the trial.

6 Please go have a -- I hope it's as
7 beautiful outside as I think that it is. Enjoy
8 some time downtown, go walk around the Battery, and
9 don't even think about jury service until you
10 return back. Be back at 2:00. My bailiffs will
11 instruct you on how to report and where to report.
12 Be back at 2:00. Thank you.

13 Please rise for the jury.

14 (Jury out, 12:43 p.m.)

15 THE COURT: Thank you. Be seated.

16 All right. Anything before -- are you
17 going to talk about the Facebook?

18 MR. EVANS: We can take it up after
19 lunch, Your Honor.

20 THE COURT: All right. Be back at
21 1:45.

22 MR. EVANS: Yes, ma'am.

23 (A luncheon recess transpired.)

24 THE COURT: Anything before we bring in
25 the jury?

COURT'S OPENING

1 MR. EVANS: Nothing from the State.

2 MS. EUDY: Nothing from the defense.

3 THE COURT: All right.

4 (Jury in, 2:19 p.m.)

5 THE COURT: Thank you. Please be
6 seated.

7 Afternoon, ladies and gentlemen. We
8 are now going to begin the trial, but before we do
9 that I must administer an oath for you.

10 THE JURY,

11 being first duly sworn, testified as follows:

12 THE COURT: Was there any member of the
13 jury panel that cannot take that oath? If so,
14 please stand.

15 Thank you. All 14 jurors have
16 indicated that they have taken the oath.

17 Ms. Johnson, you have been selected as
18 the foreperson in this case. That simply means
19 that you are the jury spokesperson. So if at any
20 time you need additional breaks or have any
21 questions or concerns, if you will alert the
22 bailiff and we will take care of that matter
23 promptly.

24 There again, if you-all need any
25 additional breaks, please let the foreperson know,

COURT'S OPENING

1 and she will alert the bailiff and they will tell
2 -- either handle it or let me know.

3 To my two alternates, Mr. Raguseo and
4 Mr. Riley, those are your two assigned seats, and,
5 Ms. Johnson, that is your assigned seat. So the
6 three of you that's where you sit. The rest of you
7 sit where you are comfortable, and you don't have
8 to remain in the same seat every time.

9 I have provided notepads for you. That
10 means you may take notes during the progress of
11 this trial. Please remember some of us are much
12 better note-takers than others. Remember, one
13 juror's notes are no more correct or accurate than
14 another juror's. Those are for your use. We will
15 lock them up at breaks and over the evening hour
16 and get those back to you so no one will read those
17 while we're on break.

18 Please remember that if you need any
19 testimony played back to you while deliberating, we
20 will bring you back in the courtroom and play the
21 audio of that. We do not have transcripts of --
22 real time transcripts of the court. So we will
23 bring you back in and play the audio of that.
24 Don't feel like you have to take down word for word
25 of what is happening.

COURT'S OPENING

1 There will be exhibits that will be
2 entered into evidence in this case. Those will
3 also go back. So if you don't have the opportunity
4 to see and read and look carefully at those
5 exhibits, again, those will go back to you -- with
6 you to your jury room when you're deliberating.

7 Ladies and gentlemen, the case that we
8 are about to begin is the case of the State v.
9 Andrew Allston Kirkland. What I now say is
10 intended to serve as an overview of the
11 introduction of the trial of this case.

12 These remarks are not a charge on the
13 law. I will instruct you on the law applicable to
14 the case throughout the trial when it becomes
15 necessary, but, most importantly, at the end after
16 you have heard all of the evidence, heard closing
17 arguments on behalf of counsel, and then you would
18 retire to consider your verdict.

19 The defendant is charged by one
20 indictment filed in this court with the crime of
21 criminal sexual conduct in the third degree. I
22 will explain the elements of that charge to you at
23 a later time.

24 The indictment, as I indicated to you
25 during jury selection, is simply the charge by

COURT'S OPENING

1 which this case is brought into court. It is not
2 in any sense evidence of the allegations it
3 contains. The defendant has pled not guilty to
4 that indictment.

5 The State has the burden of proving
6 each of the elements of that indictment beyond a
7 reasonable doubt. It is up to you, ladies and
8 gentlemen, to determine whether the State has met
9 that burden.

10 Your purpose as jurors is to find and
11 determine the facts. You are the sole judges of
12 the facts in this case. If at any time I make any
13 comment regarding the facts, you must disregard
14 that comment.

15 As judges of the facts in this case,
16 out of respect for that new position, you may have
17 noticed when you were coming in and exiting, the
18 attorneys and the parties involved in this case and
19 the audience were standing. This is out of respect
20 for your new position as judges of the facts.

21 You are to determine the facts from the
22 testimony you hear and the other evidence that is
23 introduced in court. It is up to you to determine
24 the inferences which you feel may be properly drawn
25 from the evidence. It is important that you

COURT'S OPENING

1 perform your duty of determining the facts
2 diligently and conscientiously; because,
3 ordinarily, there is no way to correct an erroneous
4 determination of the facts by a jury.

5 On the other hand and with equal
6 emphasis, the same law that makes you the judges of
7 the facts makes me the judge of the law. The law
8 as given by this court is the only law that you may
9 consider. You must accept it and follow it even
10 though you may disagree with it.

11 I cannot tell you what I think the
12 facts are and you cannot disagree with me about
13 what the law is or what the law ought to be. Your
14 job is to take the law as I give it to you and
15 apply it to the facts as you find it from the
16 testimony of the witnesses and any other evidence
17 that is introduced. After doing that, you will
18 render your verdict, a true and just verdict under
19 the solemn oath that you just took as jurors.

20 Again, until I tell you that you may
21 begin your deliberations, you must not discuss this
22 case with anyone. That includes your fellow
23 jurors, friends, family members, or anyone else.
24 That includes face-to-face discussions. It also
25 includes any electronic discussions, anything of

COURT'S OPENING

1 that nature.

2 So simply put, you may not talk about
3 this case; you may not text about this case; you
4 may not e-mail about this case; you may not make
5 any postings about this case or your jury service
6 on social media.

7 As I indicated to you, failure to
8 follow my rules could jeopardize the outcome of
9 this trial. Do not do independent research
10 regarding this case. Do not look up any of the
11 attorneys involved or the defendant's name or the
12 victim's name or any of the witnesses who may
13 testify.

14 Again, everything that you know about
15 this case must come from what you learn in the
16 courtroom. It is your solemn responsibility to
17 determine the guilt or innocence of the defendant.
18 Your verdict must be based solely on the evidence
19 as it is presented to you in the trial and on the
20 law as I instruct you during and at the close of
21 the trial.

22 You must keep an open mind and not
23 decide any issue in this case until all of the
24 evidence has been presented, the parties have made
25 their closing arguments, and I have instructed you

COURT'S OPENING

1 on the law applicable to the case.

2 In just a moment, the Solicitor is
3 going to make what's called an opening statement in
4 which the Solicitor will explain to you the issues
5 in this case, or at least what the Solicitor
6 believes the issues to be. The attorney for the
7 defendant may also make an opening statement,
8 although the Defendant is not required to do so at
9 this time.

10 What the attorneys tell you is not
11 evidence in this case. The evidence in the case
12 will be presented to you by the testimony of sworn
13 witnesses from the witness stand, as well as
14 exhibits that may be introduced into evidence.

15 From time to time, one of the attorneys
16 may state an objection and ask to approach the
17 bench, or I might ask them to approach the bench,
18 or I may excuse you from the courtroom for a short
19 while. If I do have the attorneys approach, do not
20 try to overhear us or read our lips.

21 And if I excuse you, please do not
22 think I'm trying to hide anything from you. The
23 reason I do this is because it is sometimes
24 necessary for me to make a comment on the facts in
25 order to issue a ruling on the law. So I may

COURT'S OPENING

1 excuse you so that in no way anything that I say or
2 do throughout the progress of this trial influences
3 you as to your findings of the facts.

4 In determining what the facts are, you
5 must determine whether or not the testimony of the
6 witness is believable. It is my responsibility to
7 rule as a matter of law whether certain testimony
8 is admissible.

9 Once the testimony is admitted, whether
10 or not you believe it is solely for you to
11 determine. In deciding whether to believe a
12 witness, you have the right to consider the bias of
13 the witness, the interest of a witness, the
14 prejudice of a witness, the opportunity for that
15 witness to have seen and heard the things about
16 which the witness may testify as well as the way
17 the witness acts on the witness stand.

18 You have a right to consider anything
19 in the record that would help you evaluate the
20 testimony of the witnesses. That means it is your
21 duty to pay close attention, to observe the
22 witnesses, to listen to the witnesses, and to pay
23 close attention to the attorneys and the Court.

24 Please do not let your thoughts wander,
25 but give strict attention so at the end of all the

OPENING STATEMENT BY MR. EVANS

1 testimony, after you have heard closing arguments
2 on behalf of counsel, and I have instructed you on
3 the law applicable to this case you will be in a
4 position to determine what the facts are and to
5 apply the law to those facts, thus rendering your
6 verdict.

7 Ladies and gentlemen, please give your
8 strict attention. Mr. Evans.

9 MR. EVANS: Thank you. May it please
10 the Court?

11 THE COURT: Yes, sir.

12 MR. EVANS: On December 2, 2014, Robyn
13 Dunn was raped. She was raped by someone she had
14 just met. She was raped by the cousin of one of
15 the her best friends.

16 Afternoon, ladies and gentlemen. As
17 you heard earlier this morning, my name is Drew
18 Evans. Ms. Elliott and I are assistant solicitors.
19 Our office prosecutes crimes for Charleston County,
20 and we represent the State of South Carolina in
21 this case.

22 I do want to thank you for being here
23 this week. I know this was not the first thing
24 that you wanted to have to start your week getting
25 picked for jury duty, but this is an important

OPENING STATEMENT BY MR. EVANS

1 case. It's important to the State. It's important
2 to Mr. Kirkland, and it's important to Robyn.

3 You see her right there on the front
4 row. So I want to thank you for giving us your
5 time and attention.

6 The defendant is charged with criminal
7 sexual conduct in the third degree, or what we
8 commonly call rape. It happened on December 7,
9 2014. On December 6, 2014, Robyn and one of her
10 best friends, Lexi Allston, who were living in
11 Beaufort at the time, came up from Beaufort to
12 Charleston for Lexi's 30th birthday.

13 They were going to come hang out with
14 the defendant, who is Lexi's cousin, and celebrate
15 Lexi's 30th birthday. They drove up that evening,
16 got to the defendant's trailer in Hollywood, South
17 Carolina and had a few drinks at the trailer, and
18 then they went out to a bar.

19 And so the three of them, two girls and
20 the defendant and the defendant's brother, Dewey,
21 who is also Lexi's cousin, all got into the
22 defendant's car and they drive to the bar in West
23 Ashley. It was kind of a pool hall bar kind of
24 place.

25 They stayed there a couple of more

OPENING STATEMENT BY MR. EVANS

1 hours, had a couple of more drinks and then they
2 decided to go home, go back to the defendant's
3 place. They -- in the car on the way home, Robyn
4 threw up on herself. That's when Lexi realized
5 that she'd had too much to drink.

6 And so when Lexi got back -- and when
7 they got back to the trailer, Lexi went into, what
8 I would call, take care of your drunk friend mode.

9 She got Robyn out of the car, got her
10 into the shower, put her clothes into the washing
11 machine. They had vomit on them. She got one of
12 the guys to cook some instant mashed potatoes, that
13 was all the food they could find in the house.
14 They got her dressed in her pajamas and she put
15 Robyn to bed.

16 The original plan was the girls were
17 going to sleep in the one bedroom in the trailer,
18 and the defendant was supposed to crash on the
19 couch. That's what they had planned on doing. The
20 defendant kind of ended up following them into the
21 bedroom and ended up in the bed that night.

22 At the time, Lexi didn't think anything
23 of it; it was her cousin, she trusted him. So she
24 really didn't think anything of it at the time.
25 They all went to sleep. A few hours later Lexi

OPENING STATEMENT BY MR. EVANS

1 woke up; she had to use the restroom. She could
2 tell by the way that Robyn was breathing -- Robyn
3 was between them. You had the defendant on one
4 side, Lexi on one side, and Robyn in the middle.

5 She could hear the way Robyn was
6 breathing she was sleeping. She heard kind of a
7 rustling commotion on the defendant's side of the
8 bed. She said, Andrew, leave her alone, she's
9 asleep. So she went up -- got up to use the
10 restroom and then decided to go have a quick
11 cigarette outside.

12 No sooner had she lit up that cigarette
13 than Robyn came out of the trailer distraught,
14 upset, crying. She told Lexi she had been raped.
15 So the girls left. Even though it was early in the
16 morning, they got back in Robyn's car and Lexi
17 drove them back to Beaufort.

18 When they got back to Beaufort, Robyn
19 decided she needed to go to the hospital. So they
20 went to Beaufort Memorial Hospital and they
21 reported it to the police.

22 Ladies and gentlemen, Judge Harrington
23 is going to charge you on the law of reasonable
24 doubt at the end of the trial this week. That's a
25 phrase you heard a few minutes ago, reasonable

OPENING STATEMENT BY MS. EUDY

1 doubt. I submit to you that proof beyond a
2 reasonable doubt is very simply proof that would
3 leave you firmly convinced of the defendant's
4 guilt, firmly convinced.

5 I'm confident after you've heard all of
6 the testimony this week and seen all of the
7 evidence in this case, each of you will be firmly
8 convinced that the defendant is guilty of criminal
9 sexual conduct in the third degree. Thank you.

10 THE COURT: Ms. Eudy.

11 MS. EUDY: May it please the Court?
12 Mr. Evans, Ms. Elliott.

13 Good afternoon, ladies and gentlemen of
14 the jury. As you know, my name is Summer Eudy.
15 I'm here with my law partner, Joe Good, to speak on
16 behalf of our client Andrew Kirkland. It's an
17 honor and a privilege to be here to do this for him
18 today. And you may not feel like it right now, but
19 it's an honor and privilege for you to do your job
20 here today.

21 I know it might not feel like that.
22 It's annoying to get that jury summons, and it's
23 hard to put aside all that we have to do, but it
24 really is a privilege to have jurors and have the
25 opportunity to have our peers look at facts and

OPENING STATEMENT BY MS. EUDY

1 decide our guilt or innocence. And it's a
2 privilege to be able to do that for our peers.

3 While you embark on this new job, I ask
4 you to keep two things in mind, two important legal
5 principles; one is the presumption of innocence and
6 the other is the burden of proof. The presumption
7 of innocence is what we've all heard before,
8 innocent until proven guilty. You've heard that on
9 TV and you've heard it in the courtroom.

10 Innocent until proven guilty. It
11 sounds pretty simple, but it's really not. It's
12 really hard when you come and sit down in this
13 chair, or even if you hear something on the news,
14 to wash away your biases, disregard your
15 experiences and say, I'm going to look at this
16 person as totally innocent, and I'm not going to
17 assume anything about what happened. It's hard.

18 We all naturally make assumptions, and
19 so I'm asking you to keep that in mind, to -- to --
20 to say, I'm going to start with a clean slate.
21 Andrew is on team innocent right now. He's got a
22 white jersey on with a big I for innocent.

23 And it's the State's burden to prove
24 beyond a reasonable doubt that Andrew has to put on
25 a black jersey with a big G for guilty. Just --

OPENING STATEMENT BY MS. EUDY

1 when you're hearing the evidence and you're
2 listening to the testimony, you have to think, have
3 they convinced me that they have taken that white
4 jersey off of Andrew and put on a black jersey,
5 taken that team innocent jersey off and put on team
6 guilty?

7 Just like, for instance, if we talk
8 about what's going on right now with the Superbowl
9 last night. If the Eagles were going to convince
10 Tom Brady to take off that Patriot's jersey he's
11 been wearing and come play with them, what would
12 they have to show him? What would they have to
13 prove?

14 That's what you need to think about as
15 we're going through this process. And they have to
16 -- the State, it's their burden to prove those
17 things beyond a reasonable doubt. You will hear
18 more about that burden at closing arguments, but I
19 want you to think about it as we go through this
20 process.

21 When you hear the testimony and you're
22 looking at a piece of evidence, does that
23 testimony, does that evidence, does that create
24 reasonable doubt for me? Keep those two things in
25 mind.

OPENING STATEMENT BY MS. EUDY

1 But I'm going to tell you what happened
2 on the night of December 6, 2014. This is the
3 story about a guy who thought his cousin was coming
4 up to hang out and he was getting -- that she was
5 going to set him up with one of her girlfriends.
6 Andrew had texted back and forth with his cousin.
7 You will see and hear about those texts.

8 You will see that -- and hear that his
9 cousin Lexi Allston sent him a picture of Robyn
10 Dunn, and they talked about that she was cute or
11 she was hot or she was pretty, and there was some
12 back and forth and whatnot.

13 So he expected when she came that they
14 were kind of maybe going to hit it off or not hit
15 it off, but that's how it all started out. And
16 they came up to the house and they all drank;
17 everybody was drinking in this story.

18 And they went out to the bar. On the
19 way home Ms. Dunn got sick, as the Solicitor told
20 you. When they got home, she got in the shower,
21 and then she ate some potatoes and she sobered up a
22 little bit.

23 And then they, ultimately, all went and
24 got in the same bed. You had Lexi Allston, my
25 client's, Andrew Kirkland, cousin; Robyn Dunn; and

OPENING STATEMENT BY MS. EUDY

1 you had Andrew Kirkland. And what Andrew is going
2 to tell you is that he and Robyn hooked up. They
3 had consensual sex, and he's going to tell you the
4 details about that.

5 And I have to apologize in advance. I,
6 during this trial, as well as Mr. Good and Andrew
7 will all have to talk about details that are not
8 necessarily comfortable. Things we don't like to
9 say in public, but we'll have to talk about those
10 things. Andrew will tell you how he took off
11 Ms. Dunn's pants with her help; how he inserted
12 himself inside of her with her help; how she
13 actively participated in what we'll tell you was
14 pretty good sex.

15 And, then, sometime later Lexi Allston
16 wakes up and she sees what is -- either the
17 evidence of what had gone on or was happening, but
18 then she leaves the room. She clearly doesn't
19 think that anything is going on that she needs to
20 interfere in and she leaves the room. And moments
21 later, Ms. Dunn comes out and tells her that she's
22 been raped.

23 Lexi Allston and Robyn Dunn are really
24 good friends, best friends. You will hear all
25 about that. And you heard the Solicitor and you

OPENING STATEMENT BY MS. EUDY

1 will hear the Solicitor talk about how Ms. Allston
2 is Mr. Kirkland's cousin, and she's flown here from
3 Alaska to testify against him. Her loyalty lies
4 with Ms. Dunn.

5 Andrew and Ms. Allston don't really
6 know each other real well. She grew up in Alaska.
7 She lived down here for some time, but they were
8 not cousins that grew up together playing and had a
9 really strong bond. Her bond is with Ms. Dunn;
10 it's not with Ms. Kirkland.

11 I ask you to keep that in mind as this
12 plays out. Just because they are cousins doesn't
13 mean that -- that -- that doesn't help prejudice
14 Andrew.

15 They are no different than
16 acquaintances really or, you know, friends that
17 don't know each other really well. And so when
18 Robyn Dunn (sic) realized that her best friend, who
19 is like her sister -- she will tell you that --
20 woke up and realized that something was going on
21 between Andrew and Ms. Dunn, Ms. Dunn was
22 embarrassed. She was ashamed and she was instantly
23 regretful. And that's when regret became rape.

24 It is a privilege to be here. And I
25 will tell you that this is my first criminal trial.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 I've tried cases before, Mr. Good's tried lots of
2 criminal cases, but this is my first criminal case.
3 I usually do civil work. But this is why I went to
4 law school, because it's our greatest privilege and
5 honor and duty as lawyers to protect the innocent.
6 And that is your duty as jurors, to protect the
7 innocent.

8 THE COURT: Thank you.

9 Call your first witness.

10 MR. EVANS: Thank you, Your Honor. The
11 State calls Robyn Dunn.

12 ROBYN DUNN,
13 being first duly sworn, testified as follows:

14 THE CLERK: Please state your full name
15 for the record and spell your last.

16 THE WITNESS: Robyn Dunn, R-O-B-Y-N
17 D-U-N-N.

18 MR. EVANS: May it please the Court?

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. EVANS:

22 Q. Good afternoon, Robyn. How are you?

23 A. As good as I can be.

24 Q. Where do you live currently?

25 A. Lafayette, Louisiana.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Q. Where is Lafayette relative to like New
2 Orleans?

3 A. About two hours outside of New Orleans.

4 Q. How long have you lived in Louisiana?

5 A. February 16th will be a year.

6 Q. Okay. What do you do for a living?

7 A. I am a server, bartender, slash, key
8 manager.

9 Q. Okay. What is a key manager?

10 A. It is a manager without salary.

11 Q. Where do you work?

12 A. Romacelli.

13 Q. Is this a restaurant?

14 A. It's an Italian bistro.

15 Q. Where are you from originally?

16 A. Princeton, Kentucky.

17 Q. What part of Kentucky is that in?

18 A. The western part. It's about an hour
19 and 15 minutes outside of Nashville, Tennessee.

20 Q. Where were you living in December of
21 2014?

22 A. Beaufort, South Carolina.

23 Q. Okay. And when did you move
24 permanently -- when did you move to South Carolina?

25 A. I moved to South Carolina around 2012.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 I went back and forth between there and Kentucky
2 for some time, but by the end of 2012 I permanently
3 lived there.

4 Q. Okay. Do you recall the date,
5 December 6, 2014?

6 A. Yes.

7 Q. What were your plans for that evening?

8 A. Me and Lexi had gone to work that day,
9 and we knew that she was fixing to leave to go to
10 Alaska. So we decided to spend her birthday with
11 her cousins in Charleston.

12 Q. And who is Lexi?

13 A. She is my best friend.

14 Q. And how did you meet Lexi?

15 A. I started working with her when I
16 started at Outback Steakhouse.

17 Q. You were coworkers and kind of hit it
18 off?

19 A. Uh-huh.

20 Q. How long had you known her?

21 A. How long now?

22 Q. At the time, December 2014.

23 A. About a year, year and a half.

24 Q. So you got to be pretty close friends
25 pretty quickly?

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 A. Yes, sir.

2 Q. So you were going to come up to
3 Charleston and hang out with Lexi and her cousins?

4 A. Yes.

5 Q. Had you ever met her cousins before?

6 A. No.

7 Q. Let me go ahead and ask this: Were you
8 getting set up with one of her cousins?

9 A. No.

10 Q. Where were you planning on staying that
11 night?

12 A. At Andrew's trailer.

13 Q. Had you brought overnight clothes?

14 A. We did. We both brought bags to be
15 able to stay throughout the night.

16 Q. Do you know what time you left
17 Beaufort?

18 A. Between 6 and 7:00.

19 Q. After dark?

20 A. Yes.

21 Q. Where was the first place you went when
22 you got to Charleston?

23 A. Andrew's house.

24 Q. Do you know where that was?

25 A. Hollywood.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

- 1 Q. Okay. Had you ever been there before?
- 2 A. No.
- 3 Q. Did you have anything to eat when you
- 4 got to his house?
- 5 A. Not when I got there.
- 6 Q. Did you have anything to drink?
- 7 A. Yes.
- 8 Q. What were you drinking?
- 9 A. We were drinking a little bit of vodka.
- 10 Q. You said a little bit. How much vodka
- 11 were you drinking?
- 12 A. I had about two glasses while I was
- 13 there.
- 14 Q. Was there anything else you-all were
- 15 doing? Shots or anything?
- 16 A. We did take a shot, a birthday shot.
- 17 Q. And when you say vodka, how were you
- 18 drinking the vodka?
- 19 A. I mixed the vodka with like a little
- 20 Sprite, like a mixed drink.
- 21 Q. Did you stay at the house all night?
- 22 A. No; we left and went to a bar.
- 23 Q. Do you know how long you were at the
- 24 house before you went to the bar?
- 25 A. A few hours because we were waiting on

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Dewey -- Dewey's wife to come and get his child.

2 Q. Who is Dewey?

3 A. Dewey is Lexi and -- Lexi's cousin.

4 Q. So Dewey's wife came and got the kid.

5 Where did you go after that?

6 A. We went to a bar that was about 15 to

7 20 minutes down the street.

8 Q. Who is we?

9 A. Me and Andrew and Lexi and Dewey.

10 Q. Who drove?

11 A. Andrew.

12 Q. Whose car did you take?

13 A. Andrew.

14 Q. Do you remember what kind of car it

15 was?

16 A. I just remember it was a silver

17 two-door car.

18 Q. Okay.

19 MR. EVANS: May I approach the witness?

20 THE COURT: You may.

21 BY MR. EVANS:

22 Q. I show you Exhibit 1. Do you recognize

23 that?

24 A. Yes.

25 Q. What is that a photograph of?

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 A. That's Andrew's vehicle.

2 Q. Is that a fair and accurate
3 representation of the way it appeared in December
4 of 2014?

5 A. Yes.

6 MR. EVANS: Your Honor, at this time I
7 move to admit State's Exhibit 1 and publish it to
8 the jury.

9 MS. EUDY: No objection.

10 THE COURT: State's Exhibit 1 into
11 evidence without objection. You may
12 publish.

13 (STATE'S EXH. 1 in evidence.)

14 BY MR. EVANS:

15 Q. Is that the car you-all took to the
16 bar?

17 A. Yes.

18 Q. And all four of you got into the car?

19 A. Yes.

20 Q. And I think you mentioned it was about
21 15 minutes from the house?

22 A. Uh-huh.

23 Q. Do you know the Charleston area very
24 well?

25 A. Not really.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Q. Do you remember approximately what time
2 it was when you got to the bar?

3 A. I think it was around 10 or 11.

4 Q. Okay. Did you have anything to eat at
5 the bar?

6 A. I didn't.

7 Q. Did you have anything to drink?

8 A. Yes.

9 Q. What were you drinking at the bar?

10 A. Me and Lexi had -- she had bought an
11 Angry Orchard Cider Beer, and we shared that.

12 Q. Angry Orchard Cider you said?

13 A. Yes.

14 Q. Do you remember drinking anything else?

15 A. Yes, sir. I remember I had one other
16 drink.

17 Q. What kind of drink was it?

18 A. I think it was vodka or gin. It was a
19 clear liquor.

20 Q. Another mixed liquor drink?

21 A. Uh-huh.

22 Q. What were you doing at the bar?

23 A. We were just kind of hanging out,
24 mingling. There was a little dance floor there,
25 and I do like to dance, so I was kind of dancing.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Lexi and Andrew were off playing pool
2 in the corner where the pool tables were.

3 Q. Did you have much interaction with the
4 defendant at the bar?

5 A. Not really.

6 Q. Do you remember how long you-all were
7 at the bar that night?

8 A. A few hours.

9 Q. Okay. How did you feel when you left?

10 A. I didn't feel good, but I definitely
11 didn't feel normal.

12 Q. What do you mean, you didn't feel
13 normal?

14 A. It didn't feel like I felt drunk. It
15 felt like I might have -- you know, something else
16 might have happened. I have been drunk before, but
17 I didn't feel that way. I just didn't feel good.

18 Q. Did you feel kind of dizzy or --

19 A. Yes.

20 Q. So where did you go after you left the
21 bar?

22 A. We went back to Andrew's house.

23 Q. And you took the car in State's
24 Exhibit 1 back?

25 A. Yes.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Q. Did anything happen in the car on the
2 way home?

3 A. Yes. When I started to not feel very
4 good, and I didn't feel comfortable, I called my
5 boyfriend at the time, Chad, and told him that I
6 didn't feel okay. And then I ended up -- I could
7 just remember the trees as I went by. They seemed
8 like real blurry and everything just kind of seemed
9 hazy and then I ended up throwing up on myself.

10 Q. So you threw up in the car?

11 A. Yes.

12 Q. Who was driving on the way back?

13 A. Andrew.

14 Q. How did you feel when you got back to
15 the house -- or the trailer?

16 A. I still didn't feel good at all. I
17 don't know, I might have thrown up another time or
18 two. Lexi helped me into the house.

19 Q. Do you know what time it was when you
20 got back?

21 A. Not really.

22 Q. So what happened -- when Lexi helped
23 you back into the house, what happened next?

24 A. She helped me up the stairs, and then
25 we walked inside for her to give me a shower.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Q. Okay. What did you put on after you
2 took a shower?

3 A. A T-shirt and my favorite pair of
4 pajama pants.

5 Q. What did your pajama pants look like?

6 A. They were purple with a white outline
7 on them.

8 Q. Like long pants?

9 A. Uh-huh, and they were fuzzy.

10 Q. Those were in the clothes that you had
11 brought?

12 A. Yes.

13 Q. Did you have anything to eat when you
14 got back?

15 A. Yes; some mashed potatoes that either
16 Dewey or Andrew fixed.

17 Q. So Dewey was still there at that point?

18 A. Uh-huh, when we first came home.

19 THE COURT: I need you to say yes
20 instead of uh-huh.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Thank you.

23 MR. EVANS: I apologize, Your Honor.

24 THE COURT: That's fine.

25 BY MR. EVANS:

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Q. Robyn, do you remember if you were
2 wearing underwear?

3 A. I was not.

4 Q. Is that unusual for you?

5 A. No, sir.

6 Q. So after you had took a shower and put
7 your pajamas on and had potatoes, what did you do
8 next?

9 A. I went to bed.

10 Q. What was the plan for where everyone
11 was supposed to sleep that night?

12 A. We had planned, talked about Andrew
13 sleeping in the living room and that me and Lexi
14 were going to sleep in the bed.

15 Q. Was that something you talked about
16 before you got up there?

17 A. (Nodding)

18 THE COURT REPORTER: I need an answer.

19 By MR. EVANS:

20 Q. You still have to say yes or no because
21 the court reporter --

22 A. Yes.

23 Q. That's okay. She just can't write down
24 a nod or --

25 A. (Nodding)

ROBYN DUNN - DIRECT EXAM¹ BY MR. EVANS

1 Q. So he was supposed to be sleeping on
2 the couch, and you-all were going to be on the bed?

3 A. Yes.

4 Q. Do you remember anything after you laid
5 down in bed?

6 A. Not really. I just remember cuddling
7 up to Lexi and I was out of it.

8 Q. Do you know where the Defendant was
9 when you laid down in bed?

10 A. I do not know.

11 Q. Do you remember him being in bed with
12 you?

13 A. No, sir.

14 Q. What is the next thing that you
15 remember happening that night?

16 A. I remember hearing Lexi mumble
17 something to the fact of me sleeping. She's
18 asleep, leave her alone, or something like that.

19 Q. What did you do when you heard that?

20 A. I just -- I wasn't aware of what was
21 going on, so I just curled back up and went back to
22 sleep.

23 Q. Okay. Had you been having sex at that
24 point when she said that to you?

25 A. Not that I was aware of.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Q. Did you intend to have sex at that
2 point?

3 A. Not at all.

4 Q. So what was the next thing you remember
5 after you hear Lexi say something to you?

6 A. I remember waking up and realizing that
7 I could feel Andrew --

8 Q. It's okay. There are some Kleenex
9 tissues there.

10 A. I could feel Andrew and I could tell
11 that we were having skin-to-skin contact.

12 Q. I'm sorry. I didn't really understand
13 that.

14 A. I could feel that we were having
15 skin-to-skin contact and that my pants were no
16 longer on.

17 Q. Okay. So when you said you could feel
18 Andrew, was there a specific part of his body you
19 could feel?

20 A. After I realized that I could feel I
21 didn't have any pants on, I realized that he was
22 inside of me.

23 Q. And I know this is kind of embarrassing
24 question, but what of him was inside of you?

25 A. His penis.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

- 1 Q. Penis?
- 2 A. Yes.
- 3 Q. And when you say inside of you, what do
- 4 you mean by that?
- 5 A. He was inside of my vagina.
- 6 Q. Do you remember how you were laying in
- 7 the bed at that point?
- 8 A. I was on my back.
- 9 Q. And where was he?
- 10 A. He was on top of me.
- 11 Q. Do you remember him saying anything?
- 12 A. Yes. When I tried to push him off of
- 13 me, he told me it was okay and that he wasn't
- 14 trying to hurt me, and something to the effect of
- 15 just let me finish.
- 16 Q. This is another embarrassing question;
- 17 do you know if he ejaculated?
- 18 A. I don't know.
- 19 Q. And I think you mentioned earlier that
- 20 you weren't wearing your pajama bottoms anymore?
- 21 A. I was not.
- 22 Q. When you went to bed you were wearing
- 23 them?
- 24 A. Yes, sir.
- 25 Q. Do you know what time this was? Was it

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 daylight outside?

2 A. It was still dark. I'm thinking 2 or
3 3.

4 Q. How did you feel when you realized what
5 was happening?

6 A. I was scared and I didn't know where
7 Lexi was and I just wanted to get out.

8 Q. When did you realize that he had gotten
9 into the bed with you-all?

10 A. Whenever Lexi mumbled, that's when I
11 knew he was there.

12 MR. EVANS: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 BY MR. EVANS:

16 Q. I'm handing you what was marked for ID
17 purposes as State's Exhibit 2 and 3. Do you
18 recognize those photographs?

19 A. Yes.

20 Q. What are they of?

21 A. Andrew's bedroom.

22 Q. Are they a fair and accurate
23 representation of how the bedroom appeared that
24 night?

25 A. When we first got there, yes.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 MR. EVANS: At this time, I would move
2 to admit State's Exhibits 2 and 3 into evidence and
3 publish for the jury.

4 MS. EUDY: No objection.

5 THE COURT: You may.

6 (STATE'S EXH. 2 in evidence.)

7 (STATE'S EXH. 3 in evidence.)

8 BY MR. EVANS:

9 Q. Robyn, referring to State's Exhibit
10 2 -- and you should be able to actually draw on the
11 TV in front of you.

12 MR. EVANS: Oh, it's not on?

13 BY MR. EVANS:

14 Q. Do you see a picture in front of you?

15 A. Yes.

16 Q. State's Exhibit 2, can you point out
17 where the Defendant was sleeping in the bed when
18 you realized that he was in there?

19 A. Yes. (Indicating)

20 Q. Where would you have been in the bed?

21 A. (Indicating) It won't let me draw.

22 Q. Would you have been on this side?

23 A. Yes.

24 Q. And referring to State's Exhibit 3,
25 it's another picture of the bed, you were in the

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 middle, correct?

2 A. Yes.

3 Q. And the Defendant was on this side?

4 A. Yes.

5 Q. And when you went to bed, Robyn was
6 over here?

7 A. Lexi, yes.

8 Q. Excuse me, Lexi. Is that correct?

9 A. Yes.

10 Q. Had you agreed to any sexual
11 intercourse with the Defendant?

12 A. No.

13 Q. Had you even discussed having sex that
14 night?

15 A. No.

16 Q. Did you consent to any sexual
17 intercourse that night?

18 A. No.

19 Q. What did you do after you realized what
20 was going on?

21 A. I went out of the room and went to the
22 first room that I saw which was the bathroom to my
23 right.

24 Q. Did you know where Lexi was?

25 A. I didn't know at that time.

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 Q. What happened -- what did you do after
2 you came out of the bedroom?

3 A. I went to search for Lexi and said her
4 name, and found her at the door of the trailer.

5 Q. Okay. Was she inside or outside?

6 A. She was outside. She was smoking a
7 cigarette.

8 Q. What were you wearing at this point?

9 A. Just the T-shirt.

10 Q. Okay. Did you tell Lexi what had
11 happened?

12 A. Yes.

13 Q. What was her reaction?

14 A. She was angry. She wanted to help me
15 get out.

16 Q. What did you do next?

17 A. I stayed in the living room while she
18 went to go grab our things.

19 Q. You were planning on leaving?

20 A. Yes.

21 Q. Did you ever go back into the bedroom?

22 A. No, I did not.

23 Q. Where did you go next?

24 A. We went outside to the car and then we
25 left to go to Beaufort, but we stopped at the gas

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 station.

2 Q. Whose car were you in?

3 A. We were in mine.

4 Q. Who drove you back to Beaufort?

5 A. Lexi.

6 Q. And you said you stopped at a gas

7 station?

8 A. Yes.

9 Q. Where was that?

10 A. I don't remember exactly. I just know

11 it was on the way out.

12 Q. So close to the house?

13 A. Fairly.

14 Q. Closer to the house than Beaufort?

15 A. Yes. It was probably about 10 or

16 15 minutes.

17 Q. Did you call the police immediately?

18 A. I did not.

19 Q. Why not?

20 A. I was kind of in shock; I was scared.

21 That was her family; I didn't want to mess anything

22 up.

23 Q. When did you get back to Beaufort?

24 A. The sun was rising.

25 Q. So it was dark when you left?

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 A. Yes.

2 Q. And it was kind of daybreak when you
3 got back?

4 A. Yes.

5 Q. What did you do when you got back to
6 Beaufort?

7 A. I dropped Lexi off at her house. And
8 she insisted that she take me, but I told her since
9 I lived around the block from her that I would just
10 drive home. And I went to talk to my boyfriend.

11 Q. Okay. Did you-all go anywhere after
12 that?

13 A. Yes. After I talked to him, he called
14 Lexi and told her we were going to the hospital.
15 And we met up, and Lexi and her mom went with us to
16 the hospital.

17 Q. What did you do in the hospital?

18 A. They examined me.

19 Q. And you reported a sexual assault and
20 they examined you?

21 A. Yes.

22 Q. When did you report to the police?

23 A. Actually, my boyfriend called the
24 police while they were examining me.

25 Q. So at the same time you were in the

ROBYN DUNN - DIRECT EXAM BY MR. EVANS

1 hospital?

2 A. Yes.

3 Q. Did you speak to anybody in the police
4 department?

5 A. Yes.

6 Q. Who was that?

7 A. Detective Bowen.

8 Q. Okay. Did you ever come to Charleston
9 to speak with him?

10 A. No. He came there.

11 Q. He came to the hospital?

12 A. Yes.

13 Q. And you told him what happened?

14 A. Yes.

15 Q. Robyn, how has this affected your life?

16 A. How has it not? Emotionally, mentally,
17 financially, all of the above. I have issues with
18 all relationships now including friends. I feel as
19 if I can't trust anyone, even if it's family
20 sometimes, and I feel like I can't be a good
21 girlfriend because I have a hard time even being
22 somewhat intimate.

23 Q. Robyn, do you see the person who
24 assaulted you in the courtroom today?

25 A. I do.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. Can you point him out for the jury,
2 please?

3 A. (Indicating)

4 Q. What's he wearing?

5 A. A pink shirt.

6 MR. EVANS: Your Honor, let the record
7 reflect that the victim has identified the
8 Defendant.

9 THE COURT: So identified.

10 MR. EVANS: Beg the Court's indulgence.
11 I don't have anything further at this
12 time.

13 Please answer any questions that
14 Ms. Eudy may have for you.

15 CROSS-EXAMINATION

16 BY MS. EUDY:

17 Q. Ms. Dunn, let's go back to before you
18 went to the bar. You said you had two mixed
19 drinks?

20 A. Yes.

21 Q. And you had one shot?

22 A. Yes.

23 Q. So you had a total of three liquor
24 drinks?

25 A. Yes.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. Is that all you had before you went to
2 the bar?

3 A. Yes.

4 Q. And you were at Andrew's house for
5 several hours before you went to the bar?

6 A. Yes.

7 Q. And then you went -- you came up to
8 Charleston and went to what bar?

9 A. I don't recall the name.

10 Q. And I think you said that it took about
11 15 minutes to get to the bar?

12 A. Yes, ma'am.

13 Q. If I told you it was about 30 minutes
14 from Andrew's house, would you dispute that?

15 A. Probably not.

16 Q. And remind me again how long you said
17 you were at the bar?

18 A. A few hours.

19 Q. You were there a few hours. Okay.
20 What time did you go to the bar?

21 A. Around 10 or 11.

22 Q. What time did you get home from the
23 bar?

24 A. I don't recall.

25 Q. And at the bar you had an Angry Orchard

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 beer?

2 A. Yes, ma'am.

3 Q. And you shared that with Lexi?

4 A. Yes.

5 Q. And you had one liquor drink?

6 A. Yes.

7 Q. Did you share that?

8 A. No.

9 Q. Okay. So you had a total of three --
10 four liquor drinks and a beer you shared with Lexi?

11 A. Yes.

12 Q. And do you drink a lot?

13 A. Yes.

14 Q. In social settings?

15 A. Yes.

16 Q. Do you consider that a lot for you to
17 drink four liquor drinks and a beer?

18 A. No.

19 Q. So what do you think made you sick?

20 A. I don't know.

21 Q. Do you think someone put something in
22 your drink?

23 A. Possibly.

24 Q. Who do you think could have put
25 something in your drink?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 A. I don't know.

2 Q. Is that what you told the investigator?

3 A. Yes.

4 Q. Who did you propose to the investigator
5 may have put something in your drink?

6 A. Possibly Andrew or Dewey.

7 Q. Do you remember proposing anyone else?

8 A. I mean, there were other people there
9 at the bar.

10 Q. So if I told you that you told the
11 investigator Andrew, Dewey, or some guys at the
12 bar, you wouldn't dispute that you told the
13 investigator that one or some of those people could
14 have put something in your drink?

15 A. Yes.

16 Q. And that's what made you sick?

17 A. Possibly.

18 Q. You didn't get sick from drinking too
19 much?

20 A. No.

21 Q. When you went to the hospital, did they
22 take blood?

23 A. Not that I recall.

24 Q. You don't recall when you went and got
25 examined at Beaufort Memorial Hospital that they

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 took blood as part of the CSC rape kit?

2 A. I didn't.

3 Q. Are you aware that a toxicology was
4 done on the blood?

5 A. Yes.

6 Q. How would they do a toxicology if they
7 didn't take blood?

8 A. Just because I didn't realize it
9 doesn't mean that it didn't happen. I just wasn't
10 aware. I don't remember.

11 Q. Are you aware of the results of the
12 toxicology report?

13 MR. EVANS: Objection, Your Honor;
14 foundation.

15 THE COURT: Sustain. Rephrase the
16 question.

17 BY MS. EUDY:

18 Q. Ms. Dunn, you stated that you were
19 aware a toxicology analysis was done on your blood
20 work from the hospital, correct?

21 A. Yes.

22 Q. And have you had an opportunity to find
23 out what the results of that toxicology was?

24 A. Yes.

25 Q. What were the results?

ROBYN DUNN -- CROSS EXAM BY MS. EUDY

1 MR. EVANS: Objection, Your Honor.

2 THE COURT: Counsel.

3 (Bench conference.

4 THE COURT: Ladies and gentlemen, we
5 have a matter of law to take up outside of your
6 presence. Do not begin your deliberations and do
7 not discuss the case amongst yourselves.

8 When we take these breaks we're also
9 taking our comfort breaks, so please make sure
10 you're taking your comfort breaks as well.

11 Take your notepads with you or leave
12 them right in your chairs. Your preference.

13 Please rise for the jury.

14 (Jury out 3:10 p.m.)

15 THE COURT: All right. Take your
16 seats.

17 MR. EVANS: Your Honor, my objection
18 was for the foundation. I think it's hearsay for
19 her to testify to what a SLED tox report says. I
20 think the SLED analyst can come in and testify
21 about the results, but I don't think Ms. Dunn can
22 -- has laid the foundation for -- she's not the
23 SLED analyst. She didn't look at the results
24 personally and she didn't do the testing herself.

25 THE COURT: It may be at a later date

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 or at a later question you can object to
2 foundation. It's not -- whether or not she was
3 told is not a foundational question.

4 MR. EVANS: Well, I guess it's two part
5 then, Your Honor, hearsay and lack of foundation,
6 but primarily hearsay because she doesn't
7 personally know the results other than that SLED
8 exam, which is an out-of-court statement submitted
9 for its truth.

10 THE COURT: Ms. Eudy.

11 MS. EUDY: Well, one, I would have to
12 go back and look at the transcript. I'm not sure
13 if I got to the point where she said whether -- I
14 guess she didn't answer the question whether she
15 knew the results, but I don't think it's hearsay to
16 know your own medical condition. That's like
17 saying I can't testify as to what my diagnosis is
18 because my doctor told it to me.

19 THE COURT: So is it your opinion it's
20 not hearsay or it's hearsay with an exception?

21 MS. EUDY: I don't think it's hearsay,
22 but if it is, then I think that -- it's an
23 exception under 8034, statement for purposes of
24 medical diagnosis or treatment. They were treating
25 her at the hospital. They took a tox screen. If

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 she had been into drugs, they would have to treat
2 her for that.

3 THE COURT: The SLED analysis isn't for
4 medical treatment, is it?

5 MS. EUDY: I mean, I think when they
6 took the blood it would have been for medical
7 treatment and that --

8 THE COURT: SLED is State law
9 enforcement. Not state medical treatment.

10 MS. EUDY: I don't think it's hearsay.
11 I think she can testify as to what her own blood
12 toxicology is, but --

13 THE COURT: Mr. Evans.

14 MR. EVANS: Your Honor, regarding the
15 hearsay exception, my reading of that rule is
16 that's dealing with a patient making a statement to
17 the doctor for purposes of medical treatment.
18 That's not what we have here.

19 We have a law enforcement test done by
20 SLED after the -- any of the treatment is done, and
21 it's being offered for the truth of its matter,
22 that she was or wasn't at a threshold level of
23 intoxication.

24 So I would submit that it is hearsay
25 and there are no hearsay exceptions.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 THE COURT: Are you calling the SLED
2 analyst?

3 MR. EVANS: I wasn't planning on it,
4 Your Honor.

5 THE COURT: Let me see the report.

6 MS. EUDY: Well, they're going to have
7 to subpoena them and they -- part of this report
8 they just gave to me a couple of days ago. They
9 put all these people on their list, and now they
10 say they're not calling them.

11 THE COURT: They don't have to --

12 MS. EUDY: I understand.

13 THE COURT: -- call them.

14 MS. EUDY: I understand, but, you know,
15 they produced this at the last minute. I didn't
16 have time to name them and subpoena them.

17 THE COURT: Okay. Let's -- Ms. Dunn,
18 step down and take your comfort break. Do not
19 discuss your case with anyone. Have we invoked the
20 Rule?

21 Did any of you request the Rule be
22 invoked?

23 MR. EVANS: We agreed on it. We didn't
24 put it on the record actually.

25 THE COURT: So the Rule is invoked.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 MR. EVANS: Yes, ma'am.

2 THE COURT: So please don't discuss
3 your testimony with anyone, and that includes
4 counsel. Okay?

5 THE WITNESS: Yes, ma'am.

6 THE COURT: Let me see you in chambers.

7 (A recess transpired.)

8 THE COURT: Ms. Dunn, I remind you that
9 you are still under oath.

10 Anything before we bring in the jury?
11 Mr. Evans?

12 MR. EVANS: I want to clarify something
13 briefly on the record. Ms. Eudy said that she
14 didn't get the SLED results on the tox back until
15 last week. That's accurate. I didn't have that
16 report until I pulled it off of I-lab last week and
17 provided that to her, but the results of that
18 testing were contained on page 46 -- Bates page 46
19 of the discovery that was sent.

20 THE COURT: Okay. Thank you.

21 Anything further?

22 MS. EUDY: No. I think the documents
23 speak for themselves. Thank you.

24 (Jury in, 3:46 p.m.)

25 THE COURT: Please be seated.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Ms. Eudy.

2 BY MS. EUDY:

3 Q. Ms. Dunn, before the break we were
4 talking about the concerns that somebody put
5 something in your drink. Did you tell anybody at
6 Beaufort Memorial Hospital that you were concerned
7 that you had been drugged?

8 A. Yes.

9 Q. And were you diagnosed with any
10 condition related to being drugged or having
11 something put in your drink?

12 A. Not that I was aware of.

13 Q. Were you treated for any condition
14 related to having been drugged?

15 A. No, ma'am.

16 Q. When you got back to Andrew's house,
17 did you continue to drink?

18 A. No.

19 Q. So you didn't have anything after you
20 left the bar?

21 A. No.

22 Q. After you got sick, you didn't drink
23 any other alcohol?

24 A. No.

25 Q. Did you eat?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

- 1 A. Yes.
- 2 Q. And I think you said you had potatoes?
- 3 A. Yes.
- 4 Q. And about what time of night was that?
- 5 A. I don't recall.
- 6 Q. Did you shower or eat first?
- 7 A. I think I showered first.
- 8 Q. You said earlier you didn't have any
- 9 interaction with Andrew while at the bar. What
- 10 were you doing?
- 11 A. I was dancing.
- 12 Q. Who were you hanging out with?
- 13 A. Dewey.
- 14 Q. You said you called your boyfriend.
- 15 Where were you when you called your boyfriend?
- 16 A. In the car.
- 17 Q. Were you on the way home or had you
- 18 just gotten into the car?
- 19 A. On the way home.
- 20 Q. So everybody was in the car at that
- 21 point?
- 22 A. Yes.
- 23 Q. Earlier you said you threw up in the
- 24 car?
- 25 A. (Nodding)

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. Did you guys pull over, or did you
2 throw up as the car was going down the road?

3 A. I recall throwing up on myself. I
4 don't remember if we stopped or not.

5 Q. And then you said you may have thrown
6 up another time or two. Where were you when you
7 threw up another time or two?

8 A. Possibly in the car. Possibly at the
9 house.

10 Q. Well, do you remember if you threw up
11 or -- another time or two, or you don't remember?

12 A. Yes. I know I didn't just vomit once.
13 I vomited two or three times. If it was while I
14 was in the car or when we got home or pulled over,
15 I'm not sure.

16 Q. And so you took a shower, you ate the
17 potatoes. And what else did you do before you went
18 to bed?

19 A. Nothing.

20 Q. Did you go straight to bed or just hang
21 out with everybody?

22 A. I just remember going to bed.

23 Q. When you went to bed, did you go to bed
24 by yourself?

25 A. Lexi was there.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. Did she go to bed at the same time with
2 you, or before or after?

3 A. Around the same time.

4 Q. Where was Andrew when you went to bed?

5 A. I don't recall.

6 Q. Do you recall talking to Andrew about
7 going to bed?

8 A. Not really.

9 Q. You guys didn't talk about where you
10 were going to sleep?

11 A. No. That was something previously
12 discussed.

13 Q. You guys hadn't been talking about who
14 was going to sleep in the middle, who was going to
15 sleep on the outside, all those kind of things
16 joking around?

17 A. Yes, I do recall. We did. We made a
18 joke about Andrew coming and sleeping.

19 Q. Who made the joke?

20 A. Andrew did.

21 Q. I thought you said you didn't talk to
22 Andrew before you went to bed?

23 A. I said I didn't recall that we did.

24 Q. So tell me about that. Where were you
25 when you were talking to Andrew about where you

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 were going to sleep?

2 A. I was -- just got done with my shower
3 and I was probably, I don't know, in the doorway, I
4 guess.

5 Q. What did you talk about?

6 A. About sleeping arrangements?

7 Q. Yes. What was the conversation about
8 the sleeping arrangements?

9 A. Oh, I do recall them making a joke
10 about Andrew sleeping between me and Lexi.

11 Q. Did you participate in the joking?

12 A. Yes.

13 Q. And so this is when you were going to
14 bed?

15 A. Yes.

16 Q. So you knew that Andrew was going to
17 sleep in the bed with you guys?

18 A. No.

19 Q. And it's your testimony that when you
20 went to bed he was not in the bed?

21 A. No.

22 Q. Let's go to when Lexi woke up. You
23 were talking about that. Tell me more about that.
24 She woke up at what time?

25 A. I don't know.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. I thought you said 2 or 3 in the
2 morning earlier?

3 A. I said I believe that it was 2 or 3.
4 I'm not -- I can't say for positive what time.

5 Q. Okay. And when she woke up, what
6 happened?

7 A. She mumbled something to Andrew about
8 sleeping, and then I just remember going back to
9 sleep.

10 Q. So --

11 A. I was kind of startled, but I wasn't
12 real aware of what was going on. I was kind of out
13 of it really. I just remember -- it's kind of
14 hazy. If you hear something whenever you're asleep
15 and -- in that manner.

16 Q. Okay. So you heard Lexi mumble
17 something, but you don't know what she said?

18 A. To the effect of, Andrew, stop, or
19 she's sleeping, Andrew, or something like that,
20 yes.

21 Q. And so you do know what she said?

22 A. I'm not for exact word-for-word
23 verbatim, no, ma'am.

24 Q. So you believe she said something like,
25 stop. What would she have been telling Andrew to

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 stop doing?

2 MR. EVANS: Objection; calls for
3 speculation.

4 THE COURT: Sustained.

5 BY MS. EUDY:

6 Q. What did you do when you heard Lexi
7 mumble something? You said you went back to sleep?

8 A. Uh-huh.

9 THE COURT: Is that a yes?

10 THE WITNESS: Yes.

11 BY MS. EUDY:

12 Q. And then what happened? How long --
13 what happened after you went back to sleep?

14 A. I woke up; I don't know how much later
15 it had been, but I know I woke up with Andrew
16 messing with me.

17 Q. So you went to sleep for some time?

18 A. Yes.

19 Q. A few minutes? Was it 30 minutes? Was
20 it an hour?

21 A. A few minutes. I was never fully awake
22 at this point. I never fully woke up and was
23 coherent enough to understand what Lexi was saying
24 and what was really going on. Kind of dazy wake up
25 and realize somebody was moving around and realized

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 that Lexi had said something, and that's all I
2 recognized.

3 Q. After Lexi said something, she left the
4 room?

5 A. Yes.

6 Q. When you woke up, what was going on?

7 A. I could feel Andrew against me.

8 Q. Against you how?

9 A. He was kind of against my side and kind
10 of pushing me around -- like over. Not forcefully,
11 but he was kind of pushing me around. And at that
12 point that's when I realized I didn't have any
13 pants on.

14 Q. So at that point is the first time you
15 knew you didn't have any pants on?

16 A. Yeah.

17 Q. And he was pushing you around?

18 A. Uh-huh.

19 Q. Are you laying on your side?

20 A. Yes.

21 Q. And he's to your back?

22 A. Yes.

23 Q. And at that point was he penetrating
24 you?

25 A. I don't know at that point. I was in

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 shock of what was going on. I'm not sure.

2 Q. Well, what was shocking if he wasn't
3 penetrating you?

4 A. Well, in the next couple of seconds
5 after that, that's when I said I realized that he
6 was penetrating me. Whenever I asked him to stop
7 and he told me that it's okay, he wasn't hurting
8 me, he just wanted to finish.

9 Q. Just a little bit earlier when
10 Mr. Evans was questioning you, I believe you said
11 you were on your back?

12 A. Yes. I was turned over on my back.

13 Q. So at that point, you were laying on
14 your back?

15 A. Yes.

16 Q. And you said that he got on top of you?

17 A. Uh-huh.

18 Q. And he did what?

19 A. He was penetrating me.

20 Q. So he was able to move you from your
21 side to your back, get on top of you and penetrate
22 you and you didn't know what was going on?

23 A. Not really. I was kind of in a daze.

24 Q. And Lexi just left the room while this
25 was happening?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 A. Yes. She said she had to go to the
2 bathroom.

3 Q. Did you tell the investigator, like I
4 played it off as if we were playing and that's when
5 I pushed, and she was like, I've got to go pee?

6 A. Yes.

7 Q. So you were aware enough to play it
8 off?

9 A. No.

10 Q. Well, why would you play it off if you
11 weren't aware?

12 A. I said I kind of pushed him.

13 Q. Like -- I asked you if you said, like I
14 played it off as if we were playing.

15 A. I said yes. That was what me and Lexi
16 talked about at a later time.

17 Q. So did you tell the investigator, like
18 I played it off as if we were playing?

19 A. Yes.

20 Q. So what were you playing off?

21 A. Playing off of the realization that
22 Andrew was doing things to me that I didn't approve
23 of or agree with.

24 Q. Let me have you listen to what I'm
25 talking about and see if we can clarify.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 MR. EVANS: Your Honor, I'm going to
2 object.

3 THE COURT: Come here.

4 (Bench conference.)

5 THE COURT: Step back.

6 Ladies and gentlemen, there is a matter
7 of law that I must take up outside of your
8 presence. Please remember all of my admonitions.
9 We will receive you back in just a few moments.

10 Please rise for the jury.

11 (Jury out, 3:56 p.m.)

12 THE COURT: Thank you. Be seated.

13 Mr. Evans, would you articulate your
14 objection on the record?

15 MR. EVANS: Thank you, Your Honor. It
16 might resolve it if the Court Reporter were to read
17 back the victim's testimony over the last two or
18 three sentences. My recollection is she said, yes,
19 I made that statement to the detective. In which
20 case I don't think there's any extrinsic evidence
21 they would need to refresh her recollection or
22 impeach her because she never said she didn't make
23 that statement.

24 THE COURT: Madame Court Reporter, can
25 you read it back?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 (Requested portion read.)

2 MR. EVANS: And, again, I don't think
3 she denied making that statement or claimed she
4 can't remember. So I don't know that the playing
5 can refresh her recollection or impeach her.

6 MS. EUDY: I think it goes back -- I
7 feel like I asked her twice and I got two different
8 answers.

9 THE COURT: I thought you wanted to
10 play the statement because she didn't admit it.

11 MS. EUDY: She said she said it, and
12 then she said -- she said it when she was talking
13 to Lexi, or something to that effect. I was asking
14 her, did you tell the investigator that when Lexi
15 woke up and heard you that you played it off like
16 you and Andrew were playing around is what I was
17 asking her.

18 And she said yes. And she said, yes, I
19 said that to Lexi when we were talking about it
20 later.

21 THE COURT: Just so I'm clear as to
22 what you're attempting to do. You want to play an
23 audio statement that was made of the detective.

24 MS. EUDY: Yes.

25 THE COURT: After she just said she

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 made that statement to the detective.

2 MS. EUDY: I don't think that's what
3 she said in the context, but I guess just let me
4 move on and I'll see if I can get it worked out. I
5 just -- I won't play it right now. Let me try to
6 question her some more about that.

7 THE COURT: I'm not going to -- I'm not
8 every question going to take the jury in and out.
9 So I need you to resolve this line of questioning
10 so that we can move on.

11 MS. EUDY: I mean, I don't feel like
12 I've had an opportunity to resolve it, I guess is
13 all.

14 THE COURT: I'm asking you to
15 articulate to me what it is that you are attempting
16 to ask. What I heard that you asked before is, did
17 you make the statement? Did you tell the
18 detective?

19 If there's something you feel that she
20 did not say, then you need to articulate the
21 question, because under 613(b) she has to have the
22 opportunity to admit or deny; but until she denies
23 making it and you have articulated to her and
24 framed it to whom, when, and where the statement
25 was made, extrinsic evidence is not coming in.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 MS. EUDY: Okay. I guess I just need
2 to rephrase my question.

3 THE COURT: Okay. Do you want to let
4 me know what the question is going to be?

5 MS. EUDY: I mean, sure. The detective
6 says -- she says, but that's when I was saying at
7 that point, like, from the time I laid down in the
8 bed to waking up to Lexi's voice being, like,
9 Andrew, stop, she's asleep, like, I could hear my
10 own self breathing at that point. And I looked at
11 her and I was, like, what is she talking about?

12 So she was saying she was incoherent,
13 but here she's saying she's coherent. And then the
14 detective goes on, do you think when she said that
15 -- and she said go ahead. And he says, no, go
16 ahead.

17 Because it seems like at some point he
18 still continued and she got up. And then
19 Ms. Dunn, said, yeah, that was at the moment when
20 she was like, Andrew, stop. Stop. Do you know --
21 and he was just, like, no. And then she said,
22 like, I played it off as if we were just playing.
23 And that's when I pushed. And she was, like, I've
24 got to pee.

25 THE COURT: Is that the audio?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 MS. EUDY: This is a transcript of the
2 audio.

3 THE COURT: All right. And --

4 MS. EUDY: Prepared by a court
5 reporter. It's not an original.

6 So I know that she said, I played it
7 off as if me and Andrew were playing. And she's
8 telling me that she was incoherent. And she just
9 admitted to the investigator, I played it off. I
10 was coherent enough to play it off as Lexi was
11 going out of the room as if nothing was going on,
12 as if we were playing.

13 THE COURT: Are you done so I can
14 finish my question?

15 MS. EUDY: Yes, I'm sorry.

16 THE COURT: What are you attempting to
17 do with that? Do you want to have her refresh her
18 memory? What are we doing? What's the purpose of
19 this line of questioning?

20 MS. EUDY: That she said she was
21 incoherent. That's what she testified to here
22 today, that she didn't wake up and she was
23 incoherent. But she told him that she was awake
24 and she was --

25 THE COURT: Who is him?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 MS. EUDY: The investigator.

2 THE COURT: Have you asked that
3 specific question?

4 MS. EUDY: Yes. And she said, yes.
5 And then she said, no, this is what Lexi and I were
6 talking about. And so then I said, did you say
7 this.

8 I mean, I can't remember exactly what
9 the back and forth was now, but my ultimate read of
10 the situation is that she's not admitting that she
11 was awake and coherent and played it off her and
12 Andrew were playing.

13 THE COURT: You must advise the witness
14 of the substance of the statement, the time and
15 place it was allegedly made, and the person to whom
16 it was made. And you have to give her the
17 opportunity to explain it or deny it. Have you
18 done that?

19 MS. EUDY: I don't know that I gave her
20 the opportunity to explain it.

21 THE COURT: All right. Counsel.

22 (Bench conference.)

23 (Recess)

24 THE COURT: Bring the jury back in.

25 (Jury in, 4:14 p.m.)

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 THE BAILIFF: All jurors are present.

2 THE COURT: Thank you. Be seated.

3 Your witness.

4 BY MS. EUDY:

5 Q. Ms. Dunn, when you went to sleep you
6 said your pants were on?

7 A. Yes.

8 Q. And when you woke up, you didn't have
9 any pants on?

10 A. No, ma'am.

11 Q. So how do you believe your pants got
12 off?

13 A. Someone had to take them off.

14 Q. So is it your testimony that Andrew
15 Kirkland took your pants off?

16 A. Yes, ma'am.

17 Q. You believe that he took your pants off
18 while you were asleep?

19 A. Yes, ma'am.

20 Q. And you didn't help him take your pants
21 off?

22 A. No, ma'am.

23 Q. He was able to get your pajama pants
24 all of the way off of you without waking you up
25 while you were asleep?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 A. Yes, ma'am.

2 Q. And he was able to spread his legs and
3 insert himself inside of you while you were asleep?

4 A. Yes, ma'am.

5 Q. And when your body was not ready for
6 sex?

7 A. Yes, ma'am.

8 Q. And he was able to do all of that and
9 start having sex with you, and you did not wake up?

10 A. No, ma'am.

11 Q. How long do you believe this went on
12 while he was having sex with you while you were
13 asleep?

14 A. I have no idea.

15 Q. Did you tell the investigator that you
16 felt like it was a long time?

17 A. No.

18 Q. You didn't say it could have been a
19 long time?

20 A. Not that I recall.

21 Q. Were you sore?

22 A. No.

23 Q. You didn't tell Lexi that you were
24 sore?

25 A. Not that I recall.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. And you went to the hospital?

2 A. Yes.

3 Q. And they did a rape kit analysis on
4 you?

5 A. Yes.

6 Q. And part of that rape kit was they did
7 a vaginal exam?

8 A. Yes.

9 Q. And doing the vaginal exam, did they
10 find any evidence of trauma?

11 MR. EVANS: Objection, Your Honor. I
12 don't think this witness has foundation to testify
13 about that.

14 THE COURT: Overruled. You may answer.
15 If you know.

16 THE WITNESS: I don't know.

17 BY MS. EUDY:

18 Q. So you went to the hospital, you had a
19 vaginal exam, and you don't know if the nurse that
20 did the exam found any evidence of trauma in your
21 vagina?

22 A. I was told that nothing came back.

23 Q. So you do know that there was no
24 evidence of trauma found from the vaginal exam?

25 A. Yes.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. So you were asleep and Andrew is having
2 sex with you. Then what happens?

3 A. I wake up.

4 Q. And what did you do when you wake up?

5 A. I nudged him off of me.

6 Q. You nudged him off of you?

7 A. Uh-huh.

8 Q. And then you left the room?

9 A. Yes.

10 Q. And you didn't confront him about the
11 fact that he was having sex with you while you were
12 asleep?

13 A. Well, I asked him, what are you doing?

14 Q. You just asked him, what are you doing?

15 A. And he told me that -- he said -- he
16 said he wasn't trying to hurt me. And he said that
17 he was just trying to finish. Just let him finish,
18 or something to that effect.

19 Q. And then you just got up and left the
20 room?

21 A. Yes, ma'am.

22 Q. You didn't yell at him?

23 A. No.

24 Q. You didn't fuss at him for having sex
25 with you while you were asleep?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

- 1 A. No, ma'am.
- 2 Q. And then you went to the bathroom?
- 3 A. Yes.
- 4 Q. And then you went outside?
- 5 A. Yes.
- 6 Q. Without your pants on?
- 7 A. Yes.
- 8 Q. And you didn't ask Lexi to confront
- 9 Andrew?
- 10 A. She went to get our things.
- 11 Q. But you didn't ask her to go
- 12 confront --
- 13 A. I didn't want anybody to confront him.
- 14 At that time I just wanted to leave.
- 15 Q. But she offered to go confront him?
- 16 A. Yes.
- 17 Q. And you told her not to?
- 18 A. Yes.
- 19 Q. And you had a boyfriend at the time?
- 20 A. Yes.
- 21 Q. And you went home to your boyfriend?
- 22 A. Yes.
- 23 Q. Did Lexi suggest that you go to the
- 24 police before you left the house?
- 25 A. Yes.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. And you told her you didn't want to
2 call the police?

3 A. Yes.

4 Q. And you rode home to Beaufort?

5 A. Yes.

6 Q. And when you got home, you talked to
7 your boyfriend?

8 A. Yes.

9 Q. And he's the one who told you to go to
10 the hospital?

11 A. That I should, yes.

12 Q. And he's the one that supposedly called
13 the police, per your testimony?

14 A. Yes.

15 Q. But you didn't want to call the police?

16 A. No, ma'am.

17 Q. Did you attend Andrew's bond hearing?

18 A. No.

19 Q. Why didn't you attend his bond hearing?

20 A. Because I was out of state.

21 Q. You were out of state when he was
22 arrested?

23 A. Oh, when he was -- the bond hearing was
24 meaning that he was arrested -- that's when he got
25 arrested.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. Yes. You have a bond hearing within
2 24 hours after arrested to determine the bond.

3 A. Yes, ma'am.

4 Q. Did you attend Andrew's bond hearing?

5 A. No.

6 Q. But you were aware of the bond hearing?

7 A. Yes.

8 Q. And you had been told about it by the
9 detective?

10 A. Yes. I was told I didn't have to go if
11 I didn't feel comfortable.

12 Q. But you understood that you could go?

13 A. Yes.

14 Q. And you could tell the judge what
15 happened?

16 A. No.

17 Q. So that she could set a bond. You
18 could go there and speak on your behalf so the
19 judge can take that into consideration when setting
20 a bond.

21 A. No. I just didn't want to go.

22 Q. You chose not to go?

23 A. I didn't want to see him.

24 Q. Earlier you testified that you came
25 home, you took a shower, ate potatoes, and went

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 directly to bed, correct?

2 A. Uh-huh.

3 Q. Did you ever sit down and hang out with
4 Andrew on the couch?

5 A. Not that I recall.

6 Q. Did you ever give Andrew your phone
7 number?

8 A. No.

9 Q. I'm going to show you what's marked as
10 Defendant's Exhibit 7 for identification.

11 MS. EUDY: May I approach?

12 THE COURT: You may.

13 BY MS. EUDY:

14 Q. Can you look through that exhibit to
15 familiarize yourself, please?

16 On the first page of the exhibit, can
17 you tell me what that is?

18 A. Picture of me and a phone number.

19 Q. And it has your name?

20 A. Yes.

21 Q. And under it it has Lexi, LOL?

22 A. Yes.

23 Q. And then it has a mobile number

24 [REDACTED]. Is that your number?

25 A. Yes.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. And that entry is a data entry that was
2 created at 1:22 a.m.? That's 0022 hours, military
3 time --

4 A. Yes.

5 Q. -- correct? Okay. Did you take that
6 picture?

7 A. Not that I recall.

8 Q. But that is you?

9 A. Yes, that is me.

10 Q. That's all I have for that document.

11 A. Yes.

12 Q. Thank you.

13 I have what is marked as Exhibit --
14 Defendant's Exhibit Number 8, for identification.

15 MS. EUDY: May I approach?

16 THE COURT: You may.

17 BY MS. EUDY:

18 Q. Can you tell me what that is, if you
19 know?

20 A. It looks like a contact log on a
21 telephone.

22 Q. And is that also a picture of you?

23 A. Yes, the same picture. Yes.

24 Q. And does that have your phone number?

25 A. Yes.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. The same phone number we talked about?

2 A. Yes.

3 Q. That's all I have for that.

4 You told us earlier that you and Lexi
5 were best friends.

6 A. Yes, ma'am.

7 Q. How old are you?

8 A. I'm 27 currently.

9 Q. And how old is Lexi?

10 A. 33.

11 Q. 33. So she is five or six years older
12 than you?

13 A. Yes.

14 Q. And at that time of this incident you
15 guys had been friends for about two years?

16 A. About a year, year and a half.

17 Q. Year, year and a half. But by that
18 point, you were already really good friends?

19 A. Yes.

20 Q. And since that time have you gotten
21 closer?

22 A. Yes.

23 Q. Do you post on each other's Facebook
24 pages?

25 A. Yes.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. Do you post a lot?

2 A. Depends.

3 Q. Do you share things, talking about your
4 relationship with each other?

5 A. Yes.

6 Q. I have what's marked as Defendant's
7 Exhibit 12 for identification.

8 MS. EUDY: Your Honor, may I approach?

9 THE COURT: You may.

10 BY MS. EUDY:

11 Q. Can you tell me what this is?

12 A. It's a post on Facebook.

13 Q. Can you tell me the date?

14 A. November 6, 2017.

15 Q. And that's a post that you made onto
16 Lexi Allston's Facebook page?

17 A. Yes.

18 Q. And it's something that you shared --
19 somebody else posted it and you shared and posted
20 it on her Facebook page?

21 A. Yes.

22 Q. Can you read it out for me?

23 A. That's when I realized --

24 MR. EVANS: Objection, Your Honor. I
25 ask that she enter it into evidence before Ms. Dunn

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 reads off of it.

2 THE COURT: All right.

3 MS. EUDY: Your Honor, I would like to
4 move Exhibit 7 into evidence.

5 What number is on that?

6 THE COURT REPORTER: 12.

7 THE WITNESS: Number 12.

8 MS. EUDY: Oh, Number 12.

9 THE COURT: Any objection, Mr. Evans?

10 MR. EVANS: No, ma'am, now that it's
11 been entered into evidence.

12 MS. EUDY: Your Honor, I would like
13 permission to publish this to the jury.

14 THE COURT: Defendant's Exhibit 12 into
15 evidence without objection.

16 (DEFENDANT'S EXH. 12 in evidence.)

17 THE COURT: You may now publish.

18 BY MS. EUDY:

19 Q. Can you read into the record, please.

20 A. That's when I realized what a true
21 friend was. Someone who would always love you.
22 The imperfect you, the confused you, and the wrong
23 you, because that's what friends are supposed to
24 do.

25 Q. And is this the type of thing that you

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 would regularly post on each other's Facebook
2 pages?

3 A. Yes.

4 Q. That's all I have for that.

5 So earlier you testified that this
6 affected you greatly emotionally, I believe you
7 said?

8 A. Yes.

9 Q. And financially?

10 A. Yes.

11 Q. And can you tell me how it affected you
12 financially?

13 A. Because about every three to six
14 months, I get a phone call from a supposable debt
15 collector trying to collect a debt from Beaufort
16 Memorial that says they have -- still have payment
17 they haven't received from me, which the State is
18 supposed to take care of if you go into a rape
19 situation.

20 So at this point, if I'm trying to go
21 get a car or trying to get anything, it continues
22 to drop my credit and then it goes off, like, my
23 report, and then it comes back on my credit. And I
24 literally deal with this every six months.

25 And when I have to repeat it and I have

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 to explain what happened and tell them that I'm a
2 rape victim all over again, I just -- each three to
3 six months I relive this over and over again.

4 Q. How much is that bill?

5 A. I have no idea what the amount is for.

6 Q. When they put it on your credit report,
7 they don't tell you how much it is?

8 A. No.

9 Q. Did you contact Beaufort Memorial to
10 see how much it is?

11 A. Yes. They tell me that my accounts are
12 clear.

13 Q. Did you contact the government? Did
14 you contact Mr. Evans and see if they could get
15 that bill paid for?

16 A. I have not currently, no.

17 Q. So you don't know how much it is, and
18 you're telling us that you can't pay it?

19 A. No. I mean, it's not the principle
20 that I can't pay it. Even if I could pay it, I
21 know that I'm not supposed to have to pay anything
22 due to me going into the hospital as a rape victim.

23 Q. Sure. I guess what I'm saying is,
24 you're saying that you don't know how much it is so
25 you can't pay it to clear it up off your credit?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 A. No.

2 Q. Has this situation affected you in any
3 other way financially?

4 A. Yes.

5 Q. Okay. What other ways has it affected
6 you financially?

7 A. This, for instance, coming here. I'm
8 losing out on a lot of money.

9 Q. Okay. But the State paid for your
10 plane ticket to come here, right?

11 A. Yes.

12 Q. And they're paying for your hotel down
13 the street?

14 A. Yes.

15 Q. And tell me, is there any other way
16 that this has affected you financially?

17 A. No.

18 Q. So you haven't gone to counselling?

19 A. Yes.

20 Q. When did you go to counselling?

21 A. Some free counselling in the beginning.

22 Q. Some free counselling in the beginning.
23 Who did you go see for counselling?

24 A. I don't remember her name.

25 Q. How long did you go there?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 A. Twice.

2 Q. And so you haven't continued to go to
3 counselling?

4 A. No.

5 Q. You're not having to pay for
6 counselling?

7 A. No, ma'am.

8 Q. At the time of this incident, you were
9 in a relationship?

10 A. Yes.

11 Q. And your boyfriend's name was what?

12 A. Chadwick.

13 Q. Chadwick?

14 A. Johnson.

15 Q. And were you just dating or were
16 you-all married?

17 MR. EVANS: I'm going to object to this
18 line of questioning under the pretrial motion.

19 THE COURT: All right.

20 (Bench conference)

21 THE COURT: Overruled.

22 Do you need Ms. Eudy to ask the
23 question again?

24 THE WITNESS: Yes, please.

25 BY MS. EUDY:

ROBYN DUNN - CROSS EXAM BY MS. EUDY

- 1 Q. I believe the question was, you were in
2 a relationship at the time, and you said, yes, with
3 Chadwick Johnson. And I said, were you guys
4 married?
- 5 A. No.
- 6 Q. But you lived together?
- 7 A. Yes.
- 8 Q. And when did you-all break up?
- 9 A. I can't recall.
- 10 Q. Have you dated anybody since then?
- 11 A. Yes.
- 12 Q. And who have you dated since Chadwick?
- 13 A. My current boyfriend.
- 14 Q. Who is your current boyfriend?
- 15 A. Keith.
- 16 Q. Keith who?
- 17 A. Gleason.
- 18 Q. Is he here today?
- 19 A. Yes.
- 20 Q. He's in the courtroom?
- 21 A. Yes, ma'am.
- 22 Q. How long have you and Keith been
23 together?
- 24 A. A little over two years.
- 25 Q. So when did you start dating?

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 A. Right as I moved to Mississippi, which
2 would have been like 2015, December 2015.

3 Q. So you lived in Beaufort from the time
4 of this incident until December 2015?

5 A. Yes.

6 Q. And then you moved to Mississippi?

7 A. Yes.

8 Q. And you started dating Mr. Gleason
9 before you moved?

10 A. That's when we began to talk, yes,
11 ma'am.

12 Q. And then you continued to date after
13 that?

14 A. Yes, ma'am.

15 Q. Did he live in Beaufort when you
16 started dating?

17 A. Not Beaufort.

18 Q. Or South Carolina?

19 A. Yes.

20 Q. He lived in South Carolina when you
21 started dating, and then in December of 2015 you
22 moved to Mississippi?

23 A. Yes.

24 Q. And you continued to date?

25 A. Yes.

ROBYN DUNN - CROSS EXAM BY MS. EUDY

1 Q. And was he married at the time you
2 started dating?

3 MR. EVANS: Objection.

4 THE COURT: Sustained.

5 MS. EUDY: Beg the Court's indulgence.

6 BY MS. EUDY:

7 Q. I have one more question. I have
8 marked what's Exhibit 10 for identification. Also,
9 I will hand you those at the same time. Also what
10 is marked as Defendant's 11 for identification.

11 MS. EUDY: May I approach?

12 THE COURT: You may.

13 BY MS. EUDY:

14 Q. Can you look at these and tell me what
15 they are?

16 Ms. Dunn, let me trade with you. Can
17 you tell me what those are?

18 A. Yes. This is for Lexi's going-away
19 party.

20 Q. And can you tell me the date?

21 A. December 14, 2014.

22 Q. So that was just a week after that
23 you're alleging that Andrew raped you?

24 A. Yes, ma'am.

25 Q. And you guys were out having a party?

ROBYN DUNN - REDIRECT EXAM BY MR. EVANS

1 A. Yes, ma'am.

2 MS. EUDY: Okay. I would like to move
3 this into evidence at this time.

4 THE COURT: What's the number?

5 MR. EVANS: 10 and 11.

6 THE COURT: Any objection?

7 MR. EVANS: No objection, Your Honor.

8 THE COURT: Defendant's 10 and 11 in
9 evidence without objection.

10 (DEFENDANT'S EXH. 10 in evidence.)

11 (DEFENDANT'S EXH. 11 in evidence.)

12 MS. EUDY: That is all I have.

13 THE COURT: Redirect?

14 MR. EVANS: I have some brief redirect,
15 Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. EVANS:

18 Q. Robyn, I think on cross-examination you
19 were testifying that you had been joking earlier
20 that night about staying in the same bed. Was the
21 defendant in bed when you went to bed?

22 A. No.

23 Q. Did you invite him to come to be with
24 you?

25 A. No.

ROBYN DUNN - REDIRECT EXAM BY MR. EVANS

1 Q. When did you realize he had gotten into
2 bed with you-all?

3 A. When I was woke up.

4 Q. When Lexi woke you up?

5 A. Yes. When I -- yes.

6 Q. And you hadn't discussed having sex
7 that night?

8 A. Not that I recall.

9 Q. Did you agree to have sex that night?

10 A. No.

11 Q. When you kind of got -- processed what
12 was happening, what was your number one priority?
13 Was it confronting him and yelling at him?

14 A. No.

15 Q. What was your number one priority?

16 A. Getting to a safe zone.

17 Q. You wanted to get out of there?

18 A. (Nodding)

19 Q. Why didn't you call the police right
20 away?

21 A. That was Lexi's family. I didn't want
22 her to have to choose a side.

23 Q. So you were really conflicted about it?

24 A. Very much so.

25 Q. The party that we heard about, did you

ROBYN DUNN - REDIRECT EXAM BY MR. EVANS

1 have fun at that point?

2 A. No.

3 Q. Were you at the party the whole time?

4 A. No. I ended up leaving early.

5 Q. What did you do at the party?

6 A. Most of the party we were in the
7 bathroom and I cried.

8 Q. Okay. When had you planned that party?

9 A. Way months in advance.

10 Q. Was it before this incident happened?

11 A. Yes.

12 Q. And what was it for again?

13 A. It was for Lexi so all of her friends
14 in Beaufort and any family at that time could come
15 and celebrate with her before she moved back to
16 Alaska.

17 MR. EVANS: Beg the Court's indulgence.

18 BY MR. EVANS:

19 Q. I believe Ms. Eudy asked you about a
20 statement that you made to Detective Bowen about --
21 or maybe to Lexi about you playing it off. What
22 did you mean by that?

23 A. I just meant that whenever me and Lexi
24 talked about it on the ride home, or we really
25 didn't have like full-fledged conversation about

ROBYN DUNN - REDIRECT EXAM BY MR. EVANS

1 how Lexi viewed it or how I viewed it, and how Lexi
2 thought that maybe I had played it off.

3 Q. So is it like you didn't want to
4 confront what had happened?

5 A. Yes.

6 Q. Was that your way of dealing with it?

7 A. Yes.

8 Q. And by playing it off, do you mean it
9 was a consensual sexual encounter?

10 A. Not at all.

11 MR. EVANS: Beg the Court's indulgence.

12 Thank you, Robyn. I have nothing
13 further at this time.

14 THE COURT: Ms. Eudy, any redirect?
15 Recross?

16 MS. EUDY: No recross, Your Honor.

17 THE COURT: All right. You may step
18 down.

19 THE WITNESS: Thank you.

20 MR. EVANS: What time are we -- just
21 approach for scheduling. I don't need all four of
22 you, just one from each.

23 (Bench conference.)

24 THE COURT: Ladies and gentlemen, we
25 are going to go until 5:00. We have one more

COREY TUCKER - DIRECT EXAM BY MR. EVANS

1 witness for the evening.

2 MR. EVANS: State calls Corey Tucker.

3 THE COURT: Sir, please come forward
4 and be sworn.

5 COREY TUCKER,

6 being first duly sworn, testified as follows:

7 THE CLERK: Please state your full name
8 for the record and spell your last.

9 THE WITNESS: Corey Tucker, C-O-R-E-Y
10 T-U-C-K-E-R.

11 MR. EVANS: May it please the Court?

12 THE COURT: Yes.

13 DIRECT EXAMINATION

14 BY MR. EVANS:

15 Q. Afternoon, Mr. Tucker. How are you?

16 A. Good. And you?

17 Q. Pretty good. Thanks.

18 Where are you currently employed?

19 A. Beaufort Memorial Hospital.

20 Q. And what is your position there at
21 Beaufort Memorial?

22 A. I'm an emergency department PA,
23 physician's assistant.

24 Q. So what are your duties as an ER PA?

25 A. See patients; I treat and diagnose

COREY TUCKER - DIRECT EXAM BY MR. EVANS

1 various medical conditions that people come to the
2 ER.

3 Q. Whatever rolls into the door as an
4 emergency?

5 A. Uh-huh.

6 Q. What is your educational background?

7 A. Bachelor'S in science from University
8 of Alabama, 2005, and then a Master'S PA program at
9 UAB, finished in 2012.

10 Q. How long have you been at Beaufort
11 Memorial?

12 A. Five years. Since 2013.

13 Q. What was your involvement with this
14 case?

15 A. I was a primary provider for this case.

16 Q. Did you have any independent
17 recollection about it when I reached out to you?

18 A. I did not.

19 Q. Do you have any formal training
20 specific to sexual assault examinations, or is that
21 done on an as-needed basis?

22 A. As-needed, no formal training.

23 Q. Okay. Does Beaufort have a SANE
24 program?

25 A. Yes, we do.

COREY TUCKER - DIRECT EXAM BY MR. EVANS

1 Q. Were there any SANE nurses on call when
2 Ms. Dunn was seen?

3 A. No, sir.

4 Q. So, basically, you fill in when the
5 SANE nurse can't be there?

6 A. Yes, sir.

7 Q. When did you treat Ms. Dunn?

8 A. Can I review the report?

9 Q. Would it refresh your recollections?

10 A. It would.

11 MR. EVANS: May I approach the witness,
12 Your Honor?

13 THE COURT: You may.

14 BY MR. EVANS:

15 Q. Does that refresh your recollection
16 when Ms. Dunn was treated?

17 A. It does. It looks like December 7th,
18 her initial --

19 Q. December 7th, 2014?

20 A. December 7, 2014.

21 Q. What was she reporting as her reason
22 for the visit?

23 A. Her chief complaint when she came in
24 and I first spoke with her, she had been possibly
25 sexually assaulted.

COREY TUCKER - DIRECT EXAM BY MR. EVANS

1 Q. And you took a medical history from
2 her?

3 A. Yes.

4 Q. What did you do after taking her
5 medical history?

6 A. After taking the initial history, you
7 go through social history and medications she took,
8 any previous medical history, and then a quick
9 review of systems.

10 I just asked her questions. Is there
11 anything else going on? And then we would make
12 sure that the proper authorities, I guess in this
13 case, would have been called and then eventually a
14 physical exam.

15 Q. So as part of that physical exam, a
16 pelvic exam?

17 A. In this case, yes.

18 Q. What does a pelvic exam consist of?

19 A. On my part a pelvic examination
20 consists of two parts; external exam, just
21 reviewing everything in the external part of the
22 genitals, and then a speculum exam.

23 Q. Do you use any dye during your pelvic
24 exam?

25 A. I do not.

COREY TUCKER - DIRECT EXAM BY MR. EVANS

1 Q. Did you use anything more detailed than
2 a visual examination with the naked eye?

3 A. I did not.

4 Q. And just to be clear, pelvic exams,
5 we're kind of using it as a medical -- you're
6 looking at her vagina, correct?

7 A. Correct.

8 Q. Did you note any injuries during
9 Ms. Dunn's pelvic exam?

10 A. I did not.

11 Q. Did Ms. Dunn have any medication
12 administered to her?

13 A. She did.

14 Q. What was that?

15 A. Zithromax, 1 gram; and Citrex, 250
16 milligrams.

17 Q. What are those medications used for?

18 A. Those two are used in combination as a
19 prophylactic against sexually-transmitted diseases,
20 specifically chlamydia and gonorrhea.

21 Q. So STD medication?

22 A. Yes.

23 Q. How long was Ms. Dunn in the hospital?

24 A. Looks like she checked in at 7:29 and
25 was discharged at 13:09, so 1:09 in the afternoon.

COREY TUCKER - CROSS EXAM BY MS. EUDY

1 MR. EVANS: Beg the Court's indulgence.

2 THE COURT: Take your time.

3 BY MR. EVANS:

4 Q. You mentioned the medications that you
5 provided. One was prophylactic. What does that
6 mean?

7 A. Prophylactic means you treat just in
8 case -- the gonorrhea and clad don't always come
9 back sometimes for 12 to 24 hours. So we treat as
10 a just in case, just to cover these in case they do
11 come back positive.

12 Q. So kind of a preemptory thing?

13 A. Yes.

14 MR. EVANS: Thank you, Mr. Tucker. I
15 have nothing further at this time.

16 THE COURT: Ms. Eudy.

17 CROSS-EXAMINATION

18 BY MS. EUDY:

19 Q. Mr. Tucker, when you were treating for
20 the STD you were just referencing, that was kind of
21 just in case she had them.

22 A. It's just -- it's one of our protocols,
23 but it's a just in case.

24 Q. There was no prior diagnosis before the
25 treatment?

COREY TUCKER - CROSS EXAM BY MS. EUDY

1 A. No.

2 Q. And Mr. Evans was asking you questions
3 about the SANE program and SANE nurse. Can you
4 tell the jury what SANE stands for?

5 A. SANE is a sexually -- a sexual assault
6 nurse examiner.

7 Q. And so the SANE nurse generally
8 examines sexual assault victims that come in, and
9 when that nurse is not there, you do it?

10 A. Yes.

11 Q. Are you competent to do the vaginal
12 exams?

13 A. Pardon me?

14 Q. Are you competent to do the vaginal
15 exams?

16 A. I do pelvic examination on a regular
17 basis.

18 Q. Say again?

19 A. I do pelvic examinations on a regular
20 basis.

21 Q. When you did this pelvic exam, did you
22 use a UV light?

23 A. I did not.

24 Q. I've got what is marked as Defendant's
25 Exhibit Number 13 for identification. You said

COREY TUCKER - CROSS EXAM BY MS. EUDY

1 earlier you didn't remember this particular
2 encounter without looking at the records, correct?

3 A. Correct.

4 Q. Can you tell me what this is?

5 A. A SOVA form.

6 Q. Can you explain what that is to the
7 jury?

8 A. It is a --

9 Q. Are those your records from Ms. Dunn's
10 visit at Beaufort Memorial?

11 A. These are not my records.

12 Q. Can you take a look at it?

13 A. Okay.

14 Q. All the pages.

15 A. All right. That's correct.

16 Q. So those are the records for Beaufort
17 Memorial?

18 A. Yes.

19 Q. On what would be page 5, if you go a
20 quarter of the way down, it says, genital
21 examination, female, the UV light is set?

22 A. I see that.

23 Q. Did you check that or did somebody else
24 check that?

25 A. I did not fill out this form.

COREY TUCKER - CROSS EXAM BY MS. EUDY

1 Q. So are you the only one that did a
2 vaginal exam?

3 A. I would assume so.

4 Q. Okay. So you don't believe you used
5 the UV light, even though it's checked on here?

6 A. No, ma'am.

7 Q. It's checked -- it says, presence of
8 sperm in the vaginal wet prep, and it's checked
9 modal.

10 A. Yes.

11 Q. Can you explain what that means?

12 A. Modal just means the presence of moving
13 sperm.

14 Q. So there were moving sperm inside of
15 her, based on this report?

16 A. I did not fill this, nor did I note
17 that.

18 Q. But these are the records from Beaufort
19 Memorial?

20 A. They were. These were filled out by
21 the nurse.

22 Q. Can you go to the next page? Can you
23 tell me what that is?

24 A. These are diagrams of -- this page
25 here? (Indicating)

COREY TUCKER - CROSS EXAM BY MS. EUDY

1 Q. Yes.

2 A. These are diagrams of -- if there is a
3 possible injury, you are to make a note and show
4 exactly where they are.

5 Q. Okay. And so you were the one that did
6 the vaginal exam?

7 A. Correct.

8 Q. And you didn't diagnose any injury?

9 A. I did not see any injuries.

10 Q. You didn't see any evidence of trauma
11 or laceration or swelling or anything like that?

12 A. According to my physical exam notes, no
13 evidence of trauma --

14 Q. And --

15 A. -- normal findings.

16 Q. I'm sorry, I didn't mean to interrupt
17 you. Say that again.

18 A. Normal findings.

19 Q. Normal findings. If you found evidence
20 of trauma or swelling or lacerations or bruising,
21 would you note that on the diagram?

22 A. I would have made a note of it in my
23 documentation of my notes. As I said, I have never
24 seen this form of documentation before.

25 Q. Okay.

COREY TUCKER - CROSS EXAM BY MS. EUDY

1 A. I have never filled one of those out.

2 Q. Okay. And, again, just to make sure,
3 you -- you did not diagnose Ms. Dunn with any form
4 of trauma related to the alleged rape?

5 A. Say that again.

6 Q. You did not diagnose -- based on your
7 vaginal exam of Ms. Dunn, you didn't diagnose any
8 trauma or injuries related to the injury?

9 A. Correct.

10 Q. Do you know who completed the forms
11 that we were just talking about?

12 A. Carol Miller.

13 Q. And who is Carol Miller?

14 A. One of our nurses at Beaufort Memorial.

15 MS. EUDY: That's all I have for you.

16 Thank you.

17 THE COURT: Mr. Evans, any redirect?

18 MR. EVANS: Nothing from the State,
19 Your Honor.

20 THE COURT: All right. Is this witness
21 excused?

22 MR. EVANS: Yes, ma'am. He may be
23 excused.

24 MS. EUDY: No objection.

25 THE COURT: Sir, you may step down.

1 You are free to go, but feel free to stay with us.

2 All right. Ladies and gentlemen, we
3 came as close to 5:00 as we can. There's no need
4 to call another witness. Please remember all my
5 admonitions over the evening hours. You may not
6 discuss this case with anyone. That includes when
7 you go home and your person at home says, what did
8 you do today? You're going to say, I had jury
9 duty, and that's it.

10 You may not discuss this case with
11 anyone until I tell you otherwise. No face-to-face
12 conversations, no postings, anything of that
13 nature, no independent research. We've heard a lot
14 of terms. Do not go home and look them up in your
15 encyclopedia or on Google or anything of that
16 nature.

17 Go home and have a restful evening and
18 please report back at 9:30. 9:30 in the morning.
19 9:30 in the morning. Please be respectful. We
20 cannot get started until all 14 of you are here, so
21 please be mindful of the time. We will be using
22 that clock as well, so if you need to coordinate
23 whatever time device you're using and make
24 adjustments as the need to.

25 Ladies and gentlemen, I don't know if

1 you normally travel downtown in the mornings, so
2 please plan for the traffic.

3 All right. Please have a wonderful
4 evening. If you have any questions or concerns,
5 let your foreperson know and she will alert the
6 bailiffs, but, otherwise have a wonderful and
7 restful evening and I will see you back at 9:30 in
8 the morning.

9 Please rise for the jury.

10 (Jury out, 5:00 p.m.)

11 THE COURT: Thank you. We're at ease.
12 Please be seated.

13 Mr. Evans, anything before we break for
14 the evening?

15 MR. EVANS: No, ma'am.

16 THE COURT: All right.

17 MS. EUDY: And I don't have anything.
18 Thank you.

19 THE COURT: I remind you that you need
20 to be back at 9:15 tomorrow. We will proceed in
21 your absence if you choose not to appear. If you
22 do not appear, a warrant will be issued, and I will
23 hold you in contempt of court and, most
24 importantly, the trial will continue.

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: See you in the morning.

2 Thank you.

3 (These proceedings were recessed at
4 5:00 p.m. to be continued 2/6/2018 at 9:15 a.m.)

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1 (Whereupon, the following proceedings
2 were had 2/6/18, Charleston County General Sessions
3 Court in re: Dunn v Kirkland, 9:40 a.m.)

4 THE COURT: Bring in the jury.

5 (Jury in, 9:45 a.m.)

6 THE BAILIFF: Jurors are all present.

7 THE COURT: Thank you. Please be
8 seated.

9 Morning, ladies and gentlemen of the
10 jury. If you complied with the Court's
11 instructions over the evening hours, please raise
12 your right hand.

13 Thank you. All 14 have indicated they
14 complied with the Court's instruction over the
15 evening hours.

16 Mr. Evans, call your next witness.

17 MR. EVANS: Thank you, Your Honor. May
18 it please the Court.

19 The State calls Lexi Allston.

20 LEXI ALLSTON,

21 being first duly sworn, testified as follows:

22 THE CLERK: Please take your seat,
23 spelling your first and last name for the record.

24 THE WITNESS: L-E-X-I A-L-L-S-T-O-N.

25 MR. EVANS: May it please the Court?

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. EVANS:

4 Q. Good morning, Ms. Allston, how are you?

5 A. Okay.

6 Q. Where do you live right now?

7 A. I live in Alaska.

8 Q. Okay. What part of Alaska?

9 A. Chugiak.

10 Q. Can you spell that for us?

11 A. C-H-U-G-I-A-K.

12 Q. Okay. And I'm not too familiar with

13 Alaska. Where is Chugiak?

14 A. It's about 45 minutes outside of
15 Anchorage, depending on the weather.

16 Q. So there, if there's snow, it takes
17 longer to get there?

18 A. Yes.

19 Q. And you came back to South Carolina for
20 the trial?

21 A. I did.

22 Q. How do you know the defendant,
23 Mr. Kirkland?

24 A. He is my first cousin.

25 Q. Okay. How are you related

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 specifically?

2 A. Our mothers are sisters.

3 Q. So he's your mom's sister's son?

4 A. Yes.

5 Q. How do you know Robyn Dunn?

6 A. We are former coworkers and very good
7 friends.

8 Q. Where were you living in early
9 December 2014?

10 A. Beaufort, South Carolina.

11 Q. Do you recall the evening of
12 December 6, 2014?

13 A. Yes.

14 Q. Did you have any specific plans that
15 evening?

16 A. Yes. Robyn and I were going to get
17 together with my cousin Andrew and Dewey to
18 celebrate my 30th birthday.

19 Q. Where were you planning on staying that
20 evening?

21 A. At Andrew's house.

22 Q. Do you remember when you and Robyn came
23 up from Beaufort?

24 A. Sometime around seven, I think.

25 Q. Where did you go first thing you got

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 to --

2 A. To Andrew's house.

3 Q. Had Robyn met the defendant before?

4 A. No.

5 Q. Did you-all have anything to drink when
6 you got to the defendant's house?

7 A. Yes.

8 Q. Do you remember what you were drinking?

9 A. As far as I can recall, it was some
10 kind of flavored vodka.

11 Q. So liquor?

12 A. Yes.

13 Q. Did you notice what Robyn was drinking?

14 A. The same thing.

15 Q. You were both having flavored liquor?

16 A. Yes.

17 Q. Did you have anything to eat at the
18 house that night?

19 A. No.

20 Q. Do you remember what time -- did you
21 stay at the house all evening?

22 A. No.

23 Q. Where did you go?

24 A. We went to a little bar in West Ashley.

25 Q. Do you remember what time you left the

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 house?

2 A. I don't. I don't remember exactly what
3 time. It was late.

4 Q. How many cars did you take?

5 A. One.

6 Q. Whose car was it?

7 A. Andrew's.

8 Q. I'm showing State's Exhibit 1. Is that
9 the car you were riding in?

10 A. Yes.

11 Q. You said it was a bar in West Ashley
12 that you went to?

13 A. Yes.

14 Q. Do you remember about how far from the
15 house it was?

16 A. Less than 30 minutes.

17 Q. Did you have anything to eat at the
18 bar?

19 A. No.

20 Q. Did you have anything to drink at the
21 bar?

22 A. Robyn and I shared an Angry Orchard.

23 Q. What is an Angry Orchard?

24 A. It's a hard cider.

25 Q. What was everybody doing?

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 A. Andrew and I were playing pool, and
2 Robyn and Dewey were on the dance floor.

3 Q. You were hanging out with the defendant
4 mostly?

5 A. Yes.

6 Q. Did you see if he and Robyn had much
7 interaction at the bar?

8 A. No, they didn't.

9 Q. No, you didn't see or, no, they did
10 not?

11 A. They did not.

12 Q. How long were you at the bar in West
13 Ashley?

14 A. A few hours probably.

15 Q. Do you remember what time it was when
16 you left?

17 A. No.

18 Q. How did Robyn appear as you were
19 leaving the bar?

20 A. Sorry?

21 Q. How did Robyn appear to you as you-all
22 were leaving the bar?

23 A. She seemed tipsy.

24 Q. How did you get back to the -- where
25 did you go after you left the bar?

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 A. Back to Andrew's house.

2 Q. And how did you-all get back there?

3 A. Andrew drove his car.

4 Q. Same car?

5 A. Yes.

6 Q. How was Robyn acting in the car?

7 A. She was pretty drunk at that point.

8 She was -- yeah, she was drunk.

9 Q. Okay. Where was everybody sitting in
10 the car?

11 A. Andrew was driving, I was in the front
12 passenger seat, Robyn was behind me, and Dewey was
13 behind Andrew.

14 Q. So you were riding shotgun?

15 A. Yes.

16 Q. And Robyn was behind you?

17 A. Yes.

18 Q. And Dewey was in the back left?

19 A. Yes.

20 Q. Did anything of note happen while you
21 were in the car on the way home?

22 A. Yes. Robyn actually ended up vomiting
23 on herself.

24 Q. Okay. And was it obvious that she had
25 thrown up? Did everyone realize it in the car?

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 A. Yes. We pulled over.

2 Q. Tell me about that.

3 A. Well, she started to throw up and I
4 believe Dewey was, you know -- basically, said,
5 hey, pull over, she's throwing up. And so we
6 pulled over to the side of the road, off the road
7 just a little ways, and let her finish throwing up.
8 And then got back on the road to go to his house.

9 Q. And it's a two-door car, correct?

10 A. Yes.

11 Q. Did you have to put the seat forward to
12 let her out?

13 A. Yes.

14 Q. And you went back to the trailer at
15 that point?

16 A. Yes.

17 Q. How was Robyn acting when you got back
18 to the trailer?

19 A. Still very drunk.

20 Q. What did you do?

21 A. I had to help her get out of the car --
22 she couldn't walk on her own -- and help her up the
23 stairs and into the house.

24 Q. What did you do when you got back into
25 the house?

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 A. I put her in the shower because she had
2 vomit on her.

3 Q. What did do you with her clothes?

4 A. Put them in the washer.

5 Q. And then how was she acting when she
6 got out of the shower?

7 A. She was still very drunk and kept
8 saying she was hungry.

9 Q. Okay. Did she have anything to eat
10 that you saw?

11 A. Yes. One of them, I believe it was
12 Dewey, made some boxed mashed potatoes for her.

13 BY MR. EVANS: May I approach, Your
14 Honor?

15 THE COURT: You may.

16 BY MR. EVANS:

17 Q. Ms. Allston, I'm handing you what's
18 been marked for ID purposes as State's Exhibit 4.
19 Do you recognize that photograph?

20 A. Yes.

21 Q. What is that?

22 A. A picture of his kitchen with the box
23 of mashed potatoes on the counter.

24 Q. Is that a fair and accurate
25 representation of the way the kitchen appeared the

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 night --

2 A. Yes.

3 MR. EVANS: Your Honor, at this time, I
4 move to admit State's Exhibit 4 into evidence and
5 publish for the jury.

6 THE COURT: Any objection?

7 MS. EUDY: No objection.

8 THE COURT: State's 4 into evidence
9 without objection. You may publish.

10 (STATE'S EXH. 4 in evidence.)

11 BY MR. EVANS:

12 Q. You said this is the kitchen. Point
13 out the box of potatoes -- you can actually write
14 on that thing in front of you.

15 A. Okay. It's right here. (Indicating)

16 Q. That's what they made for Robyn?

17 A. Yes.

18 Q. What did Robyn put on after she got out
19 of the shower?

20 A. Fuzzy pajama pants, purple or blue, and
21 like a white long-sleeved shirt.

22 Q. Was she able to completely dress
23 herself?

24 A. No. I had to help her.

25 Q. You had to help her get dressed?

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 A. Yes.

2 Q. What did you do next?

3 A. At that point we went to bed.

4 Q. What was the plan on where everybody
5 was supposed to sleep that night?

6 A. Her and I were to sleep in his room,
7 Andrew's room, and Andrew was to sleep on the
8 couch. That was the agreement.

9 Q. Had you talked about that beforehand?

10 A. Yes.

11 MR. EVANS: May I approach?

12 THE COURT: You may.

13 BY MR. EVANS:

14 Q. Ms. Allston, I'm handing you State's
15 Exhibit 5 for identification purposes. Do you
16 recognize that photograph?

17 A. Yes.

18 Q. What does that depict?

19 A. Andrew's living room.

20 Q. Is that a fair and accurate
21 representation of how it appeared on December 6,
22 2014?

23 A. Yes.

24 MR. EVANS: At this time, Your Honor,
25 I'd move to admit State's Exhibit 5 into evidence.

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 THE COURT: Any objection?

2 MS. EUDY: No objection.

3 THE COURT: State's Exhibit 5 into
4 evidence without objection.

5 (STATE'S EXH. 5 in evidence.)

6 BY MR. EVANS:

7 Q. Ms. Allston, is that the couch where he
8 was supposed to sleep?

9 A. Yes.

10 Q. And that's in the living room?

11 A. Yes.

12 Q. Not in the bedroom?

13 A. No.

14 Q. Do you remember who went to bed first?

15 A. I don't. I think we all went to bed at
16 the same time.

17 Q. Where was Dewey at this point?

18 A. He had left. He went home.

19 Q. Did the defendant seem very intoxicated
20 to you?

21 A. No.

22 Q. Did he seem as intoxicated as Robyn did
23 to you?

24 A. No.

25 Q. How was everybody -- when everybody

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 laid down and was settled in the bed, how was
2 everybody positioned?

3 A. Robyn was in the middle, Andrew was on
4 the side furthest away from the door, and I was on
5 the side closest to the door.

6 Q. Okay. I show you what's been already
7 admitted as State's Exhibit 3. Show the jury on
8 that photograph where everybody was positioned.

9 A. So I was here, Robyn was here, and
10 Andrew was here. (Indicating)

11 Q. Okay. Do you remember about what time
12 it was when you woke up next?

13 A. I believe it was around four in the
14 morning.

15 Q. Okay. Still dark out?

16 A. Yes.

17 Q. What happened when you woke up?

18 A. When I first woke up, I felt the bed
19 moving, and I couldn't tell what was going on. And
20 it took me a few moments to realize that he was
21 touching her and --

22 Q. Sorry, let's back up. Who is he?

23 A. Andrew.

24 Q. Okay. And her is?

25 A. Robyn.

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 Q. Okay.

2 A. Like I said, I didn't realize what was
3 going on at first, and then when I -- I could tell
4 she was asleep after a few moments of being awake.

5 Q. How could you tell she was asleep?

6 A. Because the way she was breathing, that
7 deep slow breathing like almost snoring. And --

8 Q. Did you see anything?

9 A. I did. I said, Andrew, leave her
10 alone, she's asleep.

11 Q. Could you tell how -- what position
12 Robyn was laying in?

13 A. She was still facing me, like spooning
14 me.

15 Q. And you said, leave her alone, she's
16 sleeping?

17 A. Yes.

18 Q. Did he say anything?

19 A. No.

20 Q. What did you do next?

21 A. I got up and went to the bathroom.

22 Q. Okay. Did you come back to bed after
23 you went to the bathroom?

24 A. No. I stepped outside to smoke a
25 cigarette.

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 Q. Outside of the trailer?

2 A. Yes.

3 Q. What happened when you were outside
4 smoking?

5 A. Robyn came flying out, and she came and
6 found me basically.

7 Q. Do you remember how long you had been
8 out there before Robyn came out?

9 A. A few minutes, at most.

10 Q. Okay. What was her demeanor when she
11 came out of the door?

12 A. Hysterical.

13 Q. Hysterical. What do you mean by that?

14 A. Shaking, crying violently.

15 Q. Did she say anything to you?

16 A. Yes. She said, what the fuck, Lexi? I
17 woke up and he was inside me. What the fuck?

18 Q. Did you notice what she was wearing
19 when she came outside?

20 A. She had on just the shirt she went to
21 bed in and no pants. She was naked from the waist
22 down.

23 Q. And you saw her go to bed with the
24 pants on?

25 A. Yes.

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 Q. What did you do in response to what she
2 told you? What was your reaction to hearing that?

3 A. I was shocked and horrified and angry.
4 And I said, are you okay? Or something along those
5 lines. And she said, I want to get out of here,
6 just get me out of here. And so I proceeded to try
7 to get all of our things together so we could
8 leave.

9 Q. Did you go back into the bedroom?

10 A. Yes.

11 Q. Did you speak to him when you went back
12 into the bedroom?

13 A. Yes.

14 Q. What did you say?

15 A. I said, she was sleep, Andrew. What
16 the fuck?

17 Q. Did he respond to you?

18 A. No.

19 Q. Were you looking for something specific
20 in the bedroom?

21 A. Her pants.

22 Q. The pajama pants?

23 A. Yes.

24 Q. Did you find them immediately?

25 A. No.

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 Q. How were you able to locate them?

2 A. I asked him where they were.

3 Q. And how did you figure out where they
4 were?

5 A. He gestured and kind of grunted towards
6 the end of the bed.

7 Q. Where did you find them at the end of
8 the bed?

9 A. Under the covers, near his feet.

10 Q. Is that where he had pointed out to
11 you?

12 A. Yes.

13 Q. So after you gathered up her pajamas,
14 her pajama bottoms, what did you do next?

15 A. I tried to get all the rest of our
16 things together. I helped her get her pants on and
17 get her out to the car.

18 Q. Did you ever see Robyn go back into the
19 bedroom?

20 A. No.

21 Q. So you went outside and went to the
22 car. Where did you go next?

23 A. Actually, I went back into the house at
24 that point.

25 Q. Okay. For what purpose?

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 A. I couldn't find something. I think it
2 was one of our phones.

3 Q. Okay. So eventually you got in the car
4 and left?

5 A. Yes.

6 Q. Whose car was it?

7 A. Robyn's.

8 Q. Who drove?

9 A. I did.

10 Q. Why did you drive?

11 A. Because she was still hysterical and
12 not coherent enough to drive.

13 Q. So you didn't think she was in a state
14 to drive back to Beaufort?

15 A. No.

16 Q. What was Robyn's demeanor like in the
17 car on the way back to Beaufort?

18 A. She was extremely upset, still shaking
19 and crying and extremely upset.

20 Q. Did she want to call the police?

21 A. No.

22 Q. Did you hear from the defendant at any
23 point after you left the house?

24 A. Yes.

25 Q. Do you remember about how long after

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 you left it was?

2 A. Within a few minutes.

3 Q. Did he call you or how did you hear
4 from him?

5 A. He sent me two text messages.

6 MR. EVANS: May I approach the witness?

7 THE COURT: You may.

8 BY MR. EVANS:

9 Q. I show you what's been marked for
10 identification purposes as State's Exhibit 6. Do
11 you recognize that?

12 A. Yes.

13 Q. What is that?

14 A. That's the text message that he sent
15 me.

16 Q. And that was a screenshot from your
17 phone, I believe, correct?

18 A. Yes.

19 Q. Is that a fair and accurate
20 representation of the text that you received from
21 the defendant on December 4, 2014?

22 A. Yes.

23 MR. EVANS: I move to admit State's
24 Exhibit 6 in evidence.

25 THE COURT: Any objection?

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 MS. EVANS: No objection.

2 THE COURT: State's 6 in without
3 objection. You may publish.

4 (STATE'S EXH. 6 in evidence.)

5 BY MR. EVANS:

6 Q. So, Lexi, what time did you get those
7 two text messages?

8 A. I'm sorry?

9 Q. What time did you get those two text
10 messages?

11 A. Right after we left. It was 5:48 in
12 the morning.

13 Q. And what did they say?

14 A. Be safe. Wish I could just die. I
15 don't know W T F. I hate who I am. I thought she
16 really liked me. Hearing her cry, I wish I had a
17 gun right now. I don't want to be here anymore.
18 You be safe. Sorry I ruined everything.

19 Q. What is W T F?

20 A. What the fuck.

21 Q. When did you-all get back to Beaufort?

22 A. Around 7:00 a.m.

23 Q. What happened when you got back to
24 Beaufort?

25 A. She dropped me at my mom's house

LEXI ALLSTON - DIRECT EXAM BY MR. EVANS

1 because she wanted to go home and see her boyfriend
2 at the time.

3 Q. Did you go anywhere else after you got
4 back to Beaufort?

5 A. We ended up going to the hospital
6 later.

7 Q. How soon after you got back did you go
8 to the hospital?

9 A. I got a phone call within 15 minutes.

10 Q. So you got home and then pretty closely
11 thereafter you went to the hospital?

12 A. Yes. She lived right around the corner
13 from me.

14 Q. Did you speak to the police at some
15 point about this incident?

16 A. Yes. I was interviewed around 3:00
17 that afternoon before I went to work.

18 Q. Did you have to come back to
19 Charleston?

20 A. No. Detective Bowen came to Beaufort.

21 MR. EVANS: Beg the Court's indulgence.

22 Thank you. I don't have anything
23 further at this time. Answer any questions the
24 defense may have for you.

25 THE WITNESS: Thank you.

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MS. EUDY:

4 Q. Ms. Allston, you came here to testify
5 on behalf of your good friend?

6 A. Yes.

7 Q. And you're doing it because you think
8 it's the right thing?

9 A. Yes.

10 Q. You believe that something bad happened
11 to her?

12 A. Yes.

13 Q. You believe that she was raped?

14 A. Yes, that's correct.

15 Q. The State has paid for you to come here
16 and testify?

17 A. Yes.

18 Q. They paid for your plane ticket and
19 your hotel room?

20 A. Yes.

21 Q. And they've given you a per diem?

22 A. Yes.

23 Q. A daily amount --

24 A. Yes.

25 Q. Okay. Earlier you testified that you

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 didn't know what time you left for the bar, that
2 you left Andrew's house for the bar?

3 A. Yes.

4 Q. And you said you thought it was late?

5 A. Yes. Sometime around probably 11 or
6 midnight; I'm not sure.

7 Q. That makes sense. Do you recall
8 telling -- or earlier you testified that you did
9 give a statement to Detective Bowen?

10 A. Yes.

11 Q. Do you recall telling him that you
12 believe it was around 11:26 that you were -- 11:26
13 p.m. that you were on the way to the bar?

14 A. I do not remember that, no.

15 Q. Do you remember telling him that you
16 had a text on your phone that you looked at and you
17 texted a friend that said, we're on the way to the
18 bar now?

19 A. No, I don't remember that.

20 Q. Would you dispute that?

21 A. No. It's just a long time ago.

22 Q. You testified earlier that Miss Dunn
23 was drunk?

24 A. Yes.

25 Q. Do you have any reason to believe that

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 she had been drugged?

2 A. I have no way of knowing that.

3 Q. Do you have any reason to believe that
4 she had been drugged?

5 A. No.

6 Q. Do you recall Detective Bowen asking
7 you about that?

8 A. Yes.

9 Q. Do you recall telling him that you did
10 not -- that you doubted that she had been drugged?

11 A. Yes, I do remember that.

12 Q. And you testified earlier that you and
13 Andrew and Miss Dunn got in the bed at the same
14 time?

15 A. I don't recall. I think we did, but I
16 don't recall.

17 Q. Do you recall joking around about who
18 was going to sleep in the middle?

19 A. Yes.

20 Q. Moments ago you told Mr. Evans that you
21 believed this morning you woke up around 4:00 a.m.?

22 A. Yes.

23 Q. Do you recall telling Detective Bowen
24 that you woke up around 5:00 a.m.?

25 A. It's possible.

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 Q. When you got up and left the room, how
2 long was it before Miss Dunn came outside?

3 A. A few minutes.

4 Q. Two or three minutes?

5 A. Yes.

6 Q. Okay. When you went back in and
7 gathered the stuff and had to get the cell phone
8 and all that between the time you woke up around
9 5:00 a.m. and left the house, how long do you think
10 that was?

11 A. Twenty minutes probably.

12 Q. So it took you about 20 minutes to
13 leave the house from the time you woke up until the
14 time you were in the car?

15 A. Yes.

16 Q. How long did it take you to get to that
17 gas station you stopped at?

18 A. Ten minutes probably. Ten,
19 fifteen minutes.

20 Q. You testified earlier that you got that
21 text message from Mr. Kirkland at 5:48 a.m.?

22 A. Yes.

23 Q. So would that make sense then that you
24 woke up somewhere around 5:00 a.m. or thereafter?

25 A. It's possible.

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 Q. And when you woke up and thought
2 something was going on, you left the room?

3 A. Yes.

4 Q. And you left the room because at that
5 time you didn't believe anything was being done to
6 Robyn that she didn't want being done to her?

7 A. Yes. I thought he was trying to wake
8 her up.

9 Q. So you wouldn't have left the room if
10 you thought she was being raped?

11 A. Correct.

12 Q. And when Miss Dunn came out to talk to
13 you she was hysterical and she was shaking?

14 A. Yes.

15 Q. And earlier you testified that you and
16 Mr. Kirkland are first cousins?

17 A. Yes.

18 Q. But you didn't grow up together?

19 A. No. I grew up in Alaska.

20 Q. So you guys don't know each other very
21 well?

22 A. I wouldn't necessarily say that. We
23 know each other as family, but we didn't grow up
24 together. We had spent some time together, yes.

25 Q. Prior to the night of December 6, 2014,

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 had you guys hung out socially?

2 A. Yes. Actually, the prior week.

3 Q. Other than that time of the prior week,
4 had you hung out socially other than just regular
5 family gatherings?

6 A. Yes, years before we had.

7 Q. Years before?

8 A. Yes.

9 Q. How many years?

10 A. When I first moved to Charleston, so
11 eight, nine years.

12 Q. Do you recall telling Detective Bowen
13 that you had only hung out one time with Andrew
14 prior to December 6, 2014?

15 A. No.

16 Q. You and Andrew Kirkland are family, but
17 you are not particularly close?

18 A. No.

19 Q. You would say that Robyn Dunn was
20 drunker than you were?

21 A. Yes.

22 Q. And that was when you were at the bar?

23 A. In the car on the way home.

24 Q. In the car on the way home. In the car
25 on the way home is when she threw up?

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 A. Yes.

2 Q. And you guys stopped on the side of the
3 road for her to finish vomiting?

4 A. Yes.

5 Q. Did she throw up at any time
6 thereafter?

7 A. I don't remember.

8 Q. Do you recall if she threw up when you
9 got back to Andrew's house?

10 A. I don't.

11 Q. Would you have told Detective Bowen if
12 that was the case?

13 A. I'm sure I probably would have, yes.

14 Q. Okay. Going back to when you woke up,
15 it was dark?

16 A. Yes.

17 Q. And you couldn't really see what was
18 going on?

19 A. Yes.

20 Q. And you couldn't see whether Andrew's
21 eyes were open?

22 A. That's correct.

23 Q. And you couldn't see whether Miss
24 Dunn's eyes were open?

25 A. That's correct.

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 Q. And as soon as Robyn came out there and
2 told you what happened, you suggested she call the
3 police?

4 A. No.

5 Q. Do you recall telling Investigator
6 Bowen you told her to call the police while you
7 were still at Andrew's house?

8 A. I don't remember that.

9 Q. Would you dispute that you told
10 Investigator Bowen that?

11 A. It's certainly possible. I was more
12 focused on getting her out of the house.

13 Q. Also, when she came out there she told
14 you that he had been inside of her?

15 A. Yes.

16 Q. And did she tell you for how long?

17 A. No.

18 Q. Did she tell you she felt sore?

19 A. No.

20 Q. You don't recall telling Investigator
21 Bowen that Miss Dunn told you she felt sore?

22 A. I don't.

23 Q. If I told you you said, I don't, but
24 when she came outside she told me that she woke up
25 and he was inside of her. So -- and she said was

LEXI ALLSTON - CROSS EXAM BY MS. EUDY

1 sore like it had been going on for a while?

2 A. I don't remember saying that. I'm not
3 saying that I didn't, but I don't remember it.

4 Q. Because obviously you gave a
5 statement --

6 A. Right.

7 Q. -- at 3:00 the day this happened?

8 A. Yes.

9 Q. And the memory was fresher then than it
10 is now?

11 A. Uh-huh.

12 Q. Years later?

13 A. Uh-huh.

14 Q. Is that a yes?

15 A. Yes.

16 Q. I'm not giving you a hard time.

17 A. You're fine.

18 Q. It's for the court reporter.

19 MS. EUDY: Beg the Court's indulgence.

20 THE COURT: Take your time.

21 BY MS. EUDY:

22 Q. Just a moment ago I asked you if you
23 suggested to Miss Dunn that she call the police
24 while at Andrew's, and you said you didn't
25 remember, correct?

LEXI ALLSTON - REDIRECT EXAM BY MR. EVANS

1 A. Correct.

2 Q. So you wouldn't dispute that?

3 A. Correct.

4 Q. You certainly wouldn't have given Miss
5 Dunn a hard time about calling the police?

6 A. No.

7 Q. You wouldn't have made her feel guilty
8 because Andrew was your cousin?

9 A. No.

10 Q. If he raped her, you would want her to
11 call the police?

12 A. Yes.

13 MS. EUDY: That's all I have at this
14 time.

15 THE COURT: Mr. Evans.

16 MR. EVANS: Have some brief redirect.

17 THE COURT: Take your time.

18 REDIRECT EXAMINATION

19 BY MR. EVANS:

20 Q. Ms. Allston, Ms. Eudy asked you about
21 that we purchased your plane ticket and all that.
22 Did we twist your arm to come down here?

23 A. No. I would have been here regardless.

24 Q. Did you even get a subpoena served by
25 the process --

LEXI ALLSTON - REDIRECT EXAM BY MR. EVANS

1 A. No. I got it in an e-mail so I could
2 show my boss.

3 Q. Why did you come back to South
4 Carolina?

5 A. To support my friend.

6 Q. How long had you known Robyn at the
7 time this happened?

8 A. Over a year.

9 Q. Okay. But not two years?

10 A. No.

11 Q. And I think you testified that you
12 weren't particularly close with the defendant. How
13 close were you with Dewey, his brother?

14 A. Pretty close. He lived with me when I
15 first moved to Charleston.

16 Q. So you and Dewey lived together prior?

17 A. Uh-huh.

18 Q. And you testified, I think, that when
19 you woke up, you couldn't see anything necessarily
20 because it was dark, but how was the -- how was the
21 victim breathing?

22 A. She was breathing slow and deep, almost
23 snoring.

24 Q. Okay. So you interpreted that as her
25 being asleep?

LEXI ALLSTON - RECROSS EXAM BY MS. EUDY

1 A. Yes.

2 MR. EVANS: Beg the Court's indulgence.

3 BY MR. EVANS:

4 Q. Would you lie for Robyn?

5 A. No.

6 Q. Under oath?

7 A. No.

8 Q. Has this overall incident affected your
9 family dynamic?

10 A. Yes.

11 Q. Makes family reunions a little awkward
12 I'm guessing?

13 A. I haven't been here for them, but I
14 assume that it will.

15 MR. EVANS: I don't have anything
16 further.

17 Thank you, Ms. Allston.

18 THE COURT: Re-cross?

19 RECROSS-EXAMINATION

20 BY MS. EUDY:

21 Q. Mr. Evans just asked you if this
22 affected your family dynamics. Certainly it has.

23 A. Yes.

24 Q. And Andrew's mother is your aunt?

25 A. Yes.

LEXI ALLSTON - RECROSS EXAM BY MS. EUDY

1 Q. And she's sitting on this side of the
2 courtroom?

3 A. Yes.

4 Q. And your mother is sitting on this side
5 of the courtroom?

6 A. Yes.

7 Q. Because this affected your family
8 dynamic, did you ever reach out to Andrew and ask
9 him what his side of the story was? You didn't,
10 did you?

11 A. No.

12 MS. EUDY: That's all, Your Honor.

13 THE COURT: You may step down. Thank
14 you.

15 Call your next witness.

16 MS. ELLIOTT: The State calls Jason
17 Bowen.

18 JASON BOWEN,
19 being first duly sworn, testified as follows:

20 THE CLERK: Please take your seat,
21 spelling your first and last name for the record.

22 THE WITNESS: Jason Bowen, J-A-S-O-N
23 B-O-W-E-N.

24 DIRECT EXAMINATION

25 BY MS. ELLIOTT:

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 Q. Good morning, Detective Bowen. Would
2 you tell us a little bit about where you work?

3 A. I work at the Charleston County
4 Sheriff's Office as a detective currently.

5 Q. And how long have you been with the
6 Charleston County Sheriff's Office?

7 A. Since 2002.

8 Q. Any prior law enforcement training
9 before then?

10 A. I did. I had -- I was originally
11 trained at the North Carolina Justice Academy and
12 worked briefly for about six months with the
13 Smithfield Police Department in North Carolina and
14 received some training during that time.

15 Q. And then you moved to Charleston?

16 A. That's correct.

17 Q. What about some -- any educational
18 background or training that helps you perform your
19 duties at the sheriff's office?

20 A. I have a Bachelor's of Science in
21 Criminology, and over the time period I've been in
22 law enforcement, I've received numerous training
23 courses, everything from investigations to
24 practical application. I'm also a member of the
25 underwater recovery team. We do a lot of training

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 there as well.

2 Q. What type of positions have you held
3 with the Charleston County Sheriff's Office during
4 your career?

5 A. I've been on patrol, I have been a
6 school resource officer, I'm currently in
7 investigations. In investigations I used to handle
8 our sex offender registry, and currently I'm a
9 member of the underwater recovery team, which is a
10 collateral duty. I'm now an assistant scuba
11 instructor for the team.

12 Q. Now, let's talk about something that's
13 a little more difficult. In December of 2012, were
14 you subject to a disciplinary suspension?

15 A. 2012 or -- yes.

16 Q. 2014?

17 A. '14.

18 Q. Sorry. In 2014, were you subject to a
19 disciplinary suspension?

20 A. Yes.

21 Q. What was that regarding?

22 A. In my position as a school resource
23 officer, we had been given keys to the schools.
24 And I had a master key. My son was an elementary
25 student at the time, and he had left his school

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 work in the classroom. And I wanted to help him
2 finish his schoolwork, so I went and used the
3 master key to access the school and looked for his
4 school folder basically.

5 I had kept the key when I was a school
6 resource officer. The position had just been
7 eliminated and there was never any formal turn-in
8 of equipment. And I was on patrol at the time, so
9 I figured keeping the key would allow me quicker
10 access, quicker response if there was an incident
11 at the school.

12 Q. And this incident -- that did happen in
13 December of 2012?

14 A. Yes.

15 Q. And that was prior to this
16 investigation?

17 A. Yes.

18 Q. And you were confronted by the
19 principal about accessing the school?

20 A. I was. I had a meeting with the
21 principal and the assistant principal. Initially,
22 they asked me what had happened. And they knew I
23 had access to the school. Initially, I told them
24 that I had found an open door and used that; and I
25 told them right away before that meeting ended, I

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 told them that that was not correct and I gave them
2 the correct information. They asked me to
3 surrender the keys and I did so.

4 Q. Does that incident have anything to do
5 with this investigation that we are here about
6 today?

7 A. No.

8 Q. Has it affected your truthfulness as to
9 anything that you will say today or anything in
10 your report?

11 A. It has not.

12 Q. You touch on it a bit, but what is your
13 current position with the Charleston County
14 Sheriff's Office?

15 A. I'm currently assigned to the criminal
16 investigations division and we're broken down into
17 multiple units. I am assigned to the special
18 victims unit and, also, a member of the South
19 Carolina Internet Crimes Against Children Task
20 Force.

21 Q. What type of crimes do you investigate?

22 A. We investigate -- in the special
23 victim's unit we investigate any crimes that
24 involves children or vulnerable adults and also
25 crimes of a sexual nature, kind of like you see on

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 the SVU TV.

2 Q. Was that the position you held in
3 December of 2014?

4 A. It was.

5 Q. How long had you been in special
6 victims investigations in December of 2014?

7 A. Since about August of that year.

8 Q. How did you become involved in this
9 case?

10 A. This case I was on call. We take one
11 week a month as an on-call detective, and I was
12 on-call the weekend that this incident occurred.
13 And being assigned to a special victims unit, I was
14 the on-call detective that was dispatched to go and
15 meet with the victim and begin the investigation.

16 Q. Tell us a little bit about the first
17 things you did were.

18 A. I got a call from my supervisor and he
19 gave me a brief synopsis of what had happened. And
20 he dispatched me to Beaufort and told me to meet
21 with the victim there and interview her. And I
22 went to Beaufort Hospital and met with her.

23 Q. Who was present while you interviewed
24 Miss Dunn?

25 A. Primarily, it was just me and Miss

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 Dunn. We, typically, try to keep the interview
2 environment as private as possible while we're
3 interviewing. Occasionally, the doctor would come
4 in, and her boyfriend at the time, I think, was
5 present briefly, but not during any particular
6 portion of the interview.

7 Q. During the interview, were you asking
8 the people coming in and out to leave?

9 A. Yes. There was -- I remember one that
10 wanted to do some treatment, and I asked them to
11 hold off so we could complete the interview.

12 Q. What was Ms. Dunn's demeanor like when
13 you were interviewing her?

14 A. It was what I probably would have
15 expected for somebody in her position. She was as
16 calm as she could be trying to relay the incident
17 and the information. Occasionally, she would break
18 down and cry when we got to a particularly
19 sensitive portion of the interview.

20 Q. Did she disclose a sexual assault?

21 A. She did.

22 Q. Where did she say it happened?

23 A. She said it happened at a house in
24 Charleston County in the Hollywood area.

25 Q. When did she say it happened?

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 A. The night previously, just before I met
2 with her.

3 Q. Once you completed the interview with
4 Ms. Dunn, what did you do next?

5 A. Once I completed my interview with Miss
6 Dunn, I made contact with what -- she had
7 identified a witness, Ms. Allston, and made
8 arrangements with her before I left Beaufort.

9 Q. Where did you meet with Ms. Allston?

10 A. At her house in Beaufort.

11 Q. Did she provide you with any relevant
12 evidence when you spoke with her?

13 A. She did. She was able to show me the
14 text message that she'd received from Mr. Kirkland.

15 MS. ELLIOTT: May I approach the
16 witness, Your Honor?

17 THE COURT: You may.

18 BY MS. ELLIOTT:

19 Q. Detective Bowen, I'm showing you
20 State's Exhibit 6. Is that what Ms. Allston
21 provided to you?

22 A. Yes.

23 Q. And what is your understanding of what
24 that is?

25 A. That was a text message she received

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 from Mr. Kirkland.

2 Q. Were you able to identify the incident
3 location?

4 A. Ultimately, yes.

5 Q. What was the incident location?

6 A. [REDACTED] Hollywood, South
7 Carolina.

8 Q. Is that in Charleston County?

9 A. That is in Charleston County.

10 Q. Once you identified that location, what
11 did you do next?

12 A. I briefed my supervisor on the update
13 and returned to Charleston and sought a search
14 warrant for the incident location.

15 Q. Did you visit the incident location?

16 A. I did.

17 Q. While you were there, did you speak
18 with anyone?

19 A. While we were there, Mr. Kirkland came
20 on scene and I had the opportunity to interview
21 him.

22 Q. Were any other people identified as
23 people you wanted to speak to?

24 A. Yes. He identified his brother as
25 having been there that night, Dewey Kirkland.

JASON BOWEN - DIRECT EXAM BY MS. ELLIOTT

1 Q. Did you ever speak to Mr. Kirkland?

2 A. I did.

3 Q. Do you remember where you spoke to
4 Dewey Kirkland?

5 A. I did. I went to his house, and we
6 spoke in my car outside of his residence.

7 Q. Who was present for that interview?

8 A. Myself and Dewey. And I don't remember
9 if another investigator was with me at the time or
10 not.

11 Q. After you spoke to Dewey Kirkland, what
12 did you do after that?

13 A. We basically ended the incident for the
14 night. Crime Scene would have taken the evidence
15 and logged it.

16 Q. Were you able to confirm that the text
17 message that Lexi Allston provided was from the
18 defendant's phone?

19 A. I was.

20 Q. What was the status of that text
21 message?

22 A. It had been deleted.

23 Q. Once you gathered all this information,
24 what did you do?

25 A. Once I gathered the information, I

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 called Miss Dunn back and discussed with her some
2 of the information I had learned from the
3 interview. Then I sought an arrest warrant for
4 Mr. Kirkland.

5 Q. And what was the arrest warrant for?

6 A. Criminal sexual conduct in the third
7 degree.

8 MS. ELLIOTT: Beg the Court's
9 indulgence.

10 THE COURT: Take your time.

11 MS. ELLIOTT: Detective Bowen, those
12 are all the questions I have for you right now.
13 Answer any questions that Miss Dunn (sic) or
14 Mr. Good may have for you.

15 THE COURT: Mr. Good.

16 MR. GOOD: Thank you. May it please
17 the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. GOOD:

21 Q. Good morning, Detective Bowen.

22 A. Good morning.

23 Q. Detective Bowen, I have some
24 preliminary questions for you. You just testified
25 that you interviewed Lexi and Robyn and Dewey and

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Andrew. Did you review those audiotapes before
2 coming to trial today?

3 A. I did.

4 Q. How long would you say Andrew's
5 interview lasted?

6 A. Less than an hour.

7 Q. Okay. Would you say more than
8 45 minutes?

9 A. Approximately, 45 minutes to an hour
10 range.

11 Q. Okay. So there was a lot of
12 information in that -- in that interview?

13 A. Yes.

14 Q. Would you say Robyn Dunn's, Ms. Dunn's
15 interview was of a similar length?

16 A. It was. Again, there were different
17 interviews. I don't remember the exact.

18 Q. Okay. But there was a lot of
19 information in Ms. Dunn's interview; is that
20 correct?

21 A. Yes.

22 Q. And Miss Dunn testified that she went
23 back to sleep -- when they were all three in the
24 bed and Lexi got up and left the room, and then
25 Robyn Dunn testified that she then went back to

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 sleep. You were here during her testimony
2 yesterday, correct?

3 A. I was here.

4 Q. You heard her say she went back to
5 sleep, but that's not what she told you in her
6 interview; is that correct?

7 A. I don't remember that being what she
8 told me, no.

9 Q. Detective, I want to start by
10 discussing your report.

11 MR. GOOD: Beg the Court's indulgence.

12 Q. (BY MR. GOOD) I want to go through
13 some things in your report. The grand jury
14 indictment summary and your report both say, after
15 several hours drinking at the bar -- how many hours
16 would you say several hours is?

17 A. Two to three.

18 Q. Two to three. Okay. And so did you
19 hear what time Miss Dunn said they left Andrew's
20 house and went to the bar?

21 MS. ELLIOTT: Objection, Your Honor.
22 This is pitting.

23 THE COURT: All right.

24 (Bench conference.)

25 THE COURT: Sustained.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 BY MR. GOOD:

2 Q. Do you think that -- well, based on
3 your investigation, you said that they were at the
4 bar for several hours; is that correct? Is that
5 what you came up with, because it's in your report?

6 A. Yes.

7 Q. And you said several hours would be two
8 or three hours they stayed at the bar?

9 A. Yes.

10 Q. And based on your investigation, it
11 took approximately 30 minutes to travel from
12 Andrew's house to the bar and back?

13 A. As I understood it from the information
14 at the time, yes.

15 Q. So two or three hours, plus essentially
16 an hour of round-trip drive time?

17 A. Yes.

18 Q. Okay. Your report also says that Miss
19 Dunn did not want to call the police at this time;
20 is that correct?

21 And while we're discussing it, you
22 offered in -- says in your case notes, I offered
23 the victim -- this is what you wrote in your case
24 notes. I offered the victim the opportunity to
25 make a control call to the suspect before I left

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Beaufort. She declined; is that correct?

2 A. That's correct.

3 Q. Okay. Can you explain what a control
4 call is?

5 A. So a controlled call would be
6 essentially a call in which she would initiate to
7 the suspect with me listening and recording the
8 call, which is allowed under South Carolina law.
9 Some victims want to participate in that call,
10 others don't because it can be very emotionally
11 trying.

12 Q. Okay. But had she opted to participate
13 in that call, it certainly would have helped your
14 investigation to get a -- to get Mr. Kirkland's
15 side of the story; is that correct? When he didn't
16 know it?

17 A. It may have elicited additional
18 information from him, yes.

19 Q. It would have been helpful for your
20 investigation, right?

21 A. Yes.

22 Q. Okay. For both sides; is that correct?

23 A. That's correct.

24 Q. To know whether Miss Dunn was being
25 truthful or Mr. Kirkland was being truthful in

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 their interviews?

2 A. Yes.

3 Q. What is the purpose of those controlled
4 calls?

5 A. The purpose is to allow us, as an
6 investigator, to listen in on the interaction
7 between the two and, hopefully, get some candid
8 interaction at least from the person on the other
9 end of the line who doesn't know that we're
10 listening.

11 Q. Okay. And, again, just to sum all this
12 up, Miss Dunn never -- you gave her the option, but
13 as your case notes said, she declined, did not want
14 to participate in that call?

15 A. Yes.

16 Q. Your report also says that the victim
17 did not suffer any injuries?

18 A. That's correct. And that would have
19 come from me asking her.

20 Q. Your report also says that Andrew said
21 in your report, we had sex and then she woke up; is
22 that true?

23 A. Yes. That's what I remember him
24 saying.

25 Q. That's what you remember Robyn Dunn

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 saying?

2 A. I'm sorry. What --

3 Q. I'm sorry. I'm sorry. That's what you
4 remember Mr. Kirkland saying?

5 A. Yes.

6 Q. Is that -- was that -- that's what is
7 in your report, exactly what I just read there; we
8 had sex and then she woke up, but that -- but that
9 -- that will be a small clip of the entire
10 statement; is that correct? And misleading, would
11 that be correct?

12 MS. ELLIOTT: Objection.

13 THE COURT: What's your basis?

14 MS. ELLIOTT: May we approach?

15 THE COURT: You may.

16 (Bench conference.)

17 THE COURT: Sustained.

18 MR. GOOD: Beg the Court's indulgence.

19 THE COURT: Take your time.

20 BY MR. GOOD:

21 Q. I'll summarize this whole thing for you
22 in a question to you, Detective Bowen.
23 Essentially, what I'm getting at is, your report
24 just has small quotes, but it doesn't have all the
25 information from Mr. Kirkland's interview in it; is

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 that correct?

2 A. That's correct.

3 Q. Okay. I'll move on from that.

4 Detective Bowen, who called the police
5 that ultimately led you being dispatched to
6 Beaufort Memorial?

7 A. I don't recall. I was contacted
8 directly by my supervisor.

9 Q. When you interviewed Miss Dunn, did you
10 videotape her?

11 A. I did not.

12 Q. Would they train you to do that in your
13 investigation classes at all?

14 A. If it's available. That's why I used
15 an audio recording in this case. That was what was
16 available at the hospital.

17 Q. Did you ever get a written statement
18 from Miss Dunn?

19 A. I did not.

20 Q. Did you get a written statement from
21 Lexi Allston?

22 A. I did not. I used the audio recording.

23 Q. Did you get a written statement from
24 Andrew Kirkland?

25 A. No.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Q. Or Dewey Kirkland?

2 A. I did not.

3 Q. So the only statements you got were the
4 day after, those audio statements; is that correct?

5 A. Yes, in their word and voices.

6 Q. But those were the only ones. You
7 didn't ask for another interview or a written
8 statement subsequent to that day?

9 A. No.

10 Q. When you were interviewing Miss Dunn,
11 which was your first interview, correct?

12 A. Yes.

13 Q. When you were interviewing Miss Dunn,
14 would you say you were doing a preliminary
15 independent investigation of her?

16 A. Miss Dunn being located in Beaufort, I
17 was doing the investigation as thoroughly as I
18 could at the time.

19 Q. Okay. I'm going to read something that
20 you said out of the transcript of your interview
21 with Miss Dunn, and ask that you explain what it
22 meant.

23 A. Okay.

24 Q. You said, okay. And as we're going
25 through this, don't think some of the questions I'm

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 going to ask you, I'm not putting anything on you.
2 Some things it's easier for me to explain. And
3 later on, if at some point I interview Andrew, that
4 I can use essentially against him.

5 What exactly did you mean? And what
6 were you going to use against Andrew? This was
7 your first interview. What were you going to use
8 against Andrew?

9 A. So often when we are interviewing
10 victims, we have to challenge -- essentially,
11 challenge their story to determine credibility to
12 see if there's anything that she might tell me that
13 is in the interview with the suspect I could
14 challenge them with as well.

15 I often give a precursor to a question
16 like that to let a victim know I'm not challenging
17 their story at that time. But we often have to do
18 that as part of the investigation, essentially to
19 put them at ease and allow them to speak to us more
20 candidly.

21 Q. After you interviewed Miss Dunn, then
22 you went over to Lexi Allston's house and
23 interviewed her?

24 A. That's correct.

25 Q. And later that evening you went over

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Mr. Kirkland's house and interviewed him.

2 A. That's correct.

3 Q. He wasn't home when you got there?

4 A. Not initially, no.

5 Q. How many police cars were there waiting
6 for him in his driveway when he got there?

7 A. If I remember correctly, there would
8 have been two -- one marked unit for sure, my
9 unmarked, and I don't remember at the time the
10 Crime Scene vehicle if it was marked or unmarked.

11 Q. So at least three police vehicles
12 waiting on him when he pulled in?

13 A. Yes.

14 Q. And you had a search warrant to search
15 his house?

16 A. Yes, we did.

17 MR. GOOD: May I approach?

18 THE COURT: You may.

19 BY MR. GOOD:

20 Q. Is this your evidence log here?

21 A. Yes.

22 Q. Okay. Thank you.

23 MR. GOOD: Your Honor, at this time, I
24 would like to enter Defendant's Exhibit 1 marked
25 for identification purposes, and I would also like

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 to publish it to the jury.

2 THE COURT: Any objection?

3 MS. ELLIOTT: Relevance and hearsay.

4 THE COURT: Counsel, bring that
5 document and approach.

6 (Bench conference.)

7 THE COURT: Sustained. Rephrase your
8 question.

9 MR. GOOD: Thank you, Your Honor.

10 BY MR. GOOD:

11 Q. Through your search warrant, you saw on
12 this list that I showed you that -- and you would
13 remember that you took Andrew's phone; is that
14 correct?

15 A. Yes, that's correct.

16 Q. And a pair of pajama bottom pants from
17 the victim?

18 A. That's correct.

19 Q. Were there any other pants involved
20 that Miss Dunn told you about in her interview?
21 Didn't she say something about another pair of
22 pants she was wearing?

23 A. I don't remember.

24 MR. GOOD: Beg the Court's indulgence.

25 BY MR. GOOD:

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Q. In your interview with Miss Dunn, do
2 you recollect saying, do you have or those are the
3 pants that you wore from Charleston to here?

4 Were you discussing those pants as
5 opposed to another pair of pants?

6 A. I would have been asking if the pants
7 that she was currently wearing were the ones that
8 she wore from Charleston back to Beaufort.

9 Q. And then you asked her, where are those
10 pants; is that correct?

11 A. Yes.

12 Q. Back to what you received from the
13 search warrant. Essentially, I could read off a
14 list of the stuff, but basically you received a
15 bunch of bedding; is that correct?

16 A. We did seize the bedding.

17 Q. Pillow cases, fitted sheets, normal
18 sheets?

19 A. Yes.

20 Q. Was all that -- did you bring all of
21 that evidence with you today? Is that what is in
22 all these bags and boxes?

23 A. It should be, yes.

24 Q. Did you have any of that stuff tested
25 for DNA or bodily fluids or anything of that?

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 A. I did not specifically submit it for
2 testing.

3 Q. So essentially you received this
4 pursuant to the search warrant but nothing else
5 really happened with it? You just took it, but
6 that's it?

7 A. That's correct. We -- at the time of
8 the search warrant, we don't know what additional
9 information we're going to gain.

10 MR. GOOD: Okay. Beg the Court's
11 indulgence.

12 Your Honor, may we approach?

13 THE COURT: You may.

14 (Bench conference.)

15 THE COURT: Ms. Johnson, this is
16 probably a good time for us to take a midmorning
17 comfort break. Please remember all of my
18 admonitions. Please be escorted out of the
19 courtroom.

20 Please rise for the jury.

21 (Jury out, 10:42 a.m.)

22 THE COURT: Thank you. Be seated.

23 So what I understand, Mr. Good, you
24 were starting to introduce a lot of evidence. If
25 you will go ahead and just pull it out and let

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Ms. Lauder mark it as appropriate and we will go
2 ahead and take our comfort break.

3 MR. GOOD: That's fine.

4 THE COURT: And I need to know
5 scheduling since we're moving a little slower than
6 you had anticipated.

7 MR. EVANS: Yes, ma'am. We have at
8 least our next two witnesses here, and I think our
9 third witness is here. Okay. We have our next two
10 witnesses from Columbia.

11 THE COURT: And I'm just trying to
12 schedule the remainder of my week.

13 MR. EVANS: We should have everybody
14 here by the end of the morning.

15 We will be finished with our case
16 today.

17 THE COURT: Detective, remember all of
18 my admonitions. You can go ahead and step down.
19 We're going to take a break. Mr. Good is going to
20 mark whatever he intends for the record. And so,
21 Ms. Elliott, if you could be of assistance.

22 MS. ELLIOTT: I'm going to let Mr.
23 Evans do that while I take a comfort break.

24 (A recess transpired.)

25 (DEFENDANT'S EXH. 15, pajama bottoms,

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 was marked for identification.)

2 (DEFENDANT'S EXH. 16, Defendant's
3 phone, was marked for identification.)

4 THE COURT: Mr. Good, are you ready?
5 Everything marked?

6 MR. GOOD: We're ready to go, Your
7 Honor.

8 THE COURT: Did you have enough time?

9 MR. GOOD: Yes, ma'am.

10 MS. ELLIOTT: Judge, it's my
11 understanding that they are not intending to admit
12 that evidence, simply to display it to the jury,
13 and I will object to that.

14 MS. EUDY: We're going to admit the
15 pants, but not the phone. We just have to
16 substantiate they recovered the phone because we've
17 got phone data that was produced in the original
18 five. We're not going to, like, get the phone out
19 and go through it.

20 MR. GOOD: We're not going to even open
21 it.

22 MS. EUDY: But we have to substantiate
23 that you took the phone. Or you're going to object
24 later and say there's no foundation.

25 THE COURT: Well, I didn't think there

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 was any question that the phone was taken.

2 MS. ELLIOTT: I don't think there's any
3 dispute that --

4 THE COURT: Counsel.

5 (Bench conference.)

6 THE COURT: What have we reached?

7 MR. GOOD: We have come to a
8 resolution.

9 THE COURT: What's the resolution?

10 MR. GOOD: We're going to admit the
11 pants and we're not going to admit the phone.

12 THE COURT: What's the number?

13 MR. GOOD: Your Honor, the number on
14 the pants is 15.

15 THE COURT: And so the pants will be
16 admitted without objection?

17 MS. ELLIOTT: Without objection.

18 THE COURT: Defendant's Exhibit 15 in
19 evidence without objection. You may publish at the
20 appropriate time.

21 (DEFENDANT'S EXH. 15 in evidence.)

22 MS. EUDY: And also Defendant's 7,
23 which is the contact.

24 THE COURT: Any objection?

25 MS. ELLIOTT: They're going to, I

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 think, lay the appropriate foundation for it. As
2 long as that comes out, then we won't have an
3 objection.

4 THE COURT: Ms. Lauder, that is the
5 correct --

6 THE COURT REPORTER: What did you say
7 it was?

8 MS. EUDY: The contact entry, Number 7.

9 THE COURT: Anything else?

10 MR. GOOD: No, Your Honor.

11 THE COURT: Thank you.

12 (Jury in, 11:05 a.m.)

13 THE BAILIFF: Jurors all present.

14 THE COURT: Thank you. Please be
15 seated.

16 Mr. Good, you may continue.

17 MR. GOOD: Thank you. May it please
18 the Court?

19 BY MR. GOOD:

20 Q. Detective Bowen, these are a pair of --

21 MR. GOOD: May I approach the witness?

22 THE COURT: You may.

23 BY MR. GOOD:

24 Q. These are a pair of pants that were
25 taken as part of your investigation; is that

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 correct?

2 A. That's correct.

3 Q. Could I get you to open this bag and --

4 THE COURT: Just for the record, that
5 is Defendant's Exhibit 15 that has been admitted
6 into evidence without objection during our break.

7 MR. GOOD: Thank you.

8 BY MR. GOOD:

9 Q. Detective Bowen. We were talking a
10 minute ago, and you said there was a discussion
11 with Miss Dunn about another pair of pants that she
12 was wearing at some point?

13 A. Yes.

14 Q. And in your interview with her, did you
15 say -- well, question: Did you get those other
16 pair of pants?

17 A. Not the other pair of pants that she
18 was wearing at the hospital.

19 Q. You said in your interview earlier that
20 -- that morning in the hospital with her, just to
21 cover our bases because, if we don't, the defense
22 attorney is going to say, why didn't you get her
23 other pants.

24 Did you say that?

25 A. That sounds correct.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Q. Okay.

2 MR. GOOD: Beg the Court's indulgence.

3 BY MR. GOOD:

4 Q. And about these pants, because there is
5 another pair of pants, was there a dispute over
6 what pair of pants she was wearing with Miss Dunn?

7 A. I'm sorry, I don't understand.

8 Q. Was there a dispute -- was there some
9 confusion over which pair of pants she was wearing?

10 A. I don't remember there being any
11 confusion, no.

12 Q. As part of the evidence which now has
13 been admitted into this trial, was there any
14 testing done on the pants?

15 A. Not at my direction.

16 Q. Was there any testing, to your
17 knowledge, done at anybody's direction on those
18 pants?

19 A. No.

20 Q. Testing for bodily fluids or DNA?

21 A. No.

22 MR. GOOD: May I approach?

23 THE COURT: You may.

24 BY MR. GOOD:

25 Q. Detective Bowen, we have a contact

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 entry form from a phone marked -- premarked
2 Defendant's Exhibit 7. Can you tell me what -- did
3 you take Andrew's phone as a result of your search
4 warrant at his house?

5 A. Yes.

6 Q. And from that phone did you do a data
7 dump to get all of the information?

8 A. I didn't personally, but we had one
9 done at the sheriff's office.

10 Q. As a result of that data dump, was
11 there information including text messages and
12 photographs and contacts and that sort of thing
13 typical?

14 A. Yes.

15 Q. What you're holding right there, is
16 that a contact that was retrieved from that data
17 dump on Andrew's phone?

18 A. It appears to be.

19 Q. Can you tell me whose contact that is
20 in Andrew's phone?

21 A. It says Robyn Dunn, Lexi, LOL.

22 Q. Okay. And do you know -- do you
23 recognize that phone number just sitting there?

24 A. Not just sitting here. Not without
25 referencing back to my report.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Q. Did you hear Miss Dunn say earlier when
2 shown a picture of the contact information that
3 that was her telephone?

4 A. I did.

5 Q. And her picture?

6 A. Yes.

7 MR. GOOD: May I approach the witness,
8 Your Honor?

9 THE COURT: You may.

10 MR. GOOD: I would like to admit this
11 as Defendant's Exhibit 7 and publish it to the
12 jury.

13 THE COURT: Any objection?

14 MS. ELLIOTT: No objection, Your Honor.

15 THE COURT: Defendant's 7 into evidence
16 without objection.

17 (DEFENDANT'S EXH. 7 in evidence.)

18 BY MR. GOOD:

19 Q. Detective Bowen, is that time and date
20 entry on that contact on Andrew's phone
21 representative of the time and date that that
22 contact would have been entered on to his phone, to
23 your knowledge?

24 A. To my knowledge, it should be.

25 Q. And what date and time does it say?

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 A. It says it was created December 7,
2 2014, at 0022 hours and 22 seconds eastern standard
3 time.

4 Q. What time in non-military time would
5 that be?

6 A. Right. The non-military time would be
7 12:22 a.m.

8 Q. So just 22 minutes after midnight; is
9 that correct?

10 A. That's correct.

11 Q. And I think that's all I have on that
12 question.

13 MR. GOOD: Thank you, Your Honor.

14 BY MR. GOOD:

15 Q. Detective Bowen, going back to Andrew's
16 house, when you interviewed Andrew you testified
17 that you and at least two other patrol units,
18 marked or unmarked, were on scene doing the
19 investigation with regard to the search warrant.
20 How long after you-all were there did Andrew show
21 up?

22 A. I don't remember exactly, but it was
23 pretty quickly that he showed up after we did.

24 Q. And you did not contact Andrew ahead of
25 him to tell him you were coming; is that correct?

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 A. No.

2 Q. So it was more or less kind of a
3 surprise visit when he got home? He didn't know
4 you guys were going to be there?

5 A. That's correct.

6 Q. And when he got there, would you say he
7 was very cooperative with you?

8 A. He was.

9 Q. Okay. And when you interviewed Andrew,
10 was he nervous?

11 A. Nervous and shaken.

12 Q. Maybe stressed out?

13 A. Definitely stressed.

14 Q. Did he prepare any kind of a statement?

15 A. Not that I could tell from the
16 interview.

17 Q. Did he talk to a lawyer beforehand?

18 A. No, not that he indicated.

19 Q. So he just waived his Miranda rights
20 and gave a statement without hesitation; is that
21 correct?

22 A. That's correct.

23 Q. Was it safe to say he wasn't
24 particularly articulate in his statement that he
25 gave?

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 A. He was not -- appeared to have not had
2 a whole lot of sleep prior to.

3 Q. Do you feel like he was truthful in his
4 statement to you?

5 A. I do.

6 Q. He admitted to you in his statement
7 that he was intoxicated?

8 A. He did.

9 Q. And he admitted without hesitation that
10 he did have sex with Miss Dunn?

11 A. That's correct.

12 MR. GOOD: Beg the Court's indulgence.

13 THE COURT: Take your time.

14 BY MR. GOOD:

15 Q. So, Detective Bowen, at any time Andrew
16 Kirkland has not been uncooperative with you; is
17 that correct?

18 A. There hasn't been any time, no.

19 Q. You only spoke with Andrew throughout
20 the entire process three times total; is that
21 correct?

22 A. That sounds about right.

23 Q. Okay. And the first time was when you
24 interviewed that day when he didn't know anybody
25 was coming?

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 A. That's correct.

2 Q. The second time when he called you to
3 find out how the investigation was going and you
4 told him it was continuing; is that correct?

5 A. Yes.

6 Q. And then the last time is when you
7 called him and said I have an arrest warrant,
8 please come turn yourself in; is that correct?

9 A. That's correct.

10 Q. So the only investigative time that you
11 talked to him was when -- the one interview the day
12 after?

13 A. Yes.

14 Q. Did Andrew promptly turn himself in?

15 A. He did.

16 Q. When he turned himself in, he had a
17 bond hearing that day. Did you attend his bond
18 hearing?

19 A. I believe I did.

20 MS. ELLIOTT: Objection; relevance.

21 THE COURT: Overruled.

22 BY MR. GOOD:

23 Q. Your report says the victim did not
24 attend the bond hearing because she couldn't travel
25 from Beaufort?

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 A. That's correct.

2 Q. Did you ever at any point have any
3 reason to believe that Andrew was untruthful or
4 dishonest with you?

5 MS. ELLIOTT: Objection.

6 THE COURT: Sustained.

7 BY MR. GOOD:

8 Q. Detective Bowen, is part of your job at
9 any time to mislead a suspect through your work
10 with cyber predators and that kind of thing?

11 A. Occasionally.

12 Q. Okay. And can you explain and tell me
13 a little bit about -- well, let me ask you this
14 way: As part of your investigation with cyber
15 predators, would you get online and mislead them a
16 little bit to get them to do certain things for
17 you?

18 A. I would not mislead to get them to do
19 things for me; that would be entrapment. I would
20 get online and portray the persona of a
21 14-year-old, and if they opened the door for
22 certain activities or types of chat, then I would
23 portray the 14-year-old allowing and continuing
24 that type of chat, yes.

25 Q. But you were untruthful with them

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 through the chats?

2 A. Yes.

3 Q. Earlier in your testimony with the
4 solicitor's office, you discussed -- you discussed
5 your reprimand while you were a school resource
6 officer. And were you disciplined for being
7 untruthful to the school principal?

8 A. Essentially, the discipline was for
9 conduct unbecoming was the official policy cited in
10 the discipline.

11 Q. Were you suspended without pay for that
12 incident?

13 A. I was.

14 MR. GOOD: Okay. Your Honor, I would
15 like to admit Defendant's Exhibit 2 premarked for
16 identification purposes.

17 THE COURT: Any objection?

18 MS. ELLIOTT: Cumulative, Your Honor.

19 THE COURT: Let me see Defendant's
20 Exhibit 2.

21 Sustained as cumulative. I'll take up
22 additional argument outside the presence of the
23 jury.

24 You may continue.

25 MR. GOOD: Sorry. Thank you.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 BY MR. GOOD:

2 Q. Where did you get Andrew's statement
3 from him, at his house? Where was it?

4 A. When Andrew arrived while we were doing
5 the search warrant, he and I sat in my car and he
6 gave me a statement. And I recorded it there.

7 Q. Is your patrol car -- or your cruiser
8 equipped with a dash cam recorder?

9 A. Mine is not.

10 Q. Okay. So you were not able to video
11 record his statement?

12 A. That's correct.

13 Q. And at any time subsequent to that day,
14 did you attempt to interview Andrew again or
15 videotape his statement?

16 A. I did not.

17 Q. And, again, did you videotape any of
18 the witnesses?

19 A. No.

20 Q. While we're talking about it, just to
21 recap, you didn't do any controlled interrogation
22 room interviews with any of the witnesses where
23 there was a video camera?

24 A. No. I interviewed them basically on
25 scene or in my vehicle.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Q. Does that occur through investigations
2 with Charleston County Sheriff's Department where
3 you do interrogation room interviews and bring
4 people in and videotape it?

5 A. Sometimes.

6 Q. So through pure investigation you
7 learned that Robyn, Lexi, Andrew, and Dewey went to
8 a bar called Famous Joe's; is that correct?

9 A. That's correct.

10 Q. Did you plan to go to the bar to do any
11 further investigating?

12 A. Not once I had gotten to the point that
13 I was in the investigation.

14 Q. What point was that?

15 A. After having interviewed all four of
16 the subjects involved.

17 Q. Okay. On page 45 of the transcript of
18 your interview with Andrew, you stated, I'm going
19 to go to the bar, you know, just all that, all that
20 stuff.

21 So you told Andrew that you were going
22 to go to the bar at that point, and that was
23 page 45. On page 51, at the end of Andrew's
24 interview, at that point you said, I still need to
25 go to the bar essentially.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 What -- what did you do after that that
2 changed your mind to not go to the bar?

3 A. After I was able to take a fresh look
4 at the statements and the evidence that we had, I
5 just didn't believe there would be any relevant
6 evidence that would be obtained from the bar.

7 There was no question that they were
8 there. All of the subjects indicated that they had
9 gone there. It would be essentially a delayed step
10 of going there that wouldn't produce anything
11 additional.

12 Q. If the bar had surveillance video,
13 would that be helpful?

14 A. It would have shown what they already
15 said, that they were there. That they all drank
16 and danced.

17 Q. So would it have shown what different
18 people's behavior was like or their level of
19 intoxication or dancing or --

20 A. It may have.

21 Q. So how about talking to the bartenders
22 or bar managers and whether they remembered
23 anything, would that have been helpful?

24 A. It would have only given an additional
25 evidence that they were where they said they were

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 at.

2 Q. How about getting receipts, not just to
3 show alcohol consumption, but more so to show a
4 time stamp on when they may or may not closed out
5 to get a better idea of when they left the bar?
6 Were any receipts sought after?

7 A. I didn't seek any receipts. It would
8 have given a specific timeline, but, again, it
9 wasn't in question the approximate times they were
10 there.

11 Q. The times, that wasn't in question?
12 But you heard Lexi state that she thought it was 11
13 p.m. or midnight when they left Andrew's house to
14 go to the bar, and you heard Miss Dunn's statement
15 she thought it was --

16 MS. ELLIOTT: Objection; pitting.

17 THE COURT: Rephrase your question.

18 BY MR. GOOD:

19 Q. Is there a question of the timeline --
20 exact timeline of the events of that night?

21 A. Specifically, minute by minute, but in
22 this investigation my view was that I was
23 interviewing and getting information from several
24 people who were intoxicated at the time. So once
25 the timelines were approximately matching up, I was

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 satisfied.

2 MR. GOOD: We are -- beg the Court's
3 indulgence.

4 BY MR. GOOD:

5 Q. Detective Bowen, we spoke a little
6 while ago about the data dump you did from Andrew's
7 phone. And you testified that there were text
8 messages that were retrieved from the telephone and
9 contacts and photographs.

10 MR. GOOD: May I approach the witness,
11 Your Honor?

12 THE COURT: You may.

13 BY MR. GOOD:

14 Q. We have this premarked as Defendant's
15 Exhibit 14. Can you look through that and verify
16 that that looks like text messages that came from
17 Andrew's cell phone pursuant to the forensic data
18 dump?

19 A. Yes. That's, essentially, the report
20 that we would receive.

21 Q. Would you -- would you agree that maybe
22 not every text message was retrieved throughout
23 these text message chains?

24 A. Yes.

25 Q. So there's a text message and sometimes

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 it -- some were missing and then there would be
2 another one; is that correct?

3 A. That occasionally happens, yes.

4 MR. GOOD: Your Honor, I would like to
5 admit Defendant's Exhibit 14.

6 MS. ELLIOTT: I don't think he's laid
7 the proper foundation yet.

8 MR. GOOD: I can continue.

9 THE COURT: Let me see the document.
10 Counsel, if you want to approach.

11 (Bench conference.)

12 THE COURT: Sustained.

13 BY MR. GOOD:

14 Q. While you were retrieving evidence,
15 Detective Bowen, did you seize or grab Robyn Dunn
16 or Lexi Allston's cell phones?

17 A. I did not.

18 Q. No data dumps were done on their cell
19 phones, or picture, or anything like that?

20 A. That's correct.

21 Q. So based on what we just discussed now,
22 the brunt of your investigation was on -- on the
23 four interviews that you did with Robyn, Lexi,
24 Andrew, and Dewey; is that correct?

25 A. That's correct.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Q. Did you ever offer Andrew a lie
2 detector test?

3 A. I did not.

4 Q. Did he ever offer to take one for you?

5 A. He didn't that I recall.

6 Q. Okay. Did you ever offer Miss Dunn a
7 lie --

8 MS. ELLIOTT: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. GOOD:

11 Q. Is it legal in South Carolina to
12 offer --

13 MS. ELLIOTT: Objection, Your Honor.

14 THE COURT: Let him finish the
15 question.

16 MR. GOOD: Thank you, Your Honor.

17 BY MR. GOOD:

18 Q. Is it legal in South Carolina pursuant
19 to Title 16 of the South Carolina Code of Laws to
20 offer a victim in these types of cases a polygraph
21 that is not required but is offered as an option?

22 MS. ELLIOTT: Objection, Your Honor.

23 THE COURT: I'm going to let him answer
24 that one.

25 THE WITNESS: Yes, it is legal. My

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 understanding, yes.

2 MR. GOOD: May I approach the witness,
3 Your Honor?

4 THE COURT: You may.

5 BY MR. GOOD:

6 Q. Detective Bowen, are you familiar with
7 this state law that I've handed to you?

8 A. Yes.

9 Q. Thank you. And can you recap for the
10 jury what that state law says?

11 MS. ELLIOTT: Objection, Your Honor.

12 THE COURT: Counsel, approach.

13 (Bench conference.)

14 THE COURT: Your objection is
15 sustained.

16 MR. GOOD: Thank you, Your Honor.

17 Beg the Court's indulgence.

18 THE COURT: Take your time.

19 BY MR. GOOD:

20 Q. Detective Bowen, back to Andrew's
21 interview. At the end of Andrew's interview, do
22 you recall saying, I can tell you right now if I
23 thought I was there I would arrest you, and I can
24 also tell you, at this point that's not going to
25 happen.

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 Do you remember saying that?

2 A. I do.

3 Q. And that was at the end of Andrew's
4 interview?

5 A. Yes.

6 Q. And at that point you had already
7 interviewed Robyn Dunn and Lexi Allston and almost
8 finished Andrew's interview?

9 A. Correct.

10 Q. And at that point, you did not think
11 you had enough to arrest Andrew?

12 A. I was not prepared to at that point,
13 no.

14 Q. The only other interview you did after
15 that was Dewey Kirkland?

16 A. Yes.

17 Q. And Dewey Kirkland, through your
18 investigation, was not there throughout the night,
19 was only there at the house after the bar for a
20 little while; is that correct?

21 A. That's correct.

22 Q. So after -- after -- again, after you
23 finished Andrew's interview, you interviewed his
24 brother, Dewey, but there was really no other
25 investigating on the case done; is that correct?

JASON BOWEN - CROSS EXAM BY MR. GOOD

1 A. After I interviewed Dewey and
2 everything was submitted, I did obtain a search
3 warrant for the phone and that was submitted to our
4 forensic personnel to complete a forensic
5 examination on the phone.

6 Q. And that was it?

7 A. That was it.

8 Q. Okay. So the interviews and the data
9 dump of the phone and that was it?

10 A. And there was additional phone calls
11 with Miss Dunn.

12 Q. Okay. So you kept talking to Miss
13 Dunn?

14 A. Yes.

15 Q. No more phone calls with Mr. Kirkland?

16 A. That's correct.

17 Q. How long after this incident did you
18 wait to call Andrew and ask him to turn himself in?

19 A. I don't remember the specific days, but
20 it was early January.

21 Q. Was it greater than a month after the
22 arrest -- I mean, after the incident?

23 A. I believe it was. Of course, we had
24 the holiday break and I have small children, so
25 that put some delays in the investigation.

JASON BOWEN - REDIRECT EXAM BY MS. ELLIOTT

1 Q. Would it surprise you if I told you it
2 was January 14th?

3 A. That sounds correct.

4 Q. And the incident occurred on
5 December 6th?

6 A. That's -- December 6th, 7th, yes.

7 Q. Would that be almost five weeks,
8 roughly?

9 A. Yes.

10 Q. After the incident?

11 A. That's correct.

12 MR. GOOD: I have no more questions.

13 Thank you, Detective Bowen.

14 A. Yes, sir.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MS. ELLIOTT:

18 Q. Detective Bowen, are you aware if lie
19 detector tests are admissible in criminal
20 proceedings in the State of South Carolina?

21 A. It's my understanding they are not.

22 Q. With your work with ICAC -- first of
23 all, tell us what ICAC is.

24 A. So ICAC is -- it stands for -- it's
25 ICAC. It's internet crimes against children. At

JASON BOWEN - REDIRECT EXAM BY MS. ELLIOTT

1 this time it's a nationwide task force that has
2 sub-task forces, if you will, in every state. Here
3 in South Carolina ours is run by the South Carolina
4 Attorney General's Office.

5 We have a task force officer in every
6 state. We are trained to basically a national
7 standard so we can refer cases across state lines
8 if need be, because the Internet works that way.
9 We investigate any crimes that involves a child and
10 technology. So child pornography, online
11 solicitation, anything along that category. And
12 then because of that, we often assist in other
13 investigations as well.

14 Q. And so from your experience and
15 training with that, you are familiar with various
16 forms of communication like via the Internet or by
17 cell phone?

18 A. Yes.

19 Q. Are you familiar with phone dumps?

20 A. I am.

21 Q. What does the term recovered mean in a
22 phone dump report?

23 A. So recovered typically means that
24 whatever that piece of data is has been deleted and
25 it was then recovered by our forensics software, so

JASON BOWEN - REDIRECT EXAM BY MS. ELLIOTT

1 the user would not have been able to get it back.
2 But because it still exists on the device, our
3 software is able to go in and pull it out.

4 Q. So when Mr. Good asked you about
5 messages being recovered from Mr. Kirkland's phone,
6 what would that mean the status of those messages
7 was?

8 A. They had been deleted prior to our
9 examination of the device.

10 Q. From the time of the report to the time
11 that you took the cell phone from Mr. Kirkland, do
12 you know approximately how long that was?

13 A. From the time of the report to the time
14 -- it was hours.

15 Q. Twelve hours?

16 A. Yeah, that -- that -- within that time
17 frame. I remember it being dark when we had his
18 interview and search warrant.

19 Q. When you took the phone, whose custody
20 was the phone in?

21 A. I received the phone from Mr. Kirkland
22 and then placed it into evidence.

23 Q. And from looking at a phone report and
24 Defendant's Exhibit, I believe, 7 -- do you have
25 Exhibit 7?

JASON BOWEN - REDIRECT EXAM BY MS. ELLIOTT

1 In looking at Defendant's Exhibit 7,
2 does anything in any of the information that you
3 reviewed related to the phone number that indicate
4 who put that contact information in there?

5 A. No.

6 Q. Or how Mr. Kirkland would have acquired
7 that information?

8 A. No.

9 Q. Are you familiar -- well, let me ask
10 you this: Who processes forensic evidence like DNA
11 and serology for the Charleston County Sheriff's
12 Office?

13 A. SLED.

14 Q. And is that the State law enforcement
15 division?

16 A. That is.

17 Q. Do they have any priority that they
18 give to the order that they want evidence to come
19 to it in a criminal sexual conduct in the third
20 degree?

21 A. Not that I'm aware of.

22 Q. Do you remember if you tried to contact
23 the defendant prior to going to his house and
24 serving the search warrant?

25 A. I remember in my notes there being a

JASON BOWEN - REDIRECT EXAM BY MS. ELLIOTT

1 noted that I tried to call him.

2 Q. You talked about controlled calls a
3 lot. Does every victim want to do a controlled
4 call?

5 A. No. It's not uncommon for a victim to
6 decline that opportunity.

7 Q. Why is that?

8 A. It's a very stressful time for them,
9 particularly in this case with the event had just
10 happened and I was asking her -- giving her that
11 opportunity almost immediately. So emotions are
12 still very high and very raw, if you will.

13 Q. Is the major goal of a controlled call
14 to get the suspect to give incriminating
15 information?

16 A. No.

17 Q. In total, how many parties did you
18 interview in this case?

19 A. I remember four.

20 Q. Did any party that you interviewed
21 dispute that Miss Dunn was intoxicated that night?

22 A. No one did.

23 MS. ELLIOTT: Beg the Court's
24 indulgence.

25 THE COURT: Take your time.

JASON BOWEN - RECROSS EXAM BY MR. GOOD

1 MS. ELLIOTT: Nothing further, Your
2 Honor.

3 THE COURT: Re-cross?

4 MR. GOOD: Thank you, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. GOOD:

7 Q. Detective Bowen, you just said no one
8 disputed that Ms. Dunn was intoxicated that night.
9 But you were here yesterday to hear her testimony
10 where --

11 MS. ELLIOTT: Objection; pitting.

12 THE COURT: Sustained.

13 MR. GOOD: I'll withdraw.

14 BY MR. GOOD:

15 Q. Back to the lie detector test. She
16 said -- Ms. Elliott said it was not admissible.
17 Would it have helped the investigation?

18 A. In this case I don't believe so. I
19 don't believe anybody was being particularly
20 untruthful.

21 Q. Okay. When you received Andrew's
22 telephone, his cell phone that we've been talking
23 about, while you were sitting in the car
24 interviewing him you took it right away; is that
25 correct?

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 A. That I remember, yes.

2 Q. And he wanted to make a telephone call,
3 but you had him make it from your phone; is that
4 correct?

5 A. That's correct.

6 Q. And then you shut his phone down?

7 A. I did.

8 MR. GOOD: Okay. Beg the Court's
9 indulgence.

10 No more questions. Thank you.

11 THE COURT: You may step down.

12 Call your next witness.

13 MS. ELLIOTT: The State calls Jaclynn
14 Mc Kay.

15 JACLYNN MCKAY,

16 being first duly sworn, testified as follows:

17 THE CLERK: Please take your seat,
18 spelling your first and last name for the record.

19 THE WITNESS: My name is Jaclynn McKay
20 J-A-C-L-Y-N-N M-C-K-A-Y.

21 MS. ELLIOTT: Thank you, Your Honor.

22 DIRECT EXAMINATION

23 BY MS. ELLIOTT:

24 Q. Ms. McKay, where are you employed?

25 A. I'm currently employed at the South

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 Carolina Law Enforcement Division, commonly
2 referred to as SLED.

3 Q. And what is your position currently
4 with SLED?

5 A. Currently, I'm a crime scene agent in
6 the crime scene department.

7 Q. Was that your role back in March of
8 2016?

9 A. No, it was not. I was a forensic
10 serologist in the DNA casework department.

11 Q. And in total, how long have you worked
12 for the State law enforcement division?

13 A. March will be three years.

14 Q. Tell us a little bit about your
15 educational background that aids you in your job at
16 the SLED.

17 A. I received a Bachelor's of Science
18 degree in Forensic Science with a concentration in
19 forensic biology and minors in both biology and
20 chemistry from the Virginia Commonwealth
21 University, in Richmond, Virginia.

22 Q. What is forensic serology?

23 A. Forensic serology is the study of
24 identifying the presence of biological fluids on
25 items of evidence submitted or items of evidence

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 associated with a crime. At SLED we primarily look
2 for blood, semen, and saliva.

3 Q. And what type of training do you have
4 to become a forensic serologist?

5 A. Upon my employment at SLED, I
6 participated in the in-house training program which
7 took approximately seven months. During this
8 training program I learned about the labs policies
9 and procedures, I shadowed my fellow
10 court-qualified forensic serologist, I performed
11 analysis on training samples as well as supervised
12 casework, and I took a competency test that
13 assessed my knowledge and skills in the area of
14 forensics or forensic serology.

15 And once I passed the competency test,
16 I was deemed capable to perform independent
17 casework.

18 Q. And, roughly, how many cases have you
19 processed as a serologist at SLED?

20 A. Through my training as well as
21 independent casework, I have worked on
22 approximately 400 cases in the forensics while I
23 was in the serology department.

24 Q. And, roughly, how many cases with CSC
25 kits, or criminal sexual conduct kits, have you

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 worked on at SLED?

2 A. With my training, as well as
3 independent casework, I've worked on approximately
4 300 cases with sexual collection kits.

5 Q. Have you ever testified before in
6 general sessions court in the State of South
7 Carolina?

8 A. Yes, I have.

9 Q. How many times?

10 A. Four times.

11 Q. And have you ever been qualified as an
12 expert in forensic serology in a general sessions
13 court in South Carolina?

14 A. Yes, I have.

15 Q. And how many times?

16 A. I've been qualified as an expert in
17 forensic serology three other times.

18 MS. ELLIOTT: Your Honor, at this time,
19 I would offer Ms. McKay as an expert in forensic
20 serology.

21 MR. GOOD: No objection, Your Honor.

22 THE COURT: Whose witness?

23 MR. GOOD: Oh, I'm sorry, it's hers.

24 MS. EUDY: No objection.

25 THE COURT: All right. Ladies and

5 There is an exception in our rules when
6 someone is qualified because of their education and
7 experience; they are permitted to give their
8 opinions in certain areas if they are qualified as
9 an expert.

10 This witness will be qualified in the
11 area of forensic serology to give opinion testimony
12 in that area. That does not mean that you must
13 accept that opinion. It is simply evidence for you
14 to use in any way that you see fit and give it the
15 weight and credibility you believe is appropriate.

16 Ms. Elliott.

17 MS. ELLIOTT: Thank you, Your Honor.

18 BY MS. ELLIOTT:

19 Q. Ms. McKay, can you tell us -- you said
20 that serology looks for three biological fluids.
21 What are those fluids?

22 A. At SLED we primarily look for blood,
23 semen and saliva in the forensic serology unit.

24 Q. And tell us about what semen is?

25 A. Semen is the male reproductive fluid.

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 It has a liquid and cellular fractions. In the
2 cellular fraction, it contains cells that are used
3 in order to microscopically identify semen, as well
4 as the cells hold the material necessary for DNA
5 analysis.

6 And in the fluid fraction or the fluid
7 portion of semen, it contains a lot of components
8 that are used in the serological analysis that we
9 do in order to identify the biological fluids of
10 semen.

11 Q. So what are you using to try to
12 identify whether something has semen on it?

13 A. So we have a series of testing that we
14 do. We perform serological testing that could be
15 presumptive or confirmatory testing, which is
16 either indicative that the biological fluid might
17 be there or can confirm its presence, as well as we
18 perform a microscopic examination in order to find
19 spermatozoa, which is the male reproductive cell in
20 seminal fluids.

21 Q. So kind of explain that. It sounds
22 like there is a test. What are you testing for?

23 A. So when -- the way that we test for
24 semen, we're looking for what we call P30, which is
25 a component in the liquid fraction of semen. And

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 it's -- we use what we call a card test. It's very
2 similar to the way a pregnancy test works.

3 If a line shows up, you get a positive
4 result indicating that that P30 component is there.
5 If a line is not there, then that P30 component is
6 not there. That's the test that we used to look
7 for P30 in this case.

8 Q. What is the significance of P30?

9 A. It's found in very high concentrations
10 in seminal fluid, and it's important serological
11 analysis because it can still be used to identify
12 semen if there is no sperm or a little sperm count
13 associated with the sample.

14 Q. So if you were doing a test and there
15 is a high P30 level -- would that be the right way
16 to phrase that?

17 A. Yes.

18 Q. What would happen to the evidence after
19 that?

20 A. If we have a positive result on our
21 card test for P30, that item of evidence would be
22 submitted -- a cutting of that item would be
23 submitted to the DNA caseworker for further
24 analysis.

25 Q. What about -- you mentioned that you

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 could look for spermatozoa, and I think you touched
2 on what that is. Kind of walk us through that
3 step. Are you looking for it? How do you identify
4 it?

5 A. So normally we receive samples dried on
6 swabs. So I will take a small portion of a swab
7 and I will turn it into a liquid form. And I will
8 take a small part of that liquid form and put it on
9 a microscope slide. We stain it with a two-color
10 biological stain.

11 It just kind of helps highlight the
12 different parts of the cellular material, and then
13 we'll look at it under a microscope. We are
14 specifically looking for the sperm cell in semen
15 sample.

16 Q. If you see a sperm cell in a semen
17 sample, what happens to that -- that item of
18 evidence?

19 A. Again, that item will be forwarded to
20 the DNA analysis section or the DNA section for
21 further analysis.

22 Q. So if -- there are two tests as I
23 understand it, one looking for sperm and one
24 looking for P30. If either one of those are
25 positive, does the item still go up to DNA or is it

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 held back from DNA analysis?

2 A. If either component is found, it will
3 be forwarded to DNA section for analysis.

4 Q. What are some reasons that spermatozoa
5 or biological fluid may not be identified in a
6 sexual assault case?

7 A. There are various scenarios why sperm
8 or biological fluid may not be found. If a condom
9 was used, if no ejaculation occurred, if the source
10 of semen has a low sperm count or no sperm due to a
11 possible vasectomy, the victims's positioning and
12 physical activities after assault; for example,
13 showering or urinating can also affect whether a
14 sample would be there, the time between collection
15 of the sexual assault kit and when the assault
16 occurred, as well as a possible false report.

17 Q. Can the skill of the selector impact
18 whether or not the evidence is preserved?

19 A. I would say it's possible.

20 Q. Did you receive evidence in this case?

21 A. I did.

22 Q. What tests did you perform on it?

23 A. I received a sexual evidence collection
24 kit and within it were smears from the vaginal,
25 oral, and rectal swab. For the smears I performed

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 a microscopic examination. So I stained the smears
2 and looked at them under the microscope.

3 For the vaginal, rectal, and oral
4 swabs, I performed a P30 card test as well as made
5 my own microscope slide and looked at that under
6 the microscope. There were left- and right-hand
7 fingernail scrapings collected.

8 These are submitted on -- essentially,
9 it's a plastic stick that has a tip on the end
10 that's in separate envelopes for which hand it's
11 collected from. I cut the tips of these sticks and
12 put them in a tube and forwarded that on to the DNA
13 section.

14 There was a pubic hair combing
15 envelope, and I performed a visual examination to
16 see if there was any hair in the combing
17 collection; and there was also a debris collection,
18 and I performed a visual exam to see if there was
19 anything of evidentiary value within the envelope.

20 Q. And what did you determine about that?

21 A. For the smears that were collected by
22 the hospital, there was no spermatozoa identified.
23 For the vaginal, oral, and rectal swabs, they --
24 all three of them were negative for P30 and
25 spermatozoa; therefore, on my report I indicate

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 it's no semen identified.

2 The fingernail scrapings were submitted
3 for further analysis to the DNA section. The pubic
4 hair combing, no hair was found; and on the debris
5 collection nothing of biological evidentiary value
6 was found.

7 MS. ELLIOTT: Beg the Court's
8 indulgence.

9 THE COURT: Take your time.

10 BY MS. ELLIOTT:

11 Q. Is it uncommon for you not to find
12 biological fluids in sexual assault kits that you
13 have analyzed?

14 A. It can go either way. Since we are
15 solely basing the evidence that is submitted to us
16 and we are testing that, it -- it can go either way
17 since we can only speak about the science that was
18 performed on the items of evidence.

19 Q. Once you finished performing your test,
20 what did you do with the evidence?

21 A. The evidence collection kit is sealed
22 inside a heat-sealed pouch. So the items that
23 needed further analysis in the DNA department were
24 cut and placed into tubes, which would have been
25 the fingernail scrapings sticks as well as the

JACLYNN MCKAY - DIRECT EXAM BY MS. ELLIOTT

1 victim's buccal swab that was submitted with the
2 kit. They were placed into tubes.

3 They were sealed in a separate
4 heat-sealed pouch. That was then put inside the
5 larger heat-sealed pouch, and all of that was
6 forwarded up to the DNA section.

7 MS. ELLIOTT: Thank you, Ms. McKay.
8 Those are all the questions I have for you.

9 MS. EUDY: We don't have any questions
10 for Ms. McKay.

11 THE COURT: May this witness be
12 excused?

13 MS. EUDY: Absolutely.

14 MS. ELLIOTT: No objection from the
15 State.

16 THE COURT: You may step down. Thank
17 you.

18 MS. ELLIOTT: Your Honor, the State
19 calls Catherine Leisy.

20 CATHERINE LEISY,
21 being first duly sworn, testified as follows:

22 THE CLERK: Please take your seat,
23 spelling your first and last name for the record.

24 THE WITNESS: Catherine Leisy,
25 C-A-T-H-E-R-I-N-E L-E-I-S-Y.

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 DIRECT EXAMINATION

2 BY MS. ELLIOTT:

3 Q. Morning, Ms. Leisy. Where are you
4 employed?

5 A. I work for the South Carolina Law
6 Enforcement Division, more commonly referred to as
7 SLED.

8 Q. What is your job title?

9 A. I'm a forensic scientist assigned to
10 the DNA casework department.

11 Q. And what are your responsibilities with
12 SLED?

13 A. My responsibilities include processing
14 forensic cases, generating reports based on the
15 results and conclusions drawn, and testifying for
16 those reports if necessary. I also assist in the
17 training of less experienced analysts, and I have
18 several quality control duties in the laboratory.

19 Q. Tell us about your educational
20 background.

21 A. I have a Bachelor of Science in Genetic
22 Engineering from Cedar Crest College in Allentown,
23 Pennsylvania.

24 Q. How long have you worked in the area of
25 DNA analysis?

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 A. I've been at SLED for almost 12 years,
2 and prior to my time at SLED I spent four years
3 working as a forensic DNA analyst in a private
4 sector facility known as Morgan Selmar, which was
5 located in Germantown, Maryland, where I did the
6 same type of testing analysis as I did here.

7 Q. What kind of training do you have that
8 qualifies you for your job?

9 A. I received in-house training by other
10 court-qualified analysts in all the different
11 testing and analyses I'm required to perform. I'm
12 also required to participate in continuing
13 education which consists of training seminars and
14 conferences that relate to new techniques and test
15 analyses that are available.

16 Q. Have you ever testified as an expert in
17 DNA identification testing before?

18 A. I have.

19 Q. How many times?

20 A. In over 50 cases.

21 MS. ELLIOTT: Your Honor, at this time
22 I would offer Ms. Leisy as an expert in DNA
23 analysis.

24 THE COURT: Any objection?

25 MS. EUDY: No objection.

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 THE COURT: She will be so qualified.

2 BY MS. ELLIOTT:

3 Q. Can you explain to us a little bit
4 about what is DNA?

5 A. DNA stands for deoxyribonucleic acid.
6 It is the genetic material found in all our body
7 cells with the exception of our red blood cells.
8 DNA is packaged into structures called chromosomes
9 which contain our genes. And these are simply
10 strands of DNA that comprise characteristics such
11 as our height and our eye color.

12 We inherit one copy of DNA from our
13 mother and one from our father and, therefore, we
14 have two copies of every gene. Now, approximately,
15 99.9 percent of an individual's DNA is identical to
16 that of everyone else's. It's the variation of
17 that remaining .1 percent that we test that allows
18 us to tell different people apart.

19 Q. And for any given individual, is the
20 DNA information in one body fluid tissue the same
21 as the DNA information in other body fluids or
22 tissue of that same individual?

23 A. Yes.

24 Q. So to put that in laymen's terms, the
25 DNA that's in my skin can be the same DNA that's in

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 my liver?

2 A. That's right.

3 Q. Is there any dispute in the scientific
4 community regarding the principles that you just
5 discussed?

6 A. No, there is not.

7 Q. Is what is know as PRC STR testing
8 performed in your lab?

9 A. It is, yes.

10 Q. What is that?

11 A. PCR stands for polymerase chain
12 reaction. It's a laboratory technique that allows
13 us to make copies of the specific DNA locations
14 that we're interested in testing. Those locations
15 are referred to as STR, short tandem repeats.

16 And STR is just the location in our DNA
17 where a short core unit of DNA repeats a certain
18 number of times. And it's the number of times that
19 unit repeats that varies from person to person in
20 each location.

21 Q. And what are the steps involved when
22 you're using this test on a piece of evidence?

23 A. The initial step is DNA extraction.
24 Essentially, we're just removing the DNA from the
25 item that we're interested in testing. The next

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 step is amplification which is the PCR process
2 itself where we're making copies of the STR
3 locations. Once we have all of these locations
4 copied, we have what we refer to as a DNA profile.

5 The DNA profile is then developed from
6 an item of evidence that can be compared to the
7 profile of a known individual to try to determine
8 whether or not that individual is the contributor
9 of the biological material that we're testing.

10 Q. What safeguards and controls are used
11 to ensure the integrity of the samples and the
12 reliability of their testing process?

13 A. When each case is submitted to the
14 laboratory, it's assigned a unique case number.
15 And then within each case, each item is assigned a
16 unique number for identification purposes. We also
17 sterilize our work space and the instruments that
18 we use in between different samples to prevent any
19 form of contamination.

20 We also use what we refer to as
21 positive and negative controls. A positive control
22 is just a sample that we already basically know the
23 DNA profile of. We run that to make sure that our
24 instruments and all of our reagents and chemicals
25 are working as we expect. And we use negative

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 controls to show there has been no introduction of
2 foreign DNA during testing as that should be blind.

3 Q. Did you receive any evidence in this
4 case?

5 A. I did.

6 Q. What did you receive?

7 A. I received what was identified as a
8 sexual assault evidence collection kit from Robyn
9 Dunn.

10 Q. Within the DNA analysis and serology
11 community, is there a preferred form of evidence to
12 get?

13 A. In terms of how it's collected or --

14 Q. When -- when given an option between
15 several items to test, how would you prioritize or
16 prefer to get the evidence?

17 A. In terms of what we test, we will
18 typically go by either an incident report or
19 information that is collected during collection of
20 the evidence to determine what we consider to be
21 most probative. And by probative we just mean what
22 is most likely to provide us an informative link
23 between two people or between a person and an item
24 of evidence.

25 So if an individual has been stabbed,

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 we're going to look for blood at the scene. We're
2 going to look for something that links back to the
3 supposed accident or incident that happened.

4 Q. And, specifically, in relation to
5 sexual assault cases, when offered a CSC kit, as
6 you call it, or an article of clothing the victim
7 was wearing, which would you prefer to test?

8 A. It depends on the actual details of the
9 incident. Typically, we're going to start with
10 what is in the sexual assault evidence collection
11 kit as those items are taken directly from the
12 body.

13 If we're looking for material left on
14 an item of clothing, that is also an option, but
15 typically we're going to start with what's in the
16 kit.

17 Q. Why that?

18 A. Again, these are very intimate samples
19 that have been collected directly from the
20 individual's body and can give us some idea of the
21 physical connection between two people.

22 Q. Did you perform any DNA testing on any
23 of the items in the CSC kit?

24 A. I did.

25 Q. What items?

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 A. I tested what was identified as SLED
2 item no. 2.5.1, left-hand fingernail scrapings;
3 2.5.2, right-hand fingernail scrapings; and SLED
4 item 2.7, which was a buccal swab from Robyn Dunn.
5 That item was used to develop a known profile from
6 Ms. Dunn.

7 Q. What is a buccal swab?

8 A. A buccal swab is a cotton swab that's
9 rubbed against the inside of the cheek to gather
10 cells from inside the mouth to develop a profile.

11 Q. And what was the result of that
12 testing?

13 A. The partial DNA profile that was
14 developed in the left-hand fingernail scrapings is
15 insufficient for interpretation. And the DNA
16 profile developed from the right-hand fingernail
17 scrapings were attributable to Robyn Dunn.

18 I performed what we refer to as YSTR
19 testing. That's a test that specifically targets
20 locations on the Y chromosome, so we would only be
21 looking for male DNA. And the test for that
22 particular YSTR profile was negative for both
23 items, so no profile was developed.

24 Q. So SLED items 2.5.1, which was the
25 left-hand fingernail scrapings, was insufficient

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 for interpretation. Can you explain that for us
2 real quick?

3 A. Essentially, we test for 15 different
4 STR locations. For this particular item, I was
5 only able to develop information at one of those 15
6 locations due to there not being enough DNA present
7 to develop a more full profile. And that's simply
8 not enough information for us to make a comparison
9 between evidence and a known individual.

10 Q. Would it be fair to say that you
11 couldn't even say if that sample was Ms. Dunn or
12 someone else completely?

13 A. Correct. It's just not suitable for
14 comparison with any individual.

15 Q. And then for item 2.52, the right-hand
16 fingernail scrapings, that came back to Ms. Dunn?

17 A. That profile does match the profile
18 developed for Miss Dunn.

19 Q. Does any of your analysis rule out that
20 Ms. Dunn had contact with any other people?

21 A. It does not. It simply means there was
22 none other than Ms. Dunn indicated on those two
23 samples.

24 Q. Were there any other items in the kit
25 when you received it?

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 A. Yes, there were.

2 Q. What were those other items?

3 A. In the kit there was also a set of
4 smears that were to be used for microscopic
5 examination. I believe it was vaginal, oral and
6 rectal smears. There were vaginal swabs, oral
7 swabs, rectal swabs, pubic hair combing and debris
8 collection.

9 Q. Did you test any of those items?

10 A. I did not.

11 Q. Why not?

12 A. Based on the serology testing that was
13 performed prior to my receiving the case, there was
14 no indication of bodily fluid present at those
15 items.

16 Q. But if the serology is just looking for
17 body fluids, why wouldn't you have tested it for
18 touch DNA?

19 A. That's not common practice for us.
20 When we're dealing with, let's say, vaginal swabs,
21 we're typically looking for a bodily fluid when
22 we're running a CSC kit.

23 Q. Does that eliminate the possibility
24 that Miss Dunn and the defendant, Mr. Kirkland,
25 were -- had any intimate physical contact?

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 A. I can't rule out any contact. It's
2 just, essentially, there's no indication in the
3 sample that I tested of a second individual.

4 Q. So explain that to me. It would seem
5 that whenever two people come together they're
6 going to trade some DNA, so there should be
7 evidence behind.

8 A. Correct. Typically, you would expect
9 to see some level of transfer. It really becomes a
10 matter of is there enough transfer for us to be
11 able to detect it. Are we talking about just
12 physical contact between skin or transfer of bodily
13 fluids, which we would expect to give us a greater
14 amount of DNA.

15 So, again, it's based on case specifics
16 how much DNA is present to begin with and exactly
17 what it is that we're looking for.

18 Q. Are there any things that can mask DNA
19 in, say, a vaginal swab or any of the swabs that
20 were requested?

21 A. Not necessarily mask it. You can have
22 -- introduce items that can cause DNA to break
23 down. If the DNA is present and is suitable for
24 testing, we will detect it.

25 Q. What would be the ideal circumstance

CATHERINE LEISY - DIRECT EXAM BY MS. ELLIOTT

1 for finding -- finding DNA after a sexual assault?

2 A. Again, it is based on the specifics of
3 a particular case. Typically, what we're looking
4 for is either semen or saliva that's been
5 transferred from one individual to another. Again,
6 it's very case specific as to what we're looking
7 for.

8 Q. How common is it to find foreign DNA
9 after an alleged sexual assault?

10 A. Again, many factors go into it.
11 Sometimes we find whole profiles from a male and a
12 victim. Sometimes we don't find any for an
13 individual. It really just depends on what's
14 present in the kit when it is submitted to us.

15 MS. ELLIOTT: Beg the Court's
16 indulgence.

17 THE COURT: Take your time.

18 MS. ELLIOTT: I don't have any more
19 questions for you at this time. Please answer any
20 that Miss Dunn (sic) might have for you.

21 MS. EUDY: We don't have any reason to
22 question Ms. Leisy.

23 THE COURT: You may step down. You're
24 free to go.

25 THE WITNESS: Thank you.

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 THE COURT: Call your next witness.

2 MR. EVANS: The State calls Kathy
3 Gill-Hopple.

4 KATHY GILL-HOPPLE,
5 being first duly sworn, testified as follows:

6 THE CLERK: Please take your seat,
7 spelling your first and last name for the record.

8 (Bench conference.)

9 THE WITNESS: My name is Kathy
10 Gill-Hopple, spelled K-A-T-H-Y G-I-L-L hyphen
11 H-O-P-P-L-E.

12 THE COURT: Thank you, Ms. Gill-Hopple.
13 Ladies and gentlemen of the jury, I
14 apologize. That had -- the conversation at the bar
15 had nothing to do with this case.

16 I'm chief administrative judge for
17 Charleston this six months, and so I have a lot of
18 other administrative matters going on, trying to
19 juggle a lot of balls and keep a lot of things
20 moving. So I apologize. Please do not draw any
21 inference from what was happening at the bar.

22 You may continue.

23 MR. EVANS: Okay. Thank you. May it
24 please the Court?

25 DIRECT EXAMINATION

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 BY MR. EVANS:

2 Q. Good afternoon, Dr. Gill-Hopple. How
3 are you?

4 A. Good.

5 Q. Been feeling a little under the weather
6 lately?

7 A. I have the flu.

8 THE COURT: It is not contagious?

9 THE WITNESS: No.

10 BY MR. EVANS:

11 Q. I appreciate you being here. Where are
12 you currently employed?

13 A. Medical University South Carolina.

14 Q. And what is your position at MUSC?

15 A. I'm the coordinator of the forensic
16 nurse examiner program.

17 Q. And what are your duties as the
18 coordinator and also as a SANE nurse?

19 A. My duties as a coordinator is to manage
20 the day-to-day activities, scheduling, hiring,
21 quality assurance, case review, policy development
22 and training.

23 Q. So what would your duties as a SANE --
24 do you also practice as a SANE nurse?

25 A. I do.

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 Q. What are your duties as a SANE nurse?

2 A. As a SANE nurse, I do direct patient
3 care, I provide medical forensic exams for adults
4 age 18 and older.

5 Q. What is your educational background?

6 A. I have a Bachelor's of Science in
7 Nursing from Saint Louis University, Master's of
8 Science in Nursing from Wichita State University,
9 and a Doctorate in Nursing from the University of
10 Nebraska Medical Center.

11 Q. Do you have any training specific to
12 sexual assault forensic examinations?

13 A. I do. I have attended a 40-hour
14 training program for adults and adolescents,
15 another 40-hour training program for pediatrics as
16 well as additional advanced training, and I'm
17 certified in adults and pediatrics.

18 Q. How many SANE exams do you think you
19 have performed in your career?

20 A. Approximately, 155.

21 Q. Have you ever been qualified as an
22 expert in court before?

23 A. I have.

24 Q. In South Carolina?

25 A. Yes.

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 MR. EVANS: Your Honor, at this time, I
2 would move to qualify Dr. Gill-Hopple as an expert
3 in forensic sexual assault nurse examinations.

4 THE COURT: Any objection?

5 MS. EUDY: No objection.

6 THE COURT: She will be so qualified.

7 MR. EVANS: Thank you, Your Honor.

8 BY MR. EVANS:

9 Q. Dr. Gill-Hopple, in your experience,
10 are sexual assaults always reported immediately?

11 A. No.

12 Q. What are some reasons for delayed
13 reporting?

14 A. The reasons are varied. Sometimes it
15 is because people aren't sure that they will be
16 believed. They are not sure that they will have
17 support from their family or friends, or they may
18 not be sure that law enforcement will handle it.
19 They may be afraid of retribution.

20 Sometimes people are not even sure it's
21 a crime. Sometimes people are not sure what
22 happened. Sometimes they are afraid they will
23 lose their job or friends or anything else.

24 Q. What is a SANE nurse relative to a
25 registered nurse, a regular RN?

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 A. In order to become a SANE nurse -- and
2 SANE stands for sexual assault nurse examiner -- a
3 person has to already be a registered nurse and
4 have some years of experience. They have to attend
5 a 40-hour training course, and then that is
6 followed by a clinical -- what we call
7 preceptorship, which is another clinical hands-on
8 training portion where the nurse typically has
9 other classes to attend, but then works in depth
10 with another nurse examiner observing and then
11 gradually taking on those duties.

12 Q. So it is preferable for a sexual
13 assault exam to be performed by a SANE nurse as
14 opposed to a registered nurse?

15 A. Well, sure. That's preferable, but
16 there are not that many SANE nurses around. So
17 it's not unusual for any other nurse or physician
18 to perform that exam.

19 Q. Would they have had the specialized
20 training that the SANE nurse has?

21 A. No.

22 Q. Okay. What, typically, takes place
23 during a sexual assault exam?

24 A. During a sexual assault exam the
25 patient is given information about resources in the

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 community and, also, given the opportunity to
2 consent to any part of the exam at all with the
3 goal being giving control back to the patient.

4 The exam consists of collecting a
5 history, doing a head-to-toe physical exam, doing a
6 detailed genital exam, collecting forensic
7 evidence, and providing appropriate medical
8 treatment.

9 Q. So the history is that just the patient
10 telling the nurse what happened in their own words?

11 A. Well, it's that, but it's much bigger
12 than that. It's a medical history about any
13 potential medical concerns, allergies, past
14 injuries, all of those things that will factor in
15 as well as the account of the assault.

16 Q. Do patients always have a complete
17 account of the assault in their history?

18 A. In my experience, they do not always.

19 Q. There are things they don't remember
20 from the incident sometimes?

21 A. Yes.

22 Q. And you also mentioned a genital exam.
23 Can you explain that to the jury?

24 A. A detailed genital exam is a fairly
25 invasive procedure for a female to go through.

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 I think any women in the courtroom can probably
2 identify with going to the gynecologist's office
3 and getting a pap smear. It's kind of like that.

4 You're laying on a table with your legs
5 in stirrups, and when the SANE nurse does the exam,
6 the detailed part is just really carefully looking
7 at all the genital landmarks, assessing for injury,
8 tenderness, anything at all unusual, as well as
9 collecting the evidence.

10 So it's time-consuming. It does
11 involve a speculum being placed inside the vaginal.
12 It does involve swabbing on the outside, swabbing
13 on the inside. It may also include photography.

14 Q. Is the exam done just with the naked
15 eye, or is there any other tools that you use to
16 see if there are any injuries?

17 A. Well, there is a number of tools that
18 we can use, but, essentially, it is with the naked
19 eye under most circumstances, particularly for
20 adults. The other tools that we could use would be
21 a speculum. We might have a meshing tool that
22 doesn't go inside the body. It just measures on
23 the outside.

24 We can use Toluidine blue dye, which is
25 a substance that we paint on the skin and then wipe

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 off, and whatever is left over that is absorbed
2 into the nucleus of the cell can highlight injury.

3 We can use some other tools to expand
4 the edges of the hymen. We use a camera to
5 document our findings.

6 Q. Is it unusual in your experience for --
7 to have a sexual assault exam where you do not note
8 injury to the genitals?

9 A. No, it is not.

10 Q. What happens to the female body when
11 there is penetration -- and this may be a weird way
12 to phrase it -- but the body is not ready for sex?

13 What happens to the female body -- is
14 that even an accurate statement?

15 A. Not really.

16 Q. Explain why it's not an accurate
17 statement.

18 A. Well, many people think that there is a
19 hymen that covers over the vaginal opening, and
20 that when a girl has sex for the first time that
21 hymen is broken, but that's not true. It's a
22 common misconception.

23 Every female has a hymen, and the hymen
24 is considered to be a piece of tissue that is sort
25 of like a collar, and it goes around the vaginal

KATHY GILL-HOPPLE - DIRECT EXAM BY MR. EVANS

1 opening, but doesn't cover it. When a girl has
2 periods, then she has more estrogen in her body, a
3 hormone that is essential for making that tissue
4 very elastic with the purpose ultimately being so
5 that it can stretch enough to allow a baby to be
6 born through the birth canal.

7 So as long as a female has had periods,
8 that part of the body is very stretchy. And it can
9 stretch to allow a baby to come out, it can stretch
10 to allow a penis to go in, to allow tampons to go
11 in, to allow speculums to go in.

12 So in that sense, that part of the body
13 is very forgiving, but I'm not sure if what you're
14 talking about is with under age, like prepuberty?

15 Q. For an adult. There are reasons for an
16 adult why genital injuries may not occur with
17 penetration, correct?

18 A. It's not unusual for penetration to
19 occur and there to be no injury because of the
20 elasticity of the tissue.

21 Q. Would it -- would the way a victim --
22 would a victim's capacity or incapacity have any
23 effect on that as well, in your experience?

24 A. By -- can you tell me what you mean by
25 capacity?

KATHY GILL-HOPPLE - CROSS EXAM BY MS. EUDY

1 Q. For instance, if someone is passed out
2 or sleeping.

3 A. Yes, it can have an effect. A person
4 who is passed out or unconscious because of a
5 medical condition or because they are asleep or
6 because of an overdose or because of an excessive
7 amount of alcohol or drugs or anything, that person
8 is in a state of complete relaxation, so there
9 isn't any tension in the body. So there is less
10 likely to be injury because it is so stretchable
11 and so relaxed.

12 Q. So, in your experience, a lack of
13 genital injuries does not necessarily indicate a
14 consensual sexual encounter; correct?

15 A. That is true.

16 MR. EVANS: Beg the Court's indulgence.

17 Thank you, Dr. Gill-Hopple. I don't
18 have anything further at this time. Please answer
19 any questions that the defense may have for you.

20 THE COURT: Ms. Eudy.

21 CROSS-EXAMINATION

22 BY MS. EUDY:

23 Q. Good afternoon.

24 A. Hi.

25 Q. You said earlier, I believe, I just

KATHY GILL-HOPPLE - CROSS EXAM BY MS. EUDY

1 want to clarify this, when you were talking to
2 Mr. Evans that essentially -- or the vaginal exam
3 generally or essentially is done with the naked eye
4 under most circumstances?

5 A. Yes..

6 Q. And so it's not a breach of the
7 standard of care not to use some of the other tools
8 such as the dyes and whatnot that you talked about
9 earlier?

10 A. That's true.

11 Q. And some facilities don't even use the
12 dye or these other tools as a standard?

13 A. That may be true.

14 Q. And Miss Dunn, she was never examined
15 by you, correct?

16 A. No. I don't know that name.

17 Q. Okay. Robyn Dunn is the person that's
18 made allegations in this case against my client,
19 Andrew Kirkland. You have never to your knowledge
20 examined Robyn Dunn?

21 A. I have not.

22 Q. Do you know if her examination was done
23 at MUSC?

24 A. I'm not aware that it was.

25 Q. Okay. Because it was done at Beaufort

KATHY GILL-HOPPLE - CROSS EXAM BY MS. EUDY

1 Memorial. Okay. And I think it's clear from your
2 testimony earlier, but I want to make sure. You
3 stated that it's not unusual for a P.A. or another
4 nurse, that's not a certified SANE nurse, to do the
5 vaginal exam when they come into the facility and
6 report a rape?

7 A. If there is not a nurse that's already
8 trained as a sexual assault nurse examiner,
9 somebody has to provide care so it could very well
10 be done.

11 Q. And that happens regularly because, as
12 you said, there are not a lot of SANE nurses
13 around?

14 A. Yes.

15 MS. EUDY: I think that's all I have
16 for you. Thank you.

17 THE COURT: Any redirect?

18 MR. EVANS: No, Your Honor.

19 THE COURT: You may step down. Feel
20 better. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Call your next witness.

23 MR. EVANS: Beg the Court's indulgence.

24 Your Honor, at this time the State
25 would rest its case.

1 THE COURT: Ladies and gentlemen, that
2 is an appropriate time for us to take our lunch
3 break. There is a matter of law that I will have
4 to take up outside of your presence. So in order
5 to minimize your waiting, we will go ahead and take
6 our lunch break.

7 Please return at 2:00, at 2:00. Again,
8 be mindful. We can't start until all 14 of you are
9 here. Please rise for the jury.

10 Leave your note pads in your chair and
11 the bailiffs will collect them over the lunch hour.
12 Remember all of my admonitions.

13 (Jury out, 12:27 p.m.)

14 THE COURT: Thank you. Be seated.

15 All right. Any motions or matters?

16 MS. EUDY: For the record, we would
17 like to make a motion for directed evidence.

18 THE COURT: Do we have any argument?

19 MS. EUDY: We do not believe that the
20 facts presented substantiate a case against
21 Mr. Kirkland.

22 MR. EVANS: Briefly, Your Honor.

23 Miss Dunn testified that there was
24 non-consensual sexual intercourse in this case.
25 She testified about a sexual battery. She said she

1 was sleeping at the time, did not consent to sexual
2 intercourse. There was also testimony regarding
3 what I will call an outcry witness from Ms. Allston
4 about Ms. Dunn's state of mind after the incident
5 and some excited utterances she made that
6 corroborates it was a non-consensual sexual
7 encounter.

8 I submit to the Court the evidence
9 viewed in the light most favorable to the State,
10 that there is a sufficient question for the jury to
11 consider this, and I would ask that you deny the
12 defense motion.

13 THE COURT: Any response?

14 MS. EUDY: Nothing further, Your Honor.

15 THE COURT: Pursuant to Rule 19 of the
16 South Carolina Rules of Criminal Procedure, ruling
17 on a motion for directed verdict, I am concerned
18 only with the existence or nonexistence of the
19 evidence presented. I do not consider the weight
20 of any evidence.

21 In order to prove third-degree criminal
22 sexual conduct, the State must prove beyond a
23 reasonable doubt that the defendant engaged in a
24 sexual battery with the victim. Sexual battery is
25 sexual intercourse, and there has been testimony by

1 the victim that that occurred.

2 The State must also prove beyond a
3 reasonable doubt that the defendant used force or
4 coercion without any aggravating circumstances to
5 accomplish the sexual battery and/or the defendant
6 knew or had reason to know that the victim was
7 mentally defective, mentally incapacitated or
8 physically helpless and that aggravated force or
9 aggravated coercion was not used to accomplish the
10 sexual battery.

11 Mentally incapacitated means that the
12 victim was rendered temporarily unable to control
13 her conduct. This condition may be caused by
14 illness, defect, or the influence of a substance or
15 some other cause. Physically helpless means that
16 the victim was unconscious, asleep, or for any
17 other reason physically unable to communicate
18 consent to the sexual battery.

19 Again, there has been testimony to go
20 to those elements. I am concerned only with the
21 existence or non-existence of the evidence
22 presented and deny your motion for direct verdict
23 at this time.

24 Any other motions or matters?

25 MS. EUDY: No, Your Honor, we don't

ANDREW KIRKLAND - EXAM BY THE COURT

1 have anything.

2 THE COURT: I'm now going to advise the
3 defendant of his right to testify.

4 Please stand.

5 ANDREW ALLSTON KIRKLAND,
6 being first duly sworn, testified as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q. Mr. Kirkland, we have now reached the
10 stage of the trial where you may present your
11 defense. I'm going to explain to you certain
12 rights that you have. If you do not understand
13 anything that I say, please let me know. If you
14 need me to explain anything in more detail, please
15 let me know. Do you understand?

16 A. Yes, ma'am.

17 Q. You have the right to claim the
18 protections given to you by the Fifth Amendment to
19 the Constitution of the United States. The
20 amendment states in part, no person shall be
21 compelled in any criminal case to be a witness
22 against themselves.

23 This means that you cannot be required
24 to testify in this case. You have the right to
25 testify on your own behalf. No one can make you

ANDREW KIRKLAND - EXAM BY THE COURT

1 testify. This is a personal right, and no one can
2 waive this right except for you.

3 If you decide to testify, you will be
4 subject to the same rules that govern other
5 witnesses, and you may be examined and
6 cross-examined on any relevant issue in the case.

7 In addition, if you have any
8 convictions involving dishonesty or false
9 statements or for crimes punishable by imprisonment
10 for more than one year, and I determine that the
11 probative value of admitting this evidence
12 outweighs the prejudicial effect to you, the
13 solicitor will be able to introduce your record to
14 attack your credibility.

15 THE COURT: Mr. Evans?

16 MR. EVANS: Your Honor, he doesn't have
17 anything that would fall within the purview of the
18 rule; that's, of course, with the caveat if the
19 door is open, I will approach the bench and ask to
20 discuss that.

21 THE COURT: Are there -- is there
22 something potentially?

23 MR. EVANS: He has an arrest record and
24 no conviction. Of course, if he testifies that
25 he's never been in trouble or anything like that,

ANDREW KIRKLAND - EXAM BY THE COURT

1 we may open that door.

2 THE COURT: Please approach so there's
3 no --

4 MR. EVANS: Yes, ma'am.

5 BY THE COURT:

6 Q. If you decide to testify, this decision
7 must be freely and voluntarily and intelligently
8 made with knowledge of the protections given to you
9 by the Fifth Amendment and the consequences of your
10 decision to testify.

11 If you decide not to testify, I will
12 instruct the jury that they cannot give the fact
13 that you did not testify any consideration
14 whatsoever, and I will further instruct them there
15 is to be absolutely no prejudice to you because you
16 did not testify.

17 It is left entirely up to you whether
18 or not you testify. You may talk with attorney,
19 your friends, your family, but the final decision
20 is left up to you.

21 Do you understand what I have explained
22 to you?

23 A. Yes, Your Honor.

24 Q. And do you have any questions about
25 what I have explained to you?

ANDREW KIRKLAND - EXAM BY THE COURT

1 A. No, Your Honor.

2 Q. Have you discussed with your attorneys
3 whether or not you should testify?

4 A. Yes, Your Honor.

5 Q. Do you need any more time to discuss
6 that matter with them?

7 A. No, ma'am.

8 Q. Do you wish to testify?

9 A. Yes, ma'am.

10 THE COURT: All right. And so we will
11 -- are there any other motions or matters before we
12 take our lunch break?

13 MS. EUDY: No, Your Honor.

14 MR. EVANS: None from the State.

15 THE COURT: All right. Be back at ten
16 until 2:00. Thank you. We're at ease.

17 Mr. Kirkland, remember all my
18 admonitions.

19 THE DEFENDANT: Yes, ma'am.

20 (A luncheon recess transpired, 12:34 -
21 2:13 p.m.)

22 THE COURT: State what you would like
23 to go on the record.

24 MS. EUDY: For the record, I just want
25 to state that we had a conversation between counsel

1 and Your Honor about whether Mr. Kirkland or --
2 Mr. Andrew Kirkland and Mr. Dewey Kirkland could
3 testify about Miss Dunn's flirtatious behavior
4 towards Dewey Kirkland and other people at the bar,
5 as well as Miss Dunn touching the leg of Dewey
6 Kirkland on the way home.

7 And I believe with regard to the rape
8 shield law, the State objects to all of that. And,
9 Your Honor, if you want to say what your ruling is
10 on that --

11 THE COURT: No. Just place it on the
12 record.

13 MS. EUDY: Okay. Okay. Well, I mean,
14 I took it that we can't do it. I mean, do you want
15 us to try and get the objection in? I just want to
16 make sure it's on the record if we're not -- I
17 mean, it's my understanding you're telling us we
18 can't do that.

19 THE COURT: I'm allowing you to place
20 on the record what you want, and then I will tell
21 you what is going to happen.

22 MS. EUDY: Okay. Sorry. That's what I
23 was asking.

24 THE COURT: Are you done?

25 MS. EUDY: Yeah.

1 THE COURT: Okay.

2 MR. EVANS: Your Honor, it's the
3 State's position that that evidence runs afoul of
4 both the Rule of Evidence 401.2 as well as South
5 Carolina Code 163659.1, which we commonly call rape
6 shield.

7 THE COURT: Do you have a copy of that
8 statute?

9 MR. EVANS: I actually do, Your Honor.

10 MS. EUDY: I think I have one.

11 THE COURT: Do you agree what was
12 presented to me was accurate?

13 MR. EVANS: Yes, ma'am. That's the
14 statute.

15 THE COURT: Were you given --

16 MR. EVANS: I was not given written
17 notice of their intent to introduce any of that.
18 Our position is that this just runs afoul of not
19 only --

20 THE COURT: You were not given any
21 information as to what the brother is going to
22 testify?

23 MR. EVANS: No, ma'am. I had the
24 statement, of course, that I had provided to them,
25 but I wasn't aware of what specifically he was

1 going to testify to today.

2 THE COURT: Did you comply with the
3 statute?

4 MS. EUDY: Your Honor, I believe that
5 the statute reads that the written notice is
6 required if you are going to use evidence of sexual
7 conduct, and that's not what we were intending to
8 do, and that's not what we felt like we were doing,
9 so, no, we did not --

10 THE COURT: Then how is it relevant
11 under 401?

12 MS. EUDY: As I stated earlier, I
13 believe that the testimony regarding Miss Dunn's
14 behavior at the bar going around and talking to
15 different groups of men is relevant in -- from one
16 purpose, particularly the timeline and
17 substantiating why they left the bar and why they
18 were at the bar a short time. And Mr. --

19 THE COURT: So there's no reason why
20 you can't inquire as to what time did you leave the
21 bar, sir? And why they left the bar, I'm not sure
22 how that's relevant to whether or not consent was
23 involved.

24 MS. EUDY: I think it's relevant
25 because it shows that they were at the bar a short

1 time frame, and it creates our timeline and it
2 substantiates the testimony that our client is
3 going to give with regard to all of that.

4 And I think it goes to the credibility
5 of the victim's testimony with regard to the
6 timeline and when she was intoxicated, when she was
7 not intoxicated, when she was -- went to sleep and
8 when she woke up. I think the timeline --

9 THE COURT: None of that has to do with
10 sexual conduct, opinion evidence, or reputation of
11 the victim's sexual conduct, which are not
12 admissible under this statute.

13 MS. EUDY: I would -- I was arguing
14 that it does. That's why --

15 THE COURT: Why are we having this
16 conversation?

17 MS. EUDY: Because he's objecting to
18 that testimony.

19 THE COURT: I don't think he's
20 objecting to the timeline use.

21 MR. EVANS: That's correct. I don't
22 have any objection to her asking when they left. I
23 think the reasons they left are immaterial and
24 irrelevant for all the reasons we previously
25 stated.

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 THE COURT: Are we clear?

2 MS. EUDY: I suppose so.

3 THE COURT: All right. Who is your
4 first witness?

5 MS. EUDY: We are going to --

6 MR. GOOD: We are going to call Dewey
7 Kirkland, the defendant's brother.

8 MS. EUDY: Your Honor, may I step out
9 and see if Ms. Miller showed up?

10 THE COURT: You may.

11 (Jury in, 2:16 p.m.)

12 THE BAILIFF: Jurors are all present.

13 THE COURT: Thank you. Be seated.
14 Call your next witness.

15 MR. GOOD: The defendant calls Dewey
16 Kirkland.

17 DEWEY KIRKLAND,

18 being first duly sworn, testified as follows:

19 THE CLERK: Please take your seat,
20 spelling your first and last name for the record.

21 THE WITNESS: Dewey Kirkland, D-E-W-E-Y
22 K-I-R-K-L-A-N-D.

23 DIRECT EXAMINATION

24 BY MR. GOOD:

25 Q. Good afternoon, Dewey.

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Can you state your relationship to
2 Andrew Kirkland?

3 A. He's my brother.

4 Q. Is he your big brother or little
5 brother?

6 A. Younger.

7 Q. How far apart in age are you?

8 A. Fourteen months.

9 Q. So where do you currently live now?

10 A. Saint Louis, Missouri...

11 THE COURT REPORTER: I need you to
12 speak into the microphone and speak up.

13 THE WITNESS: Alton, Illinois.

14 BY MR. GOOD:

15 Q. Is that near Saint Louis, Missouri?

16 A. It is.

17 Q. Did you fly out of Saint Louis airport
18 this morning?

19 A. I did.

20 Q. Did you come here on your own dime to
21 be here for this trial?

22 A. I did.

23 Q. Let's talk about your relationship with
24 Lexi Allston. How are you related to Lexi?

25 A. She is our first cousin.

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. And more into the relationship, how
2 close are you to Lexi?

3 A. We lived together a few years back.

4 Q. How long did you live together?

5 A. Maybe about a year.

6 Q. So you were roommates?

7 A. Yes, we were.

8 Q. And where did you live together?

9 A. Off of Orangeburg Road, Georgetown
10 Apartments.

11 Q. Is that in Charleston?

12 A. It is West Ashley.

13 Q. While you lived together, did you hang
14 out very much together?

15 A. Fairly often, yeah.

16 Q. Okay. Let's talk about the night of
17 December 6th of the year of this alleged incident.
18 How did you end up hanging out with everybody that
19 night?

20 A. Lexi called us together, she wanted to
21 go out and have some drinks.

22 Q. So Lexi called you to go have some
23 drinks?

24 A. Yeah.

25 THE COURT: Is that a yes?

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 THE WITNESS: Yes. Yes.

2 BY MR. GOOD:

3 Q. And did you get to Andrew's house that
4 night before Lexi and Robyn got there?

5 A. Yes. I had my son with me.

6 Q. You had your son with you?

7 A. Yes, I did.

8 Q. Where was your wife at the time?

9 A. She was working. She came later and
10 picked my son up.

11 Q. When you got to Andrew's house, were
12 you drinking?

13 A. Yes. We had a few drinks.

14 Q. How much were you drinking?

15 A. Just here and there, a beer, maybe a
16 whiskey drink.

17 Q. How long would you say you were there
18 before Lexi and Robyn got there?

19 A. A good while. Maybe a couple of hours.

20 Q. Do you remember what time it was that
21 Lexi and Robyn -- what time they got there to
22 Andrew's house?

23 A. Not quite, no.

24 Q. Okay. When Lexi and Robyn did get
25 there, what all -- what did you do?

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. We hung out for a little, we drank.
2 Pregame as it were. They brought some liquor and
3 my wife came up. We hung out, she picked up my son
4 and then left.

5 Q. And after your wife picked your son up
6 and left, what did you do next?

7 A. We continued to pregame for a little
8 while and then we decided to go to a bar.

9 Q. Your statement to Detective Bowen says
10 that you saw Robyn and Andrew talking some before
11 you went out?

12 A. Yes. Yes. There was some activity,
13 between the two of them.

14 Q. Can you explain that?

15 A. Little flirtatious in nature. Just
16 some innuendo here and there, just random flirting,
17 drunken flirting.

18 Q. Okay. What time would you say you went
19 to the bar?

20 A. I don't know. Probably somewhere
21 around ten or so.

22 Q. Okay. How long did it take to get from
23 Andrew's house to the bar that you went to?

24 A. It was Famous Joe's in West Ashley. So
25 anywhere -- I would say probably 30 minutes, maybe

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 a little bit more depending on traffic.

2 Q. If you left at 10:00 from Andrew's
3 house, does that mean you got to the bar at 10:30?

4 A. Roughly, 10:30. Maybe a little bit
5 later than that.

6 Q. When you got to the bar, how much did
7 you drink at the bar?

8 A. I don't really remember. It was a good
9 bit.

10 Q. What did you do when you got to the
11 bar?

12 A. Hung out with Lexi, shot some pool with
13 her, Andrew ran around shooting some pool. Just
14 hanging out, drinking.

15 Q. Did you hang out with Robyn at all?

16 A. Little bit.

17 Q. Okay. Did you hang out with Andrew at
18 the bar?

19 A. Yeah. He shot a game of pool with me,
20 but he was basically trying to hustle the tables
21 like he always does.

22 Q. What did you-all predominantly do while
23 you were at the bar? Did you all play pool?

24 A. Andrew did. Lexi and I sat and had
25 some shots, and Robyn too.

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. She played pool as well?

2 A. I don't recall.

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

4 THE COURT: Take your time.

5 BY MR. GOOD:

6 Q. While you were at the bar, did you-all
7 hang out with any other people at the bar?

8 MR. EVANS: Objection. That --

9 THE COURT: What's the basis?

10 MR. EVANS: Rape shield, Your Honor,
11 for the previous reasons we mentioned, as well as
12 404 and 401. I think it's an attempt to get in to
13 what we discussed before.

14 THE COURT: All right. Sustained.

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

16 THE COURT: Yes.

17 BY MR. GOOD:

18 Q. Okay. How long were you at the bar?

19 A. Long enough to shoot some pool and have
20 some shots and some beers. I wouldn't say too
21 terribly long. Ballpark, an hour, hour and a half
22 at the most.

23 Q. An hour to an hour and a half. Okay.
24 Why did you end up leaving the bar?

25 A. We were -- well, I was pretty well on

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 for the evening after having had too much to drink
2 probably before I even got to the bar. So we
3 decided to head on back to Andrew's place.

4 Q. Who paid for the drinks at the bar?

5 A. Lexi did.

6 Q. Do you remember if she used a credit or
7 a debit card?

8 A. She used a credit card, and I remember
9 this specifically because that was the impetus for
10 us going out. She said she had gotten a new card
11 and she wanted to run up the limit on it. So
12 wanted to treat herself.

13 Q. So do you remember her closing out the
14 bar tab?

15 A. Yes. I was there next to her and she
16 used the credit card.

17 Q. And would there have been a receipt
18 then?

19 A. Should have been if it's a credit card.

20 Q. When you left the bar, where did you
21 sit in the car on the way home?

22 A. Back passenger seat.

23 Q. Okay. And what time -- and was Andrew
24 driving?

25 A. No. Lexi was driving.

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. Lexi was driving. And who was in the
2 front passenger seat?

3 A. Andrew was in the front passenger.

4 Q. Who was in the backseat next to you?

5 A. Robyn.

6 Q. What time did you get back to Andrew's
7 house?

8 A. Probably within 30 minutes of leaving
9 the bar or a little bit more.

10 Q. What time of night would that have
11 been?

12 A. Couldn't have been too much more than
13 midnight, I would say.

14 Q. What did you do when -- well, let me
15 ask you this: When you got back to the house, did
16 you continue drinking?

17 A. I did not continue drinking. I was a
18 little bit too far gone for that. I wound up
19 cooking some mashed potatoes I believe.

20 Q. Did anybody eat mashed potatoes with
21 you?

22 A. I believe everybody ate mashed
23 potatoes.

24 Q. Do you remember if Andrew continued to
25 drink?

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I do not believe he did.

2 Q. Do you remember if Robyn continued to
3 drink?

4 A. I'm not sure that she did either.

5 Q. Do you remember if Lexi continued to
6 drink?

7 A. I do not recall.

8 Q. You said in your statement to Detective
9 Bowen that Robyn asked Lexi to get into the shower
10 with her?

11 MR. EVANS: Objection.

12 THE COURT: Hold on one second.

13 Approach.

14 (Bench conference.)

15 THE COURT: Mr. Good, I apologize. I
16 did not hear your question fully so if you would
17 please re-ask your question.

18 BY MR. GOOD:

19 Q. Did Robyn and Lexi take a shower when
20 they got home?

21 A. Yes.

22 Q. Do you remember them taking a shower?

23 A. Yes.

24 Q. Do you remember if Robyn asked Lexi to
25 take a shower with her?

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. She called from the bathroom for Lexi
2 to come with her.

3 Q. You remember --

4 A. I do remember that.

5 Q. -- Robyn calling --

6 A. Yes. Robyn called Lexi to come into
7 the bathroom.

8 Q. When they got out of the shower, did
9 they eat mashed potatoes?

10 A. Yes.

11 Q. Do you remember if you went outside to
12 smoke a cigarette?

13 A. I don't directly recall it, but we both
14 smoked and it's a good possibility, probability.

15 Q. While you were and Lexi were outside if
16 you were outside smoking, what were Andrew and
17 Robyn doing?

18 A. I don't know. Possibly spending --

19 MR. EVANS: Objection; speculation.

20 THE COURT: Sustained as to
21 speculation.

22 BY MR. GOOD:

23 Q. And did you continue to hang out after
24 the mashed potatoes and eating the mashed potatoes?

25 A. Not too much longer. I was feeling

DEWEY KIRKLAND - DIRECT EXAM BY MR. GOOD

1 quite tired so I went home to just a few miles
2 away.

3 Q. Did you know -- did you go home before
4 Andrew went to bed?

5 A. I think I did, yes.

6 Q. So you don't know if Andrew or Lexi
7 or --

8 A. I don't remember. No, I don't -- I
9 don't have a clue about that.

10 Q. Did you make any comments to Detective
11 Bowen as to any -- any relationship between Andrew
12 and Robyn that night?

13 A. I may have. It's been awhile; I don't
14 remember the gist of that interview.

15 MR. GOOD: Okay. Beg the Court's
16 indulgence.

17 THE COURT: Take your time.

18 BY MR. GOOD:

19 Q. Dewey, do you recall in your statement
20 to Detective Bowen stating that you were not
21 surprised --

22 MR. EVANS: Objection; leading the
23 witness, Your Honor.

24 THE COURT: Watch your leading
25 questions. It's your witness.

DEWEY KIRKLAND - CROSS EXAM BY MR. EVANS

1 MR. GOOD: I understand, Your Honor. I
2 apologize.

3 Beg the Court's indulgence.

4 BY MR. GOOD:

5 Q. Dewey, you testified a few minutes ago
6 that you said that Andrew and Robyn had been
7 flirtatious that night; is that correct?

8 A. Yes.

9 Q. And based upon that, do you remember
10 telling Detective Bowen that you were not surprised
11 that Andrew and Robyn had sex?

12 A. I do remember saying that, yes.

13 Q. And do you also remember telling
14 Detective Bowen it wouldn't surprise you if she
15 hopped in the sack with him?

16 A. That sounds like something I would have
17 said.

18 MR. GOOD: No more questions.

19 THE COURT: Mr. Evans.

20 MR. EVANS: Thank you. May it please
21 the Court?

22 CROSS-EXAMINATION

23 BY MR. EVANS:

24 Q. Afternoon, Mr. Kirkland. How are you?

25 A. Well. How are you?

DEWEY KIRKLAND - CROSS EXAM BY MR. EVANS

1 Q. Doing good. Thank you. My name is
2 Drew Evans. I'm one of the prosecutors in the
3 case.

4 So everybody was over at your brother's
5 house and everybody was drinking, right?

6 A. Correct.

7 Q. And then you-all went to the bar and
8 you said everybody was doing shots? Shots going
9 around the bar?

10 A. There were some shots going around.

11 Q. And I think you told Detective Bowen
12 that was one of the drunkest you had ever been,
13 right?

14 A. I definitely was pretty drunk that
15 night.

16 Q. And when you-all came back in the car
17 from the bar, you saw Robyn throw up in the car?

18 A. Yes.

19 Q. Okay. And then you told Detective
20 Bowen there wasn't much interaction between your
21 brother and Robyn after you got back to the house.
22 Do you remember that?

23 A. I don't recall.

24 Q. You don't remember saying that?

25 A. I don't remember saying it. It doesn't

DEWEY KIRKLAND - CROSS EXAM BY MR. EVANS

1 mean that I didn't.

2 Q. Would you believe that you said it?

3 A. If it's in the statement that I have
4 given a police officer, then I would be.

5 Q. I think the quote was, the party is
6 over when somebody starts throwing up. Do you
7 remember saying that?

8 A. No, but that does sound like something
9 I could have said.

10 Q. Do you agree that the party is over
11 when somebody starts puking?

12 A. Not necessarily.

13 Q. That night it was, though?

14 A. It could quite possibly have been.

15 Q. And then you ended up leaving and you
16 don't know what happened after you left?

17 A. I have no idea about anything that
18 happened after I left.

19 MR. EVANS: Thank you, Mr. Kirkland. I
20 have nothing further.

21 THE COURT: Redirect?

22 MR. GOOD: No redirect, Your Honor.

23 THE COURT: You may step down. Feel
24 free to stay with us, but you're free to leave.

25 Call the next witness.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 MS. EUDY: I need to step out and see
2 if she is here.

3 (Brief pause)

4 MS. EUDY: Ms. Miller is not out there.
5 We will call Andrew and then call her last.

6 THE COURT: Okay.

7 MR. GOOD: Thank you, Your Honor.

8 THE COURT: Call your next witness.

9 MR. GOOD: The defense calls Andrew
10 Kirkland.

11 ANDREW KIRKLAND,
12 being first duly sworn, testified as follows:

13 THE CLERK: Please take your seat,
14 spelling your first and last name for the record.

15 THE DEFENDANT: Andrew Kirkland,
16 A-N-D-R-E-W K-I-R-K-L-A-N-D.

17 MR. GOOD: Thank you.

18 DIRECT EXAMINATION

19 BY MR. GOOD:

20 Q. Andrew, you just stated your name.
21 Tell us your birth date.

22 A. I was born [REDACTED] 1988.

23 Q. And how old does that make you?

24 A. 29 years old.

25 Q. Can you tell the Court where you grew

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 up?

2 A. I grew up on James Island until I think
3 I was four or so, and then my family and I moved to
4 Edisto and that's where I primarily grew up.

5 Q. Can you tell us about your educational
6 background?

7 A. Well, in Edisto I attended Jane Edwards
8 Elementary School. Upon completing that, I went to
9 Ashley High School. After high school, I attended
10 Trident Tech for approximately a year and a half
11 pursuing criminal justice.

12 Q. And who was your favorite teacher at
13 Trident?

14 A. It was you, Joe. It was you.

15 Q. Okay. Thank you.

16 Did you ever serve in the military?

17 A. Yes, sir.

18 Q. Can you tell the Court which branch of
19 the military?

20 A. United States Marine Corps.

21 Q. Where are you currently employed?

22 A. Currently I'm employed at Canopy Tree
23 Care.

24 Q. And what do you do for Canopy Tree
25 Care?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I'm an arborist.

2 Q. How long have you been an arborist?

3 A. I've been an arborist for approximately
4 three years now.

5 Q. Tell us about your family. How many
6 siblings do you have?

7 A. I have my one full brother, Dewey, and
8 I have a half brother and half sister.

9 Q. And how about your parents?

10 A. My mother is right there in the
11 courtroom, and my grandmother, and my father is
12 still alive.

13 Q. As I did with your brother, let's talk
14 about Lexi Allston. How is Lexi Allston related to
15 you?

16 A. Lexi Allston is my first cousin.

17 Q. How would you describe your
18 relationship with Lexi?

19 A. Very distant. A very distant
20 relationship. She grew up in Alaska.

21 Q. How often growing up would you see
22 Lexi?

23 A. I may have seen Lexi a handful of times
24 throughout my whole childhood.

25 Q. Where would you see her?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. Maybe a family function, they would
2 come down for a holiday. It was very seldom.

3 Q. At the time of the alleged incident,
4 did Lexi live in South Carolina?

5 A. Yes.

6 Q. Where in South Carolina did she live?

7 A. She lived in Beaufort, South Carolina.

8 Q. When did she move to Beaufort from
9 Alaska?

10 A. I do not recall exactly when she moved
11 to Beaufort from Alaska.

12 Q. How often did you and Lexi hang out?

13 A. I rarely ever saw Lexi. The first time
14 that I had seen Lexi in years was at my graduation
15 from Parris Island.

16 Q. What were you graduating from?

17 A. I was graduating from Marine Corps boot
18 camp.

19 Q. What caused you and Lexi to reconnect?

20 A. So the whole family came to the
21 graduation, and I assumed since she was in Beaufort
22 she was there for family and the whole family was
23 there.

24 Q. Since this incident, have you spoken to
25 Lexi at all?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I have not spoke one word to Lexi since
2 this incident.

3 Q. Did she ever reach out to you to hear
4 your side of the story?

5 A. Not one time.

6 Q. Did she ever try to call you?

7 A. Never.

8 Q. When you -- did you ever reach out to
9 her?

10 A. I did. I reached out to Lexi the same
11 morning of the incident.

12 Q. When you reached out, did she ever
13 return your call or text?

14 A. She never returned any call or text.

15 Q. Let's get into the night of the
16 allegation on December 6th. Why did Lexi and Robyn
17 come to your house that night?

18 A. Lexi and Robyn came from Beaufort to
19 celebrate Lexi's 30th birthday party and slash a
20 going away party. She was moving back to Alaska.

21 Q. Okay. Did you reach out to Lexi or did
22 she reach out to you to hang out for her birthday?

23 A. Lexi reached out to myself.

24 Q. How is it that Robyn ended up coming
25 with Lexi to Charleston that night?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I remember -- I remember Lexi sending
2 me a text just stating that her friend Robyn wanted
3 to come with her if she came to Charleston.

4 Q. Okay.

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

6 (Bench conference.)

7 Your Honor, may I approach?

8 THE COURT: You may.

9 BY MR. GOOD:

10 Q. Andrew, I have a document here
11 premarked Defendant's Exhibit 14 for identification
12 purposes. Can you tell the Court what you
13 recognize this text as being?

14 A. The exhibit in front of me, Joe, is a
15 text between Lexi and myself. And they were --
16 this is on December 5th at approximately 5:36 in
17 the afternoon.

18 Q. Do you recognize these text messages as
19 coming from your iPhone?

20 A. Yes, Joe.

21 MR. GOOD: Your Honor, I would like to
22 move these text messages into evidence as
23 Defendant's Exhibit 14.

24 THE DEFENDANT: Yes.

25 THE COURT: Any objection?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 MR. EVANS: None from the State.

2 THE COURT: Defendant's 14 into
3 evidence without objection.

4 (DEFENDANT'S EXH. 14 in evidence.)

5 BY MR. GOOD:

6 Q. I want to go through a few of these
7 text messages if we can.

8 MR. GOOD: Your Honor, may I approach
9 him to show him where we will begin?

10 THE COURT: You may.

11 BY MR. GOOD:

12 Q. Andrew, start with the text message
13 from December 5, 2014. Was that the day before
14 Robyn and Lexi came to your house?

15 A. Yes, Joe.

16 Q. And what time was this text message?

17 A. Approximately 5:36 in the afternoon.

18 Q. How can you tell on this document that
19 that was an incoming text message?

20 A. On this document there will be red
21 arrows pointing at a downward angle that means
22 incoming. And my messages that are outgoing are
23 going to be a Greene arrow slightly pointed up.

24 Q. On this incoming message at the top of
25 the page, can you read the incoming text message

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 from Lexi?

2 A. On December 5, 2014, at 5:316
3 approximately, the text from Lexi came. My friend
4 Robyn is off tomorrow too. She wants to come with
5 me if I come down there. Or you guys can come
6 here. It's up to you.

7 Q. What is the next text message on the
8 list?

9 A. Joe, there is another message, but
10 there is apparently a message missing before the
11 next message that is on this document.

12 Q. Can you explain what that missing
13 message was?

14 A. The missing message which after --
15 after I read the next text message will show
16 clearly there was a picture of Robyn sent from
17 Lexi's phone.

18 Q. How did -- how did you respond to the
19 picture that was sent to you?

20 A. That is also not in this document, but,
21 to the best of my recollection, I stated Robyn was
22 hot, or beautiful. Something to that effect.

23 Q. And how did Lexi respond to that text
24 message back to you?

25 A. That text message is on here at

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 approximately 5:58. It says, I know. That's why
2 she is my wife, exclamation mark, duh, dot, dot,
3 dot.

4 Q. What did she mean she is my wife?

5 A. I cannot tell you exactly what she
6 meant, Joe. I know that they called each other
7 wifey. They called each other wifey like -- I
8 can't even come up with a relation or an analogy.
9 I can't come up with an analogy. She just called
10 Robyn her wife and Robyn called Lexi her wife.

11 Q. Andrew, I want to skip if you can look
12 a couple of pages to the last text message.

13 Oh, I'm sorry. I don't want to go
14 there yet.

15 Andrew, can you read this incoming text
16 message to your phone from Lexi from December 5th
17 at 18:02?

18 A. At 18:02, on December 5th, an incoming
19 message, dude, a little warning next time. LOL.
20 And she loves me for my boobs. So I still win,
21 exclamation mark.

22 Q. What does that text message mean?

23 A. That text message to me means that I
24 had sent a picture to Lexi to show Robyn of me in
25 return for the picture that she had sent.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. What kind of picture did you send?

2 A. A selfie of me I would assume probably
3 with my shirt off.

4 Q. And how did she respond to you sending
5 a shirtless picture of yourself?

6 A. That is why the, dude, a little warning
7 next time, LOL, is in that statement, I believe,
8 Joe.

9 Q. What is your response to that?

10 A. My response is, I have boobs, too. I
11 thought after I acted. LOL. Sorry.

12 Q. What did you say next?

13 A. Happens a lot.

14 Q. Can you explain that?

15 A. Yes. When I said that, I was -- I had
16 thought about how I had sent my own cousin a
17 shirtless pic, and it was a little strange. I
18 didn't think that at the time because at the time
19 we were talking about Robyn and she had sent a
20 picture back.

21 And so that's why I said, I have boobs
22 too, pertaining to the fact that I'm in shape. I
23 thought after I acted. Sorry, happens a lot.

24 That was just banter, normal banter
25 back and forth.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. And what was -- when you said, happens
2 a lot, what was her response?

3 A. Her response was, my boobs are
4 significantly bigger than yours, so I'm not
5 worried. It's not even a competition, LOL.

6 Q. How did you take it? How did you take
7 that comment about competition to mean?

8 A. I took that as like -- just like I said
9 previously, banter. I mean, we were going both
10 back and forth about her friend that she was
11 bringing that I had never met from Beaufort, and it
12 just -- it seemed like she was setting me up with
13 her friend who was beautiful.

14 And that was just banter between Lexi
15 and I, that was just banter back and forth, you
16 know.

17 Q. What was your response to -- when she
18 said my boobs are bigger, it is not a competition?
19 What was your response?

20 A. My first response was, my type, I'm
21 going to get her.

22 Q. And what did you say after that?

23 A. I want.

24 Q. What did you mean by those two
25 comments?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I just meant I'm in shape and I wanted
2 to meet her. I wanted her to come up to South
3 Carolina -- not South Carolina, to Charleston and
4 hang out and meet me. And I just -- I wanted the
5 interaction. That's what I meant.

6 Q. And what was her response to you?

7 A. LOL, nope. She loves me, LOL.

8 Q. How did you feel about that comment?

9 A. Once again, just, you know, normal
10 banter, like Lexi and I were competing for her
11 friend. It was joking about the fact that she was
12 bringing this girl, who I thought was beautiful, up
13 to Charleston. And how this was her, quote,
14 unquote, wifey, and that she looked better than me
15 and had bigger boobs than me, and, therefore, Robyn
16 was going to choose Lexi over me.

17 Q. Thank you. Can you flip in that
18 document -- the last one we will go through is this
19 text message that you sent the morning that Lexi
20 and Robyn left your house on 12/07 5:48 a.m.

21 A. Yes, sir.

22 Q. And can you read the entire text
23 message to the jury?

24 A. Yes, sir. On 12/07, approximately 5:48
25 in the morning I sent to Lexi, be safe. Wish I

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 could just die. I don't know what the F. I hate
2 who I am. I thought she really liked me, dot, dot.
3 Hearing her cry, I wish I had a gun right now. I
4 don't want to be here anymore.

5 I sent one other message right directly
6 after, 30 seconds after, that said, you be safe,
7 sorry I ruined everything.

8 Q. Let's go through that text message.
9 What do you mean by the beginning of the message
10 where you said, be safe?

11 A. Be safe. I told them to be safe first
12 and foremost because we had all been drinking.
13 We'd had a wild night, and I knew they were driving
14 back to Beaufort at the crack of dawn with little
15 to know sleep.

16 Q. And by the way, at 5:45 would you say
17 you were completely clear-headed?

18 A. Not at all, Joe. I was still in a
19 haze. I was in a complete daze. Everything was
20 cloudy. I don't even remember them leaving. I
21 just remember a whirlwind chaos and they left.

22 Q. Let's go to the next section of that
23 text message which -- where it says, I wish I could
24 die. I don't know what the F.

25 A. Yeah, of course. When I said, I wish I

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 could just die, I felt like death. I felt like I
2 had drank way too much. I had overindulged in the
3 alcohol. And when I said, I don't know what the F,
4 that explains itself. I don't know what happened.

5 I did not know why they woke up and
6 left the way they did. I didn't know what was
7 going on. I was --

8 Q. The next section, I hate who I am, I
9 thought she really liked me. Can you explain that?

10 A. When I said, I hated who I am, I still
11 didn't even know what was going on. The way that
12 they left -- I don't want to jump ahead. When I
13 said, I hate who I am, I thought she really liked
14 me. It was -- you know, the way the whole night
15 went, the flirting, the everything that happened.

16 I'm not -- I'm trying not to jump too
17 far ahead. I really did, I thought she liked me.
18 And when I said I hated who I am, I hated where I
19 was at that point right then. At 5:58 in the
20 morning, didn't know what was going on. I hated
21 who I was at that point because I had drank way too
22 much, obviously something happened and they left
23 and it was -- that's why I said that.

24 Q. Why did you say, I thought she really
25 liked me?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. Because I thought she did. I mean --

2 Q. What gave you a reason to think she
3 liked you?

4 A. Because we had already -- I don't want
5 to. Because we had already had consensual sex. I
6 thought she liked me.

7 Q. Hearing her cry, I wish I had a gun
8 right now. Can you explain that?

9 A. Hearing her cry, I do remember her ---
10 like it was very -- I'm trying to think of the
11 right word. I didn't hear her cry. I heard
12 rustling, commotion. It was -- I heard chaos.

13 And saying, I wish I had a gun right
14 now wasn't meaning that I was going to take myself
15 out or anything like that. I just didn't -- hear
16 her cry made me feel like the lowest of the low.

17 I did not know what was going on. And
18 saying, I wish I had a gun right now, it just -- I
19 mean, you're talking about 5:48 in the morning. I
20 sent this message still dazed and confused. I felt
21 regret and remorse. I didn't know why -- I didn't
22 know what had conspired for them to leave the way
23 that they did.

24 Q. Why did you delete the chain of
25 messages?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I deleted the chain of messages because
2 I didn't want -- I did not want to even keep this.
3 It was just bad. It was a bad feeling. I didn't
4 want to open my phone and see this. You know, it
5 was a bad night, and I didn't want to keep
6 reminding myself of that.

7 Q. What was the last comment you made?

8 A. You be safe. Sorry I ruined
9 everything.

10 Q. What did you mean by that?

11 A. Once again, I told them to just be safe
12 and I was sorry they left the way they did. I
13 still was unaware of why, but apparently I had
14 ruined everything, so I took the blame. She left
15 my house and so I said, be safe, and sorry I ruined
16 everything.

17 Q. Thank you, Andrew. We are done with
18 that exhibit.

19 And let's go back to the night
20 December 6th. What did Lexi and Robyn bring with
21 them to drink to your house?

22 A. I remember when Lexi and Robyn came
23 they brought a bottle of Spectre vodka, flavored
24 vodka, I believe it was raspberry; a bottle of Jim
25 Bean and a case of Bud Light, a 12-pack.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. And what did you-all do when they got
2 to your house?

3 A. We started pregaming, we started
4 drinking. We planned to go out, but we started
5 drinking at the house when they got there.

6 Q. How long did you drink at your house
7 before you went to the bar?

8 A. I would say we drank a few hours, a few
9 hours.

10 Q. A few hours at your house or a few
11 hours at the bar?

12 A. A few hours at my house.

13 Q. What was the name of the bar you went
14 to?

15 A. We went to Famous Joe's.

16 Q. Okay. So had you been there before?

17 A. I had been to Famous Joe's previously.
18 I used to shoot a lot of pool there.

19 Q. Did they know you at the bar?

20 A. Yes, Joe.

21 Q. Is it usually crowded at that bar?

22 A. It usually isn't.

23 Q. It's not?

24 A. It's not crowded. It usually is not
25 crowded at the bar.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. Was it crowded that night?

2 A. Yes, Joe, it was crowded. I believe
3 there was a birthday party. There was some kind of
4 party going on.

5 Q. How -- well, what time did you leave
6 your house to go to the bar?

7 A. We left my house I would say
8 approximately 10:30 or so.

9 Q. How much would you say you drank at the
10 bar?

11 A. We didn't drink. I did not drink very
12 much at the bar at all. I didn't drink that much
13 before we went to the bar because I was driving to
14 the bar.

15 Q. Okay. While you were at the bar, what
16 did you do?

17 A. I shot pool. As my brother stated
18 earlier, I shoot pool. I'm an avid pool player, so
19 I was shooting pool. I was looking for games. I
20 was putting my money on the different tables and
21 playing as my turn came up.

22 Q. Did Lexi play pool with you?

23 A. Not that I recall.

24 Q. What was she doing?

25 A. Conversing with my brother and

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 drinking.

2 Q. Did Robyn play pool with you?

3 A. No, sir.

4 Q. What was she doing?

5 A. Robyn was dancing and hanging out with
6 other people at the bar, other men.

7 Q. What do you mean by that?

8 MR. EVANS: Objection. Your Honor,
9 rape shield and all the other things we've
10 previously been talking about.

11 THE COURT: Counsel.

12 (Bench conference.)

13 THE COURT: Sustained.

14 BY MR. GOOD:

15 Q. Did Robyn or Lexi ever mention that
16 Robyn had a boyfriend at the time?

17 A. No, Joe. I was unaware that Robyn had
18 a boyfriend.

19 Q. How long did you stay at the bar?

20 A. We stayed at the bar maybe an hour.
21 Maybe an hour. Forty-five minutes, approximately
22 an hour. It would be -- there was --

23 Q. Are you saying you stayed at the bar
24 between 45 minutes and one hour?

25 A. That's it, Joe.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. You said that you left your house at
2 10:30 p.m.?

3 A. Approximately, yes, sir.

4 Q. And how long does it take to get to the
5 bar?

6 A. To the bar? Approximately 30 minutes.

7 Q. What time would that get you to the
8 bar?

9 A. That would get us to the bar about
10 11:00.

11 Q. How long did you stay at the bar?

12 A. It was not an hour.

13 Q. Okay.

14 A. Forty-five minutes, maybe an hour.

15 Q. You just said you got to the bar around
16 -- left a little after 10:30 and got to the bar
17 around 11, and you said you stayed for almost an
18 hour, which should be midnight. What time would
19 that put you back at the house?

20 A. That put me back at my house about
21 12:30 or so. 12:45 because we did have to stop.

22 Q. Did you drive everyone home?

23 A. Yes, Joe.

24 Q. Where did everyone sit in the car?

25 A. I was driving, Lexi was in the front

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 passenger seat, my brother was in the rear driver's
2 seat, and Robyn was in the rear passenger seat.

3 Q. Okay. When you got home to your house,
4 did you continue to drink?

5 A. Yes, Joe. When we got home to my house
6 I actually started to drink a little heavier than
7 most, and I started to get on with that bottle of
8 Jim Beam straight, no mixed drinks.

9 Q. Why did you wait until you got home to
10 --

11 A. Because I had driven everybody out, I
12 was trying to be the responsible one. So once I
13 got home, I let loose.

14 Q. Do you remember if Lexi continued to
15 drink --

16 A. I believe everyone continued to drink a
17 little bit. Sorry, I jumped the question.

18 Q. That's okay.

19 A. I believe Lexi did continue to drink.

20 Q. Did Robyn continue to drink?

21 A. I believe so.

22 Q. What did Robyn and Lexi do when you got
23 home?

24 A. Upon getting home, I know that Robyn
25 and Lexi -- Robyn wanted to get showered and Robyn

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 and Lexi went to my bathroom and showered and
2 washed clothes.

3 Q. Okay. What happened after Lexi and
4 Robyn got out of the shower?

5 A. When Lexi and Robyn got out of the
6 shower, Lexi had gone out front and my brother was
7 in the living room, I was hanging out. Lexi and my
8 brother went outside to smoke a cigarette, at which
9 point Robyn came -- she got dressed, whatever, came
10 to the couch and sat on my couch in the living
11 room, at which point I had put my hand on her leg,
12 we had kissed.

13 That's when Robyn took a picture of
14 herself and asked me if I would like her number and
15 saved her number into my phone.

16 MR. GOOD: Beg the Court's indulgence.

17 May I approach?

18 THE COURT: You may.

19 BY MR. GOOD:

20 Q. Andrew, this is a document premarked
21 Defendant's Exhibit Number 8 for identification
22 purposes. Can you tell me what that is?

23 A. Yes, Joe. This is a screenshot of the
24 contact of Robyn Dunn in my phone currently.

25 Q. When was that contact put in your

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 phone?

2 A. This contact was put in the phone -- in
3 the phone the night of at approximately 1:26.

4 Q. Is that her name on that contact?

5 A. Yes..

6 Q. Is that her phone number?

7 A. Yes.

8 Q. Can you read what it says on the
9 contact?

10 MR. EVANS: Objection. I don't think
11 it's been entered into evidence and I have not seen
12 it.

13 THE COURT: If you could please provide
14 it to the solicitor.

15 MR. GOOD: I'm so sorry. I thought I
16 showed it to you before.

17 MS. EUDY: I had showed it to you
18 before.

19 THE COURT: Why don't you bring it to
20 me and counsel can approach.

21 (Bench conference.)

22 THE COURT: Step back.

23 MR. GOOD: Your Honor, I would like to
24 move Defendant's Exhibit Number 8 into evidence and
25 publish it for the jury.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 THE COURT: Any objection, Mr. Evans?

2 MR. EVANS: No, ma'am.

3 THE COURT: State's 8 -- or Defendant's
4 Exhibit Number 8 into evidence without objection.

5 (DEFENDANT'S EXH. 8 in evidence.)

6 BY MR. GOOD:

7 Q. Before I publish it to the jury, can
8 you read on there underneath the name what it says.

9 A. Underneath Robyn Dunn's name it says,
10 Lexi, LOL.

11 Q. And can you explain what that means?

12 A. It was just Robyn putting that in there
13 as a joke. You know, Lexi, LOL, remember.

14 Q. Did she take that picture in front of
15 you?

16 A. Yes, Joe. She took the selfie with my
17 phone and put the contact information in.

18 Q. Where were you in your house when she
19 did all that?

20 A. We were both sitting on the couch.

21 Q. How long did you sit on the couch?

22 A. I don't recall, but a few minutes. Ten
23 minutes, five or ten minutes.

24 Q. Did you kiss her while on the couch?

25 A. Yes, Joe.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. And can you tell us about that?

2 A. It -- we -- she came out the bathroom
3 like I said, showered. She came to the couch and
4 we were just talking a little bit. And I remember
5 she -- she asked if I wanted her number. And I
6 said, save your number. Go ahead.

7 And she took a picture and it was just
8 -- it was like a flirtatious kiss. It wasn't
9 anything; we didn't jump on each other. My brother
10 and cousin were still outside. It was just a
11 simple -- just a simple kiss.

12 Q. We heard testimony earlier that you
13 were going to sleep on the couch. Why did you
14 change your plan and sleep in the bed?

15 A. The initial plan was for me to sleep on
16 the couch. I told the girls they could have the
17 room. Upon getting home and them showering, it was
18 like everybody was kind of awake again, everybody
19 except me. I had started to drink heavily at that
20 point, and I remember my brother starting to cook
21 something.

22 And I just -- I remember being --
23 becoming out of it. Like the liquor hit me all at
24 once. I said, I'm done, I'm going to go to bed.
25 If you're going to stay up, I'm going to go to bed.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 It's a small trailer, two bedrooms, a
2 living room. The other bedroom was nothing but
3 storage, so...

4 Q. Your testimony is that you went -- is
5 it your testimony -- is your testimony that you
6 went to bed first?

7 A. My testimony is that I went to bed
8 first. I went to my bedroom alone; I went to bed
9 first.

10 Q. How long after you had been in bed did
11 Robyn and Lexi jump in with you?

12 A. I can't recall the exact time frame. I
13 went in there to pass out, quote, unquote. Ten,
14 15, 20 minutes. Maybe 30.

15 Q. You heard testimony earlier about there
16 was some joking when they came into the bedroom to
17 get into bed with you about who was going to sleep
18 in the middle. Do you remember that?

19 A. Yeah. I remember hearing the
20 testimony, Joe.

21 Q. Did you -- do you remember that
22 conversation?

23 A. I do not recall that conversation.

24 Q. Did it wake you up when the -- when
25 they got into your bed?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I believe so. It was a half wake up,
2 kind of groan. Like, I know the lights turned on
3 and it was briefly. And so it woke me, but not a
4 full I'm awake. I was intoxicated.

5 Q. When Robyn and Lexi got in the bed,
6 what did Lexi do?

7 A. When Robyn --

8 Q. When Robyn and Lexi got in the bed
9 after you were already in the bed as you testified,
10 then what -- did Lexi go to sleep?

11 A. We all went to sleep. Lexi went to
12 sleep when she got in the bed.

13 Q. Okay. And what did Robyn do after Lexi
14 went to sleep?

15 A. After Lexi went to sleep, Robyn was
16 initially rolled over to Lexi. She turned over, we
17 started kissing, and -- I'm trying to find the
18 right word.

19 Q. I'll actually --

20 MR. GOOD: May I approach the exhibit
21 table?

22 THE COURT: You may.

23 MR. GOOD: I want to retrieve one of
24 the State's Exhibits.

25 Your Honor, may I publish State's

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Exhibit 3 to the jury?

2 MR. EVANS: It's in evidence. I don't
3 have any objection.

4 THE COURT: You may.

5 BY MR. GOOD:

6 Q. Andrew, does that diagram help you a
7 little bit to explain what happened while you were
8 in the bed?

9 A. Yeah. It's --

10 Q. That picture --

11 A. It's -- the picture shows the bed and
12 shows -- yeah.

13 Q. So you just testified that you-all
14 three were in the bed and Lexi went to sleep?

15 A. Yes, Joe.

16 Q. Did she -- did Lexi drink excessively
17 that night, in your opinion?

18 A. Yes, Joe.

19 Q. And then what did Robyn do after Lexi
20 went to sleep?

21 A. Robyn rolled over and I remember that's
22 where it started. We started touching on each
23 other a little bit. She rustled the bed when she
24 rolled and then --

25 Q. Did she initiate physical intimacy with

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 you?

2 A. Yes. She rustled and turned over
3 towards -- not towards but turned over onto her
4 back. She was leaning towards Lexi, rolled over
5 onto her back and rustled, and that's when we
6 started to touch a little and there was contact.

7 Q. And then what happened?

8 A. And then we started to kiss and -- kind
9 of keep talking. We started to kiss and that just
10 led into touching that led into the initial act of
11 consensual sex is what it led into.

12 Q. Did you take off her pants?

13 A. I took off her pants with her help.

14 Q. Okay. You did not take -- did you take
15 off her pants all by yourself?

16 A. No, I did not.

17 Q. After you took off her pants, then what
18 happened?

19 A. After I took off her pants, there was
20 some penetration by my fingers. I don't know how
21 to describe that. There was penetration by my
22 fingers, some more touching. There was -- what's
23 the right word mass -- what do you call that?
24 There was masturbation of her.

25 She put her hands on my penis and

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 ejac -- not ejaculated, but jerked it to -- I was
2 drunk so it's not like it was just ready to go.

3 Q. Okay. And what happened when?

4 A. And then from there it was -- we had
5 sex for -- I can't recall, maybe ten minutes.

6 Q. At the end of that ten minutes, why did
7 you two stop having sex?

8 A. I was winded and when -- I thought she
9 was going to roll into a different position to go
10 from -- I'll just leave it at that. I thought she
11 was getting into a different position.

12 And when she rolled over, she didn't
13 roll over all the way and we ended up just spooning
14 and going back to sleep and not continuing to have
15 sex.

16 Q. Okay. So your testimony just now is
17 that you two -- she was laying on her back and that
18 you had sexual intercourse with her and with her
19 assistance and with -- and -- and then did you go
20 to sleep and for how long?

21 A. Yes. Once we stopped, the sex stopped,
22 we went back to sleep, it had to have been a few
23 hours.

24 Q. You said a few? Did you say a few
25 hours?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I would say at least two, two to
2 three hours.

3 Q. What time do you think you started to
4 have sex?

5 A. What time do I think we started to have
6 consensual sex? I believe it was from -- it was
7 probably around 2:00 in the morning maybe.

8 Q. Why do you think it was 2:00 in the
9 morning?

10 A. Because I know that the -- I know when
11 she saved her contact info, I wasn't up that much
12 longer after that. I went to bed. I remember that
13 because I had gotten drunk. They decided they were
14 going to cook some potatoes and stay up, and we had
15 consensual sex very shortly after they came to bed.

16 Q. Okay. And you just testified that
17 after sex you both went to sleep for three or four
18 hours?

19 A. Yes, sir.

20 Q. And then what happened at the end of
21 the -- of that three or four hours?

22 A. This is where I woke up, and I woke up
23 to a violent push onto the floor. I don't know
24 what happened. I remember waking up and going,
25 what the F? Like, I don't know. That's what woke

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 me up.

2 Q. When Lexi testified that -- you heard
3 her testify --

4 MR. EVANS: Objection; pitting.

5 THE COURT: Sustained.

6 MR. GOOD: Okay. Beg the Court's
7 indulgence.

8 BY MR. GOOD:

9 Q. Andrew, you testified that you woke up
10 when you fell off the bed. Did you ever at any
11 point hear Lexi say anything to wake you up?

12 A. I do not recall hearing Lexi say
13 anything.

14 Q. Do you remember when Robyn left the
15 room?

16 A. That's when I woke up on the floor. I
17 know that.

18 Q. How did you get on the floor?

19 A. I believe I was pushed off the bed
20 violently, I believe.

21 Q. Who pushed you on the floor?

22 A. Robyn.

23 Q. Okay. Why do you think you were pushed
24 on the floor?

25 MR. EVANS: Objection; speculation.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 THE COURT: If he knows, he can answer.

2 THE DEFENDANT: I don't -- I do not
3 really honestly know why I was pushed on the floor.

4 MR. EVANS: Objection; speculation.

5 THE COURT: Hold on one second.

6 Is there any response?

7 MR. GOOD: No response, Your Honor.

8 THE COURT: Thank you. Move on.

9 BY MR. GOOD:

10 Q. Andrew, once Lexi and Robyn left your
11 house, what did you do?

12 A. Once Lexi and Robyn left my house?

13 Q. Did you continue to sleep?

14 A. I was -- I remember still trying to
15 sleep. I remember waking up on the floor pissed
16 off and yelling and so -- initially, yelling. I
17 don't know what I may have said. I was fuzzy, woke
18 up on the floor in my bedroom, pissed off.

19 Q. Why were you angry?

20 A. I was angry because I had gotten shoved
21 off the bed. I mean, it's not like I rolled off
22 the bed. I was pushed off, and I don't even recall
23 why or what happened. The next thing I know I just
24 heard a bunch of noise. There was hysterical
25 crying, there was rustling.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 And all I remember is pulling my cover
2 over my head and, like, just shut up. Just shut
3 up, whatever, and then they left.

4 Q. So really you haven't talked to Lexi
5 since before you went to bed that night --

6 A. No, I have not.

7 Q. -- to date? Okay. Let's talk about
8 your meeting with Detective Bowen the day after.
9 Where did he interview you?

10 A. Detective Bowen interviewed me in his
11 patrol car in the front yard of my house.

12 Q. What time of day was that?

13 A. It was evening time. I couldn't tell
14 you. It was dusk, almost dark.

15 Q. How many police cars were there when
16 you got to the house?

17 A. It looked like a SWAT team was there.
18 There was definitely more than four. Probably six
19 to eight. I know there were two SUVs. I know that
20 there were four marked patrol cars, and I know that
21 his unmarked silver Crown Victoria was there. My
22 yard was full.

23 Q. Okay. Did you know they were coming to
24 your house --

25 A. I had no idea. I had gotten one random

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 phone call from a random number. No voice mail.

2 Q. How were you feeling when you got to
3 your house?

4 A. When I got to my house -- when I got to
5 my house and saw all the cops how was I feeling?
6 Didn't know what was going on. I saw cops inside
7 the house, inside the car. I was feeling
8 overwhelmed. Just completely overwhelmed and leave
9 it at that.

10 Q. How were you feeling physically based
11 on the night before?

12 A. Physically, I had barely any sleep, I
13 was weak, I was distraught, I was confused, I was
14 just -- no sleep. I mean, sleep-deprived,
15 confused, not even knowing what's going on.

16 Q. Did you feel like you had done anything
17 wrong?

18 A. I didn't feel like I had done anything
19 wrong, but I did not know what had occurred. If I
20 had gone into like a fit when I got pushed out of
21 my bed and, you know, yelled and got mean, but I
22 did not know, you know.

23 Q. Did you know at the time that you spoke
24 with Detective Bowen that he had already talked to
25 Lexi and Robyn and heard their side of the story?

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 A. I did not know that.

2 Q. Why did you -- let's see. Did you ever
3 -- outside of the interview that Detective Bowen
4 did with you, did you participate in the
5 investigation in any other way, meaning did you --
6 was there any follow-up interview, any requested
7 blood sample, anything like that?

8 A. After the interview, there was nothing.
9 I remember sitting in the patrol car and telling
10 Detective Bowen, you know -- I listened to my
11 testimony to him for 47 minutes. And I told him
12 that I will take a lie detector. I'm sitting here
13 talking with you because I don't know what's going
14 on, you know.

15 At that point, if I felt like -- at
16 that point if I felt like I had done something
17 wrong, I would have called Joe. I would have
18 called my teacher who taught me. And I openly
19 talked to him and tried to explain to the best of
20 my ability the day after the incident what was
21 going on.

22 Q. You testified a few minutes ago you had
23 sex with Robyn while she was laying on her back; is
24 that correct?

25 A. Yes, Joe.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. How was -- can you explain in detail
2 the position that you were in when she was on her
3 back?

4 A. Can I explain the position?

5 Q. The physical sexual position.

6 A. Yes. When we -- when she was on her
7 back and we had consensual sex, her legs were up
8 and they were up and open like this. (Indicating)
9 I mean, they were -- I don't want to stand up. Her
10 legs were up and resting on my shoulders and open.

11 Q. And did you put her legs on your
12 shoulders?

13 A. She lifted them up.

14 Q. Did you ever have sexual intercourse
15 with Robyn while she was laying on her side?

16 A. No, Joe.

17 Q. Andrew, can you tell the Court if --
18 this allegation of non-consensual sex, how has this
19 affected you emotionally and financially?

20 A. I've been waiting for this day for
21 three years because I got to sit here yesterday and
22 I got to hear how the State of South Carolina flew
23 these two women and paid for their expenses and
24 paid for their hotel and, basically -- I can't use
25 that word.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 I got to sit here and listen to
2 somebody sit up here and tell me their side as well
3 as you-all, and this is my side. For three years
4 of my life, it's been like a conviction already.
5 It's been like a conviction already.

6 I can't go to college. I can't do -- I
7 can't go be a firefighter, I can't even work a
8 state job, I can't do anything with a background
9 check. Why? Because this is pending.

10 MR. EVANS: Your Honor, I'm going to
11 object to the relevance of this.

12 THE COURT: Hold on one second.

13 Counsel approach.

14 (Bench conference.)

15 THE COURT: Thank you.

16 BY MR. GOOD:

17 Q. Andrew, the really important question
18 is this: Did you have consensual sex with Robyn
19 Dunn?

20 A. Yes, I had consensual sex with Robyn
21 Dunn.

22 Q. Did you have non-consensual sex with
23 Robyn Dunn?

24 A. No, I did not have non-consensual sex
25 with Robyn Dunn.

ANDREW ALLSTON KIRKLAND - DIRECT EXAM BY MR. GOOD

1 Q. Did you rape Robyn Dunn?

2 A. I did not rape Robyn Dunn.

3 MR. GOOD: That's all, Your Honor.

4 Beg the Court's indulgence.

5 BY MR. GOOD:

6 Q. Andrew, you didn't dispute -- did you
7 dispute taking off Robyn's pants?

8 A. I did not dispute taking off Robyn's
9 pants. I said I took Robyn's pants off with her
10 help.

11 Q. Do you remember Lexi coming back into
12 the room and asking where Robyn's pants were?

13 A. I do not, Joe.

14 Q. Okay. So did you tell Lexi where the
15 pants were?

16 A. No, Joe.

17 Q. You admitted to taking off her pants.
18 Would you have known where the pants were?

19 A. They were mostly likely in the bed,
20 Joe, underneath the covers.

21 Q. And, lastly, did you have sex with
22 Robyn while she was sleeping?

23 A. No.

24 MR. GOOD: Thank you. No more
25 questions.

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 THE COURT: Cross.

2 CROSS-EXAMINATION

3 BY MR. EVANS:

4 Q. Afternoon, Mr. Kirkland.

5 A. Afternoon.

6 Q. Those text messages that Mr. Good spent
7 a lot of time going through, you deleted all of
8 those, right?

9 A. Yes, I did delete those.

10 Q. And those were between you and Lexi,
11 not you and Robyn, correct?

12 A. Yes, sir.

13 Q. And despite the fact that apparently
14 shows you being set up on this date with her, you
15 still deleted them, correct?

16 A. Yes, sir.

17 Q. You had never met Robyn before that
18 night, had you?

19 A. No, sir.

20 Q. And you were all drinking and hanging
21 out at the house, drinking liquor, right?

22 A. Yes, sir.

23 Q. And then you were the driver, right?

24 A. Yes, sir.

25 Q. Two and from the bar, right?

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 A. Yes.

2 Q. You were sober enough leaving the house
3 and coming back from the bar, you were sober enough
4 to drive, correct?

5 A. Yes, sir.

6 Q. And you said the original plan was that
7 you were going to sleep on the couch?

8 A. That was the original plan.

9 Q. Okay. And then you testified on direct
10 that you went to bed first, right?

11 A. Yes.

12 Q. Because you got really drunk, right?

13 A. Yes. Once we got home.

14 Q. And you were really tired, right?

15 A. Yes.

16 Q. So you were too tired to stay up,
17 right?

18 A. Yes.

19 Q. But you weren't too tired when Robyn
20 apparently rolled over and tried to initiate sex
21 with her, you weren't too tired to have sex, right?

22 A. No.

23 Q. And do you remember giving a statement
24 to Detective Bowen?

25 A. Yes.

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 Q. And you were at your house, right?

2 A. Yes.

3 Q. And he actually told you you were not
4 under arrest?

5 A. Yes.

6 Q. And he read you your Miranda warnings,
7 didn't he?

8 A. Yes.

9 Q. And he told you that you didn't have to
10 talk to him, didn't he?

11 A. Yes.

12 Q. And he told you you didn't have to talk
13 to him without an attorney there, right?

14 A. Yes.

15 Q. And you were actually sitting -- you
16 said it was in the police car, but you were sitting
17 in the front seat with him, right?

18 A. Yes.

19 Q. You freely and voluntarily made that
20 statement to Detective Bowen, right?

21 A. Yes.

22 Q. And you told Detective Bowen, quote, I
23 knew she was fucked up, right?

24 A. Yes.

25 Q. So you knew she was intoxicated, right?

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 A. Huh? I knew that we had all been
2 drinking, yes.

3 May I see the transcript as you read
4 it?

5 Q. I don't have a transcript. You don't
6 remember making that? Would it refresh your
7 recollection if you heard it?

8 A. I was trying to see if I could see what
9 I had said.

10 Q. Let's be clear. You don't remember it,
11 right? Is that what you're saying?

12 A. I need you to ask the question again,
13 sir.

14 Q. I'm saying, do you remember telling
15 Detective Bowen that you knew she was fucked up?
16 She being Robyn.

17 A. Yes.

18 Q. Okay. And so you knew she was
19 intoxicated, correct?

20 A. I know that we were all intoxicated.

21 Q. Okay. And she in that statement was
22 Robyn, right?

23 A. Yes.

24 Q. And you knew that she had thrown up in
25 your car, right?

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 A. Yes.

2 Q. You had to pull over and let her finish
3 throwing up, right, on the way home?

4 A. I remember pulling over, yes.

5 Q. And you and Dewey actually cleaned out
6 the car, right?

7 A. I don't recall that.

8 Q. Okay. In your statement to Detective
9 Bowen -- I believe you testified on direct that you
10 took her pants off and she helped you, but the
11 first time you told Detective Bowen about it you
12 said you took her pants off and she just laid
13 there, right?

14 A. I don't recall. That was three years
15 ago and my memory is very fuzzy, and it was a 45-
16 48-minute talk with Detective Bowen. And I do
17 remember listening to it and I do remember saying,
18 I took her pants off. And I do remember us walking
19 in circles --

20 Q. All right. Mr. Kirkland, that's not
21 what I asked. Simple question. Do you remember
22 telling Detective Bowen that you took her pants off
23 and she just laid there?

24 A. No, I do not.

25 Q. You don't remember that. Would it

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 refresh your recollection if you heard your
2 statement again?

3 A. No, it would not refresh my
4 recollection.

5 Q. So you're saying you didn't say that?

6 A. I said that statement in so many ways
7 to Detective Bowen that I do not feel it's fair
8 that you can use --

9 Q. That's not my question. Did you say it
10 or did you not?

11 A. Yes.

12 Q. Okay. And do you remember that
13 statement because -- you said you reviewed it for
14 trial, right?

15 A. I -- I --

16 Q. I haven't finished my question. I
17 don't mean to interrupt you.

18 A. Yes, sir.

19 Q. When he asked you to explain the sex as
20 you remember it, you said, I thought she had woke
21 up. Do you remember that?

22 A. That whole interview is so --

23 Q. Mr. Kirkland, I'm just asking a simple
24 question. Do you remember saying that to Detective
25 Bowen?

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 A. I remember telling Detective Bowen a
2 lot of things.

3 Q. Do you remember specifically saying I
4 thought she had woke up?

5 A. I believe so.

6 Q. Okay. And so you weren't sure whether
7 she had woken up or not?

8 A. I'm not sure at what point in the
9 timeline that you're talking about, sir.

10 Q. Would it refresh your recollection to
11 hear it again?

12 A. You're totally confusing me.

13 MR. GOOD: Your Honor, objection. He's
14 asked -- he's given him an answer.

15 THE COURT: Overruled.

16 BY MR. EVANS:

17 Q. Would it refresh your recollection as
18 to that specific statement if you heard that in
19 your interview again?

20 A. No. If you're telling me I said
21 something in the statement and you're going to pull
22 it up, then I would say I had to have said that.

23 Q. Okay. So you said that.

24 A. Yes.

25 Q. And so, apparently, you go to bed --

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 or, excuse me, you go to bed first, right?

2 A. Right.

3 Q. And so you were right here, correct?

4 A. Yes.

5 Q. Robyn is here, correct? And Lexi is
6 here, right?

7 A. Yes.

8 Q. And then Lexi falls asleep, right?

9 A. Yes.

10 Q. And then that's when Robyn rolls over
11 and initiates sexual intercourse with you, right?

12 A. Robyn rolled over onto her back, yes.

13 Q. Okay. So Lexi is laying here the whole
14 time all this is going on, right?

15 A. Yes.

16 Q. And so you-all had -- you said she's on
17 her back.

18 A. Yes.

19 Q. And I'm assuming this is what we call
20 missionary position?

21 A. Yes.

22 Q. And you said you had sex for ten
23 minutes, right?

24 A. Probably. It wasn't that long.

25 Q. Ten minutes?

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 A. Probably, yeah.

2 Q. Okay. And you're going and you said
3 you wore yourself out. You were going pretty hard.
4 Ten minutes, right?

5 A. I just said that -- we were all drunk.
6 And when I said --

7 Q. Mr. Kirkland, I don't mean to interrupt
8 you. I just need you to answer the question I'm
9 asking.

10 A. I would love to ask a question. I
11 would.

12 Q. Well, that's not what you can do.
13 Okay. You said you wore yourself out, you got
14 tired, right? After ten minutes?

15 MR. GOOD: Objection, Your Honor. He
16 didn't say that.

17 MR. EVANS: I believe that's what he
18 said.

19 MR. GOOD: He said he was winded.
20 That's all. He didn't say what you said.

21 THE COURT: I've already told you, you
22 do not argue --

23 MR. GOOD: I'm sorry.

24 MR. EVANS: I apologize, Your Honor. I
25 will rephrase my question.

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 THE COURT: All right. Thank you.

2 BY MR. EVANS:

3 Q. You got winded after ten minutes,
4 correct?

5 A. Yes.

6 Q. But you were going hard enough to get
7 winded, right?

8 A. I was still drunk.

9 Q. Okay.

10 A. I was still intoxicated, so --

11 Q. So, yes. And this whole ten minutes
12 Lexi is laying there asleep in the bed?

13 A. Yes.

14 Q. She doesn't wake up for the first
15 minute, right?

16 A. No.

17 Q. She doesn't wake up for the second
18 minute, right?

19 A. No.

20 Q. Not the third minute?

21 A. No.

22 Q. Not the fourth minute?

23 A. No.

24 Q. Not the fifth minute?

25 A. No.

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 Q. Not the sixth minute?

2 A. No.

3 Q. Not the seventh minute?

4 A. No.

5 Q. Not the eighth minute?

6 A. No.

7 Q. Not the ninth minute?

8 A. No.

9 Q. Not the tenth minute?

10 A. No.

11 Q. And when you were done, she doesn't
12 wake up?

13 A. No.

14 Q. And so you weren't wearing a condom,
15 right?

16 A. No, sir.

17 Q. And you did not ejaculate?

18 A. No, sir.

19 Q. And then I believe you testified the
20 next thing you know you're getting pushed off the
21 bed by Robyn?

22 A. I didn't say by Robyn. I just remember
23 getting pushed off the bed.

24 Q. I believe you testified that Robyn
25 pushed you off --

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 A. Okay. Yes.

2 Q. Okay. But you have no idea why Robyn
3 pushed you out of bed?

4 A. No.

5 Q. And then you told Detective Bowen that
6 you could hear Robyn crying, right?

7 A. Yes.

8 Q. After you got pushed out of the bed?

9 A. No. I could hear Robyn crying after
10 the fact when they were leaving out of my house.

11 Q. Okay. So you could hear her crying
12 while you were in bed, right?

13 A. Yes.

14 Q. You could hear her crying while she was
15 in the living room, right?

16 A. I believe so. I can't tell you where
17 she was, sir.

18 Q. Okay. But she wasn't in the bed?

19 A. She wasn't in the bedroom.

20 Q. And you could hear her crying?

21 A. Yes.

22 Q. And then Lexi came in and you told
23 Detective Bowen that she was pissed, right?

24 A. I believe so.

25 Q. So Lexi was pissed and then they left,

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 right?

2 A. Yes.

3 Q. And you didn't try to talk to Lexi
4 before they left?

5 A. All I remember --

6 Q. You didn't try to talk to Lexi, right?

7 A. What?

8 Q. You didn't try to talk to Lexi before
9 they left. That's what you testified, right?

10 A. I just covered my head and tried to
11 cover up and just told them to just go, go.

12 Q. So you didn't tell her -- you didn't
13 ask why they were leaving?

14 A. There was no time to ask why they were
15 leaving.

16 Q. You didn't ask them why they were
17 leaving?

18 A. No, sir.

19 Q. You didn't ask what was wrong?

20 A. No, sir.

21 Q. You didn't say, hey, Robyn and I just
22 had great sex earlier, what's going on? You didn't
23 ask them that?

24 A. No, sir.

25 Q. And when Detective Bowen asked you if

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 Robyn intended to have sex with you, you said, I
2 don't know?

3 A. Yes, sir. To the best of my
4 recollection, I said that.

5 Q. You said, I don't know. I don't know
6 if she intended to have sex with me, right?

7 A. Okay.

8 Q. Right?

9 A. To the best of my recollection, yes.

10 Q. And then Bowen asked you specifically
11 if you thought Robyn had remorse. And what you
12 told him was, I think now that I fucked up, right?

13 A. Can you -- can you say that whole thing
14 one more time?

15 Q. In your statement to Detective Bowen --
16 he asked you, do you think that Robyn was just
17 remorseful about what happened? And you said, I
18 think now that I fucked up, right?

19 A. You said Robyn was remorseful. I'm not
20 getting where you're going with that.

21 Q. He asked you if you thought Robyn was
22 remorseful about what happened.

23 A. Okay.

24 Q. And your response was, and correct me
25 if I'm wrong, because --

1 A. I'm wondering why he would ask Robyn
2 why she thought --

3 Q. He asked you if you thought Robyn was
4 remorseful about what happened. If that's why she
5 had reported it to the police, right?

6 A. Okay.

7 Q. And you said, I think now that I fucked
8 up, right?

9 A. Yeah. This is the day after I said
10 that. I believe so.

11 Q. And so after they left, you sent Lexi
12 that text message that we have all seen, right?

13 A. Yes.

14 Q. And you said, I hate who I am. I
15 thought she really liked me, right?

16 A. Yes.

17 Q. Hearing her cry, I wish I had a gun
18 right now, right?

19 A. Yes.

20 Q. And then the second text message you
21 said, you be safe. Sorry I ruined everything,
22 right?

23 A. Yes.

24 Q. You were sorry, but you don't know what
25 you were sorry about, right?

ANDREW ALLSTON KIRKLAND - CROSS EXAM BY MR. EVANS

1 A. Yes.

2 Q. You and Robyn didn't talk about having
3 sex that night, did you?

4 A. Did Robyn and I talk about having sex
5 that night? There was sexual innuendo. I can't
6 tell you for sure that we said, hey, we're going to
7 have sex. I cannot tell you that. There was
8 sexual innuendo? Yes, sir.

9 Q. You didn't talk about having consensual
10 sex --

11 A. Did we plan to have sex that night? We
12 did not come up with a plan or -- you know, no.

13 Q. In fact, Robyn didn't plan to have sex
14 that night. She didn't intend to have sex that
15 night, did she?

16 A. I don't know.

17 Q. You don't know?

18 A. I don't recall. From her actions
19 and --

20 MR. GOOD: Objection, Your Honor.

21 THE COURT: What's the basis?

22 MR. GOOD: He -- that's all --
23 speculation.

24 THE COURT: He can answer if he knows
25 and so --

ANDREW ALLSTON KIRKLAND - REDIRECT EXAM BY MR. GOOD

1 MR. GOOD: He can't speak to what --

2 THE COURT: He's answered the question,

3 so...

4 MR. GOOD: I just wanted my objection

5 noted.

6 THE COURT: It's on the record.

7 BY MR. EVANS:

8 Q. So you don't know if she intended to
9 have sex with you that night?

10 A. I don't know.

11 Q. And yet you think it was consensual?

12 A. Yes, it was consensual.

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

14 Thank you, Mr. Kirkland.

15 THE COURT: Mr. Good.

16 REDIRECT EXAMINATION

17 BY MR. GOOD:

18 Q. You feel that you were very honest with
19 Detective Bowen?

20 A. Yes, sir, I do.

21 Q. When you took Robyn's pants off, was
22 she laying there?

23 A. She was laying on her back, yes.

24 Q. So that statement to Detective Bowen
25 would not be incorrect?

ANDREW ALLSTON KIRKLAND - REDIRECT EXAM BY MR. GOOD

1 A. No.

2 Q. Did that mean she was asleep, that she
3 was laying there?

4 A. No, it did not.

5 Q. Andrew, if you drank heavily and you
6 went to sleep, would you sleep more soundly or
7 passed out?

8 A. Yes. Yeah.

9 Q. Had Lexi drank heavily that night?

10 A. Yes. Yes.

11 Q. When Lexi and Robyn left at 5-ish in
12 the morning, were you still intoxicated?

13 A. Yes, Joe.

14 Q. What did you mean, Andrew, by the
15 statement, I think I fucked up?

16 A. Where are we at? What I said to
17 Detective Bowen?

18 Q. Yes. The next day you told Detective
19 Bowen -- he asked about remorse, and you said, I
20 think I fucked up. What did you mean by that?

21 A. What I was trying to get across
22 earlier, I was confused, I was disoriented. This
23 is the day after. This is the day after I come
24 home and there is like eight cop cars in my yard.

25 So when I testified about -- the only

ANDREW ALLSTON KIRKLAND - REDIRECT EXAM BY MR. GOOD

1 interview I did with Detective Bowen, we're talking
2 hours after this incident. We're talking hours.

3 Q. What did you think you F'd up?

4 A. What did I think I F'd up? I thought
5 that I had gotten mean when I got kicked out my
6 bed. I thought I had said something or, you know,
7 told them to get out. I don't know.

8 When I said I fucked up, I didn't even
9 really know what I was saying. I was in shock. I
10 was in a cop car being interviewed. I was, you
11 know, sleep deprived.

12 Q. Had you felt like you had done anything
13 wrong?

14 A. I didn't feel like I had done anything.
15 I didn't know what was going on. I had a bad
16 feeling, but I didn't feel like I had done -- I
17 don't know how to convey this in a -- in a
18 scholarly manner. I felt bad, but I didn't feel
19 like I had done anything wrong. That's why I was
20 -- why are the cops here? I felt bad I drank a
21 bunch, we partied hard.

22 Q. And in this text message you stated, I
23 thought she really liked me. Can you again explain
24 why you texted that?

25 A. Because the way the whole night had

ANDREW ALLSTON KIRKLAND - RECROSS EXAM BY MR. EVANS

1 gone. I mean, she had saved her number in my
2 phone. She had taken a selfie; we had kissed and
3 we had touched. There was sexual innuendo
4 throughout the whole night.

5 Throughout the day prior in the
6 messages with my cousin, there was banter, and it
7 just continued with the sexual innuendo when they
8 showed up.

9 MR. GOOD: Okay. Thank you.

10 THE COURT: Mr. Evans, any re-cross?

11 MR. EVANS: Beg the Court's indulgence.

12 RECROSS-EXAMINATION

13 BY MR. EVANS:

14 Q. I think you just testified,
15 Mr. Kirkland, that people who drink heavily pass
16 out in your experience, right?

17 A. Yes, sir.

18 Q. You said Lexi had drank heavily that
19 night?

20 A. Yes, sir.

21 Q. And Robyn drank heavily that night,
22 right?

23 A. Yes, sir.

24 Q. And you had drank heavily that night,
25 right?

ANDREW ALLSTON KIRKLAND - RECROSS EXAM BY MR. EVANS

1 A. Yes, sir.

2 MR. EVANS: Beg the Court's indulgence.

3 I don't have anything further.

4 THE COURT: Okay. Sir, you may step
5 down.

6 THE DEFENDANT: Thank you.

7 THE COURT: Call your next witness.

8 MS. EUDY: Your Honor, can we take a
9 comfort break?

10 THE COURT: We can. Is your next
11 witness here?

12 MS. EUDY: I'm not sure. I was going
13 to check on that.

14 THE COURT: Can you check before? It
15 will make a difference.

16 Mrs. Johnson, do you-all need a comfort
17 break?

18 All right. Please remember all of my
19 admonitions. Please rise for the jury.

20 (Jury out, 3:44 p.m.)

21 THE COURT: Thank you. Be seated.

22 Can you see if there is another witness
23 in the hallway?

24 MR. EVANS: I don't believe she is
25 present, Your Honor. I believe they're trying to

1 check on her status.

2 THE COURT: Okay.

3 (Bench conference.)

4 THE COURT: Mr. Evans, do you have any
5 rebuttal?

6 MR. EVANS: No, ma'am, we do not have
7 any rebuttal.

8 THE COURT: Do you have any additional
9 witnesses?

10 MS. EUDY: We do not. Ms. Miller from
11 Beaufort Memorial has not shown up. We don't have
12 anybody else at this time.

13 THE COURT: And so do you plan to have
14 somebody else or --

15 MS. EUDY: I mean, I want her to
16 testify. We sent a subpoena and she's under their
17 subpoena, and I can't get anybody on the phone. I
18 was told last night she would be here between 2 and
19 2:30. If we could recess to work on that, I would
20 love to do that.

21 THE COURT: What are you asking then?

22 MS. EUDY: I'm asking for a recess.

23 THE COURT: For how long?

24 MS. EUDY: Can we restart in the
25 morning with her, or closing arguments if I can't

1 get her?

2 THE COURT: Do you know where she is,
3 Mr. Evans? Have you released her from your
4 subpoena?

5 MR. EVANS: Frankly, Your Honor, I
6 hadn't. I just talked to --

7 THE COURT: You have or haven't?

8 MR. EVANS: I have not. I did tell
9 her --

10 THE COURT: Is there some reason she
11 should not be brought here?

12 MR. EVANS: I told someone from her
13 office we were not planning on calling her. I gave
14 her the impression that the State was not planning
15 on calling her, but I did not release her. I don't
16 want her to get into trouble, but I told her we
17 weren't going to need her.

18 THE COURT: Why don't you step out and
19 call her? Have your victim advocate call her. I
20 do not like it that she's not here --

21 MR. EVANS: I can have --

22 Is she the one that's an attorney?

23 MR. EVANS: That's my understanding.

24 THE COURT: Okay. Let me know.

25 Regardless, I'm going to let the jury go; is that

1 correct?

2 MR. EVANS: Yes, Your Honor. I'm fine
3 with that.

4 THE COURT: Bring them in.

5 Have the advocate call her and let me
6 know where she is. Do you have the subpoena that
7 you served?

8 MR. EVANS: It was served by Beaufort
9 Sheriff's Department.

10 THE COURT: Did you serve a subpoena?

11 MS. EUDY: We didn't formally serve it.

12 MR. GOOD: We were going to hand it to
13 her when she got here under their subpoena.

14 THE COURT: But you believe that --

15 MS. EUDY: I did speak with the guy in
16 her office that he -- same guy he spoke with last
17 week. When you call the --

18 THE COURT: Just a second. Mr. Evans,
19 you believe that you released her from the
20 subpoena? That would have been her understanding
21 on Friday?

22 MR. EVANS: That's very possible, Your
23 Honor. I did tell her we were not planning on
24 calling her.

25 THE COURT: Okay.

1 MS. EUDY: Last night I did advise him
2 that she was still under the subpoena for what it's
3 worth. I don't want to get her in trouble. I want
4 to figure it out.

5 THE COURT: Okay.

6 MS. EUDY: And I did leave several
7 messages that number today.

8 (Jury in, 3:57 p.m.)

9 THE COURT: Thank you. Please be
10 seated. Ladies and gentlemen, we've approached a
11 point where we will need to break for the
12 afternoon. I told you I would try to get you out
13 of here by 5:00. Be back in the morning at 9:30.

14 And tomorrow we, potentially, may have
15 one more witness and then you will hear closing
16 arguments on behalf of counsel, and then I will
17 instruct you on the law applicable to this case.

18 Ladies and gentlemen, it is even more
19 important over the evening hours that you follow
20 all of my admonitions. Do not begin deciding any
21 issues in this case. Do not discuss this case with
22 anyone. Do not do any independent research.

23 You have not heard closing arguments on
24 behalf of counsel and, most importantly, I have not
25 advised you on the law applicable to this case.

1 Ladies and gentlemen, please have a
2 wonderful evening. Leave your notepads where they
3 are, and we will lock them up over the evening
4 hours.

5 Ladies and gentlemen, please remember
6 we can't start until all 14 of you are here. So
7 please be mindful. Now you know how bad the
8 traffic is coming in in the morning. So I will see
9 you at 9:30. Please rise for the jury.

10 (Jury out, 3:59 p.m.)

11 THE COURT: Thank you be. Seated.

12 All right. Counsel, we will be at
13 ease. I need to have a charge conference. Are
14 there any lesser includeds?

15 MR. EVANS: No, ma'am. I think it's a
16 consent case. I think it's all or nothing.

17 THE COURT: Okay. And any special
18 charges?

19 MS. EUDY: We don't have anything other
20 than the typical.

21 MR. EVANS: I requested a voluntary
22 intoxication charge, but nothing other than that.

23 THE COURT: Anything else?

24 MS. EUDY: No. We don't have anything.

25 THE COURT: All right. Will you let me

1 know -- so you need to be prepared at 9:30 either
2 to have your witness here or begin closing
3 arguments. Anything further?

4 MR. EVANS: No, ma'am.

5 THE COURT: Anything further?

6 MS. EUDY: I don't have anything other
7 than -- do you have -- does anybody have a
8 different number for her?

9 THE COURT: You can take up those
10 housekeeping matters outside of my presence. So be
11 here at 9:25 so that I can do -- assuming -- should
12 you rest, I will allow you to rest in front of the
13 jury, but you will -- if you're not calling another
14 witness, you need to rest and then argue your
15 motions at 9:25.

16 MS. EUDY: Okay.

17 THE COURT: Do you understand that?

18 MS. EUDY: Yes.

19 THE COURT: Mr. Evans, you understand?

20 MR. EVANS: Yes, ma'am, absolutely.

21 THE COURT: We'll be at ease.

22 (These proceedings were recessed at
23 4:08 p.m., to be continued 2/7/18 at 9:25 a.m.)

24

25

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 your full name and spell your last.

2 THE WITNESS: My name is Carol Miller,
3 C-A-R-O-L M-I-L-L-E-R.

4 THE COURT: Thank you for speaking so
5 loud. We usually have the opposite problem.

6 Ms. Eudy, your witness.

7 DIRECT EXAMINATION

8 BY MS. EUDY:

9 Q. Thank you for coming here today,
10 Ms. Miller. I'm going to ask you about a time
11 frame of December 2014. In December of 2014, were
12 you employed with Beaufort Memorial Hospital?

13 A. Yes, I was.

14 Q. In what capacity?

15 A. As a registered nurse in the emergency
16 room.

17 Q. A registered nurse in the emergency
18 room. And do you independently recall all the
19 patients that you saw in the emergency room on
20 December 14th -- December 7, 2014?

21 A. No. The emergency room sees about
22 several hundred a day. So I have no independent
23 recollection.

24 Q. Sure. Of course. And would it help
25 refresh your recollection if I handed you the

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 medical records to review?

2 A. I've been provided the medical records.
3 I have no independent recollection.

4 Q. Of course. Of course. And I'm going
5 to switch -- you've got a copy.

6 MS. EUDY: If I may approach?

7 THE COURT: You may.

8 BY MS. EUDY:

9 Q. I'm just going to hand you what was
10 marked for identification as Defendant's
11 Exhibit 13. Can you tell me what Exhibit 13 is?

12 A. Well, it's a State of South Carolina
13 Medical Examination Release Form. It's SOVA.

14 Q. And then on the second page, can you
15 tell me what that is?

16 A. It says, South Carolina Law Enforcement
17 Division Sexual Assault Examination Protocol.

18 Q. And who is the patient in this
19 particular record?

20 A. Robyn Dunn.

21 Q. What's the date of the exam?

22 A. 12/7/14.

23 Q. And the time admitted is what?

24 A. 10:50 is the exam. I don't know what
25 time -- she arrived at the ER 7:37.

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 Q. And the name of the hospital is
2 Beaufort Memorial?

3 A. That's correct.

4 Q. Okay. And is this your handwriting on
5 this document?

6 A. It's my printing.

7 Q. Okay. And are those your initials at
8 the bottom right corner?

9 A. Yes, it is.

10 Q. And so it appears that you would have
11 completed this record?

12 A. I completed portions of it. Portions I
13 did not. That would have been the P.A. who did the
14 medical examination.

15 Q. Okay. And on page 1, is that your
16 handwriting on page 1?

17 A. Yes.

18 Q. Okay. And if you go down about halfway
19 it says, pertinent medical history?

20 A. Uh-huh.

21 Q. Says L M P and it has a date. Can you
22 tell me what that is?

23 A. Last menstrual period 9/7/14.

24 Q. And if you go down, it says, current
25 medications. Can you tell me what you put there?

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 A. Xanax and Zoloft.

2 Q. And so that would have been reported by
3 the patient and you would have filled that in?

4 A. All I can say is it's down there. It's
5 under current medications.

6 Q. Do you generally get that information
7 from the patient?

8 A. Yes.

9 Q. And if you go down a little bit further
10 to the last quarter of the page, medications,
11 social drugs, or alcohol. Do you see that?

12 A. Yes, I do.

13 Q. And it says ingestion of alcohol or
14 drugs by the patient. And you marked what?

15 A. Yes.

16 Q. And then if, yes, it has alcohol or
17 drugs as an option. Which one did you mark?

18 A. I marked alcohol.

19 Q. And did you mark that she had taken any
20 drugs?

21 A. Says any voluntary use of any drugs
22 during the 96 hours? I put, no, other than what we
23 gave at the hospital.

24 Q. Under that it also says, if yes, you
25 check voluntary, coerced, or suspected; and it's

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 not checked that drugs were forced, coerced, or
2 suspected, correct?

3 A. That was referring to the alcohol. I
4 didn't say anything about drugs, but the voluntary
5 had to do with my saying that she had ingested
6 alcohol.

7 Q. So it doesn't appear that the patient
8 ingested drugs?

9 A. It does not appear that she said she
10 ingested drugs voluntarily.

11 Q. Or otherwise?

12 A. I do not know. All I'm doing is
13 looking at the record.

14 Q. Sure. But if she would have reported
15 to you that she was drugged or suspected she was
16 drugged, it would have checked drugs and it would
17 have checked suspected? If that's what the patient
18 told you?

19 A. All I can say is on the form it says
20 voluntary for the ingestion of alcohol.

21 Q. And can you flip to page 2 of 6,
22 please? That first section is called post assault
23 hygiene and activity. Do you see that?

24 A. Yes.

25 Q. Okay. And the last three -- you

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 checked no on everything other than urinated at the
2 top. And then you go down to vomited, changed
3 clothes, and smoked. For -- those for changed
4 clothes, what did you indicate?

5 A. Changed clothes? I put down, yes.

6 Q. Okay. And can you read what the
7 comment is after that?

8 A. Was naked at the time of assault,
9 different clothing. That's what I have down. I
10 can't -- you know.

11 Q. Certainly. You can't remember
12 independently, but that's what you wrote here. The
13 second section, assault history. It says, date of
14 assault. What date did you write down?

15 A. 2/7/14, 2:00 a.m. approximately.

16 Q. Is that 12/7/14?

17 A. Yes.

18 Q. And time of assault, what did you
19 write?

20 A. I put down 2:00 a.m. approximately,
21 because she was not sure.

22 Q. And can you flip to page 3 of 6? That
23 first question, any injuries inflicted upon the
24 assailants during the assault. You checked?

25 A. I checked no. At least that's what is

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 on this report.

2 Q. And if you flip to page 4 of 6, under
3 general physical examination, describe general
4 physical appearance. Can you read me what you
5 wrote.

6 A. Vaginal exam cooperative, in no acute
7 distress. By acute I mean no obvious -- you know,
8 she wasn't bleeding that I could see, you know,
9 anything like that. She wasn't in a
10 life-threatening condition.

11 Q. Sure. And under what that you checked?

12 A. Quiet, tearful, eye contact good.

13 Q. Okay. And if you go down to genital
14 examination, female?

15 A. After the first portion at the very
16 top, that other portion would have been by -- not
17 -- that's not my handwriting. So the rest of it is
18 not my handwriting.

19 Q. Okay. All right. So nothing else on
20 this report is your handwriting?

21 A. I see my initials there and I see my
22 initials down on the other things, but I did not
23 perform any of the other things except the last
24 page 6 of 6.

25 Q. When you say you didn't perform

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 anything, you mean you did not do the vaginal exam?

2 A. Vaginal exam. I did collect the
3 evidence as far as the other evidence that's in the
4 SLED packet. Per any registered nurse, we go
5 through this about once a year and we collect, as
6 far as protocol, and assess specifically on what to
7 do for each thing as far as for like, you know, the
8 mucosa mouth, et cetera, but I did not do the
9 vaginal exam.

10 Q. And the P.A. -- you testified the P.A.
11 would have done the vaginal exam?

12 A. Yes.

13 Q. And he came here and told us that.

14 On page 6 of 6, were you about to say
15 that you did fill that out?

16 A. Yes. That's my handwriting.

17 Q. And under evidence collected, you
18 checked?

19 A. On the top, that's not my handwriting
20 there. I see where my handwriting as far as the
21 Rocephin and the other -- the other marks I cannot
22 say. I know that those were collected and we
23 marked them off as we did them, but -- I believe
24 those are my Xs, but I cannot swear.

25 I know that my handwriting below is

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 Rocephin and Zithromax, et cetera. I believe that
2 I would have -- I don't know if this was marked.
3 We wrote down, myself and -- we wrote down all the
4 information that we did in each swab.

5 Q. And when you say, we, are you talking
6 about you and the P.A.?

7 A. Me and the P.A., and in the room also
8 was Heather Taylor who assisted in holding an
9 envelope to put things in.

10 Q. Okay.

11 A. She would be the tech.

12 Q. And her name, I think, was on the first
13 page --

14 A. Uh-huh.

15 Q. -- correct? And then right there under
16 evidence collected where it says two pair of pants
17 collected by the sheriff's office, Detective Bowen
18 at victim's home, you didn't write that?

19 A. I didn't write that, no.

20 Q. Okay.

21 A. That could have been who wrote it at
22 the time. Heather might have filled that out at
23 the time.

24 Q. But this was your record --

25 A. Right.

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 Q. -- or the county record that was filled
2 out while you three were participating in
3 performing the exam?

4 A. That's correct.

5 Q. And then at the bottom it says,
6 signature of officer receiving evidence?

7 A. Uh-huh.

8 Q. Do you see that? So the officer signed
9 it from the Charleston County Sheriff's Department,
10 and then that's when you hand off the evidence you
11 collected; is that how it works?

12 A. We wait until we -- it's either under
13 lock or key or keep it in our possession until it's
14 signed off by the sheriff's office.

15 Q. Okay. Certainly. And it says,
16 signature, Jason Bowen, 1:27 p.m.?

17 A. That's what it says.

18 MS. EUDY: All right. Your Honor, I
19 would like to move to admit Exhibit 13 into
20 evidence.

21 THE COURT: Any objection?

22 MR. EVANS: Your Honor --

23 THE COURT: Is there an objection?

24 MR. EVANS: Hearsay, Your Honor, yes.

25 THE COURT: Please approach.

CAROL MILLER - DIRECT EXAM BY MS. EUDY

1 MR. EVANS: Apologize, Your Honor.

2 (Bench conference.)

3 THE COURT: Sustained.

4 BY MS. EUDY:

5 Q. One last question, Ms. Miller. This
6 record of the SANE exam, this would be a record
7 that you would keep at Beaufort Memorial Hospital
8 in the normal scope of business in treating
9 patients at that hospital; is that correct?

10 A. Yes, it is.

11 MS. EUDY: Your Honor, I would like to
12 move this into evidence, Exhibit Number 13.

13 THE COURT: Any objection?

14 MR. EVANS: Not at this time, Your
15 Honor.

16 THE COURT: Defendant's Exhibit
17 Number 13 into evidence without objection.

18 (DEFENDANT'S EXH. 13 in evidence.)

19 MS. EUDY: Thank you. No further
20 questions, Your Honor.

21 MR. EVANS: Your Honor, I don't have
22 any questions for Ms. Miller.

23 THE COURT: May this witness be
24 excused?

25 MS. EUDY: Yes.

1 THE COURT: Thank you.

2 THE WITNESS: Thank you.

3 THE COURT: Call your next witness.

4 MS. EUDY: The defendant has no other
5 witnesses and we rest our case.

6 THE COURT: All right. Reserving all
7 motions and matters, Mr. Evans, do you have any
8 rebuttal?

9 MR. EVANS: Beg the Court's indulgence.
10 We do not, Your Honor.

11 THE COURT: Ladies and gentlemen, you
12 have heard all the testimony that you will hear in
13 this case and received into evidence all of the
14 exhibits that have been made part of the record in
15 this case. There is a matter of law that I must
16 take up outside of your presence.

17 Do not begin your deliberations. Do
18 not begin discussing this case. I will receive you
19 back in this courtroom, and at that time you will
20 hear closing arguments on behalf of counsel, and
21 then I will instruct you on the law applicable to
22 this case. After that, you will retire to consider
23 your verdict.

24 Once again, please do not discuss the
25 case with your fellow jurors or with anyone, and do

1 not begin deciding any issue in this case. You may
2 take your notepads with you or leave them in your
3 chair. Please rise for the jury.

4 (Jury out, 9:57 a.m.)

5 THE COURT: Thank you, be seated. Any
6 motions or matters?

7 MS. EUDY: Yes, Your Honor. I would
8 like to take the opportunity to renew all of our
9 objections and motions, including our motion for
10 directed verdict. As when viewing the evidence in
11 the light most favorable to the State, the State
12 has failed to present any direct evidence or
13 substantial circumstantial evidence that meets the
14 elements of criminal sexual conduct in the third
15 degree, specifically that Ms. Dunn was mentally
16 incapacitated to the State that she could not
17 control her behaviors or that she was physically
18 helpless such that reasonable -- that it reasonably
19 tends to prove that Andrew Kirkland had committed a
20 sexual battery and a crime of criminal sexual
21 conduct in the third degree.

22 Further, I don't believe the State has
23 established that jurisdiction -- that this took
24 place in Charleston County.

25 Thank you.

1 MR. EVANS: May it please the Court.

2 Your Honor, Detective Bowen testified
3 that he went to the crime scene that was located in
4 Charleston County as to the jurisdiction.
5 Regarding the elements of criminal sexual conduct
6 --

7 THE COURT: Do you recall that
8 testimony, Ms. Eudy?

9 MS. EUDY: Specifically, he said he
10 went to the defendant's home, but I don't recall
11 that he said it was in Charleston County.

12 MR. EVANS: I'm fairly certain we asked
13 that question. That's something that we check off
14 as an element. We can go to the record if
15 necessary, but that's not our recollection.

16 THE COURT: That's one of those things
17 that I also always check. He did prove that one.
18 I wanted to make sure that you recall him
19 testifying that he went to the defendant's home --

20 MS. EUDY: I do recall --

21 THE COURT: -- you recall the magic
22 words Charleston County. All right. Thank you.

23 MR. EVANS: Regarding the elements of
24 criminal sexual conduct, third degree. I mostly
25 stand on my argument for the directed verdict that

1 in the State's case, Miss Dunn testified that she
2 was sleeping. At the time of the incident, she
3 awoke and the defendant was penetrating her
4 vaginally with his penis.

5 There was also substantial testimony
6 from many witnesses about her level of intoxication
7 at the time, and I believe all of that would go to
8 the question for the jury of whether she was
9 mentally incapacitated or physically helpless, and
10 I would ask that you deny the motion and submit
11 those issues to the jury.

12 THE COURT: Mr. Evans, do you agree
13 that you have not shown that the defendant used
14 force or coercion?

15 MR. EVANS: I agree we are not going
16 forward on that element, Your Honor. As well as
17 the -- the first prong --

18 THE COURT: -- the second?

19 MR. EVANS: Yes, ma'am, I apologize.

20 THE COURT: Ms. Eudy, any response?

21 MS. EUDY: I don't have any response.

22 THE COURT: Okay. And, again, for the
23 reasons I more fully articulated at the close of
24 the State's case when you first made the motion for
25 a directed verdict, I deny your motion for directed

1 verdict again.

2 The burden is the existence or
3 nonexistence of evidence, not as to the weight. I
4 do agree there was no testimony presented that the
5 victim was mentally defective, and there has been
6 no testimony presented that the defendant used
7 force or coercion under the first prong.

8 And so as to that -- those elements, I
9 will not be charging those to the jury, but I will
10 charge the mentally and physically helpless.
11 Mentally incapacitated comes under the helpless
12 prong.

13 Note your exception to my ruling. I
14 think you agree the State has not proven that.

15 MR. EVANS: Yes, ma'am. We do not
16 intend to go forward on those prongs under the
17 statute.

18 MS. EUDY: Thank you, Your Honor.

19 THE COURT: Anything further?

20 MS. EUDY: Nothing further.

21 THE COURT: And how are closings going
22 to occur?

23 MR. EVANS: I will be doing opening in
24 full and closing in rebuttal. Closing in full and
25 then rebuttal.

1 MS. EUDY: I'm going to close after
2 him.

3 THE COURT: Okay. And anything before
4 we --

5 MR. EVANS: I would like a brief
6 comfort break if possible, Your Honor, but I'm
7 ready to go.

8 MS. EUDY: That would be great.

9 THE COURT: Come look at the verdict
10 form.

11 (Bench conference.)

12 THE COURT: Anything before we bring in
13 the jury?

14 MR. EVANS: We are waiting on Ms. Eudy.
15 I think she was taking her comfort break.

16 MR. GOOD: There she is.

17 THE COURT: Anything before we bring in
18 the jury?

19 MR. EVANS: State is ready, Your Honor.

20 MS. EUDY: Defense is ready.

21 THE COURT: And we have agreed on the
22 exhibits.

23 MR. EVANS: Yes, ma'am.

24 MR. GOOD: I just reviewed them; we do.

25 THE COURT: And you were in agreement

1 with the verdict form.

2 MR. EVANS: The State was.

3 MS. EUDY: Yes, Your Honor. Defense is
4 as well.

5 (Jury in, 10:08 a.m.)

6 THE COURT: Thank you. Please be
7 seated.

8 Ladies and gentlemen, we have reached
9 the stage of the trial where you will hear closing
10 arguments on behalf of counsel. Just as I
11 instructed you what was contained in opening
12 statements is not evidence, neither is what is
13 contained in closing arguments. It's merely the
14 attorneys' contention as to what the evidence has
15 shown you.

16 After you have heard closing arguments
17 on behalf of counsel, in this case, Mr. Evans will
18 go first for his closing, then Ms. Eudy will have
19 her closing argument, and then Mr. Evans will have
20 an opportunity for brief rebuttal.

21 After that, I will instruct you on the
22 law applicable to this case. Please remember, the
23 law as given by this Court is the only law that you
24 may follow.

25 Please give your strict attention.

CLOSING ARGUMENT BY MR. EVANS

1 Mr. Evans.

2 MR. EVANS: Thank you. May it please
3 the Court.

4 THE COURT: Yes, sir.

5 MR. EVANS: Ladies and gentlemen, this
6 may not be what you thought of as a rape before you
7 sat on the jury this week, but make no mistake
8 that's what this was, a rape. And the defendant is
9 no less of a predator than someone waiting down a
10 dark alley for a stranger to wander by.

11 I want to review the testimony from
12 this week with you because you've been sitting here
13 three days, and I know it's hard to remember
14 everything that was testified to.

15 Robyn, obviously, testified for you.
16 She told you she and her friend -- best friend Lexi
17 came up from Beaufort on December 6, 2014. The
18 plan was to go out with Lexi's cousins who Robyn
19 had never met for Lexi's 30th birthday.

20 They came up, everybody was drinking
21 liquor, had multiple drinks that night, and Robyn,
22 I submit to you, she didn't have anything to eat
23 that day. She had more to drink than she realized.
24 She testified she had about five, six, seven
25 drinks.

CLOSING ARGUMENT BY MR. EVANS

1 There was other testimony that
2 everybody was doing shots at the bar. Robyn
3 obviously had more to drink than she realized.
4 Everybody else testified that she was very clearly
5 intoxicated, and we knew she vomited on herself in
6 the car on the way back to the defendant's house.

7 When Robyn got back, she had to get a
8 shower, wash her clothes, tried to eat some instant
9 mashed potatoes and get some food in her stomach.
10 She put on her pajamas and got put to bed. The
11 next thing she remembered is slightly waking up to
12 hear Lexi saying something about her sleeping.

13 Then the next thing she remembers after
14 she dozed back off is waking up and she is being
15 raped and the defendant is raping her. They didn't
16 talk about having sex that night. She didn't agree
17 to have sex that night. She wasn't in any capacity
18 to have sex that night. She was upset and, of
19 course, she was confused. She was conflicted
20 because this is her best friend's cousin.

21 So she ran outside, she found Lexi, and
22 she told her, I woke up and he was inside me. They
23 did the first thing they could to get her to a safe
24 place and they got her out of there and they went
25 back to Beaufort.

CLOSING ARGUMENT BY MR. EVANS

1 When they got back, she decided they
2 needed to report it to the police at the hospital.
3 You also heard Carey Tucker, the physician's
4 assistant testify on Monday afternoon. He told you
5 that he did a vaginal exam, but he's not a SANE
6 nurse. He does what he can with those.

7 He didn't know -- excuse me. He didn't
8 note any genital injuries. You heard from
9 Dr. Gill-Hopple reasons why you wouldn't expect
10 necessarily to see genital injuries.

11 Lexi testified for you on Tuesday
12 morning. She told you about how she and Robyn came
13 up from Beaufort. They were going out with her
14 cousin. She testified about all the drinking that
15 everybody was doing and that Robyn and the
16 defendant didn't have much interaction that night.
17 That's what Lexi told you.

18 And it was clear to her in the car that
19 Robyn was really drunk at that time. Of course,
20 she threw up on herself, and then Lexi went into
21 what I told you would be take care of your drunk
22 friend mode.

23 Lots of people have been there. She
24 got her in the shower, cleaned her up, got her some
25 food, put her pajamas on her and put her to bed.

CLOSING ARGUMENT BY MR. EVANS

1 Of course, the original plan was for the defendant
2 to sleep on the couch. This couch. (Indicating)
3 That's not what happened.

4 He sort of followed them into the
5 bedroom, got into bed with them. And then later
6 that morning, Lexi woke up. She could tell by the
7 way Robyn was breathing she was asleep. She said
8 she was almost snoring. And she heard the
9 defendant rustling around messing with her.

10 She said, Andrew, leave her alone.
11 She's sleeping. Leave her alone, she's sleeping.
12 Lexi got up, didn't think anything of it, went to
13 the bathroom and went outside to smoke a cigarette.
14 A few moments later, Robyn came running out.

15 She was distraught and upset and
16 crying. And she said, oh, my God, Lexi, he was
17 inside me. I woke up and he was inside of me. And
18 Robyn was furious -- excuse me, Lexi was furious.

19 She wanted to go back in and do
20 something about it, but Robyn just had to get out
21 of there. So they gathered up her clothes, but,
22 remember, Robyn wasn't wearing anything when she
23 came running outside. So they had to go find her
24 pajamas bottoms.

25 Lexi went to the defendant's room.

CLOSING ARGUMENT BY MR. EVANS

1 Robyn was too upset to go back into the bedroom.
2 She yelled at the defendant, where are her pajamas?
3 Where are her pajamas? And he pointed at the end
4 of the bed. That's exactly where Lexi found them
5 because he knew where they were because he had
6 taken them off and put them there. Robyn had no
7 idea where the pajamas were.

8 They got in Robyn's car and Lexi was
9 like, you are not in any state to drive. I need to
10 drive us home. They started driving back home, and
11 that's when the defendant sends the text message.
12 Be safe. Wish I could just die. Don't know WTF.
13 I hate who I am. I thought she really liked me.
14 Hearing her cry, I wish I had a gun right now.
15 Don't want to be here anymore. You be safe. Sorry
16 I ruined everything. That's the text he sends and
17 then deletes later in the day before the police get
18 there.

19 You also heard Detective Bowen testify
20 about his investigation. He was sent down to
21 Beaufort to speak with Lexi and Robyn. He came
22 back to Charleston and interviewed the defendant,
23 did a search warrant on the defendant's house. He
24 interviewed Dewey, the defendant's brother, and he
25 got the defendant's phone.

CLOSING ARGUMENT BY MR. EVANS

1 We got the phone dump back and found
2 out, here's that text message that Lexi had given
3 to him. It had been deleted. And then he got the
4 arrest warrant for criminal sexual conduct in the
5 third degree.

6 You also heard the two women from SLED
7 testify yesterday about how there was no DNA or
8 semen. They told you some reasons why that might
9 be. Maybe because the person that collected the
10 evidence wasn't a specially-trained SANE nurse and,
11 also, because there's no ejaculation. Which the
12 defendant testified to.

13 And, lastly, in the State's case you
14 heard from Dr. Kathy Gill-Hopple. And
15 Dr. Gill-Hopple explained to you reasons why you
16 wouldn't see a genital injury in a sexual assault
17 case. And that's probably counterintuitive to a
18 lot of people. You would think, if there's a rape,
19 you would see injuries down there.

20 Dr. Gill-Hopple explained that that's a
21 very stretchy area of the body. It's made for a
22 baby to pass through in an adult woman, and that's
23 a reason why you don't see injuries very often.
24 And, also, when someone is incapacitated, passed
25 out, drunk, or asleep, the muscles are relaxed, the

CLOSING ARGUMENT BY MR. EVANS

1 body relaxes and you are less likely to see
2 injuries there.

3 I want to go over the law of criminal
4 sexual conduct with you, and I usually don't do
5 this but CSC law -- apparently, we're having
6 technical difficulties. What the judge is going to
7 charge you at the end of the closing is the law of
8 criminal sexual conduct, so I do want to go over
9 that with you.

10 Criminal sexual conduct is when a
11 person engages in a sexual battery with the victim,
12 and if any one or more of the following thing
13 happens. So the State only has to prove one of
14 these elements, and I submit to you we have proved
15 multiple.

16 If the actor uses force or coercion to
17 accomplish the sexual battery, you have aggravating
18 circumstances. The actor knows or has reason to
19 know the victim is mentally incapacitated or
20 physically helpless and aggravated force or
21 coercion is not used.

22 Knows or has reason to know. They
23 watched someone consume copious amounts of alcohol
24 that night. They see someone throw up in the back
25 seat of their car. They see someone laying asleep,

CLOSING ARGUMENT BY MR. EVANS

1 passed out in their bed. They hear them breathing,
2 almost snoring. Those are had reasons to know.

3 Mentally incapacitated is defined in
4 the statute as rendered temporarily incapable of
5 appraising or controlling his or her conduct
6 whether this condition is reduced by illness,
7 defect, the influence of a substance, or from some
8 other cause; drinking too much and passing out.
9 That's mentally incapacitated.

10 Physically helpless means that a person
11 is unconscious, asleep, or for any other reason
12 physically unable to communicate an unwillingness
13 to act. Again, I submit to you that element is met
14 here as well.

15 We have Robyn asleep, passed out when
16 the sexual battery happens. A sexual battery is
17 intercourse with any penetration of the body. And
18 that is not in dispute because the defendant
19 testified yesterday and told you that they had
20 intercourse. Of course, he claimed it was
21 consensual, but he admitted to penetrating her body
22 and committing a sexual battery.

23 I want to go over a little bit with you
24 the defendant's case from yesterday. The
25 defendant's brother, Dewey Kirkland, testified. He

CLOSING ARGUMENT BY MR. EVANS

1 told you everybody was drinking and everyone was
2 doing shots, everybody got really drunk.

3 He thought Lexi was driving the car on
4 the way home. Nobody else testified to that. He
5 also told you that the defendant wasn't drinking
6 when they got back. He said everyone was eating
7 mashed potatoes, and he left before anything
8 happened. He left before anybody went to bed,
9 before any of this stuff happened.

10 I, also, want to talk about the
11 defendant's story. Ladies and gentlemen, that's
12 what it is, a story. It's made up. He claims
13 Robyn put her phone number in his phone after she
14 took a shower and they went and sat on the couch.
15 And you've got that contact information that the
16 defense put in. You'll have that back there with
17 you.

18 Go look at this photograph. Robyn's
19 hair is not wet. She's not wearing her pajamas.
20 That photograph was not taken after she got out of
21 the shower. Who knows where he got the picture?
22 Who knows when it was taken? It was not taken on
23 his couch after she got out of the shower.

24 We also know this contact was created
25 at 12:22 in the morning the night of the incident.

CLOSING ARGUMENT BY MR. EVANS

1 Having someone's phone number in your cell phone is
2 not consent to have sex when they're asleep.
3 Having their phone number is not consent.

4 The defendant testified, of course,
5 that he and Robyn sat on the couch. That's when
6 they kissed. It's very convenient that the only
7 intimate contact they apparently have that night is
8 when everybody else is outside of the house. There
9 is no other witnesses to that kiss. Because it
10 didn't happen.

11 And then he said he was so tired and so
12 drunk that he went to bed first. He called the
13 audible, I'm not sleeping on the couch. I'm going
14 to bed. Lexi and Robyn said -- Robyn doesn't
15 remember when he went to bed. He was not in bed
16 when she got in there. And Lexi said he kind of
17 followed them in at the same time. He did not go
18 to bed first, but that's what he told you.

19 And then he claims when Lexi falls
20 asleep that's when Robyn, who you have heard
21 everybody testify was so drunk that she was
22 stumbling, was vomiting, that's when Robyn rolls
23 over and puts the move on him. And then he claims
24 they have consensual sexual intercourse for ten
25 minutes until he was -- let me get the word right

CLOSING ARGUMENT BY MR. EVANS

1 -- winded I believe is the word.

2 For ten minutes. You have seen
3 pictures of the bed. It's not a California king.
4 It's not a huge bed for three people. He's having
5 passionate consensual sex for ten minutes while
6 Lexi is right there in the bed, and she doesn't
7 wake up a single time to it. It doesn't make any
8 sense. That didn't happen.

9 And then he claims after this
10 passionate consensual sex, that they fall asleep
11 spooning. Of course, Lexi testified when she woke
12 up Robyn was spooning her. She was facing the
13 opposite side. That's because the defendant's
14 story didn't happen.

15 The next thing he knows, he's pushed
16 out of bed by Robyn. He has no idea why she's so
17 upset. And then Lexi comes storming in, and he has
18 no idea why she's upset and then they leave. He
19 doesn't try to stop them. He doesn't try to find
20 out what is wrong. They're angry, they leave, and
21 he has no idea why, but then he sends this text
22 message.

23 And I was impressed at the mental
24 gymnastics it took for him to explain all the
25 meanings of these little phrases yesterday beyond

CLOSING ARGUMENT BY MR. EVANS

1 what they clearly mean. Even though he wasn't
2 upset -- or even though he didn't know why they
3 were upset, he was sorry. He was sorry because he
4 got caught. He was sorry because she woke up while
5 he was in the middle of raping her.

6 And then, of course, he deleted the
7 text messages, even though they were great evidence
8 that he was being set up with Robyn by Lexi.

9 And importantly, ladies and gentlemen,
10 I want you to remember what he told Detective Bowen
11 in his interview, because it wasn't what he
12 testified to in his direct examination. He told
13 Detective Bowen he knew she was F'd up. He told
14 Detective Bowen the first time he talked about the
15 pants, that took her pants off and she was just
16 laying there. Just laying there.

17 He said, Detective Bowen, I thought she
18 had woken up. And then when -- Detective Bowen
19 asked him, do you think she intended to have sex
20 with you? And he said, I don't know. I don't
21 know. He told you that on the stand yesterday. I
22 don't know if she intended to have sex with me, but
23 yet he still contends this was a consensual sexual
24 encounter. I don't know is not consent.

25 Ladies and gentlemen, I think the

CLOSING ARGUMENT BY MR. EVANS

1 defense is going to argue that Robyn and, I guess,
2 both Lexi are making all of this up. They have
3 some ulterior motive, something to gain for falsely
4 reporting this and then coming to trial three years
5 later.

6 I want to ask yourself, why in the
7 world Robyn would spend -- you've heard about five
8 hours at the hospital, having her genitals poked
9 and prodded and looked at, have to talk to
10 Detective Bowen about what happened, meet with me
11 over three years getting ready for the trial, have
12 to fly halfway across the country and spend three
13 days of her life sitting in a courtroom, and then
14 have to get on the witness stand and tell 14
15 strangers about the most embarrassing, worst night
16 of her life.

17 And then have every little detail of
18 her story dissected and scrutinized, have her
19 character impugned. Nobody would sign up for that.
20 Nobody. The only reason somebody would do that is
21 because it happened, and she wanted the person
22 responsible to be held responsible.

23 More importantly, I want you to ask why
24 Lexi would sign up for that. Why she would fly
25 5,000 miles literally across the country and spend

CLOSING ARGUMENT BY MR. EVANS

1 three days of her life in trial, have to sit on the
2 stand opposite her flesh-and-blood first cousin,
3 her mothers's sister's son and testify?

4 The only reason she would do that is
5 because she saw how Robyn reacted that night to
6 what happened. She saw the fear and the confusion
7 and the tears on Robyn's face when she came out and
8 said he was inside of me. That's the only reason
9 Lexi would come.

10 Ladies and gentlemen, the evidence is
11 clear in this case what happened. The defendant
12 knew his cousin was bringing a female friend. For
13 whatever reason he thought she was being brought
14 for him, but then very early on when Robyn and Lexi
15 got there, he realized they weren't hitting it off,
16 she wasn't coming to hang out with him. He wasn't
17 going to get lucky, not unless he took it upon
18 himself.

19 He saw a window when he realized how
20 much Robyn was drinking, when he saw her throw up
21 in the back seat of his car. This little two-door
22 car. (Indicating) Pretty obvious what's going on
23 in the back seat of that car when somebody throws
24 up.

25 And he realized she's going to be

CLOSING ARGUMENT BY MR. EVANS

1 sleeping in my bed. The only way I can get in that
2 bed -- I'm not supposed to be sleeping in there --
3 is if I follow them in there. That's what he did.

4 And he waited until he knew she was
5 sleeping, and then he waited until Lexi got up to
6 go to the bathroom, and that's when he made his
7 move. He thought, she's drunk, she's asleep, she's
8 not going to realize what's going on, she's not
9 going to remember this, and Lexi's not here to see
10 what happened. And that's when he made his move
11 and that's when the rape happened.

12 Ladies and gentlemen, Robyn and Lexi
13 know what happened in this case, and they told you
14 what happened. Lexi told you what happened,
15 despite her cousin sitting in that chair, despite
16 her aunt sitting on the opposite side of the
17 courtroom. She told you what happened because she
18 wants him held responsible for what happened to her
19 friend. And Robyn, she wants him held responsible
20 because of what happened to her.

21 And I, too, ask you to hold him
22 responsible and find him guilty of criminal sexual
23 conduct in the third degree.

24 Thank you.

25 THE COURT: Ms. Eudy.

CLOSING ARGUMENT BY MS. EUDY

1 MS. EUDY: Ladies and gentlemen of the
2 jury, Andrew Kirkland waited, and he waited, and he
3 waited, and he laid there until he got his
4 opportunity at 5:00 a.m. That makes a lot of
5 sense.

6 Mr. Evans just told you, quote, Lexi
7 saw how Robyn reacted. She did. She saw how Robyn
8 reacted, and that's all she saw. She didn't see
9 the rape. The alleged rape. She didn't see what
10 happened in that bedroom.

11 The only two people that know what
12 happened in that bedroom are Robyn Dunn and Andrew
13 Kirkland. They are the only two people that were
14 there. It's Robyn Dunn's story versus Andrew
15 Kirkland's story. It's he said versus she said,
16 and that does not meet the burden of proof.

17 Thank you guys for being here and thank
18 you for your patience with us as we have gone
19 through this process. I hope you are all a little
20 more rested than I am. My 17-month-old decided it
21 was a great night to stay up and have a party last
22 night. I'm a little tired this morning, but I
23 really appreciate you being here.

24 Let's talk about what we do know. We
25 do know that Robbie -- Robyn and Dewey and Andrew

CLOSING ARGUMENT BY MS. EUDY

1 and Lexi drank at Andrew's house on the evening
2 December 6, 2017 (sic). We know that Robyn and
3 Lexi got there that evening. We know that sometime
4 around 11 or 12 they all went to the bar. They all
5 agreed on that, that kind of time frame.

6 We know that on the way home Robyn Dunn
7 got sick. Everybody agrees Robyn Dunn got sick and
8 she threw up. We know that when they got home the
9 girls showered, and we know that when they got home
10 Dewey fixed some potatoes and at least Dewey and
11 Robyn ate some potatoes.

12 We know that at some point Lexi and
13 Robyn and Andrew were in the bed together. Nobody
14 disputes this fact, and nobody disputes that Robyn
15 and Andrew had intercourse. They had sex of some
16 kind at some point.

17 Robyn said on the stand that from the
18 time she got to Andrew's house until they left the
19 bar, she had four and a half drinks. She told us
20 that. Do you remember that? I asked her exactly
21 what the drinks were, and we went over it. Four
22 and a half drinks; two mixed liquor drinks at the
23 house, one shot, and one liquor drink at the bar,
24 and they shared an Angry Orchard beer or hard
25 cider, whatever that is.

CLOSING ARGUMENT BY MS. EUDY

1 And Mr. Evans has stood up here and
2 told you that she had five, six, seven drinks.
3 That's not what she told you. That is not what she
4 told you. Because she's telling different stories.
5 She has different versions of the events. She told
6 one thing to Detective Bowen and she told a
7 different thing up here on the stand.

8 She stood up here and told you that she
9 got sick, not because she was wasted. She didn't
10 want you to think that she drank a lot. She didn't
11 want you to think that she was a partier. She told
12 you she was sick because she started feeling bad
13 and maybe somebody put something in her drink.
14 Maybe it was Andrew. Maybe it was Dewey. Maybe it
15 was the guys at the bar. You heard her say that.
16 That's why she got sick.

17 But we just heard from Ms. Miller; she
18 didn't go to the hospital and report that there
19 were any drugs in her system, forced, suspected,
20 otherwise. You can look at that form. I'm sure if
21 she said I suspect somebody put something in my
22 drink, Ms. Miller would have written that down.

23 Ms. Miller, she doesn't independently
24 remember that, of course. How could she? You look
25 at that when you go back in the jury room and you

CLOSING ARGUMENT BY MS. EUDY

1 tell me. She wanted to get up here and act like
2 she'd been ruffied and somehow make all this make
3 sense. And the State presented no other evidence
4 that Miss Dunn had any drugs in her system.

5 Lexi told us that they came home and
6 went to bed and that this alleged rape had to have
7 occurred around 5:00 a.m. We know -- one thing we
8 really do know is that text message was sent at
9 5:48 a.m. We know that. And Lexi told us they got
10 that text message not long after they left Andrew's
11 house. They were at the gas station down the
12 street.

13 And Lexi testified that it took about
14 20 or 30 minutes to get out of the house after they
15 woke up. There was all this commotion, find the
16 pants, find the phone, find all that stuff, get it
17 together, get in the car and leave. So based on
18 all of this, 5:48 a.m. minus the time to get down
19 the street to the gas station, minus 20 or
20 30 minutes, they could have not have woken up
21 before 5:00 a.m.

22 Robyn told the nurse that this alleged
23 rape was around 2:00 a.m. You can't get 2:00 a.m.
24 and 5:00 a.m. confused in this circumstance. She
25 is telling different stories. Maybe she did have

CLOSING ARGUMENT BY MS. EUDY

1 sex at 2:00 a.m. That's what Andrew said actually.

2 That kind of lines up with his time
3 frame. We went to bed, we had a little sex, and
4 then we went to sleep for several hours. Lexi
5 testified we were asleep for several hours before
6 they woke up and this went on.

7 The State wants you to believe that
8 Robyn got drunk, threw up, came home, showered, ate
9 some potatoes, went to sleep for several hours, and
10 at 5:00 a.m. she was still so passed out drunk that
11 she sort of woke up, as she said, when Lexi said --
12 mumbled something I think were her exact words.
13 Mumbled something. And when I said, mumbled
14 something, then all of a sudden she could tell me,
15 oh, she said, leave her alone.

16 So she woke up to some degree, went
17 back to sleep so hard that she didn't know she was
18 being raped. And Lexi told us that there were only
19 two or three minutes that this could have even
20 happened in. Two or three minutes.

21 And then Robyn tells us -- Lexi told us
22 two or three minutes from the time she walked out
23 of the room until when Robyn came out outside
24 without her pants on and told her she had been
25 raped. And Robyn told us before she came outside

CLOSING ARGUMENT BY MS. EUDY

1 and told Lexi that she had been raped, that she got
2 up, left the room and went into the bathroom. That
3 shortens that window.

4 That shortens that time frame when
5 Andrew Kirkland could have raped Robyn Dunn. It
6 shortens that time frame, but the State wants you
7 to believe that she was so passed out asleep that
8 she didn't know a guy took off her pants all by
9 himself.

10 She's laying there dead weight, can't
11 help, took off her pants all by himself, rolled her
12 on her back. She testified she was laying on her
13 side. Lexi testified she was laying on her side
14 towards Lexi. Took off her pants, rolled her over
15 on her back, spread her legs, got on top of her and
16 raped her in less than two or three minutes.

17 Why would he wait up until 5:00 a.m.
18 waiting to do that? Why in the world? This does
19 not add up and, certainly, it creates reasonable
20 doubt.

21 Let's talk about the exhibits and
22 evidence that the State presented. They showed you
23 a picture of a car; they showed you a picture of a
24 bed. Yeah, we don't dispute that's where this
25 happened. They showed you a picture of the couch;

CLOSING ARGUMENT BY MS. EUDY

1 they showed you a picture of the kitchen and the
2 undisputed potatoes and the kitchen sink.

3 And they showed you the text message,
4 and they went on and on and on about Andrew deleted
5 the text message. Andrew didn't know the cops were
6 coming to his house. He may have felt like
7 something was wrong, but he certainly didn't think
8 he did anything to worry about the cops showing up
9 at his house. He wouldn't have deleted these text
10 messages if he knew the cops were coming. He would
11 have deleted the whole text message string. Some
12 of these text messages are helpful for him.

13 I am glad they got the phone and they
14 gave us that phone data so we could show you what
15 Andrew's thought process was with Robyn. Lexi sent
16 him a picture of Robyn. He said, she's pretty,
17 she's hot, whatever it may be.

18 And they talked back and forth, banter
19 about she's my wifey. She's going to like me
20 better than you. No, I want to hook up with her.
21 I want to get her, I want to date her. All that
22 back and forth and stuff.

23 He didn't know the girl had a
24 boyfriend, and they hung out. But just because he
25 deleted that text message doesn't mean that he

CLOSING ARGUMENT BY MS. EUDY

1 raped a girl.

2 He said, I thought she liked me. I
3 thought she liked me so I raped her. That makes a
4 lot of sense.

5 Let's talk about the witnesses that the
6 State called up. Mr. Carey Tucker the P.A. from
7 Beaufort Memorial come up here and testify, and
8 they wanted to basically discredit him and get him
9 to say, because I'm not a SANE nurse, because I'm
10 not SANE-certified I can't do a vaginal exam and
11 identify that there are injuries.

12 But later their expert they called in,
13 Kathy Gill-Hopple, paid expert, came in here and
14 told you, yeah, there aren't SANE nurses at every
15 hospital 24 hours a day. And P.A.s and other
16 nurses are certainly qualified to do these exams.
17 And she gives you a reason why the P.A. from
18 Beaufort Memorial could have done that exam and
19 documented whether or not there were injuries.

20 She also told you that a vaginal exam
21 is essentially usually done with the naked eye
22 only, especially in adults. No special tools are
23 required, and some of those employees don't have
24 special tools. It's not that what was done at
25 Beaufort Memorial wasn't good enough.

CLOSING ARGUMENT BY MS. EUDY

1 She substantiated Mr. Tucker was
2 completely qualified to do that exam. She told you
3 that sometimes in sexual assault cases there is no
4 evidence of injury and sometimes there are. Okay.

5 She also said sometimes when there is
6 physical contact between individuals there is
7 evidence of it and sometimes there is not.

8 And then they had the two SLED experts
9 come in here. Those ladies were apparently very
10 smart individuals. They -- I'm not particularly
11 sure why they were here, other than to tell you
12 kind of the same thing. Sometimes when there is
13 sexual assault kits and tests semen is found and
14 sometime there's not. Sometimes DNA is found and
15 sometimes there is not. They drove all the way
16 here to tell you that.

17 The State brought those three people in
18 here to make their case look like good, to make
19 their case look smart, and they didn't really tell
20 us anything. They didn't substantiate that a rape
21 occurred.

22 Lexi, by her own account, is not
23 particularly close to Andrew. You can't say
24 because they are cousins, and she came here to
25 testify on behalf of her friend, instead of her

CLOSING ARGUMENT BY MS. EUDY

1 cousin, that means a rape occurred as opposed to it
2 didn't occur.

3 She was here because she's a good and
4 loyal friend. She was here because she believed
5 her friend, best friend, her sister, her wifey,
6 Robyn Dunn, and I commend her for that. But she
7 also doesn't know what happened.

8 She wasn't there and she didn't call
9 Andrew and even ask him what his side of the story
10 was. Not one time. It's been over three years,
11 hasn't talked to him, didn't ask him what happened.
12 I'm not saying it's because she didn't care, but it
13 kind of seems that way. Because she is loyal to
14 Robyn Dunn, not Andrew Kirkland.

15 Let's talk about Detective Bowen. He
16 did not do a thorough investigation. Let's talk
17 about what he did do. He interviewed Robyn and
18 Lexi and then he interviewed Andrew, and then he
19 told Andrew he was going to go back to the bar. He
20 didn't go get the video surveillance that would
21 show what was going on there. The timeline does
22 matter.

23 He didn't get the credit card receipt
24 that would certainly have been available the next
25 day to show us when they left the bar and what they

CLOSING ARGUMENT BY MS. EUDY

1 drank, because that matters. That matters.
2 They're arguing that this girl was totally
3 incapacitated and that -- by -- and still by
4 5:00 a.m. The timeline and what they drank
5 matters.

6 He did go talk to Dewey. He wasn't
7 there. He didn't really have anything to add from
8 the perspective of whether a rape occurred. And he
9 downloaded the phone data. That's it.

10 Let's talk about what he didn't do. He
11 didn't do any controlled interview, didn't ask
12 Andrew to come down to the station -- you've always
13 heard that, come down to the station and give an
14 interview; sit in an interrogation room and be
15 interviewed. He didn't ask Robyn to do that. He
16 didn't ask any of them to do that.

17 He didn't -- he collected a bunch of
18 evidence, but he didn't test any of it. He didn't
19 get the data from Robyn's phone. He didn't get the
20 data from Lexi's phone. Maybe that would have
21 given us more insight into it.

22 He didn't, as is very typical in
23 criminal investigations, get a written statement
24 from any of the people. That would have really
25 tied us down a lot more. It's good when we have

CLOSING ARGUMENT BY MS. EUDY

1 records and medical records and statements.

2 Detective Bowen didn't get those pair
3 of pants. There is a dispute over what pants were
4 where. He didn't get both pair of pants. And he
5 even admitted that he said in the interview with
6 Lexi, it's important to get both pair of pants.
7 There's a reason defense attorneys go crazy when
8 you don't get all the pants. And he didn't take
9 the -- the stuff to see if there is any evidence
10 that a rape occurred.

11 Detective Bowen didn't offer the victim
12 or the alleged rapist, as permitted under South
13 Carolina law, a lie detector test. You guys
14 wouldn't have known the results of that. That's
15 not admissible in court. The State told you that.
16 But had he done that, we might not be here.

17 He did tell us two very important
18 things. He told us that Robyn Dunn never told him
19 that she woke up and went back to sleep after Lexi
20 left the room. He told us she told him a different
21 story than she told us up here.

22 Detective Bowen also told you that
23 Andrew Kirkland was cooperative, honest and
24 forthcoming. As soon as Detective Bowen or --
25 Detective Bowen was actually at Andrew's house

CLOSING ARGUMENT BY MS. EUDY

1 before Andrew was. As soon as Andrew pulled up, he
2 waived his Miranda Rights, he sat down and gave an
3 interview. He admitted that he had sex. There's
4 no physical evidence they had sex. He's the one
5 who told you they had sex.

6 Let's talk about the two people that
7 were actually there in that room. I told you when
8 I walked up here this is he said, she said. No one
9 produced any physical evidence or otherwise to
10 substantiate that a rape occurred. In fact, there
11 is no visible evidence that Robyn Dunn and Andrew
12 Kirkland had sex, consensual or otherwise.

13 The State brought in those three
14 experts to say that sometimes there's evidence and
15 sometimes there's not. In this case, there happens
16 not to be, but that doesn't really mean anything.
17 This is all about what he said, she said, which
18 leads me to the burden of proof.

19 It's the State of Carolina's burden to
20 show you beyond a reasonable doubt, to prove beyond
21 a reasonable doubt that a rape occurred, to prove
22 beyond a reasonable doubt the elements of criminal
23 sexual conduct in the third degree.

24 Reasonable doubt in this state means
25 the kind of doubt that would cause a reasonable

CLOSING ARGUMENT BY MS. EUDY

1 person to hesitate to act. All the stuff that I
2 just talked about makes you hesitate to find Andrew
3 Kirkland guilty of rape. Criminal sexual conduct.
4 That's rape. He told you, it's rape.

5 Proof beyond a reasonable doubt.

6 That's when you were firmly convinced of the
7 defendant's guilt. Are you firmly convinced that
8 Andrew Kirkland raped Robyn Dunn? If you are not,
9 then you can't find him guilty. That's the law in
10 this state. There is guilty and there is not
11 guilty, but for guilty you have to be firmly
12 convinced.

13 If you are not firmly convinced that
14 all of that happened in that two or three minutes
15 that Lexi was out of that room, then you cannot
16 find Andrew Kirkland guilty. We know that Robyn
17 Dunn, or at least what she testified, wasn't
18 mentally incapacitated. She only had four and a
19 half drinks. She didn't drink anything after
20 12:00, or whenever it was they got home from the
21 bar. And we know that this rape didn't occur until
22 after 5:00 a.m.

23 Do you think those four and a half
24 drinks kept her mentally incapacitated that she
25 could not control her behavior, or physically

REBUTTAL CLOSING ARGUMENT BY MR. EVANS

1 helpless that she was so passed out that they want
2 you to believe that she was laying there and being
3 raped without waking up?

4 This is a story about a guy and a girl.
5 A guy who thought he was getting set up with his
6 cousin's friend. The guy that thought he got
7 lucky, and a girl who had sex with a guy who was
8 not her boyfriend, and she was embarrassed, she was
9 ashamed and she was regretful. A girl that when
10 she woke up with her pants off, that embarrassment
11 and shame and regret became rape.

12 I told you when I walked up here Monday
13 morning the greatest privilege of a lawyer is to
14 protect the innocent. And the greatest privilege
15 of a jury is to protect the innocent. Protect
16 Andrew Kirkland; go back into that jury room and
17 find him not guilty. Thank you.

18 THE COURT: Mr. Evans.

19 MR. EVANS: Thank you, Your Honor. May
20 it please the Court.

21 Ms. Eudy just harped on the SOVA, the
22 SANE paperwork form, and you will have this back
23 there with you; I encourage you to go through it
24 too. I want you to look at specifically the victim
25 Robyn's history of assault, her patient. This is

REBUTTAL CLOSING ARGUMENT BY MR. EVANS

1 on page 2 of 6. It says exactly what she testified
2 to.

3 She hasn't been changing her story.
4 She's had a consistent story from day one. I was
5 raped by Lexi's cousin, the defendant. Go back and
6 review her statement here. That's what she's
7 saying.

8 The defense also made a big deal about
9 the timeline -- or, excuse me, the time that Robyn
10 said the assault happened the morning of the
11 incident. And Ms. Miller was even noncommittal
12 about it. She said approximately 2:00, she wasn't
13 sure about it.

14 She had left Charleston in the middle
15 of the night in the dark, driven down to Beaufort,
16 went straight to the hospital and started talking
17 to medical providers and law enforcement. She
18 didn't know exactly when it happened. She knew
19 that she had been raped though, and so she told her
20 approximately two. I'm not sure when it happened.

21 That doesn't change the timeline; it
22 doesn't fit with the defendant's story. That was
23 her best guess at a time when she was still under
24 the stress of the incident.

25 Also, Robyn couldn't testify about how

REBUTTAL CLOSING ARGUMENT BY MR. EVANS

1 long she was asleep. That's pretty common.
2 Everybody knows when you're in and out of sleep,
3 it's dark and you don't have a clock in the room.
4 You kind of wake up, you don't know exactly how
5 much time has passed. That's not unusual. That's
6 not concerning that she didn't know how much time
7 had passed when she had fallen asleep.

8 Robyn doesn't remember exactly how much
9 she had to drink, but remember all the other
10 witnesses' testimony, including the defendant who
11 was helped out by his brother Dewey, yeah, Robyn
12 was really drunk. And Lexi, I could tell in the
13 car she was very drunk. She could barely walk back
14 into the trailer. I had to help her into the
15 trailer and help her into her pajamas.

16 You heard a lot of questions from the
17 defense to Lexi and Robyn about how much we paid to
18 get them here. You didn't hear the defense ask
19 Dr. Gill-Hopple that. She wasn't paid to be here.
20 There is no evidence she got paid. She was here on
21 her own, came down from MUSC to help us out.

22 I want you to ask yourself -- the
23 defense harped on this a lot -- what doesn't make
24 sense? What is more believable? Is it more
25 believable that the defendant and Robyn had wild

REBUTTAL CLOSING ARGUMENT BY MR. EVANS

1 passionate ten-minute sex at 2:00 in the morning
2 while Lexi was laying there the whole time and
3 doesn't realize it?

4 Does that make more sense, or does it
5 make more sense that when Lexi leaves the room he
6 sees his window of opportunity and that's when he
7 rapes her. Ask yourself which story makes more
8 sense.

9 Ladies and gentlemen, firmly convinced.
10 That is the reasonable doubt standard. Robyn's
11 testimony alone is enough to convict. If you find
12 her testimony alone firmly convinces you, then
13 that's the State proving its case beyond a
14 reasonable doubt.

15 Never mind all the other circumstantial
16 evidence, Lexi's testimony, all of the other
17 people's testimony about how drunk Robyn was.
18 Never mind all the other stuff. Robyn's testimony
19 alone is enough to firmly convince you.

20 Ms. Eudy said this is a he said, she
21 said case, and I want to remind you what he said
22 and what she said. He said, I don't know. I don't
23 know if she intended to have sex with me. Robyn
24 said, I was raped.

25 Ladies and gentlemen, I ask you to

JURY CHARGE

1 bring back a verdict of guilty to criminal sexual
2 conduct.

3 THE COURT: Ladies and gentlemen, I
4 remind you that during this trial you and I have
5 certain duties to perform. As a trial judge, it is
6 my responsibility to preside over the trial of this
7 case, and I have the duty to rule on the
8 admissibility of the evidence that has been offered
9 throughout this trial.

10 You are to consider only the competent
11 evidence before you. You are to consider only the
12 testimony that has been presented from the witness
13 stand, any exhibits that have been made part of the
14 record of this case, and any stipulations of
15 counsel.

16 I have the additional duty to charge
17 you the law applicable to this case. As the
18 presiding judge, I am the sole judge of the law in
19 this case. It is your duty as jurors to accept it
20 and apply the law exactly as I state it to you now.

21 If you already have any idea as to what
22 the law is or what the law ought to be, and it does
23 not agree with what I'm about to tell you, you must
24 abandon your own idea and apply the law exactly as
25 I state it to you now.

JURY CHARGE

1 Ladies and gentlemen, I'm going to read
2 the law to you. I typically do not send back a
3 copy of my charges, so I ask that you pay close
4 attention.

5 In every case tried in court before a
6 jury, the jury becomes the sole and exclusive
7 judges of the facts. A trial judge may not comment
8 to a trial jury about the facts in this case. You
9 are the sole judges of the facts in this case.

10 You are not to infer from anything that
11 I have said or done throughout the progress of this
12 trial that I have any opinion about the facts in
13 this case. The law does not allow me to have an
14 opinion about the facts in this case. This is
15 solely for you to determine.

16 As jurors, it becomes your duty to
17 determine the effect, value and weight of the
18 evidence presented during this trial. The
19 indictment charges the defendant with criminal
20 sexual conduct in the third degree. I remind you,
21 the fact that the defendant was arrested, charged
22 and indicted in this case is not evidence in this
23 case and cannot be considered by you as evidence of
24 guilt in this case, nor does it create a
25 presumption or inference of guilt. This document

JURY CHARGE

1 is simply the formal instrument by which this case
2 is brought into the Court.

3 Just as the indictment in this case are
4 not evidence, any terminology or labels used in
5 this case to refer to the individuals involved in
6 this case cannot be considered as evidence. For
7 example, the use of the words defendant and victim
8 are merely formal labels and may not be considered
9 by you to be evidence.

10 The defendant has pled not guilty to
11 the indictment. A person charged with committing a
12 criminal offense in South Carolina is never
13 required to prove himself innocent. I charge you
14 it is an important rule of law that the defendant
15 in a criminal charge, no matter what the
16 seriousness of the charge may be, will always be
17 presumed to be innocent of the crime for which the
18 indictment was issued unless guilt has been proven
19 by evidence satisfying you of that guilt beyond a
20 reasonable doubt.

21 This presumption of innocence does not
22 end when you begin your deliberations, but it
23 accompanies the defendant throughout the trial
24 until you reach a verdict of guilt based upon
25 evidence satisfying you of that guilt beyond a

JURY CHARGE

1 reasonable doubt.

2 The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. Some
4 of you may have served as jurors before in civil
5 cases where you were told that it was only
6 necessary to prove a fact is more likely true than
7 not true, such as by a greater weight or
8 preponderance of the evidence.

9 In criminal cases, the State's proof
10 must be more powerful than that. It must be beyond
11 a reasonable doubt. Proof beyond a reasonable
12 doubt is proof that leaves you firmly convinced of
13 the defendant's guilt. There are very few things
14 in this world that we do know with absolute
15 certainty, and in criminal cases the law does not
16 require proof that overcomes every possible doubt.

17 If, based on your consideration of the
18 evidence, you are firmly convinced that the
19 defendant is guilty of the crime charged, you must
20 find the defendant guilty. If, on the other hand,
21 you think there is a real possibility that the
22 defendant is not guilty, you must give the
23 defendant the benefit of the doubt and find him not
24 guilty.

25 There are two types of evidence which

JURY CHARGE

1 are generally presented throughout a trial;
2 circumstantial evidence and direct evidence.
3 Direct evidence directly proves the existence of a
4 fact and does not require deductions.
5 Circumstantial evidence is proof of a chain of
6 facts and circumstances indicating the existence of
7 a fact.

8 Crimes may be proven by circumstantial
9 evidence. The law makes absolutely no distinction
10 between the weight or value to be given either
11 direct or circumstantial evidence; however, to the
12 extent the State relies on circumstantial evidence,
13 all the circumstances must be consistent with each
14 other and, when taken together, point conclusively
15 to the guilt of the accused beyond a reasonable
16 doubt.

17 If these circumstances merely portray
18 the defendant's behavior as suspicious, the
19 plaintiff has failed. The State has the burden of
20 proving the defendant guilty beyond a reasonable
21 doubt. This burden rests on the State regardless
22 of whether the State relies on direct evidence,
23 circumstantial evidence, or some combination of the
24 two.

25 Necessarily you must determine the

JURY CHARGE

1 credibility of the witnesses who have testified in
2 this case. Credibility simply means believability.
3 It becomes your duty as jurors to analyze and to
4 evaluate the evidence and determine which evidence
5 convinces you.

6 In determining the believability of the
7 witnesses who have testified, you may believe one
8 witness over several witnesses or several witnesses
9 over one witness. You may believe a part of the
10 testimony of a witness and reject the remaining
11 part of the testimony of that same witness. You
12 may believe the testimony of a witness in its
13 entirety or reject the testimony of a witness in
14 its entirety.

15 You may consider whether any witness
16 has exhibited to you any interest, bias, prejudice
17 or other motive in this case. You may consider the
18 appearance and manner of a witness while that
19 witness was on the witness stand.

20 The rules of evidence ordinarily do not
21 permit witnesses to testify to opinions or
22 conclusions. An exception to this rule exists for
23 witnesses we call expert witnesses. A witness who
24 by education and experience has become expert in
25 some art, science, profession or calling may state

JURY CHARGE

1 an opinion as to a relevant and material matter in
2 which the witness claims to be an expert, and may
3 also state the reason for that opinion.

4 You should consider any expert opinion
5 received into evidence in this case and, like any
6 other evidence, give it the weight you think it
7 deserves. If you decide that the opinion of an
8 expert witness is not based on sufficient education
9 or experience, or if you conclude the reasons given
10 in support of the opinion are not sound, or that
11 the opinion is outweighed by other evidence, you
12 may disregard the opinion entirely.

13 An expert witness's testimony is to be
14 given no greater weight than that of other
15 witnesses simply because the witness is an expert.
16 Further, you are not required to accept an expert's
17 opinions even though it is not contradicted.

18 In order to establish criminal
19 liability, criminal intent is required. For
20 example, the mental state required to be proven by
21 the State for a particular crime might be purpose,
22 intent, knowledge, recklessness or criminal
23 negligence.

24 Criminal intent must be proven by the
25 State beyond a reasonable doubt. Criminal intent

JURY CHARGE

1 is a matter that must be determined by the jury
2 from the circumstances surrounding the situation.
3 There is no way to prove intent to a mathematical
4 certainty. There is no way medical science can
5 dissect a persons's brain and determine what the
6 person had in mind.

7 The law says that criminal intent may
8 be inferred from the circumstances shown to have
9 existed. This is how you make a determination of
10 whether or not the element requiring intent was
11 present. It is not necessary to establish intent
12 by direct and positive evidence, but intent may be
13 established by inference in the same way as any
14 other fact by taking into consideration the acts of
15 the parties and all the facts and circumstances of
16 the case.

17 Criminal intent is a mental state. It
18 is a conscious wrongdoing. It is up to you to
19 determine what the defendant intended to do based
20 upon the circumstances showed to have existed.
21 Criminal intent can arise from action or a failure
22 to act. It may arise from negligence,
23 recklessness, or an indifference to duty or
24 consequence that is considered by the law to be the
25 equivalence of criminal intent.

JURY CHARGE

1 In order to prove third degree criminal
2 sexual conduct the State must prove beyond a
3 reasonable doubt that the defendant engaged in a
4 sexual battery with the victim. A sexual battery
5 is sexual intercourse, cunnilingus, fellatio, anal
6 intercourse, or any intrusion, however slight, of
7 any part of a person's body or of any object into
8 the genital or anal openings of another person's
9 body except when the intrusion is accomplished from
10 medically-recognized treatment or diagnostic
11 purposes.

12 If you find that a sexual battery did
13 occur, you must then decide whether the State has
14 proven beyond a reasonable doubt that the defendant
15 knew or had reason to know that the victim was
16 mentally incapacitated or physically helpless and
17 that the aggravated force or aggravated coercion
18 was not used to accomplish the sexual battery.

19 Mentally incapacitated means that the
20 victim was rendered temporarily unable to evaluate
21 or control her conduct. This condition may be
22 caused by illness, defect, the influence of a
23 substance or some other cause.

24 Physically helpless means that the
25 victim was unconscious, asleep, or for any other

JURY CHARGE

1 reason physically unable to communicate
2 unwillingness to an act.

3 The defendant has raised the defense
4 that the victim voluntarily consented to the sexual
5 intercourse. The defendant does not have to prove
6 that the victim consented. Instead, the State must
7 prove beyond a reasonable doubt that the victim did
8 not consent.

9 If you find -- if you find that the
10 victim consented to the sexual intercourse, you
11 must find the defendant not guilty.

12 Insanity caused by the use of drugs or
13 alcohol may be a defense if the insanity is
14 permanent and destroyed the person's ability to
15 know right from wrong; however, when voluntary
16 intoxication has not produced permanent insanity,
17 it is not a defense to a crime.

18 A person who becomes voluntarily
19 intoxicated is just as responsible for the acts
20 committed while intoxicated as when the person is
21 not intoxicated.

22 Ladies and gentlemen, I'm now going to
23 go over the verdict form with you. In the Court of
24 General Sessions for the Ninth Judicial Circuit,
25 2016-GS-10-6068, State of South Carolina v Andrew

JURY CHARGE

1 Allston Kirkland. We, the jury, find the Defendant
2 Andrew Allston Kirkland, not guilty; or we, the
3 jury, find the Defendant Andrew Allston Kirkland,
4 guilty of criminal sexual conduct third degree.

5 Madame Foreperson, you will check one
6 or the other. It must be a unanimous decision,
7 meaning all 12 of you must agree. Once you have a
8 unanimous decision of all 12 of the members, Madame
9 Foreperson, you will sign and date the verdict
10 form.

11 Once you have done that, you will knock
12 on the jury room door indicating to the bailiffs
13 that you have reached a verdict, and we will
14 receive you back.

15 Madame Foreperson, I do not require
16 that my foreperson read the verdict form. Do not
17 worry that you will be doing public speaking at a
18 later time. I will take care of that for you.

19 Ladies and gentlemen, is there any
20 member of the first 12 who feels for whatever
21 reason you will not be able to begin and complete
22 the deliberations in this matter? If so, please
23 stand.

24 Thank you. All 12 have indicated that
25 they are able to begin and complete their

JURY CHARGE

1 deliberations in this case.

2 To my two alternates, you have
3 completed your service at this time. I will have
4 you remain with us until the evidence has gone back
5 and the verdict form has gone back and the first 12
6 have indicated that they have begun their
7 deliberations.

8 To all 14 of you, this is the last time
9 I'm going to say to you, do not begin your
10 deliberations. Do not begin discussing this case
11 amongst yourselves. Do not talk about this case
12 until the bailiff brings the evidence to you into
13 your jury deliberation room with the verdict form.
14 They will then tell you, you may begin your
15 deliberations.

16 Please take all of your belongings with
17 you; and for the first 12, if you will go on and
18 exit, and then last two, if you will be the last
19 two out so that the bailiffs may place you in a
20 separate location.

21 (Jury out, 11:10 a.m.)

22 Thank you. Please be seated. Any
23 motions or matters --

24 MR. EVANS: None from the State.

25 THE COURT: -- exceptions to the charge

1 of this case?

2 MR. EVANS: No, ma'am.

3 THE COURT: From the defendant?

4 MS. EUDY: No, Your Honor.

5 THE COURT: All right.

6 And, Mr. Kirkland, this is no comment
7 on what you're doing, but -- and done, you've been
8 appropriate, but we will go ahead and take you into
9 custody until the verdict is returned out of an
10 abundance of caution. You have been appropriate.
11 That's just my policy. Thank you.

12 We will be at ease.

13 First question that typically comes
14 out, let me go ahead and do this, any objection to
15 me -- if they ask for a charge on the law -- to
16 send back 12 copies of my entire charge? From the
17 State?

18 MR. EVANS: I don't have an objection.

19 MS. EUDY: No objection.

20 THE COURT: All right. Thank you.

21 Then I will do that.

22 (Jury deliberating, 11:19 a.m.)

23 THE COURT: Anything before we bring in
24 the jury? From the State?

25 MR. EVANS: No, Your Honor.

VERDICT

1 THE COURT: From the defense?

2 MS. EUDY: No, Your Honor.

3 (Jury in, 5:17 p.m.)

4 THE COURT: Please be seated.

5 Madame Foreperson, I understand you
6 have reached a verdict. If you will please hand it
7 to the bailiff.

8 Mr. Kirkland, if you would please rise.

9 THE CLERK: In the matter of State of
10 South Carolina, County of Charleston, Ninth
11 Judicial Circuit v Andrew Allston Kirkland; as to
12 Indictment 2015-GS-10-06068; we, the jury, find the
13 Defendant Andrew Allston Kirkland guilty of
14 criminal sexual conduct in the third degree.

15 Signed by the foreperson this day,
16 February 7, 2018.

17 THE COURT: Anything else further
18 required of the jury from the State?

19 MR. EVANS: Nothing from the State.

20 THE COURT: From the defense?

21 MS. EUDY: Your Honor, I would like for
22 you to poll the jury.

23 THE COURT: Please have a seat.

24 Ladies and gentlemen, the clerk is
25 going to poll the jury. He's going to use your

VERDICT

1 juror number; he will be asking two questions. We
2 do this in almost every criminal case, so please do
3 not infer from anything that you're about to do
4 that this is unusual. It's just to verify that the
5 verdict that was read is your verdict and is still
6 your verdict.

7 Mr. Clerk.

8 THE CLERK: As Your Honor instructed,
9 please indicate as I call your juror number by
10 raising your right hand.

11 Juror No. 2, Cristin Adams: Is this
12 your verdict?

13 JUROR NO. 2: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR NO. 2: Yes.

16 THE CLERK: Juror No. 222, Sheldon
17 Nichol森: Is this your verdict?

18 JUROR NO. 222: Yes.

19 THE CLERK: Is this still your verdict?

20 JUROR NO. 222: Yes.

21 THE CLERK: Juror No. 200: Is this
22 your verdict?

23 JUROR NO. 200: Yes.

24 THE CLERK: Is this still your verdict?

25 JUROR NO. 200: Yes.

VERDICT

1 THE CLERK: Juror No. 159, Jeanette
2 Johnson: Is this your verdict?
3 JUROR NO. 159: Yes.
4 THE CLERK: Is this still your verdict?
5 JUROR NO. 159: Yes.
6 THE CLERK: Juror No. 127, Ellen
7 Grampus: Is this your verdict?
8 JUROR NO. 127: Yes.
9 THE CLERK: Is this still your verdict?
10 JUROR NO. 127: Yes.
11 THE CLERK: Juror No. 41, Gerald Brown:
12 Is this your verdict?
13 JUROR NO. 41: Yes.
14 THE CLERK: Is this still your verdict?
15 JUROR NO. 41: Yes.
16 THE CLERK: Juror No. 15, Caroline
17 Baggett: Is this your verdict?
18 JUROR NO. 15: Yes.
19 THE CLERK: Is this still your verdict?
20 JUROR NO. 15: Yes.
21 THE CLERK: Juror No. 275, James
22 Rusnock: Is this your verdict?
23 JUROR NO. 275: Yes.
24 THE CLERK: Is this still your verdict?
25 JUROR NO. 275: Yes.

VERDICT

1 THE CLERK: Juror No. 20, Nathan
2 Bartlett: Is this your verdict?
3 JUROR NO. 20: Yes.
4 THE CLERK: Is this still your verdict?
5 JUROR NO. 20: Yes.
6 THE CLERK: Juror No. 315, Terrance
7 Taylor: Is this your verdict?
8 JUROR NO. 315: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR NO. 315: Yes.
11 THE CLERK: Juror No. 322, Robert
12 Turriago: Is this your verdict?
13 JUROR NO. 322: Yes.
14 THE CLERK: Is it still your verdict?
15 JUROR NO. 322: Yes.
16 THE CLERK: Juror No. 284, Trevor
17 Scott: Is this your verdict?
18 JUROR NO. 284: Yes.
19 THE CLERK: Is this still your verdict?
20 JUROR NO. 284: Yes.
21 THE CLERK: Thank you. The jury has
22 been polled and the verdict stands.
23 THE COURT: Anything further requested
24 of the jury from the defense?
25 MS. EUDY: I don't think so, Your

1 Honor.

2 THE COURT: Anything further requested
3 of the jury from the State?

4 MR. EVANS: No, ma'am.

5 THE COURT: Ladies and gentlemen, this
6 completes your matters to this case. It also
7 completes your service for the week. If you will
8 be escorted back to the jury room, I will be there
9 in just a few moments to personally thank you for
10 your service to Charleston County.

11 Please rise for the jury.

12 (Jury out, 5:20 p.m.)

13 THE COURT: Thank you. Please be
14 seated.

15 Outside the presence of the jury,
16 anything further required of the jury, Mr. Evans?

17 MR. EVANS: No, ma'am.

18 THE COURT: Ms. Eudy.

19 MS. EUDY: No, Your Honor.

20 THE COURT: Do you need to approach?

21 MS. EUDY: Yes.

22 THE COURT: All right.

23 (Bench conference.)

24 THE COURT: We'll be at ease ten
25 minutes.

1 (A recess transpired.)

2 MR. EVANS: May I approach, Your Honor?

3 THE COURT: You may.

4 Mr. Evans.

5 MR. EVANS: May it please the Court,
6 Your Honor. I believe Miss Dunn would like to
7 address the Court briefly.

8 THE COURT: All right.

9 MS. DUNN: First and foremost, thank
10 you for your time this week. Thank you to all my
11 -- for everybody who has supported me. This has
12 probably been the longest and toughest and most
13 trying three years of my entire life.

14 There's been so many sleepless nights
15 and so many times that I felt I couldn't move
16 forward. And I'd just like to thank you.

17 MR. EVANS: Thank you, Your Honor.

18 I, obviously, won't go into the facts.
19 The Court has heard the facts of this case. I do
20 think this was more than just a drunken
21 indiscretion by the defendant.

22 I think this was a calculated attempt
23 to take advantage of someone that was in a
24 vulnerable state. As the Court is aware, we
25 originally offered a probationary recommendation as

1 a plea on the case. That was, of course, before
2 Miss Dunn had to fly back to South Carolina and
3 participate in a trial.

4 As you can see, this was a traumatic
5 experience for her, so I would ask for an active
6 period of incarceration as a sentence.

7 Thank you, Your Honor.

8 THE COURT: And, Mr. Evans, what does
9 this carry?

10 MR. EVANS: It's a 0 to 10, Your Honor.

11 THE COURT: Is there a prior record?

12 MR. EVANS: Judge, he has a couple of
13 DUI arrests and a failure to stop for blue light
14 arrest, but I don't see any convictions on his
15 record.

16 THE COURT: When were those?

17 MR. EVANS: DUI arrest was in '07, '11,
18 and the failure to stop in 2013, but I'm not seeing
19 a disposition --

20 THE COURT: All before this --

21 MR. EVANS: It does predate this.

22 THE COURT: Thank you. And this
23 carries a mandatory sex offender registry; is that
24 correct?

25 MR. EVANS: That's correct.

1 THE COURT: What does the State feel
2 would be an appropriate period of incarceration?

3 MR. GOOD: I'm sorry, Judge?

4 THE COURT: I was talking to Mr. Evans.

5 MR. EVANS: Your Honor, we'll leave
6 that in the Court's discretion.

7 THE COURT: All right. Thank you.

8 Ms. Eudy.

9 MR. GOOD: I'm going to --

10 THE COURT: Mr. Good.

11 MR. GOOD: Thank you, Your Honor.

12 MR GOOD: Of course, we completely
13 disagree with what Mr. Evans says as far as the
14 plea offer. On this side of the courtroom, we felt
15 like we didn't have a plea offer because of the
16 mandatory sex offender registry, with the
17 probationary sentence.

18 Coming from our point of view, it was
19 not a plea offer, so we felt we had to come to
20 trial, but also my client wanted to come to trial.
21 And as far as his criminal record is concerned, he
22 has no convictions. He has some arrests, but he
23 has no convictions. He has a clean record.

24 He graduated from Parris Island as a
25 United States Marine at the top of his class. He

1 was considered an iron man. His fiancée is here
2 and present. She has been here all day and she is
3 three months pregnant, due with their baby in six
4 months.

5 As the Court knows, his brother Dewey
6 flew in from St. Louis to support him. His mother
7 and grandmother have been here since the beginning
8 of the trial.

9 Andrew has been employed as an
10 arborist. He has had support throughout this whole
11 process and, more importantly, has cooperated with
12 this case from the very beginning, from very
13 willingly cooperating and being forthcoming and
14 honest with Detective Bowen, to turning himself in,
15 to showing up for every meeting in our office, to
16 showing up for anything that he's been asked to do,
17 he has done and cooperated with. He didn't ever
18 show up. He was always very willing to be there.

19 I think that counts for something.
20 And, again, Your Honor, because of the
21 circumstances of this case with regards to what I
22 said was a plea offer and the fact that he did want
23 his day in court, and the fact that he has a clean
24 criminal record -- he lives locally and the biggest
25 thing is he has a baby on the way in six months and

1 is beginning to start a family and start a life and
2 move past this.

3 And the fact that the sex offender
4 registry is a life sentence in and of itself. We
5 know that prohibits jobs, it prohibits a lot of
6 things socially, financially, employment-wise. So
7 jail time pales in comparison to what that is going
8 to do to him.

9 The collateral consequences of this
10 conviction are going to travel with him forever.
11 He will not forget this situation ever. And
12 because of that we think and ask the Court for
13 probation. We feel like that's appropriate because
14 the sex offender registry is a harsh punishment.

15 That's all, Your Honor.

16 THE COURT: All right. Mr. Kirkland,
17 do you wish to address the Court? I understand
18 that many times the defendants do not wish to
19 address the Court because of appellate purposes.

20 Is there anything you wish to state to
21 the Court here today?

22 THE DEFENDANT: I would like to address
23 the Court, but I just don't know if I can speak,
24 Your Honor. I feel like I cooperated from the
25 beginning and my life hasn't been the same and now

1 it never will be. It never will be.

2 I don't know what the sex offender
3 registry entails or what it is going to prohibit in
4 my life, but I wanted to come to court for -- to
5 have my day. And that's all I have.

6 THE COURT: Anything further from the
7 State?

8 MR. EVANS: No, ma'am.

9 THE COURT: Ms. Eudy, any post-trial
10 motions or matters?

11 MR. GOOD: We would renew all of our
12 objections from the trial and renew all of the
13 motions that we made throughout the trial,
14 including renewing the directed verdict motion
15 based on our previously made arguments. And,
16 finally, we'd make a motion for a new trial based
17 on the previous objections and motions, Your Honor.

18 THE COURT: All right. Mr. Evans, do
19 you have any response to the previous motions that
20 were made?

21 MR. EVANS: During the trial, Your
22 Honor?

23 THE COURT: Yes.

24 MR. EVANS: I would jut stand on the
25 Court's ruling as well as my arguments there and

1 ask you to deny all post-trial motions.

2 THE COURT: At this time there is
3 nothing that I have heard or anything about the
4 jury verdict that would make me change my ruling.
5 No additional evidence has been presented for me to
6 change any of my previous rulings.

7 Mr. Evans, as to the motion for a new
8 trial.

9 MR. EVANS: Again, Your Honor, the jury
10 has spoken and that's what everybody signed up for,
11 so I would ask that you deny that. I haven't heard
12 any compelling reasons for you to grant a new trial
13 in this case, so I would ask you to deny that
14 motion as well.

15 THE COURT: Mr. Good, is there some
16 compelling or some additional information that you
17 would like for me to consider as to your motion for
18 a new trial?

19 MR. GOOD: No, Your Honor.

20 THE COURT: And just so we are clear,
21 you had asked -- you believe that you had ten days;
22 is that correct?

23 MR. GOOD: Yes, Your Honor. That was
24 my understanding.

25 THE COURT: So the Rule indicates that

1 you have up to ten days at the Court's instruction,
2 and so you were advised Friday at the pretrial
3 conference with my law clerk that post-trial
4 motions would be heard immediately upon the verdict
5 being read. Note that for the record.

6 MR. GOOD: Yes, Your Honor.

7 THE COURT: How long was your client --
8 was your client on house arrest?

9 MR. GOOD: No, Your Honor. He was out
10 on a PR bond.

11 THE COURT: Did he serve any time?

12 MR. GOOD: Just one day, Your Honor.

13 THE COURT: Any of your client's family
14 wish to address the Court? I will hear one.

15 MR. GOOD: Beg the Court's indulgence.
16 Yes, Your Honor.

17 MS. ALLSTON: I'm Andrew's mother.

18 THE COURT: Ma'am, I need you to state
19 your full name and spell your last name.

20 MS. ALLSTON: Michelle Allston,
21 A-L-L-S-T-O-N.

22 THE COURT: Yes, ma'am.

23 MS. ALLSTON: When they -- Judge Buckel
24 and Officer Bowen asked him to turn himself in, he
25 told him when to go, I took him. That would

1 minimize his time at the jailhouse, and he was
2 released on a PR bond.

3 I personally think there is some
4 extenuating circumstances that can't be brought up,
5 but I do not agree with the ruling -- the jury
6 finding. There is a lot of family things that
7 can't be put into this that I feel strongly had a
8 huge impact. And I really wish you would be
9 lenient.

10 I don't want my son to have to have a
11 sex offender and not be able to pick his own
12 children up from school or to take them to ball
13 games or to be influenced to where he can work
14 because he won't be able to be anywhere near that
15 kind of stuff.

16 I think this is a very severe penalty
17 considering they came up -- there had already an
18 incident -- I can't bring that up either. They
19 brought the alcohol. I think everybody was equally
20 in bad shape. And I really think it was more of a
21 case of drunken remorse than rape. I really do.

22 That's -- beg for a little leniency.
23 Thank you.

24 THE COURT: Anything further, Mr. Good?

25 MR. GOOD: No, Your Honor.

1 THE COURT: Have you advised your
2 client of his appellate rights?

3 MR. GOOD: I have, yes.

4 THE COURT: He understands he has ten
5 days from today's date in order to appeal?

6 MR. GOOD: Yes, Your Honor.

7 THE COURT: Mr. Kirkland, please stand.
8 Anything before I impose sentence?

9 MR. GOOD: No, Your Honor.

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Mr. Kirkland, one of the
12 toughest things that I do as a judge is to sentence
13 people. I've only known you now for three days and
14 I've heard stories and I've heard from the victim
15 and the trauma that she went through and I've heard
16 your side when you were allowed and given your day
17 in court to testify.

18 The State of South Carolina has
19 determined that the punishment is from 0 to 10 and
20 placement upon the sex offender registry. I cannot
21 deviate whether or not I place you on the registry.
22 It's an automatic registry sentence.

23 Mr. Good, have you explained to your
24 client what that means?

25 MR. GOOD: We have talked about it over

1 time, but not today we haven't, Your Honor.

2 THE COURT: So you will have to for the
3 rest of your life comply with the sex offender
4 registry. Do you understand?

5 THE DEFENDANT: Yes.

6 THE COURT: So what that leaves me is
7 to determine what the next ten years of your life
8 is going to look like.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And so in order for me to
11 do that I look at your past behavior, the
12 seriousness of the crime, and your ability and your
13 acceptance of what has happened. I don't find that
14 you have accepted what has happened at all. And
15 that concerns me.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: The jury listened, they
18 listened to the same facts that I listened to, and
19 they have determined that you are guilty of this
20 crime.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: They listened to your side
23 of the story, they listened to the facts presented
24 by the victim and they made a determination that
25 you have violated the laws of the State of South

SENTENCING

1 Carolina.

2 No one is sitting here in judgment as
3 to whether or not you're a good person or a bad
4 person or somewhere in between. That's not what we
5 are here to do. What I must determine is the
6 appropriate punishment for the act that you
7 committed.

8 Anything before I make that final
9 determination?

10 THE DEFENDANT: No, ma'am.

11 THE COURT: Anything further, Mr. Good?

12 MR. GOOD: No, Your Honor.

13 THE COURT: It is the order of the
14 Court on 2015-GS-10-06068 that be committed to the
15 State Department of Corrections for a term of five
16 years provided upon the service of one year. The
17 balance is suspended with probation for four years.

18 I will give you credit for any time
19 that you have served. Upon your release on
20 probation you must successfully complete substance
21 abuse counseling, random drug and alcohol testing.

22 There is to be no contact with the
23 victim or the victim's family. You must complete
24 90 NA or AA meetings within 90 days. You must have
25 a mental health assessment and following their

SENTENCING

1 recommendations, and you will be placed on the sex
2 offender registry.

3 Mr. Kirkland, again, I must advise you
4 you have ten days from today's date in order to
5 appeal this Court's and the jury's findings.

6 Good luck to you, sir.

7 THE DEFENDANT: Thank you.

8 THE COURT: Anything further, Counsel?

9 MR. GOOD: No, Your Honor.

10 MR. EVANS: Nothing from the State.

11 THE COURT: All right. Ms. Eudy and
12 Mr. Good, Mr. Evans and Ms. Elliott, thank you for
13 your professional presentation. This was a very
14 personal and trying case for each side, and I know
15 there were a lot of factors involved.

16 So thank you for your presentation and
17 your courteousness and professionalism and
18 preparedness for the Court.

19 I wish you only the best, Miss Dunn in
20 the future, and I wish you only the best, Ms.
21 Allston. I know this is not the outcome that you
22 wanted. Thank you.

23 All four of you were excellent
24 attorneys as always and it's always a pleasure when
25 I have four competent attorneys in front of me. So

1 I wish everyone the best. Thank you.

2 We are adjourned. We will begin pleas
3 tomorrow.

4 (These proceedings were concluded at
5 6:01 p.m.)

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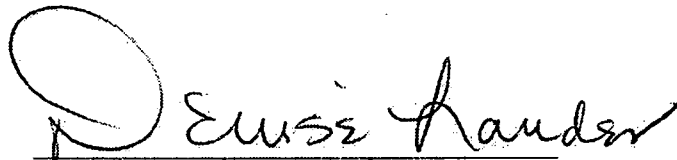
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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of June, 2018 at Charleston, Charleston County, South Carolina.



Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
February 27, 2028

ACE/0244010/20150100394
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER

2014020638B

ARREST WARRANT NUMBER

2015A1010900040

DATE OF ARREST

01/15/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature] NOV 3 2015
Foreperson of Grand Jury Date:

VERDICT

[Signature]

[Signature] 2/7/18
Foreperson of Petit Jury Date:

DOCKET NO. 2015-GS-10-06068

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2015

THE STATE

VS.

ANDREW ALLSTON KIRKLAND
W/M DOB: [REDACTED] 1988

Indictment for

CRIMINAL SEXUAL CONDUCT THIRD
DEGREE

SC Code: § 16-03-0654
CDR Code: 0162

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

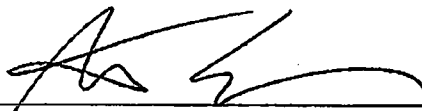
INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT THIRD DEGREE

That in Charleston County, South Carolina, on or about December 7, 2014, the Defendant, Andrew Allston Kirkland, did commit a sexual battery upon the victim, Robyn Dunn, (1) through the use of force or coercion and in the absence of aggravating circumstances and/or (2) when the Defendant knew, or had reason to know, the victim was mentally defective, mentally incapacitated, or physically helpless and aggravated force or aggravated coercion was not used to accomplish sexual battery. This is in violation of Section 16-03-654, South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

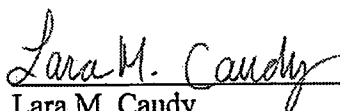


ANDREW EVANS
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in cursive script, reading "Lara M. Caudy", is written over a horizontal line.

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211-1589

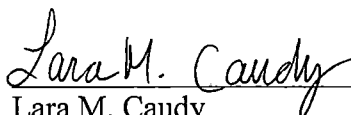
ATTORNEY FOR APPELLANT

This 20th day of August, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
P.O. Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 20th day of August, 2018.

RECEIVED

AUG 20 2018

SC Court of Appeals