

VOLUME I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Grace Gilchrist Knie, Circuit Court Judge

RICHARD TODD CULBERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000371

APPENDIX

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1 STATE OF SOUTH CAROLINA }
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3
4 STATE OF SOUTH CAROLINA,)
5 PLAINTIFF,)
6 VS.)
7 RICHARD TODD CULBERSON,) 2013-GS-42-1811 - 1814
8 DEFENDANT.)

9
10 June 16th - 17th, 2014
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

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

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17 SOLICITOR
18 Attorney for the State

19 MATTHEW SHEALY
20 ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant

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24 Circuit Court Reporter
25 Seventh Judicial Circuit

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THE COURT: All right. If you have a witness list and
voir dire I'll be glad to take a look at them.

Is the defendant in custody?

MR. SHEALY: He is, Your Honor.

THE COURT: All right.

(WHEREUPON, the defendant comes into the courtroom at
this time.)

SOLICITOR BARNETTE: May we approach for a second, Your
Honor?

THE COURT: Yeah. Sure.

(WHEREUPON, a bench conference was held at this time.)

THE COURT: Now, Mr. Shealy, I don't know if your
client has been arraigned or is -- if he hasn't, if he's
waiving arraignment. I don't know the situation.

MR. SHEALY: Your Honor, it's my understanding he has
been arraigned.

THE COURT: He has been arraigned---

MR. SHEALY: Yes, sir, he has on all of those warrants
--

THE COURT: ---on all four charges?

Okay.

MR. SHEALY: Or all of those indictments sprung from
warrants.

1 THE COURT: All right. Thank you then.

2 Anything further from the State before we call the jury
3 in?

4 SOLICITOR BARNETTE: No, sir, I read over the top of
5 the questions that, that he submitted. I really don't -- I
6 think they're, they're basically covered by your charge. I
7 think they can be combined. Obviously they ask a lot of the
8 same questions, but, in general, I don't have an objection.

9 THE COURT: All right. I'm looking at the Code Section
10 concerning the number of peremptory strikes. I do not --
11 since these are attempted armed robbery and attempted CSC,
12 assault and battery first, I don't see a ten strike charge.

13 MR. SHEALY: Your Honor, I would ask for ten strikes
14 based on the criminal sexual conduct. He's alleged to have
15 committed criminal sexual conduct. I mean -- I understand
16 it's an assault with the intent to commit criminal sexual
17 conduct, but I think that would --

18 THE COURT: Mr. Barnette.

19 MR. SHEALY: -- and I have no law to---

20 THE COURT: Mr. Barnette.

21 MR. SHEALY: But that would be what I would request.

22 SOLICITOR BARNETTE: Your Honor, I would say the law is
23 very specific to what all offenses they are and it's not
24 covered.

25 THE COURT: It's, it's not listed in the statute.

1 It's -- it specifically says in the statute that -- it talks
2 about criminal sexual conduct, but it doesn't say an assault
3 with the intent to commit that offense. So, I think we're
4 gonna go five and five.

5 All right. Anything further from the State before we
6 bring the jury in?

7 SOLICITOR BARNETTE: Nothing from the State at this
8 point, Your Honor.

9 THE COURT: Anything further from the defense before we
10 bring the jury in?

11 MR. SHEALY: No, sir.

12 THE COURT: All right. Let's bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. Ladies and gentlemen, we are
16 about to begin the trial of the State of South Carolina
17 versus Richard Todd Culberson. Before we begin the actual
18 jury selection I'm going to go over some information with
19 you that may be of some help to you in answering questions
20 that I'm going to ask you that apply specifically to the
21 cases that are before this Court.

22 Now, cases in the General Sessions Court come before
23 this Court by way of what is referred to as an indictment.
24 The indictment is a document that informs this Court of the
25 charges that have been lodged in a particular case. It also

1 informs the defendant of the charges that have been lodged
2 against the defendant.

3 Now, indictments do not constitute evidence in a case
4 and can't be used by a jury in any manner in determining the
5 guilt or the innocence of a defendant. Again, they are
6 notice documents. They notify this Court of the charges to
7 be tried and they notify the defendant of the charges lodged
8 against the defendant.

9 The reason I'm going over the indictments with you at
10 this time is so that you will know what the charges are,
11 what the allegations are. That may help you, later on,
12 answer the questions that I'm about to ask you in a more
13 complete or more -- a more complete manner.

14 All right. The first indictment that I will go over in
15 the matter with you is Case Number 2013-GS-42-1814. The
16 charge in this indictment is for assault with intent to
17 commit criminal sexual conduct first degree.

18 The indictment states that the defendant, Richard Todd
19 Culberson, did, on or about January 24th of 2013,
20 willfully and unlawfully commit an assault with the intent
21 to commit criminal sexual conduct in the first degree
22 against the defendant -- the victim, D.P. in
23 violation of Code Section 16-3-656 and 16-3-654(2) of the
24 Code of Laws of South Carolina, 1976, as amended, against
25 the peace and dignity of the State and contrary to the

1 statute in such case made and provided. That's the first
2 indictment before the Court.

3 The next indictment that I'll go over with you is Case
4 2013-GS-42-1813. This indictment is for the offense of
5 attempted armed robbery.

6 The indictment states that the defendant, Richard Todd
7 Culberson, did, in Spartanburg County, on or about
8 January 24th of 2013, whiled armed with a deadly weapon,
9 feloniously attempt to take, by means of force or
10 intimidation, goods or moneys from the person or presence of
11 D.P. in violation of section 16-11-330(b) of the
12 Code of Laws of South Carolina, 1976 as amended, against the
13 peace and dignity of the State and contrary to the statute
14 in such case made and provided.

15 The next indictment is Case Number 2013-1812. This
16 offense is kidnapping. The indictment states that Richard
17 Todd Culberson did, in Spartanburg County, on or about
18 January 24th, 2013, willfully and unlawfully, with criminal
19 intent, seize, confine, inveigle, decoy, kidnap, abduct, or
20 carry away the victim, D.P. without authority of
21 law, all in violation of section 16-3-910 of the Code of
22 Laws of South Carolina, 1976 as amended, against the peace
23 and dignity of the State and contrary to the statute in such
24 case made and provided.

25 The final indictment in this matter is 2013-1811. This

1 is for assault and battery in the first degree.

2 The indictment states that the defendant, Richard Todd
3 Culberson, did in Spartanburg County, on or about
4 January 24th, 2013, commit an act causing an unlawful
5 injury to D.P. and the act involved the
6 non-consensual touching of the private parts of an adult
7 with a lewd and lascivious intent to, or, two, occurred
8 during the commission of a robbery, burglary, kidnapping, or
9 theft, or, three, involves an offer or an attempt to injure
10 another person with the presentability, the presentability
11 to do so, and the act is accomplished by means likely to
12 produce death or great bodily injury occurring during the
13 commission of a robbery, burglary, kidnapping, or theft in
14 violation of Code Section 16-3-600 of the Code of Laws of
15 South Carolina, 1976 as amended, against the peace and
16 dignity of the State and contrary to the statute in such
17 case made and provided.

18 Those are the indictments before the Court. The
19 defendant has pled not guilty to those indictments, and I am
20 informing you of that information so that you might more
21 fully answer some questions that we're going to ask in just
22 a few minutes.

23 Before I do that, also I'm going to have the attorneys
24 involved in this case introduce themselves to you, and, in
25 the case of the State, if the victim is present, I'd ask

1 that you introduce the alleged victim.

2 So, for the State.

3 SOLICITOR BARNETTE: May it please the Court, Your
4 Honor.

5 Barry Barnette from the Solicitor's Office.

6 Ms. Pruitt, if you would, stand.

7 THE COURT: Ma'am, if you'll stand, face the jury
8 panel.

9 (Ms. Pruitt complies.)

10 THE COURT: Thank you. You can be seated.

11 (Ms. Pruitt complies.)

12 SOLICITOR BARNETTE: This is Ms. D.P. She's
13 the victim in this case.

14 THE COURT: Thank you.

15 And the defense, if you would please introduce the
16 defendant to the jury panel.

17 MR. SHEALY: Thank you, Your Honor.

18 My name is Matthew Shealy, Spartanburg County Public
19 Defender's Office, and I represent Richard Culberson.

20 THE COURT: Sir, if you'll stand, face the jury panel
21 so that they can put a face with a name.

22 (Defendant complies.)

23 THE COURT: Thank you, sir. You can be seated.

24 (Defendant complies.)

25 THE COURT: Now, ladies and gentlemen, again, I'm going

1 to ask a series of questions of you. We'll follow a process
2 that's very similar to the process we followed during jury
3 qualification. That is, if you have a response to my
4 question, I'll ask that you stand, stand. I'll need your
5 name and number before I discuss your response on the
6 record. So, we'll follow that same process in accomplishing
7 this particular questioning.

8 Now, it is important that the answers that you give
9 during this process is truthful, accurate, and complete
10 information as well. So, again, in this trial, it's
11 necessary that you be sworn to respond honestly to the
12 court's inquiry.

13 Madam Clerk, please swear the potential jury panel in
14 this case.

15 THE CLERK: Yes, sir.

16 (WHEREUPON, the entire jury panel was placed under oath
17 at this time.)

18 THE COURT: Now, if any member of the jury panel either
19 failed or refused to take the oath just administered by the
20 clerk, please stand.

21 (No response.)

22 THE COURT: The record then will reflect that all
23 potential jurors have been sworn concerning their responses
24 in this matter.

25 Now, has any member of this jury panel ever been

1 related by marriage or are you related by blood to either
2 the defendant, Richard Todd Culberson, or the alleged
3 victim, D.P. if that's true, please stand.

4 (No response.)

5 THE COURT: Has any member of the jury panel ever had a
6 close personal or a social relationship with either the
7 defendant, Richard Todd Culberson, or the alleged victim,
8 D.P. if that's true, please stand.

9 (No response.)

10 THE COURT: Has any member of the jury panel ever been
11 represented by either of the attorneys that are involved in
12 this case or have they ever appeared on the other side of
13 some legal matter from you, if that's true, please stand.

14 (No response.)

15 THE COURT: Has any member of the jury panel ever had a
16 close social or a personal relationship with either of the
17 attorneys that are involved in this case, if that's true,
18 please stand.

19 (No response.)

20 THE COURT: Now, of course, Mr. Barnette is the circuit
21 solicitor, and he has a staff of attorneys that work in that
22 office, and so, as to the, the Seventh Circuit solicitor's
23 office, if there's any member of the jury panel who has a,
24 has a close social or a personal relationship with anyone
25 working in the Circuit solicitor's Office or if you've ever

1 been related by blood or marriage to anyone who works in
2 that office, please stand.

3 (No response.)

4 THE COURT: Mr. Shealy is a member of the, of the
5 Seventh Circuit Public Defender's Office, and as to that
6 office, if any member of the jury panel has ever been
7 related by blood or marriage or if you have ever had a close
8 social or a personal relationship with anyone working in
9 that office, please stand.

10 (No response.)

11 THE COURT: Now, ladies and gentlemen, I'm going to go
12 over a list of people who have been identified to me as
13 people who may be witnesses in this case, possible
14 witnesses, and, as I go through this list of people, there's
15 a possibility I might repeat a name because I've been given
16 a list by both sides in the case. I'll try not to do that.
17 I will also give you any identifying information that I've
18 been given concerning these individuals as well as I go
19 through this. And when I refer to the Sheriff's Office,
20 I'll be referring to the Spartanburg County Sheriff's Office
21 as I go through this list of individuals who are potential
22 witnesses.

23 I want you to listen carefully, listen carefully to the
24 names because, when I finish, I'll be asking you about these
25 individuals as I've asked similarly as I've asked about

1 other individuals already.

2 Now, the first list that I have, of course, D.P.

3 from Spartanburg, South Carolina.

4 Shalean Ann Smith from Spartanburg, South Carolina.

5 Stephanie Eubanks of Spartanburg.

6 Kelly Rudicill from Spartanburg.

7 Investigator Lathier, Lathier Graham with the Sheriff's
8 Office.

9 Investigator William Gary with the Sheriff's Office.

10 Investigator Lorin Williams with the Sheriff's Office.

11 Sergeant Jason Bryant with the Sheriff's Office.

12 Investigator Tom Clark with the Sheriff's Office.

13 Deputy W. Swanlund, Swanlund with the Sheriff's Office.

14 Sergeant Matt Hutchins with the Sheriff's Office.

15 Deputy Brian Fraley of -- with the Sheriff's Office.

16 Deputy Anita Mullinax with the Sheriff's Office.

17 Deputy Robert Rosenberg with the Sheriff's Office.

18 Deputy Angela Nelson with the Sheriff's Office.

19 Deputy Bryan Snow with the Sheriff's Office.

20 Deputy David Wood with the Sheriff's Office.

21 Chris Bush with the Sheriff's Office.

22 Phillip Davis with the Sheriff's Office.

23 Coby Stepp with the Sheriff's Office.

24 Harry Cline with the Sheriff's Office.

25 Brian Baird from Spartanburg.

1 Benjamin Huckeba from Spartanburg.

2 Amanda Webb of the State Law Enforcement Division.

3 Doris Yarbrough with the State Law Enforcement

4 Division.

5 Officer Paul Weatherman with the Spartanburg City

6 Police Department.

7 Officer Katrina Canada with the Spartanburg City Police

8 Department.

9 Dawn McQuiston from Wofford College.

10 Faron Cox from Simpsonville, South Carolina.

11 Luis Gonzalez, General Manager of the SPARTA

12 Transportation System.

13 Heather Holmstrom of Spartanburg, South Carolina.

14 Brian Baird of Spartanburg, South Carolina.

15 Mrs. Martha Culberson of Moore, South Carolina.

16 Is it -- Curtis Jones, an investigator with the Public

17 Defender's Office.

18 Now, those are the people that have been identified to

19 me as possible witnesses in the case.

20 As to those individuals that I just named, has any

21 member of this jury panel ever been related by marriage or

22 are you related by blood or have you ever had a close social

23 or a personal relationship with anyone that I've listed as a

24 possible witness in this case, if that is true, please

25 stand.

1 (No response.)

2 THE COURT: Has any member of this jury panel ever been
3 arrested for, charged with, or convicted of a crime
4 involving, involving violence such as murder, and/or
5 manslaughter, assault and battery with intent to kill, armed
6 robbery, criminal sexual conduct, burglary, criminal
7 domestic violence high and aggravated involving a weapon or
8 an assault on another person or a similar crime?

9 So, is that any member of the jury panel who's ever
10 been arrested for or charged with or convicted of such a
11 crime, if that has occurred, please stand.

12 (No response.)

13 THE COURT: Has any member of the jury panel ever had a
14 member of your immediate family or a close personal friend
15 who has been arrested for, charged with, or convicted of the
16 same crimes I just went over with you, crimes of violence,
17 if that is occurred, please stand.

18 (Jurors respond.)

19 THE COURT: Yes, ma'am, name and number.

20 THE JUROR: Ruth Nash, 118.

21 THE COURT: Yes, ma'am.

22 THE JUROR: Well, I had a son who you probably was the
23 judge in his case.

24 THE COURT: I may of been.

25 THE JUROR: Rodney Nash.

1 THE COURT: All right. Now, ma'am, so that was a son
2 of yours?

3 THE JUROR: Yes.

4 THE COURT: Now, the fact that you've had that close
5 family member involved in such a case, would that affect
6 your ability to be fair and impartial if you were to be
7 seated on this jury?

8 THE JUROR: No.

9 THE COURT: Thank you. You can be seated.
10 Name and number please, ma'am.

11 THE JUROR: Linda Russell, 148.

12 THE COURT: Yes, ma'am.

13 THE JUROR: My youngest daughter was convicted of
14 assault and battery of a high and aggravated nature.

15 THE COURT: All right. Would the fact that that had
16 occurred in your family, if you were selected to sit on the
17 jury, would that affect your ability to be fair and
18 impartial to both the State and the defense?

19 THE JUROR: No, sir.

20 THE COURT: Thank you, ma'am.

21 Ma'am, name and number.

22 THE JUROR: Margaret Bobo, Number 13.

23 THE COURT: Yes, ma'am.

24 THE JUROR: My ex-husband was domestic violence and I
25 feel very strongly about domestic violence.

1 THE COURT: Okay. Ma'am, now, if you were selected to
2 sit on the jury, would that fact affect your ability to be
3 fair and impartial on that jury?

4 THE JUROR: It may. It would, it would be hard. I'd
5 have to hear the evidence to really know, but it affected
6 me. It's really affected me.

7 THE COURT: Well, my question is though would it affect
8 your impartiality in this case, yes or no?

9 THE JUROR: It probably would.

10 THE COURT: All right. I'm gonna excuse you.

11 THE JUROR: But I would---

12 THE COURT: I will excuse you from the trial of this
13 matter. You no longer have to answer my questions, but I'll
14 ask you to be seated.

15 THE JUROR: Okay.

16 THE COURT: Thank you.

17 Name and number please, ma'am.

18 THE JUROR: 71, Boone Hopkins.

19 THE COURT: Yes, ma'am.

20 THE JUROR: And my dad was abusive to my mom. They use
21 to do that in front of me.

22 THE COURT: All right. Now, would that affect your
23 ability to be fair and impartial if you were a juror in this
24 case?

25 THE JUROR: Yes.

1 THE COURT: All right. I'll excuse you. You no longer
2 have to answer my questions. Please be seated.

3 Name and number please, ma'am.

4 THE JUROR: Cindy Davenport, 36.

5 THE COURT: Yes, ma'am.

6 THE JUROR: My brother's been arrested for domestic
7 violence.

8 THE COURT: All right. Would that fact affect your
9 ability to be fair and impartial if you were selected on the
10 jury?

11 THE JUROR: No.

12 THE COURT: Thank you.

13 Name and number please, ma'am.

14 THE JUROR: Susan Mabry, 101.

15 THE COURT: Yes, ma'am.

16 THE JUROR: Stepson, burglary.

17 THE COURT: Would it affect your impartiality if you
18 were on this jury?

19 THE JUROR: No, sir.

20 THE COURT: Thank you, ma'am.

21 Anyone else?

22 (No response.)

23 THE COURT: Is there any member of the jury panel or a
24 member of your immediate family who has, in the past, been
25 prosecuted by or is currently being prosecuted by the

1 Seventh Circuit solicitor's office, if that's true, please
2 stand.

3 (No response.)

4 THE COURT: Has any member of the jury panel ever been
5 arrested by the Spartanburg County Sheriff's Office or the
6 State Law Enforcement Division, if that has occurred, please
7 stand.

8 (Juror responds.)

9 THE COURT: Name and number, ma'am.

10 THE JUROR: 166, my name is Doris Suber. My son was
11 arrested one time for drugs.

12 THE COURT: All right. Well, ma'am, I was asking if
13 you had been arrested.

14 THE JUROR: No, sir.

15 THE COURT: Okay. Thank you, ma'am. You can be
16 seated.

17 Now, has any member of the jury -- is any member of the
18 jury panel a member of an organization that does not
19 recognize the existence of or the authority of the
20 government of the United States of America or the State of
21 South Carolina, if that's true, please stand.

22 (No response.)

23 THE COURT: Has any member of the jury panel or a
24 member of your immediate family ever suffered sexual abuse
25 either as a minor or an adult, if that's true, please stand.

1 (Jurors respond.)

2 THE COURT: Name and number please, ma'am.

3 THE JUROR: Wendy Blackwood, Number 11.

4 THE COURT: Yes, ma'am.

5 THE JUROR: My husband was sexually abused as a child.

6 THE COURT: All right. Would that affect your ability
7 to be fair and impartial in this case?

8 THE JUROR: Yes.

9 THE COURT: All right. Then I'm gonna excuse you,
10 ma'am. Be seated. No longer answer my questions.

11 Name and number, ma'am.

12 THE JUROR: Cynthia Stone, 165.

13 THE COURT: Yes, ma'am.

14 THE JUROR: My daughter was.

15 THE COURT: All right. Would that fact affect your
16 ability to be fair and impartial if you were seated on this
17 jury?

18 THE JUROR: No, sir.

19 THE COURT: Thank you, ma'am.

20 Name and number, ma'am.

21 THE JUROR: Angela Smaley, 158.

22 THE COURT: Yes, ma'am.

23 THE JUROR: My mother was sexually abused as a child.

24 THE COURT: All right. Would that fact affect your
25 ability to be fair and impartial if you were sitting on the

1 jury in this matter?

2 THE JUROR: No, sir.

3 THE COURT: Thank you.

4 Name and number, ma'am.

5 THE JUROR: Karen Rhodes, 190 -- 139.

6 THE COURT: Yes, ma'am.

7 THE JUROR: My mother was sexually abused.

8 THE COURT: Would that affect your impartiality if you
9 were serving on this jury?

10 THE JUROR: No, sir.

11 THE COURT: Thank you.

12 Anyone else?

13 (No response.)

14 THE COURT: Has any member of the jury panel or a
15 member of your immediate family ever been accused of
16 improper sexual conduct toward another person, minor or
17 adult, if that's true, please stand.

18 (No response.)

19 THE COURT: Has any member of this jury panel received
20 or gotten any information such that it would have caused you
21 to either form or express an opinion about any issue or
22 matter that might be involved in the trial of this case, if
23 that's true, please stand.

24 (No response.)

25 THE COURT: Is there any member of the jury panel who

1 is aware of any bias or prejudice that you might have either
2 for or against both -- either the state or the defense in
3 the case, if that's true, please stand.

4 (Juror responds.)

5 THE COURT: Yes, ma'am, name and number.

6 THE JUROR: Karen Rhodes, 139.

7 THE COURT: Yes, ma'am.

8 THE JUROR: I work for Safe Homes Rape Crisis
9 Prevention.

10 THE COURT: All right. Would that affect your ability
11 to be fair and impartial in this matter?

12 THE JUROR: I would think so.

13 THE COURT: All right. You say you would think so?

14 THE JUROR: Yes, sir.

15 THE COURT: All right. I'm gonna excuse you from the
16 trial of the case. You can be seated.

17 Is there any member of the jury panel who was a member
18 of the Grand Jury that might have issued the indictments in
19 this case -- let me check and see. I believe the
20 indictments were issued I believe in March of last year.
21 2013. Let be sure that's the case.

22 That's correct.

23 If that's true, please stand.

24 (No response.)

25 THE COURT: Is there any member of the jury panel who

1 is a member of or a contributor to a group that has as its
2 primary concern the promotion of law enforcement and/or
3 victims rights?

4 These groups would include, but not be limited to,
5 Mothers Against Drunk Driving, Students Against Drunk
6 driving, Citizens Against Violent Crime, the South Carolina
7 Troopers Association, the South Carolina Sheriff's
8 Association, or other similarly oriented organizations, if
9 that's true, please stand.

10 (Juror responds.)

11 THE COURT: Name and number, ma'am.

12 THE JUROR: Cynthia Lee, Number 95.

13 THE COURT: Yes, ma'am.

14 THE JUROR: I'm a member of the State Cut It Out
15 Program, which is against domestic violence. We're a safe
16 haven.

17 THE COURT: I see.

18 Now, ma'am, would the fact that you're a member of that
19 group, would that affect your ability to be fair and
20 impartial in the trial of this case?

21 THE JUROR: No, sir.

22 THE COURT: Thank you. You can be seated.

23 Anyone else?

24 (No response.)

25 THE COURT: Now, does any member of this jury panel

1 know of any reason whatsoever why he or she should not serve
2 as a juror in this case with particular emphasis being
3 placed on your ability to be both fair and impartial to both
4 the State and the defense, if that's true, please stand.

5 (No response.)

6 THE COURT: Additional questions from the State?

7 SOLICITOR BARNETTE: None from the State, Your Honor.

8 THE COURT: Any from the defense?

9 MR. SHEALY: Your Honor, if we may approach?

10 THE COURT: Please do.

11 (WHEREUPON, a bench conference was held out of the
12 hearing of the jury at this time.)

13 THE COURT: Has any member of the jury panel or any
14 member of your immediate family ever been employed by a law
15 enforcement agency, a detention facility, or the Department
16 of Social Services or any similar agency, if that's true,
17 please stand.

18 (Jurors respond.)

19 THE COURT: Name and number, ma'am.

20 THE JUROR: Christina Robertson, Number 140.

21 THE COURT: Yes, ma'am.

22 THE JUROR: My husband works for the Department of
23 Corrections.

24 THE COURT: All right. Would that affect your
25 impartiality if you were to serve in the case?

1 THE JUROR: No, sir.

2 THE COURT: Thank you.

3 Name and number, ma'am.

4 THE JUROR: Karen Bennett, Number 9. I was employed
5 with the Department of Social Services.

6 THE COURT: All right. Would that fact affect your
7 ability to be fair and impartial if you were on the jury?

8 THE JUROR: No, sir.

9 THE COURT: Thank you, ma'am.

10 Name and number, ma'am.

11 THE JUROR: Karen Potter, 192.

12 THE COURT: Yes, ma'am.

13 THE JUROR: My son is a corrections officer and my dad
14 was a city policeman for 35 years.

15 THE COURT: All right. Would that affect your
16 impartiality if you were on the jury?

17 THE JUROR: No, sir.

18 THE COURT: Thank you.

19 Name and number please, ma'am.

20 THE JUROR: Tamara Croachie, 91. My husband worked
21 with the Department of Corrections.

22 THE COURT: I see.

23 Would that affect your impartiality if you were on the
24 jury?

25 THE JUROR: No, sir.

1 THE COURT: Thank you, ma'am.

2 We'll start, we'll start with this gentleman in the
3 back.

4 Your name and number, sir.

5 THE JUROR: Eric Powell, Number 34.

6 THE COURT: Yes, sir.

7 THE JUROR: My dad served the City of Spartanburg for
8 ten years.

9 THE COURT: All right. Would that affect your
10 impartiality if you were on the jury?

11 THE JUROR: No, sir.

12 THE COURT: Thank you.

13 Ma'am, name and number.

14 THE JUROR: Brenda Brooks, Number 17. My husband is
15 employed with Duncan Police Department.

16 THE COURT: Would that affect your impartiality if you
17 were on the jury?

18 THE JUROR: No, sir.

19 THE COURT: Thank you.

20 Name and number, ma'am.

21 THE JUROR: I'm Gina Moniouk, 114.

22 THE COURT: Yes.

23 THE JUROR: My mother is a policeman with Spartanburg
24 City.

25 THE COURT: All right. Would that affect your

1 impartiality in this case?

2 THE JUROR: No.

3 THE COURT: Thank you.

4 Name and number.

5 THE JUROR: Number 89, Catherine King. My son was on
6 the vice squad for the Greenville County Sheriff's
7 department, and my son-in-law worked for the South Carolina
8 Department of Corrections.

9 THE COURT: All right. Would those factors affect---

10 THE JUROR: No, sir.

11 THE COURT: ---your impartiality?

12 Thank you, ma'am.

13 Name and number, sir.

14 THE JUROR: 94, Boyce Lawton. My step-father retired
15 from the Cincinnati Police Department as a detective.

16 THE COURT: All right. Would that affect your
17 impartiality in this matter?

18 THE JUROR: No, sir.

19 THE COURT: Thank you, sir.

20 Ma'am, name and number.

21 THE JUROR: Dianna Pack, 124. My father was a police
22 officer in North Carolina for several years. My son-in-law
23 is currently a state trooper in North Carolina.

24 THE COURT: I see.

25 Would that affect your impartiality in this case?

1 THE JUROR: No.

2 THE COURT: Thank you, ma'am.

3 Anyone else?

4 (No response.)

5 THE COURT: Any other questions from the State?

6 SOLICITOR BARNETTE: None from the State, Your Honor.

7 THE COURT: Any from the defense?

8 MR. SHEALY: None.

9 THE COURT: All right. Then I'll declare that the
10 remaining members of the jury panel are qualified to serve
11 as members of the jury in this case.

12 Now, I'm gonna instruct that -- the clerk of court to
13 prepare a list of names. Let me explain to you how this
14 works so you'll get some appreciation for what we're doing.

15 We have a computer program that will randomly select
16 names out of those who have been qualified as jurors in this
17 case. So, they're preparing that list.

18 Once that list is prepared it will be provided to Court
19 personnel. We'll begin to call the names on that list in
20 the order in which they are printed on the list, and the
21 order in which the computer printed them.

22 When your name is called, I'll ask that you come
23 forward, walk down the aisle right in front of where the
24 clerk is, and stand there and face the door at the back of
25 the courtroom. At that time the attorneys will be in a

1 position to exercise their strikes that they're allowed by
2 law.

3 In this case there will be five for the state, five for
4 the defense. We'll pick an alternate. The State will get
5 one strike. The defense will get two strikes for the
6 alternate.

7 Now, I like to tell juries the first time I have them
8 that we use to be required by law to do -- put the names in
9 a barrel and spin it around and we had to have a blind
10 person, a legally blind person hired at the courthouse to
11 pull the names out of the barrel, and so we still have the
12 oak barrel in the back of the courtroom on the other side in
13 case the computer ever goes down we can still do that, but
14 we try to do it a little more modern way sometimes.
15 Sometimes the computer doesn't work as good as the barrel
16 worked, but we'll see how that goes.

17 Now, as your name is called, if you brought a
18 pocketbook or some other personal item into the courtroom
19 with you, bring that with you when you come down the aisle
20 because, if you're selected to serve on the jury, you'll
21 immediately have a seat in the jury box. You'll not be
22 going back to your seat. So, bring any personal items with
23 you if your name is called.

24 Madam Clerk, you can begin the jury selection process.

25 THE CLERK: Yes, sir.

1 (WHEREUPON, a jury panel was selected at this time.)

2 THE COURT: All right. We're selecting the alternate
3 at this time.

4 (WHEREUPON, an alternate juror was selected at this
5 time.)

6 THE CLERK: Jury selection has been completed.

7 THE COURT: Thank you, Madam Clerk.

8 All right. Are there objections to the jury selection
9 process from the state?

10 SOLICITOR BARNETTE: None from the State, Your Honor.

11 THE COURT: Any from the defense?

12 MR. SHEALY: No, Your Honor.

13 (Pause.)

14 THE COURT: All right. Ladies and gentlemen, you have
15 been selected as jurors in this case, and I notice it's
16 about 15 minutes till one o'clock. So, we're gonna break at
17 this time for lunch and let you go get your lunch and we'll
18 return afterwards. So, you'll be leaving the courthouse for
19 a brief period of time. So, there's some things I need to
20 go over with you concerning your behavior and, and what's
21 expected of you as a juror in this matter.

22 When you come back in front of the Court later on
23 you'll be taking an oath that's prescribed by law for jurors
24 concerning your responsibilities in this case. That oath
25 will include that you will swear to decide the case based

1 upon the law and the evidence presented.

2 Now, the only place you're going to hear law and
3 evidence about this case is in this courtroom. The only
4 evidence you'll hear will be testimony of witnesses who've
5 sworn to tell the truth who will be testifying from the
6 witness stand here in front of you and whatever documents or
7 other pieces of evidence coming into the record through the
8 testimony of those witnesses or evidence that's agreed upon
9 by agreement of the attorneys to go into the record.

10 There is no evidence in this case outside of this
11 courtroom. For that reason it would be highly improper for
12 you, in fact, it would be a violation of your oath as a
13 juror for you to attempt to gather any information about
14 this matter outside of this courtroom in any manner or
15 fashion whatsoever.

16 Now, I'm not so old that I don't realize that you can
17 pick up a tablet and punch a few buttons and you can get
18 information about just about anything or anybody in the
19 world these days. However, again, it would be a violation
20 of your oath to gather any information about this case from
21 any other source. So, don't attempt to do so.

22 Also it would be improper for you to listen to, watch,
23 or read any media reports that might be on the media
24 concerning this matter. So, if you were to hear something
25 like that or see something like that, as soon as you noticed

1 what it was, walk away, turn it off, don't listen to it
2 because, again, be a violation of your oath to gather any
3 information about the case in that manner as well.

4 Also I've cautioned you about your communication with
5 third parties. Don't discuss anything about this case, even
6 among yourselves, as you're leaving or when you come back
7 in. Nothing about this case. We've gone to a great deal of
8 difficulty and trouble to pick a jury that has an open mind
9 concerning the issues in this case. I'm going to ask you to
10 keep an open mind until you've heard all the evidence,
11 you've heard the arguments by the lawyers, and you've heard
12 my charge concerning the law to be applied in this case.
13 Only once you've heard all of that information will you have
14 all the building blocks or the tools that you need to begin
15 to make a decision in this matter.

16 So, I'm going to ask you not to discuss this case with
17 anyone. Don't allow anyone to discuss with you. That
18 includes even among yourselves at this point in time because
19 even the most innocent conversation you might have with a
20 third party about what this case is about or what might have
21 or could have happened, that might begin to color, to color
22 your final decision. I don't want you to do that in any
23 manner whatsoever.

24 So, from this point forward, I will instruct you, every
25 time you walk through that door and leave this courtroom,

1 not to discuss this case with anyone, not allow anyone to
2 discuss it with you. Do not attempt to gather any
3 information outside of the courtroom, and perhaps, most
4 importantly of all, if someone does try to contact you or to
5 give you information about this case, in other words, what I
6 talked about earlier, attempt to tamper with a jury, you
7 report that when you, when you can to me. I can assure you
8 I take it seriously. I'll see that the appropriate
9 investigations are begun and we'll see that that activity is
10 stopped. So, if you have any -- if that does occur, please
11 report that upon your return.

12 Now, I'm gonna have to take up some matters with the
13 lawyers preliminarily. Hopefully these matters will allow
14 us to move through the case in a more orderly fashion so the
15 matters that involve rulings on matters that will allow us
16 to move forward a little better. So, I'm gonna take a
17 little longer than I would normally take for lunch because
18 we'll be in here working on some things that have to do with
19 this case before your involvement begins. So, for that
20 reason I'm going to ask that you be back in the jury room
21 that the bailiffs showed you by three o'clock this
22 afternoon, and, at that point in time or shortly thereafter,
23 we should be in a position to begin your involvement in the
24 case at that time.

25 Again, you will be asked to take the oath that I

1 indicated. That is the oath to decide this case based upon
2 the law and the evidence presented during the trial. We --
3 every time you come back into this courtroom, when you've
4 left the courthouse, I'll be asking you whether you've been
5 able to follow my instructions and you remain under oath to
6 respond to those inquiries honestly. So, please follow my
7 instructions so we don't have any difficulty concerning your
8 service on the jury during your absence for -- from the
9 courthouse.

10 Hope you have a great lunch. We'll see you at
11 three o'clock. The bailiffs will show you out.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. I believe there's a couple of
15 pretrial motions. We'll reconvene at two o'clock, and be in
16 a position to deal with those at that time.

17 Court's in recess then until two o'clock.

18 Thank you very much.

19 SOLICITOR BARNETTE: Can we approach for one second,
20 Your Honor?

21 THE COURT: Yes, please do.

22 Mr. Shealy.

23 MR. SHEALY: Yes, sir.

24 (WHEREUPON, a bench conference was held at this time.)

25 (WHEREUPON, a screwdriver was marked as State's Exhibit

1 No. 1. Swabs from the screwdriver were marked as State's
2 Exhibit No. 2. The lineup information was marked as State's
3 Exhibit Nos. 3 through 6. Buccal swabs from the victim were
4 marked as State's Exhibit No. 7. A gray hoodie was marked
5 as State's Exhibit No. 8. A denim jacket was marked as
6 State's Exhibit No. 9. The defendant's hair was marked as
7 State's Exhibit No. 10. Buccal swabs from the defendant
8 were marked as State's Exhibit No. 11. All of the above
9 exhibits were for identification purposes only at this
10 time.)

11 THE COURT: All right. We'll see you then at 2:00.

12 SOLICITOR BARNETTE: Thank you.

13 THE COURT: Thank you.

14 (WHEREUPON, Court was in recess for the lunch hour.)

15 THE COURT: All right. We're on the record in the case
16 of State versus Richard Todd Culberson.

17 I believe the State has motions you'd like the Court to
18 consider.

19 SOLICITOR BARNETTE: Yes, sir.

20 Before we go into motions I just want to put on the
21 record we made an offer. I talked with the victim and
22 talked with the Sheriff's Department. We had made an offer
23 to let the defendant plead straight up to kidnapping,
24 assault and battery first degree, and leaving the sentencing
25 up to the Court. I've relayed that to defense and I

1 think -- I'll let Mr. Shealy reply with their response just
2 to make sure the record's covered.

3 THE COURT: Mr. Shealy, is that accurate -- an accurate
4 statement of the offer?

5 MR. SHEALY: It is, Your Honor.

6 THE COURT: And your position?

7 MR. SHEALY: I've explained the offer to my client and
8 explained to him what everything carries, the ramifications
9 of a kidnapping conviction and things of that nature as well
10 as the ramifications if we would go to trial and found
11 guilty on all of those and the various penalties and how
12 they're punished, the strikes, that sort of thing.

13 THE COURT: Yes, sir.

14 MR. SHEALY: Your Honor, I've also explained North
15 Carolina versus Alford to him. I've explained all of those
16 things. He is decided not to accept the State's plea
17 bargain -- offer is my understanding of his position.

18 Is that right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Culberson, is that a correct statement
21 of the situation?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Thank you, sir.

24 All right. Mr. Barnette.

25 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

1 I filed two pretrial motions, Your Honor. The first
2 one might be the easier one of the two to deal with. I
3 filed a motion to exclude any reference to third party guilt
4 by the defendant and his attorneys in this case. I don't
5 know if they're gonna be presenting any third party guilt.
6 I hadn't got any proof of that or anything.

7 THE COURT: All right. Let's, let's check with the
8 defense.

9 Yes, sir.

10 MR. SHEALY: Your Honor, to the extent that we would be
11 accusing any individual person we have no -- none of that
12 type of evidence. We will obviously be arguing that it
13 wasn't my client. It was some unknown third party, and I
14 believe we're allowed to argue that, but we do not have---

15 THE COURT: You're not offering any evidence of other
16 party's guilt, is that right?

17 MR. SHEALY: No, sir.

18 THE COURT: All right. Does that take care of your
19 question, Mr. Barnette?

20 SOLICITOR BARNETTE: Yes, sir.

21 THE COURT: All right. Next motion.

22 SOLICITOR BARNETTE: Your Honor, we have a motion under
23 Rule 404(b), prior bad act evidence, Your Honor, and the
24 exception we'd use is for identification, Your Honor.

25 They have served an alibi defense on us saying the

1 defendant didn't do this or was somewhere else with somebody
2 else from that, Your Honor, and I did do a memo, Your Honor,
3 I believe I provided to the Court.

4 THE COURT: I have received a copy of that, yes, sir.

5 SOLICITOR BARNETTE: And I provided that to the defense
6 also, Your Honor.

7 In this case, Your Honor, back on January 24th, 2013,
8 it was at the Mary Black Urgent Care is what we call it
9 there at 221 -- two -- 995 Reidville Road here in
10 Spartanburg, Your Honor. The victim in this case, Ms.
11 Pruitt, was working there. She went there, was going early.
12 Matter of fact, about ten after 7:00 was walking into her --
13 or close to that, walking into the building.

14 When she went in, she went in the front entrance where
15 the patients usually go. She did not go back where the
16 employees went in because obviously, and she'll testify to
17 this, she didn't use the touch pad at that time, and this
18 gentleman came up behind her, pulled, pulled on her coat,
19 came around, and stabbed her in the chest up in the right
20 side, Your Honor.

21 During that -- they had a struggle and fell down, Your
22 Honor. Her purse was on that side. He fell on top of her,
23 Your Honor. Kept trying to pull her clothes off, trying to
24 grab her. She'll go into more detail about that. He also
25 stabbed her in the right side also, Your Honor. She was

1 able to kick him in the groin and he left running, Your
2 Honor, in this case.

3 She gave a description to the law enforcement officers,
4 Your Honor, a BOLO was sent out. The defendant was seen at
5 the QT down -- which is about four and a half miles away
6 from here, Your Honor. However, we feel like he could get
7 there several different ways in that amount of time.

8 The BOLO -- law enforcement stopped him actually twice.
9 Once, just inquired, then went back to him, was questioning
10 him, Your Honor. At the time they were questioning him
11 about -- they were checking on a previous warrant for a
12 probation violation also on him. They got his ID or
13 information.

14 He asked to go to the bathroom at Vic Bailey. They let
15 him go to the bathroom. He actually went and jumped the
16 fence at Vic Bailey, went to a friends, got a ride all the
17 way out to his parent's house, which is approximately
18 five miles away. Law enforcement had got his name by that
19 point, had got a -- lineups, was taking that to the victim
20 in this case, Your Honor.

21 When they arrived at the scene, which is his parent's
22 house, [REDACTED], Your Honor, when
23 officers going on the back porch area, they saw a gray
24 hoodie, which matched the description, laying in the ground,
25 Your Honor, with a blue denim jacket. As they was going up

1 there they saw his mother or stepmother cutting his hair.
2 They actually recovered the hair from in the thing. They
3 took pictures. He looks quite different that what he looked
4 that day, and you'll -- and the Court will see that.

5 Your Honor, through their investigation they found out
6 that approximately six weeks before that, December 10th,
7 2012, a robbery occurred, and I can show maps, but I think
8 the Court's very familiar with this area.

9 THE COURT: I am familiar with the area.

10 SOLICITOR BARNETTE: Yes, sir.

11 And the Bi-Lo, which is less than a mile down there,
12 there's apartments behind the Bi-Lo called The Haven at that
13 time.

14 THE COURT: Uh-huh. (Affirmative).

15 SOLICITOR BARNETTE: Ms. Smith was the victim of an
16 attempted armed robbery and assault. She was going to her
17 apartment towards the Bi-Lo. When she came back, this
18 defendant attacked her, tried to grab her purse, grab her
19 arm in that area. She resisted. She actually carried a
20 knife with her, pulled the knife out, forced him to leave.
21 She had actually looked at two previous lineups from
22 Investigator Tommy Clark. Did not pick anybody out of those
23 lineups. Once this crime occurred, Investigator William
24 Gary went to her, and she immediately identified the
25 defendant as being the person that did this to her.

1 In talking to her also, Your Honor---

2 THE COURT: That was the first time she had seen a
3 lineup that this defendant was in?

4 SOLICITOR BARNETTE: Yes, sir, that's correct. Cause
5 the other two he was not in not cause he -- they didn't
6 know.

7 THE COURT: I see.

8 SOLICITOR BARNETTE: Didn't know about him though.

9 THE COURT: Okay.

10 SOLICITOR BARNETTE: So, she immediately picks him out
11 from there, Your Honor, and, in this case, we have -- it's
12 less than a mile if you drive. It's probably less than that
13 by the way the crow flies from that standpoint.

14 THE COURT: Uh-huh. (Affirmative.)

15 SOLICITOR BARNETTE: Also we went and did additional
16 research, I've attached both reports, where the defendant,
17 at I-26, which is probably a tenth or two-tenths of a mile
18 from the location of the Bi-Lo, and a little bit over a mile
19 from where it happened at Mary Black Emergency Room or Mary
20 Black Urgent Care, he was twice, in May of 2012 and August
21 of 2012, he was arrested for solicitation at those -- at
22 that location.

23 So, there's no question he's been in this location.
24 He's been identified by law enforcement in those locations.
25 Both witnesses have ID'd him from lineups in this case.

1 THE COURT: Where, where was the residence that they
2 approached him at?

3 SOLICITOR BARNETTE: It was at [REDACTED]
4 [REDACTED]

5 THE COURT: And where is that in relationship to
6 these---

7 SOLICITOR BARNETTE: It's not -- it's not that far away
8 from -- I mean if you go by the crow flies.

9 THE COURT: Okay.

10 SOLICITOR BARNETTE: All right.

11 THE COURT: Anything else?

12 SOLICITOR BARNETTE: And, Your Honor, I believe I
13 handed up a couple cases in support.

14 THE COURT: So, you're asking the Court to rule on
15 whether or not you would be allowed to bring in evidence of
16 the other occurrence at the Bi-Lo? .

17 SOLICITOR BARNETTE: Yes, sir, and it's for
18 identification purposes. Obviously for identity --

19 THE COURT: All right.

20 SOLICITOR BARNETTE: -- since they're using an alibi
21 defense.

22 THE COURT: Yes, sir.

23 MR. SHEALY: Thank you, Your Honor.

24 Judge, I would just first call your attention that when
25 they say all these things happened, the first incident, my

1 understanding, happened December 10th of 2012. This
2 occurrence allegedly happened January 24th of 2013. So,
3 there's more than a month between these two incidents.

4 THE COURT: Yes, sir.

5 MR. SHEALY: There is no logical connection between the
6 two. There's no -- the -- there's no connection to -- by
7 of -- way of the M.O., the modus operandi. There was no
8 weapon used, it doesn't appear, in the December 10th,
9 which is the incident that the State is attempting to, to
10 discuss or get a statement or to get testimony from.

11 There's just -- and without her having testified,
12 judge, I'd submit to you that there simply is no logical
13 connection except maybe that happened somewhat close in
14 place. But, judge, this is a city. I mean, you know,
15 there's any number of people in that area.

16 So, I don't know that identifying him in one place
17 somehow necessarily means that he is in this other place at
18 a particular time which is what the State has to prove. Not
19 simply that he's in this region of the county. Instead,
20 that he was at Mary Black Urgent Care on January 24th at,
21 and it seems there's some discrepancies when exactly this
22 occurred. But sometime in the 7:10 to 7:40 range of the
23 morning.

24 Your Honor, and if you'll look at the two cases that
25 the State has provided you, they both are, again, close in

1 time. These two incidents simply aren't, and they -- again,
2 they aren't logically connected. They, they just aren't
3 logically connected. We have two identifications perhaps,
4 and -- but those are two separate and distinct crimes. One
5 of which my client hasn't even been arrested for, Your
6 Honor. No warrant issued from that December incident. So,
7 he hasn't even been arrested on that.

8 To say that -- even if you accept everything the State
9 says is true, to say that the December 10th incident
10 happened does not make more or less likely the
11 January 24th incident. It just doesn't prove anything.
12 It doesn't help anybody. I would to submit you that they
13 really just want to use it to, to basically shoehorn some
14 character evidence in there, which obviously is prohibited
15 by the first sentence of that Rule, 404(b), that this is
16 simply propensity evidence.

17 Thank you, Your Honor.

18 THE COURT: Mr. Barnette, I'm a, I'm a little bit lost
19 as to how the identification at the second occurrence makes
20 the identity at the first occurrence more or less likely if
21 you're offering it for the purpose of showing identity.

22 SOLICITOR BARNETTE: Yes, sir.

23 There's two reasons, two things, Your Honor, and this
24 has to come out in testimony and also I understand from that
25 standpoint is obviously both of them he attacked women.

1 Both women resisted. Both of them left. I mean he left
2 after both of them resisted in one way or the other from
3 that standpoint.

4 Also, talking to Ms. Smith, she did see a picture and
5 she said the boots was just like the boots that she saw
6 that, that he was wearing the day of the second incident,
7 which is the one in January from that standpoint, and
8 there's other parts of the evidence that match up from that
9 standpoint.

10 THE COURT: A boot?

11 SOLICITOR BARNETTE: The, the boots he was wearing that
12 day, Your Honor.

13 MR. SHEALY: I don't know about the boots, judge. But
14 any number of people, again, have boots. I, I -- the
15 problem, judge, is that it doesn't make it any -- it doesn't
16 establish the identity of the perpetrator on January 24th.
17 The fact that someone attacked -- that two women were
18 attacked, two women resisted, and the alleged perpetrators
19 ran away, that's not particularly -- it's just not
20 particularized. It -- and we also have differences in the
21 manner by which the attacks appear to have occurred.

22 One attack appears to have been grabbing a purse and
23 pulling, and then, when she pulls a knife, he runs away.
24 The other attack is a stabbing with a screwdriver and has
25 some kind of sexual component, appears to have some kind of

1 sexual component. And, again, they're -- I believe that
2 there can be some issues as to whether there was an
3 attempted armed robbery or not there.

4 THE COURT: Well -- and I also have to be concerned
5 with the prejudicial affect versus the probative value I
6 believe of it.

7 MR. SHEALY: Yes, sir. Yes, sir. And it's just -- and
8 I don't see any probative value, and so I submit to you that
9 it really is simply prejudicial. As to how you're gonna
10 find that the evidence that this occurred is clear and
11 convincing, I don't know without testimony. I don't think
12 you can honestly. But it's not my motion. So --.

13 THE COURT: All right. Mr. Barnette, anything else I
14 should consider?

15 SOLICITOR BARNETTE: Your Honor. We'll be glad to
16 provide evidence -- of course, Ms. Pruitt's gonna be
17 testifying here shortly and we'll be glad to have Ms. Smith
18 testify at the appropriate time. The other thing too, Your
19 Honor, both attacks occurred where the women's purse was.
20 You'll hear, when Ms. Pruitt testifies, that she had her arm
21 with her purse on it the same way Ms. Smith did, and the
22 other too is, we haven't had a robbery such as that out in
23 that area since this attack since he's been arrested from
24 that standpoint.

25 THE COURT: Well, I'm not sure that's one -- I

1 understand what you're saying, but I'm not sure the Court
2 would allow that evidence one way or the other.

3 SOLICITOR BARNETTE: Sure. I understand that. I'm
4 just bringing it for the pretrial motion, Your Honor, from
5 that standpoint.

6 THE COURT: All right. Just give me a few seconds to
7 go read your cases, Mr. Barnette.

8 The Court will recess briefly.

9 SOLICITOR BARNETTE: Thank you, Your Honor.

10 MR. SHEALY: Thank you, Your Honor.

11 (WHEREUPON, a short recess was taken at this time.)

12 THE COURT: I've had an in chambers conference with the
13 attorneys involved. I've asked the State to present the
14 witness who was involved in what I'll call the Bi-Lo
15 incident in the morning to offer testimony, and specifically
16 I've requested testimony concerning the boots that were in
17 question or that were used in her identification. So, I'd
18 like to hear that testimony before I rule.

19 So, I'll hold that under advisement until that time and
20 I'll instruct the attorneys not to argue anything concerning
21 the Bi-Lo incident in opening arguments to the jury.

22 Does that cover what we had talked about, Mr. Barnette?

23 SOLICITOR BARNETTE: Yes, sir, and I'll just -- this is
24 the picture I actually took back. I'll mark that as Court
25 Exhibit 1.

1 THE COURT: Any objection to that being a Court's
2 Exhibit 1 for the hearing?

3 MR. SHEALY: No, Your Honor.

4 THE COURT: All right. Let's mark it and put it in the
5 record for this hearing.

6 (WHEREUPON, the photographs was marked as Court's
7 Exhibit No. 1 for identification purposes only at this
8 time.)

9 THE COURT: All right. Anything further that the State
10 would like the Court to consider before we bring the jury?

11 SOLICITOR BARNETTE: Your Honor, the only, the only
12 other thing was the, that there was a statement given by the
13 defendant. I understand they, they -- they're not making
14 any motions concerning that.

15 THE COURT: You're not contesting the voluntariness or
16 the admissibility of the statement, is that right,
17 Mr. Shealy?

18 MR. SHEALY: My -- no, not the statement that was made
19 immediately after this happened, no, sir. None.

20 THE COURT: All right. Let's be sure we're talking
21 about the same statements.

22 MR. SHEALY: The same statement.

23 THE COURT: Let's identify it.

24 SOLICITOR BARNETTE: There was a written -- well, there
25 was some statements made and plus there was a written -- I

1 think it was written in his handwriting.

2 MR. SHEALY: Yeah, this -- we have no objection.

3 THE COURT: No objection to that document?

4 Let's go ahead and mark it then.

5 MR. SHEALY: We do have a Neal v. Biggers issue, Your
6 Honor. There is an identification -- there will be, in
7 fact, be at least one in-Court identification of my client.
8 It will be our position that the in-Court identification may
9 of been tainted by a suggestive and unduly suggestive---

10 THE COURT: All right.

11 MR. SHEALY: ---and unreasonable---

12 THE COURT: All right. Do you want to present evidence
13 concerning that identification?

14 SOLICITOR BARNETTE: Yes, sir, I'm gonna go ahead and
15 mark this statement before we forget.

16 THE COURT: All right. Do that.

17 (WHEREUPON, the statement was marked as State's Exhibit
18 No. 12 for identification purposes only at this time.)

19 SOLICITOR BARNETTE: And, Your Honor, that's -- that
20 statement was marked for State's Exhibit 12 for ID purposes
21 only at this point.

22 THE COURT: All right. Thank you.

23 All right. Concerning the identification by the victim
24 in this case, is that one we're talking about, Mr. Shealy?

25 MR. SHEALY: It is, Your Honor.

D.P. - Direct examination
by SOLICITOR Barnette

1 THE COURT: All right. I'll take testimony on that,
2 Mr. Barnette.

3 SOLICITOR BARNETTE: Like to call Ms. Pruitt to the
4 stand, Your Honor.

5 THE COURT: Ma'am, come forward over here to my left to
6 be sworn please.

7 D.P. being first duly sworn,
8 testified as follows:

9 THE COURT: Ma'am, please state your name.

10 THE WITNESS: D.P.

11 THE COURT: Thank you.

12 Mr. Barnette, your witness.

13 DIRECT EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q Ms. Pruitt, back on January 24th, 2013, where was you
16 working at, ma'am?

17 A I was working at Carolina OB-GYN on the west side
18 office.

19 Q And what was your position there, ma'am?

20 A I was a -- the head nurse.

21 Q Okay. And how long had you been with Carolina OB-GYN?

22 A Off and on for about 30 years.

23 Q And, on that morning, did you go in early that morning?

24 A I did.

25 Q And what did you go in early that morning?

D.P. - Direct examination
by Solicitor Barnette

- 1 A I was to meet a maintenance man to work on one of the
2 machines that was broke.
- 3 Q Yes, ma'am.
- 4 what time did y'all's office normally open?
- 5 A We open at eight o'clock.
- 6 Q About what time did you get to work that day?
- 7 A Did, did I get to work that day?
- 8 Q Or get to the parking lot at your work that day.
- 9 A It was probably about five after 7:00.
- 10 Q Okay. And what was you driving that day, ma'am?
- 11 A My Jeep Liberty.
- 12 Q Okay. And what was you wearing that day, ma'am?
- 13 A Was what now?
- 14 Q What was you wearing that day?
- 15 A Scrubs and I had on a corduroy, short corduroy coat and
16 gloves cause it was, it was cold that day.
- 17 Q And did you have a purse, ma'am?
- 18 A I did.
- 19 Q And where was the purse at?
- 20 A It was on my right arm.
- 21 Q And as you got out of the car, what did you do after
22 you got out of the car, ma'am?
- 23 A I walked up to the entrance and opened the door, and,
24 as I opened the door, I felt a tug on my coat and I heard
25 one (sic) say hey, and I turned around to see if they

D.P. - Direct examination
by Solicitor Barnette

1 needed, you know, just directions or if they needed
2 assistance, and as I turned I was stabbed on the right
3 shoulder, and, at that time, I didn't really know what it
4 was.

5 Q Uh-huh. (Affirmative).

6 And what happened -- and when you turned around, he
7 stabbed you -- which shoulder did he stab you if you can
8 remember?

9 A My right one.

10 Q In your right one.

11 Okay. And as he stabbed you, did you get to see him?

12 A I did.

13 Q And how close was you to him, ma'am?

14 A About six to twelve inches from his face.

15 Q What happened after that, ma'am?

16 A He did touch my breast. He pushed me down against the
17 glass and I slid all the way down, and I was on the floor,
18 and I -- when I was down on the floor he was over me and he
19 grabbed the hem, the top of my pants and, and started
20 tugging, and, at that time, I knew it was a different type
21 situation. So, I, I turned around to where I could kick
22 him, and I did that and then he gave -- came down on my
23 right side with another stab..

24 Q Uh-huh. (Affirmative).

25 And what happened then, ma'am?

D.P. - Direct examination
by Solicitor Barnette

1 A He left. I -- after I kicked him and everything he
2 left.

3 Q Okay. And did you notice if he was wearing anything on
4 his hands?

5 A Oh his what?

6 I'm sorry.

7 Q Hands?

8 A He had gloves on.

9 Q Okay. And what race was he, ma'am?

10 A What?

11 Q What race was he?

12 Was he white or black?

13 A No, he was white, uh-huh. (Affirmative).

14 Q Okay. And what, what did you remember him wearing?

15 A I know that he had a hoodie on cause it was over his
16 head, and I know that he had a coat on. Now, as far as the
17 color, I really couldn't tell. It was fluffy. I knew that
18 cause when I was pulled against him I felt the fluffiness of
19 it. He had blue jeans and tennis shoes on.

20 Q And what kind of hoodie?

21 What color was the hoodie?

22 A It was gray.

23 Q Okay. And his facial features, what did he have on his
24 face, ma'am?

25 A He had facial hair like scruffy type hair on his chin

D.P. - Direct examination
by SOLICITOR Barnette

1 and a little on his upper lip like he was trying to grow a
2 mustache.

3 Q And was this -- how tall was this fellow compared to
4 you?

5 A He was over six feet cause I had to look up.

6 Q Okay. And how long did you lay in the -- describe it
7 for the Court.

8 Can you describe the room -- I call it a room, but
9 it's really not a room. It's the entrance going into the --
10 let me see if I got a picture for you.

11 I apologize for a second, Your Honor.

12 THE COURT: Yes, sir.

13 (Pause.)

14 SOLICITOR BARNETTE: Can I go ahead and mark this as
15 Court Exhibit 2, Your Honor?

16 THE COURT: For this hearing.

17 Any objection?

18 You want to see it?

19 MR. SHEALY: If I can see it.

20 THE COURT: And I may get a better picture. We
21 actually have taken some pictures that's actually better.

22 MR. SHEALY: No objection, Your Honor.

23 THE COURT: Without objections it will be marked as
24 Court's No. 2 for this hearing.

25 (WHEREUPON, the photographs was marked as Court's

D.P. - Direct examination
by Solicitor Barnette

1 Exhibit No. 2 for identification purposes only at this
2 time.)

3 SOLICITOR BARNETTE: May I approach the witness, Your
4 Honor?

5 THE COURT: You may.

6 SOLICITOR BARNETTE: And I may hold this like -- where
7 the Court can see this also.

8 Is this a picture of the entrance that you went in that
9 day, ma'am?

10 A It is.

11 Q Okay. And, like I said, we don't have a real good
12 picture of the room, but the room is probably 12 by 12 or
13 something like that from there?

14 A I would say so.

15 Q And you actually fell over on this side, is that right?

16 A That's correct. I fell -- the door -- I came in this
17 door. I was pushed up against the glass.

18 MR. SHEALY: Your Honor?

19 SOLICITOR BARNETTE: Hold up for one second. Let
20 him---

21 MR. SHEALY: I'm gonna come around where I can see.

22 THE COURT: Why don't you step around, Mr. Shealy---

23 THE WITNESS: I'm sorry.

24 THE COURT: ---so you can see what she said?

25 MR. SHEALY: Not your fault.

D.P. - Direct examination
by Solicitor Barnette

1 THE COURT: Start over again, ma'am.

2 THE WITNESS: Okay. I came into the door, and I was
3 pushed. When I was pushed, I was pushed over against this
4 glass here, and I slid down the glass, and it was over -- it
5 was over in this corner right here.

6 Q Okay. And how long did you -- do you know how long you
7 laid there before somebody came?

8 A You know, I really, I really don't.

9 Q Was you in shock---

10 A I really don't---

11 Q Was you in shock at the time?

12 A Yeah, I mean I had -- I was stunned. My head -- I hit
13 my head on the glass. So, I really don't know. I couldn't
14 tell you how long I laid there.

15 Q Okay. And later on, was your purse across on the other
16 side of the room?

17 A It was.

18 Q Okay. So, it wasn't with you?

19 It was actually on the other side -- I call it the
20 room, but that entrance area?

21 A Right. It was on the other side.

22 Q Okay. And, later on, I don't -- do you know where the
23 screwdriver was or did you ever see it?

24 A Well, I did look over to, to the right of me and it was
25 laying over there.

D.P. - Direct examination
by SOLICITOR Barnette

1 Q Okay. Thank you, ma'am.

2 Was you taken to the emergency room after that, ma'am?

3 A Yes, I was.

4 Q And was you treated there at, at the ER?

5 A Yes, I was.

6 SOLICITOR BARNETTE: And, Your Honor, I'm not gonna go
7 into the marks and everything. I don't think that's the
8 purpose for the hearing if that's okay with Your Honor.

9 THE COURT: All right. No, the purpose is to determine
10 the correctness of the identification --

11 Q And---

12 THE COURT: -- or the reliability of the
13 identification.

14 SOLICITOR BARNETTE: Yes, sir.

15 Ms. Pruitt, did you get to go home after that?

16 A Yes, I did.

17 Q And did the Sheriff's Department come out to your home
18 later that day?

19 A Yes, they did.

20 Q And, at that time, I believe it was Investigator Gary,
21 Sergeant Hutchins, did they show you a lineup, ma'am?

22 A Yes, they did.

23 SOLICITOR BARNETTE: And let me, I guess, mark this as
24 Court Exhibit 3, the lineup itself, and then Court Exhibit 4
25 the affidavit.

D.P. - Direct examination
by Solicitor Barnette

1 THE COURT: Any objection?

2 MR. SHEALY: No, Your Honor. I'd just like to see
3 that.

4 THE COURT: Yes, sir.

5 (Pause.)

6 MR. SHEALY: No objection.

7 (WHEREUPON, the lineup was marked as Court's Exhibit
8 No. 3. The affidavit was marked as Court's Exhibit No. 4.
9 Both were for identification purposes only at this time.)

10 SOLICITOR BARNETTE: May I approach the witness, Your
11 Honor?

12 THE COURT: You may.

13 Q And was this the lineup they showed to you, ma'am?

14 A Yes, sir, it was.

15 Q And did they indicate to you that anybody was there or
16 anything or just ask you to look at the lineup?

17 A They just asked me to look at the lineup.

18 Q And did you see the individual that did this to you
19 that day?

20 A Yes, I did.

21 Q And did you identify him in the lineup?

22 A I did.

23 Q Okay. And what did you do once you identified him?

24 A I circled it and initialed it.

25 SOLICITOR BARNETTE: Just let the Court see that.

D.P. - Direct examination
by Solicitor Barnette

1 THE COURT: All right.

2 Q And that was the man that did this to you that morning?

3 A Yes.

4 Q And then you filled out an affidavit, is that right,
5 ma'am?

6 A That's correct.

7 Q And that's Court Exhibit 4 I'm gonna show to you.

8 A Uh-huh. (Affirmative).

9 Q I guess part of that was filled out by Investigator
10 Gary, but did you do the written part of the -- in the
11 middle of it?

12 A I did.

13 SOLICITOR BARNETTE: Okay. May I approach the bench,
14 Your Honor?

15 THE COURT: You may. Thank you.

16 Q Okay. And just one thing just for clarification for
17 the Court and everything.

18 You had mentioned he had grabbed your breast---

19 A Uh-huh. (Affirmative).

20 Q ---before?

21 I notice you didn't initially tell that to law
22 enforcement.

23 why didn't you do that, ma'am?

24 A I wanted to let my husband know before anybody else.

25 Q All right. So, that, that was something you wanted to

D.P. - Direct examination
by SOLICITOR Barnette

1 tell him before you told anybody else about that?

2 A That's correct.

3 Q Okay. And, ma'am, I know he's changed his looks quite
4 a bit, but do you see the individual in here that did that
5 to you that morning, ma'am?

6 A Yes, I do.

7 Q Can you identify him for the Court please?

8 A He's the man in the white shirt with the red tie.

9 SOLICITOR BARNETTE: Okay. Your Honor, I would like
10 the record to reflect that she's identified the defendant in
11 this case.

12 THE COURT: The record will so reflect.

13 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.
14 That would be the State's showing at this point. Well, I
15 may call Investigator Gary, but it depends on the
16 questioning from there.

17 THE COURT: Mr. Shealy, your witness.

18 MR. SHEALY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. SHEALY:

21 Q All right. Ms. Pruitt, so it's my understanding that
22 you were in that foyer area for some period of time?

23 A I'm sorry?

24 Q You were in the foyer area for some period of time, is
25 that---

D.P. - Cross-examination
by Mr. Shealy

- 1 A Yes, sir.
- 2 Q Is that accurate?
- 3 Okay. How did you get into the first doors?
- 4 A I'm sorry?
- 5 Q How did you get into the -- through the first doors,
- 6 the outside doors?
- 7 A I just opened the door.
- 8 Q Okay. So, they weren't locked?
- 9 A Pushed. No, they were not locked.
- 10 Q They were not locked.
- 11 Okay. Were the inside doors locked?
- 12 A No.
- 13 Q No, those -- so, it was just opened---
- 14 A Correct.
- 15 Q ---opened?
- 16 Is that normal practice or does that mean someone---
- 17 A I believe it was cause every morning I'd go in there.
- 18 Q Okay. So, somebody didn't have to come in and unlock
- 19 all the doors that you know of?
- 20 A That I don't know.
- 21 Q You don't know.
- 22 Okay. And -- now, at any point did any of these
- 23 officers give you the, the option of filling out a written
- 24 statement?
- 25 A What -- when are you talking about?

D.P. - Cross-examination
by Mr. Shealy

1 I'm sorry.

2 Q At any time during any of this did they just say well,
3 here's, here's a voluntary statement form?

4 A Oh, well, I really don't know. I was on a stretcher.

5 Q Right.

6 A I remember---

7 Q I'm just saying at anytime during this?

8 A No.

9 Q No.

10 Okay. So, even when Investigator Gary came later,
11 after you were out of the hospital, they didn't give you a
12 statement form and ask you to fill it out?

13 A No, the only form I filled out was the one that I
14 filled out.

15 Q Was the identification?

16 A Yes.

17 Q Okay. Did they give you an affidavit of photo
18 identification?

19 A Yes.

20 Q Okay. So, my understanding of whenever -- let's get to
21 where Mr. Gary or Investigator Gary comes to you.

22 Who was with him or was anybody with him?

23 A He was with -- Detective Gary, is that what you're
24 asking me?

25 Q Yes, sir. Yes, ma'am. I'm sorry.

D.P. - Cross-examination
by Mr. Shealy

1 A Okay. There was another detective and I can't remember
2 his name.

3 Q Okay. So, there's another fellow might be on the first
4 row?

5 Does that look like him?

6 A I'm, I'm unsure---

7 Q Okay.

8 A ---if he's on the first row.

9 Q That doesn't matter. I'm just trying to understand
10 what all happened

11 Okay. And when Investigator Gary presented you what's
12 been marked as Court's Exhibit 3, that's this lineup, what
13 all did he tell you?

14 A He didn't tell me anything. He just asked me to look.

15 Q Okay. So, he didn't tell you that the person who's in
16 this might or might not be in this lineup---

17 A No.

18 Q ---who did this?

19 A He just told me to look at the pictures.

20 Q He just said look at the pictures?

21 A Uh-huh. (Affirmative).

22 Q Okay. And do you have any idea as to who generated
23 this lineup?

24 A I do not.

25 Q Okay. And you don't have any idea as to how it was

D.P. - Cross-examination
by Mr. Snealy

1 generated---

2 A I do not.

3 Q ---or anything like that, right?

4 I didn't expect you to, but I need to ask.

5 Now, whenever you were giving a description of the
6 person who did this to you, were you giving that to several
7 different people or did you have a particular point of
8 contact or what?

9 How did that go through?

10 A I gave it I believe just to one of the detectives that
11 was leaning over me as I was on the stretcher. He kept
12 asking me --

13 Q Okay.

14 A -- questions.

15 Q And when you say detective, you mean an officer with
16 the Sheriff's Office---

17 A An officer---

18 Q ---somebody like that?

19 A ---or whoever. He introduced himself as a detective
20 and I forgot his name, and he was just asking me questions.

21 Q Okay. All right. That's all I have for this witness,
22 Your Honor.

23 THE COURT: Anything further, Mr. Barnette?

24 SOLICITOR BARNETTE: No, sir, nothing further from this
25 witness.

1 THE COURT: Let me just ask a couple questions, ma'am.
2 The area -- at that time of the morning, was the sun up
3 or was the sun down?

4 THE WITNESS: It was up. It was bright.

5 THE COURT: It was up bright?

6 THE WITNESS: Uh-huh. (Affirmative).

7 THE COURT: So, the area that you were in were well --
8 was well lit?

9 THE WITNESS: Yes, sir, it was.

10 THE COURT: You indicated he was wearing a hoodie.
11 Was he wearing anything covering his face --

12 THE WITNESS: No, sir.

13 THE COURT: -- the perpetrator?
14 So, did you get a good look at his face?

15 THE WITNESS: I did.

16 THE COURT: Okay. Anything further, Mr. Barnette?

17 SOLICITOR BARNETTE: Nothing further from this witness,
18 Your Honor.

19 THE COURT: Anything further?

20 MR. SHEALY: No, Your Honor.

21 THE COURT: You may step down, ma'am.

22 Any other witnesses, Mr. Barnette?

23 SOLICITOR BARNETTE: I don't think so, Your Honor,
24 because, like I said, there's no suggestiveness in any of
25 this testimony. So---

1 THE COURT: All right.

2 SOLICITOR BARNETTE: ---I don't see any reason to call
3 any police officer.

4 THE COURT: Do you wish to offer any evidence?

5 MR. SHEALY: No, Your Honor, simply argument.

6 THE COURT: All right. I'll allow you to argue, to
7 argue the issue if you'd like, Mr. Shealy.

8 MR. SHEALY: Thank you, judge.

9 Your Honor, looking at State's Exhibit 3 or Court's
10 Exhibit 3 I think it is now, judge, it's in black and white.
11 The description appears to have been a -- for colors. It
12 would be our position that it is suggestive in the lighting
13 conditions and things of that nature, Your Honor, and that
14 would be our showing.

15 THE COURT: All right. Anything, Mr. Barnette?

16 SOLICITOR BARNETTE: Your Honor, I think it speaks for
17 itself. I know the Court's seen it.

18 THE COURT: I do not find the identification to be
19 suggestive, and, therefore, I will allow it to be
20 introduced.

21 Anything further, Mr. Shealy?

22 MR. SHEALY: Your Honor, just a couple of things I
23 wanted to make sure of.

24 Judge, there were some pictures of a red truck taken in
25 the parking lot. I don't know why. We would move to

1 suppress mention of those. There's nothing in my discovery
2 except they took some pictures of a red truck, and I don't
3 know that the State has any---

4 THE COURT: Do you know anything about pictures of a
5 red truck?

6 SOLICITOR BARNETTE: There was pictures -- obviously
7 they were taken of whatever was in the parking lot. It
8 wasn't related to this.

9 MR. SHEALY: Yeah.

10 THE COURT: Okay.

11 MR. SHEALY: And, Your Honor, I would ask that we --
12 there's going to be some testimony about a warrant for my
13 client's arrest that was outstanding at the time that this
14 occurred. Judge, ultimately I don't think -- we're not
15 moving to suppress the mention of the warrant per se. We're
16 asking that it not be mentioned that it was for a probation
17 violation. That's simply -- that it's, that it's a warrant.

18 SOLICITOR BARNETTE: We're not gonna mention a warrant
19 unless they want to bring it up.

20 THE COURT: Okay. Apparently they've agreed not to
21 even mention the warrant.

22 MR. SHEALY: Well, that's fine too, judge.

23 THE COURT: I think that will cure any problem we might
24 have.

25 MR. SHEALY: Those were the things I needed to put on

1 the record.

2 THE COURT: Thank you. Thank you, Mr. Shealy.

3 MR. SHEALY: Thank you, judge.

4 THE COURT: All right. State ready to go forward?

5 SOLICITOR BARNETTE: State's ready, Your Honor.

6 THE COURT: Defense ready?

7 MR. SHEALY: Yes, sir, Your Honor.

8 SOLICITOR BARNETTE: Your Honor, can I have just one
9 second please real quick?

10 THE COURT: Yeah, go ahead. I need to check and be
11 sure the jury's here.

12 SOLICITOR BARNETTE: You want to approach?

13 Your Honor, may we approach?

14 THE COURT: Yes, please.

15 (WHEREUPON, a bench conference was held at this time.)

16 THE COURT: We'll take a short recess. Mr. Shealy
17 would like to consult with his client. I'll stay on the
18 bench. Let me know when you're ready, Mr. Shealy.

19 MR. SHEALY: Yes, sir.

20 SOLICITOR BARNETTE: Your Honor, may I step upstairs
21 for one second?

22 I'll be right back.

23 THE COURT: Yes, sir.

24 SOLICITOR BARNETTE: Thank you.

25 (WHEREUPON, a short recess was taken at this time.)

1 THE COURT: All right. Mr. Barnette, ready to proceed?

2 SOLICITOR BARNETTE: Yes, sir, Your Honor.

3 THE COURT: Defense ready?

4 MR. SHEALY: It is.

5 Your Honor, may we approach on a different issue real
6 quick?

7 THE COURT: Yes, sir.

8 (Whereupon, a bench conference was held at this time.)

9 THE COURT: All right. Are you ready to proceed, Mr.
10 Shealy?

11 MR. SHEALY: Yes, sir.

12 THE COURT: Let's bring the jury in.

13 (Whereupon, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect the
16 jury has returned to the courtroom.

17 If any juror had any difficulty in complying with my
18 instructions during your absence from the courthouse, please
19 stand.

20 (No response.)

21 THE COURT: And it appears that all jurors have been
22 able to comply with my instructions thus far.

23 Thank you for your patience this afternoon. I told you
24 that, upon your return, you'd be taking an oath concerning
25 your duties in this matter, and at this time I'll ask that

1 the clerk please swear the jury panel.

2 THE CLERK: Yes, sir.

3 (WHEREUPON, the jury panel was placed under oath at
4 this time.)

5 THE COURT: All right. Any member of the jury panel
6 either failed or refused to take the oath that was just
7 administered by the clerk, please stand.

8 (No response.)

9 THE COURT: It appears that all jurors have now been
10 sworn concerning your duties in this case.

11 Now, before we actually begin the trial there's some
12 things that I would like to go over with you.

13 Probably, for most of you, this is your first
14 experience in actually sitting on a jury during the trial of
15 a criminal case, and for those of you for whom this is your
16 first experience, I'd like to go over some things that -- to
17 describe basically the roles and responsibilities from the
18 people that are involved in this trial, and, more
19 specifically, your roles and, and responsibilities as jurors
20 in this case.

21 Now, if you've never been on a jury before in this
22 situation, probably what you might know about what juries do
23 or how they function I would expect you might have learned
24 from television shows you've watched or movies you've seen
25 or books you read, things of that nature. And, of course,

1 while those sources of information are always interesting,
2 they have very interesting plots and twists and turns and
3 they're designed to keep your attention as they go along.
4 In the case of television, we can have an event occur and
5 the case be tried and it all be wrapped up in an hour, and
6 they still have time to stop for commercials about five
7 times, and because -- I hope you realize that, when you see
8 those stories or the movies and things of that nature, the
9 people who write the scripts for those, those forms of
10 entertainment take what's called literary license with what
11 goes on in a courtroom. In other words, they change what
12 really happens to fit the storylines so the story moves
13 along well.

14 That's because, again, those things are intended to
15 entertain you. They're intended to keep your attention so
16 you'll watch those commercials when they stop and take those
17 breaks.

18 I hope you realize that what you're engaged in at this
19 time is intended for anything but your entertainment. What
20 you're involved in today is a fundamental part of our
21 governmental structure. If you were to look around the
22 courtrooms of most of the countries in this world today, you
23 would find that most of those countries do not allow direct
24 participation by citizens in the decision making process
25 that goes on in those courtrooms.

1 Most courtrooms in the world today are, are staffed or
2 manned by people either hired by or appointed by the
3 government or perhaps bureaucrats who handle those sorts of
4 things.

5 Our system is different. Our system is based upon a
6 document which is known as the Magna Carta. That document
7 was signed in a place called Runnymede, Runnymede England in
8 the Year 1215. So, next year, 2015, it will have its eight
9 hundredth birthday.

10 So, I hope you realize that our system of a trial by a
11 jury of one's peers goes back a long way in our system of
12 jurisprudence. It is embodied in both the Constitution of
13 this State and of the United States. That is the guarantee
14 of citizens to have a trial by a jury of their peers.

15 So, what you're involved in is a fundamental part of
16 our government. You see, this courtroom is a place of
17 honor. It's dedicated to the preservation of citizen's
18 rights through both the Constitution of this State and of
19 the United States as embodied in the Bill of Rights in our
20 United States Constitution.

21 It's a right to a -- the right to a trial by jury is
22 a -- one that a lot of people have fought for and a good
23 many have died for. I hope you appreciate the fact that
24 you're allowed to participate in this fashion in our
25 government in our country. I hope it's a right we never

1 lose in this country.

2 Now, the attorneys who are here are here to represent
3 their client's interest, and I hope you understand that,
4 that they, they will do a good job or an excellent job in
5 presenting their client's positions before you during this
6 trial. But first and foremost, the attorneys that will
7 appear in front of you today are also officers of this
8 Court. You see, at some point in time, they have appeared
9 before this Court and they took an oath. That oath referred
10 to as the attorney's oath. Part of that oath is that they
11 will assist you in your search for the truth during this
12 trial because that's what we're engaged in is a search for
13 the truth, an effort to see that justice is done between the
14 parties that are before this Court. That is the State of
15 South Carolina that is brought charges against one of its
16 citizens, the defendant in this case.

17 But in -- as I indicated, these attorneys are officers
18 of this Court and they've taken such an oath to assist you
19 in your search for the truth. I'll remind you too that
20 you've come in front of this Court today and you have taken
21 an oath. Your oath is to decide this case based upon the
22 law and the evidence presented to you during the trial.

23 You too are now expected to act in a reasonable, a
24 professional, and an ethical manner in the discharge of your
25 duties as jurors in this case. I want to thank you very

1 much for your willingness to come forward and accept the
2 responsibilities that you have accepted in this particular
3 case.

4 I've gone over the four indictments in this case
5 already with you. I'm not going to read those indictments
6 to you again. At the close of the trial I'll go over those
7 indictments with you in detail again, and you will have a
8 copy of the or have the original of the indictments in your
9 jury room during deliberations for you to review. Those are
10 the charges that are -- that have been brought before this
11 Court, and I will tell you, at that time, as I will now,
12 that the indictments in this case do not constitute evidence
13 in this case. They can, can not be used by a jury in any
14 manner in determining the guilt or the innocence of a
15 defendant. They are simply the documents that bring the
16 charges before the Court, and they explain to this Court the
17 charges to be tried. They explain to the defendant the
18 charges that have been lodged against the defendant.

19 Now, the defendant has pled not guilty to each and
20 every one of the indictments. Under the laws and
21 Constitution of this state, that places the burden of proof
22 upon the State to prove the allegations that are contained
23 in the indictments by proof beyond a reasonable doubt. It's
24 your duty, as jurors, at the close of this trial, to
25 determine whether the State has met its burden of proof as

1 to the indictments that are before this Court.

2 So, it's your purpose, as jurors, to find and determine
3 the facts in this matter. I will tell you that, in every
4 case tried in this Court before a jury, the jury is always
5 the sole and exclusive judge of the facts in the case. You
6 are to determine the facts from the testimony that you hear,
7 and from other evidence which is introduced into the record
8 of this case in this Court. It's up to you to determine the
9 inferences that can be drawn from the evidence that's
10 presented in this case. It's especially important that you
11 do that job of determining the facts diligently and
12 conscientiously because, under our system of justice,
13 ordinarily there's no means by which an erroneous
14 determination of facts made by a jury can ever be corrected.

15 Now, the same law that makes you the sole judges of the
16 facts in this case makes me the sole judge of the law in
17 this case. At the close of the trial it will be my
18 responsibility to charge you or instruct you upon the law to
19 be applied in this matter. You see, the law doesn't allow
20 me the right to disagree with you concerning your
21 determination of the facts. I'm not allowed an opinion on
22 that subject, and I have no opinion as to how you determine
23 the facts in this case.

24 That same law does not allow you to disagree with me
25 concerning the law to be applied. You must take the law

1 exactly as I give it to you and apply it to the facts as you
2 determine those facts to be. If you have an idea as to what
3 the law is or what it ought to be, those notions should be
4 left outside of the jury room before you begin your
5 deliberations because, under your oath as jurors, you're to
6 take the law exactly as I give it to you and apply that law
7 to the facts as you determine those facts from the evidence
8 presented in this case.

9 Now, I've already made it clear to you that, that you
10 should not discuss this case at all until you have heard all
11 of the evidence in this case, the arguments by the lawyers,
12 and I have charged you concerning the law in this case. So,
13 until I tell you to begin your deliberations, you should not
14 discuss anything about this case, even among yourselves,
15 until I ask you to begin your deliberations because, as I've
16 explained, that is the only time that you will have all of
17 the information that you need in order to begin to make up
18 your mind concerning the issues that are before the Court
19 and will be presented to you during the trial.

20 Also I've told you that you should not listen to,
21 watch, or read any media reports concerning this case. You
22 should not attempt to gather any information on your own
23 because I will explain to you, when we refer to evidence and
24 the oath that you've taken as jurors, that refers to the
25 testimony that you'll hear during this trial. The only

1 evidence that you'll hear will be testimony of witnesses who
2 will testify from the witness stand and then, again,
3 whatever documents or other evidence gets into the record
4 through that testimony or by agreement of the attorneys. It
5 will be your solemn responsibility to determine the guilt or
6 the innocence of the defendant and your verdict must be
7 based solely upon the evidence presented during this trial.

8 Now, in a few minutes we're going to begin the trial by
9 allowing the attorneys to make an opening statement to you,
10 and I will explain to you that attorneys are allowed to
11 directly address the jury, speak to the jury, only on two
12 occasions during a trial. That is at the beginning of the
13 trial in an opening statement in which they may explain what
14 the case is about, perhaps what they intend to show, and
15 then at the close of the trial they'll be allowed to sum up
16 the evidence that you heard during the trial from their
17 client's prospective. They will urge you to take certain
18 inferences from that testimony. But statements made by
19 lawyers during the trial, those, in and of themselves, are
20 not evidence and can't be used directly by a jury in
21 determining the guilt or the innocence of a defendant in any
22 case.

23 Now, from time to time, during the trial, it will be my
24 job, as the presiding officer, to perhaps rule upon
25 objections made by lawyers or to rule on the admissibility

1 of certain evidence that's being offered. If it's my belief
2 that the discussion about those issues may lead to a
3 discussion about some matter or some evidence that's not
4 admissible in, in Court under the rules of evidence that
5 govern the admissibility of those types of things, if I
6 think the discussion is going in that direction, I will ask
7 you to leave the jury room (sic) while I discuss that with
8 the lawyers. Don't take from the fact that I've excluded
9 you from the courtroom during those discussions to indicate
10 to you that I have an opinion as to how you determine the
11 facts in the -- this case. I hope you would realize that
12 it's just me doing my job.

13 My job is to see to it that you decide this case based
14 upon only properly admitted evidence under the rules of
15 evidence that govern the admission of those types of things,
16 and only consider that type of information. So, it's my
17 responsibility to see that you do not consider matters that
18 should be excluded under those rules.

19 So, once I've completed my discussion with the lawyers,
20 I'll ask you to come back into the courtroom. I'll make a
21 ruling on whatever the issue was that I sent you out on, and
22 we'll proceed with the trial. But please don't think,
23 again, that that's an effort by me to somehow indicate to
24 you as to how you should decide the facts in this case.

25 Again, I don't have an opinion on that subject, and

1 please don't take from anything that I do to indicate
2 otherwise.

3 Now, it's your job to determine the facts in this case,
4 and I'm going to tell you it will be also your job to
5 determine the truth or the believability of the evidence
6 that you're going to hear in this case. That's what
7 credibility, credibility means. It means believability, and
8 it's your responsibility, as the finders of fact, to
9 determine the credibility and the believability of the
10 testimony presented during this case.

11 In deciding whether or not to believe witnesses, I will
12 ask you to use your good common sense that you've brought
13 into the courtroom. Every single day of your life you make
14 decisions, common sensical decisions, as to what you choose
15 to believe and what you choose not to believe. This trial
16 will be no different than any other day in your life.
17 You'll be called upon to make determinations as to the
18 credibility or the believability of what you hear from the
19 witnesses who testify.

20 So, try to pay close attention to what they say. Try
21 not to let your thoughts wonder. Listen to how they say it,
22 the way they say it, what they say. You have the right to
23 believe all of what a witness tells you, part of what a
24 witness tells you, or none of what a witness tells you. You
25 can believe one witness against all the others. You can

1 believe all the others against one. You're the sole judges
2 of the facts and credibility in the case.

3 You have the right, using your good common sense, to
4 determine such factors as whether or not a particular
5 witness might have a stake in outcome of the trial, whether
6 or not a witness might have a bias or a prejudice one way or
7 the other, whether or not the witness actually had the
8 ability to know the facts about which the witness is
9 testifying, and I tell juries this all the time. I've been
10 in courtrooms now for almost 40 years, and the witness stand
11 is always right in front of the jury box in every courtroom
12 I've ever been in, and the reason for that is that's so the
13 jury can observe the witnesses as they testify, how they
14 speak.

15 You can use any of the factors that I've mentioned,
16 again using your common sense, and make a determination as
17 to the credibility or believability of the testimony you're
18 going to hear in this case. You have a right to consider
19 anything that's in the record that will help you evaluate
20 the testimony of a witness.

21 It will be your responsibility to evaluate the
22 testimony that you hear. Decide what weight you choose to
23 assign to the testimony that you hear. If you'll listen
24 carefully and pay attention carefully, you should be in a
25 position to determine what the true facts are and apply the

1 law to those facts and thus be in a position to render a
2 verdict according to the instructions given to you by the
3 Court.

4 Now, ladies and gentlemen of the jury, I do not appoint
5 a foreperson of a jury until I charge you on the law. If,
6 prior to that time, you need to communicate with the Court,
7 Court, just let the bailiffs know and I'll get, get whatever
8 information you might want to share through the bailiffs.
9 But, at the close of the trial, I will be appointing a
10 foreperson of the jury.

11 Now, I don't appoint, appoint a foreperson for the
12 simple reason that I don't want any of you to believe that
13 there's any one juror who is more important than any other
14 juror. At the close of the trial I will instruct you that
15 your verdict must be unanimous. All of you will have to
16 agree upon the verdict before it is the verdict of the jury.
17 That means each of you has an equal say in the outcome of
18 the case. Each of you has an equal responsibility to be
19 prepared and ready to enter into the discussions during
20 deliberations.

21 So, you won't be able to sit back and say well, the
22 foreperson has been appointed. I'll let him listen and just
23 go with whatever that person says. I want you to be in a
24 position to lead those discussions if I appoint you as the
25 foreperson of the jury.

1 I'll make that appointment at the close of the trial
2 because that person's job really is to lead the discussions,
3 to write any questions back to the Court, if necessary,
4 during deliberations, and then to record the verdict once
5 the verdict has been reached. So, I'll appoint that person
6 at the close of the trial. Not at the beginning of the
7 trial.

8 Now, I want to be sure that I haven't violated anyone's
9 rights by the comments that I've made to you thus far.

10 Does the State have an objection to my opening
11 comments?

12 SOLICITOR BARNETTE: No, sir.

13 THE COURT: Any from the defense?

14 MR. SHEALY: No, Your Honor.

15 THE COURT: All right. Now, I indicated to you, ladies
16 and gentlemen, that the State has the burden of proof in the
17 case and the only burden of proof is to prove the
18 allegations in the indictments by proof beyond a reasonable
19 doubt. For that reason the State is allowed to go first
20 during the arguments at the beginning of the trial, and is
21 allowed to go first in the presentation of any evidence the
22 State produces.

23 Once that evidence is completed, the defense has the
24 right to put up evidence if they choose to do that. Once
25 all the evidence is in, then we'll have closing arguments or

1 statements by lawyers. Thereafter I will charge you
2 concerning the law, and once I've completed my charge on the
3 law the case will be handed over to you for your
4 deliberations in the jury room. So, we'll do opening
5 statements, presentation of evidence, closing statements,
6 charge on the law, and then deliberations. So, that's how
7 we'll go as we move through the trial.

8 Since the State has that burden of proof, the State
9 will be going first in its opening comments.

10 Mr. Barnette.

11 SOLICITOR BARNETTE: May it please the Court, Your
12 Honor?

13 THE COURT: Yes, sir.

14 SOLICITOR BARNETTE: Ladies and gentlemen of the jury,
15 I want to take you back to January 24th, 2013.

16 Ms. D.P. was going to work like she'd done for
17 30 years. She worked at Carolina OB-GYN. She'd worked
18 there on the west side, which is the Mary Black Urgent Care.
19 I don't know if you're familiar with that area where you go
20 out Reidville Road. She was working there at the time. She
21 was a nurse manager. She also worked at the east side one
22 over at Mary Black Hospital.

23 She got up early that day because they had a
24 maintenance worker come by to work in the office. She came
25 into the parking lot, five after 7:00. She went in the

1 front entrance, and the reason why she went in the front
2 entrance, she really didn't know the keypad in the back
3 cause, like I said, she mostly worked over at the east side
4 one and just came over to the west side.

5 She went to the door. She felt a tug on the back of
6 her jacket. She was wearing her scrubs. She was wearing a
7 corduroy jacket which you'll see. She just thought somebody
8 needed help. She turned around and immediately was stabbed
9 in the shoulder by that man right there.

10 She had her purse on that side, and you'll see the
11 space. It's probably a 12 by 12 space. What it is is it's
12 a glass door that you go in. You go in a space and you have
13 like a second glass door which actually goes in the lobby.
14 It's like an area right there.

15 She turned around and he's -- she's face-to-face with
16 him. He's taller than her. She has to look up at him. She
17 grabbed -- I mean he grabs her, grabs her breasts. She
18 falls down. She's pushed down against the glass. As she
19 slides down, she hit her head. He starts grabbing at her.
20 Her purse is taken off her shoulder. It's later found
21 across the room on the other side or I call it a room, but
22 across the area and across there. She's resisting. He
23 stabs her again in the side with the screwdriver.

24 She's fighting with her life. She kicks at him,
25 finally kicks him in the groin area. He runs away and the

1 screwdriver's left beside of her where he had used that that
2 day.

3 She's laying there in shock. Just imagine somebody, a
4 nurse that helps people, she's laying there helpless.

5 Eventually -- what's bad about this, most offices don't
6 open till eight o'clock. There was one I believe opening at
7 7:00, but the people was already up there. So, she laid
8 there for a period of time. Finally people did notice her,
9 and immediately they got help. Law enforcement was called.
10 The Sheriff's Department came there. She gave a description
11 and she'll tell you what that description was, a white male,
12 facial hair, tall, gray hoodie, was wearing something fluffy
13 on him like a fleece jacket from there.

14 The BOLO goes out. Law enforcement swarm the area as
15 you can imagine trying to find this individual. They get a
16 BOLO call near the QT downtown. It's right off here down on
17 Reidville Road. Law enforcement starts checking on it.
18 They find the defendant walking down near Main Street and
19 Baltimore Street across from Vic Bailey on 29 there as you
20 go out West Main Street out towards Westgate.

21 They initially talk to him. They talk to him again,
22 find out who he is. In the mean time he says well, I need
23 to use the bathroom. So, he goes over to the Vic Bailey
24 place acting like he's going -- he actually goes and jumps
25 over the back fence. Goes to somebody. Has them drive him

1 out to his parent's house at [REDACTED].

2 And if you're familiar, that's quite a distance from here
3 from the downtown area down to there.

4 Law enforcement gets the information cause they did
5 find out who he was. They take a lineup to Ms. Pruitt. Ms.
6 Pruitt ID's him.

7 They go out to his residence which winds up being his
8 parent's residence. He had not been there for a period of
9 time.

10 As they come to the back-door or the back -- there's a
11 back deck and you'll see pictures of it. The gray hoodie
12 that he was wearing that day, has a blue denim jacket laying
13 there on the ground behind the house near the deck. Law
14 enforcement walks up, and the detectives will tell you this,
15 as they walk up, they look inside the kitchen and his
16 stepmother is shaving his hair. Literally shaving his hair.
17 They put it in the trash. Law enforcement gets the hair.
18 You'll see the actual hair. They take a picture of the
19 trash can.

20 Believe me, he looks much different today than he did
21 back on January 24th, 2013. You'll see pictures of the way
22 he looked that day. The clothing description, she ID's him,
23 everything matches up. He flees law enforcement when he's
24 questioned. He runs.

25 where do you run when you get in trouble?

1 To your parents.

2 And then he was actually shaving his head at that time
3 when law enforcement come up.

4 Ladies and gentlemen, there's been four charges made,
5 and I'll be -- have a chance to come, like the judge says,
6 come back to speak to you about this. But please listen to
7 the evidence. Please keep this in mind. I'll give you a
8 preview of what you're gonna be seeing.

9 This is a serious case. This lady didn't do anything
10 wrong. She was just going to work that day when this man
11 attacked her, and you'll see the actual wounds that he left
12 on her that day. Please keep that in mind as you listen to
13 the evidence.

14 We appreciate y'all being here, and, like I say, you
15 speak for our community, and we appreciate you being here.

16 Thank you again.

17 Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 Mr. Shealy.

20 MR. SHEALY: Thank you, Your Honor.

21 THE COURT: You may proceed.

22 MR. SHEALY: Ladies and gentlemen, my name is Matthew
23 Shealy as I've said earlier today. I represent Richard
24 Culberson and sitting over there I kind of feel outnumbered
25 a little bit.

1 Ladies and gentlemen, all you're gonna hear is this
2 identification. That's their case.

3 Okay. You're not gonna see a video from Mary Black
4 Urgent Care that you say can yep, that's certainly who did
5 this.

6 The description -- there is a description given. I
7 would dispute as to whether that description actually fits
8 my client. There's several descriptions given at various
9 points in this and they vary substantially.

10 what you're gonna have to do is you're gonna have to
11 listen to all of this with an open mind because we just
12 assume that eye witness identifications are necessarily good
13 ones, but generally they're not. They just aren't and we've
14 all had those problems, for example, at the mall where you
15 go to the mall, you're walking, and you think you see
16 something. You think you see somebody you know and you
17 chase them down in the mall and you say hey. They turn
18 around. You got close enough. That ain't them.

19 It happens all the time. We've all had that happen to
20 us, and we assume that, because this was a traumatic event
21 and this is certainly a traumatic event. We're not saying
22 that this did not occur.

23 Okay. We're not asking you to decide that this didn't
24 happen. We're asking you to decide that they can not prove
25 beyond a reasonable doubt that it was my client who

1 committed this act.

2 What, what we assume is that when -- the trauma somehow
3 makes our memory better. I would never forget that
4 happened.

5 But, ladies and gentlemen, we've all had traumatic
6 events in our life, and, quite frankly, the ones I've had I
7 can't remember very well. I just can't. I couldn't tell --
8 I was in a car accident. Couldn't tell you what the woman
9 looked like.

10 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
11 this point. It's not about personal feelings. It's about
12 the facts of the case from that standpoint.

13 MR. SHEALY: Your Honor?

14 THE COURT: Overruled.

15 MR. SHEALY: Thank you, Your Honor.

16 So, these -- and you're allowed to bring your personal,
17 your personal views on things to this jury surface. That's
18 why we've got 12 of you. If we didn't have -- you know, if
19 we just was gonna go on with what one person thought, then
20 we'd only need one. But all of you are here to bring your
21 common sense, your personal experiences to bear on this
22 trial, and so if y'all have had those kind of personal,
23 those personal events, you're allowed to voice those
24 personal events in the jury room.

25 Ladies and gentlemen, my client does not bear the

1 burden to prove anything. I can't prove a negative. You
2 can never prove something didn't happen or that he didn't do
3 it beyond -- you just can't do it. I can't. I wish that
4 you could, but you can't.

5 So, we make the State prove that he did do it. That's
6 why the burden is on the State, and we're asking you to hold
7 them to that burden.

8 Now, you're also gonna hear about the evidence about
9 flight and all of that, but that doesn't have any -- that
10 doesn't assert or doesn't establish that he committed this
11 crime. You're gonna have to hear some other things about
12 that that we'll get to during, presumably during testimony.

13 Just a little bit so you know. I've hurt myself. So,
14 I will be making some faces. It's not based on the
15 evidence. It's because I've done something stupid to myself
16 and so every once in a while I might grimace. That's on me.
17 Hold that against me. Don't hold that against my client. I
18 hope y'all hold anything else if, you know, you don't look
19 like, like -- the way I look, you don't like my voice,
20 whatever, hope that y'all hold that against me. Not my
21 client cause it's -- he got assigned me.

22 I'm a public defender. I represent poor folk. My
23 client is poor and he just got the public defender that was
24 assigned to him. Now, I like to think he was lucky, but.

25 Now, what you also have to be aware of is he was

1 homeless and I believe everybody's going to agree that he
2 was homeless. So, he didn't necessarily associate with the
3 highest class of folk. So, ladies and gentlemen, we, we'd
4 ask that you not hold that again -- against him or against
5 any witnesses we should choose to call.

6 Finally, I'd ask that you hold the State to their
7 burden because, if you do that, I don't think you're gonna
8 be able to convict my client. They have to prove it by the
9 evidence. You can't get carried away by the emotion cause
10 there's gonna be a lot of emotion. There just is because
11 this was a terrible thing. It was a terrible thing.

12 But I don't want y'all to be the people who come up to
13 me in three months or so saying I got carried away. I
14 didn't apply the evidence. I wanted to give that woman
15 justice. He was the guy we had in front of us. So, he's
16 the guy we punished because you simply felt like somebody's
17 got to be punished and he's the guy.

18 There's an old saying, when you're a hammer,
19 everybody's a nail. Don't be a hammer or you're gonna see
20 my client as a nail and that's not your oath. That's not
21 what you're here for.

22 So, ladies and gentlemen, as I've said, I don't think
23 ultimately you're gonna be able to find my client not --
24 guilty cause I just don't think they can carry their burden.
25 I just don't think they can carry their burden.

1 Thank you.

2 THE COURT: State may call its first witness.

3 SOLICITOR BARNETTE: May it please the Court, Your
4 Honor.

5 I'd like to call Ms. Pruitt to the stand please.

6 THE COURT: Come forward please, ma'am.

7 SOLICITOR BARNETTE: May I take a second to get set
8 up, Your Honor?

9 THE COURT: Yes, sir.

10 MR. SHEALY: Your Honor, may Mr. Barnette and I
11 approach---

12 THE COURT: Yes, sir.

13 MR. SHEALY: ---on another thing?

14 Please swear the witness for me.

15 THE CLERK: Yes, sir.

16 D.P. being first duly
17 sworn, testified as follows:

18 THE COURT: Have a seat please, ma'am.

19 You may approach.

20 (WHEREUPON, a bench conference was held at this time
21 out of the hearing of the jury.)

22 THE COURT: Mr. Shealy had told me he had a doctor's
23 appointment. He had a little accident this morning here at
24 the courthouse. He had a fall and he needs to get to the
25 doctor. Apparently they've just messaged him and he has to

1 get there before five o'clock.

2 So, we're gonna just take a break right now and back
3 first thing in the morning. I'll ask you to be here at
4 9:30.

5 During your absence from the courthouse I will instruct
6 you, as I did when you left at lunch, don't attempt to
7 gather any information on your own. Don't listen to, watch,
8 or read any media reports about the case. Don't discuss the
9 case with anyone. Don't allow anyone to discuss it with
10 you. It's okay to tell family members you've been selected
11 on a jury and that you, if you wish to, you'll talk to them
12 about it at the close of the trial and then start talking
13 about the weather and whatever else you want to talk about,
14 sports, but don't talk about this case with anyone.

15 Should anyone try to contact you about your service on
16 the jury, please report that to me upon your return. I'm
17 gonna ask you to be back in the jury room in the morning at
18 9:30. We should be able to start shortly thereafter. 9:30
19 back in the jury room.

20 Thank you for your patience this afternoon. We'll see
21 you in the morning.

22 Ma'am, if you'll just remain seated.

23 THE WITNESS: Okay. Thank you.

24 (WHEREUPON, the following takes place outside the
25 presence of the jury.)

1 THE COURT: All right. Ma'am, I'll caution you that,
2 during our break, please don't discuss your testimony with
3 anyone.

4 Do you understand that?

5 THE WITNESS: I do.

6 THE COURT: All right. We'll resume then -- let's see.
7 You're gonna have the other ID witness here at nine
8 o'clock?

9 SOLICITOR BARNETTE: Yes, sir, that's what I'm planning
10 on doing.

11 THE COURT: So, we'll resume at nine o'clock. We'll
12 start with the jury at 9:30.

13 Good luck, Mr. Shealy.

14 MR. SHEALY: Thank you, judge.

15 THE COURT: All right.

16 MR. SHEALY: Again, I'm sorry. I can't---

17 THE COURT: That's quite all right.

18 We're in recess until nine o'clock in the morning.

19 You can step down, ma'am.

20 THE WITNESS: Thank you.

21 THE COURT: Thank you, ma'am.

22

23 (WHEREUPON, Court was in recess for the evening.)

24

25

1 Tuesday, June 17th, 2014

2
3 THE COURT: All right. Yesterday we had taken
4 testimony concerning a defense motion to limit the
5 introduction of Lyle evidence for the purpose of identity,
6 and, at that time, one of the State's witnesses was not
7 available. I understand that she may be at this time. So,
8 we're going to go back to that hearing that I'd left open,
9 and I'll allow the State to call its next witness in that
10 matter.

11 SOLICITOR BARNETTE: May it please the Court, Your
12 Honor.

13 Like to call Ms. Smith to the stand please.

14 THE COURT: Come forward please, ma'am. If you'll step
15 over here to my left and be sworn in please.

16 (Witness complies.)

17 THE COURT: Thank you.

18 SHALEAN SMITH, being first duly
19 sworn, testified as follows:

20 THE COURT: All right, ma'am. If you would, please
21 state your name for me.

22 THE WITNESS: Shalean Smith.

23 THE COURT: Thank you.

24 Mr. Barnette, it's your witness. You may proceed.

25 SOLICITOR BARNETTE: Thank you, Your Honor.

Shalean Smith - Direct examination
by Solicitor Barnette

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY SOLICITOR BARNETTE:

4 Q Ms. Smith, back in December 10th, 2012, where did you
5 live at, ma'am?

6 A The Haven at Oak Forest.

7 Q And where is that located, ma'am?

8 A It's on Reidville Road. Right off of Reidville Road.

9 Q Okay. Is it behind the Bi-Lo there on Reidville Road?

10 A Yes.

11 Q And do you know where the Mary Black Urgent Care is?

12 A Yes.

13 Q Is it less than a mile from where you live probably?

14 A Yes.

15 Q Okay. From there.

16 That evening -- did you go to Bi-Lo that evening?

17 A Yes.

18 Q And what did you go to Bi-Lo for?

19 A To get my daughter a Snickers bar and to buy a pack of
20 cigarettes.

21 Q Okay. And, if you would, when you went over there, was
22 it, was it dark or daylight?

23 A It was dark.

24 Q Was there lights on outside?

25 A Yes.

Shalean Smith - Direct examination
by Solicitor Barnette

1 Q And where your apartments is, do they have, have lights
2 outside that are floodlights?

3 A Yes.

4 Q Okay. So, you can see well outside?

5 A Very well.

6 Q Okay. Did you go to the Bi-Lo?

7 A Yes.

8 Q When you came back from the Bi-Lo, if you would, tell
9 us what happened.

10 A I crossed through the same path that I crossed through
11 before. I went in-between trees and a man came out and
12 grabbed my purse. I fought with him for what felt like
13 forever, but it was probably only a few seconds. I pulled
14 out my knife and swung at him twice and he let go and he
15 took off running.

16 Q Okay. So, he grabbed your right side I'm assuming
17 where your -- your purse side?

18 A My left side, yes.

19 Q Left side where your purse was?

20 A Yes.

21 Q So, he, he went towards that side where the purse was?

22 A Yes.

23 Q And he grabbed you.

24 where did he grab you at, ma'am?

25 A He grabbed the strap on the back of my purse and pulled

Shalean Smith - Direct examination
by Solicitor Barnette

1 it off my shoulder.

2 Q So, he came from behind you?

3 A Yes.

4 Q Okay. When you turned around, could you see him?

5 A Yes.

6 Q And how close was y'all to each other?

7 A Maybe a foot and a half between us.

8 Q Okay. And you could clearly see his face?

9 A Yes.

10 Q Okay. And y'all started fighting or he started
11 struggling with you at that time?

12 A Yes.

13 Q And you had a knife on you?

14 A Yes.

15 Q And you pulled that knife?

16 A Yes.

17 Q Is that something that you carry with you for
18 protection?

19 A Yes.

20 Q And why do you carry that with you?

21 A I was in the military and my father's in the military,
22 and I was always told to -- taught to try and protect myself
23 from anything. So, I always, always carry a knife on me.

24 Q Okay. After he left, did you call 9-1-1?

25 A As soon as I ran back to my house, yes.

Shalean Smith - Direct examination
by Solicitor Barnette

1 Q Okay. And did you give a prescription (sic) to the law
2 enforcement?

3 A Yes.

4 Q And did they investigate the case?

5 A Yes.

6 Q I believe they came out and checked your purse and took
7 fingerprints or they couldn't really take fingerprints I
8 guess because of the material on it?

9 A They tried.

10 Q They tried on that.

11 Let me show you what's been -- I guess, Investigator
12 Clark, he's sitting in the front row I believe, did he come
13 and show you two previous lineups---

14 A Yes.

15 Q ---before this?

16 Before -- let me show you State's Exhibits 5 and 6.
17 was those the lineups he showed to you?

18 A Yes.

19 Q Did you see the person that did this to you in those
20 lineups?

21 A No.

22 Q Okay. So, you didn't pick anybody out?

23 A No.

24 Q And did he just show them to you from that standpoint?

25 A Yeah, he just --

Shalean Smith - Direct examination
by Solicitor Barnette

1 Q Okay. So, he wasn't -- may I just publish these or
2 would you rather just look at them, Your Honor?

3 THE COURT: They'll be made a Court's Exhibit if you'd
4 like to have them put in for this hearing.

5 SOLICITOR BARNETTE: Yes, sir, like to make these
6 Court---

7 THE COURT: Have you seen them?

8 MR. SHEALY: I think I've seen them.

9 THE COURT: Take a look please.

10 MR. SHEALY: Let me just make sure.

11 Yeah.

12 THE COURT: Any objections?

13 MR. SHEALY: No, Your Honor.

14 THE COURT: All right. They'll be made Court's
15 Exhibits for purposes of this hearing.

16 If you'll mark them for me please, Ms. Green.

17 (WHEREUPON, the lineups were marked as Court's Exhibit
18 Nos. 5 and 6 and received into evidence for purposes of this
19 hearing only at this time.)

20 SOLICITOR BARNETTE: Your Honor, these have been marked
21 Court Exhibit 5 and Court Exhibit 6 for purposes of this
22 hearing, Your Honor.

23 THE COURT: All right.

24 SOLICITOR BARNETTE: May I approach the bench?

25 THE COURT: Yes, thank you.

Shalean Smith - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you.

2 THE COURT: You may proceed.

3 Q So, through their investigation, they showed you two
4 previous lineups, and on January 24th, 2013, did they show
5 you a third lineup?

6 A Yes.

7 Q And did they go through the same procedure with you
8 saying that -- just look at it and so forth?

9 A Yes.

10 Q Let me show you -- I guess -- I would mark this -- I
11 guess I'll do it as a packet here. Court Exhibit 7, Your
12 Honor.

13 (WHEREUPON, another lineup was marked as Court's
14 Exhibit No. 7 for identification purposes only at this
15 time.)

16 SOLICITOR BARNETTE: And, Your Honor, for the record,
17 what's marked as Court Exhibit 7, but it's also for ID
18 purposes State Exhibit 4.

19 THE COURT: All right.

20 SOLICITOR BARNETTE: Okay. May I approach the witness,
21 Your Honor?

22 THE COURT: You may.

23 Q Let me let you look at this, ma'am.

24 Was this the third lineup they showed you that day?

25 A Yes.

Shalean Smith - Direct examination
by Solicitor Barnette

1 Q And did you see the person that attacked you and tried
2 to take your purse that night?

3 A Yes.

4 Q Did you ID him?

5 A Yes.

6 Q How did you -- did you circle -- was that your circle
7 around it?

8 A Yes, sir, that's it.

9 Q And did you initial it?

10 A Yes.

11 Q Okay. And did you also do an affidavit?

12 A Yes, I did.

13 Q Okay. And did you sign -- I guess is that your
14 handwriting in the middle and then your signature, ma'am?

15 A Yes.

16 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
17 enter this as -- for purposes of this hearing at this time.

18 THE COURT: Any objection for this hearing, Mr. Shealy?

19 MR. SHEALY: No, Your Honor.

20 THE COURT: All right. They'll be admitted as marked
21 as Court's Exhibits.

22 (WHEREUPON, Court's Exhibit No. 7 was received into
23 evidence for purposes of this hearing only at this time.)

24 SOLICITOR BARNETTE: May I approach the bench, Your
25 Honor?

Shalean Smith - Direct examination
by solicitor Barnette

1 THE COURT: You may.

2 Q And that was the man that did this to you that night,
3 is that right, ma'am?

4 A Yes.

5 Q Okay. And I believe you saw another picture -- and if
6 I -- may I approach the witness, Your Honor?

7 THE COURT: You may.

8 Q Let me show you Court Exhibit 1, ma'am.

9 Is that a picture that was shown to you I guess last
10 week?

11 A Yes.

12 Q And in that picture, is that the man that attacked you?

13 A Yes.

14 Q Okay. And let me ask you a question.

15 The boots, I notice when we were talking you saw this
16 picture, tell us about what made you -- drew your attention
17 to the boots he was wearing.

18 A I just recently bought my husband a pair of Dr. Martens
19 that look exactly the same.

20 Q And the appearance of his boots, did anything notice
21 from any marks on them or anything on the boots?

22 A Really scruffed up, really dirty.

23 Q Was those the boots that the gentleman was wearing the
24 night that you were attacked?

25 A Yes.

Shalean Smith - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Your Honor, like to enter Court
2 Exhibit 1. I know it's been entered for purposes of this
3 hearing I believe.

4 THE COURT: Any, any objection?

5 MR. SHEALY: None, Your Honor.

6 THE COURT: Without objection, it will be admitted as
7 marked if it's not already in.

8 (WHEREUPON, Court's Exhibit No. 1 was received into
9 evidence at this time for purposes of this hearing only.)

10 Q And do you see the man -- I know he's changed
11 dramatically, but do you see the man that attacked you that
12 night in the courtroom here, ma'am?

13 A Yes, I do.

14 Q Okay. Could you identify, identify him in the
15 courtroom please?

16 A He's sitting over there in the blue shirt.

17 SOLICITOR BARNETTE: Your Honor, I'd like the record to
18 reflect that she's identified the defendant.

19 MR. SHEALY: It will so reflect.

20 Q Ma'am, in this case -- so, he came up from behind
21 you---

22 A Yes.

23 Q ---and attacked you?

24 And he, and he grabbed your purse from behind?

25 A Yes.

Shalean Smith - Direct examination
by Solicitor Barnette

1 Q And he turned -- and obviously you turned around and
2 y'all was -- he was grabbing at that time?

3 A Uh-huh. (Affirmative).

4 Q And y'all were face-to-face?

5 A Yes.

6 Q If he didn't have the knife, would you probably have
7 kept on fighting?

8 A Probably.

9 Q Yeah.

10 So, you was able to pull the knife -- where was the
11 knife at?

12 A In my packet.

13 Q Okay. So, it wasn't in your purse?

14 A No, it was in my front pocket.

15 Q So, as soon as you showed resistance, did he run away?

16 A As soon as I swung at him.

17 Q Okay. And which direction did he go in, ma'am?

18 A He went from, from the side of the building up through
19 behind the Bi-Lo --

20 Q Okay.

21 A -- in the parking lot.

22 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
23 please.

24 THE COURT: Yes, sir.

25 (Pause.)

Shalean Smith - Cross-examination
by Mr. Shealy

1 Q If you would, please answer any questions that
2 Mr. Shealy may have for you.

3 THE COURT: You may cross-examine the witness.

4 MR. SHEALY: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. SHEALY:

7 Q Ms. Smith, it's my -- so, he came up from behind you,
8 correct?

9 A Yes.

10 Q And grabbed the strap of your purse?

11 A Yes.

12 Q And that's when y'all started pulling?

13 A Yes.

14 Q Okay. Because then you give a pretty -- in your
15 written statement, you give a pretty detailed description of
16 the fellow who did this, right?

17 A (Witness nods affirmatively.)

18 Q Said he's a white male, mid to late forties.
19 Does that sound right?

20 A Uh-huh. (Affirmative).

21 Q Okay. Gray, white, short hair?

22 A Yeah.

23 Q And a black hoodie, khaki cargo pants?

24 A (Witness nods affirmatively.)

25 Q Okay. And in the struggle, did you get a -- apparently

Shalean Smith - Cross-examination
by Mr. Shealy

1 you got a pretty good look at his hands cause you say he
2 also had a scar on the top of his hand that was between his
3 ring and middle finger all the way down?

4 A I, I saw it. It looked to me like either a scratch or
5 a bruise, possibly a scar. I told the detective about it
6 that was there, the police officer, and he told me to go
7 ahead and write it in my statement.

8 Q Okay. Well, but -- I mean in your statement you write
9 that it was a scar, correct?

10 A Yes.

11 Q And that's what we got.

12 And it makes sense that you would of gotten a pretty
13 good look at his hands cause y'all were fighting over the
14 purse, right?

15 A Yes.

16 Q Okay. He didn't attack you with any weapons?

17 A No.

18 Q All right. So, so, he didn't stab you -- upon coming
19 upon you?

20 A No.

21 Q He just -- that's when he grabbed the purse.

22 Okay. And there was no grabbing at your breast or
23 pulling down your pants or anything like that, was there?

24 A No.

25 Q No, I didn't see any in your statement, but for the

Shalean Smith - Cross-examination
by Mr. Shealy

- 1 record.
- 2 Now, I'm trying to figure out exactly how long is this
- 3 path between the Bi-Lo and the, I believe, you said The
- 4 Haven Apartments?
- 5 A Yes.
- 6 Q How, how long is that path?
- 7 A From my apartment to the Bi-Lo?
- 8 Q Sure.
- 9 A Maybe a couple hundred feet --
- 10 Q Okay. But the---
- 11 A -- or a little longer than.
- 12 Q And is this path through some woods or what kind of
- 13 path is it?
- 14 A It has a couple of trees on it. It's between two
- 15 storage buildings---
- 16 Q Okay.
- 17 A ---out back.
- 18 Q All right. And you testified you -- that there was a
- 19 good bit of light, correct?
- 20 A Yes.
- 21 Q Okay. And in that light you saw him clearly in a black
- 22 hoodie and cargo pants?
- 23 A Uh-huh. (Affirmative).
- 24 Q There was no fluffy coat?
- 25 A No.

Shalean Smith - Cross-examination
by Mr. Shealy

1 Q There weren't any gloves?

2 A No.

3 Q No toboggan?

4 A No.

5 Q Okay. But you noticed the boots because you had
6 recently purchased --?

7 A Boots for my husband.

8 Q All right.

9 A Yes.

10 Q And those boots, boots that you purchased were what
11 kind of boots now?

12 A Dr. Martens.

13 MR. SHEALY: Okay. If you would bear with me --

14 THE COURT: Yes, sir.

15 MR. SHEALY: -- just for one second.

16 (Pause.)

17 Q Did you happen to see his teeth?

18 A No, I did not.

19 Q Sorry. Can't see me.

20 You didn't happen to see his teeth?

21 A No.

22 Q Okay. And you've testified that you thought he was
23 about six feet tall, something like that?

24 A Yeah, a lot taller than I am.

25 MR. SHEALY: That's all I have for this witness, Your

Shalean Smith - Cross-examination
by Mr. Shealy

1 Honor.

2 THE COURT: Anything further, Mr. Barnette?

3 SOLICITOR BARNETTE: Yes, sir, just a couple on
4 follow-up, Your Honor, if I could.

5 Your Honor, just -- let me show this to Mr. Shealy.
6 It's State's Exhibit 13. I know the Court's probably
7 familiar with it, but just for the record. I guess I'll
8 enter it. I'm gonna use it actually in trial too, Your
9 Honor, But Court Exhibit 8 I guess for purposes of this
10 hearing.

11 THE COURT: Any objection to that being admitted?

12 MR. SHEALY: No.

13 THE COURT: All right. It will be admitted and marked
14 as Court's Exhibit for this hearing.

15 And that's Court's Exhibit what, Ms. Green?

16 SOLICITOR BARNETTE: Eight I believe, Your Honor.

17 THE COURT: Eight?

18 THE COURT REPORTER: Yes, sir.

19 SOLICITOR BARNETTE: And, Your Honor, it's also State's
20 Exhibit 13 for ID at this time.

21 THE COURT: All right. Thank -- thank you.

22 (WHEREUPON, the map was marked as Court's Exhibit No. 8
23 and received into evidence for purposes of this hearing only
24 at this time.)

25 SOLICITOR BARNETTE: Your Honor, I'm just gonna publish

Shalean Smith - Redirect examination
by Solicitor Barnette

1 it at this time.

2 THE COURT: Yes, sir.

3 SOLICITOR BARNETTE: Let me make sure.

4 REDIRECT EXAMINATION

5 BY SOLICITOR BARNETTE:

6 Q Ma'am, looking at this map and everything, your
7 apartment was in this general area, is that right?

8 A Yes.

9 Q And then, of course, this is where the Mary Black
10 Hospital was, is that right?

11 A Yes.

12 Q Now, the -- I believe you testified earlier that it was
13 less than a mile, give or take?

14 A Yes.

15 Q Let me ask you a question.

16 He was asking you about where this occurred at. I've
17 been out there and I've seen it too.

18 This is a pretty public area, isn't it?

19 A Yes.

20 Q Cause you got several apartments right there, the
21 Bi-Lo's right there, the parking lot's right there?

22 A Yes.

23 Q And these trees that we're talking about, it's just
24 pine trees that's planted in a row, isn't it?

25 A Right.

Shalean Smith - Redirect examination
by Solicitor Barnette

1 Q And just, you just walk between them?

2 A (Witness nods affirmatively.)

3 Q So, obviously it's very open to the public. It's not
4 like it's a private area or anything like that.

5 A Yes, it's very open.

6 Q Okay. So, anybody could see and, like you say, it's
7 well lit because of the apartments as well as the Bi-Lo?

8 A Yes.

9 Q So -- and people was obviously at the Bi-Lo when you
10 went over there?

11 A Yes.

12 Q And obviously there was people at the apartments---

13 A Yes.

14 Q ---when you came back over?

15 And you was talking about on the hand, and I believe
16 you had testified earlier it was just kind of the mark --
17 you don't know if it was a cut, scar, bruise, or what?

18 A I'm not sure what exactly it was. I said a scratch, a
19 bruise, a scar.

20 Q Uh-huh. (Affirmative).

21 And you just put -- is that what the officer said, just
22 put a scar in there?

23 A Yes.

24 Q So, that's the reason why you put that in the
25 statement?

Shalean Smith - Recross examination
by Mr. Shealy

1 A Yes.

2 Q Okay. From there.

3 Thanks for answering my questions.

4 THE COURT: Yes, sir, Mr. Shealy.

5 MR. SHEALY: Just a couple, judge.

6 RE CROSS EXAMINATION

7 BY MR. SHEALY:

8 Q I'm a little concerned about.

9 So, it's your testimony that the officer told you to
10 put something that wasn't true in your statement?

11 A I had told him that I had seen something on his hand.

12 Q Okay. And he told you well, put a scar, say that it's
13 a scar?

14 A He told me to put it in my statement.

15 Q That it was a scar or just put just that you saw
16 something on his hand?

17 A That there was something on his hand --

18 Q Okay.

19 A -- that I saw.

20 Q And then you put that it was a scar?

21 A Yes.

22 Q Okay. Now, as to this area, you've heard how public it
23 is.

24 There's a Bi-Lo there?

25 Is there a CVS as well?

Shalean Smith - Recross examination
by Mr. Shealy

1 A Across the street from the Bi-Lo.

2 Q Okay. And is that -- when you say across the street,
3 is it in the same general shopping center area or is there
4 an actual street, street between there?

5 A There's an actual street between them.

6 Q Okay. And then there's a parking lot and then there's
7 a path and then they're the apartments?

8 A And then there's the storage buildings.

9 Q And some storage buildings.

10 Okay. Okay. But, to your knowledge, no camera footage
11 has been pulled from any of those places?

12 A No.

13 Q No.

14 Okay. Thank you.

15 THE COURT: Anything further from the witness, Mr.
16 Barnette?

17 SOLICITOR BARNETTE: No, sir.

18 THE COURT: All right, ma'am. You may step down.
19 Thank you very much.

20 Mr. Barnette, in light of this testimony, do you wish
21 to recall anyone that previously testified in this hearing?

22 SOLICITOR BARNETTE: Not -- well, one thing and just
23 for -- let me ask for the Court, and I don't know, I guess
24 the defense -- I can call the officers about the, the ID's
25 and things. I don't think there's any need to about the

1 videotapes. They did check and I'll be glad to call them
2 about that. They checked at the Bi-Lo.

3 THE COURT: That's -- that may be important for the
4 jury. It's probably not important for me --

5 SOLICITOR BARNETTE: I understand.

6 THE COURT: -- in my inquiry because it's the lack of
7 evidence. Then I won't have any evidence to weigh.

8 MR. SHEALY: Well, judge, it's---

9 THE COURT: The question is identity here and if
10 there's nothing that would go toward the question of
11 identity, then I'm -- I understand that there's no video.

12 SOLICITOR BARNETTE: Right, and I didn't know if you
13 needed that for your purpose. I'll be glad to call
14 witnesses.

15 THE COURT: I don't see the relevance.

16 Do you see the relevance, Mr. Shealy?

17 MR. SHEALY: Judge, I mean I'm gonna argue that there's
18 no camera, but I mean---

19 THE COURT: Well, obviously I've already acknowledged
20 there's none.

21 MR. SHEALY: Yes, sir.

22 THE COURT: So, we -- we'll stipulate that there is no
23 video and none's been pulled.

24 SOLICITOR BARNETTE: Well, I just wanted to explain to
25 the Court the reason why there -- they went and checked.

1 There's no cameras in that direction.

2 THE COURT: Okay.

3 SOLICITOR BARNETTE: And also---

4 THE COURT: I'm good with that.

5 SOLICITOR BARNETTE: -- from there.

6 THE COURT: Now, one question I do have.

7 This Court's Exhibit No. 1, which is the photo where
8 the defendant I believe is dressed in the blue jacket with
9 the boots in question.

10 Is this an arrest photo?

11 Is this the date of arrest?

12 SOLICITOR BARNETTE: Yes.

13 THE COURT: I don't know when this was taken.

14 SOLICITOR BARNETTE: Yes, sir, it was and I can call
15 witnesses concerning that.

16 THE COURT: Maybe we ought to establish that on the
17 record as to when this photo was taken cause I don't know
18 when it was taken.

19 SOLICITOR BARNETTE: Okay. Like to call Investigator
20 Williams just for the purpose to ask about those photos.

21 THE COURT: Come up and be sworn, sir.

22 LORIN WILLIAMS, being first duly
23 sworn, testified as follows:

24 THE COURT: State your name once you're seated,
25 officer.

Lorin Williams - Direct examination
by Solicitor Barnette

1 THE WITNESS: Lorin Williams.

2 THE COURT: Thank you.

3 Mr. Barnette.

4 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY SOLICITOR BARNETTE:

7 Q Where do you work at, sir?

8 A Spartanburg County Sheriff's Office.

9 Q And what is your position there, sir?

10 A I'm a violent crime investigator with the Sheriff's
11 Office.

12 Q Back on January 24th of 2013, and I'm not gonna go
13 through everything that you did that day, but was, was you
14 present when the defendant was arrested?

15 A I was.

16 Q And was he taken to the Sheriff's Department?

17 A Yes, sir, he was.

18 Q And let me show you what -- may I approach the bench,
19 Your Honor?

20 THE COURT: Yes, you may.

21 Q Let me show you -- I think this is Court Exhibit 1.

22 A Yes.

23 Q Let me show you Court Exhibit 1.

24 Was those pictures taken that day at the Sheriff's
25 Department of the defendant?

Lorin Williams - Direct examination
by Solicitor Barnette

1 A Yes, sir, they were.

2 Q And was that the boots and the clothes that he was
3 wearing that day?

4 A Yes, sir.

5 SOLICITOR BARNETTE: Okay. Your Honor, for that
6 limited purpose that's why I would call him. In fact, just
7 to establish the foundation for those pictures.

8 THE COURT: All right. Thank you.

9 SOLICITOR BARNETTE: Thank you.

10 THE COURT: Wish to cross-examine?

11 MR. SHEALY: I do, Your Honor.

12 THE COURT: All right. Yes, sir.

13 MR. SHEALY: Just briefly.

14 RE CROSS EXAMINATION

15 BY MR. SHEALY:

16 Q Officer Williams or Detective Williams, excuse me, did
17 you take any of those -- of that stuff into evidence?

18 A The coat and the boots were not taken. I don't know
19 why.

20 Q Okay.

21 A We were---

22 Q So, so, those boots, we don't have them?

23 A No.

24 Q So, we can't determine whether they're Dr. Martens or
25 for example, Timberland boots?

Lorin Williams - Recross examination
by MR. Shealy

1 A That's correct.

2 Q All right. Okay. Thank you.

3 SOLICITOR BARNETTE: No further questions of this
4 witness, Your Honor.

5 THE COURT: All right. You may step down, sir.

6 Do you wish to call any other witnesses in this
7 hearing, Mr. Barnette?

8 SOLICITOR BARNETTE: No, sir.

9 THE COURT: Defense wish to call any witnesses in light
10 of that testimony?

11 MR. SHEALY: Your Honor, I just ask to proffer my
12 client's hands into the record. He doesn't have a scar on
13 his right-hand. I believe that would be non-testimonial
14 evidence.

15 THE COURT: Does the State wish to --?

16 SOLICITOR BARNETTE: I'll be glad to take a look, Your
17 Honor.

18 THE COURT: Take a look. See if you can stipulate that
19 there's not a scar on the back of his right-hand.

20 SOLICITOR BARNETTE: I don't know if I'd stipulate that
21 he didn't have markings on his hands. I don't know. They
22 may argue it's a different mark or whatever. But just
23 looking at his hands---

24 THE COURT: Well, I'm not sure we can put his hand into
25 evidence.

1 SOLICITOR BARNETTE: Yes, sir, I understand.

2 MR. SHEALY: Your Honor, if I need, I can call an
3 investigator to bring me a camera and let me take a picture
4 of his hands if you'd like me to.

5 THE COURT: Well---

6 MR. SHEALY: I thought that it would be sufficient to
7 have him proofer his hands, but apparently---

8 THE COURT: Why don't you have him approach?

9 I'll take a look at it and I'll just put, for the
10 record, on the record what I have viewed.

11 SOLICITOR BARNETTE: Yes, sir, and I'll speak what my
12 concerns is, Your Honor.

13 THE COURT: I believe it's the right hand?

14 Is that what I heard?

15 MR. SHEALY: Yes, Your Honor.

16 SOLICITOR BARNETTE: Yes, sir, I was just looking. The
17 thumb, between the thumb and the finger there was a mark and
18 I don't know what mark that is. So --.

19 MR. SHEALY: But, again, Your Honor, the scar is
20 suppose to be between his ring and his --.

21 THE COURT: All right. I see no distinctive scars.
22 There are some markings, but nothing that I would call a
23 distinctive scar. I'll put that on the record.

24 You can have a seat.

25 SOLICITOR BARNETTE: Okay.

1 THE COURT: All right. Now, as to this issue, I had
2 gone -- met with counsel in chambers this morning and gone
3 over some of the research that I'd done during the break.

4 Does the State want a little time to take a look at
5 that before we argue this issue?

6 SOLICITOR BARNETTE: If I could, Your Honor. I've got
7 somebody that did some research and I'd like to look at
8 that.

9 THE COURT: All right. I'll allow you to do that. So,
10 we'll adjourn the hearing. Obviously before any evidence of
11 the prior event could be introduced we'll have to complete
12 that hearing and discuss it further and I'll make a ruling.

13 At this point in time we'll adjourn that hearing.

14 Anything else, Mr. Barnette, before we bring the jury
15 in?

16 SOLICITOR BARNETTE: No, sir, if I could just briefly
17 or do you want to -- you want to go ahead and go forward or
18 did you want---

19 THE COURT: Yes, sir, I'm gonna go ahead -- if you want
20 to take a minute and talk with you, with the other witness.
21 The one that was on the stand, she can't discuss her
22 testimony.

23 SOLICITOR BARNETTE: Right.

24 THE COURT: But if you'd like to talk with the other
25 witness, I'll give you a chance to do that.

1 we'll take about a five, ten minute break.

2 SOLICITOR BARNETTE: Okay. Make sure I'm correct.

3 Can I talk to Ms. Pruitt or Ms. Smith, Ms. Pruitt?

4 THE COURT: Well, Ms. Pruitt's already been sworn and
5 put on the stand and I've instructed her not to discuss her
6 testimony with anyone at this stage.

7 SOLICITOR BARNETTE: All right.

8 THE COURT: Just can talk to the young lady, Ms. Smith,
9 I believe who just testified. You can talk with her.

10 SOLICITOR BARNETTE: Okay.

11 THE COURT: That's not a problem.

12 SOLICITOR BARNETTE: I just wanted to make sure---

13 MR. SHEALY: Your Honor, can he go to the bathroom
14 while---

15 THE COURT: We're gonna take about a five minute break.
16 Court will be in recess for about five to ten minutes.

17 MR. SHEALY: Thank you, Your Honor.

18 (WHEREUPON, a short recess was taken at this time.)

19 THE COURT: All right. State ready to proceed?

20 SOLICITOR BARNETTE: Yes, sir.

21 THE COURT: Defense ready?

22 MR. SHEALY: Are we gonna -- I'm sorry.

23 Are we taking testimony from Ms. Pruitt or are we still
24 getting ready?

25 THE COURT: We're getting ready to start with the trial

1 of the case. I gave Mr. Barnette an opportunity to look at
2 the cases that we went over this morning before we argue
3 that point.

4 MR. SHEALY: Yes, sir.

5 THE COURT: So now we're gonna start back with the
6 trial of the case.

7 MR. SHEALY: With the trial of the case. Good.

8 SOLICITOR BARNETTE: Okay. Do we need to argue -- when
9 do you want to argue that point, Your Honor?

10 I'm sorry. I didn't know.

11 THE COURT: Well, I don't know. Whenever you're ready.
12 I want to give -- I'd give you some cases this morning that
13 I had looked at.

14 SOLICITOR BARNETTE: Okay. I understand, Your Honor.

15 THE COURT: And, and you said you wanted some -- you
16 wanted the opportunity to review them. So, I'm giving you
17 that opportunity now. We can revisit it whenever you want,
18 whenever you're ready. I'm ready.

19 SOLICITOR BARNETTE: Okay.

20 THE COURT: I don't know if you've had a chance to look
21 at those things I gave you or not.

22 SOLICITOR BARNETTE: I did. I did, Your Honor.

23 If I could -- I'll go ahead and argue them now --

24 THE COURT: All right. Let's do that then. That's
25 fine.

1 SOLICITOR BARNETTE: -- from there.

2 Your Honor, I did look at the three cases that was
3 provided to me by the Court, and I appreciate the time to
4 look at that, Your Honor. I would argue The State versus
5 Rivers, Your Honor, 273 SC 75, Your Honor. It was a very
6 unusual fact pattern.

7 Basically it called the wife in the case to show that
8 she had rough sex with him, and that's part of what they
9 used to try to prove the CSC from there, and I'd say that's
10 definitely different from what he have here. It wouldn't --
11 I understand the -- I'm not saying it's bad law or anything.
12 I just think the fact pattern is totally different from what
13 we have here. So, that's, that's -- that distinguish that
14 one from that point, Your Honor.

15 I was looking at The State versus Daniels one, Your
16 Honor, and I noticed -- and I don't know what -- it's not
17 under the Headnote 5, 6, or whatever. It said the Trial
18 Court, in the prosecution, took limited, took care to limit
19 Ms. Nick's testimony, but then it says, but in considering
20 the inference from Ms. Nick's testimony that she was robbed
21 by the defendant there was no error. Evidence of another
22 crime is competent to prove specific crime charged when it
23 tends to establish identity, and that's State versus Thomas
24 248 SC 573. It's a 1966 case, and that's what I would argue
25 in this case, Your Honor, in the situation.

1 It's being -- tending to show that crime or show the
2 specific crime in that case. I think it's differential -- I
3 mean it's very similar. They said they limited it, but
4 still they could see the inference was from the testimony
5 that she was robbed by the defendant and there was no error,
6 and that's what was cited in the case, Your Honor. I'd ask
7 the Court take a look at that.

8 And then State versus Wilson, Your Honor, it was a
9 three month period concerning that, Your Honor. It involved
10 a CSC type situation from there if I understand it from
11 there. They did talk about different similarities or
12 whatever, and they talk about the timeframe. But the
13 timeframe here is six weeks. It's not three months. It's
14 from the standpoint there is connection, I think, if you
15 listen to where she said it happened -- both of these
16 happened in public places. Both of them, attacks from the
17 back. I know they're gonna argue that he didn't have a
18 weapon on the first one, but, to me, we don't know if we
19 ever got to that point because obviously, the one that
20 happened in December, the victim had a knife.

21 Both times, when he faced resistance, he ran away in
22 those cases. Both times he attacked on the side where the
23 purse was. I guess it's the left side on one, right side on
24 the other. But it's where the purses was on both cases and
25 that would be part of the argument was I think this is

1 basically he wanted to rob the person and both of them
2 continued on to a different style than what he thought they
3 were gonna happen on both of them.

4 I know they're gonna argue about the scar. Obviously
5 she testified it was a mark on his hand. It could of been
6 permanent. It could not of been permanent from that
7 standpoint. But I feel like there's enough connection here
8 to submit this as a prior bad act from the identity in this
9 case.

10 That would be my argument, Your Honor.

11 THE COURT: Yes, sir, Mr. Shealy.

12 MR. SHEALY: Thank you, Your Honor.

13 Your Honor, first, as to the clear and convincing
14 evidence, again, she said the scar. He has no scar. I mean
15 I -- the written statement says a scar, and now they're
16 walking that back saying that well, the police officer told
17 him---

18 THE COURT: well---

19 MR. SHEALY: ---to put something else in the statement.

20 THE COURT: well, the testimony she said was that she
21 saw some type of mark and she characterized it as a scar.
22 But it -- I think her testimony was it could of been a
23 scratch. It could of been a bruise. It could of been some
24 other type of mark other than a scar.

25 MR. SHEALY: Yes, sir, but---

1 THE COURT: That's the testimony today.

2 MR. SHEALY: But, again, I would point out that
3 everybody seems to be the fact---

4 THE COURT: The statement -- apparently the statement
5 did say scar.

6 MR. SHEALY: Scar, yes, ma'am. Yes, sir.

7 THE COURT: I understand that.

8 MR. SHEALY: Now, as to this similarities, the, the --
9 they simply aren't similar. It's got to be much more
10 distinct than simply generic he was -- she was attacked from
11 behind. They have to be so logically connected that his
12 identification in the December 10th incident is somehow
13 necessary for the identification in this, this incident.

14 They need to be distinct. Otherwise, you know, we can
15 just use any robbery cause that's what they're saying is
16 this just happened as any other robbery happened. Grabbed a
17 purse, they struggled over the purse, swung a knife at him,
18 and he ran away. That's a generic run of the mill robbery.
19 That -- that's -- we see those everyday.

20 That robbery is completely different from the
21 allegations made here, and I'm not sure that Ms. Pruitt is
22 testified as to that in this hearing. She did testify at a
23 previous hearing. So, I think, I think you've, at least,
24 heard her versions of events, maybe not for this purpose,
25 but you've heard her version of events, that the attack at

1 issue with Ms. Pruitt is there was an initial stabbing.
2 Well, there was a pulling on the coat, an initial stabbing,
3 pushing into the wall, some grabbing the breasts and pants.

4 That's completely different from what we've heard from
5 Ms. Smith. Completely different. That it happened on her
6 right side, well, if you come up from behind somebody and
7 you're right-handed, that's where you're going to come at
8 them. So, we -- it's any right-handed person would,
9 generally speaking, attack from the right side.

10 It's, it's simply not -- it's not probative of
11 anything, this December 10th incident. It's not probative
12 of anything. Instead, it's -- but it is very prejudicial.
13 Obviously, there's -- they're going to say well, he was a
14 robber back then and he's a robber now, and that's what
15 404(b), the first sentence, is suppose to stop.

16 We're not suppose to be able to use character evidence
17 because, in this country, we don't think that that's good
18 evidence, that you have to be able to prove that my client
19 committed this crime in particular, and the December 10th
20 incident simply doesn't, doesn't help.

21 And, again, the State is called -- has handed up some
22 cases, State versus Beck, Your Honor. There was a short
23 period of time between them, and the same thing with State
24 versus Aiken. Again, I would point out that this is six
25 weeks, which is much closer---

1 THE COURT: Well, in State versus Beck there was also
2 physical evidence that tied both crimes together. The
3 physical crime -- evidence that tied the, the crimes was
4 attack on escorts.

5 MR. SHEALY: Yes, sir.

6 THE COURT: And they're -- the same weapons were used
7 or weapons that belonged to the roommate of the, the
8 defendant, and a pair of boots was used in both crimes
9 because the first victim identified the boots. The blood of
10 the second victim was found on the boots, and the boots were
11 found in the possession of the roommate of the defendant,
12 and were turned over to the police. So, that piece of
13 physical evidence ran through all of the events --

14 MR. SHEALY: As did---

15 THE COURT: -- as well as the weapons. The weapons ran
16 through all the, the event of the first event, the second
17 event, and being recovered in the possession of the
18 defendant or in his home where he lived.

19 MR. SHEALY: Yes, sir.

20 THE COURT: So, in Beck there was, there was something
21 that tied all the events together that would identify
22 possibly a person as being involved in both events.

23 MR. SHEALY: It did, Your Honor, and, again, if I may,
24 I believe the State's going to argue well, we've got this
25 identification of the boots. Well, we don't have the boots.

1 THE COURT: Well, we didn't have the identification of
2 the boots in the second, in the second incident.

3 MR. SHEALY: We didn't. We didn't. But, again, I
4 expect that Mr. Barnette's gonna stand up and argue about
5 that, but these, these boots, we don't have them, and there
6 isn't any other physical evidence tying my client to this,
7 and there is a pretty long period of time between the one
8 incident and the other incident.

9 THE COURT: Well, the Supreme Court doesn't -- you
10 know, the time thing doesn't seem to bother them too much in
11 some cases. It bothers them in other cases. I don't know
12 why that is other than every case is unique.

13 MR. SHEALY: Yes, sir, and, again, I would argue the
14 similarities. So, even, in my opinion, using the tests that
15 the State has asked you to use, it doesn't come in. I would
16 agree with you that there's got to be a higher level of
17 distinction to make identity rather than common scheme or
18 plan. I don't think they can make common scheme or plan
19 here. I certainly don't think---

20 THE COURT: That hasn't been argued.

21 MR. SHEALY: No, sir, and I don't think they can
22 make -- certainly don't think they can make identity.

23 Thank you.

24 THE COURT: Anything further, Mr. Barnette?

25 SOLICITOR BARNETTE: Your Honor, in -- and he's right,

1 I'm gonna mention the boots again.

2 THE COURT: Yeah.

3 SOLICITOR BARNETTE: Obviously they were identified. I
4 know the Court heard that testimony --

5 THE COURT: Yeah.

6 SOLICITOR BARNETTE: -- from there and I don't think
7 there's---

8 THE COURT: Well, I just didn't hear anything,
9 Mr. Barnette, that would have indicated that, in the second
10 event, that, the one that we're trying, that there was any
11 identification of the boots in that event there's -- being
12 present at that particular occurrence. I think that
13 evidence goes toward the fact, the clear and convincing
14 evidence, that he may of been involved in the first
15 occurrence. I'd agree with that. It is relevant for that
16 point.

17 All right. In, in deciding whether to admit Lyle
18 evidence for the purposes of identity, the Court has
19 determined that there is a, a -- it appears to be a three
20 step analysis.

21 First of all, for the Court to consider it, there must
22 be clear and convincing evidence that the defendant in this
23 case was involved in the prior bad act and the Court finds
24 that the State has established that.

25 I find that the identification made by the victim in

1 the first incident was done using three different lineups.
2 She didn't identify anybody in the first two and the third
3 one she did. Also, she was able to identify the boots that
4 the perpetrators used, and that the defendant was arrested,
5 at the time of his arrest, was wearing the boots that she
6 identified as the same boots.

7 So, I find that, by clear and convincing evidence,
8 that, that the State -- and that's not as high as beyond a
9 reasonable doubt. But that is evidence that would -- that
10 the Court would find would be sufficient to show that the
11 defendant may have been involved or was involved in the
12 first incident.

13 Now, the second question concerning -- is that the,
14 that the crimes involved were similar. I think the language
15 used in Beck is that the bad act must logically relate to
16 the crime with which the defendant has been charged. But to
17 go further than that, there were cases prior to that where
18 they said that, when evidence is used for this purpose, that
19 is identification purposes, the Court has said that the
20 method of the crime must be so distinct that it would be
21 highly improbable that anyone else could have committed the
22 crime, and that's language that it was used in State versus
23 Rivers, State versus -- and State versus Wilson, and I
24 believe there's a Daniels case that was also cited and a
25 Weldon case that's also been cited, State versus Daniels,

1 and State versus Weldon.

2 I didn't see that language in Beck. Beck was a later
3 case. It said, again, that the bad act must logically
4 relate to the crime with which the defendant has been
5 charged. But, in Beck, this -- the language -- the evidence
6 on this point was so strong. As I indicated, there was a
7 pair of boots that was identified throughout both crimes and
8 found in the possession of the defendant. In other words,
9 identified in both events and the weapons were identified in
10 both events then found in, in a place where it was in the
11 possession of the defendant. Plus there was testimony that
12 the defendant had announced to a person, prior to all this
13 happening, a common scheme, a plan to do this.

14 So, you get into the element then of the Lyle exception
15 of a common plan or scheme that's in Beck that's not in this
16 case. We don't have any evidence of a plan or a scheme or
17 anything of that nature. So, that doesn't exist in this
18 case either.

19 So, I'm gonna find that the evidence that would, would
20 establish the identity of the defendant as the one who
21 committed the crime that we're trying is, is not sufficient
22 to meet the test that would allow Lyle evidence to come in,
23 and that is that the, the evidence that's been presented for
24 this purpose, I believe it's not so distinct that it would
25 be highly improbable that anyone else could not have

1 committed the crime. So, I don't believe it's reached that
2 point.

3 I don't think that they logically relate to each other.
4 There are, as the defense pointed out, there was the sexual
5 aspect of the, of one attack that didn't exist in the other.
6 There was a weapon used in one attack that didn't exist in
7 the other. One was in the morning. One was in the evening.
8 One was inside of a building. One was in the public.

9 There's a lot of factors that don't make these crimes
10 mesh closely enough that I find that it would identify the
11 defendant in the second event that we're trying here.

12 So, having said that, we won't get to the 403 analysis.
13 But given the strength of the evidence on the second point,
14 if I did the 403 analysis, it would be that the probative
15 value is not there. Therefore, the prejudicial effect would
16 outweigh the probative value, and I'll exclude the evidence.

17 All right. Anything further on that point,
18 Mr. Barnette?

19 SOLICITOR BARNETTE: No, sir. Thank you.

20 THE COURT: From the defense?

21 MR. SHEALY: None, Your Honor.

22 THE COURT: Okay. Now are we ready to begin the
23 testimony in the case?

24 SOLICITOR BARNETTE: Yes, sir, if I can let the witness
25 go, Ms. Smith?

1 THE COURT: Yes, sir, you can release her if you'd
2 like.

3 All right. Ma'am, you were on the stand. You need to
4 resume the stand please, ma'am. Come on up and have a seat
5 please.

6 (Witness complies.)

7 THE COURT: Thank you.

8 All right. State ready to proceed?

9 SOLICITOR BARNETTE: State's ready, Your Honor.

10 THE COURT: Defense ready?

11 MR. SHEALY: It is, Your Honor.

12 THE COURT: All right. Let's bring the jury in.

13 (WHEREUPON, the following takes place within the
14 presence of the jury.)

15 THE COURT: All right. The record will reflect the
16 jury's return to the courtroom.

17 If anyone had any difficulty in complying with my
18 instructions during your absence from the courthouse, please
19 stand.

20 (No response.)

21 THE COURT: It appears that all jurors have been able
22 to comply with my instructions. I want to thank you for
23 your patience this morning.

24 We actually started before you folks started. We were
25 here at nine o'clock. We've been dealing with some issues

1 that we needed to deal with outside of your presence. I
2 mentioned that we might have those kind of issues. So,
3 we've been dealing with those and we've completed that
4 process and we're now in a position to start the testimony
5 in this case.

6 This is the State's first witness.

7 Mr. Barnette, your witness.

8 I'll remind the witness that she remains under oath at
9 this time.

10 Do you acknowledge that, ma'am?

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you.

13 All right. You may proceed, Mr. Barnette.

14 SOLICITOR BARNETTE: May it please the Court, Your
15 Honor.

16 D.P. having been
17 previously sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q Ms. Pruitt, if you would, state your full name again
21 please.

22 A D.P.

23 Q Ms. Pruitt, back on January 24th, 2013, where do you
24 work at, ma'am, or where did you work at?

25 A I worked at Carolina OB-GYN on the west side.

D.P. - Direct examination
by Solicitor Barnette

1 Q I know this is tough. I'm gonna have to ask you to
2 speak a little bit louder if you can.

3 A Okay. I worked at Carolina---

4 THE COURT: And if you'd move a little closer to the
5 microphone.

6 THE WITNESS: Sure.

7 THE COURT: That might help -- move it closer to you.
8 I don't know which would be better.

9 A Okay. I worked at Carolina OB-GYN at the west side
10 office.

11 THE COURT: Thank you. That's very good.

12 Q Okay. Thank you, ma'am.

13 And what was your position there, ma'am?

14 A I was nurse manager at that time.

15 Q And how long had you worked for Carolina OB-GYN, ma'am?

16 A Off and on, close to 30 years.

17 Q Okay. And do they have two locations?

18 A They do.

19 Q And where, where is the two locations at, ma'am?

20 A One's on the Reidville Road. That's what we call the
21 west side office. The other one is at the east side. It's
22 at the Mary Black building, The Pavilion.

23 Q And had you just taken the position there at the west
24 side one off Reidville Road there?

25 A I did.

D.P. - Direct examination
by Solicitor Barnette

1 Q Okay. And what was your duties there at the, at the
2 office there?

3 A It was -- well, making sure that the patients flow
4 well, taking calls for the patients if I had to, helping to
5 order things and equipment. You know, making sure that they
6 were maintained.

7 (WHEREUPON, a map was marked as State's Exhibit No. 13
8 for identification purposes only at this time.)

9 Q Let me show, if I can, just show the location of this.
10 It's been marked as State Exhibit 13. I'll share this
11 with defense, Your Honor.

12 MR. SHEALY: I have no objection.

13 THE COURT: All right. Then -- without objection then,
14 it will be admitted as it's been marked.

15 (WHEREUPON, State's Exhibit No. 13 was received into
16 evidence at this time.)

17 THE COURT: You may publish it or show it to the jury.

18 SOLICITOR BARNETTE: Okay. Thank you, sir.

19 Let me see if I can do this on the overhead for the
20 jury.

21 Just to show the location here, ma'am, to the jury,
22 this is I-26, is that right, ma'am?

23 A Yes.

24 Q And this is Reidville Road --

25 A Yes, sir.

D.P. - Direct examination
by Solicitor Barnette

1 Q -- coming this way?

2 A Uh-huh. (Affirmative).

3 Q And I believe there's a Denny's here, there's a Bi-Lo,
4 and then y'all are out probably about -- a little bit over a
5 mile from the I-26 intersection, is that right, ma'am?

6 A That's correct.

7 Q Okay. And that's the location of the Mary Black?

8 I guess it's called Mary Black Urgent Care at times
9 too?

10 A It's just -- yeah, the Urgent Care is there.

11 Q Okay. Thank you, ma'am.

12 On the morning of January 24th of 2013, ma'am, did
13 you go into work early that day?

14 A I did.

15 Q And why did you go into work early that day?

16 A I was meeting a maintenance man for one of our machines
17 that were broke.

18 Q Okay. And what did you drive that day, ma'am?

19 A I drove my -- I have a Jeep Cherokee and that's what I
20 drove.

21 Q Okay. And what was you wearing that day, ma'am?

22 A I had on my scrubs. It was really cold that morning,
23 in the twenties. So, I had on my scrubs and I had on a
24 corduroy jacket and I wore my gloves.

25 Q Okay. Let me just show you -- I know you had your

D.P. - Direct examination
by SOLICITOR Barnette

1 scrubs on and everything. Let me just show you State
2 Exhibit -- let Ms. Green mark this for me.

3 (WHEREUPON, eleven photographs were marked as State's
4 Exhibit Nos. 14 through 24. A video was marked as State's
5 Exhibit No. 25. A SLED report was marked as State's Exhibit
6 No. 26. Another photograph was marked as State's Exhibit
7 No. 27. A jacket was marked as State's Exhibit No. 28. All
8 of the above exhibits were marked for identification
9 purposes only at this time.)

10 Q Let me show this to you, ma'am. This is State Exhibit
11 28.

12 Was this the actual jacket you were wearing that day,
13 ma'am?

14 A Yes, sir.

15 Q Okay. And you had your scrubs and I believe -- did you
16 have a sweater underneath this too or anything---

17 A No, I didn't have a sweater, wore a sweater. I might
18 of had my lab coat, but I'm, I'm not sure.

19 Q I got you.

20 But you had your scrubs underneath this, is that right?

21 A I did, and a long sleeve under my scrubs.

22 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
23 enter State's Exhibit 28 into evidence at this time.

24 MR. SHEALY: No objection, Your Honor.

25 THE COURT: Without objection it will be admitted as

D.P. - Direct examination
by SOLICITOR Barnette

1 it's been marked.

2 (WHEREUPON, State's Exhibit No. 28 was received into
3 evidence at this time.)

4 THE COURT: You may proceed, Mr. Barnette.

5 SOLICITOR BARNETTE: Okay. Thank you, sir.

6 Ma'am, what time did you arrive in the parking lot
7 there at, at Mary Black?

8 A It was about five after 7:00.

9 Q And, if you would, tell the jury what happened as you
10 got out of your car and went to the building.

11 A Okay. When I got out of the car I just walked up like
12 I normally did to the, to the door to go into the building.
13 And when I opened the door I felt a tug on my coat, and I
14 turned around to -- cause I thought it was somebody might,
15 maybe needing directions or assistance. And when I turned
16 around I was stabbed on the right shoulder with a -- it was
17 a screwdriver. I didn't realize it at the time. I didn't
18 know what it was, and it startled me so.

19 And then, at that point, he had, he had touched my
20 breast. Now, I don't know where my pocketbook got to. He
21 pushed me up against the -- it was in an area like a foyer
22 where -- in the glass partition, and he pushed me up against
23 that glass, and when I, you know, it was, you know, a real
24 good push, and I hit my back, and I hit the back of my head
25 a little and I slid on down.

D.P. - Direct examination
by Solicitor Barnette

1 And as I slid on down I was laying on the floor. My
2 head was still a little, you know, a little bit on the
3 glass. But he came down and he was trying to pull my pants
4 down. He tugged at the, the hem, you know, the top of my
5 pants, and, at that time, I knew something else was going on
6 other than just a robbery.

7 I started kicking and I, I kept kicking him, and then
8 he stabbed me on the right side under my rib, and that was
9 about -- that's about the last thing that I knew.

10 I saw him. He got out of the door and he ran --
11 there's a field and he ran into that field, and I don't know
12 how long that I laid there. An elderly man came in and then
13 an elderly woman, and the woman called 9-1-1. And the man,
14 I asked him, I said, did you see anybody, a man, you know, a
15 man, a white man, and he went around to look and he said he
16 didn't see anybody. So, I don't know where, you know, where
17 he got to, but that's what happened to me.

18 Q Okay. Ma'am, how close was he to you when this attack
19 occurred?

20 I mean---

21 A About---

22 Q Let me go back.

23 which -- where did -- where was your purse at when you
24 was going into the office building?

25 A I believe my purse was on the other side of the corner

D.P. - Direct examination
by Solicitor Barnette

1 on the other side.

2 Q Okay. And did he have anything on his hands?

3 A He had gloves.

4 Q Okay. And when he approached you and grabbed you on
5 the right side, where was your purse at when he grabbed,
6 tugged on the back of your --?

7 A It was on my right arm.

8 Q So, your purse was there on the right arm?

9 A Yes.

10 Q And then you got attacked in the right shoulder, is
11 that right---

12 A That's correct.

13 Q ---first?

14 Okay. If I can show you real quick.

15 May I approach the witness, Your Honor?

16 THE COURT: You may.

17 Q Let me show you State Exhibit 27, ma'am.

18 A That's, that's---

19 Q Is that a fair, a fair representation of the area?

20 A Yes, sir, it is.

21 Q Okay. Now, this was taken afterwards, is that right,
22 ma'am?

23 This was not taken the day of?

24 This is, this is a fair representation---

25 A That is, uh-huh. (Affirmative).

D.P. - Direct examination
by SOLICITOR Barnette

1 Q ---of the area?

2 Your Honor, I'd like to enter State Exhibit 27 into
3 evidence at this time.

4 THE COURT: Any objection?

5 MR. SHEALY: None.

6 THE COURT: Without objection, it will be admitted as
7 marked.

8 (WHEREUPON, State's Exhibit No. 27 was received into
9 evidence at this time.)

10 THE COURT: You may show it to the jury or publish it.

11 SOLICITOR BARNETTE: And it might be better too if I go
12 ahead and enter one other picture before that.

13 (WHEREUPON, two photographs were marked as State's
14 Exhibit Nos. 29 for identification purposes only at this
15 time.)

16 SOLICITOR BARNETTE: May I approach the witness on this
17 one, Your Honor?

18 THE COURT: You may, yes, sir.

19 Q This is State Exhibit 29, ma'am.

20 Does that -- this did occur -- this was from the day
21 of.

22 Do those pictures fairly represent what you saw that
23 day?

24 A Yes, sir.

25 SOLICITOR BARNETTE: Your Honor, I'd like to enter

D.P. - Direct examination
by Solicitor Barnette

1 State's Exhibit 29 into evidence. It consists of four
2 pictures.

3 MR. SHEALY: No objection.

4 THE COURT: Without objection, it will be admitted as
5 marked.

6 (WHEREUPON, State's Exhibit No. 29 was received into
7 evidence at this time.)

8 THE COURT: You may publish to the jury.

9 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

10 Showing this to you, ma'am, this may make it easier for
11 the jury to understand the way it looked.

12 Is this the first door you go into the building?

13 A Yes, sir.

14 Q And you actually walk in and there's like a room, and I
15 call it a room, but like a space, and then there's a second
16 glass door, is that right---

17 A That's correct.

18 Q ---before you go into the lobby?

19 So, this is actually the first door---

20 A Yes, sir.

21 Q ---that you went in?

22 Yes, ma'am.

23 And actually we -- this is the pictures through the
24 first door going into the -- that's the second door we
25 actually see there, is that right?

D.P. - Direct examination
by Solicitor Barnette

- 1 A That's correct.
- 2 Q And this is the area that you were talking about?
- 3 A Yes.
- 4 Q Okay. If you would, show the jury where you winded up
- 5 at, ma'am.
- 6 If you would, just press that red button there if you
- 7 can.
- 8 A Now we're in the --?
- 9 Q We're going through the first door going towards the
- 10 second door.
- 11 A I ended up over --.
- 12 Q In that area, ma'am?
- 13 A Yes, sir.
- 14 Q And where was your purse?
- 15 where did your purse wind up?
- 16 A It was over there.
- 17 Q Over there at the other corner like catty-cornered away
- 18 from there?
- 19 A The back corner, yes, sir.
- 20 Q Okay. And what did you see about his face, ma'am?
- 21 A I'm sorry?
- 22 Q Did you -- and you saw his face and did you give a
- 23 description of his face to, to---
- 24 A Yes.
- 25 Q ---law enforcement?

D.P. - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q And you said he was a white male?

3 A He was a white male. He was around six feet cause I
4 remember I had to look up to him. What I saw was that he
5 had bad teeth, and he had, you know, a scruffy face with,
6 with a beard and a mustache, and his hair was kind of
7 longish, but he had a hoodie over it, a gray hoodie, and
8 that's what I saw.

9 Q And do you remember something fluffy against you,
10 against you during this time also---

11 A Yes, sir.

12 Q ---when you---

13 A Yes, sir, I thought it was another coat that he had on.

14 Q Okay. And you gave that description to law
15 enforcement, is that right?

16 A Yes, sir, I did.

17 Q And, later on, did the nurses from your office come
18 down to help you afterwards?

19 A Yes, sir, they did.

20 Q Okay. And was you taken to the hospital, ma'am?

21 A I was.

22 Q And was you treated at the hospital, ma'am?

23 A Yes, sir, I was.

24 Q I hate showing you these pictures, ma'am, but I'd like
25 to show you State Exhibit 14, 15, 16, and 17.

D.P. - Direct examination
by SOLICITOR Barnette

1 Do these pictures fairly represent the wounds that you
2 had afterwards or the injuries?

3 MR. SHEALY: Your Honor, I may have a motion about
4 these.

5 THE COURT: Have you seen the photos?

6 MR. SHEALY: I believe I have.

7 THE COURT: Okay.

8 MR. SHEALY: But I don't know which ones specifically
9 those are.

10 THE COURT: Well, why don't you show him so he knows---

11 A That's correct.

12 THE COURT: ---exactly what we're talking about.

13 THE WITNESS: These are correct.

14 SOLICITOR BARNETTE: I thought he had seen them before,
15 Your Honor. I apologize.

16 THE COURT: I'm sorry.

17 Did the witness identify those photos as showing the
18 wounds?

19 THE WITNESS: Yes, sir.

20 THE COURT: Is that correct, ma'am?

21 THE WITNESS: Yes, sir.

22 THE COURT: All right. I didn't hear what you said.
23 I'm sorry.

24 MR. SHEALY: I don't have any objection.

25 THE COURT: So you know what we're talking about now?

D.P. - Direct examination
by Solicitor Barnette

1 MR. SHEALY: I do.

2 THE COURT: Are there, are there gonna be objections to
3 those?

4 MR. SHEALY: No, sir.

5 THE COURT: All right. Without objections the, they'll
6 be admitted as they've been marked.

7 (WHEREUPON, State's Exhibit Nos. 14 through 17 were
8 received into evidence at this time.)

9 THE COURT: You may publish those to the jury.

10 SOLICITOR BARNETTE: Thank you, Your Honor.

11 Q Let me show you State Exhibit 14, ma'am.

12 Okay. Ma'am, in looking at the pictures and
13 everything, was this where the area that the shoulder --
14 where he attacked you on the shoulder area, ma'am?

15 A Yes, sir.

16 Q And showing you State Exhibit 15, ma'am, was that the
17 marks that was left from the stabbing?

18 A Yes, sir.

19 Q And then -- and that's one reason I wanted to show the
20 coat.

21 You had your coat over there when he was trying to stab
22 you through it, is that right, ma'am?

23 A Yes, sir.

24 Q Showing you State Exhibit 16.

25 Was these -- was that the marks that was left from the

D.P. - Direct examination
by Solicitor Barnette

1 stabbing on your side, ma'am?

2 A Yes, sir.

3 Q Showing you State Exhibit 17.

4 was those the marks, close-up of those marks on your
5 side, ma'am?

6 A Yes, sir.

7 Q All right. Later on that day -- did you get to go
8 home, ma'am?

9 A That -- yes, I got to go home.

10 Q And later on did the Sheriff's Department come see you,
11 ma'am?

12 A Yes, sir, they did.

13 Q And did they bring you a lineup?

14 A They did, yes, sir.

15 MR. SHEALY: Your Honor, I'm gonna go ahead and object
16 to this just based on my prior objections.

17 THE COURT: Prior objections is noted. The Court will
18 make the same ruling. Of course, you reserve the right to
19 object to any differences in testimony that might occur.

20 MR. SHEALY: Yes, sir.

21 THE COURT: You may proceed, Mr. Barnette.

22 SOLICITOR BARNETTE: Thank you, Your Honor.

23 I believe these are, together, will be State Exhibit 3,
24 Your Honor, which is the affidavit and the lineup, Your
25 Honor.

D.P. - Direct examination
by Solicitor Barnette

1 If you would, ma'am, was you shown that lineup by law
2 enforcement, ma'am?

3 A Yes, sir.

4 Q And when they showed you the lineup, did they suggest
5 anything or tell you anybody was in this lineup?

6 A No, sir, they didn't.

7 Q What did they do when---

8 A They just asked me if I could identify anyone on -- in
9 the lineup and I, and I could.

10 Q Yeah.

11 And did you see the person that, that did this to you
12 earlier that day?

13 A Yes, sir.

14 Q And did you identify that person?

15 A Yes, sir, I did.

16 Q Did you circle who that person was?

17 A Yes, sir, I did and I initialed it.

18 Q Okay. And did you also do an affidavit stating
19 basically -- I know it's very short.

20 But did you sign the affidavit or fill out the
21 affidavit and then sign it?

22 A Yes, sir, I did.

23 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
24 enter State Exhibit No. 3 as a joint exhibit.

25 THE COURT: Subject to your prior objections?

D.P. - Direct examination
by Solicitor Barnette

1 MR. SHEALY: Yes, sir.

2 THE COURT: Any other objections?

3 MR. SHEALY: No, sir, Your Honor.

4 THE COURT: All right. The Court will make the same
5 ruling. It will be admitted as marked.

6 (WHEREUPON, State's Exhibit No. 3 was received into
7 evidence at this time.)

8 THE COURT: You may proceed---

9 SOLICITOR BARNETTE: Thank you, Your Honor.

10 THE COURT: ---and publish.

11 Q And, ma'am, there's no question in your mind that was
12 the man that attacked you this day?

13 A There's none at -- doubt in my mind. That was him.

14 Q Okay. And that's the reason why you identified him as
15 that person and that's who -- the person that you saw that
16 morning?

17 A Yes, sir.

18 Q And then showing the other part of it, and that was the
19 statement you gave to law enforcement, is that right, ma'am
20 concerning the---

21 A Yes.

22 Q ---the lineup?

23 A Yes, sir.

24 Q And that was done on the same day that the, the attack
25 occurred, is that right, ma'am?

D.P. - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q Now, when you saw him he had longer hair, is that
3 right---

4 A Yes, sir.

5 Q ---that morning?

6 But he had the -- like I said---

7 A The facial hair, yes.

8 Q The facial from that---

9 A Scruffy. Scruffy.

10 Q Same as that.

11 And, obviously, in this picture, he didn't have any?

12 I mean the hair was shorter obviously?

13 A Yes, sir.

14 Q Okay. And matter of fact, you see the person today
15 that attacked you?

16 A Yes, sir.

17 Q Can you identify him here in Court, ma'am?

18 A He has a blue shirt on with a blue tie.

19 SOLICITOR BARNETTE: Your Honor, I'd like for it to
20 show that she identified the defendant in this case.

21 THE COURT: The record shall so reflect.

22 You may proceed.

23 Q Yes, ma'am.

24 Did he look different today?

25 A Yes, sir, he does.

D.P. - Direct examination
by Solicitor Barnette

1 Q And matter of fact, let me show you -- go ahead and
2 mark that too.

3 (WHEREUPON, a photograph was marked as State's Exhibit
4 No. 30 for identification purposes only at this time.)

5 Q Let me approach you.

6 This has been marked for State Exhibit 30, ma'am.

7 Is that the person that you saw attack you that day,
8 ma'am?

9 A Yes, sir.

10 Q And the jacket, was that the fluffy thing that you felt
11 that too on you concerning that?

12 A Yes, sir.

13 SOLICITOR BARNETTE: Your Honor, I'd like to move State
14 Exhibit 30 into evidence at this time. It consists of four
15 pictures.

16 THE COURT: Any objections?

17 MR. SHEALY: No objection, Your Honor.

18 THE COURT: Without objections it will be admitted as
19 it's been marked.

20 (WHEREUPON, State's Exhibit No. 30 was received into
21 evidence at this time.)

22 THE COURT: You may publish the photo, photos. I
23 believe they're several.

24 Q And this is the man that attacked you that day, is that
25 right, ma'am?

D.P. - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q And like you say, the hair is shorter, is that right,
3 than what you saw that day?

4 A Yes, sir.

5 Q So, he actually had longer hair?

6 A Yes, sir, when I saw him, yes.

7 Q But the same facial hair, the same mustache like you
8 said, hair---

9 A Yes, sir.

10 Q ---right there in that case?

11 Let me go back here, ma'am, to this other picture too.

12 Going back to State Exhibit 29. It's already been
13 entered into evidence, and I believe the other -- we've got
14 other people to testify, but was that the screwdriver that
15 you learned later that he used to stab you with?

16 A Yes, sir.

17 Q And I believe somebody put a chair over the top of it,
18 is that right?

19 A I---

20 Q I don't know if you know that or not.

21 A I don't, I don't know.

22 Q You may be---

23 A Yeah.

24 Q You may be gone by the time that happened, but --.

25 A I probably was or they were working on me or --.

D.P. - Direct examination
by Solicitor Barnette

1 Q Showing you State Exhibit 3 and State Exhibit 30,
2 ma'am.

3 Was that the man that attacked you that day, ma'am?

4 A Yes, sir.

5 Q And, like I say, really the major difference is his
6 hair was shorter in these pictures than it was that day?

7 A That's -- he had a haircut. I mean, when I saw him, it
8 was longer.

9 Q Yes, ma'am.

10 One moment, Your Honor, please.

11 THE COURT: Yes, sir.

12 (Pause.)

13 Q Just one follow-up question just to make sure.

14 After the attack, did you lay there for a period of
15 time in shock from what happened to you, ma'am?

16 A Yes, sir, I -- yeah.

17 Q You don't know how long you laid there?

18 A I do not. I don't.

19 Q And let me ask you this question.

20 where does most of the employees come into the office
21 at?

22 A They go into the back-door.

23 Q And why didn't you go in the back-door?

24 A Well, I didn't have a code at that time.

25 Q So, it's like a press key to go in?

D.P. - Direct examination
by Solicitor Barnette

1 A Press key, yes, sir, and I didn't have the code to go
2 in and I just parked around the front and went in that door.

3 Q So, you went in the front door where the patient's
4 usually go through---

5 A Yes, ma'am.

6 Q ---to go in there?

7 What time does y'all's office usually open?

8 A At 8:00.

9 Q 8:00.

10 So, there's not a whole lot of traffic right there---

11 A No.

12 Q ---obviously?

13 A None. There was no traffic going.

14 Q Okay. And obviously somebody came up to you later, but
15 you don't know how long it was after that?

16 A I don't. I do not.

17 Q Thank you, ma'am. Please answer any questions that
18 Mr. Shealy may have for you.

19 THE COURT: Mr. Shealy, your witness.

20 MR. SHEALY: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. SHEALY:

24 Q All right, Ms. Pruitt. You testified you went in
25 through the front -- I guess the front door, is that

D.P. - Cross-examination
by Mr. Shealy

1 correct?

2 A sir?

3 Q Yes, ma'am.

4 Is, is it correct that you testified that you went in
5 through the front door?

6 A That's correct.

7 Q Okay. And the way this thing is laid out, they're
8 actually two entrances, right, at least that's the way it
9 looks?

10 A That's correct. You go in one door and then go in
11 another door to get into the building.

12 Q Okay. But is there a way to get -- there's a -- one
13 entrance and is there a second entrance on the other end?

14 A That is to the minor care, Urgent Care.

15 Q That's to the -- okay. So, so that's Urgent Care?
16 So, that's a different---

17 A That's correct.

18 Q ---group?

19 okay. And you've testified that those -- if you'll
20 bear with me just one second. Let me find State's Exhibit
21 looks like 29.

22 These doors were unlocked?

23 A That's correct.

24 Q Okay. And, to your knowledge, they're always unlocked?

25 A They've been unlocked ever since, you know, I've been

D.P. - Cross-examination
by Mr. snealy

1 working there to go in.

2 Q Okay. So, to your knowledge, they're -- I mean they --
3 you've never found them to be locked?

4 A Not when I went in that morning that early.

5 Q Well, not just that morning. I mean ever.

6 Have they ever been---

7 A No, never, when I went in.

8 Q Okay. And I'm going to show you State's Exhibit No.
9 27.

10 These are the interior doors, right?

11 A That is the entrance.

12 Q Okay. And -- but this -- these are the, the second set
13 of doors that you have to go in through, correct?

14 A Yes.

15 Q And I believe that's what you've testified to earlier
16 at least?

17 A Yes.

18 Q Okay. And those doors have always been unlocked for
19 you --

20 A Yes.

21 Q -- is that right?

22 Okay. And it looks like the, these windows, at the
23 very least, are clear glass cause we can see the Lila Bridge
24 carpet on the other side of them, is that correct?

25 A That's correct.

D.P. - Cross-examination
by Mr. Snealy

1 Q Okay. I mean what I'm saying is you can see into the
2 building?

3 A Yes.

4 Q Is that right?

5 A Uh-huh. (Affirmative).

6 Q Yeah.

7 So, they're not frosted or --

8 A Oh, no.

9 Q -- tinted or anything like that?

10 A No.

11 Q Okay. All right. You testified you got there early to
12 meet a maintenance man, is that accurate?

13 A That is.

14 Q Okay. Who were you -- do you remember his name?

15 A No, because he was coming to work on a cryo machine and
16 I didn't know what his name was.

17 Q Okay. Why did you have to meet him?

18 Just to let him in, to -- why did you have to meet him?

19 A Well, I was the nurse manager and I always got there
20 early to meet someone if they needed to come in and fix a
21 machine.

22 Q Okay. So, were you gonna unlock their door, the door
23 for them?

24 I mean what were you gonna do when you met with him?

25 A Well, I was gonna unlock the door --

D.P. - Cross-examination
by Mr. Shealy

1 Q Okay.

2 A -- so he can get into the office.

3 Q All right. And then you were gonna just send him over
4 to the cryo machine you said?

5 A Correct.

6 Q And have him work on that?

7 A Right.

8 Q Okay. But you don't remember what his name was?

9 A I did not know his name, no.

10 Q Okay. All right. Now, after this attack happened,
11 you've testified you laid there for some period of time,
12 right?

13 A That's correct.

14 Q Okay. But you have no idea as to how long?

15 A No, sir.

16 Q All right. And you got there you said somewhere around
17 7:05?

18 A That's correct.

19 Q Okay. Then, once the police responded, obviously they
20 asked you a whole bunch of questions, right?

21 A That's correct.

22 Q Okay. And you talked, it looks like, to, if you'll
23 bear with me, one, two, three, four -- it looks like five
24 different officers during the pendency of -- during their
25 investigation.

D.P. - Cross-examination
by Mr. Shealy

- 1 Does that sound about right?
- 2 A I, I don't know.
- 3 Q You don't know?
- 4 A I don't know really the --.
- 5 Q Okay. Well, we'll, we'll walk through them.
- 6 Okay. The initial responding officer who came out
- 7 there was an Officer Swanlund.
- 8 Do you remember him?
- 9 A What was his name?
- 10 Q Swanlund. S-W-A-N-L-U-N-D.
- 11 A Was he a detective?
- 12 Q He wasn't a detective. He was just a regular
- 13 responding officer.
- 14 A I don't remember him.
- 15 Q You don't remember a police officer -- just a regular
- 16 patrol police officer coming out there?
- 17 A No, I do not.
- 18 Q Okay. And you don't remember talking to him?
- 19 A No, I do not.
- 20 Q Okay. All right. Well, do you remember talking to him
- 21 maybe at Spartanburg Regional?
- 22 A I could have. There was one in the room.
- 23 Q Okay. So, you talked to at least one person at
- 24 Spartanburg Regional, is that accurate?
- 25 A That's correct.

D.P. - Cross-examination
by Mr. Shealy

1 Q At least one.

2 Okay. And let's -- again, I guess I have the advantage
3 on you cause I have the incident reports in front of me, but
4 you -- do you remember giving him a description?

5 A Of the gentleman?

6 Q Of the---

7 A The only thing that I remember, I was still at Mary
8 Black, and I was on the stretcher and a detective came and,
9 and he got in my face and he started asking me questions.
10 That's the only one I remember, and I gave him the
11 description at that time.

12 Q Okay. So, you don't remember talking to Officer
13 Swanlund at Spartanburg Regional Medical Center and giving
14 him a description of an unknown white male wearing a gray
15 hoodie, blue jeans, gloves who's 30 to 35 years old?

16 You don't remember telling him that at Spartanburg
17 Regional?

18 A I don't, but I remember that an officer was in the
19 room.

20 Q Okay. You also don't remember telling that officer, at
21 Spartanburg Regional, that the suspect had very bad teeth?

22 A No, I remember telling the detective --

23 Q Okay.

24 A -- who was asking me questions.

25 Q All right. But you don't remember telling the officer

D.P. - Cross-examination
by Mr. Shealy

1 Swanlund all of that---

2 A No.

3 Q ---information?

4 A I mean I don't.

5 Q Okay. And you don't remember leaving out this business
6 about a fluffy coat?

7 A I don't remember. I don't recall.

8 Q You don't recall that.

9 okay. And you don't recall not telling him that --
10 well, at no time telling him that you were laying there for
11 some period of time?

12 A (Witness nods negatively.)

13 Q I mean you, you -- okay.

14 A No, I don't remember.

15 Q Okay. Well, I mean if you don't remember you don't
16 remember.

17 And you also don't remember Officer Fraley responding
18 out to Reidville Road?

19 A No, I do not.

20 Q And I can't tell you if he's a detective or not.

21 A Well, I don't know his name.

22 Q I just know that's he's an officer.

23 A I don't remember his name.

24 Q Okay. And you, you don't -- and, again, I can't tell
25 you if he's the detective you're speaking of or not cause

D.P. - Cross-examination
by Mr. Snealy

1 you don't remember his name, but do you remember giving that
2 officer a description that the suspect was actually 5'9"
3 with a slim build with blonde hair and bad teeth?

4 A I don't remember.

5 Q You don't remember.

6 Okay. You don't remember telling that Officer Fraley
7 that the suspect had on a gray hooded sweatshirt, appeared
8 to be in his thirties?

9 A No, I don't remember that.

10 Q Okay. And, again, leaving out the fact about the
11 fluffy coat?

12 A I don't remember.

13 Q Okay. Again, you don't remember if this is the
14 detective you talked to or not, right?

15 A No.

16 Q Okay. All right. Okay. Now, when they came and
17 brought you this lineup -- let me go find it. Here it is.

18 If you'll bear with me one second.

19 THE COURT: Yes, sir.

20 (Pause.)

21 Q There it is.

22 All right. I'm gonna show you State's Exhibit 3,
23 ma'am. I'm sorry. I'm having a heck of a time putting
24 these things up.

25 Is this the -- this is the lineup that they showed you,

D.P. - Cross-examination
by Mr. Snealy

1 correct?

2 A Yes, sir.

3 Q And it's in black and white?

4 A And there's one -- I'm sorry.

5 Q It was in black and white like this one?

6 A Yes.

7 Q It was not in color, in other words?

8 A No, it was not in color.

9 Q Okay. And you had testified -- well, I don't know that
10 you testified to this.

11 Do you recall, when they brought you this lineup,
12 talking to an Investigator Gary and a Sergeant Hutchins?

13 A Yes, sir.

14 Q Okay. All right. And do you remember talking to
15 Sergeant Hutchins in particular about what happened?

16 A If he was the one that showed me the picture.

17 Q Well, he was apparently not the one that showed you
18 this lineup. He was another officer. The officer who was
19 with Investigator Gary.

20 A Uh-huh. (Affirmative).

21 Q The guy who was with him, do you recall giving him a
22 description of, again, a white male with bad teeth wearing a
23 gray hoodie and gloves?

24 A Yes, sir.

25 Q Okay. But no mention of a fluffy coat?

D.P. - Cross-examination
by Mr. Shealy

1 A No, sir.

2 Q No mention of that.

3 okay. You also remember giving a description of blonde
4 or dirty blonde hair?

5 A I don't remember that.

6 Q You don't remember giving a color for hair?

7 A Hu huh. (Negative).

8 Q Okay. But in any event, you wouldn't have been able to
9 tell what color hair he had here --

10 A No.

11 Q -- right, because it's in black and white?

12 A Correct.

13 Q All right. Now -- and I'm a little confused about your
14 testimony regarding State's Exhibit -- no, it's gonna be
15 over here. State's Exhibit No. 29 here.

16 I'm gonna put this down here, Barry.

17 I guess there's, there's a screwdriver there
18 apparently?

19 Is that what y'all were talking about?

20 A Where the chair was, yes.

21 Q Where the chair was?

22 A Yes.

23 Q Okay. Now, I'm confused by your testimony as to
24 whether you saw it as a screwdriver whenever it was -- you
25 were being attacked or were you told later that he must of

D.P. - Cross-examination
by Mr. Shealy

1 attacked you with a screwdriver cause there it is?

2 A No, I saw the screwdriver.

3 Q You saw the screwdriver?

4 A That's correct.

5 Q Okay. Okay. But you didn't -- now, whenever he left,
6 did you see him put the screwdriver down or throw it down,
7 toss it down, or put---

8 A No, I did not. I closed my eyes.

9 Q Okay.

10 A I did not.

11 Q Sure. That's, that's understandable. I'm just trying
12 to understand the testimony, and I think you testified --
13 and, again, I'm sorry. I don't have fancy pointers and
14 whatnot, but that you---

15 SOLICITOR BARNETTE: You want to use mine if you would,
16 Mr. Shealy?

17 MR. SHEALY: I'll try not to break it.

18 Q You said you were in this area, correct, whenever---

19 A Yes, that's correct.

20 Q All right. And your purse was in this area down in
21 this vicinity?

22 A That I remember, yes, sir.

23 Q Okay. And I guess the doors are about right here,
24 right?

25 A I'm sorry?

D.P. - Cross-examination
by Mr. Snealy

- 1 Q The door to the outside?
- 2 A Uh-huh. (Affirmative).
- 3 Q The door to the outside is about in this area, right?
- 4 It would be right in the middle---
- 5 A Right, that's correct.
- 6 Q ---of this, right?
- 7 So, you come in right here and then the attack would of
- 8 happened right about here kind of in this general vicinity?
- 9 A It could be or a little bit more over.
- 10 Q More over to the -- right here?
- 11 A Uh-huh. (Affirmative).
- 12 Q Why don't I just let you do this.
- 13 If I may approach the witness?
- 14 THE COURT: You may.
- 15 Q And, again, it's apparently that button there.
- 16 A Hit this button?
- 17 Q Yes, ma'am.
- 18 And show us right round where the attack happened and
- 19 let me get out of your way.
- 20 A Let's see. I, I came in the door and it was about
- 21 right here.
- 22 Q Okay. Okay.
- 23 A I came in the door.
- 24 Q And that's where the attack took place roughly?
- 25 A Roughly, yeah, cause I, I went back into the room a

D.P. - Cross-examination
by Mr. Snealy

1 little bit.

2 Q Okay. And the attack was not accompanied by a, a
3 demand for your purse?

4 He didn't yell give me that purse and then stab you,
5 did he?

6 A I never heard it -- him say that.

7 Q You never heard anything about that.

8 Okay. And once you got stabbed, were you really
9 interested in your purse anymore?

10 A I didn't -- I wasn't interested in anything but --
11 other than I was hurt.

12 Q Right, and getting the heck away from that fellow --

13 A That's correct.

14 Q -- right?

15 I mean -- so, the purse would of been the first thing,
16 get off of me, let me go, right?

17 A It could of been.

18 Q Okay. Do you remember, again, talking with Sergeant
19 Hutchins that, to your knowledge, suspect did never attempt
20 to get to your purse or any of your belongings?

21 A That's -- could be.

22 Q Could be.

23 Okay. They never give -- gave you the opportunity to
24 write a written statement, did they?

25 A I'm sorry?

D.P. - Cross-examination
by Mr. Shealy

1 Q Did they ever say here's a pad of paper and a pen, why
2 don't you write this down so we can have a coherent record
3 of what happened?

4 A No, like I said, I was laying on a stretcher.

5 Q Sure. Sure. But this was even -- I mean later they
6 could of come to you cause they did come to you and they
7 asked you about this lineup, right?

8 A That's correct, and they asked me I believe what
9 happened.

10 Q Right. I'm sure that they -- but they didn't give you
11 a sheet of paper and say I tell you what, Ms. Pruitt, would
12 you just write down what happened?

13 A They, they did and then I wrote it down on the
14 affidavit---

15 Q Okay.

16 A ---form I believe it was.

17 Q I mean I understand it's a very short little bit on the
18 affidavit.

19 A That's it. Uh-huh. (Affirmative).

20 Q But did they ever sit you down, give you something
21 called a voluntary statement form, and say what we want you
22 to do is write down everything you can remember about what
23 happened?

24 A No, they did not.

25 Q Didn't never ask you to do that.

D.P. - Cross-examination
by Mr. Shealy

1 Okay. So, you're having to go off of what you remember
2 of a traumatic event a year and four months, well five
3 months later, correct?

4 A Yes.

5 MR. SHEALY: Okay. Your Honor, if you will, just bear
6 with me for one second.

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. SHEALY: I apologize, Your Honor.

10 THE COURT: Yes, sir, that's all right.

11 MR. SHEALY: Your Honor, I have no further questions
12 for this witness. Thank you.

13 THE COURT: Mr. Barnette, redirect.

14 SOLICITOR BARNETTE: Just a couple on redirect, Your
15 Honor.

16 THE COURT: Yes, sir.

17 SOLICITOR BARNETTE: May it please the Court.

18 REDIRECT EXAMINATION

19 BY SOLICITOR BARNETTE:

20 Q I believe State Exhibit 3 is still there, ma'am, on
21 here.

22 Showing you State Exhibit 30, Your Honor.

23 They showed you that lineup that day, is that right,
24 ma'am?

25 A That's correct.

D.P. - Redirect examination
by SOLICITOR BARNETTE

1 Q And that's the man that attacked you that day?

2 A That's correct.

3 SOLICITOR BARNETTE: Thank you, Your Honor. That's all
4 the questions I have.

5 THE COURT: Anything to -- about -- to follow-up?

6 MR. SHEALY: No, Your Honor.

7 THE COURT: Ma'am, you may step down. Thank you very
8 much.

9 The State may call its next witness.

10 SOLICITOR BARNETTE: Your Honor, I'd like to call
11 Stephanie Eubanks to the stand please.

12 THE COURT: Come forward please and be sworn.

13 Ma'am, if you'll step to my left please right over this
14 way. Thank you.

15 STEPHANIE EUBANKS, being first duly
16 sworn, testified as follows.

17 THE COURT: State your name please, ma'am.

18 THE WITNESS: Stephanie Eubanks.

19 THE COURT: Thank you.

20 Your witness, Mr. Barnette.

21 SOLICITOR BARNETTE: Thank you.

22 DIRECT EXAMINATION

23 BY SOLICITOR BARNETTE:

24 Q I'm gonna have to ask you -- you're very soft spoken.
25 So, I'm gonna have to ask you to speak---

Stephanie Eubanks - Direct examination
by Solicitor Barnette

- 1 A Yes, sir.
- 2 Q ---so they can hear you in the back.
- 3 A Okay.
- 4 Q I apologize.
- 5 where do you work at, ma'am?
- 6 A Carolina OB-GYN on Reidville Road.
- 7 Q Yes, ma'am.
- 8 what's your position there, ma'am?
- 9 A I'm the business coordinator, which is the assistant
10 manager.
- 11 Q Okay. And how long have you worked for Carolina
12 OB-GYN?
- 13 A This is my fifteenth year.
- 14 Q All right. Back on January 24th of 2013, was you
15 working that day, ma'am?
- 16 A Yes, I was.
- 17 Q And was you in the office that day when this occurred
18 or did you come in sometime during that morning?
- 19 A Yes, I did.
- 20 Q And where did you -- where do most of the employees
21 come through?
- 22 A Most employees park in the back, and you have a little
23 pin pad, security code that you have to enter in order to
24 get through the back-door. But I do have a couple employees
25 that park in the front. They don't like bothering with the

Stephanie Eubanks - Direct examination
by Solicitor Barnette

1 pin pad. So, they park in front.

2 Q Do you come in the back that, that day?

3 A Yes, I did.

4 Q And was y'all gonna have some work done earlier?

5 I guess some work was gonna be done in the office?

6 A Yes.

7 Q Is that the reason why Ms. Pruitt was going in early
8 that day to help with that person into---

9 A It could of been. I don't recall. But she was, she
10 was the nurse manager. So, she always came in early anyway
11 to get things set up.

12 Q Okay. That morning did you go outside the office?

13 If you would, tell -- when you went outside the office
14 that morning, tell the jury what you saw afterwards?

15 A Well, I come in the back-door, the employee door, and
16 I, I take the stairwell, and it comes up -- the stairwell
17 goes on the second floor. You have to cross -- walk across
18 like a balcony, and I glanced over the balcony and I heard
19 an elderly man hollering for help, and I looked down, and
20 all I saw was the, the curly salt and pepper hair slumped
21 down in a corner with a big jacket on and I just assumed it
22 was his wife maybe had fell. So, I ran back down the steps
23 and when I got down there I noticed it was D.P. .

24 Q What did you do once you saw it was D.P. ?

25 A Well, first of all, I asked her if she was okay, and

Stephanie Eubanks - Direct examination
by Solicitor Barnette

1 she was really incoherent. I think more traumatized and
2 couldn't hardly talk. She was trying to talk, but she
3 couldn't make anything out.

4 So, I ran back upstairs and went into our office cause
5 I have no cell phone service in our building. So, I ran
6 back into our office and called 9-1-1, and that's when I saw
7 that another nurse was in our practice. I was sitting at
8 her desk. She comes in from a different direction. So, she
9 never saw what happened, but -- and I told her, I said I
10 didn't know you were here. I said I need help, I need help,
11 and so I send her downstairs while I called 9-1-1.

12 Q Okay. And you don't how long D.P. was laying there
13 obviously?

14 People don't go in that entrance very often?

15 A Hu huh. (Negative). Hu huh. (Negative).

16 Q That early in the morning.

17 what time do y'all---

18 A Well, the, the building is on an automatic timer for
19 just that one side. There's two entrances to the building.
20 One for minor care and one for the offices that are inside
21 that building. There's only one office that opens at
22 seven o'clock in the morning, but they don't start see ing
23 patients until 7:30.

24 So, they typically get there earlier in order to open
25 up their office, and they all come in the back. But, but

Stephanie Eubanks - Direct examination
by Solicitor Barnette

1 --.

2 Q But you don't know how long she laid there before
3 anybody---

4 A I got there at about 7:35 that morning, and that's when
5 I saw her.

6 Q So, you got there at 7:35?

7 A 7:35, 7:40ish, yeah.

8 Q Okay. So then you went out and that's when you saw her
9 after you got in the office?

10 A Uh-huh. (Affirmative).

11 Q One other thing just to answer this question for the
12 jury.

13 Is there any video cameras in the building at that
14 time?

15 A No.

16 Q Are there now?

17 A Yes.

18 Q Okay. Cause of this incident?

19 A Yes.

20 Q Okay. But there was no video cameras there at the
21 office at -- that could videotape anything from there?

22 A Correct.

23 Q When y'all went back to see D.P. , did she -- did you
24 see any of her injuries?

25 I know that she actually went to Spartanburg Regional

Stephanie Eubanks - Direct examination
by Solicitor Barnette

1 after that.

2 A She did. I did not. I'm not clinical. So, I didn't
3 go there -- I was just trying to talk to her to make sure
4 she was okay, and basically the only thing I could make out
5 with what she was saying was a screwdriver.

6 MR. SHEALY: Objection, Your Honor. It's hearsay.

7 THE COURT: Sustain the objection.

8 MR. SHEALY: Okay.

9 THE COURT: You can't quote what someone told you
10 unless Mr. Barnette asked for something specifically that
11 would meet the rule.

12 SOLICITOR BARNETTE: Yes, sir.

13 THE WITNESS: Okay.

14 Q Let me ask you this question, ma'am.

15 Did you see a screwdriver there in that little room and
16 I guess let me show you -- get my glasses so I can see here.

17 State Exhibit 27, this was taken afterwards or
18 whatever.

19 Was this the room that she was in --

20 A Yes.

21 Q -- from that point?

22 And was she laying over in this area?

23 A Well, I'm kind of confused of the picture.

24 Q And I apologize. Like I said, it's -- this is actually
25 going through the first door. That's actually the second

Stephanie Eubanks - Direct examination
by Solicitor Barnette

1 door.

2 A So, this is inside the glassed in area?

3 Q Right. Yes, ma'am, they're -- the lobby's beyond that
4 and you can see and I apologize. We couldn't really get a
5 good picture because of the, the way it's done. But -- or
6 it may be better to show you this picture. Let me show you
7 State Exhibit 29 first.

8 Okay. These are the front doors, is that right, ma'am?

9 A Correct.

10 Q Okay. And did y'all see a screwdriver or was there a
11 screwdriver that somebody sat a chair over at some point?

12 A Yes.

13 Q Okay. And was this the chair that was used to set over
14 the top of the screwdriver?

15 A Yes.

16 Q And was this the screwdriver that was found underneath
17 or I guess was -- the chair was placed over it?

18 A Yes.

19 Q And did you see that screwdriver?

20 A Yes.

21 Q Okay. And law enforcement did respond?

22 A Yes.

23 Q And obviously several officers came to the scene and so
24 forth?

25 A Yes.

Stephanie Eubanks - Direct examination
by Solicitor Barnette

1 Q Okay. The -- did one of the other nurses -- did Kelly
2 come treat or try to take care of Donnie as best she could
3 until EMS got there to take her to Regional?

4 A Yes.

5 Q So, she actually talked to her more than you did?
6 I think you were---

7 A She did, yes.

8 Q Okay. From that standpoint.

9 And this is in Spartanburg County, isn't it, ma'am?

10 A Yes.

11 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
12 please.

13 THE COURT: Yes, sir.

14 (Pause.)

15 SOLICITOR BARNETTE: Thank you, ma'am, for your time.
16 Please answer any questions that Mr. Shealy may have for
17 you.

18 THE COURT: Mr. Shealy, your witness.

19 MR. SHEALY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SHEALY:

22 Q Let me show you what's been marked State's Exhibit,
23 State's Exhibit 13.

24 If I may borrow the laser pointer, Mr. Barnette. Thank
25 you.

Stephanie Eubanks - Cross-examination
by Mr. Shealy

1 My understanding is, again, and you were present in the
2 courtroom earlier, is that correct?

3 were you present in the courtroom earlier?

4 A I haven't been here that long.

5 Q You haven't?

6 A Hu huh. (Negative).

7 Q Okay. But you're familiar with this area?

8 A Yes.

9 Q Okay. And you're familiar with that's I-26 obviously?

10 A Yes.

11 Q And you're about a, I believe it's testified to, about
12 a mile down Reidville Road from I-26?

13 Is that accurate?

14 A That's correct.

15 Q Okay. And so this is the part towards the city, right,
16 towards the City of Spartanburg?

17 To get to the City of Spartanburg you got to go down
18 Reidville Road this way --

19 A Correct.

20 Q -- right?

21 All right. Now, we've heard some testimony about some
22 woods.

23 Are the, the woods, I believe, are on this side, isn't
24 that correct?

25 A The woods are behind our building---

Stephanie Eubanks - Cross-examination
by Mr. Shealy

1 Q Okay.

2 A ---and to the side.

3 Q Around and behind the building.

4 A Correct.

5 Q There's a fence along this road, correct?

6 A Yes.

7 MR. SHEALY: Okay. If you'll bear with me one second

8 --

9 THE COURT: Yes, sir.

10 MR. SHEALY: -- Your Honor.

11 (Pause.)

12 MR. SHEALY: All right. That's all I have for this
13 witness I believe.

14 SOLICITOR BARNETTE: We ask that the witness be
15 excused, Your Honor.

16 THE COURT: All right. Ma'am, you may step down.

17 Do you have any objection to her being excused, Mr.
18 Shealy?

19 MR. SHEALY: No. None, Your Honor.

20 THE COURT: You're free to go if you'd like. You're
21 welcome to stay as well.

22 SOLICITOR BARNETTE: Your Honor, I'd like to call Kelly
23 Rudicill to the stand.

24 THE COURT: Come forward please and be sworn.

25 KELLY RUDICILL, having been first duly

Kelly Rudicill - Direct examination
by Solicitor Barnette

1 sworn, testified as follows:

2 THE COURT: Ma'am, once you're seated, state your name
3 please.

4 THE WITNESS: Kelly Rudicill.

5 THE COURT: All right. Mr. Barnette, your witness.

6 DIRECT EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q I'm gonna have to ask you to speak a little bit louder
9 to make sure they can hear you.

10 okay?

11 A okay.

12 Q I apologize.

13 where do you work at, ma'am?

14 A Carolina OB-GYN.

15 Q And what is your position there, ma'am?

16 A I'm an LPN.

17 Q And how long have you worked there, ma'am?

18 A I'm going on my fourteenth year.

19 Q Was you working the morning of January 24th, 2013?

20 A Yes, I was.

21 Q If you would, tell the jury what happened that morning
22 if you could.

23 A I came in the back-door. I parked in the back, and
24 there's two different stairwells. So, I decided to take the
25 first stairwell where it would not show -- I couldn't see

Kelly Rudicill - Direct examination
by Solicitor Barnette

1 over the atrium where down in the front part of the, the
2 building. I came up the back way.

3 I got into my office, and I knew D.P. was gonna be
4 there early. Kept looking for her, and it was probably
5 about 7:20. So, I started doing some work, and she never
6 came up, never came in. I was kind of, you know,
7 questioning why she was not there. She's always there
8 early.

9 So, I started getting up to, to open up some, do some
10 lab work and things to that nature, and the door opened, and
11 Stephanie Eubanks, my manager, said Kelly, go out -- D.P.
12 is passed out in the atrium downstairs. I said, well, I
13 didn't come up that way. I did not see her. I don't know
14 how long she's been there, but I just took off. I took off
15 and, and got straight to her.

16 Q And what -- tell the jury what you did once you got to
17 her down there.

18 A Once I got to her, I was checking her, made sure that
19 she -- she was, she was in shock. She was in total shock.
20 I, you know, checked her over and she kept saying, she kept
21 saying screwdriver, screwdriver. I said are you hurt
22 anywhere and I saw the places. I pulled the place -- her
23 jacket to the side, and I saw marks on her neck, and she
24 kept holding her side, and the main thing we wanted to do
25 was she go ahead and just get her up into a chair because

Kelly Rudicill - Direct examination
by Solicitor Barnette

1 she was in such shock.

2 So, we got a wheelchair and pulled her on into the
3 inside of the building, and she kept saying her side, her
4 side.

5 MR. SHEALY: Objection, Your Honor. Your Honor, this
6 is---

7 THE COURT: Beg your pardon?

8 MR. SHEALY: I said objection. This is all hearsay
9 still.

10 THE COURT: I'm gonna instruct the witness not to quote
11 what was said to her, but what happened. You can testify
12 about what happened. Mr. Barnette will ask you about
13 specific matters that might be exceptions to that rule.

14 THE WITNESS: Yes, sir.

15 THE COURT: You may proceed, Mr. Barnette.

16 SOLICITOR BARNETTE: Thank you.

17 All right. And was EMS called, ma'am?

18 A Yes.

19 Q Okay. And did she told -- and is there any videotape
20 there at the or was there any videotape at the office at
21 that time?

22 A No.

23 Q And, of course, there is now?

24 A Yes.

25 Q Okay. And you saw the wounds that was on her?

Kelly Rudicill - Direct examination
by Solicitor Barnette

1 A Yes.

2 Q And obviously she was in very -- I mean she just been
3 attacked --

4 A Yes.

5 Q -- from there?

6 And was she wearing this -- was this the jacket she was
7 wearing at the time or appear to be the jacket?

8 A Yes.

9 Q And, obviously, did you see the screwdriver there in
10 the foyer also?

11 A Yes, I did.

12 Q And did somebody place a chair on that to cover that?

13 A Yes.

14 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
15 please.

16 THE COURT: Yes, sir.

17 (Pause.)

18 SOLICITOR BARNETTE: If you would, please answer any
19 questions Mr. Shealy may have for you.

20 THE COURT: Mr. Shealy, your witness.

21 CROSS-EXAMINATION

22 BY MR. SHEALY:

23 Q All right. Ms. Rudicill, did you ever have an
24 opportunity to talk to law enforcement?

25 A Yes.

Kelly Rudicill - Cross-examination
by Mr. Shealy

1 Q You did?

2 A (Witness nods affirmatively.)

3 Q Okay. Did you give a written statement to law
4 enforcement?

5 A I did not give a written statement, no.

6 Q Okay. Do you remember who you talked to?

7 A No.

8 Q No. That's unfortunate.

9 So, you wouldn't know if that person wrote the incident
10 report or not?

11 A I don't know.

12 Q Okay.

13 A EMS was also there.

14 Q Okay. Now, you said you got there around 7:20. This
15 might be a stupid question cause I don't know how y'all's
16 business works, but do you have to clock in in anyway, log a
17 computer, anything like that?

18 A Yes.

19 Q You do.

20 Okay. Okay. That's all I've got for this witness.

21 Thank you.

22 THE COURT: Redirect?

23 SOLICITOR BARNETTE: No redirect, Your Honor. We ask
24 the witness be excused.

25 THE COURT: Any objections, Mr. Shealy?

William Gary - Direct examination
by Solicitor Barnette

1 MR. SHEALY: None, Your Honor.

2 THE COURT: Ma'am, you may step down. You're free to
3 go if you'd like. Thank you very much.

4 State may call its next witness.

5 SOLICITOR BARNETTE: Your Honor, I'd like to call
6 Investigator William Gary to the stand.

7 THE COURT: Come forward, sir, to be sworn.

8 WILLIAM GARY, being first duly sworn,
9 testified as follows:

10 THE COURT: Sir, once you're stated, state your name
11 please.

12 THE WITNESS: William Gary.

13 THE COURT: Thank you.

14 Mr. Barnette, your witness.

15 SOLICITOR BARNETTE: Yes, sir.

16 DIRECT EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Where do you work at, sir?

19 A Spartanburg County Sheriff's Office.

20 Q And what is your position there, sir?

21 A Violent crime investigator.

22 Q And how long have you been with the Sheriff's
23 Department, sir?

24 A A little bit over 19 years.

25 Q Back on January 24th, 2013, was you working that day,

William Gary - Direct examination
by Solicitor Barnette

1 sir?

2 A Yes, I was.

3 Q And did you respond to an attack that occurred over at
4 the Mary Black Urgent or I guess Carolina OB-GYN, that
5 building for Mary Black?

6 A Yes, I did.

7 Q If you would, tell the jury what you did once you got
8 there.

9 A When I got there, the purpose, at that point, was to
10 look for the suspect. We had a description of clothing,
11 physical description. So, a number of us responded to the
12 parking lot more towards the back to see what type of
13 avenues of escape someone on foot could have been going that
14 way, and we spent quite a bit of time on Anderson Mill Road
15 checking garages, outbuildings, ditches, abandoned houses,
16 things like that looking for the suspect.

17 Q And how many officers responded?

18 A I could tell you one abandoned house I know we were
19 searching that was probably two, three hundred yards off the
20 road. There was, I think, eight of us at that one house,
21 but that wasn't everyone that was out there.

22 Q okay. And obviously they called the K-9 units, the
23 dogs, and everybody they could call---

24 A Correct.

25 Q ---to try to find out from there?

William Gary - Direct examination
by Solicitor Barnette

1 Did y'all continue on the investigation based -- trying
2 to look for this individual?

3 A We did.

4 Q Okay. Later on was a BOLO given out concerning him?

5 A Well, there's -- there was a description given out
6 pretty quick with the attack once some information was
7 gathered originally from the scene by the officers that
8 responded.

9 Q And did, did, later on, was there a -- was y'all
10 notified about a suspect?

11 A Yes, we were told that the city had been out with a
12 subject at the QT at West Main and John B. White Boulevard,
13 it had just recently opened, that matched the description
14 that was given. But they didn't quite put it together and
15 let him leave. So then the search started again for that
16 person.

17 Q I did -- later on did they find him again later on
18 through the information that you received?

19 A Yes, sir.

20 Q And was he initially found again near the Main Street
21 Hotel and---

22 A Downtown---

23 MR. SHEALY: Your Honor, I'm gonna object at this
24 point. It doesn't sound like this is something that he had
25 personal knowledge of. It sounds like he was out on Old

William Gary - Direct examination
by Solicitor Barnette

1 Anderson Mill Road.

2 THE COURT: All right. Well, I'll ask Mr. Barnette to
3 lay a foundation as to whether or not this witness might
4 have knowledge of the facts about which he's testifying.

5 SOLICITOR BARNETTE: I'm just trying to clarify some
6 things. Your Honor, I'll just move on from there --

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

8 SOLICITOR BARNETTE: -- since he's, since he's
9 objecting to it.

10 Afterwards, did you receive information who was the
11 person who did this attack?

12 A We received a -- some information that the person that
13 fit the description that the city had been out with, once
14 they got him identified, we had his name and that
15 information.

16 Q And what was that name that you was given?

17 A It was the defendant, Richard Culberson.

18 Q Okay. And based off that, did you develop a lineup
19 concerning that, sir?

20 A Yes, sir.

21 Q And let me show you, show you what's been marked as
22 State Exhibit 3 already. It's already been entered into
23 evidence.

24 Was that the lineup that you did for Ms. Pruitt in this
25 case?

William Gary - Direct examination
by Solicitor Barnette

1 A Yes, it was --

2 Q Okay.

3 A -- or is.

4 Q And if you would, tell your procedure, how you show a
5 lineup to -- and here, I'll just put it up here so that way
6 they can follow along.

7 A With our policy and procedure mainly we have a standard
8 by which lineups are done and presented, and within that
9 standard, that guideline, I always tell a person, when I
10 present it to them, it's always face down with the photos so
11 they can't see the photos on there. When I tell the person
12 that -- to take a look, see if they recognize anyone just
13 keeping in mind that hairstyles can change, facial hair can
14 change, and to take their time to take a look at the
15 photographs and tell me if they recognize anyone in there,
16 that the person who did this may or may not be in these
17 photographs. That way there's no pressure. They don't feel
18 like they have to pick someone out, and then I hand it to
19 the person, let them turn it over themselves to look at the
20 photographs, which is what I did in this situation, and Ms.
21 Pruitt was able to identify -- she pointed to photograph
22 number two after looking at all the photographs.

23 I watched her eyes and can see that she was scanning
24 the page and she had pointed to photograph number two and
25 said that was the person who had attacked her that morning.

William Gary - Direct examination
by Solicitor Barnette

1 Q Okay. And then she also did an affidavit, is that
2 right?

3 A Yes, I asked her to circle the photograph she
4 identified initially, and then we have what's called a, an
5 affidavit of photo lineup identification where you can see
6 the differences in the handwriting. I filled out the
7 particulars as far as case number, where we were, the time,
8 that sort of thing, her name, the date. Everything except
9 for the narrative of the affidavit and then her signature
10 and her information at the bottom I filled out. Then I
11 asked her to fill out what that person did that she
12 identified. Then obviously to sign and print her name and
13 her address and her phone number.

14 Q And who actually did this circle here?

15 A She did.

16 Q And who actually initialed that?

17 A She did.

18 Q Okay. And later on -- and obviously you wasn't
19 involved with it, but later on the defendant was arrested,
20 is that right?

21 A Yes, sir. I don't, I don't remember the timing, if it
22 was before or after this.

23 Q Okay. From there.

24 Let me ask you, and this is a follow-up to some
25 questions that Mr. Shealy asked before, do you always get

William Gary - Direct examination
by Solicitor Barnette

1 written statements from every witness or anything from
2 there?

3 A No, we don't.

4 Q I know Solicitor Trey Gowdy, when he was solicitor, did
5 it in a different position now obviously, was he one that --
6 I believe the Federal system, they don't even take written
7 statements, do they?

8 A No, they don't. They, they take notes when they're
9 talking to someone and put those notes down in their words.
10 It's what's the person told them. When he was actually
11 solicitor, he actually requested we didn't take statements.
12 Even though we didn't stop that practice with everyone, we
13 did take -- still take statements from people depending on
14 the circumstances.

15 Q But that's something he used in the federal system --

16 A Yes.

17 Q -- for example?

18 They rarely use written statements in the federal
19 system?

20 A Very rarely.

21 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
22 please?

23 THE COURT: Yes, sir.

24 (Pause.)

25 Q If you would, sir, please answer any questions that Mr.

William Gary - Direct examination
by Solicitor Barnette

1 Shealy may have for you.

2 A Yes, sir.

3 Q Thank you.

4 THE COURT: Mr. Shealy, your witness.

5 MR. SHEALY: Thank you, Your Honor.

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. SHEALY:

9 Q Investigator Gary, so, written statements shouldn't be
10 taken.

11 Is that your testimony?

12 A Absolutely not.

13 Q That's not your testimony?

14 A No, not that they shouldn't be taken. They're not
15 taken in every situation. Sometimes people aren't able to
16 give a written statement depending on injury, depending on
17 intoxication. Certain factors would -- can prohibit from --
18 you from taking a written statement.

19 Q But in the main, those kinds of factors, intoxication,
20 injury, et cetera, they disappear over time, right?

21 I mean you're not drunk for the entire 16 months that
22 this is been ongoing, correct?

23 A Well, Ms. Pruitt wasn't indicated at all.

24 Q Okay.

25 A But I've met people who have probably been drunk for

William Gary - Cross-examination
by Mr. Shealy

1 that long, but, in this situation, I don't think that was a
2 factor, no, sir.

3 Q Okay. And you've been doing this how long now?

4 A A little bit over 19 years.

5 Q Nineteen years.

6 You've been in violent crimes for how long?

7 A About 12 of that.

8 Q Okay. And you've been through a whole lot of training?

9 A Sure.

10 Q Right?

11 A Yes, sir.

12 Q And cause the Sheriff's Office looks after its people
13 and wants them to be good at what they do, correct?

14 A Yes, sir.

15 Q Okay. And yet you still make investigative reports,
16 don't you?

17 A Yes, sir.

18 Q You write them down?

19 A Yes, sir.

20 Q Okay. So, somebody without that training, ah, written
21 statement, who cares?

22 But somebody with a whole lot of training who's been
23 doing this for 19 years, violent crimes for 14, they
24 probably ought to write it down?

25 A We work a number of cases everyday. We don't go

William Gary - Cross-examination
by Mr. Shealy

1 through this traumatic event once in a life. So, that
2 person may be able to remember that traumatic event more
3 than us working 30 cases a month. So, we take notes and we
4 write down what we do on that particular case so we don't
5 mix our cases up. So, yes, we write investigative reports.

6 Q Okay. And you've been in the courtroom all morning,
7 haven't you?

8 A Yes, sir.

9 Q Okay. And you heard Ms. Pruitt testify?

10 A I did.

11 Q Okay. Did you hear her say I don't remember any number
12 of times?

13 A I remember her saying she doesn't remember talking to
14 people except a detective at the, at -- that was over her on
15 the stretcher. Although I'm not sure there's even a
16 detective there at that time. I think there were uniform
17 officers there talking to her, but I don't know about a
18 detective.

19 But I do know that the description giving out was given
20 by her and Mr. Culberson matched the description when he was
21 encountered by the city at QT. So, her description was the
22 same given to what he looked like and was wearing at the
23 time he was encountered.

24 Q Well, I mean they're -- it appears to be some issue
25 about that, but what you just said is that she remembered

William Gary - Cross-examination
by Mr. Shealy

1 incorrectly?

2 That your understanding was there were no detectives at
3 that -- at the scene when she was on a stretcher?

4 A I don't know for a fact there was or was not. What
5 I've seen, reading through the case, I see things from
6 officers that have talked to her at Mary Black. I've also
7 been on a stretcher talking to people before myself, and if
8 you're looking at a face, you're not seeing their clothing.
9 So, she may not have recognized they're wearing a uniform or
10 plain clothes.

11 Q Okay. All right. Was there somebody else with you,
12 some other member of the Sheriff's Office with you?

13 A At what point, sir?

14 Q Whenever you went out with this lineup to talk?

15 A The lineup, yes, sir. Sergeant Hutchins was there.

16 Q Sergeant Hutchins was there?

17 A Yes, sir.

18 Q And did he go some place else with Ms. Pruitt while you
19 filled out the, the lineup or while you filled out the top
20 part of this, this affidavit?

21 A No, sir, there were four of us in the room at her
22 house. We actually sat at a table to do this, but her
23 husband was there. Sergeant Hutchins and Ms. Pruitt and I.
24 All four of us were in the same room the entire time.

25 Q Okay. And you said you -- did you speak with her about

William Gary - Cross-examination
by Mr. Shealy

1 what happened here?

2 A Just -- I told her the reason we were there. My
3 purpose, at that point, our purpose, at that point, was to
4 show her a photo lineup to see if she recognized anyone in
5 there, and that the person who did this may -- could be in
6 there. That was our purposes for being there. So, that's
7 what we did.

8 So, the fact of speaking with her about the incident
9 was for the lineup, and then asking her to fill out what she
10 says that person did.

11 Q Okay. Now, is it common practice to present a black
12 and white lineup like this?

13 A Most of the time this---

14 Q Most of the time.

15 A Probably 95 percent of our lineups are presented in
16 black and white.

17 Q Okay. Even though that won't provide you with details
18 such as what color the hair is, for instance?

19 A It's been my experience, a lot of times with the color
20 lineups, especially with the lighting, depending on how the
21 photograph was taken, that the color makes the lighting
22 stand out a little bit more than others as well as clothing
23 colors. You know, some of them might be drawn to a certain
24 color of a shirt, red or whatever, then they would be black
25 and white. It makes it more standard, more -- everyone more

William Gary - Cross-examination
by Mr. Shealy

1 similar because of the black and white. You don't have to
2 stand out the color, things like that.

3 Plus someone could have bright red hair in there, but
4 in black and white it doesn't stand out any different than
5 the other.

6 Q Well, I mean it does stand out to some extent?

7 A There's always gonna be differences as in any
8 photograph, but the lineup is it -- each photograph is
9 pretty similar. You're not gonna put six -- three sets of
10 twins on there or sextuplets on there for them to try to
11 pick someone out. You're gonna get similar features, facial
12 hairs, hairstyles similar, things like that because someone
13 on there could be 5'8", someone could be 6'6". But you
14 can't tell that from the photograph. So, there's obviously
15 differences in the person, but you get similar looking
16 photographs.

17 Q Okay.

18 A The black and white forge that similarity a little bit
19 more than color.

20 Q So, in this lineup here, for instance, we've got
21 different shading between let's say this guy's hair and this
22 guy's hair, which is also different from the shading in this
23 guy's hair, correct?

24 A Yes, sir.

25 Q Okay. So -- but all of these people appear to have

William Gary - Cross-examination
by Mr. Shealy

1 dark hair, don't they?

2 A Yes, sir.

3 Q Okay. He doesn't appear to have dark hair, does he?

4 He appears to have short blonde---

5 A He has short---

6 Q ---hair?

7 A He has shorter cut darker hair, yes, sir.

8 Q Okay. And you've testified that the reason you do this
9 is to avoid people standing out?

10 A Yes.

11 Q Okay. That's all I have.

12 Hang on just one second. Let me --.

13 (Pause.)

14 MR. SHEALY: That's all I have of this witness. Thank
15 you.

16 THE COURT: Redirect.

17 SOLICITOR BARNETTE: Just one or two questions, Your
18 Honor, please the Court.

19 REDIRECT EXAMINATION

20 BY SOLICITOR BARNETTE:

21 Q The reason why you don't do color ID's is you always
22 talk about the shade of the back of the color of the
23 lineups, don't they, a lot of times, the background---

24 A Right.

25 Q ---from that standpoint?

William Gary - Redirect examination
by Solicitor Barnette

1 MR. SHEALY: Objection, Your Honor. I don't know who
2 they are.

3 THE COURT: You, you---

4 SOLICITOR BARNETTE: I'll point it out.

5 THE COURT: The door's been opened on this line of
6 inquiry and I'll allow him to ask the question.

7 SOLICITOR BARNETTE: Thank you, Your Honor.

8 Q I'll specific -- I'll make it more specific.

9 Defense attorneys will, a lot of times, ask you about
10 lineups, especially when they're colored, saying that well,
11 you use different backgrounds and different things?

12 That's a common thing that's done, isn't it?

13 A It is. It's -- a lot of times with the photographs,
14 with the database that we use for our photographs, depending
15 on what kind of lighting was turned on, it can make a big
16 difference what the background was or how it appears rather.
17 It's the same background, but just how it appears for
18 shading, things like that. I mean everyone takes a picture
19 with or without a flash. It makes a difference with the
20 color and the lighting in the room.

21 So, when you do the black and white, it, I guess, the
22 best term to say is it kind of dulls it down a little where
23 it blends it a little bit better, makes it more similar.

24 Q Okay. And in this lineup and everything, y'all got a
25 computer data -- a computer actually does these lineups?

William Gary - Redirect examination
by Solicitor Barnette

1 A Yes.

2 Q So, you, you obviously have the suspect and the
3 defendant put in there, but it does -- it generates similar
4 characteristics and everything with it?

5 A What it does, you put in -- okay. This is the person I
6 want to put in this lineup. It picks a spot to put that
7 person in and then it puts five other people in there, and
8 then we have a -- another set of photographs off to the side
9 that it also says these could be similar looking people. So
10 then you look at what it puts in there on its own and the
11 other choices to see if you can find a better match just to
12 go in cause, depending on how the -- it's all -- like any
13 computer. It's only as good as -- you can only get out of
14 it as good as what's put into it, and it's the same thing
15 here.

16 If something is entered wrong, you know, you
17 occasionally have a woman pop up when you're trying to line
18 up with a man. So, you obviously take that person out, and
19 so you try to find photographs that better match the person
20 that you're putting in there as your target or as your
21 person of interest or your suspect, you know.

22 Q Okay. Thank you, sir.

23 MR. SHEALY: Your Honor, just a couple of questions.

24 THE COURT: Yes, sir.

25 RECROSS EXAMINATION

William Gary - Recross examination
by Mr. Shealy

1 BY MR. SHEALY:

2 Q So, my understanding is the way you create a lineup is
3 you have a particular person in mind and then you fill in
4 the other five, correct?

5 A Correct.

6 Q Okay. So, you have -- have you ever created a lineup
7 without a target that you can recall?

8 A No, sir, I can not.

9 Q So, you always -- there's always somebody you want
10 them -- well, that you think is the person who committed the
11 crime.

12 So, you always have that target in the lineup, right?

13 A Usually have to have a starting point and a name of a
14 person or a description, someone that can match it that you
15 can look at, say looking at the surveillance video in the
16 case and somebody says hey, I think this could be that
17 person you look, okay, that's possible. So you -- but you
18 name to -- have that name as a starting point to do your
19 lineup. I could create a lineup with just six random
20 people, but I don't know the point of doing that without
21 someone to start with.

22 Q And if I understood what you had testified to earlier,
23 you don't know if he had been arrested before or after this
24 lineup?

25 A I can't recall the times. I know I was there when he

William Gary - Recross examination
by Mr. Shealy

1 was arrested. But right off hand I don't remember if it was
2 before or after.

3 Q Okay. So, y'all had decided he was going to be
4 arrested is what it sounds like if he could of been arrested
5 before he gave you the lineup?

6 SOLICITOR BARNETTE: Your Honor, I'm gonna object to
7 this line of questioning. He's getting ready to open a door
8 that he may not want to open.

9 THE COURT: What is the objection though?

10 SOLICITOR BARNETTE: May we approach the bench?

11 THE COURT: Yes, sir.

12 (WHEREUPON, a bench conference was held out of the
13 hearing of the jury at this time.)

14 SOLICITOR BARNETTE: That's all I have for this witness
15 at this time.

16 THE COURT: Any further, Mr. Barnette?

17 SOLICITOR BARNETTE: No, sir.

18 THE COURT: All right, sir. You may step down.
19 State may call its next witness.

20 SOLICITOR BARNETTE: Your Honor, may I take a minute to
21 check and see if our witness is outside or not?

22 THE COURT: Yes, sir.

23 SOLICITOR BARNETTE: Thank you.

24 May -- can we excuse Investigator Gary, Your Honor?

25 THE COURT: Beg your pardon?

Lorin Williams - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Can Investigator Gary be excused?

2 THE COURT: Any objection?

3 MR. SHEALY: No objection.

4 THE COURT: You're free to go, sir. Thank you.

5 (Pause.)

6 SOLICITOR BARNETTE: Your Honor, I checked. My next
7 witness has been answered (sic) on another call. He's the
8 ID officer.

9 THE COURT: Uh-huh. (Affirmative).

10 SOLICITOR BARNETTE: I can call somebody out of order
11 or we can wait till he gets here. Either way.

12 THE COURT: Why don't you approach for a second and
13 let's talk about that?

14 (WHEREUPON, a bench conference was held out of the
15 hearing of the jury at this time.)

16 SOLICITOR BARNETTE: Your Honor, if I can call Lorin
17 Williams to the stand.

18 THE COURT: All right. Come forward sir.

19 LORIN WILLIAMS, being first duly
20 sworn, testified as follows.

21 THE COURT: Once you're seated, sir, state your name
22 please.

23 THE WITNESS: Lorin Williams.

24 THE COURT: Thank you.

25 Your witness, Mr. Barnette.

Lorin Williams - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Thank you, sir.

2 DIRECT EXAMINATION

3 BY SOLICITOR BARNETTE:

4 Q where do you work at, sir?

5 A Spartanburg County Sheriff's Office.

6 Q And what is your position there, sir?

7 A I'm a violent crime investigator with the Sheriff's
8 Office.

9 Q And how long have you been with law enforcement, sir?

10 A Since '93.

11 Q Was you working on the day of January 24th, 2013,
12 sir?

13 A Yes, sir, I was.

14 Q And, if you could, tell the jury a little bit about the
15 call that you got and what you did based off that.

16 A We were notified that there had been an incident at the
17 Mary Black west side. Once we arrived on the scene, the
18 victim had already been transported. We were given a
19 description of the suspect. Details, we didn't have a lot
20 of them at that point. We started trying to talk to people
21 to decide exactly what had happened.

22 I, I can't remember who went to the hospital, as far as
23 investigators, to speak with the victim. But myself and
24 several investigators stayed on the scene trying to gather
25 what information we could there.

Lorin Williams - Direct examination
by Solicitor Barnette

1 Q Okay. Was they also searching for the suspect---

2 A Absolutely.

3 Q ---at that time?

4 Later on did you receive information about a location
5 at [REDACTED]?

6 A Yes, sir.

7 Q And based off the information, did you find that the
8 suspect was Richard Culberson?

9 A Yes, sir.

10 Q Okay. And did you and another -- who was the other
11 officer that was with you at the time, sir?

12 A Myself and Sergeant Bryant went to that address.

13 Q And whose address was that?

14 A That was his mom and dad's or maybe a step-dad.

15 Q Okay. And how far is that?

16 Is that about, I guess, I'm just -- a little bit over
17 three miles away from Mary Black, this location?

18 A I believe that's correct, yes.

19 Q Okay. And when you arrived there, please tell the jury
20 what y'all did and what happened.

21 A Well, we had, we had gotten his name and we knew, you
22 know, basically that, that was a starting point to look for
23 him was at his mom and dad's house. We pulled up, walked up
24 to the back porch. There's a -- there was a deck leading up
25 to the back of the -- to the residence, and as I started up

Lorin Williams - Direct examination
by Solicitor Barnette

1 the steps I could see some people in what looked like the
2 kitchen area or the -- where the table and all was. And as
3 I stepped up on the porch, a gentleman came to the door who
4 identified himself as his, his father. I actually saw---

5 MR. SHEALY: Your Honor, I'm gonna object to hearsay as
6 to what his father or what he---

7 THE COURT: I didn't hear---

8 MR. SHEALY: ---what he said---

9 THE COURT: ---him quote what the father said. He
10 indicated how he identified himself. Not quoting him.

11 Overrule.

12 You may proceed.

13 SOLICITOR BARNETTE: Thank you, Your Honor.

14 If you would, please continue, sir.

15 A Okay. The gentleman stepped out the door. When he
16 did, I could see Mr. Culberson sitting at the table. The,
17 the lady that was identified as his mother was actually
18 shaving his head with a set of clippers. I asked the -- how
19 long he had been there, and -- or at first I asked was he
20 there, and he acknowledged yeah, that was him getting his
21 head, his head shaved.

22 MR. SHEALY: Your Honor, again, I'm objecting to
23 hearsay.

24 THE COURT: I will caution the witness not to quote
25 what people say. You can state what your investigation

Lorin Williams - Direct examination
by Solicitor Barnette

1 revealed.

2 THE WITNESS: Yes, sir.

3 THE COURT: But not quote anyone.

4 Q And you saw him getting his head shaved there?

5 A Yes.

6 Q And who was the person shaving his hair?

7 A His mother.

8 Q Okay. And did -- where was the hair being placed into?

9 A It was, it was on the floor and in a trash can.

10 Q Okay. And did y'all call a ID unit there to take
11 pictures and so forth?

12 A I did.

13 Q Okay. Let me show you -- and also did y'all find a
14 gray hoodie there also, sir?

15 A Yes, sir.

16 Q Okay. And where was it located at?

17 A If I can refer to my notes.

18 I believe it was --.

19 Q And here I've got the pictures too.

20 Let me show you State Exhibit 18, 19, 20, 21, and 22,
21 sir. If you want to review those and see if those pictures
22 fairly represent what you saw that day.

23 A Yes, sir.

24 Q Okay. Do those pictures fairly represent what you saw
25 that day, sir?

Lorin Williams - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 SOLICITOR BARNETTE: Your Honor, I'd like to enter
3 these into evidence at this time.

4 THE COURT: If you'll show them to Mr. Shealy please.

5 SOLICITOR BARNETTE: Yes, sir.

6 THE COURT: Thank you.

7 (Pause.)

8 MR. SHEALY: No objection, Your Honor.

9 THE COURT: Without objections, they'll be admitted
10 into the record as marked.

11 (WHEREUPON, State's Exhibit Nos. 18 through 22 were
12 received into evidence at this time.)

13 THE COURT: You may show them to the jury by
14 publication.

15 SOLICITOR BARNETTE: May I publish them at this time,
16 Your Honor?

17 THE COURT: Yes, sir, please do.

18 Q Okay. Let me do State Exhibit 18 first. Show this.
19 Was this the location you went to, sir?

20 A Yes, sir, it was.

21 Q Okay. Is this in Spartanburg County also?

22 A Yes, sir, it is.

23 Q Okay. And State Exhibit No. 19, what is this showing,
24 sir?

25 A That's the -- that's the back porch, the deck I was

Lorin Williams - Direct examination
by Solicitor Barnette

- 1 speaking of, where we walked up and the gentleman came out.
2 Q Okay. And what are these items right here?
3 A Those were the clothing items that were -- we located.
4 Q Okay. And State Exhibit 20, is that a close-up picture
5 of those items that y'all saw there?
6 A Yes, sir, it is.
7 Q Okay. Showing you State Exhibit 21.
8 was this the trash can in the room where he's getting
9 his haircut, the defendant?
10 A Yes, sir.
11 Q Okay. And showing you State Exhibit 22. Let me bring
12 this up a little bit.
13 was this the hair that had been cut off his head?
14 A It is.
15 Q Okay. And was that later collected by the ID unit that
16 was there?
17 A Yes, sir, it was.
18 Q Okay. And did they collect the gray hoodie and the
19 jean jacket, jacket that were found outside?
20 A Yes, sir.
21 Q These items here was collected by him, is that right?
22 A By ID, yes.
23 Q Later on, was he taken -- was the defendant taken into
24 the Sheriff's Department?
25 A Yes, sir.

Lorin Williams - Direct examination
by Solicitor Barnette

1 Q Let me show you what's been marked as -- this is
2 State's Exhibit No. 30. I think it's already been placed
3 into evidence. You may of already seen it in the courtroom.

4 A Yes, sir.

5 Q Do those pictures fairly represent the picture that was
6 taken that day at the Sheriff's Department after his arrest?

7 A They do.

8 Q And this was after -- y'all brought him in after he had
9 his haircut by his mom?

10 A That's correct.

11 Q Let me just show you State Exhibit 23 and 24.
12 Do those picture fairly represent what you saw that
13 day?

14 A Yes, sir.

15 SOLICITOR BARNETTE: Your Honor, I'd like to enter
16 these into evidence after I show them to Mr. Shealy. I
17 believe one of these pictures may already be in there, but I
18 just want to make sure.

19 THE COURT: All right.

20 MR. SHEALY: No objection.

21 THE COURT: Without objections, they'll be admitted
22 into the record as marked.

23 (WHEREUPON, State's Exhibit Nos. 23 and 24 were
24 received into evidence at this time.)

25 THE COURT: You may publish them.

Lorin Williams - Direct examination
by Solicitor Barnette

1 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

2 This is State Exhibit 23 I believe is similar to one of
3 the pictures y'all saw earlier, but State Exhibit 24, is
4 that a picture of the defendant with his head with -- down
5 where we can see it's been shaved?

6 A Yes, sir, it is.

7 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
8 please.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q If you would, sir, please answer any questions the
12 defense may have for you.

13 THE COURT: Mr. Shealy, your witness.

14 MR. SHEALY: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SHEALY:

17 Q Investigator Williams, I'm gonna show you State's
18 Exhibit No. 20.

19 That's a denim jacket?

20 Is that accurate?

21 The blue jacket is a denim jacket?

22 A I believe that's correct and a hooded sweatshirt.

23 Q And that's a hooded sweatshirt?

24 Just a run of the mill gray hooded sweatshirt, right?

25 A I believe so, yes.

Lorin Williams - Cross-examination
by Mr. Shealy

1 Q Okay. Why are they on the ground?

2 A I can't answer that.

3 Q Okay. So, your testimony is that you found them there?

4 A That's where I remember them being.

5 Q Okay. You don't remember them being inside of the
6 house?

7 A No, sir.

8 Q You don't remember them hanging on the back of the
9 chair?

10 A No, I think the -- what I remember hanging on the back
11 of the chair was the -- that puffy coat he had on.

12 Q I'm gonna show you State's Exhibit No. 30.

13 So, you're saying that's---

14 A That's what---

15 Q ---what was hanging on the back of the chair?

16 A I believe so, yes.

17 Q Okay. I'm gonna show you State's Exhibit 3. We've
18 kind of belabored this thing to death, but he's got pretty
19 short hair here too, doesn't he?

20 A Sure.

21 Q Okay. So, him having a haircut appears -- well, short
22 haircut -- appears to be in character?

23 A Well, not necessarily. You can see the sun he's got on
24 his forehead from where his hair was shading the rest of his
25 head in that picture.

Lorin Williams - Cross-examination
by Mr. Shealy

1 Q Okay. So you're testifying that you think that the red
2 from his face showing in State's Exhibit 30 is probably from
3 the sun?

4 A I mean I --.

5 Q January 24th is when this happened.

6 A Okay. All I'm saying is that there was a substantial
7 amount of hair collected on the floor and in the trash can,
8 and she had the sheers in her hand cutting his head when we
9 came in.

10 Q Okay. And when did you get to [REDACTED]?
11 About what time?

12 A I don't have that written down.

13 Q You don't know.

14 Okay. Was it -- you've testified that there was a
15 fairly long period -- lengthy period of hunting around in
16 this area here, I guess down in this area, looking for the
17 suspect, right?

18 A Correct.

19 Q Okay. So, how long -- do you, do you have any idea as
20 to how long, from when you responded out to 2995 Reidville
21 Road, it was before you responded to [REDACTED]

22 [REDACTED]

23 A I would have to look at some more of the documentation
24 in the file to be able to get closer to that.

25 Q Okay. Well, bear with me just one second. Let me see

Lorin Williams - Cross-examination
by Mr. Shealy

1 if I can find something for you.

2 well, is there something in particular you would need
3 to be able to testify as to when you got out there?

4 A No, I just have to look at some of the other, some
5 other---

6 Q Just don't know what in particular.

7 All right. But y'all did look for some period of time
8 on Anderson Mill Road here?

9 A Correct.

10 Q Okay. All right. And then you responded out to [REDACTED]

11 [REDACTED]

12 A Correct.

13 Q Okay. So, they're two different Anderson Mill Roads?

14 A There are.

15 Q Okay. And I guess this is regular Anderson Mill road.

16 where -- I don't think you're gonna be able to point
17 out where Old Anderson Mill Road is, but -- if I could
18 borrow your laser pointer?

19 If you could just give us an idea.

20 You're familiar with this area, aren't you?

21 A I'm familiar with that area. As far as geographically,
22 I wouldn't want to speculate pointing with that as to where
23 Old Anderson Mill Road is not without seeing a map.

24 Q Okay. Well, that's fair. That's fair.

25 But this is old -- this is regular Anderson Mill Road?

Lorin Williams - Cross-examination
by Mr. Shealy

1 A Correct.

2 Q All right. But y'all searched that for a fair period
3 of -- a fair piece you said, and then you responded out to
4 wherever Old Anderson Mill Road was?

5 A That's correct.

6 Q Did you do anything independently?

7 A I -- we were looking for, looking for the suspect
8 trying to identify the suspect.

9 MR. SHEALY: Okay. All right. If you'll bear with me
10 just a second.

11 (Pause.)

12 MR. SHEALY: All right. I have nothing further of this
13 witness at this time, judge.

14 THE COURT: Mr. Barnette.

15 SOLICITOR BARNETTE: No further questions for this
16 witness, Your Honor.

17 THE COURT: All right. You may step down.

18 SOLICITOR BARNETTE: Your Honor, Officer Nix is here
19 now.

20 THE COURT: All right. You may call him.

21 Come forward, sir, over here to my left, and be sworn.
22 Thank you.

23 SEAN NIX, being first duly sworn,
24 testified as follows:

25 THE COURT: Once you're seated, state your name please.

Sean Nix - Direct examination
by Solicitor Barnette

1 THE WITNESS: Yes, sir, Your Honor.

2 THE COURT: Thank you.

3 THE WITNESS: Michael Sean Nix.

4 THE COURT: Mr. Barnette, you witness.

5 SOLICITOR BARNETTE: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Where do you work at, sir?

9 A Spartanburg County Sheriff's Office.

10 Q And what is your position there, sir?

11 A I work in the crime scene unit.

12 Q Okay. And how long have you been with the crime scene
13 unit, sir?

14 A How long I been in crime scene?

15 It will be eight years in November of this year.

16 Q Back on January 24th, 2013, was you working that day,
17 sir?

18 A Yes, sir.

19 Q Did you initially get an initial call for the crime
20 scene out at Mary Black off Reidville Road?

21 A Yes, sir.

22 Q And when you arrived there, did you -- I believe we've
23 already seen the pictures. I show you this right here. I
24 believe these are State Exhibit 29.

25 Did you take those pictures, sir?

Sean Nix - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q Okay. And, at that time, of course, I know the victim
3 was gone, taken to the hospital and so forth.

4 Did you find a screwdriver there?

5 A I did, sir.

6 Q Okay. And I believe you can see it just barely, but
7 the screwdriver is underneath the chair, is that right?

8 A That's correct, sir.

9 Q And did you place that into evidence after you
10 collected it, sir?

11 A Yes, sir.

12 Q In handling that screwdriver, how did you handle it?

13 A I -- before I did anything to it, photographed it in
14 place, and then I already had gloves on before I do
15 anything, and then I, after photographing it, I collected
16 it.

17 Q And gloves are there to keep from fingerprints getting
18 on there, DNA, or anything getting on there?

19 A That's correct, sir.

20 Q So, if somebody else had gloves on, it would be the
21 same print where you wouldn't get any DNA or fingerprints
22 off of it using gloves just like you---

23 A Yes, sir.

24 Q ---did?

25 Let me let you look at State Exhibit No. 1, sir. You

Sean Nix - Direct examination
by Solicitor Barnette

1 can go ahead and open that, sir, and let's see if that was
2 the screwdriver you collected, sir.

3 A Yes, sir.

4 SOLICITOR BARNETTE: Okay. Your Honor, may I enter
5 this into evidence at this time?

6 THE COURT: Let Mr. Shealy take a look at it please.
7 (Pause.)

8 MR. SHEALY: No objection.

9 THE COURT: Without objections it will be admitted as
10 it's been marked.

11 (WHEREUPON, State's Exhibit No. 1 was received into
12 evidence at this time.)

13 THE COURT: You may proceed, Mr. Barnette.

14 SOLICITOR BARNETTE: May I publish it to the jury, Your
15 Honor?

16 THE COURT: You may do so.

17 Q Was that the screwdriver you collected in this case,
18 sir?

19 A Yes, sir.

20 Q Okay. And you placed that into evidence?

21 A Yes, sir.

22 Q And was it sent to SLED for testing?

23 A I believe it eventually was, yes, sir.

24 Q And you did, out of an abundance of caution, see if
25 there was anything on the screwdriver, is that right?

Sean Nix - Direct examination
by Solicitor Barnette

1 A Yes, sir.

2 Q Even though you know gloves would eliminate the kind of
3 DNA or fingerprints or anything on an object?

4 A Yes, sir.

5 Q Did you take swabs from the screwdriver that was sent
6 to SLED?

7 Let me show you State Exhibit No. 2.

8 A Yes, sir.

9 Q Okay. And could you explain to the jury how you do
10 those swabs that -- when you swab the screwdriver?

11 A In this incidence, what I do is swabs are put into
12 little cardboard carton boxes about this long. Again, I
13 have gloves on before I do anything. We then open up a
14 little packet of sterile cotton swabs that look like big
15 long Q-tips, and then we applied distilled water on the end
16 of those, and then swab the handle of the screwdriver in
17 order to possibly get any DNA that may be on it. Once
18 that's done, those swabs are then put in that carton box.
19 They're sealed up and placed in an evidence envelope like
20 this.

21 Q Okay. And you did these swabs and you secured those
22 and those was sent to SLED, is that right, sir?

23 A Yes, sir.

24 SOLICITOR BARNETTE: Your Honor, I'd like to enter
25 State Exhibit No. 2 into evidence at this time.

Sean Nix - Direct examination
by Solicitor Barnette

1 MR. SHEALY: No objection, Your Honor.

2 THE COURT: Without objection it will be admitted as
3 it's been marked.

4 (WHEREUPON, State's Exhibit No. 2 was received into
5 evidence at this time.)

6 THE COURT: You may proceed, Mr. Barnette.

7 SOLICITOR BARNETTE: Okay. Thank you.

8 Q Afterwards, sir, was you called to Spartanburg Regional
9 to take photographs of the victim in this case, Ms. Pruitt?

10 A Yes, sir.

11 Q Okay. I know the jury's seen that, but I just want to
12 make sure you can identify -- let's see.

13 Showing you what's been marked as State Exhibit 14.

14 Did you take that picture, sir?

15 A Yes, sir.

16 Q State Exhibit 15, did you take that close-up picture,
17 sir?

18 A Yes, sir.

19 Q State Exhibit 16, did you take that picture, sir?

20 A Yes, sir.

21 Q And State Exhibit 17, did you take that picture, sir?

22 A Yes, sir.

23 Q Okay. After meeting with the victim there, was you
24 called out to [REDACTED]

25 A I was, sir.

Sean Nix - Direct examination
by Solicitor Barnette

1 Q Okay. Before I forget that -- one other thing here.
2 At the hospital, did you collect a Buccal swab from Ms.
3 Pruitt?

4 A Yes, sir.

5 Q Let me show you what's been marked as State's Exhibit
6 No. 17.

7 Is that the Buccal swab you collected from Ms. Pruitt?

8 A Yes, sir.

9 Q Okay. And was that sent to SLED also?

10 A Yes, sir.

11 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
12 move State Exhibit 17 into evidence at this time.

13 MR. SHEALY: No objection, Your Honor.

14 THE COURT: Without objection it will be admitted as
15 it's now been marked.

16 (WHEREUPON, State's Exhibit No. 17 was received into
17 evidence at this time.)

18 THE COURT: You may proceed.

19 Q Okay. And these are Buccal swabs like the inside of
20 your cheeks where they collect cells that you use for DNA
21 testing?

22 A Yes, sir.

23 Q Okay. Did you go to Anderson Mill Road on -- [REDACTED]
24 [REDACTED] sir?

25 A [REDACTED]

Sean Nix - Direct examination
by Solicitor Barnette

1 Q Old Anderson Mill Road.

2 A Yes, sir.

3 Q I apologize. Old Anderson Mill Road.

4 Did you take pictures out there, sir?

5 A I did, sir.

6 Q Did you take State's Exhibit 18?

7 A Yes, sir.

8 Q Did you take State's Exhibit No. 19?

9 A Yes, sir.

10 Q State Exhibit 20?

11 A Yes, sir.

12 Q State Exhibit 21?

13 A Yes, sir.

14 Q And State Exhibit 22?

15 A Yes, sir.

16 Q And did you collect the hair in this case from inside
17 this?

18 A Yes, sir, I did.

19 Q This had been marked as State Exhibit No. 10.

20 Was that the hair that was collected from the trash
21 can?

22 A Yes, sir.

23 SOLICITOR BARNETTE: Okay. Your Honor, I'd like to
24 enter this into evidence at this time.

25 MR. SHEALY: No objection.

Sean Nix - Direct examination
by Solicitor Barnette

1 THE COURT: Without objection it will be admitted as
2 it's been marked.

3 (WHEREUPON, State's Exhibit No. 10 was received into
4 evidence at this time.)

5 THE COURT: You may proceed.

6 Q Okay. Also there did you collect a gray hoodie as well
7 as a denim jacket?

8 A Yes, sir, I did.

9 Q Let me show you what's been marked as State Exhibit No.
10 8.

11 Is that the gray hoodie you collected there, sir?

12 A Yes, sir.

13 SOLICITOR BARNETTE: Your Honor, I'd like to enter this
14 into evidence at this time.

15 MR. SHEALY: I don't believe there's any objection,
16 Your Honor.

17 THE COURT: No objection, is that right, Mr. Shealy?

18 MR. SHEALY: That's correct.

19 THE COURT: All right. Will be admitted as it's been
20 marked.

21 (WHEREUPON, State's Exhibit No. 8 was received into
22 evidence at this time.)

23 SOLICITOR BARNETTE: May I publish it to the jury, Your
24 Honor?

25 THE COURT: You may do so.

Sean Nix - Direct examination
by Solicitor Barnette

1 Q Okay. So, that was the gray hoodie that you took from
2 the residence -- I mean gathered there at the scene, is that
3 right, sir?

4 A Yes, sir.

5 Q Okay. And it appears to have -- it's gray and it
6 appears to have a hood on it, is that right?

7 A That's correct, sir.

8 Q And showing you State Exhibit No. 9. Let you go ahead
9 and open that, sir.

10 Is that the blue or the denim jacket you also collected
11 at that [REDACTED]

12 A Yes, sir.

13 SOLICITOR BARNETTE: Okay. Your Honor, like to enter
14 this into evidence at this time.

15 MR. SHEALY: No objection, Your Honor.

16 THE COURT: Without objection it will be admitted as
17 it's been marked.

18 (WHEREUPON, State's Exhibit No. 9 was received into
19 evidence at this time.)

20 THE COURT: You may proceed.

21 SOLICITOR BARNETTE: May I just publish it, Your Honor?

22 THE COURT: You may.

23 Q And this is the jacket that you collected there at the
24 scene, is that right?

25 A Yes, sir.

Sean Nix - Direct examination
by Solicitor Barnette

1 Q Afterwards did you take photographs of the defendant at
2 the Sheriff's Department, sir?

3 Let me show you State's Exhibit 30, 24, and I believe
4 23 is just a copy.

5 Do those picture fairly represent what you saw at the
6 Sheriff's Department, sir?

7 A Yes, sir.

8 Q And I believe these are already entered into evidence
9 already.

10 Okay. I show -- showing you State Exhibit 23, 24, and
11 State Exhibit 30 again.

12 At the Sheriff's Department, sir, did you collect also
13 a DNA sample from the defendant in this case?

14 A Yes, sir.

15 Q I believe that's State Exhibit No. 11.

16 A Yes, that is the number, sir.

17 Q Okay. And you collected this sample from the
18 defendant?

19 A Yes, sir.

20 Q Buccal swab similar to Ms. Pruitt --

21 A Yes, sir.

22 Q -- from there?

23 Your Honor, I like to enter State Exhibit No. 11 into
24 evidence at this time.

25 MR. SHEALY: No objection, Your Honor.

Sean Nix - Direct examination
by Solicitor Barnette

1 THE COURT: Without objection it will be admitted as
2 marked.

3 (WHEREUPON, State's Exhibit No. 11 was received into
4 evidence at this time.)

5 Q And just to make sure I cover this up too -- State
6 Exhibit 28, which was Ms. Pruitt's jacket, and you also
7 collected that at Spartanburg Regional, is that right?

8 A That's correct, sir.

9 Q Okay. That's the jacket she was wearing that day or
10 had with her that day?

11 A Yes, sir.

12 SOLICITOR BARNETTE: One moment, Your Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 Q Please answer any questions the defense may have for
16 you. Thank you, sir.

17 A Yes, sir.

18 THE COURT: Mr. Shealy, your witness.

19 MR. SHEALY: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. SHEALY:

23 Q All right. So, Investigator Nix, my understanding is
24 you swabbed the handle of the screwdriver, right?

25 A Yes, sir.

Sean Nix - Cross-examination
by Mr. Shealy

- 1 Q You swabbed Ms. Pruitt's mouth I guess?
- 2 A The inside of her mouth, yes, sir.
- 3 Q That's my understanding, the inside of her mouth?
- 4 A Uh-huh. (Affirmative).
- 5 Q And you swabbed my client's mouth?
- 6 A Yes, sir.
- 7 Q Right?
- 8 My client gave you that swab voluntarily, correct?
- 9 A If I remember correctly, yes.
- 10 Q And he, he didn't fight with you or anything, did he?
- 11 A No.
- 12 Q It was a -- you said open your mouth and he did?
- 13 A Yes, sir.
- 14 Q All right. Now, what order or when did you arrive at
- 15 [REDACTED]
- 16 A I arrived at 11:50 hours.
- 17 Q Okay. And Sergeant Bryant and Detective Williams were
- 18 already there, correct?
- 19 A I believe so.
- 20 Q Okay. So, they'd been there for some period of time
- 21 previously?
- 22 A They were there before. I can't tell you how long.
- 23 Q Okay. And they told you what they wanted you to
- 24 collect?
- 25 A Yes, sir.

Sean Nix - Cross-examination
by Mr. Shealy

1 Q Okay. And at Old Anderson Mill Road, I'm not really
2 excited about picking this stuff up, but they had you
3 collect this denim jacket, right --

4 A Yes, sir.

5 Q -- that we've already seen?

6 Okay. And they had you collect this gray hoodie,
7 right?

8 A Yes, sir.

9 Q But they did not have you collect that big blue puffy
10 jacket, did they?

11 A No, sir.

12 Q They didn't?

13 Okay. Was it cold that day?

14 A Couldn't tell you.

15 Q Couldn't tell me?

16 A That's a long time ago.

17 Q But it was in January, maybe it was, probably was,
18 right?

19 A Yes, sir.

20 Q So, maybe they were humanitarian.

21 Did they have you collect it after you took the
22 pictures?

23 A Are you asking me if I collected it after I took the
24 pictures?

25 Q After you took that picture, did you collect the big

Sean Nix - Cross-examination
by Mr. Shealy

1 blue puffy jacket?

2 A I don't have any knowledge -- excuse me. I don't have
3 it anywhere in my report that I did.

4 Q So, to your knowledge, you never did collect this big
5 puffy blue jacket?

6 A Correct.

7 Q All right. Did you collect these black look like khaki
8 cargo -- well, I mean they're black cargo pants?

9 Did you have any---

10 A No, sir.

11 Q Didn't collect those clothes either?

12 A No, sir.

13 Q All right. How about these boots?

14 Did he have you collect these boots?

15 A No, sir.

16 Q Okay. Okay. How about that shirt?

17 Didn't have you collect the shirt either, did they?

18 A No, sir.

19 Q No.

20 Okay. But they had you collect all of Ms. Pruitt's
21 clothing, correct?

22 A Correct, sir.

23 Q All right. And did they ask that you send the gray
24 hoodie to SLED?

25 A It was sent to SLED. I don't remember if I sent it

Sean Nix - Cross-examination
by Mr. Shealy

1 myself or the investigators did.

2 Q You don't remember.

3 Okay. Did you collect anything else other than what
4 you've already testified to that you know of?

5 A Not that I knowed of other than what I've already
6 testified to besides the screwdriver, the victim's clothing,
7 and what you referred to previously.

8 MR. SHEALY: Okay. If you'll bear with me just one
9 second.

10 (Pause.)

11 MR. SHEALY: All right. If you give me just one
12 minute, Your Honor, to confer with my client.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. SHEALY: All right. That's, that's all I have for
16 this witness.

17 THE COURT: Any redirect?

18 SOLICITOR BARNETTE: No other questions, Your Honor.

19 THE COURT: All right.

20 SOLICITOR BARNETTE: We'd ask the witness be excused.

21 THE COURT: You may step down.

22 Do you wish to excuse the witness?

23 SOLICITOR BARNETTE: Yes, sir.

24 THE COURT: Any objection?

25 MR. SHEALY: No, Your Honor.

1 THE COURT: You're free to go, sir.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, at this time we're gonna break for lunch. You'll be
5 leaving the courthouse. I'll give you the same instructions
6 I'll give you every time you leave the courthouse.

7 Don't attempt to gather any information about this case
8 on your own. Don't listen to, watch, or read media reports.
9 Don't discuss the case with anyone and do not allow anyone
10 to discuss the case with you. If anyone tries to contact
11 you about your service on this jury, please report it upon
12 your return.

13 We're going to resume at 1:30. Be back in the jury
14 room at that time. Hope you have a great lunch. I'll be
15 checking on my instructions when you get back.

16 MR. SHEALY: Your Honor?

17 THE COURT: You're free to go at this time.

18 MR. SHEALY: Your Honor, may Mr. Barnette and I
19 approach?

20 THE COURT: Yes.

21 Oh, wait a second, ladies and gentlemen. Have a seat.
22 One thing I do need to inquire of you about.

23 Let me get that information.

24 SOLICITOR BARNETTE: Your Honor, may we approach about
25 one other matter?

1 THE COURT: Sure. Come on up.

2 SOLICITOR BARNETTE: Thank you.

3 Mr. Shealy needs to --.

4 (WHEREUPON, a bench conference was held out of the
5 hearing of the jury at this time.)

6 THE COURT: The attorneys had informed me that there
7 are some names that I didn't ask you about during
8 qualification that have come up during our preparation for
9 this trial. These are people who either are witnesses or
10 can be witnesses.

11 A gentleman by the name of Richard McAbee.

12 Sean Nix.

13 Curtis Jones.

14 And as to those individuals, those names, if you've
15 ever been related to them by blood or marriage or if you
16 have ever had a close personal or a social relationship with
17 them, please stand.

18 (No response.)

19 THE COURT: So it appears that none of you are
20 acquainted with those individuals.

21 Also I have been informed that there is another matter,
22 it's got nothing to do with this case, but it's gonna
23 interfere with our being able to start back at an earlier
24 hour after lunch. So, you're gonna get a big lunch break
25 today.

1 we'll start back at three o'clock this afternoon. Be
2 back in the jury room at that time.

3 Again, same instructions apply that I gave you just a
4 moment ago. You're free to go. Three o'clock this
5 afternoon.

6 Thank you very much.

7 (WHEREUPON, the following takes place outside the
8 presence of the jury.)

9 THE COURT: All right. We're in recess till three
10 o'clock.

11 Thank you very much.

12 SOLICITOR BARNETTE: Thank you, Your Honor.

13 (WHEREUPON, Court was in recess for the lunch hour.)

14 SOLICITOR BARNETTE: May we approach for a second, Your
15 Honor?

16 THE COURT: Please do.

17 (WHEREUPON, a bench conference was held at this time.)

18 THE COURT: Defense ready to proceed?

19 MR. SHEALY: Yes, Your Honor.

20 THE COURT: All right. Let's bring the jury in.

21 (WHEREUPON, the following takes place within the
22 presence of the jury.)

23 THE COURT: The record will reflect that the jury has
24 returned to the courtroom.

25 If anyone had any difficulty in following my

1 instructions during our break, please stand.

2 (No response.)

3 THE COURT: All right. The State is in the process of
4 presenting its case.

5 You may call your next witness, Mr. Barnette.

6 SOLICITOR BARNETTE: Like to call Ms. Webb to the
7 stand, Your Honor.

8 THE COURT: Come forward please, ma'am, to be sworn.

9 AMANDA WEBB, being first duly sworn,
10 testified as follows:

11 THE COURT: Ma'am, once seated, state your name please.

12 THE WITNESS: Amanda Webb.

13 THE COURT: Thank you.

14 Mr. Barnette, your witness.

15 SOLICITOR BARNETTE: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY SOLICITOR BARNETTE:

19 Q Ms. Webb, where do you work at, ma'am?

20 A I work at the South Carolina Law Enforcement Division,
21 also known as SLED, in the forensics DNA Department.

22 Q And how long have you been there, ma'am?

23 A A little over six years.

24 Q Okay. And can you tell me a little bit about the, what
25 you do with DNA and so forth, ma'am, if you would?

Amanda Webb - Direct examination
by Solicitor Barnette

1 A Sure. At SLED we work criminal cases throughout all
2 the State of South Carolina. As a DNA analyst, if there's
3 any case where a DNA profile might be helpful as in maybe
4 placing someone at the scene of a crime, then evidence is
5 submitted to the lab at SLED, and I will try to develop a
6 DNA profile for -- from any evidence items.

7 Then also I'm submitted known standards from
8 individuals and those known standards, that's just usually
9 a, a swab from the inside of their cheek, and it just helps
10 know who the DNA is from. So, if a DNA profile is developed
11 from an evidence item, I can compare it to the DNA profile
12 of that known individual and said whether or not they're
13 included or excluded.

14 Q Okay. Thank you, ma'am.

15 How many times have you been qualified in DNA analysis,
16 ma'am, for the Court?

17 A About 30.

18 SOLICITOR BARNETTE: Okay. Your Honor, at this time
19 I'd move her as an expert in DNA.

20 THE COURT: Any objection?

21 MR. SHEALY: No objection, Your Honor.

22 THE COURT: Ladies and gentlemen, let me explain to you
23 what this means.

24 The State is offering this witness as an expert in the
25 area of DNA analysis. Normally, under the rules of

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1 evidence, witnesses are not allowed to state opinions. They
2 can state what facts they may have in their knowledge, but
3 not opinions concerning those facts.

4 An exception for that rule is made for witnesses who
5 are qualified as experts within some field or science or
6 profession. As to those witnesses, they are allowed to
7 state their opinions within their area of expertise, and
8 also are allowed to state the reasons why they hold those
9 opinions.

10 Later on, during my charge on the law, I will give you
11 some additional information concerning how you might treat
12 testimony given by all witnesses, including experts. But at
13 this time we're going to qualify this witness as an expert
14 within that field. That would allow her to state her
15 opinions within the field and the reasons for the opinions.

16 So, she is qualified, Mr. Barnette. You may proceed.

17 SOLICITOR BARNETTE: Okay. Thank you, Your Honor.

18 Ma'am, from the Spartanburg County Sheriff's Office,
19 did you receive three items to test concerning DNA?

20 Let me look at -- let you look at them.

21 I believe -- is this a copy of your report, State
22 Exhibit 26?

23 A Yes, sir, it is.

24 SOLICITOR BARNETTE: Okay. I'll go ahead -- Your
25 Honor, I'd like to move this into evidence at this time.

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1 THE COURT: Excuse me.

2 SOLICITOR BARNETTE: No objection.

3 THE COURT: Without objection, that document will be
4 received as marked.

5 How is it marked?

6 SOLICITOR BARNETTE: State Exhibit 26, Your Honor.

7 THE COURT: Thank you.

8 (WHEREUPON, State's Exhibit No. 26 was received into
9 evidence at this time.)

10 THE COURT: You may proceed.

11 Q And, Ms. Webb, if you would, take a look at State
12 Exhibit 2, 1, and I believe it's State Exhibit No. 11.

13 Was those items that you received to test for DNA,
14 ma'am?

15 And I believe there's one other item. Let me check
16 here.

17 State Exhibit 7. That's also another item you
18 received.

19 A Yes, I received State's Exhibit 2, and that was swabs
20 from a screwdriver. I can tell that I received it. It's
21 in, it's in the pouch that the evidence is submitted in
22 SLED. It has the original -- the unique case number
23 identifying this case, and it has my initials and date on it
24 from where I had it in my custody when I was working on it.

25 Q And these are the swabs that came from the screwdriver

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1 that you observed there, is that right, done by the
2 Sheriff's Department?

3 A Yes, that's correct.

4 And State's Exhibit 11, I worked -- and that is a
5 Buccal swab from Richard Culberson, and a Buccal swab,
6 again, that's the swab that's taken from an individual just
7 so I know what his DNA profile is when I compare it to any
8 evidence. Buccal is just -- it's the name of the skin cells
9 on the inside of your cheek, and that's where it's taken
10 from. So, that's why it's called a Buccal swab.

11 And State's Exhibit No. 7, yes, this was a Buccal swab
12 from D.P.

13 Q Okay. And let me ask you, before we go into the
14 analysis and everything, if an individual is wearing gloves,
15 would that keep from DNA or fingerprints being shown on a
16 screwdriver or on a weapon?

17 A Yes, gloves will prevent any transfer of, of skin cells
18 onto an item, and that's where a DNA profile is developed.
19 So, if no skin cells are transferred -- they wouldn't be
20 transferred through gloves.

21 Q And the same thing, going through cloth like a heavy
22 coat or whatever, would that be hard to show any kind of
23 transferred DNA in that situation too?

24 A Yes, that's correct.

25 Q Okay. Let me go ahead and publish State Exhibit 26,

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1 ma'am.

2 Obviously you received swabs from the screwdriver
3 handle, and you received known Buccal scabs from Richard
4 Culberson, the defendant, and D.P. the victim in
5 this case, is that right?

6 A Yes, that's correct.

7 Q Okay. And based off that result, what did you find
8 that was on the screwdriver?

9 A I was able to develop a DNA profile from the handle of
10 the screwdriver, and when I compared that to the DNA profile
11 of Richard Culberson, he was excluded as a contributor, and
12 also when compared to D.P. she is excluded as a
13 contributor meaning their profiles did not match the
14 screwdriver. So, their DNA was not found on the item.

15 Q However, you found an unidentified female individual's
16 DNA?

17 A Yes, it was an unidentified female on the screwdriver.
18 I don't know whose DNA it was. I only had the standards to
19 compare to and they are excluded.

20 Q And how do you know it was a female's DNA?

21 A Sure.

22 As you may remember in biology class or I'm sure you've
23 heard people talking that female individuals have an X
24 chromosome. They have two X chromosomes actually and males
25 have an X and a Y chromosome, and the locations that we test

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1 at SLED and in forensics test those locations for those
2 chromosomes.

3 If you'll see in the table on the screen, that very
4 last column, you can see the top has an X, yes, thank you,
5 and that's D.P. So, an X means female. And an,
6 and the second one is an XY and that's Richard Culberson,
7 and he's a male. So, he has a Y chromosome. And if you'll
8 see from the evidence item, it's the last one, it just has
9 an X. So, that means that it's a female individual. Not a
10 male individual.

11 Q Okay. But obviously if a person had gloves that
12 handled this, they would not leave DNA on this screwdriver,
13 would they?

14 A No, that's correct. Not through gloves.

15 Q Okay. And, at the same time, if the victim in this
16 case had a heavy coat on or had gloves herself, it would
17 be -- you won't get DNA from that person either, would you?

18 A Yes, that's correct. Not through heavy material, no.

19 Q Okay. If you would, please answer any questions Mr.
20 Shealy may have for you.

21 THE COURT: Mr. Shealy, your witness.

22 MR. SHEALY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SHEALY:

25 Q So, Ms. Webb, it looks like we do know that at least

Amanda Webb - Cross-examination
by Mr. Shealy

1 somebody handled this screwdriver, right?

2 A Yes, that's correct.

3 Q And it's an unidentified female?

4 A Yes, that's right.

5 Q And you've testified that it's impossible to get DNA
6 through gloves, correct?

7 A Yes.

8 Q I mean cause obviously the material stops it.

9 A Yes, correct.

10 Q But what if he has touched something?

11 Like, for example, his face, anything like that, could
12 he then transfer that way?

13 A It's possible. It's a less likely scenario. That sort
14 of instance is what we call secondary transfer. Let's say I
15 shook hands with someone, and then they shook hands with
16 someone else. You know, it would say -- the secondary
17 transfer would be my DNA on the third person's hand
18 transferred from the middle person that I shook hands with
19 and then that middle person shook hands with someone else.
20 That would be secondary transfer.

21 That's less likely just because it really takes more
22 prolonged contact to transfer skin cells, touch DNA.
23 They're, they're more fragile. They don't really transfer
24 as well as other things like body fluids. So, a transfer of
25 skin cells in a secondary type is a little less likely.

Amanda Webb - Cross-examination
by Mr. Shealy

1 Q Okay. Not if there was actually bodily fluid on that
2 glove and that glove touched the screwdriver handle, would
3 you of been able to make a DNA profile from that too or
4 would --?

5 A Well, I didn't test it for body fluids, but if, if
6 there was body fluids, that could possibly, that profile
7 that I was able to develop from the handle, it could be from
8 body fluids. I would say it would be more likely to be
9 maybe saliva that I don't think there was any appearance of
10 blood, any like brown staining or anything. But it could be
11 from saliva or skin cells. There's -- I didn't do a test
12 for any body fluids because there was no indication that
13 body fluids might be present.

14 Q Okay. So, basically what you're saying is it doesn't
15 necessarily have to be skin cells to create a DNA profile.
16 You can do it from other things, right?

17 A That's correct.

18 Q Okay. And you gave the example of shaking hands. You
19 shaking hands with a first person, and then another person
20 and transferring that first person's DNA to the third person
21 --

22 A Yes.

23 Q -- is that correct?

24 And if you washed your hands between shaking their
25 hands, you wouldn't transfer, correct, or you're unlikely to

Amanda Webb - Cross-examination
by Mr. Shealy

1 transfer?

2 A Yeah, it would be much less likely because washing your
3 hands would remove any skin cells that might of been
4 transferred from someone else.

5 Q But do you wash your hands quite a bit more often than
6 you wash your gloves, don't you?

7 A I do, yes.

8 Q Yeah.

9 okay. And couldn't, not just prolonged exposure, but
10 exposure over and over and over again, couldn't that
11 transfer enough DNA that it could show up?

12 A I would say that that's likely. Most often times, with
13 gloves, you find it on the inside, but there are certain
14 types of gloves where you, you know, that can be warn on
15 either side. So, if, if you handle the outside of the
16 gloves enough and, and deposit enough DNA on the outside of
17 those gloves, I can see where, if you were to grab an item
18 and hold it tightly and for a long amount of time, it would,
19 it would transfer DNA, yes.

20 Q Okay. And I understand that you're saying that's an
21 unlikely scenario. I'm not suggesting that it happens every
22 day all day. But I just wanted to find out if that was
23 possible.

24 A Yes.

25 Q And ultimately though the DNA profile we did get was

Amanda Webb - Cross-examination
by Mr. Shealy

1 pretty clearly -- was it one person, two people?

2 A It was one person.

3 Q One person.

4 And that one person was a non-identified female,
5 neither, obviously, Mr. Culberson or Ms. Pruitt, correct?

6 A Yes, that's correct.

7 Q Thank you, ma'am.

8 THE COURT: Mr. Barnette, your witness.

9 SOLICITOR BARNETTE: Just one question, Your Honor.

10 REDIRECT EXAMINATION

11 BY SOLICITOR BARNETTE:

12 Q But it's very very unlikely that you'd get, using
13 gloves, any kind of transfer in that situation?

14 A Yes, I would say it's a less likely scenario, yes.

15 SOLICITOR BARNETTE: Okay. That's all the questions I
16 have, Your Honor.

17 THE COURT: Mr. Shealy.

18 MR. SHEALY: I have nothing.

19 THE COURT: Any questions?

20 MR. SHEALY: Nothing further.

21 THE COURT: Do you wish to excuse the witness, Mr.
22 Barnette?

23 SOLICITOR BARNETTE: Yes, sir.

24 THE COURT: Any objections?

25 SOLICITOR BARNETTE: None, Your Honor.

1 THE COURT: You're free to go, ma'am. You may step
2 down. Thank you very much.

3 THE WITNESS: Thank you, Your Honor.

4 SOLICITOR BARNETTE: May we approach the bench for a
5 second, Your Honor?

6 THE COURT: Yes, sir.

7 (WHEREUPON, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: Ladies and gentlemen of the jury, there's a
10 matter I need to take up with the attorneys and you'll have
11 to go out of the courtroom when I do that. So, I'll ask you
12 to step back to the jury room.

13 Do not discuss anything, even among yourselves, till I
14 ask you to do so.

15 You may retire to the jury room. Thank you.

16 (WHEREUPON, the following takes place outside the
17 presence of the jury.)

18 THE COURT: Yes, sir.

19 SOLICITOR BARNETTE: One thing I want to make clear
20 before I started calling our next witness, and this came up
21 in questioning that Mr. Shealy was done.

22 THE COURT: Uh-huh. (Affirmative).

23 SOLICITOR BARNETTE: I don't want him to be in a
24 position to try to argue that they arrested him before they
25 actually did the ID. The reason why they arrested him was

1 they had a probation violation, and they did arrest him
2 prior to the lineup being shown. I mean I'll submit that to
3 the Court, but I don't think it's---

4 THE COURT: Well, who is the next witness?

5 SOLICITOR BARNETTE: It's the city officer --

6 THE COURT: I see.

7 SOLICITOR BARNETTE: -- in this case, and he was
8 actually the one that checked and found out that he had a
9 warrant, and we do have Jason Bryant that can testify that
10 the warrant was actually served on him, a probation
11 violation warrant.

12 THE COURT: Mr. Shealy.

13 MR. SHEALY: Well, judge, I mean it depends on what he
14 testifies to as to what I'm gonna have to get into.

15 THE COURT: Well, I will caution you if you, if you get
16 into questioning the reason or the motivation of the
17 probable cause behind him arresting him, that could open the
18 door for the issue of there being a probation violation
19 warrant outstanding.

20 MR. SHEALY: Well, Your Honor, and that's -- I guess
21 that I probably ought to take that up. I mean it may be
22 that, you know -- I believe that the State is going to bring
23 into evidence that my client appears to have taken flight
24 from the QT bus stop and don't---

25 THE COURT: I've heard that said, yes, sir.

1 MR. SHEALY: Yes, sir.

2 And I think that it's probably going to be necessary
3 that I ask well, isn't it true he had a warrant. The reason
4 I had asked it previously is about it being a probation
5 violation. I don't think that that, in itself, is
6 particularly relevant. The fact he had a warrant for his
7 arrest, I would think that that would be sufficient. In
8 other words, I would ask to limit it to simply that there
9 was a warrant for his arrest, and we're, we're fine with
10 officer, I believe it's gonna be Weatherman, or maybe
11 Officer Canada testifying that there was a warrant for his
12 arrest.

13 THE COURT: Would that satisfy you?

14 SOLICITOR BARNETTE: That's fine, Your Honor. I
15 noticed in the questioning with Mr. Gary, Investigator Gary
16 that that came up and I said, you know, that---

17 THE COURT: It was, it was---

18 SOLICITOR BARNETTE: I wasn't gonna introduce it.

19 THE COURT: It seemed to be going in that direction.

20 SOLICITOR BARNETTE: Yes, sir.

21 THE COURT: But he is -- apparently acknowledges that
22 you will be able to get into the fact that there was a
23 warrant outstanding for the -- his arrest, and -- but we
24 won't get into the fact that it was a probation violation
25 warrant because at least the lawyers in the room that would

1 indicate that he had other convictions for crimes, and I
2 understand that that's something we probably should not get
3 into.

4 So, as long as you get into the fact that they had a
5 warrant for his arrest, I'll allow you to do so and
6 Mr. Shealy's agreed you can.

7 SOLICITOR BARNETTE: And let me check. I got---

8 THE COURT: Check to see if you got them out there.

9 SOLICITOR BARNETTE: Yes, sir.

10 (Pause.)

11 THE COURT: Yes, sir.

12 SOLICITOR BARNETTE: Your Honor, he was here. He left.
13 He's back in route. He should be back here shortly. I
14 apologize. I, I, I didn't pay any attention when I walked
15 in that he had left.

16 THE COURT: Who is -- all right. Well, I'll make you
17 aware that I'm probably gonna have to quit a little before
18 5:00 because I have a meeting with the bar in Greenville at
19 5:30. So --.

20 SOLICITOR BARNETTE: I've got -- I think it's gonna be
21 two more witnesses, Your Honor.

22 THE COURT: Okay. Maybe we can get them done.

23 SOLICITOR BARNETTE: Yes, sir.

24 (Pause.)

25 SOLICITOR BARNETTE: Your Honor, State's ready. I

1 apologize.

2 THE COURT: That's okay.

3 Bring the jury in.

4 THE BAILIFF: Yes, Your Honor.

5 (WHEREUPON, the following takes place within the
6 presence of the jury.)

7 THE COURT: The record will reflect the jury has
8 returned to the courtroom.

9 You may call your next witness, Mr. Barnette.

10 SOLICITOR BARNETTE: Thank you, Your Honor.

11 May it please the Court.

12 Like to call Officer Weatherman to the stand.

13 THE COURT: Come forward, sir. Step over to my left
14 here to be sworn please.

15 PAUL WEATHERMAN, being first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat please, and state your name
18 once you're seated.

19 THE WITNESS: My name is Benjamin Paul Weatherman. I'm
20 with the Spartanburg City Police Department.

21 THE COURT: Thank you.

22 Mr. Barnette, your witness.

23 SOLICITOR BARNETTE: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY SOLICITOR BARNETTE:

Paul Weatherman - Direct examination
by Solicitor Barnette

1 Q What -- how long have you been with the City Police
2 Department, sir?

3 A A little over seven years now, sir.

4 Q Okay. Was you on duty January 24th, 2013, sir?

5 A I was.

6 Q If you would, did you receive a call, a BOLO, as we
7 call it, about a description over the radio that morning?

8 A I did, sir.

9 Q Okay. If you would, tell the jury about that, sir.

10 A In the early morning hours a BOLO was given out in
11 reference to a male subject in reference to an incident that
12 occurred in the county.

13 Q Uh-huh. (Affirmative).

14 And based off that description, did you see somebody
15 that, that fit that description?

16 A I did, sir.

17 Q And where did you see that individual at?

18 A That would of been at the intersection of West Main
19 Street about Baltimore Street at the bus stop area.

20 Q Okay. Is that -- to give them some reference, is that
21 going where the QT there at Reidville Road and West Main
22 going towards Westgate?

23 A Yes, sir.

24 Q Going out there through 29 on West Main Street?

25 A Yes, sir.

Paul Weatherman - Direct examination
by Solicitor Barnette

1 Q And there's a Vic Bailey across from there?

2 A Yes, sir.

3 Q Like a lot there from there?

4 A Yes, sir.

5 Q At that time when you saw the individual, what did you
6 do?

7 A When I initially saw the individual I drove by. I
8 looked toward his direction. Continued on before I turned
9 around. I didn't initially determine -- as I was driving by
10 I was looking, remembered the BOLO, was trying to see what
11 this person looked like to see if it was somebody that I
12 needed to probably get out with.

13 Q Okay. And what did you do once that happened, sir?

14 A I think when I initially went by the male had -- that I
15 observed had walked across the street to the, to the
16 business, the Vic Bailey I believe it was. Vic Bailey.
17 Then had came back to the bus stop area. At that point is
18 when I got out at the bus stop to speak with him.

19 Q Okay. Did you talk to him at that point?

20 A I did, sir.

21 Q And did you determine who he was at that point?

22 A Yes, sir. Yes, sir through I believe it was his state
23 identification card.

24 Q And who was it, sir?

25 A The male that I was out with, to make sure I pronounce

Paul Weatherman - Direct examination
by Solicitor Barnette

1 the full name correctly, was a Richard Todd Culberson.

2 Q Okay. And that time -- later on did you receive
3 additional information concerning him?

4 Later on -- did you speak to him initially and then
5 came back and spoke to him?

6 A Yeah. Well, I, I had the initial contact with him,
7 retrieved his identification, went through the normal
8 process of running the name and recording that information
9 on my pad. While doing that, I believe a deputy had arrived
10 on scene, and, at that point, I walked away to talk to that
11 deputy.

12 Q So, a sheriff's deputy.

13 Of course, what the, what's the kind of car -- you
14 drive a white car, black, or what color was your car?

15 A Our cars are white with blue striping.

16 Q Yes, sir.

17 A And the sheriff's cars are white in the middle, black
18 on the front and rear.

19 Q Okay. So, he initially talked to you and you went to
20 check some information to see who he was and everything?

21 A Yes, sir.

22 Q And then a black and white pulled up, a county vehicle,
23 is that right?

24 A Yes, sir.

25 Q What did he do when the black and white pulled up?

Paul Weatherman - Direct examination
by Solicitor Barnette

1 A At that point I -- from what I was aware of the
2 incident, the initial BOLO was in reference to what had
3 occurred in the county. So, I didn't have any details on
4 that. I guess, the county may have heard over the radio
5 that I was out with a person of interest possibly is why the
6 deputy arrived on scene. At that point I go to talk to the
7 deputy to try to figure out exactly what was going on and
8 hopefully ascertain if this is the person that we should be
9 speaking with. At that point Mr. Culberson had walked back
10 across the street toward the, the Vic Bailey.

11 Q Okay. Did y'all follow after him into the Vic Bailey?

12 A Not at that point, no, sir. Like I said, based off the
13 information I have or I had at the time, I didn't have
14 enough information to officially detain him or to keep him
15 at that point. So, as he walked away, I briefly continued
16 speaking with the deputy.

17 Q Did you get more information?

18 A We did, yes, sir, later on, that wasn't available
19 initially.

20 Q And what did you do once you received that additional
21 information?

22 A I -- once we got the additional information, we
23 attempted to go back to the area where the, the -- Mr.
24 Culberson had walked to the Vic Bailey to locate him inside
25 the business. At that time we were advised by employees

Paul Weatherman - Direct examination
by Solicitor Barnette

1 that he had went out the rear of the business, and the
2 deputy and I attempted to locate but were unable to.

3 Q Okay. So, he -- you had talked to him initially and
4 then he walked off when the county, when the county unit
5 came up and you started talking to that deputy?

6 A Yes, sir.

7 Q And y'all followed after him, but he had left Vic
8 Bailey and went through the back door from the information
9 you received?

10 A Yeah, from, from talking to the people inside the
11 business, he had went out the back of the business, yes,
12 sir.

13 Q Okay. And behind the business, what is there behind
14 the business there?

15 A If I recall correctly, I believe there's, there's some
16 sort of a fence line, property line for the business, the
17 rear of their parking lot. I believe it goes in and there
18 may be a house back there, but I believe it's a wooded area.

19 Q Okay. And this fence is probably a 6-foot fence with
20 barbwire on top of it?

21 A Something, yeah, be similar to that I believe, yes,
22 sir.

23 Q Okay.

24 A That's the only time I had ever been behind the
25 business.

Paul Weatherman - Direct examination
by Solicitor Barnette

1 Q Okay. And the individual you spoke to was Richard Todd
2 Culberson?

3 A Yes, sir.

4 Q Okay. And you ID'd him from his ID, is that right?

5 A Yeah, from speaking with him. He gave me his South
6 Carolina identification card, [REDACTED].

7 SOLICITOR BARNETTE: Okay. And what -- excuse me one
8 second, Your Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q May I see your police report for one second?

12 A Yes, sir.

13 Q What was he wearing that day, sir, when you stopped
14 him?

15 A He had on a large blue coat with a gray hooded style
16 jacket underneath it with dark colored pants.

17 Q Okay. Showing you State Exhibit 8.

18 Does this appear -- let me pull it up here.

19 Does this appear to be the -- similar to the jacket he
20 was wearing that day, sir?

21 A Based off what I observed in my description it would be
22 a similar jacket.

23 Q Yes, sir.

24 And showing you State Exhibit No. 30, sir.

25 Is that the way Mr. Culberson looked the day that you

Paul Weatherman - Direct examination
by Solicitor Barnette

1 stopped him back in January 24th, 2013?

2 A Yes, sir, it would of been very similar to that.

3 Q Okay. And that was -- looks like the blue jacket he
4 was wearing that day too?

5 A Similar sir, yes, sir. It would of been a blue, kind
6 of a bigger jacket.

7 SOLICITOR BARNETTE: Permission to publish State
8 Exhibit 30 to the jury, Your Honor?

9 THE COURT: You may.

10 Q Okay. So, when the -- you and the county deputy, and I
11 believe that was Henry Cline, went to look for him, you
12 could not find him, is that right?

13 A No, sir, we could not.

14 Q I know he's changed his looks dramatically since then,
15 but do you see that individual in the courtroom today
16 that -- the gentleman that you saw on the street?

17 A I believe that to be him sitting over there, sir. Like
18 I said, there are some differences in what he looked like
19 from when I spoke with him and now.

20 Q Can you tell me what, what he's wearing, sir, here in
21 Court today?

22 A Here in Court today, it would be a blue shirt with a
23 dark blue tie.

24 SOLICITOR BARNETTE: Your Honor, I would like the
25 record to reflect he's identified the defendant in this

Paul Weatherman - Direct examination
by Solicitor Barnette

1 case.

2 THE COURT: It will so reflect.

3 SOLICITOR BARNETTE: One moment, Your Honor, please.

4 THE COURT: Yes, sir.

5 (Pause.)

6 SOLICITOR BARNETTE: Please answer any questions that
7 Mr. Shealy may have for you, sir.

8 THE COURT: Mr. Shealy, your witness.

9 MR. SHEALY: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. SHEALY:

12 Q All right. Officer Weatherman, so you saw or you've
13 encountered it looks like my client and a female at that bus
14 stop?

15 A Yes, sir, there was a white female present.

16 Q All right. Do you remember what her name is?

17 A Her name was Heather Marie Holmstrom.

18 Q Okay. And you have their housing status listed after
19 their names.

20 what's, what's that?

21 A Yes, sir, it should be homeless for Ms. Holmstrom.

22 After Mr. Culberson I have an address listed, which would of
23 probably come from his ID card.

24 Q Okay. I'm gonna hand you what looks like your incident
25 report.

Paul Weatherman - Cross-examination
by Mr. Shealy

- 1 A Yes, sir.
- 2 Q Right about there.
- 3 A Yes, sir.
- 4 Q Do you have him listed as an -- with an address?
- 5 A Yes, sir, I have him listed with an address---
- 6 Q On the back.
- 7 A Yes, sir, on the back it's two separate parts of the
- 8 form we fill out. For mailing purposes I use what's on his
- 9 state ID card --
- 10 Q Okay.
- 11 A -- which is required through the DMV.
- 12 Q But if you would, read from there to there---
- 13 A Yes, sir.
- 14 Q ---please.
- 15 A Had a male as Richard Todd Culberson, homeless.
- 16 Q Okay. So -- but you would of gotten a mailing address
- 17 from the identification card---
- 18 A Yes, sir.
- 19 Q ---is what you're saying?
- 20 A Yes, sir, that's where this address would of came from.
- 21 Q All right. So that doesn't mean necessarily that he
- 22 lives there I suppose?
- 23 That's just what's on his ID, right?
- 24 A Yes, sir, that's what, that's what we would---
- 25 Q Generally speaking---

Paul Weatherman - Cross-examination
by Mr. Shealy

- 1 A ---get our address from.
- 2 Q ---ID's have addresses on them?
- 3 Have you ever seen an ID that doesn't have an address
- 4 on them?
- 5 A No, sir.
- 6 Q No.
- 7 Because that would be foolish, right?
- 8 A I imagine someone -- yes.
- 9 Q Okay. So, he ultimately produces his identification
- 10 card, right?
- 11 A Yes, sir, he did.
- 12 Q If you'll hang on just for one second. Let me ask the
- 13 solicitor something.
- 14 (Pause.)
- 15 Q All right. You -- initially you checked him through
- 16 y'all's computer system, right, and y'all's records
- 17 management system?
- 18 A It would of most likely went through the -- we do it
- 19 through the records department --
- 20 Q Okay.
- 21 A -- at city hall.
- 22 Q All right. Initially he came back clear, right?
- 23 A Yes, sir, I, I had him checked for warrants and they
- 24 advised initially that they were no warrants listed---
- 25 Q Okay.

Paul Weatherman - Cross-examination
by Mr. Shealy

1 A ---and anything like that.

2 Q So, you started talking to him about this incident and
3 that sort of thing, right?

4 A In---

5 Q You just---

6 A ---reference to the BOLO?

7 Q Yes, sir.

8 A Right.

9 Q And in reference in talking to him, did you notice that
10 he had a black folding pocketknife in his right pocket?

11 A I did, sir.

12 Q Okay. You also noticed he had dark colored pants,
13 correct?

14 A Yes, sir.

15 Q Okay. And when you asked him where he was going --
16 well, you can't really testify to that. We'll just skip
17 that question.

18 Now, whenever the deputy came on scene, you said, at
19 that point, you started leaving a little bit, right?

20 A Yes, sir, when I---

21 Q He walked across the street I think?

22 A Yes, sir, when I went to the deputy's vehicle.

23 Q Okay. And after you started talking to the deputy,
24 isn't it true that it turned out that Mr. Culberson did have
25 a warrant for his arrest?

Paul Weatherman - Cross-examination
by Mr. Shealy

1 A Yes, sir.

2 Q But it didn't have anything do with this incident, did
3 it?

4 A No, sir.

5 Q No.

6 It was a completely different warrant, right?

7 A Yeah, there was some sort of delay from what I
8 understand when they did the check.

9 Q Okay. So -- all right. And that's when, I guess,
10 he -- you went through the Vic Bailey, y'all decided y'all
11 needed to go and try to---

12 A Yes, I don't, I don't recall the exact timeframe of
13 when we got the call that there was actually a warrant
14 listed and that process.

15 Q Okay.

16 A But somewhere in there we would have been notified, at
17 some point, that there was a warrant.

18 Q All right. I -- if you'll bear with me just one
19 second.

20 THE COURT: Yes, sir.

21 (Pause.)

22 MR. SHEALY: All right. I have nothing further for
23 this witness.

24 SOLICITOR BARNETTE: Just a few questions on redirect,
25 Your Honor.

Paul Weatherman - Redirect examination
by Solicitor Barnette

1 THE COURT: Yes, sir, Mr. Barnette.

2 REDIRECT EXAMINATION

3 BY SOLICITOR BARNETTE:

4 Q Where did he tell you he was going to go?

5 A He advised me, at that point, that they were waiting
6 for the city bus and that he was gonna go to his father's
7 house to pick up a check.

8 Q Okay. The city bus don't go out to Anderson Mill Road,
9 does it?

10 A I doubt it.

11 Q Old Anderson Mill Road, does it?

12 A I'm not really familiar with that location.

13 Q Okay. And, matter of fact, that's not in the city, is
14 it?

15 A Yeah, I would say highly doubtful from there.

16 Q And where did he say he had came from or where he had
17 been earlier that day?

18 A He advised that they had spent the night at the cold
19 weather shelter, and that they were coming from there, but
20 had also been in downtown.

21 Q Okay. The cold weather shelter, is that the mission
22 over here that's right, the white building?

23 A I believe that's 189, 189 North Forest I believe.

24 Q Right.

25 And after he left and everything, did you go there to

Paul Weatherman - Redirect examination
by Solicitor Barnette

1 check to see if he had been there that day or that morning?

2 A I had, I had, at some point after that, I did speak
3 with, with the mission to see if they had been there.

4 Q And what information did you receive?

5 A I was advised that they didn't have documentation of
6 Mr. Culberson or Ms. Holmstrom being on record for having
7 stayed there the previous night.

8 SOLICITOR BARNETTE: One moment, Your Honor, please.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q Thank you, sir. Please answer any questions Mr. Shealy
12 may have for you.

13 A Yes, sir.

14 THE COURT: Mr. Shealy.

15 MR. SHEALY: Thank you, Your Honor.

16 RE CROSS EXAMINATION

17 BY MR. SHEALY:

18 Q Now, this business about a cold shelter, not all
19 homeless people stay at the cold shelter, do they?

20 A I'm sorry, sir. I couldn't hear you.

21 Q Not all homeless people stay at the cold shelter at 189
22 North Forest Street, correct?

23 A No, sir.

24 Q In fact, they stay wherever they can stay, right?

25 A Yes, sir.

Paul weatherman - Recross examination
by Mr. Shealy

1 Q Okay. And so it's anywhere that's got shelter, right?

2 A Yes, sir.

3 Q I mean -- okay. That's all I have for this witness.

4 THE COURT: You may step down.

5 You want to ask another question, Mr. Barnette?

6 SOLICITOR BARNETTE: Just one. I just want to do some
7 reference.

8 REDIRECT EXAMINATION

9 BY SOLICITOR BARNETTE:

10 Q But he told you that he stayed at the cold shelter
11 that, that morning or that night?

12 A Yeah, he said that he had spent the night at the cold
13 weather shelter. 189 North Forest Street is the cold
14 weather shelter that I'm familiar with in the area.

15 SOLICITOR BARNETTE: All right. Thank you, Your Honor.

16 THE COURT: You wish to follow-up?

17 RECCROSS EXAMINATION

18 BY MR. SHEALY:

19 Q Could he have asked -- could he have said at a cold
20 weather shelter as opposed to the cold weather shelter?

21 A I imagine that would be possible, a over the, yes, sir.

22 Q And it's just -- officer, thank you.

23 THE COURT: You may step down.

24 Wish to excuse the witness?

25 SOLICITOR BARNETTE: Yes, sir.

Jason Bryant - Direct examination
by Solicitor Barnette

1 THE COURT: You're free to go unless Mr. Shealy
2 objects.

3 MR. SHEALY: No objection.

4 THE COURT: You're free to go.

5 THE WITNESS: Thank you, Your Honor.

6 SOLICITOR BARNETTE: Thank you, Your Honor.

7 I'd like to call Sergeant Bryant to the stand.

8 THE COURT: Come forward to be sworn, sir.

9 JASON BRYANT, being first duly
10 sworn, testified as follows:

11 THE COURT: Once you're seated, sir, state your name
12 please.

13 THE WITNESS: Sure. Yes, sir.

14 Jason Bryant.

15 THE COURT: All right. Mr. Barnette, your witness.

16 SOLICITOR BARNETTE: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY SOLICITOR BARNETTE:

19 Q Where do you work at, sir?

20 A I work for the Spartanburg County Sheriff's Office.

21 Q And what is your position there, sir?

22 A I'm a violent crimes supervisor of the homicide unit.

23 Q And how long have you been in law enforcement, sir?

24 A Since 1996.

25 Q Going back, was you working on January 24th, 2013, sir?

Jason Bryant - Direct examination
by Solicitor Barnette

1 A I was.

2 Q If you would, tell the jury what -- did you get a call
3 about an attack at Mary Black?

4 A I did. I got a call from Investigator Williams to come
5 assist him at the attack at the Urgent Care at Mary Black on
6 Reidville Road.

7 Q And was the people out searching obviously and trying
8 to find everything they can?

9 A Absolutely. They were, were men on the ground, dogs,
10 everything such as that. Absolutely.

11 Q And through the investigation, I know that different
12 people are doing different things.

13 what did you do after y'all left the location of the
14 attack?

15 A Basically we had received the information from the
16 other deputies and the city officer, and then I had gotten a
17 little bit of information myself, and we eventually ended up
18 over at [REDACTED].

19 Q And who lived at that location?

20 A That was the parents of Mr. Culberson.

21 Q Okay. And could you tell us what you, what you and
22 Investigator Williams saw when you got there at the
23 residence?

24 A We approached the back steps off the back porch that
25 you had seen in the photographs, and observed the defendant

Jason Bryant - Direct examination
by Solicitor Barnette

1 getting his hair cut, shave -- I believe it was his mom or
2 his step-mom shaving his head.

3 Q Okay. And when y'all saw that, did you -- before you
4 went in there, I guess we mentioned here, did you also find
5 additional information that there was an arrest warrant for
6 the defendant also?

7 A Absolutely.

8 Q So, y'all had that arrest warrant available to you?

9 A In pocket, that's correct.

10 Q So, when you went in, obviously you saw them shaving
11 the hair.

12 Crime scene was called out to collect that hair?

13 A Investigator Williams did call for the forensic guys to
14 come out.

15 Q And they did collect the gray hoodie that was found --

16 A They did.

17 Q -- at that location as well as the denim jacket?

18 A They did.

19 Q And was he placed under arrest under that arrest
20 warrant initially?

21 A At that time he was placed under arrest and transported
22 to the Spartanburg County Sheriff's Office.

23 Q Okay. And, at that location, I'm showing -- I think
24 State Exhibit No. 30 is still up on here.

25 Was this -- does this fairly represent what he looked

Jason Bryant - Direct examination
by Solicitor Barnette

1 like after y'all brought him back from the house?

2 A As he was transported to the Sheriff's Office, that's
3 correct.

4 Q Okay. And like you said, he had already took off the
5 gray hoodie and the denim jacket?

6 A The forensic guys had already taken those, that's
7 correct.

8 Q All right. But he didn't have them on when y'all got
9 there at the house, did he?

10 A Correct.

11 Q Okay. And I guess the blue jacket was kind of in the
12 house somewhere from that standpoint or you---

13 A I had stayed out on the porch and had talked with the
14 father, I believe it was the father, and then actually the
15 mother figure or stepmother or mother had came out and spoke
16 with me at that time. I briefly stepped into the house for
17 just one second. My job was mainly to, to try to get as
18 much information about how long he had been there and what
19 had been going on since then during the course of that
20 aspect of the investigation.

21 Q I know you heard testimony that they was talking about
22 riding a bus out to Anderson -- Old Anderson Mill Road.

23 Does the buses go out there?

24 A Not at all.

25 Q It's way out of the way.

Jason Bryant - Direct examination
by Solicitor Barnette

- 1 A That's deep in the country out there.
- 2 Q Yes, sir.
- 3 Would you say it's at least five miles from downtown or
- 4 whatever from there?
- 5 A Easily.
- 6 Q Okay. And when -- and later on Investigator Gary took
- 7 out a lineup and showed Ms. Pruitt in this case?
- 8 A That was what I was advised, that's correct.
- 9 Q Okay. And he fit the description and everything from
- 10 what you understand?
- 11 A He did.
- 12 Q And he was ID'd as the person who attacked---
- 13 MR. SHEALY: Objection, Your Honor, at this point.
- 14 Again, I don't know that Investigator Bryant was present at
- 15 the lineup and all of these other things.
- 16 THE COURT: I'll ask you to lay a foundation for his
- 17 knowledge for these things.
- 18 SOLICITOR BARNETTE: Yes, sir.
- 19 Did you later see the lineup that Investigator Gary
- 20 presented to---
- 21 A I did.
- 22 Q ---Ms. Pruitt?
- 23 Did you see what she had written and who she ID'd on
- 24 that?
- 25 A That's correct.

Jason Bryant - Direct examination
by Solicitor Barnette

1 Q And was that Richard Todd Culberson?

2 A That's correct.

3 SOLICITOR BARNETTE: Okay. One moment, Your Honor,
4 please.

5 THE COURT: Yes, sir.

6 (Pause.)

7 Q If you would, please answer any questions Mr. Shealy
8 may have for you, sir. Thank you.

9 THE COURT: Mr. Shealy, your witness.

10 MR. SHEALY: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. SHEALY:

14 Q So, you're familiar with the area out there around Old
15 Anderson Mill Road, right?

16 A Pretty decent, that's correct.

17 Q All right. Let me see if I can find -- cause we've got
18 a map here. Here it is. State's Exhibit 13.

19 All right. If I can borrow Mr. Barnette's laser point,
20 sir?

21 SOLICITOR BARNETTE: Sure. Go ahead.

22 Q All right. So this is the incident location, right?

23 A It -- can I step down there and look?

24 I---

25 Q Sure. Come on.

Jason Bryant - Cross-examination
by Mr. Shealy

- 1 A Man, I'm old, fat, deaf, and blind. I can't---
- 2 Q I understand.
- 3 A I can't do anything anymore.
- 4 Q I understand. It happens to us all sometimes.
- 5 A (Witness comes down from the stand.)
- 6 Let's see now.
- 7 Q And if you want to, you can look at it right there.
- 8 A That would be even better.
- 9 Q All right.
- 10 A Appreciate it.
- 11 Q So, that's the incident location right about---
- 12 A That -- that's close to the incident location as far as
- 13 Letter A, that's correct.
- 14 Q Okay. And then this is, for lack of a better term, new
- 15 Anderson Mill Road or regular Anderson Mill Road.
- 16 A That's correct.
- 17 Q All right. Okay. And Old Anderson Mill Road is, if
- 18 you're looking at it, somewhere down here, right?
- 19 A They's actually -- they's a couple of different ways
- 20 you can get to Old Anderson Mill Road. One is to actually
- 21 cut back on East Blackstock and travel East Blackstock to
- 22 Old Anderson Mill and Anderson Mill. The direction he's
- 23 taking you there or he's, he's wanting to go is if you go
- 24 straight down Anderson Mill, they actually run in and
- 25 intersect each other at the old mill down there by

Jason Bryant - Cross-examination
by Mr. Shealy

1 Anderson's Dairy if you're familiar with it.

2 Q Okay. But Old Anderson or new Anderson Mill Road is
3 here, right, and then, I guess, Blackstock is kind of
4 somewhere around here?

5 A Without a scale I'd hate to --.

6 Q Okay.

7 A -- I'd hate to say as far as---

8 Q All right. But they're not that far away from this
9 incident location?

10 A Oh, no, it's close proximity.

11 Q Okay. That's what I'm asking.

12 Downtown, as you've already testified, is what,
13 five miles away?

14 A Approximately. That's correct.

15 Q All right. And you can go ahead and sit back down if
16 you'd like.

17 A Oh, okay.

18 (Witness returns to the stand.)

19 Q All right. So, from downtown where or -- well, the --
20 are you classifying the QT as downtown or is that a little
21 bit---

22 A That's in the city limits of Spartanburg.

23 Q Okay.

24 A I'd call it in the city.

25 Q All right. So, from that, from that QT down the -- to

Jason Bryant - Cross-examination
by Mr. Shealy

- 1 the incident location, how far you think that is?
- 2 A It goes straight out Reidville Road. It would be, be a
3 few times.
- 4 Q Few miles.
- 5 Okay. But fairly a good bit further than [REDACTED]
6 [REDACTED], wouldn't it?
- 7 A Without having a scaled map, and as the crow flies
8 through the woods and everything---
- 9 Q You don't know.
- 10 A ---such as that, I'd hate to say --
- 11 Q Okay.
- 12 A -- what would be the farthestest or anything.
- 13 Q All right. So, I guess you're not as familiar as I'd
14 hoped you'd be.
- 15 All right. All right. When you went into [REDACTED]
16 [REDACTED], these -- this hoodie and this blue denim
17 jacket, that's what y'all wanted Officer Nix to, to collect,
18 right?
- 19 A That's, that's what he had taken from that location
20 along with the hair that was in the trash can.
- 21 Q But I mean you're the violent crimes supervisor, right?
- 22 A They say I am, yeah.
- 23 Q Well---
- 24 A I'm just kidding with you. Yes, sir.
- 25 Q I mean if you, if you say take it he takes it?

Jason Bryant - Cross-examination
by Mr. Shealy

1 A It's took. That's correct.

2 Q Right.

3 Okay. But, in this case, that big puffy jacket you
4 didn't say take it?

5 A Well, he wore it back down to the Sheriff's Office. I
6 didn't want to take him naked back to---

7 Q Well, sure, sure.

8 A ---to the office.

9 Q But once you got him to the Sheriff's Office, I mean
10 y'all have clothes at the Sheriff's Office, don't you?

11 A Absolutely.

12 Q All right.

13 A And, and during that time and that point of the
14 investigation, I was actually meeting with the doctors and
15 everything such as that to advise them of the incident and
16 they had actually had, had a meeting at that time kind of
17 wanting to get security ideas and everything such as that
18 to, one, prevent these kind of things from happening again
19 to their employees, and seeing what they could do to help
20 tighten up security as far as that goes.

21 Q Sure. Sure.

22 But you had arrested him, right?

23 A Oh, yeah, I got him.

24 Q Y'all had arrested him?

25 A Yeah. Absolutely.

Jason Bryant - Cross-examination
by Mr. Shealy

- 1 Q And y'all were gonna provide him some clothes?
- 2 A Sure.
- 3 Q Okay. So you could of taken his clothes?
- 4 A Well, like I say, I was present during that---
- 5 Q These clothes.
- 6 A ----point of the aspect of the investigation. I was not
- 7 present when they were interviewing him or anything such as
- 8 that down at the Sheriff's Office.
- 9 Q All right.
- 10 A I could not testify to what happened at the Sheriff's
- 11 Office.
- 12 Q Okay. But, again, you say it you -- say it needs to be
- 13 taken, it gets took, right?
- 14 A Absolutely.
- 15 Q Okay. I did want to ask you one other thing.
- 16 Did you write an incident report in this case?
- 17 A I apologize, sir?
- 18 Q Did you write an incident report in this case?
- 19 A No, sir.
- 20 Q Okay. I just wanted to make sure that I wasn't missing
- 21 something.
- 22 A No, not at all.
- 23 MR. SHEALY: Okay. All right. That's all I have for
- 24 this witness.
- 25 THE COURT: Anything further?

1 SOLICITOR BARNETTE: No, sir.

2 THE COURT: All right, sir. You may step down.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Thank you very much.

5 You wish to excuse the witness?

6 SOLICITOR BARNETTE: Yes, sir.

7 THE COURT: Any objections?

8 SOLICITOR BARNETTE: None, Your Honor.

9 THE COURT: You're free to go, sir.

10 SOLICITOR BARNETTE: Your Honor, if I can check with
11 Mrs. Green real quick to see -- to make sure---

12 THE COURT: All right.

13 SOLICITOR BARNETTE: ---everything's into evidence?

14 THE COURT: Yes, sir.

15 (Pause.)

16 SOLICITOR BARNETTE: Your Honor, thank you for giving
17 me a moment to check -- to put -- the State would rest at
18 this time.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, that completes the presentation of evidence by, by the
21 State in this case. It is necessary, at this time, that I
22 go over some things with the attorneys in this matter, and
23 what I'm gonna do is I'm going to release you to be back
24 here in the morning. We'll resume with the trial at that
25 time.

1 In your absence from the courthouse, same instructions
2 as we had before. That is, please don't try to gather any
3 information on your own. Don't watch, listen to, or read
4 media reports. Don't discuss the case with anyone. Don't
5 allow anyone to discuss it with you and please report anyone
6 who might try to contact you concerning your service on this
7 jury panel.

8 I will ask that you be back in the jury room at 9:30 in
9 the morning. We should be in a position to start at that
10 time. You're free to go at this time.

11 Thank you very much.

12 (WHEREUPON, the following takes place outside the
13 presence of the jury.)

14 THE COURT: All right. The State has rested.

15 Any motions from the defense?

16 MR. SHEALY: There are, Your Honor. I've got a
17 motion---

18 THE COURT: Yes, sir.

19 MR. SHEALY: ---for directed verdict---

20 THE COURT: Be happy to hear from you.

21 MR. SHEALY: ---if I may.

22 As to Indictments 13-GS-42-1811, which is assault and
23 battery first degree, and kidnapping, 13-1812, attempted
24 armed robbery, which is Number 13-18 -- or no, not for that
25 one. But with the assault with intent to commit criminal

1 sexual conduct in the first degree, which is 13-1814. So,
2 1811, 12, and 14, we would simply argue that there's an
3 insufficiency of the evidence here, judge, that, that it
4 was, in fact, my client. Again, it would be our position
5 that they have failed to establish all of the elements they
6 need to establish.

7 As to the attempted armed robbery, there's absolutely
8 no proof in the record that he attempted to -- that anybody
9 attempted to steal anything from her. There was -- there's
10 testimony that there was an attack, and she dropped her
11 purse. She never testified there was a demand for goods or
12 money. There was no claim that he tried to take it away
13 with him and he dropped it or something like that. The
14 entirety of the testimony, Your Honor, is that she was
15 sexual assaulted -- essentially just she was assaulted with
16 the intent to commit the sexual assault.

17 So, judge, it would be our position that they simply
18 haven't -- that there's no evidence in the record as to the
19 attempted armed robbery.

20 Thank you.

21 THE COURT: All right. Mr. Barnette.

22 SOLICITOR BARNETTE: Thank you, Your Honor.

23 Obviously he used a screwdriver and attacked her with
24 it. Her purse is removed from her. It's obviously across
25 the room.

1 She testified she fights him. Actually kicks him and
2 then he leaves after that. I think, when she resisted, that
3 ended the attempted robbery from there, and I think that's
4 the reason why it's attempted armed robbery in this case
5 cause he didn't complete the robbery.

6 THE COURT: Seems like the, the -- did -- was the
7 testimony that she felt a tug at the purse on her shoulder?

8 SOLICITOR BARNETTE: A tug from behind.

9 THE COURT: Did I hear that?

10 MR. SHEALY: Your Honor, it was a tug on her shirt was
11' my understanding. It's not a tug on the purse.

12 THE COURT: All right.

13 MR. SHEALY: That was my understanding of the
14 testimony, judge, that it was a tug on her shirt from
15 somebody who said hey and then there was a stabbing, and she
16 testified she went into the door where---

17 THE COURT: Where her purse was found across the room
18 from where she was left.

19 MR. SHEALY: Where she ultimately was.

20 THE COURT: Yes, sir.

21 MR. SHEALY: But she entered into the, the door next to
22 where the purse was found. The attack continued, is my
23 understanding, she was pushed into the wall into that far
24 corner, but where she said the attack actually took place,
25 cause I asked her to make sure that I set up this motion,

1 that it was, in fact, in the middle of or where the purse
2 fell off of her arm.

3 Again, that was my understanding of the testimony
4 there.

5 THE COURT: Yes, sir, Mr. Barnette.

6 SOLICITOR BARNETTE: And, Your Honor, the tug was on
7 the right side. It was an attack on the right side. That
8 was where the purse was. That's the reason I feel like the
9 attempt, in this situation, Your Honor.

10 THE COURT: All right. I'm gonna find that there is
11 sufficient evidence to justify that there was an attempt at
12 a robbery. Obviously it was armed. The jury will have to
13 determine whether or not that was a deadly weapon or not.
14 That's a jury question as well.

15 So, I find that there is sufficient evidence to allow
16 the case to go to the jury on that point.

17 Motion denied.

18 All right. I want to inquire of your client concerning
19 his right to testify in this case.

20 MR. SHEALY: Your Honor?

21 THE COURT: Please swear the defendant.

22 THE CLERK: Yes, sir.

23 (WHEREUPON, the defendant was placed under oath at this
24 time.)

25 THE COURT: You can be seated, Mr. Culberson.

1 Mr. Culberson, at this time I'm going to explain your
2 rights under the Constitution. When I finish explaining
3 this right or these rights to you, if you do not understand
4 what I've said or you have a question about what I've said,
5 I'll give you an opportunity to ask questions of me.

6 Do you understand what I'm doing at this time?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: All right. We have reached the stage of
9 your case where you have the right to present your defense.
10 You have the right also to claim the protections given to
11 you under the Fifth Amendment to the United States
12 Constitution. That amendment reads -- states or reads in
13 part that no person shall be compelled, in any criminal
14 case, to be a witness against himself.

15 Now, what that means is that you can not be required to
16 testify in this case. You certainly have the right to
17 testify on your own behalf. However, no one can make you do
18 that.

19 Now, listen to what I'm saying.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I'll let you ask questions in just a
22 moment.

23 THE DEFENDANT: All right. Thank you.

24 THE COURT: All right. Now, the right to remain silent
25 or the right not to testify is a personal right, and no one

1 can give up the right to remain silent except yourself.
2 Now, if you decide to testify in this case, you will be
3 subject to the same rules that govern the testimony of every
4 other witness who might testify in this case. That means
5 that you would be examined by your lawyer. You would then
6 be cross-examined by the State's attorney.

7 Now, should you have any convictions on your record
8 that involve dishonesty or false statements or for crimes
9 that are punishable by imprisonment for more than one year,
10 and this Court determines that the probative value of
11 admitting that evidence as to your credibility outweighs its
12 prejudicial effect to you, if that were the ruling, then the
13 solicitor would be able to introduce that record in order to
14 attack your credibility.

15 Now, if you decide to testify, the decision on your
16 part must be made freely, voluntarily, and intelligently by
17 you with knowledge of your protections given to by the Fifth
18 Amendment to the United States Constitution, and the
19 consequences of a decision you might make to testify.

20 I will tell you that if you decide not to testify, I
21 will instruct the jury that they can not give the fact that
22 you did not testify any consideration whatsoever and that
23 there should be no prejudice to you because of the fact that
24 you did not testify.

25 Now, the decision as to whether or not to testify in a

1 case is left entirely up to you. You have the right to talk
2 to your lawyer, family, friends, or anyone else you'd like
3 to discuss the decision with. But the final decision is
4 yours and yours alone.

5 Now, Mr. Culberson, do you understand the right I just
6 explained?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions about this right?

9 THE DEFENDANT: Yes, sir.

10 Can I make up my mind in the morning?

11 THE COURT: Well, sir, you have the right, again, to
12 discuss it with anyone you'd like to.

13 THE DEFENDANT: Yes, sir, that's what I want to do.

14 THE COURT: And I'll give you the opportunity to do
15 that, and then I'll inquire of you in the morning as to how
16 you wish to proceed.

17 THE DEFENDANT: Yes, sir. Thank you, Your Honor.

18 THE COURT: But at this point in time, do you need any
19 further information from the Court before you have those
20 discussions?

21 THE DEFENDANT: Can I talk to---

22 THE COURT: Yes, talk to your lawyer if you'd like.

23 (Pause.)

24 THE DEFENDANT: Can I wait till tomorrow, sir?

25 THE COURT: Yes, sir, that will be fine.

1 THE DEFENDANT: Thank you, Your Honor.

2 THE COURT: All right. We'll convene shortly before
3 9:30 in the morning. Let's say about 9:15.

4 At that time we'll discuss that matter with you.

5 THE DEFENDANT: Okay. Thank you.

6 THE COURT: All right. Court's in recess until that
7 time.

8 MR. SHEALY: Judge?

9 THE COURT: Thank you very much.

10 MR. SHEALY: Judge, may Mr. Barnette and I approach
11 just for a minute?

12 THE COURT: Yes, sir, please do.

13 (WHEREUPON, a bench conference was held at this time
14 and Court was adjourned for the evening.)

15

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17 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 16th and 17th day of June, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 22nd, 2014



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

COURT OF GENERAL SESSIONS
2013-GS-42-01811-01814

The State of South Carolina

-vs-

Richard Todd Culberson,

Defendant.

TRANSCRIPT OF RECORD

June 18, 2014
Spartanburg, South Carolina

Ordered: July 3, 2014

Delivered: August 25, 2014

B E F O R E:

The Honorable Roger L. Couch, Presiding Judge.

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

Mr. Barry Barnette, Esquire
Solicitor for the State

Mr. Matthew Shealy, Esquire
Public Defender for the Defendant

Transcript of the third day of the three-day trial in the above-referenced case.

Pamela Faucette
Circuit Court Reporter

Pamela Faucette, CVR-M - 864-574-9534 or 336-260-2864

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9:20 A.m.

(Whereupon, Defendant's Exhibits 1 and 2 were marked for identification.)

(Off-the-Record Comments)

(Brief Pause)

THE COURT: All right. We're back record in the case of *The State vs. Richard Culberson*. Mr. Culberson, you're still under oath at this time. Do you acknowledge that, sir?

MR. CULBERSON: Yes, sir.

THE COURT: If you would, please stand, please.

(The Defendant complied with the Court's request.)

THE COURT: Yesterday afternoon I went over with your right to remain silent, your constitutional rights.

MR. CULBERSON: Yes, sir.

THE COURT: Do you recall my discussing that with you?

MR. CULBERSON: Yes, sir.

THE COURT: You indicated to me that you would like to speak with your attorney overnight concerning that question. Have you had an opportunity to do that?

MR. CULBERSON: Yes, sir.

THE COURT: Do you need to consult with your attorney ----

MR. CULBERSON: No, sir.

THE COURT: ---- or anyone else any further?

MR. CULBERSON: No, sir.

THE COURT: Do you intend to testify in this case?

1 **MR. CULBERSON:** As bad as I want to, I'm not going to be
2 able to because my nerves are just too bad and I ----

3 **MR. SHEALY:** Just say "yes" or "no."

4 **MR. CULBERSON:** No.

5 **THE COURT:** Okay. So you've made the decision not to testify?

6 **MR. CULBERSON:** Yes, sir.

7 **THE COURT:** And is that your decision?

8 **MR. CULBERSON:** Yes.

9 **THE COURT:** All right. Thank you very much. You can be
10 seated.

11 **(The Defendant complied with the Court's request.)**

12 **THE COURT:** Now, is the Defense ready to proceed with other
13 witnesses at this time?

14 **MR. SHEALY:** We are, Your Honor.

15 **MR. BARNETTE:** Your Honor, just one thing I wanted to mention.

16 **THE COURT:** Yes, sir.

17 **MR. BARNETTE:** And I wanted to see if he was going to testify
18 before we brought this issue up. I know the arrest warrant was brought up in
19 testimony yesterday.

20 And one thing I guess — I don't know how much we'll touch on it in the
21 Defense case or whatever, but in closing, I — I don't want the Defense to be
22 able to say, you know, "He has an arrest warrant. He had never been
23 convicted of it," or anything like that. Well, it's a probation violation.

24 **THE COURT:** Well, I understand that.

25 And ---

1 **MR. BARNETTE:** I just want to caution the Defense about that. I
2 know it's a arrest warrant, but obviously ----

3 **THE COURT:** So you don't want a comment on the outcome of
4 that warrant at all?

5 **MR. BARNETTE:** Right. I -- I don't think it should be because, if he
6 does -- you know what I'm saying ----

7 **THE COURT:** Well, that outcome is not in evidence and
8 shouldn't be commented on.

9 **MR. SHEALY:** And I -- I -- I wasn't ----

10 **THE COURT:** Sir, if you want to say something, you can talk to
11 your lawyer at this time, okay? Let me talk to him first.

12 **MR. SHEALY:** Thank you, Your Honor.

13 **(Off-the-Record Discussion)**

14 **MR. SHEALY:** He's -- Judge, he was concerned about
15 something ancillary, but ----

16 **THE COURT:** I -- I suspected as much. I'd like to talk on point
17 on the issue we're talking on.

18 **MR. SHEALY:** Yes, sir. But I have no interest in -- in closing
19 because I can't lie to the jury, Judge. So I can't tell them ----

20 **THE COURT:** And it would be improper to comment on matters
21 that are not in evidence.

22 **MR. SHEALY:** Yes, sir.

23 **THE COURT:** And, as long as that's not in evidence, you
24 shouldn't comment on it.

25 **MR. SHEALY:** No, sir.

1 THE COURT: And I'm saying you would.

2 MR. SHEALY: No, sir.

3 MR. BARNETTE: I mean, he mentioned arrest warrant. And I just
4 don't think we should mention ----

5 THE COURT: I understand. And I don't think that's going to be a
6 problem. And I think we have an understanding.

7 MR. SHEALY: Yes, sir.

8 THE COURT: Now, is there anything else we need to take up
9 before we begin.

10 MR. BARNETTE: No, nothing else. Thank you, Your Honor.

11 THE COURT: From the Defense's perspective?

12 MR. SHEALY: No, Your Honor.

13 THE COURT: All right. I'm not sure we have all jurors here. So
14 I'll remain on the bench. Once all the jurors have arrived — they have about
15 five more minutes — we'll get started.

16 (At ease until all jurors arrived.)

17 (Whereupon, a bench conference was had with both attorneys
18 present.)

19 (Brief Pause)

20 THE COURT: All right. Let's come to order, please. I've been
21 informed by the attorneys that the Defense intends to call an individual as an
22 expert perhaps on identification; I'm not sure.

23 But, at any rate, the State has asked to be able to qualify that
24 particular witness outside the presence of the jury. The Defense has agreed
25 to that process.

1 So if you would like to call her at this time concerning her
2 qualifications?

3 MR. SHEALY: Your Honor, the Defense would call Dr. Dawn
4 McQuiston.

5 THE COURT: Come forward to my left and be sworn, please,
6 ma'am.

7 (The witness stepped forward to be sworn.)

8 (Whereupon,

9 Dr. Dawn McQuiston

10 having been first duly sworn, testified as follows:)

11 THE COURT: And have a seat, please.

12 (The witness complied with the request.)

13 THE COURT: State your name.

14 THE WITNESS: Dawn McQuiston.

15 THE COURT: Thank you. Your witness.

16 MR. SHEALY: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 Direct Examination by Mr. Shealy:

9:28 A.m.

19 Q. Dr. McQuiston, what's your — what do you do?

20 A. I'm a psychology professor at Wofford College.

21 Q. Wofford College? Okay. How long have been a psychology
22 professor?

23 A. A total of 11 years.

24 Q. Okay.

25 A. One year at Wofford.

1 And previous to that, 10 years at Arizona State University.

2 Q. Okay. And I assume that you have a number of degrees. If you would
3 go over those with us.

4 A. I do. I have a Bachelor's degree in psychology. I have a Master's
5 degree in psychology and a Ph.D. in experimental psychology.

6 Q. Okay. And the B.S. you got at the Eastern New Mexico University?

7 A. Correct.

8 Q. All right. And the masters you got at the University of Texas at El
9 Paso?

10 A. Yes.

11 Q. And the same thing with the experimental psychology doctorate,
12 correct?

13 A. Yes.

14 Q. All right. Now, at Wofford, what exactly is it that your acting position
15 requires you to do?

16 A. I'm an associate professor there. And I — I teach and I do research.

17 Q. Okay. All right. And what do you do research in?

18 A. I do research in a couple of different areas. My main area over the
19 years has been memory as it relates to an eye witness identification situation.

20 And, then, in the last five to seven years, I've been doing research on
21 how — how jurors process scientific evidence, how they make decisions in terms of
22 forms of evidence that influence their decisions.

23 Q. So you've been doing this kind of — or you've been a professor for 11
24 years I believe you said. How long have you been doing this sort of research?

25 A. I've been doing this research for 18 years.

1 Q. Okay. So, while you were getting your doctorate, you were also doing
2 research?

3 A. That's right.

4 Q. Now, do you belong to any organizations, things of that nature,
5 national, international, psychological organizations, that sort of thing?

6 A. I — I do, the American Psychological Law Society, The Association for
7 Psychological Science, and The Society for Applied Research and Memory and
8 Cognition.

9 Q. Okay. And, as part of your position in this research interest you have,
10 have you been able to publish anything? Have you ever published?

11 A. I have. I've published scientific articles and — and book chapters,
12 about 20.

13 Q. Okay. And are these generally peer reviewed?

14 A. They are generally peer reviewed, yes.

15 Q. All right. All 20 of those were peer reviewed?

16 A. Not the — book chapters are typically not subject to peer review, but
17 scientific articles are, yes.

18 Q. Okay. And why don't you go ahead and explain what a peer review is.
19 I think the — the Court may be familiar with it, but....

20 A. Sure. Peer review is a process by which scholars submit their work
21 and it's reviewed by other scholars in the field for its quality.

22 So, typically, when an article is submitted for publication, the editor of
23 the — the scientific journal will send it out to two or three or four
24 experts. They review it independently and — and come to a conclusion about
25 whether or not they think it should be published.

1 Q. Okay.

2 A. So not all research gets — gets published.

3 Q. All right. So it has to pass a certain standard I suppose?

4 A. That's right.

5 Q. All right. And have you ever actually been a peer reviewer?

6 A. Yes, as part of my position as a faculty member as I — I serve on an

7 what's called ad hoc committees to conduct peer review of other's work.

8 Q. Okay. What journals have you peer reviewed for?

9 A. Some of them are *Law and Human Behavior*, *Applied Cognitive*
10 *Psychology*, *Justice Quarterly* to name a few.

11 Q. Okay. And these are respected journals in your field?

12 A. That's right.

13 Q. And you're not just published by some guy in a basement?

14 A. That's right.

15 Q. Okay. And so, again, as part of your research, have you ever had

16 opportunity to present at conferences, things of that nature?

17 A. Yes.

18 Q. Okay. And where would that have been?

19 A. The main association I belong to is The American Psychology Law
20 Society. They have an annual conference.

21 So I — I have presented there numerous times; The Society for
22 Applied Research and Memory and Cognition, I've presented at that
23 conference.

24 I lived on the West Coast getting my — my degree — degrees.

25 And, as my position —

1 in my first position, as a faculty member of the Western Psychological Association, I
2 presented there a few times.

3 Q. Okay.

4 A. So, yearly, one or two times.

5 Q. All right. And so have you ever presented internationally?

6 A. I have, yes.

7 Q. Okay. And these conference presentations, are they also peer
8 reviewed?

9 A. Most of them are, yes.

10 Q. Okay. So we would include, in your peer-reviewed work, conference
11 presentations as well, right?

12 A. That's correct.

13 Q. Okay. All right. Now, have you ever consulted on a criminal case?

14 A. I have.

15 Q. About how many?

16 A. I've consulted on probably about a hundred (100).

17 Q. Okay. And have you ever gone through a qualification process
18 before?

19 A. I have.

20 Q. In court?

21 A. Yes.

22 Q. Okay. Can you name the different — more than one state or...?

23 A. Yes. I — living in Arizona for — for 10 years;

24 I was in court numerous times in Maricopa County, Pima County that would serve
25 the Phoenix area and the Tucson area; and, then, here in South Carolina.

1 Q. Okay. So you've been qualified as an expert in South Carolina?

2 A. I have.

3 Q. Okay. About how many times?

4 A. One.

5 Q. One? Okay. You've been here for a year?

6 A. That's right.

7 Q. All right. So, in a year, you've been — already testified in a case in this
8 state?

9 A. That's right, in Greenville County.

10 Q. Okay. Now, are you compensated for your consulting work?

11 A. I am.

12 Q. Okay. About how much do you get?

13 A. Two hundred and seventy-five dollars (\$275) an hour.

14 Q. Okay. And have you ever worked for the prosecution? Have you ever
15 consulted with the prosecution?

16 A. I have not.

17 Q. Now, is that because you have any philosophical problem?

18 A. No.

19 Q. Okay.

20 (Off-the-Record Discussion)

21 MR. SHEALY: I apologize, Your Honor.

22 Q. (By Mr. Shealy) You don't have a philosophical objection to the
23 prosecution?

24 A. Right.

25 Q. Okay.

1 It's just they're not in the business of questioning eyewitness IDs generally
2 speaking?

3 A. Right.

4 Q. Okay. And how many — do you have any idea as to how many times
5 you've been qualified as an expert in Arizona?

6 A. I testified overall in about 20 ---- about 20 times.

7 Q. About 20 times?

8 A. Right.

9 (Brief Pause)

10 MR. SHEALY: Your Honor, at this time, I'm going to move she be
11 qualified as an expert.

12 THE COURT: In what?

13 MR. SHEALY: In eyewitness identification and memory.

14 THE COURT: All right.

15 MR. BARNETTE: Your Honor, the ID, I — I — I agree with. But
16 memory, I don't know about. I don't know if that's — as a science.

17 The ID has. But I've looked at the case law on that and it said ----

18 THE COURT: Do you want to ask her about being an expert ----

19 MR. SHEALY: Sure.

20 THE COURT: ---- in someone's memory?

21 MR. SHEALY: Okay.

22 Continued Direct Examination by Mr. Shealy:

23 Q. All right. Dr. McQuiston, as to an eyewitness identification,
24 what are the main components of that eyewitness
25 identification?

1 A. I'd say the main components are the processing of information; how
2 information is processed when someone is involved in that sort of situation and how
3 that information is incorporated into memory.

4 And — and, then, part of memory is later recalling information.

5 Q. Okay. And has your research dealt with the broader topic of memory
6 as —at least as it relates to eyewitness identification?

7 A. Yes.

8 Q. Okay. So you have to understand memory in order to understand how
9 witness ID's; is that correct?

10 A. That's right.

11 Q. All right. And have you ever written any particular — any articles on
12 memory as memory that you know of?

13 A. In terms of general memory or as it relates to eyewitness
14 identification?

15 Q. As — as it relates to eyewitness identification?

16 A. Yes.

17 Q. Okay. Those articles were — I think we've already discussed — were
18 peer reviewed?

19 A. Right.

20 Q. Okay. So you have a — a fundamental grounding (phonetic) in how
21 memory works?

22 A. Yes.

23 Q. And you've published in that field?

24 A. Yes.

25 Q. And those publications were peer reviewed?

1 A. Yes.

2 Q. And you presented in that field?

3 A. Yes.

4 Q. And those presentations were peer reviewed?

5 A. Yes.

6 MR. SHEALY: Your Honor, I believe that covers the ----

7 THE COURT: All right. Mr. Barnette, you can cross examine.

8 MR. BARNETTE: Your Honor, I'm --- I'm not going to ask any
9 questions, but just to argue on the thing. Obviously, if it's part of her ID --- I
10 don't think she can testify just as a memory person.

11 But, obviously, if it's part of the ID situation, I don't have a problem with
12 it because I think ----

13 THE COURT: Well, she's indicated that whatever testimony she
14 might offer would be as memory relates to someone's ability to ID I think is
15 what I'm hearing. So ----

16 MR. BARNETTE: That's --- that's what I think. So that's the reason I
17 wanted to ask the question; it's not about memory for itself ---

18 THE COURT: Well, if she ----

19 MR. BARNETTE: --- it's involving that.

20 THE COURT: If you feel she goes outside of whatever her
21 training is or her expertise, you can object to that.

22 MR. BARNETTE: Yes, sir, I understand.

23 THE COURT: All right.

24 MR. BARNETTE: Thank you, Your Honor.

25 THE COURT: Ma'am, you may step down.

1 THE WITNESS: Thank you.

2 (The witness complied with the Court's request.)

3 (Brief Pause)

4 THE COURT: Is the State ready to proceed at this time, Mr.
5 Barnette?

6 MR. BARNETTE: Can I have one second, Your Honor, please?

7 THE COURT: Yes, sir.

8 (Off-the-Record Discussion)

9 MR. BARNETTE: Thank you, Your Honor.

10 THE COURT: All right. Is the Defense ready?

11 MR. SHEALY: We are, Your Honor.

12 THE COURT: Is the jury present?

13 BAILIFF: Yes, Your Honor.

14 THE COURT: Bring them in, please.

15 (Whereupon, the jury was summoned and entered the courtroom
16 at 9:39 a.m.)

17 THE COURT: All right. The record will reflect the jury has
18 returned to the courtroom. If anyone had any difficulty in complying with my
19 instructions during your absence from the courtroom, please, stand.

20 (No Response)

21 THE COURT: It appears that all jurors have been able to comply
22 with my instructions.

23 When we broke yesterday, the State had completed the presentation
24 of its evidence. At this time, the Defense has the right to call witnesses. You
25 may proceed.

1 **MR. SHEALY:** Thank you, Your Honor. The Defense would call
2 Dr. Dawn McQuiston, please.

3 **(Brief Pause)**

4 **THE COURT:** Come forward, ma'am, to be sworn, please.

5 **(The witness stepped forward to be sworn.)**

6 (Whereupon,

7 **Dawn McQuiston, Ph.D.**

8 first being duly sworn, testified as follows:)

9 **THE COURT:** Have a seat, please.

10 **(The witness complied with the request.)**

11 **THE COURT:** Please, state your name.

12 **THE WITNESS:** Dawn McQuiston.

13 **THE COURT:** Mr. Shealy, your witness.

14 **MR. SHEALY:** Thank you, Your Honor.

15 **THE COURT:** Yes, sir.

16 **Direct Examination by Mr. Shealy:**

9:40 A.m.

17 **Q.** Dr. McQuiston, what is it that you currently do?

18 **A.** I'm a psychology professor at Wofford College.

19 **Q.** Okay. So you're at Wofford College?

20 **A.** Uh-huh (affirmative).

21 **Q.** How long have you been a psychology professor?

22 **A.** Overall, I've been psychology professor for 11 years.

23 **Q.** All right. And were all 11 at Wofford?

24 **A.** One year at Wofford and the previous 10 years were at Arizona State

25 University.

1 Q. Okay. Now, presumably, in order to become a psychology professor,
2 you have to be fairly well-educated. Can you go over your education, your degrees,
3 that sort of thing?

4 A. Sure. I have a Bachelor of Science Degree in Psychology — clears
5 throat — excuse me — from Eastern New Mexico University. And I have a Masters
6 degree and a Ph.D. in Psychology from the University of Texas at El Paso.

7 Q. Okay. And, in your faculty position at Wofford College, what does that
8 call for?

9 A. I teach classes and I do research.

10 Q. All right. And what do you do research in?

11 A. My main area of research over the years has been looking at how
12 memory works in an eyewitness identification situation.

13 Q. Okay. So primarily it's eyewitness identification and the aspects of
14 memory with respect to eyewitness identification, correct?

15 A. Right.

16 Q. Okay. And I know you've been a professor for 11 years. How long
17 have you been doing research in this area?

18 A. I've been doing this research for about 18 years.

19 Q. Okay. So, while you were doing your doctorate, this was going to be
20 your — your area of specialization?

21 A. Right.

22 Q. Okay. And, now, do you belong to any psychological organizations,
23 nationally, internationally, that sort of thing?

24 A. I do.

25 A — a few of the main ones are the American Psychology Law Society,

1 The Association for Psychological Science and The Society for Applied Research in
2 Memory and Cognition (phonetic).

3 Q. All right. And, since you do research, do you ever have occasion to
4 publish your research?

5 A. I do. I've published about 20 scientific papers and book chapters.

6 Q. Okay. And those papers, are those generally peer reviewed?

7 A. They are.

8 Q. I guess they're all peer reviewed?

9 A. Right.

10 Q. Okay. Could you explain to the jury what peer review is?

11 A. Sure. Peer review is a process by which scholars submit their
12 research to be published. And, when you submit it a scientific journal, the editor of
13 that journal will send it out to other experts in the field.

14 And — and they review that research independently for its quality.
15 And, then, they come together for a consensus about whether or not it should be
16 published or not.

17 Q. Okay. So not all things submitted to a journal get published, correct?

18 A. Right, most do not get published.

19 Q. Okay. And that's because stuff that gets into journals needs to be of a
20 certain quality, right?

21 A. That's right.

22 Q. Okay. And have you ever had occasion to be a peer reviewer?

23 A. Yes, I have, for a few different journals; *The Law and Human Behavior*
24 is the major journal in my field. The Society for Applied Research in Memory
25 and Cognition, they publish a journal called the — called *Applied Cognitive*

1 *Psychology*. I've been reviewing for them for years. Those are probably the two
2 main ones.

3 Q. Okay. So you're recogn -- enough -- you are recognized enough that
4 journals want you to peer review other people's articles?

5 A. That's correct

6 Q. Okay. Now, again, in -- in your field as a researcher, have you ever
7 had to present your research at a -- any kind of gathering or a conference?

8 A. I do. I attend conferences usually one to two times a year and present
9 my research there, everywhere.

10 Q. Okay. And those presentations, the presentations at those
11 conferences, are those also peer reviewed?

12 A. That's right. You have to submit a summary of what you would like to
13 present. And it goes to a committee who review it.

14 Q. Okay. And so generally once or twice a year you present at these
15 conferences?

16 A. That's right.

17 Q. All right. Now, let's get to your qualifications in criminal cases. How
18 long -- how many criminal cases have you consulted on?

19 A. About a hundred (100).

20 Q. About a hundred (100)?

21 (Brief Pause)

22 Q. All right. And have you ever had cause to testify in regards to those?

23 A. I have.

24 Q. All right. About how many?

25 A. I've testified about 20 times.

1 Q. Okay. And, when you testify, are you generally — have you always
2 been qualified as an expert?

3 A. Yes.

4 Q. Okay. And have you ever testified in this state?

5 A. I have.

6 Q. Okay. How many times?

7 A. One other time — two — two other times in this state.

8 Q. Two other times in this state?

9 A. Yes.

10 Q. Okay. And you were qualified as an expert both times?

11 A. Yes.

12 Q. All right. And so you were — you have been qualified around about 18
13 times in other states?

14 A. Right.

15 Q. All right. Primarily I guess --- you said you're from Arizona?

16 A. Right.

17 Q. So that would be primarily where you did this?

18 A. Right.

19 Q. All right. So you've been here in South Carolina for a single year and
20 you've testified twice now?

21 A. Right.

22 Q. Now, have you ever testified for the prosecution?

23 A. No.

24 Q. No? Do you have some kind of psychological or philosophical problem
25 with the prosecution?

1 A. No.

2 Q. So you don't — you wouldn't mind consulting for them?

3 A. Right.

4 Q. They just aren't generally in the business of challenging eyewitness
5 identifications?

6 A. Right, they've never called me.

7 Q. Okay. So, if they called you, you would be fine talking to them?

8 A. Yes.

9 Q. All right. How much do you make per — per hour for your consulting?

10 A. Two hundred and seventy-five dollars (\$275).

11 Q. All right.

12 MR. SHEALY: And. Your Honor, at this point, I would move to
13 qualify Dr. McQuiston as an expert in eyewitness identification and memory
14 as it relates to eyewitness identification.

15 MR. BARNETTE: I have no questions, Your Honor, that she's ----

16 THE COURT: All right. Without objection, then, she'll be
17 qualified as an expert as such.

18 I have explained to the jury what that means. And I'll give further
19 instructions during my charge. You may proceed, Mr. Shealy.

20 MR. SHEALY: Thank you, Your Honor.

21 Q. (By Mr. Shealy) Let's begin with how memory works with
22 respect to eyewitness identification. Do we generally — do we have a theory of
23 how memory works?

24 A. We do. And it goes back to the 1960s. Back then, many decades
25 ago, a couple of psychologists, Atkinson and Shiffrin (phonetic), they put forth a

1 theory about how memory works. And that has been the consistent theory that's
2 stuck in the — in the literature and in the science.

3 And what that theory argues is that memory does not work like a
4 videotape like people often think that it does. Instead, information — as we're
5 processing information, it passes through a series of stages to make it into memory.

6 So we — we call that information a processing model in that there are
7 these sort of set stages.

8 Q. Okay. So whenever you're experiencing some -- experiencing
9 something, you're taking in information and it has to go through particular stages
10 before it gets to your memory, correct?

11 A. Correct.

12 Q. Okay.

13 MR. BARNETTE: Your Honor, I would object at this time.

14 I don't mind her testifying, but I don't want him leading. I mean, she's the
15 witness.

16 THE COURT: I'll sustain the objection. Try not to lead the
17 witness.

18 MR. BARNETTE: Thank you.

19 MR. SHEALY: I apologize, Your Honor.

20 (Brief Pause)

21 Q. (By Mr. Shealy) All right. And what is the first stage?

22 A. The first stage is called sensory memory. And that's essentially what
23 — whatever is happening in the world around us, at any given moment, we only
24 retain information in sensory memory for a matter of seconds before it's lost.

25 Q. Okay. And, then, it goes from sensory memory to what?

1 A. If it makes it past that stage, then, it makes it into what we call short-
2 term memory. And we can hold information in short-term memory for about 30
3 seconds.

4 And if you — if you don't hang on to it in that stage, meaning if you
5 don't rehearse it over and over again in your mind like a phone number, if you don't
6 rehearse it, then, it's lost after about 30 seconds.

7 Q. Okay. So, when you say "rehearse," do you mean like study it?

8 A. Go over it over and over it in your mind, right.

9 Q. Okay. And, then, once — is there — what's the third stage?

10 A. So, then, there's a third stage. And that's long-term memory. And so
11 whatever information is in short-term memory, if we rehearse it, then, it might make
12 it into long-term memory.

13 And what — whatever is in long-term memory, is said to be there for a
14 long time. It's information we can recall later on.

15 Q. Okay. Are there any stages after that?

16 A. No.

17 Q. No? Okay. So you've testified basically that people don't remember
18 like a photograph?

19 A. Right.

20 Q. Okay. They just bring in information?

21 A. That's right. Instead — memory doesn't work like a photograph or a —
22 or like a — a videotaping. Instead, as we're processing information, we — there's
23 natural gaps in it. And it happens to all of us.

24 And we might fill in those gaps with information that's correct or
25 information that isn't correct.

1 Our -- our expectations, our experience, those are the things that we
2 tend to use to fill in the natural gaps in our -- in our memory.

3 So there are all these stages that information has to go through to,
4 then, make it into hopefully long-term memory. And what that means is there's a lot
5 of opportunity for information to get lost along the way.

6 Q. And, in your experience, how do psychologists study that?

7 A. In my field, eyewitness identification, as it relates to memory, people
8 are -- scientists are studying circumstances under which people's -- people get
9 things right versus get things wrong; how the circumstances that guide how we're
10 likely to remember things well later versus not remember them well.

11 Q. Okay. All right. And so let's get down to what makes people
12 remember things well. What do you mean by or what do scientists mean by the
13 term "attention"?

14 A. Attention is an important mechanism as it relates to information
15 processing or memory. Attention is this filter that we use -- we use to decide, in any
16 given moment, what information is important enough to hang on to and what isn't
17 because we can't possibly pay attention or attend to every single thing that's
18 happening in the world around us. And so attention is this mechanism that allows
19 us to filter out irrelevant information and hang on to relevant information.

20 Q. Okay. So it's kind of a way to prioritize what's -- what's important ----

21 A. Right.

22 Q. ---- and what's not important?

23 (Brief Pause)

24 Q. All right. How does that attention affect
25 memory?

1 A. Well, there — there are a couple of important things that attention —
2 one is that attention is limited. And so we can't possibly remember or attend to
3 everything that's happening in the world around us.

4 And also we may not attend to some important thing if we don't know
5 we're going to need it later. And so how it relates to memory is that we can only
6 later remember things that we attended to in the moment.

7 Q. Okay. All right.

8 **(Brief Pause)**

9 Q. All right. So you can not attend to some things that later on are
10 important?

11 A. Right.

12 Q. Am — am I understanding correctly?

13 A. Correct.

14 Q. All right. And now, with respect to attention, do you also have to be
15 able to perceive the thing that you're attending to?

16 A. That's right. Perception is another part of this; it's another mechanism
17 that helps us filter out what we — what we do need and — or filter out what we don't
18 need and hang on to what we do need.

19 Q. Okay. And — but obviously people are people. Do they make errors
20 in their perception?

21 A. Sure.

22 Q. So they perceive things incorrectly sometimes?

23 A. Sometimes, yes.

24 Q. All right.

25 **(Brief Pause)**

1 Q. Now, is there things, like physiological processes, things of that nature,
2 that influence how you — or the quality of the — what you're perceiving ---

3 A. Sure.

4 Q. --- and the.... So, for example, the amount of time, would that be one
5 of the factors that affects perception of an event?

6 A. It does. Research shows that how — how long you're exposed to an
7 event, how — that affects how much information you get.

8 If an event happens very quickly, you're probably not going to get as
9 much information as an event that — that lasts a long — a long time.

10 Q. Okay. And are there other issues that affect your — your ability to
11 perceive an event?

12 A. Sure.

13 Q. Things like — well, again, how — what you see or the quality of what
14 you see; lighting conditions, things of that nature?

15 A. Right, lighting conditions. In a more well-lit room, obviously, you'll —
16 you'll get more information. The distance, if you're far away from whatever it is
17 that's happening, you'll get less information.

18 Q. Okay. All right.

19 (Brief Pause)

20 Q. Now, dealing with attention and perception, as they relate more to —
21 to this kind of a case, when there is a weapon involved, do you all have a term for
22 that in your —

23 A. (Nods affirmatively.)

24 Q. What's that term?

25 A. We do. Scientists call that weapon focus.

1 Q. Okay. What does that mean?

2 A. It means that, when there is a weapon present, it turns out that
3 studies show that people tend to really focus on that weapon at the expense of other
4 information, other — the other things that might be going on in that moment.

5 Q. Okay. And does -- does that go back to attending to important things?

6 A. That's right because attention is limited. We can only attend to one
7 thing at a time, right.

8 Q. And generally you're attending to the weapon I guess is what you're
9 saying?

10 A. Right.

11 Q. Okay. Now, I assume that there's been some kind of scientific
12 research that backs up what you're testifying to?

13 A. Right. There have been many studies that have looked at this weapon
14 focus.

15 Q. Okay. And in particular did you review a particular analysis?

16 A. I did. I reviewed what we call a META (phonetic) analysis. And what
17 that is, is it's a compilation of a lot of research done on one topic.

18 And so in — in this area specifically there was a META analysis
19 published in the '90s that involved about 20 studies about 4,000 — a few thousand
20 participants.

21 So all of these studies have been done looking at how people perform;
22 how well they remember when there was an event with a weapon in — involved.

23 And so the purpose of an META analysis is to provide — to combine
24 the results of a bunch of studies that have been done instead of having to look at
25 each study individually.

1 It provides statically — there's a method that's used that provides an
2 average, one — one overall, one average result, that tells us how well people
3 perform in these certain conditions.

4 Q. And these META analyses, are they accepted in your field?

5 A. Right, yes.

6 Q. I mean, you all rely on them fairly regularly?

7 A. Yes.

8 Q. Okay. Now how many studies went into this — this particular META
9 analysis?

10 A. About 20 studies.

11 Q. About 20? Okay. And how were these studies, of the about 20 that
12 were included in the META analysis, how did they examine weap — weapon focus
13 generally?

14 A. Sure. Typically, it's some sort of stimulated event where people are
15 exposed. They're separated into two groups.

16 One group is exposed to some sort of threatening weapon. And the
17 other group is not. And, then, later at some time, their memory is tested where the
18 person is really looking at eye — eyewitness identification accuracy, so either a
19 weapon is present or not. And, then, we look at how well people do on — on a
20 memory test.

21 Q. Okay. And, when you say weapon, do you have any particular
22 weapon in mind or do they just use a bunch of different kinds?

23 A. Typically, the weapons that we used in these studies were guns and
24 knives.

25 Q. All right. And who participates in these kinds of studies?

1 A. Adults over — jury eligible adults over age 18.

2 Q. Over 18? Okay. And what were the results of these META — this
3 META analysis?

4 A. Sure. When you look at the overall result, it turns out that people
5 aren't quite as accurate in their identification of a person when there has been a
6 weapon involved versus when there's no weapon involved.

7 Q. Okay. And this goes through all kinds of weapons that were used?

8 A. Correct.

9 Q. I mean, there wasn't any particular weapon that ---

10 A. Right. All kinds of methods done by different scientists, different —
11 yeah, different methodology, right.

12 Q. Okay. And does that go back to stress, physiological things?

13 A. Sure. That's what researchers say about this weapon focus, the fact is
14 that it has to do with attention as we --- as we talked about.

15 And it has to do with how a person reacts physically when they're
16 under this kind of stress; that physiological stress impacts memory similar — similar
17 to these other things in that people are focused on their stress response, their fear
18 response, at the expense of being able to take in other information that's happening.

19 Q. Okay.

20 (Brief Pause)

21 Q. All right. And so — and that also affects the ability to perceive things I
22 suppose ---

23 A. Right.

24 Q. — because you're perceiving the weapon?

25 A. Right

1 Q. All right. And how does stress impair a person's memory?

2 A. Studies show that, when people are exposed to a really stressful
3 event, they — they don't perform as well on an identification test, on a memory test,
4 under really high stress levels that is, versus those that are not in that kind of
5 situation.

6 Q. Okay. Now we've had some testimony about confidence and things
7 of that nature. Have — has there been any research regarding one's confidence in
8 their identification of that alleged perpetrator?

9 A. There have. There have been a lot of studies. Scientists have been
10 very interested in looking at this relation between peoples' confidence and how that
11 relates to how accurate they are.

12 So, basically, whether a person's level of confidence predicts whether
13 they'll be accurate or not. And intuitively they — we think that it should, but studies
14 show actually that confidence is not a great predictor of accuracy as we — as we
15 may think.

16 Q. Okay. And, again, is there -- is there research to back that up?

17 A. There's many studies that have looked at this similarly another ----
18 (Phone rings)

19 MR. SHEALY: Hang on just one second.

20 (Off-the-Record Comments)

21 Q. (By Mr. Shealy) All right. Let's ask that question again.

22 Is there any science to back up your position that confidence and
23 accuracy are not necessarily one and the same?

24 A. Yeah. There — there was another META analysis published by a —
25 a few authors in 2005.

1 This one included about 30 studies that looked at that relationship
2 between a — a person's level of confidence and whether or not they were accurate.

3 Q. Okay. And about how many studies went into that particular study?

4 A. I believe it was about 30.

5 Q. About 30? Okay. And did the same group participate or — well, did
6 the same kind of people participate in these studies as the last one?

7 A. That's right. And this one included several — several thousand
8 participants.

9 Q. All right. And what did that META analysis show regarding confidence
10 and — and accuracy?

11 A. It shows that overall confidence — confident — one's level of
12 confidence is not as strong of a predictor of accuracy as we all would think, as — as
13 intuition would tell us.

14 Q. Okay. And why are they not related — or how might they not be
15 related?

16 A. Well, one thing that — that we talk about in the scientific community is
17 that a person's confidence can be affected by a lot of things. You may start out with
18 one level of confidence and confidence goes up over time or confidence goes down
19 over time,

20 Confi — a person's confidence can be affected by going over and over
21 the information in your mind. It can be affected by questions that people ask you,
22 learning new information about the events. And so we say that confidence is mal ---
23 what we call malleable. It can be pushed around; it can go up and — and down.

24 Q. Okay. So, basically, what your research has shown is that traumatic
25 events sear people's faces into the brain of people or the victims?

1 A. Not necessarily.

2 Q. Not necessarily? Okay. So simply because it's a traumatic event,
3 that doesn't mean that they will remember ----

4 A. That's right.

5 Q. --- everything? Particularly if they're in shock?

6 A. Correct.

7 Q. Or stressful?

8 A. Right.

9 Q. Okay. And that's based on your review of all these META analyses?

10 A. That's right.

11 Q. All right.

12 (Brief Pause)

13 MR. SHEALY: All right, Doctor, if you'll give me just one second.

14 (Brief Pause)

15 MR. SHEALY: All right. That's all I have for you, Doctor. Thank
16 you very much.

17 THE COURT: You may cross examine.

18 MR. BARNETTE: May it please the Court, Your Honor?

19 Cross Examination by Mr. Barnette:

20 Q. Ma'am, do you know D.P.

21 A. I do not.

22 Q. Do you know anything about her background?

23 A. No.

24 Q. Do you know anything about what happened to her?

25 A. I know details about the case, sure.

1 Q. Do you know she was a nurse for 30 years?

2 A. I knew she was a nurse, yes.

3 Q. A nurse that would, when people come in, they have to evaluate; look,
4 check the person for their temperature, eyes, and things like that? In her job that
5 she does that?

6 A. (No Response)

7 Q. Wouldn't that be correct, a nurse -- I know you've been examined by a
8 nurse. A nurse has to check you out and assess you and so forth?

9 A. Right.

10 Q. And that's something that she did for 30 years; did you know that?

11 A. I didn't know 30 years, no.

12 Q. Okay. Did you know that she had counseling for two months after this
13 where she had to go through the events and talk to counselors about this? Did you
14 know that?

15 MR. SHEALY: Objection, Your Honor, I don't know the relevance
16 of this.

17 THE COURT: Overruled.

18 A. No.

19 Q. (By Mr. Barnette) And, in that counseling, she had to go back through
20 and describe what happened to her and everything. And she's had to live this; do
21 you know -- did you know that ----

22 A. I would assume she would have to live it, sure.

23 Q. --- from there. And obviously you weren't there on January 24th, 2013,
24 when this happened to her?

25 A. No.

1 Q. And obviously each individual is different; is that right?

2 A. That's right.

3 Q. And there's individuals that have total memory, that can remember
4 everything they did from 10 years ago?

5 A. Oh, sure.

6 Q. So, there's — I mean, each individual is different, isn't it?

7 A. That's right.

8 (Brief Pause)

9 Q. And, ma'am, I just want to make sure. You was paid \$275 an hour; is
10 that right, ma'am?

11 A. Right.

12 Q. And you get a retainer of \$1,100 just to consult on the case?

13 A. Right, right.

14 Q. Okay. And you've never testified for the prosecution; is that right?

15 A. I have not.

16 MR. BARNETTE: Thank you, ma'am.

17 THE COURT: Recross — redirect?

18 MR. SHEALY: Just a couple.

19 Redirect Examination by Mr. Shealy:

20 Q. Dr. McQuiston, my understanding is — let's go back to how information
21 is processed again.

22 MR. BARNETTE: Your Honor, I'm going to object to this unless he
23 can make it part of the ---

24 MR. SHEALY: Well, Your Honor, based on what Mr. Barnette has
25 asked her about ---

1 **THE COURT:** Well, indicate to me how it ties into the cross
2 examination in some new matter that was raised.

3 **MR. SHEALY:** Yes, sir. Well, my understanding is ----

4 **THE COURT:** Let's get there up front in your questioning,
5 please.

6 **MR. SHEALY:** Okay.

7 **Q.** (By Mr. Shealy) So she had to go through counseling for two months,
8 correct? Or, well, that's what an officer -- Solicitor Barnette has asked or told you?

9 **A.** Right.

10 **Q.** Okay. And short-term memory lasts for how long?

11 **A.** People tend to hold information in short-term memory ----

12 **MR. BARNETTE:** I'm going to object at this point. I don't believe this
13 is proper redirect.

14 **THE COURT:** Well, I'll allow it. It's tenuous.

15 **A.** About 30 seconds.

16 **Q.** About 30 seconds, not two months?

17 **A.** Correct.

18 **Q.** Okay. It would have had to move into long-term memory by then,
19 correct?

20 **A.** Correct.

21 **MR. SHEALY:** Okay. Thank you, ma'am.

22 **THE COURT:** Recross?

23 **MR. BARNETTE:** No further questions, Your Honor. Thank you.

24 **THE COURT:** You may step down, ma'am.

25 **THE WITNESS:** Thank you.

1 (The witness complied with the request.)

2 THE COURT: Do you wish to excuse the witness?

3 MR. SHEALY: I do, Your Honor.

4 THE COURT: Any objections?

5 MR. BARNETTE: No objection, Your Honor.

6 THE COURT: Ma'am, you're free to go. Thank you very much.

7 (Whereupon, the witness was excused without objection.)

8 THE COURT: The Defense may call its next witness.

9 MR. SHEALY: Your Honor, I'm going to have to go see if they're
10 — they should be outside, but ----

11 THE COURT: All right.

12 MR. SHEALY: — if he's outside.

13 THE COURT: Okay.

14 MR. SHEALY: Thank you, Judge.

15 (Off-the-Record Comments)

16 MR. SHEALY: Your Honor, the Defense would call Brian Baird to
17 the stand.

18 THE COURT: Come forward, sir, to my left to be sworn.

19 (The witness stepped forward to be sworn.)

20 (Whereupon,

21 Mr. Brian Baird

22 first being duly sworn, testified as follows:)

23 THE COURT: Have a seat, please, sir. And, once you're seated,
24 state your name.

25 THE WITNESS: Brian R. Baird.

1 THE COURT: Thank you, sir.

2 THE WITNESS: Yes, sir.

3 THE COURT: Your — your witness, Mr. Shealy.

4 MR. SHEALY: Thank you, Your Honor.

5 Direct Examination by Mr. Shealy:

10:08 A.m.

6 Q. Mr. Baird, what is it — what's your occupation?

7 A. I'm a store manager for QuikTrip.

8 Q. Okay. And how long have you been with QuikTrip?

9 A. Almost 23 years.

10 Q. Twenty-three (23) years?

11 A. Yes.

12 Q. Okay. And were you working — so you were working for QuikTrip in

13 January of last year ---

14 A. Yes, sir.

15 Q. --- January 24th to be exact?

16 A. Yes, sir, I was.

17 Q. All right. And were you a manager at the QT on West Main Street?

18 A. Yes, St. John and ---

19 Q. And John White?

20 A. Yes.

21 Q. Okay.

22 A. Yes.

23 Q. Very sorry. Okay. So you were that — the manager of that particular

24 QT?

25 A. That's correct.

1 Q. All right. And, as the manager, do you have any particular duties
2 regarding the security system?

3 A. Yeah, I have. The security system is password protected. I have the
4 password.

5 Q. Okay. So, if you're going to pull security footage, you're the one who
6 had to do it for that day?

7 A. Exactly.

8 Q. All right. And did you have occasion to review security footage — well,
9 pull security footage from that day?

10 A. Yes.

11 Q. Okay. And so your security system was working?

12 A. It was working.

13 Q. Okay. What is that security system ----

14 A. We have ---

15 Q. ---- or systems?

16 A. We have multiple cameras. And we can burn them on a DVR right off
17 the PC.

18 And, of course, we have alarms as well, but mainly we have audio and
19 video.

20 Q. Okay. And so did you have occasion to pull some security footage
21 from the QT on January 24th or ----

22 A. I did.

23 Q. — of the 24th? Okay. And were the time stamps accurate?

24 A. They should be accurate, yes.

25 Q. All right.

1 A. Yes, they were.

2 Q. All right. And you turned that DV — the DVR over to the police; is that
3 accurate?

4 A. That's right.

5 Q. All right.

6 A. I did.

7 **(Brief pause while exhibit shown to Mr. Barnette.)**

8 MR. SHEALY: All right. Your Honor, we would like to play this.

9 THE COURT: Are you introducing that into evidence ----

10 MR. SHEALY: | ----

11 THE COURT: — to publish it?

12 MR. SHEALY: I am, Your Honor.

13 THE COURT: All right.

14 MR. SHEALY: We're going to move Defense Exhibits — Defense
15 Exhibit 1 into evidence ---

16 MR. BARNETTE: No objection, Your Honor.

17 MR. SHEALY: --- if we can.

18 THE COURT: Without objection, it will be admitted into the
19 record.

20 **(Whereupon, Defendant's Exhibit 1 was admitted into evidence**
21 **without objection.)**

22 MR. SHEALY: Permission to publish it?

23 THE COURT: You may publish now.

24 MR. SHEALY: Thank you, Your Honor.

25 **(Off-the-Record Discussion)**

1 (Brief Pause while equipment is readied.)

2 MR. SHEALY: All right, Gentlemen, again, I think I'm ready.

3 Permission to publish?

4 THE COURT: You may publish, yes, sir.

5 MR. SHEALY: Yes, sir.

6 (Whereupon, Defendant's Exhibit Number 1 was published.)

7 (Off-the-Record Comments)

8 MR. SHEALY: All right. I'm sorry, Judge, I can't make it bigger

9 than that.

10 Q. (By Mr. Shealy) Officer — Mr. Baird, you testified that, to your
11 knowledge, the security system was working in perfect order?

12 A. Yes.

13 Q. Okay. And the time stamps and whatnot are correct?

14 A. Yes.

15 Q. Okay. Can you look up there and tell us what the time stamp says?

16 A. January 24th, 2013. Is that 8:21 maybe?

17 Q. Okay. And would that be in the morning?

18 A. A.m., yes.

19 Q. Okay. And that's Eastern Standard Time?

20 A. I assume so, yeah.

21 Q. All right. And we would have been in Eastern Standard Time ---

22 A. Correct.

23 Q. --- in January, correct?

24 A. Correct.

25 Q. Okay.

1 (Brief Pause)

2 MR. SHEALY: Judge, I don't know that we need to play the whole
3 thing since it's been put in evidence, but...

4 THE COURT: It's up to you as to what you wish to publish.

5 MR. BARNETTE: Your Honor, I — if you want -- I'm going to publish
6 the whole video to the jury, so ----

7 THE COURT: All right.

8 MR. BARNETTE: ---- he can continue it on forward.

9 THE COURT: That'll be fine.

10 (Defendant's Exhibit Number 1 continues playing.)

11 MR. SHEALY: All right. Your Honor, again, just to make sure I
12 moved it into evidence, I'm going to move Defense Exhibit Number 1 into
13 evidence.

14 THE COURT: It's been admitted into evidence.

15 MR. SHEALY: Thank you, Judge.

16 (Brief Pause)

17 MR. SHEALY: Mr. Baird, I have no further questions for you.
18 Thank you very much.

19 THE WITNESS: Okay. Thank you.

20 MR. SHEALY: Well, he's ---

21 THE WITNESS: Oh.

22 MR. SHEALY: The Solicitor may have some questions for you.
23 So answer anything he has ----

24 MR. BARNETTE: I have no questions. And he's welcome to be
25 excused.

1 **THE COURT:** You may step down. And you're free to go, sir.
2 Thank you very much.

3 **THE WITNESS:** Yes, sir. All right.

4 **(The witness complied with the Court's request.)**

5 **(Whereupon, the witness was excused without objection.)**

6 **(Brief Pause)**

7 **MR. SHEALY:** All right. Judge, if I can have just one second. Let
8 me go speak to my — get my next witness.

9 **THE COURT:** Yes, sir.

10 **(Mr. Shealy stepped out of the courtroom to summon witness.)**

11 **(Brief Pause)**

12 **MR. SHEALY:** Your Honor, the Defense would call Faron Cox to
13 the stand, please.

14 **THE COURT:** Come forward, sir.

15 **(The witness stepped forward to be sworn.)**

16 **THE COURT:** Come to my left here to be sworn, please. Right
17 over here (indicating).

18 **(The witness complied with the Court's request.)**

19 **THE COURT:** Thank you, sir.

20 **(Whereupon,**

21 **Mr. Faron Cox**

22 first being duly sworn, testified as follows:)

23 **THE COURT:** Sir, state your name, please.

24 **THE WITNESS:** My name is Faron Cox, Sr.

25 **THE COURT:** Thank you. Mr. Shealy, your witness.

1 **MR. SHEALY:** Thank you, Your Honor.

2 **Direct Examination by Mr. Shealy:**

10:21 A.m.

3 **Q.** Good morning, Mr. Cox.

4 **A.** Good morning.

5 **Q.** Would you tell the jury what it is that you do?

6 **A.** I'm a clinical engineer, take care and repair medical equipment.

7 **Q.** Okay. So you take care of — you fix medical ----

8 **A.** Yes, I fix medical. I'm the — actually, I'm the manager, so I have
9 medical techs working for me, so....

10 **Q.** Okay. And so did you have cause to go to Carolina OB/GYN on
11 January 24th, of 2013?

12 **A.** Yes, I did.

13 **Q.** You did?

14 **A.** I did.

15 **Q.** You were there to fix a machine?

16 **A.** I was. I was going to work on the sterilizer, yes.

17 **Q.** Okay. When did you get there?

18 **A.** About 7:20 — about 7:19 perhaps.

19 **Q.** Okay.

20 **A.** About then.

21 **Q.** And did you come in the back way or the front way?

22 **A.** In the back.

23 **Q.** The back?

24 **A.** Yes.

25 **Q.** Where there's a —

1 I guess there's some kind of keypad thing?

2 A. Well, the door was already unlocked. So I just went to the double —
3 the double unlocked doors (phonetic).

4 Q. Okay.

5 A. And went upstairs — went straight upstairs.

6 Q. All right. And, when you say "upstairs," where do you mean upstairs?

7 A. Well, there's a foyer upstairs just outside the elevator.

8 Q. Okay. And that looks down on the doors that ---

9 A. On the main part ---

10 Q. --- you came in?

11 A. Yes, it does, yes.

12 Q. So that looks down on the door you came in?

13 A. Correct. Yes, sir, it does.

14 Q. Okay. And you came in through those doors at 7:20 you said?

15 A. I did, yes.

16 Q. About?

17 A. About, yes.

18 Q. Okay.

19 (Brief Pause)

20 Q. Now, did you — did you hear anything around 7:15ish?

21 A. I heard the doors open, the automatic doors open, and, then, I heard
22 — I heard a lady "Help me. Somebody's attacked me."

23 Q. Okay. And what did you do at that point?

24 A. I stood up and went down — I went down the elevator.

25 And, then, I went down to where the lady was to —

1 to see if I could render some assistance to her.

2 Q. Okay. Was she already being assisted?

3 A. Yes, sir. Well, there was — there was a — a person there, who was an
4 elderly gentleman. And he was just kind of standing over her kind of watching to
5 make sure she was okay.

6 Q. Okay. But, to be clear, you did not actually witness any attack, right?

7 A. No, I did not, no.

8 Q. I mean, you weren't staring at that ---

9 A. No, I did not. I was — I was standing with my back against the wall. I
10 was standing with my back against the wall just to the left of the — of the glass —
11 the half-glass wall.

12 Q. Okay. And, when you got down there, I — I would — was the lady
13 upset?

14 A. Yes, she was pretty strong. It was more like she was in shock.

15 Q. Okay.

16 A. She — she was just really disoriented, really — you know, she was
17 trying to get up, you know, trying to stand up. And I told her, "Just don't stand up.
18 Just sit there and we'll get some ----

19 Q. Did she —

20 A. — get some help."

21 Q. Did she tell you who had done this?

22 A. Well, she told it was a black man in a — in a grey hoodie. And he ran
23 outside.

24 Q. But it was a black man in a grey hoodie?

25 A. Yes. And he had ran outside through that field.

1 I opened the door and looked out and — and — because I said, "When did it
2 happen?" And she said, "Just now." And, then, I looked out and I didn't see
3 anybody running across the field or anything, so...

4 Q. You didn't see anybody at all?

5 A. No.

6 (Brief Pause)

7 MR. SHEALY: All right. That's all I have for this witness.

8 THE COURT: Mr. Barnette?

9 MR. BARNETTE: Just a couple of questions, Your Honor.

10 THE COURT: Yes, sir.

11 Cross Examination by Mr. Barnette:

12 Q. Now, sir, you came in the back door. You don't know when she was
13 there and when she attacked or anything from that standpoint?

14 A. She wasn't there when I got there at 7:20. So it must have been
15 shortly thereafter.

16 Q. Okay.

17 A. I heard the door — I could hear the doors open, but I didn't see
18 whoever — I couldn't see who came in.

19 Q. Right. You don't — you don't know because you didn't see it; is that
20 right, sir?

21 A. No.

22 Q. Okay.

23 A. Because I had my back to the wall.

24 Q. And nurses came down and helped her and things like that obviously,
25 came down there ----

- 1 A. Yes, some of the staff, uh-huh (affirmative).
- 2 Q. And you realize everybody else says that she said a white male?
- 3 A. Yes, I realize that.
- 4 Q. Five officers, everybody?
- 5 A. Yes, I know that, yes.
- 6 Q. The nurses, everybody?
- 7 A. Yes, sir, I realize that.
- 8 Q. Okay.
- 9 A. Yes, but I do know what she told me when I first came up to her.

10 **MR. BARNETTE:** I understand. Thank you, sir.

11 **THE WITNESS:** You're welcome.

12 **Redirect Examination by Mr. Shealy:**

- 13 Q. Just — I just want to clarify what the back way is because there is a
- 14 side door. I'd like to show him State's Exhibit — I want to make sure this is not the
- 15 way he went in.

16 **(Brief pause while exhibits are retrieved and readied.)**

- 17 Q. State's Exhibit 27— well — and State's Exhibit 29.

18 **(Exhibits shown on Elmo.)**

19 **(Off-the-Record Discussion)**

- 20 Q. (By Mr. Shealy) This is State's Exhibit 29. These were not the doors
- 21 you — were these the doors you came in?

- 22 A. Yes. The doors to the right, it would be the next door right here in
- 23 front, to the right of the building. I didn't come around the back way.

- 24 Q. Okay.

- 25 A. I was parked on the right-hand side of the building.

1 And the back way is for people who have keypad access. And I don't have keypad
2 access.

3 Q. Okay.

4 A. To the right.

5 Q. So those are the two doors you came through?

6 A. Yes.

7 Q. All right.

8 MR. SHEALY: Thank you, sir.

9 THE WITNESS: Thank you.

10 MR. BARNETTE: And I want to ask a question on that.

11 **Recross Examination by Mr. Barnette:**

12 Q. Now, there's doors on the other side, is that — you said on the right
13 side, right?

14 A. Yes, it's the right side. There's only one set of doors over there, on the
15 right-hand side of the building.

16 Q. Right. And, then, there's — on the left side there's — there's actually
17 three entrances, right?

18 A. Yes, three entrances, yes.

19 Q. Okay. And you came in the other entrance? This is not the entrance
20 that you came in?

21 A. Yes, it was. I came on the right side — the right — the right side.

22 (Brief Pause)

23 MR. BARNETTE: Okay.

24 MR. SHEALY: So —

25 THE COURT: I'm not sure if we're in cross or direct.

1 Maybe somebody needs to sit down so I can understand ---

2 MR. BARNETTE: Well, I'm ---

3 THE COURT: --- where we are.

4 MR. BARNETTE: --- I'm confused, so, I'm --- I'm going to stop there.

5 Thank you.

6 THE COURT: All right. Mr. Shealy, do you wish to ask any other
7 questions?

8 MR. SHEALY: Well, I may be able to clear it up.

9 Redirect Examination by Mr. Shealy:

10 Q. Because there's the urgent care entrance?

11 A. Yes.

12 Q. Okay. Then, there's the entrance I just showed you?

13 A. Yes.

14 Q. And, then, there's a back entrance where you have to have keypad
15 access ---

16 A. Yes.

17 Q. --- right?

18 A. Yes.

19 Q. You did not come in the immediate care, the urgent care entrance?

20 A. I did not, no.

21 Q. And you did not come in the back entrance where you have to have
22 keypad access?

23 A. I did not, no.

24 Q. You came in that side that I just showed you?

25 A. Yes, on the right-side hand of the building, right.

1 **MR. SHEALY:** Okay.

2 **(Brief Pause)**

3 **THE COURT:** Now, Mr. Barnette, I'll let you cross examine one
4 more time.

5 **MR. BARNETTE:** I'm still confused, but I'm — I'm not going to ask
6 any more questions.

7 **THE COURT:** All right. You may step down, sir.

8 **THE WITNESS:** Thank you.

9 **(Witness complied with the Court's request.)**

10 **THE COURT:** Do you wish to excuse the witness?

11 **MR. SHEALY:** I do, Your Honor.

12 **THE COURT:** Any objection?

13 **MR. BARNETTE:** No objection.

14 **THE COURT:** You're free to go, sir. Thank you for coming.

15 **THE WITNESS:** Thank you.

16 **(Whereupon, the witness was excused without objection.)**

17 **THE COURT:** Defense may call its next witness.

18 **MR. SHEALY:** Your Honor, may we approach?

19 **THE COURT:** You may.

20 **(Whereupon, a bench conference was had with both attorneys**
21 **present.)**

22 **THE COURT:** All right. Ladies and gentlemen, we're going
23 to take a short break and allow you to step back into the jury
24 room. As always, when you leave the courtroom, I ask you not to discuss
25 the case until I've asked you to begin your deliberations.

1 You may retire to the jury room.

2 **(Whereupon, the jury exited the courtroom at 10:30 a.m.)**

3 **THE COURT:** All right. We'll take about a ten-minute recess.

4 **MR. SHEALY:** Thank you, Your Honor.

5 **MR. BARNETTE:** Thank you, Your Honor.

6 **(Whereupon, a recess was taken from 10:30 a.m. until 10:40 a.m.)**

7 **(Off-the-Record Comments)**

8 **MR. SHEALY:** Your Honor, may we approach?

9 **THE COURT:** Please.

10 **(Whereupon, a bench conference was had with both attorneys**
11 **present.)**

12 **(Off-the-Record Discussion)**

13 **(Whereupon, Defendant's Exhibit 3 was marked for identification.)**

14 **MR. SHEALY:** Your Honor, the Defense would call Mrs. Martha
15 Culberson.

16 **THE COURT:** All right. We're taking a proffer at this time
17 concerning the admissibility of certain physical evidence. Come forward,
18 ma'am, over here to my left and be sworn in, please, ma'am.

19 **(The witness stepped forward to be sworn.)**

20 **THE COURT:** And I'll ask the attorneys, please, do not question
21 the witnesses unless the Court has called on you to question witnesses.

22 You may proceed, Madam Clerk.

23 **(Whereupon,**

24 **Martha Culberson**

25 having been first duly sworn, testified as follows:)

1 THE COURT: State your name, please, ma'am.

2 THE WITNESS: Martha Culberson.

3 THE COURT: Thank you. Mr. Shealy, your witness.

4 Direct Examination by Mr. Shealy:

10:41 A.m.

5 Q. All right, Ms. Culberson. Would you — I need you to speak up, okay?

6 A. Okay.

7 Q. Are you related to Richard Culberson?

8 A. Only by marriage.

9 Q. Okay. How long have you been married to his father I suppose?

10 A. For nine (9) years.

11 Q. Okay. So you've known him at least nine (9) years?

12 A. I knew him longer.

13 Q. Oh, you've known him longer than nine (9) years?

14 A. I knew him when he was 10 years old.

15 Q. Okay. Well, what we're dealing with, do you remember back on the
16 day of January the 24th, 2013?

17 A. (Nods affirmatively.) Yes.

18 Q. Yes?

19 A. Uh-huh (affirmative).

20 Q. Okay. Did Mr. Culberson visit you that day?

21 A. He did.

22 Q. Do you remember about what time that was?

23 A. I don't.

24 Q. You don't? Okay.

25 A. I know it was morning, but I don't remember exactly what time.

1 Q. All right. And do you remember if he had a pocket knife with him?

2 A. He did.

3 Q. Okay. Did he generally have a pocket knife with him?

4 A. Yes ----

5 Q. Okay.

6 A. ---- he did.

7 Q. Like you've said, you've known him for a good long while?

8 A. Yes.

9 Q. Okay. And usually he had a pocket knife?

10 A. Yes.

11 Q. Okay.

12 (Brief pause while exhibit is retrieved.)

13 Q. I'm going to hand you what's been marked as State's Exhibit Number
14 3 --- or not State, Defense Exhibit Number 3.

15 (Exhibit handed to the witness.)

16 Q. We don't very often introduce evidence, but Defense Exhibit Number
17 3, if you'll take a look at that.

18 (The witness complied with the request.)

19 A. That's the knife that he had.

20 Q. So that's the knife that he had on January 24th ----

21 A. Yes, it is.

22 Q. ---- of 2014 [sic]? And you remember that clearly?

23 A. Yes.

24 Q. All right.

25 (Brief Pause)

1 **MR. SHEALY:** Your Honor, I believe that, that's the information
2 that we would provide.

3 **THE COURT:** You may cross examine, Mr. Barnette.

4 **MR. BARNETTE:** Okay. Thank you, Your Honor.

5 **Cross Examination by Mr. Barnette:**

6 **Q.** Ma'am, if I remember right, you had not seen him for two years; is that
7 right?

8 **A.** That's right.

9 **Q.** Okay. And obviously, if you hadn't seen him for two years, how — how
10 would you know that knife was in his possession?

11 **A.** They took him out — they took it out of his pocket at my house.

12 **Q.** Okay. So you watched the officers take it out of his pocket?

13 **A.** Yes.

14 **Q.** Where did that knife go at?

15 **A.** It went with the officer.

16 **Q.** Okay. So you didn't get to see it or look at it?

17 **A.** I didn't get to see it any more until they gave — they sent home his
18 possessions from the jail. And it was in the bag.

19 **Q.** Okay. So that's where — that's how you got it back?

20 **A.** That's how I got it back.

21 **Q.** What other possessions was in that bag?

22 **(Brief Pause)**

23 **A.** His wallet, a little SpongeBob thing, a comb. And there was something
24 else.

25 **Q.** What — what clothes was in there?

1 A. There were no clothes in there.

2 Q. Okay. So it was just items in there I guess and so forth?

3 A. Yes.

4 MR. BARNETTE: Okay. Thank you, sir.

5 That's all the questions I have.

6 THE COURT: Anything else?

7 MR. SHEALY: Your Honor, again, I believe that we've laid the
8 foundation. She saw the knife on my client, taken out of his pocket ---

9 THE COURT: I think she said she saw it taken from him and
10 taken into possession by the police.

11 MR. SHEALY: Okay.

12 THE COURT: But it was in his personal possessions when they
13 were returned to her.

14 MR. SHEALY: I believe so, Your Honor.

15 MR. BARNETTE: Yes, sir. I understand.

16 THE COURT: Okay.

17 MR. BARNETTE: I just wanted to question about the prior two years.

18 THE COURT: Ma'am,, you may step down. Thank you very
19 much.

20 THE WITNESS: Thank you.

21 (Witness complied with the Court's request.)

22 THE COURT: Ma'am, you'll be called again as a witness when
23 the jury comes in. So have a seat, please.

24 (The witness complied with the Court's request.)

25 THE COURT: All right. Is the State ready to proceed?

1 MR. BARNETTE: The State is ready, Your Honor. Thank you.

2 THE COURT: Is the Defense ready?

3 MR. SHEALY: It is, Your Honor.

4 THE COURT: Bring the jury in.

5 (Whereupon, the jury was summoned and entered the courtroom
6 at 10:45 a.m.)

7 THE COURT: The record will reflect the jury has returned to the
8 courtroom. Mr. Shealy, you may call your next witness.

9 MR. SHEALY: Thank you, Your Honor. The Defense would call
10 Martha Culberson, please.

11 THE COURT: Come forward, ma'am, to my left and be sworn,
12 please.

13 (The witness stepped forward to be sworn.)

14 (Whereupon,

15 Ms. Martha Culberson

16 having been first duly sworn, testified as follows:)

17 THE COURT: Have a seat, please, ma'am.

18 (The witness complied with the request.)

19 THE COURT: State your name.

20 THE WITNESS: Martha Culberson.

21 THE COURT: Thank you, ma'am. Mr. Shealy, your witness.

22 MR. SHEALY: Thank you, Your Honor.

23 Direct Examination by Mr. Shealy: 10:45 A.m.

24 Q. Ms. Culberson, how are you related to Richard Culberson?

25 A. By marriage.

1 Q. Okay. So you're his step-what?

2 A. Mother.

3 Q. Stepmother?

4 A. I'm his stepmother, by marriage.

5 Q. Okay. How long have you known him?

6 A. Since he was 10.

7 Q. All right. How long were you — were you married to his father?

8 A. Yes.

9 Q. All right. How long?

10 A. Nine (9) years.

11 Q. All right. Do you remember him coming to visit you on January the 24th
12 of 2013?

13 A. Yes, he did.

14 Q. Okay. How did he get there?

15 A. He had a friend of his bring him.

16 Q. Okay. Who was that friend?

17 A. Laura and Norman Harris (phonetic).

18 Q. Harris?

19 A. Yes.

20 Q. Okay. All right. Do you have any idea as to when they dropped him
21 off?

22 A. I don't remember exactly what time.

23 Q. Okay. Now, did — I guess you hadn't seen him for some period of
24 time; is that correct?

25 A. Yeah, about two years.

1 Q. Okay. But your house is still his mailing address apparently?

2 A. Yes.

3 Q. All right. And had there been a check mailed to your house?

4 A. There had.

5 Q. In his name?

6 A. Yes.

7 Q. All right.

8 MR. SHEALY: Your Honor, I'm going to hand Ms. Culberson

9 Defense Exhibit Number 2. I believe I've shown that to the Prosecution.

10 THE COURT: All right. You may hand it to her.

11 (Exhibit handed to the witness.)

12 THE COURT: Mr. Barnette, have you seen that?

13 MR. BARNETTE: Yes, sir, I have.

14 THE COURT: All right.

15 Q. (By Mr. Shealy) Does that look like the check that they mailed to you?

16 A. It is.

17 Q. All right. And that's got his name on it?

18 A. It does have his name.

19 Q. All right. And what's the -- what's the amount -- the amount of the
20 check?

21 A. Seventy-six dollars and thirty-eight cents (\$76.38).

22 MR. SHEALY: Okay. And, Your Honor, at this time I'd move
23 Defendant's Exhibit Number 2 into evidence.

24 THE COURT: Any objection?

25 MR. BARNETTE: No objection.

1 **THE COURT:** Without objection it'll be admitted as it's been
2 marked. You may proceed.

3 **(Whereupon, Defendant's Exhibit 2 was entered into evidence**
4 **without objection.)**

5 **MR. SHEALY:** All right.

6 **Q.** (By Mr. Shealy) And one other thing, Ms. Culberson, could you tell us
7 what the postmark here is?

8 **A.** December the 19th, two thousand... I don't know. I can't read it.

9 **Q.** But it's from Internal Revenue Service ----

10 **A.** Yes.

11 **Q.** --- correct?

12 **A.** It is.

13 **Q.** And what is that dated?

14 **(Brief Pause)**

15 **(Off-the-Record Comments)**

16 **A.** Two thousand and twelve (2012), 12/17 of 2012.

17 **Q.** Okay. So you all had gotten it the previous month ----

18 **A.** Yes.

19 **Q.** ---- for him, correct?

20 **A.** Yes, sir.

21 **Q.** All right.

22 Ms. Culberson, so you don't remember when he got to your -- to your house?

23 **A.** No, I don't.

24 **Q.** All right.

25 **(Brief Pause)**

1 Q. And, when he got to your house, did he take his denim jacket and grey
2 hoodie off and throw them in the yard?

3 A. No.

4 Q. No?

5 A. He left them in the house.

6 Q. Okay.

7 A. He had on a blue jacket.

8 Q. He had a big puffy blue jacket on?

9 A. Yes.

10 Q. Did he also have a hoodie?

11 A. He did. And it was underneath another sweater.

12 Q. Okay.

13 A. Then, he had a sweater under that.

14 (Brief Pause)

15 Q. All right. Ma'am, I'm going to show you a State's Exhibit, Number 19.

16 (Exhibit shown on Elmo.)

17 Q. If you'll turn your attention up there. So, whenever he got to your
18 house, he didn't throw those — that pile of clothes on your ----

19 A. No, the police did that.

20 Q. The police did that?

21 (Brief Pause)

22 Q. All right. And, when he got to you, did he ask you for a haircut?

23 A. Yes, he did.

24 Q. Okay. And how were you physically at this time?

25 A. I had a broken left wrist and it was in a cast.

1 Q. Okay. Did he ask you specifically for a buzz cut, to shave his head?

2 A. No. He just asked for a haircut.

3 Q. Okay.

4 A. I told him that I couldn't do that; I could do a buzz if he wanted it.

5 Q. Okay.

6 A. And he said "Go ahead."

7 Q. All right. Was his hair long? Well — and I understand you — you
8 hadn't seen him for two years.

9 A. It was about — about the length of mine.

10 Q. Okay. So he has pretty long hair or he had pretty long hair?

11 A. Yes.

12 Q. Okay. Prior to that two years you hadn't seen him, did he usually keep
13 his hair short or long or what?

14 A. Different ways, sometimes shaved it.

15 Q. Okay. So a shaved head wouldn't be ----

16 A. Nothing unusual.

17 Q. — out of character?

18 A. Huh-uh (negative).

19 Q. Okay.

20 (Brief Pause)

21 Q. You were there when the police came?

22 A. Yes.

23 Q. All right.

24 And you were there when they took him into custody?

25 A. Yes.

1 Q. All right. Whenever they took him into custody, did they have occasion
2 to search him?

3 A. They did.

4 Q. Okay. And did they take anything else out of his pocket?

5 A. They took the knife out and they took — looked through his change.

6 Q. Okay. Ma'am, I'm gong to hand you what's been marked as State's —
7 or Defendant's Exhibit Number 3.

8 (Exhibit handed to the witness.)

9 Q. Can you identify that, ma'am?

10 A. This is the knife they took out of his pocket.

11 Q. Okay. And you saw it in his possession?

12 A. Yes.

13 Q. All right.

14 (Brief Pause)

15 MR. SHEALY: Your Honor, I'd move Defense Exhibit Number 3
16 into evidence.

17 MR. BARNETTE: No objection.

18 THE COURT: Without objection, it will be admitted as it has
19 been marked.

20 (Whereupon, Defendant's Exhibit 3 was admitted into evidence
21 without objection.)

22 (Off-the-Record Comments)

23 Q. (By Mr. Shealy) If you hadn't seen him in a while, how did — do you
24 have any idea as to how he knew that there was a check waiting for
25 him?

1 A. I told his daughter and I also told one of his friends that he knows,
2 Ricky McAbee (phonetic), that he — that we had a check for him.

3 Q. Okay. So, then, where does Ricky McAbee work?

4 A. He worked at Vic Bailey's.

5 Q. At Ricky Bailey's?

6 A. On Reidville Road.

7 Q. On Reidville Road?

8 A. Yes.

9 Q. Well, there's one down here next to the ----

10 A. John B. White Boulevard.

11 Q. The one next to the QT?

12 A. Yes.

13 Q. Okay.

14 **(Brief Pause)**

15 Q. And it's not an odd thing for you to cut Mr. Culberson's hair?

16 A. No.

17 **MR. BARNETTE:** Your Honor, I'm going to object at this point
18 because they hadn't seen him for two years.

19 **THE COURT:** Well, I'll let you cross examine on that point, but
20 that's not an objection. You may ask the question. She has answered. Any
21 other questions?

22 **MR. SHEALY:** Thank you, Judge. No other questions.

23 **THE COURT:** All right. You may cross examine.

24 **MR. BARNETTE:** Thank you, Your Honor.

25 **Cross Examination by Mr. Barnette:**

10:54 A.m.

1 **Q.** Ms. Culberson, I know you've testified and I just want to make sure.
2 So you haven't seen him in two years?

3 **A.** No.

4 **Q.** He had not came to you all's home for two years?

5 **A.** No.

6 **Q.** And he was brought by a friend I'm assuming ---

7 **A.** Yes.

8 **Q.** --- in a car?

9 **A.** Yes.

10 **Q.** And did you know where he was earlier that day or anything from
11 there?

12 **A.** No.

13 **Q.** Okay. You didn't know he had actually left --- the police officers
14 questioned him and he had left and went to Vic Bailey and jumped the back fence,
15 did you?

16 **A.** He told me that he had run through Vic --- Vic Bailey's and went over
17 the fence.

18 **Q.** Oh, so he told you that?

19 **A.** He did tell me that.

20 **Q.** Okay.

21 **(Brief Pause)**

22 **MR. BARNETTE:** One moment, Your Honor, please.

23 **THE COURT:** Yes, sir.

24 **(Brief Pause)**

25 **MR. BARNETTE:** Thank you, ma'am, for answering my questions.

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THE WITNESS: You're welcome.

THE COURT: Re -- redirect?

MR. SHEALY: I have no further questions.

THE COURT: All right, ma'am, you may step down. Thank you
very much.

(The witness complied with the Court's request.)

THE COURT: Do you wish to excuse the witness?

MR. SHEALY: I do, Your Honor.

THE COURT: Any objections?

MR. BARNETTE: No objection, Your Honor.

THE COURT: You're free to go, ma'am. Thank you very much.

THE WITNESS: Thank you.

(Whereupon, the witness was excused without objection.)

(Brief Pause)

MR. SHEALY: Now, the last part -- the last witness, Your Honor,
will be Curtis Jones from my office.

THE COURT: Sir, come forward and be sworn.

(The witness stepped forward to be sworn.)

THE COURT: Over here to my left. Thank you, sir.

(The witness complied with the Court's request.)

(Whereupon,

Mr. Curtis Jones

having been first duly sworn, testified as follows:)

THE COURT: Once seated, sir, state your name.

THE WITNESS: Curtis Jones.

1 THE COURT: Thank you. Your witness, Mr. Shealy.

2 Direct Examination by Mr. Shealy: 10:55 A.m.

3 Q. All right. Mr. Jones, how long have you been an investigator for the —
4 well, what is your current occupation?

5 A. I'm an investigator in the public defender's office.

6 Q. And how long have you been doing that now?

7 A. It'll be four years ---

8 Q. Okay. What did you do before that?

9 A. I was employed by the Spartanburg County Sheriff's Office.

10 Q. All right. In what capacity?

11 A. As an officer and also as an investigator.

12 Q. Okay. So you were an investigator with the ---

13 A. Sheriff's.

14 Q. --- sheriff's office?

15 A. Yes.

16 Q. Okay. Did you ever work for the city?

17 A. Yes, the city police, uh-huh (affirmative).

18 Q. All right. So you've been — about how long do you — were you in law
19 enforcement?

20 A. This will be my thirty-third (33rd) year.

21 Q. Over thirty?

22 A. Uh-huh (affirmative).

23 Q. Now, have you ever — or in preparation for this case, have you ever
24 driven from the QT on John B. White to 2995 Reidville Road?

25 A. Yes.

- 1 Q. Okay. About how far is that?
- 2 A. It's approximately 4.5 miles.
- 3 Q. Okay. So four and a half miles?
- 4 A. Yes, sir, four and a half miles.
- 5 Q. And how did you get there?
- 6 A. I went straight down Reidville Road.
- 7 Q. All right. And just keep driving?
- 8 A. Just keep straight down Reidville Road, yes.
- 9 Q. All right. And how about going from 2995 Reidville Road to Old —
- 10 [REDACTED]; how far is that?
- 11 A. That's 2.8 miles, a little bit over two and a half miles.
- 12 Q. Okay. So it's round about two miles closer to 2995 Reidville Road?
- 13 A. Yes, uh-huh (affirmative),
- 14 Q. All right.
- 15 A. It's closer.
- 16 (Brief Pause)
- 17 MR. SHEALY: All right. That's all I have for this witness.
- 18 THE COURT: Mr. Barnette?
- 19 MR. BARNETTE: Just a few questions.
- 20 Cross Examination by Mr. Barnette: 10:57 A.m.
- 21 Q. How far would you say from the QT to Mary Black Urgent Care?
- 22 A. Four and a half.
- 23 Q. Four and a half?
- 24 A. From ----
- 25 Q. And you measured that and everything ----

1 A. Oh, yes.

2 Q. --- showing the distance for this case? Did you realize there's a bus
3 stop where the strap --- for the status bus (phonetic) right at Denny's right before ---
4 within a mile of this ----

5 A. Yes.

6 Q. --- location?

7 A. Yes, sir.

8 Q. And you would agree with me there is a bus stop there?

9 A. Oh, yes.

10 Q. Okay. And that bus stop usually goes around 7:25, 7:30, in that area,
11 right? It stops there?

12 A. Yes, that's --- that's correct.

13 Q. That's correct? So that morning a bus stops there at 7:25, 7:30, where
14 somebody could be picked up and they're taken back to the QT probably --- they
15 could get back to the QT area by 8 o'clock or a little bit after 8:00?

16 A. That's possible, yes, sir.

17 Q. I understand. And how much did you say --- what was the other
18 location that was talked about?

19 A. It's from 2995 Reidville Road, which is the incident location, to the
20 [REDACTED], is 2.8, a little bit over two and a half miles.

21 Q. Two and a half miles to that?

22 A. Yes.

23 Q. Okay. And --- one moment.

24 MR. BARNETTE: One moment, Your Honor.

25 THE COURT: Yes, sir.

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(Brief Pause)

MR. BARNETTE: Thank you, sir.

THE WITNESS: Thank you.

THE COURT: Redirect?

MR. SHEALY: I have no questions for this witness.

THE COURT: Sir, you may step down. Thank you very much.

(The witness complied with the request.)

THE COURT: Do you wish to excuse the witness?

(Brief Pause)

MR. SHEALY: Your Honor, I do. I think he'll probably stick around.

THE COURT: He may stick around, I understand, but you're free to go unless Mr. Barnette objects. Any objection?

(Whereupon, the witness was excused without objection.)

MR. BARNETTE: No, sir.

THE COURT: All right. The Defense may call its next witness.

MR. SHEALY: Your Honor, we would like to put something on the record ----

THE COURT: All right.

MR. SHEALY: --- outside the presence of the jury.

THE COURT: All right. Ladies and gentlemen of the jury, if you would, step back to the jury room. As always, when you do that, I'll ask you not to discuss this case in any way until I've asked you to do so. You may retire.

(Whereupon, the jury exited the courtroom at 10:59 a.m.)

1 THE COURT: Yes, sir?

2 MR. SHEALY: Your Honor, the Defense has put the State on
3 notice of an alibi ----

4 THE COURT: Yes, sir.

5 MR. SHEALY: ---- or an alibi witness was a lady by the name of
6 Heather Holstrom (phonetic).

7 Your Honor, he has been in jail since at least May 23rd; that's when he
8 served her with a subpoena. And, Your Honor, I have an affidavit of service.
9 And, if I may have that marked as I guess -- I suppose as a Court's Exhibit to
10 put it in the record that we had her served.

11 THE COURT: All right.

12 MR. BARNETTE: I don't dispute that.

13 MR. SHEALY: Yeah, so, if I can just ----

14 THE COURT: Go ahead and have that marked and put into the
15 record. Any objection to that going into the record, Mr. Barnette?

16 MR. BARNETTE: No, sir, Your Honor.

17 THE COURT: All right, sir.

18 MR. SHEALY: As a Court's Exhibit, Your Honor?

19 THE COURT: As a Court's exhibit. It does not need to go back
20 to the jury I don't believe.

21 MR. SHEALY: No, no, sir.

22 THE COURT: It's not a jury issue.

23 MR. SHEALY: Your Honor, while she does that ----

24 THE COURT: Well, she has to take down what you're saying.

25 So let her finish that.

1 MR. SHEALY: Yes, sir.

2 (Whereupon, Court's Exhibit Number 9 was marked for
3 identification and admitted into the record.)

4 (Off-the-Record Comments)

5 THE COURT: All right. Now ---

6 MR. SHEALY: Your Honor, this will be Court's Exhibit Number
7 9 ---

8 THE COURT: All right.

9 MR. SHEALY: --- Your Honor, a proof of service. An investigator
10 with our office, Donald Stepp (phonetic) on May 23rd, 2014, served her with a
11 --- served Ms. Holstrom with a subpoena.

12 She gave us as her address [REDACTED] (phonetic) [REDACTED], and
13 that's in Spartanburg, South Carolina.

14 We've attempted to find her there, but it turns out that, that address is
15 a boarded up church, a padlocked church.

16 She was, as I said, in the jail up until yesterday morning. She appears
17 to have been released by 8 o'clock yesterday morning.

18 THE COURT: All right.

19 MR. SHEALY: I've gone to the library where my client thinks she
20 may be. I couldn't find her there. We also had another address for her,

21 [REDACTED].

22 Of course, she wasn't there either.

23 The phone numbers that we have been able to pull from various
24 sources are all not in service. Judge, we've --- we've looked everywhere we
25 could think of.

1 It may be that at 11:30 she may be at the soup kitchen. I don't know
2 that she'll be there. I can't say that she certainly will be there.

3 Your Honor, I don't know -- I suppose I need to ask ---

4 **THE COURT:** You -- you made the Court aware of this problem I
5 guess around after lunch yesterday.

6 **MR. SHEALY:** Yes, sir.

7 **THE COURT:** And Mr. Barnette was aware too. At that time, the
8 Court offered any assistance the Court could offer. But you indicated I
9 believe you had investigators who were pursuing her.

10 And so is there any reason to believe that she will be at the soup
11 kitchen other than that's just where people gather?

12 **MR. SHEALY:** Well it's ---

13 **THE COURT:** Or is that some place that she frequents?

14 **MR. SHEALY:** I mean, that's -- that is some place that she
15 frequents. I can't tell you that she will go there today. I don't know.

16 **THE COURT:** Mr. Barnette, anything you would like to say?

17 **(Brief Pause)**

18 **MR. BARNETTE:** Your Honor, I'll leave it up to the Court's
19 discretion.

20 I do have some reply testimony I will be introducing just to notify the
21 Court. I do -- I did have them coming, en route because like I say I know
22 we're still in Mr. Shealy's case.

23 **(Brief Pause)**

24 **THE COURT:** We're looking at 11:30?

25 **MR. SHEALY:** Yes, sir.

1 **THE COURT:** Do you think she may be there?

2 **MR. SHEALY:** Yes, sir.

3 **(Brief Pause)**

4 **THE COURT:** Well, what I'll — I could always send the jury to a
5 very early lunch and bring them back. Or we can recess that long but that
6 leaves the jury sitting in the jury room for a very long period of time.

7 **(Brief Pause)**

8 **THE COURT:** Why don't you approach for a second and let's
9 talk about it.

10 **MR. SHEALY:** Yes, sir.

11 **(Whereupon, a bench conference was had with both attorneys**
12 **present.)**

13 **(Brief Pause)**

14 **(Off-the-Record Discussion)**

15 **THE COURT:** All right. Let me put on the record, our bench —
16 at our bench conference, Mr. Shealy indicated that the witness in question
17 does frequent the soup kitchen.

18 I've agreed to allow his investigator to try to locate her at that location.
19 Therefore, we're going to adjourn until 1 o'clock to give them an opportunity
20 to find her at that location. Is that our agreement, Mr. Shealy?

21 **MR. SHEALY:** It is, Your Honor.

22 **THE COURT:** And do you agree with that process?

23 **MR. SHEALY:** I do, Your Honor.

24 **THE COURT:** Mr. Barnette, I know you would rather go forward
25 with your case, but Mr. Shealy does object, and we are in his case.

1 Does that correctly state our conference?

2 **MR. BARNETTE:** Yes, sir, it is.

3 **THE COURT:** All right. Let's bring the jury in.

4 **(Whereupon, the jury was summoned and entered the courtroom**
5 **at 11:08 a.m.)**

6 **THE COURT:** All right. Ladies and gentlemen of the jury, there
7 is some — some difficulty with a witness that is under subpoena to the court.
8 And we're going to have to, again, call a recess in the case for a brief period
9 of time.

10 We're at 11 o'clock and I'm going to turn this into your lunch break
11 while we do this. And so what I'm going to do is ask you to be back in the
12 jury room at 1 o'clock this afternoon.

13 I know this case has kind of started and stopped and I want to thank
14 you for your patience and ask you to continue to be patient with us. But any
15 time you're in — in a search for the truth, it is slow; it is deliberate. And
16 sometimes it is repetitive.

17 And I think you're finding that out.

18 As I indicated at the beginning of the trial, it will not be like a television
19 show. It won't last an hour and still have time for commercials.

20 So we're in that process and we're going to see if we can't straighten
21 out this issue that we have at this time and have the case ready to resume at
22 1 o'clock this afternoon.

23 So as usual, when you leave the courthouse, I give you the same
24 instructions; I'll do that again. Don't try to gather any information on your
25 own, don't listen to, watch, or read any media reports;

1 Don't discuss the case with anyone and don't allow anyone to discuss
2 it with you. And, if anyone attempts to contact you about the case, please
3 report that upon your return.

4 I'll ask you to be back in the jury room at 1 o'clock this afternoon. We
5 should be able to resume at the time. Thank you for your patience and
6 you're free to go at this time. Thank you.

7 **(Whereupon, the jury exited the courtroom at 11:10 a.m.)**

8 **THE COURT:** All right. We'll be in recess until 1 o'clock. Thank
9 you very much.

10 **MR. BARNETTE:** Thank you, Your Honor.

11 **(Whereupon, a lunch recess was taken from 11:10 a.m. to 12:59**
12 **p.m.)**

13 **THE COURT:** Okay. We're back on the record in the case of
14 *The State of South Carolina vs. Richard Culberson.*

15 We had broken earlier to allow the Defense an opportunity to locate a
16 subpoenaed witness. Mr. Shealy?

17 **MR. SHEALY:** Thank you, Your Honor. Judge, Mr. Jones and I
18 went out to several different locations. Ultimately, we did find Ms. Holstrom at
19 the soup kitchen, as we thought she might be.

20 Unfortunately, in both my opinion and my investigator's opinion, she
21 was intoxicated, which isn't good particularly at 11:30 in the morning. And we
22 believe that's a disabling condition.

23 I don't think she would be a competent witness and ethically I can't call
24 an incompetent witness.

25 **THE COURT:** I understand.

1 **MR. SHEALY:** I've explained that to my client and he
2 understands that. And that, even if, for some reason if we could call her,
3 obviously, her intoxicated state would be an issue for her credibility.

4 So I don't think I would call her anyway, Judge. So I would like to put
5 that on the record with that, that we will be done. So we would rest, Your
6 Honor.

7 **THE COURT:** Okay. Does — does your client agree with that?
8 Sir, do you agree with what your attorney just said?

9 **MR. CULBERSON:** Can I talk?

10 **THE COURT:** I asked you did you agree with what your
11 attorney said. Stand up, sir.

12 **(The Defendant complied with the Court's request.)**

13 **MR. CULBERSON:** She's the only one that really knows where
14 I was the whole — through all of this. I was with her the night before, all
15 night, all morning.

16 **MR. SHEALY:** Do you understand, though?

17 **THE COURT:** Do you understand the condition that she was in
18 when she was located?

19 **MR. CULBERSON:** I do.

20 **THE COURT:** I asked you a question, sir.

21 **MR. CULBERSON:** Do I understand the condition she was in?

22 **THE COURT:** Your attorney has explained that he located the
23 witness and he has indicated that he and his investigator said he found her to
24 be in an intoxicated state.

25 **MR. CULBERSON:** She don't need to come in here drunk.

1 **THE COURT:** Okay. So you agree that, that would be diffi — a
2 — a problem for your case if she were to testify while intoxicated?

3 **MR. CULBERSON:** Oh, yeah, intoxicated, but she's
4 subpoenaed. She needs to be here. She's the best thing I got in my whole
5 case.

6 **THE COURT:** Well, I can — do you want to bring her in?

7 **MR. CULBERSON:** Not drunk.

8 **THE COURT:** Have a seat, sir. Thank you.

9 **(The Defendant complied with the Court's request.)**

10 **THE COURT:** Do you wish to proceed, Mr. Shealy?

11 **MR. SHEALY:** Your Honor, I — I released her from her
12 subpoena.

13 **THE COURT:** Okay. She's been released? Thank you, sir.
14 Now, is the State ready to proceed?

15 **MR. BARNETTE** Yes — well, I've got two reply witnesses, Your
16 Honor.

17 **THE COURT:** Okay. All right.

18 **MR. BARNETTE:** They shouldn't be real long.

19 **THE COURT:** I'm going to call on you if you have additional
20 witnesses and we'll — I assume you'll be resting?

21 **MR. SHEALY:** I am, Your Honor.

22 **THE COURT:** And, then, I'll allow the reply witnesses. Bring the
23 jury in.

24 **(Whereupon, the jury was summoned and entered the courtroom**
25 **at 1:04 p.m.)**

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1 And you immediately went back to the office and got help from that point and called
2 911?

3 A. Yes, after I checked her out.

4 Q. Okay. So you went down and checked her out?

5 A. Yes.

6 Q. And did she tell you what race was the gentleman that attacked her?

7 A. Yes.

8 MR. SHEALY: I'm going to object at this point, Your Honor, as
9 hearsay.

10 THE COURT: And the exception to the hearsay is...?

11 MR. BARNETTE: The exception, Your Honor, is obviously another
12 witness has testified contrary to that. It's not for the truth of the matter; it's
13 offered to show basically the difference between those, Your Honor, in that
14 case. And it could be an excited utterance in this situation.

15 THE COURT: All right. I'll let it in as an exception to hearsay
16 rule. You may proceed.

17 MR. BARNETTE: Thank you.

18 Q. (By Mr. Barnette) If you would, did she tell you the race of the man
19 that attacked her?

20 A. Yes.

21 Q. And what was that race?

22 A. White.

23 Q. Okay. And you're definitely sure that's what she told you?

24 A. Yes.

25 Q. Okay.

1 And so you only saw the elderly gentleman there is the only time you saw her — I
2 mean and, of course, you went back upstairs to get help?

3 A. Yes.

4 Q. And Ms. Rudicill ----

5 A. He was still there.

6 Q. Right. And that gentleman was still there?

7 A. Uh-huh (affirmative).

8 Q. Did you see another gentleman there?

9 A. Not that I recall.

10 Q. Okay. So you didn't see another — you just saw the one gentleman,
11 the elderly gentleman, about 70 years old?

12 A. Yes.

13 Q. And, after you went up to the office, did you come back down?

14 A. Yes.

15 Q. Okay. And did you all obviously take care of Ms. Pruitt at that time?

16 A. Correct.

17 (Brief Pause)

18 Q. Did she constantly — was a white male the only thing that was
19 mentioned in your presence that attacked her on that day?

20 A. Yes, because, when Kelly went back down with me, she told her the
21 same thing. Kelly asked her the question.

22 Q. Okay. And is it — the only gentleman you saw was the elderly
23 gentleman there?

24 A. Correct.

25 Q. And, like I said — well, I guess Ms. Rudicill will testify about that more.

1 **A.** I mean, if there was anyone else there, I don't recall. We --- we were
2 focused on her.

3 **Q.** Sure. But --- and obviously that's what --- that's what she told in your
4 presence the whole time from that standpoint?

5 **A.** Yes.

6 **Q.** Okay.

7 **MR. BARNETTE:** One moment, Your Honor, please.

8 **(Brief Pause)**

9 **MR. BARNETTE:** Please answer any questions that ----

10 **THE COURT:** Mr. Shealy, your witness.

11 **MR. SHEALY:** Your Honor, I have nothing for this witness.

12 **THE COURT:** All right. You may step down. Thank you very
13 much.

14 **(Witness complied with the Court's request.)**

15 **MR. BARNETTE:** Your Honor, I call Ms. Rudicill to the stand.

16 **THE COURT:** Come forward, please, ma'am.

17 **(The witness complied with the Court's request.)**

18 **MR. BARNETTE:** We'd ask that this witness be excused, Ms.
19 Eubanks.

20 **THE COURT:** Any objection?

21 **MR. SHEALY:** No objection.

22 **THE COURT:** You're free to go, ma'am.

23 **(Whereupon, the witness was excused without objection.)**

24 **THE COURT:** Ms. Rudicill, you've previously been placed under
25 oath in this case. Do you acknowledge that you are still under oath?

1 THE WITNESS: Yes, sir.

2 THE COURT: Have a seat, please.

3 (The witness complied with the Court's request.)

4 THE COURT: Your witness, Mr. Barnette.

5 Direct Examination by Mr. Barnette:

1:09 P.m.

6 Q. Ms. Rudicill, I know you're a nurse there in the office at the time.

7 When you went down, did — obviously, you looked at Ms. Pruitt; looked at her
8 injuries and so forth?

9 A. Yes.

10 Q. And did you ask her what happened?

11 A. Yes.

12 Q. And what was the race of the man that she told you?

13 A. A white man.

14 MR. SHEALY: Your Honor, objection.

15 THE COURT: Do you renew your objection?

16 MR. SHEALY: I renew my objection.

17 THE COURT: Based on the same criteria, I will find that it would
18 qualify as an excited utterance and would be an exception to the hearsay
19 rule. You may proceed.

20 MR. BARNETTE: Thank you, Your Honor.

21 Q. (By Mr. Barnette) What race did she tell you when you asked her?

22 A. A white man.

23 Q. And that's what she told you the whole time you were with her?

24 A. Yes.

25 Q. And you heard her repeat that to other folks?

1 A. Yes.

2 Q. Police officers, people that was talking to her?

3 A. Yes.

4 Q. And, when you came back down, was it just the elderly man there with
5 her — with you all at that time?

6 A. Yes.

7 Q. Did you see any other man with her?

8 A. No.

9 Q. And, obviously, you assessed Ms. Pruitt. Being a nurse and
10 everything, do you assess patients when you examine them in those type
11 situations?

12 A. Oh, yeah.

13 Q. And, when you do an assessment, what do you do?

14 A. Check their condition, vitals; you need to check their blood pressure.
15 You kind of just basically have to make just sure that — if they're stable, you can go
16 ahead and proceed with them.

17 And, if they're not stable, you go ahead and take them before
18 somebody else. You always tend to the one that's not stable.

19 Q. And — and part of being a nurse too is assessing patients ----

20 A. Absolutely.

21 Q. ---- looking at their faces and everything like that?

22 A. Yes, yes.

23 Q. That's something that's done in your training and stuff?

24 A. Yes.

25 Q. Okay.

1 (Brief Pause)

2 MR. BARNETTE: Okay. One moment, Your Honor, please?

3 THE COURT: Yes, sir.

4 (Off-the-Record Discussion)

5 MR. BARNETTE: Thank you, ma'am, for answering my questions.

6 Please answer any questions the Defense may have for you.

7 THE COURT: Mr. Shealy, your witness.

8 MR. SHEALY: I've got nothing for this witness.

9 THE COURT: All right. Ma'am, you may step down. Thank you
10 very much.

11 THE WITNESS: Thank you.

12 (The witness complied with the Court's request.)

13 MR. BARNETTE: Your Honor, we would ask that this witness be
14 excused, Your Honor.

15 THE COURT: Any objection?

16 MR. SHEALY: No objection.

17 THE COURT: You're free to go, ma'am. Thank you very much.

18 THE WITNESS: Thank you.

19 (Whereupon, the witness was excused without objection.)

20 THE COURT: Does the State have any other reply witnesses?

21 MR. BARNETTE: No, sir, we don't.

22 THE COURT: All right. Ladies and gentlemen of the jury, that
23 completes the presentation of evidence in this matter.

24 At this point in time, I'm going to have to take up something with the
25 attorneys. I'll ask you to step back in the jury room while I do that.

- 1 Please don't begin discussions until I ask you to that about this case.
- 2 You may retire to the jury room.
- 3 (Whereupon, the jury exited at 1:10 p.m.)
- 4 (Off-the-Record Comments)
- 5 (Brief Pause)
- 6 THE COURT: Any motions at this time?
- 7 MR. SHEALY: Your Honor, I renew my motion for a directed
- 8 verdict based on my prior argument and prior statutes (phonetic) and things
- 9 of that nature.
- 10 THE COURT: All right. That motion is noted. The Court would
- 11 make the same ruling. The motion is denied.
- 12 The Defense has placed in — in evidence. So I assume the State will
- 13 be opening followed by the Defense. And, then, the State would end with
- 14 argument; is that correct?
- 15 MR. BARNETTE: Your Honor, I'm going to waive opening if that's
- 16 possible.
- 17 THE COURT: Any objection to the State waiving opening?
- 18 MR. SHEALY: No, Your Honor.
- 19 THE COURT: All right. Are you ready to proceed with closing
- 20 argument?
- 21 MR. BARNETTE: Can I look at few of the exhibits ----
- 22 THE COURT: Yes, sir.
- 23 MR. BARNETTE: ---- and get things lined up, Your Honor?
- 24 THE COURT: Yes, sir.
- 25 (Off-the-Record Comments)

1 **THE COURT:** We'll take about a two- to five-minute break. I'll
2 stay on the bench. Court is in recess brief — briefly.

3 **(Whereupon, a brief recess was taken.)**

4 **(Off-the-Record Discussion)**

5 **MR. BARNETTE:** Thank you, Your Honor.

6 **THE COURT:** Mr. Barnette, do you intend to use the overhead in
7 your closing agreement?

8 **MR. BARNETTE:** I possibly will. I can turn it off if you want me to.

9 **THE COURT:** Oh, that's all right. I just wanted to know if you
10 wanted it up or down. That's fine.

11 **(Continued off-the-record discussion regarding overhead and**
12 **exhibits.)**

13 **(Brief Pause)**

14 **THE COURT:** Is the State ready to proceed?

15 **MR. BARNETTE:** The State's ready, Your Honor.

16 **THE COURT:** Is the Defense ready?

17 **MR. SHEALY:** We are, Your Honor.

18 **THE COURT:** Bring the jury in.

19 **(Off-the-Record Comments)**

20 **(Whereupon, the jury was summoned and entered the courtroom**
21 **at 1:19 p.m.)**

22 **THE COURT:** All right. The record will reflect that the jury has
23 returned to the courtroom.

24 We've completed the presentation of evidence in the
25 case.

1 And, at this time, the attorneys are allowed to address you directly, for
2 the second time, in what's referred to as the closing argument or their
3 summation.

4 At this stage, the Defense will be going first followed by the State. Mr.
5 Shealy, you may proceed for the Defense.

6 **Closing Arguments**

1:20 P.m.

7 **MR. SHEALY:** Thank you, Your Honor. Ladies and gentlemen of
8 the jury, again, we finally finished the testimony. I know it's been long and
9 difficult, but, in my opinion, the State's case rests really on two things.

10 It rests — it rests on Ms. Pruitt's identification. And it rests on this idea
11 that he ran away, his flight and things.

12 I think we pretty well — and, again, he already had a warrant for his
13 arrest. Officer Weatherman (phonetic) testified to that. And it seems to me
14 a pretty good reason to be hesitant with the city police officer; and, then,
15 whenever more police officers show up and have an interest in you, to take
16 off running.

17 Now, when this happened, it's unclear what happened. She's testified
18 it happened at 7:10-ish; that she got there about 7:05 and, you know, got out
19 of the car and got into the foyer and that, that happened around 7:10.

20 And you heard from Faron Cox that he went in that entrance. She
21 wasn't there at 7:00 — well, he went in there at 7:20 and she wasn't there at
22 7:20. There's been no reason for him to lie about it that I can see.

23 I mean, the Solicitor had plenty of opportunity to cross examine him.
24 He has no dog in this fight as far as I can tell.

25 He's not testified he knew my client or anything like that.

1 And you heard that he was told that it was a black fellow in a grey hoodie. So
2 we've got the grey hoodie, but he was told that it was a black fellow.

3 Ladies and gentlemen, you — you heard from him and you also heard
4 from Dr. McQuiston talk — talk about the way memory works, the way
5 eyewitness testimony works, and the problems with it. The particular — the
6 problem with it is this weapon focus and the stress of the situation.

7 Whenever you're attacked with a weapon, you're not looking at the
8 guy's face. You want to one, make sure the weapon doesn't hit you; and two,
9 get away. At least that's what my understanding of what most people's
10 reaction would be.

11 That's — and that's what the research bears out is that you focus on
12 the weapon. You don't — then, the guy's face is really secondary. And you
13 can only remember the things that you attend to when you're attending to the
14 weapon, perceiving the weapon.

15 Now, you heard Mr. Barnette mention that she's a nurse; she knows
16 how to evaluate things, and she takes things in quickly and all of that. But
17 you also heard Ms. Pruitt testify. And, when you heard her cross examined,
18 she didn't remember a lot of things.

19 And even various officers said she got some things wrong; that she
20 thought she was being questioned by a detective. It wasn't a detective, it was
21 maybe uniformed patrol. I believe Officer Gary (phonetic) testified to that.

22 She didn't get a lot of things right. She just didn't. And she testified "I
23 don't remember." And I — I applaud her for that; a lot of people make up
24 stuff.

25 But she at least — she was being as honest as she could be;

1 "I don't remember."

2 Ladies and gentlemen, she did have counseling — well, I assume she
3 had counseling for two months. But short-term memory changes in 30
4 seconds is what she test — that's what Dr. McQuiston testified to. And your
5 mind fills in other information.

6 So, ladies and gentlemen, I would submit to you that, that counseling
7 at best reinforced her belief that it was my client, reinforced that long-term
8 memory that it was my client; that mistaken long-term memory that it was my
9 client.

10 She has decided that it was my client because that's who she picked
11 out in the lineup. And now, for 16 months, she's been decided that it's got to
12 be my client because she wants somebody to go to jail over all of this.

13 And I can't say I blame her. But, ladies and gentlemen, she's
14 mistaken.

15 I'll point out, ladies and gentlemen, that no officer who got the
16 description, who actually spoke to her about the description, has testified for
17 the State today or yesterday or Monday. None of those officers have
18 testified.

19 And the lack of that evidence I would submit to you is telling because,
20 as you heard when I was cross examining, there may have been different
21 descriptions disseminated.

22 Now, as for — you've heard from nurses Eubanks and Rudicill. I
23 don't — they apparently have talked to a police officer at some point I believe
24 they testified to. They don't appear to have done any other written
25 statements or anything at least so far as I could tell.

1 So, while they may have heard what they heard, Mr. Cox,, who talked
2 to the police too, heard "black fellow in a grey hoodie." They might have
3 heard "white fellow in a — with a grey hoodie." That just shows she was
4 confused.

5 And everybody has testified she was in shock. She was — in fact, she
6 testified she that she laid there for some period of time in shock.

7 And, if you're in shock, again, your memory is not working. It's just not
8 working.

9 Also, Ladies and gentlemen, you've heard all those discussion about a
10 puffy jacket. And everybody says that the BOLO had a puffy jacket; puffy
11 jacket, puffy jacket, puffy jacket. Or they may have said fluffy jacket.

12 They didn't take it into evidence. They took his — the hoodie into
13 evidence. And they took the blue denim jacket into evidence.

14 Sergeant Bryant testified , "Well, you know, he needed to wear it to get
15 to the jail because, you know, it was cold that day." That may be true, but
16 once they got him arrested, why couldn't they take it then?

17 And as Sergeant Bryant says, "If he says it gets taken, it gets took."
18 That's what he testified to; is what he said.

19 So, if they thought it was important, if it was part of the description,
20 why didn't it get taken?

21 And, again, he tried to walk that back a little bit too; that, you know, he
22 wasn't there whenever the decision was made. But he's the supervisor. He
23 was there when the arrest was made.

24 If he had told Detective Williams, "You need to get that coat," they
25 would have gotten that coat.

1 So there's that issue; you know, simply an eyewitness is — is — and
2 that's what their case relies on — that's not enough.

3 And as I've explained to you, the — there are some problems with the
4 timing of all of this.

5 Ladies and gentlemen, you saw the video. It said Thursday, January
6 24th, at 8:20 in the morning. At best, this happened at 7:10. Let's just
7 assume that she got the time exactly correct.

8 That's an hour and ten minutes before you see him enter the QT; Mr.
9 Culberson go into the QT. Now, I don't know how a homeless person gets
10 there in an hour and ten minutes because it's four and a half miles away.

11 Now, there was some testimony with others there's a bus stop. Oh,
12 okay, so there's a bus stop. But, as you heard Sergeant Bryant testify, 2995
13 Reidville Road is not in the city. And Sparta (phonetic) only runs in the city.

14 Further, there is no evidence that he was on a bus. That's — they
15 could have found a bus driver. There may be cameras on a Spartanburg
16 area transit bus. You would expect there to be because you would expect all
17 kinds of things to get up to on a bus.

18 But we don't have any of that evidence either. So, if he was on a bus,
19 why don't we have some kind of testimony that he was on a bus?

20 They arrested him January 24th, that day. Why didn't they go and just
21 talk to the bus driver, okay?

22 And, if there was tape, then, they would have been able to pull that
23 tape.

24 Also you heard that the — Mister — well, Ms. Culberson's house is
25 about two and a half miles away, it's — or two and a half miles away. And,

1 according to Mr. Barnette — I believe in his opening — “Where do you run
2 when you’re in trouble? You run to mom’s and dad’s house.”

3 Well, if he was in trouble, why would he run all the way to the QT and
4 then, double back to Old Anderson Mill Road, [REDACTED]?
5 Why would he do that? It just doesn't make any sense.

6 If he was going to hide his identity because he was afraid he was
7 going to get picked out of this line up or he was going to be picked out by Ms.
8 Pruitt, why wouldn't he simply go from 2995 Reidville Road to [REDACTED]
9 [REDACTED] Why go to the QT?

10 And, then, why would you just hang out at the QT until sometime
11 around 9 o'clock, which is what Officer Weatherman testified to.

12 He says he finds Mr. Culberson at a bus stop where West Main Street
13 and Baltimore Street are, which is down in that general vicinity. And that
14 happened around 9 o'clock.

15 So not only did he hang out at the QT — well, in that general vicinity,
16 he did it for it appears at least forty (40) minutes. If he is scared to death of
17 getting identified or whatever, why is he doing that?

18 And, whenever he's questioned by Officer Weatherman as he said —
19 or that he apparently testi — told Officer Weatherman, “Well, I'm on my way
20 out to Old Anderson Mill Road to cash a check...” — or well, “...to get a check
21 from my parents.”

22 You've seen the check. It's in evidence, Exhibit Number 2 I believe.
23 So there was a check there. So that's a — I believe a plausible story.

24 Then, they say, “Well, there's...” — well, then, you heard that there
25 may not be any bus stops out there because it's out in the county. Well, that

1 may be true, but, again, apparently, according to the Prosecutor, there's one
2 over there somewhere. And he can go from there and walk.

3 Ultimately he did go. Apparently he caught a ride with some friends,
4 but we don't know how long it took him to get that ride. We don't know how
5 long it took him to get to [REDACTED] because nobody can
6 testify as to exactly when it happened, neither — nobody could.

7 But, again, why wouldn't he have gone there first?

8 **(Brief Pause)**

9 **MR. SHEALY:** And, as you heard Ms. Culberson testify, he'd
10 asked for a haircut, but he didn't ask for a buzz cut. He didn't ask her to
11 shave his head. He didn't ask her to shave his face.

12 She said, "Well, I can't cut your hair. All I can do is give it a buzz
13 because I've broken my left wrist. I can't scissor cut your hair, you need both
14 hands." So, he said, "Well, fine. It's too long." And they gave him the buzz
15 cut.

16 Ladies and gentlemen, I understand that you might think that all of that
17 looks suspicious, but quite frankly, it — it really isn't. He's testified earlier ---

18 **MR. BARNETTE:** Objection, Your Honor.

19 **MR. SHEALY:** And, I -- I -- I withdraw that.

20 **THE COURT:** He has withdrawn it.

21 **MR. SHEALY:** Officer Weatherman has testified that my
22 client gave him a reason for going out to [REDACTED]

23 [REDACTED].

24 Ms. Culberson has said there was a check there for him and that it
25 was her idea for the buzz cut.

1 You also heard, ladies and gentlemen, that the person who did this ran
2 off into the woods. And, as you've heard from I believe the facilities
3 manager, the woods in question are away from this area. They're away from
4 the city.

5 So, if my client had done this, he would have had to go through the
6 woods, then, doubled back to the QT and, then, doubled around to [REDACTED]

7 [REDACTED].

8 That makes no sense to me. And, quite frankly, I believe that, that is
9 reasonable doubt.

10 Now, the judge is going to explain to you what reasonable doubt is,
11 okay? It's — and my job in court is to help you understand what these things
12 mean.

13 Reasonable doubt means the doubt that causes a reasonable person
14 to hesitate to act; a reasonable person. And the way I explain that — and I
15 got it from my dad, who was a lawyer for many, many years and he's just very
16 good at what he does.

17 And he always likened it to, whenever you go to the Bi-Lo or a Food
18 Lion or just the regular old grocery store, and you go into the meat case. And
19 you look through the meat case and there at the end are some steaks
20 generally or some ground beef, whatever, that have on them, "reduced for
21 quick sale."

22 The reason they're reduced for quick sale is because, you know,
23 they're fixing to go bad. You know, they may have a couple of "best by" tags
24 on them. And you look at them and you think, "Hmmm, I really like steak, but
25 I don't really want those steaks."

1 Now, maybe you ultimately pick them up and buy them; maybe you
2 don't. Maybe either way you've had reasonable doubt. It simply made you
3 hesitate to reach out, pick those steaks up, and put them in your cart.

4 That's what reasonable doubt is. And I think that this case is full of it.
5 It's simply is full of reasonable doubt.

6 **(Brief Pause)**

7 **MR. SHEALY:** Thank you.

8 **(Mr. Shealy's closing concluded at 1:37 p.m.)**

9 **THE COURT:** Mr. Barnette, for the State?

10 **MR. BARNETTE:** May it please the Court, Your Honor?

11 **THE COURT:** Yes, sir.

12 **(Mr. Barnette's closing began at 1:37 p.m.)**

13 **MR. BARNETTE:** Ms. Pruitt here, in that morning, she told you she
14 got out at 7:05. She was going in early.

15 And you heard Kelly Rudicill testify that she kept waiting on her, kept
16 waiting for her to come and she never came.

17 Ms. Eubanks actually saw her over there because she was laying
18 down with the elderly man over top of her. She told you what she saw and
19 what happened to her that day.

20 When he pulled her around, just imagine somebody right in front of
21 your face. If somebody's attacking you; would you remember that? Would
22 you remember seeing that face for maybe the last time?

23 Remember she said she didn't see the weapon; she felt it.
24 They keep talking about this weapon and she didn't see ----

25 **MR. SHEALY:** Objection, Your Honor.

1 I believe she testified she did see the weapon, she saw ----

2 **MR. BARNETTE:** I think — I disagree. I think — and they can listen
3 to the testimony again, Your Honor, but I think she saw the weapon later
4 laying beside of her.

5 **MR. SHEALY:** Your Honor, it's my understanding is the testimony
6 because I asked her that — that particular question. And I think she saw ----

7 **MR. BARNETTE:** I think ----

8 **THE COURT:** Well, I'm going to ask the jury to step back into
9 the jury room. Don't begin any discussions until I ask you to do so. Thank
10 you.

11 **(Whereupon, the jury exited the courtroom at 1:39 p.m.)**

12 **THE COURT:** Your objection is?

13 **MR. SHEALY:** Your Honor, it's my understanding during cross
14 she did — I asked her if she had seen the screwdriver just laying there or if
15 she had seen him have it. And my understanding was she testified she saw
16 him have it.

17 Now, I could be wrong, but I'm sure as I can be that I asked her that
18 question, that she did, in fact, see the screwdriver.

19 **THE COURT:** Okay. Mr. Barnette?

20 **MR. BARNETTE:** Your Honor, when he pulled her around, she did
21 not see it. She felt the pain. That's what she testified to. If he had let me
22 finish my closing and work through that, that's what she
23 testified to.

24 Now, she initially said, "Yeah, later on she saw it," but when she first
25 saw it and went face-to-face, she felt the pain in her shoulder.

1 **MR. SHEALY:** Your Honor, my understanding of what Mr.
2 Barnette just said was "They keep talking about this weapon and she didn't
3 see it."

4 That was my understanding of what he had said. Now, if I have
5 misheard him, I apologize.

6 **MR. BARNETTE:** I didn't say it ----

7 **MR. SHEALY:** That was my understanding.

8 **THE COURT:** Okay. Well, there — there can be reasonable
9 disagreements as to what inferences can be drawn from the testimony.

10 I don't recall any testimony — and I — if we have to listen to it, we'll
11 listen to it — but I don't recall any testimony about her having seen the
12 weapon before she felt it.

13 **MR. SHEALY:** Not before she felt it, but it's my understanding ----

14 **THE COURT:** I think that was the argument Mr. Barnette was
15 making.

16 **MR. BARNETTE:** Yes, sir.

17 **MR. SHEALY:** My understanding of what argument — and, again,
18 I may have misheard him, but my understanding of the argument he was
19 making was that she did not see the weapon at all —

20 **THE COURT:** Well, the way I heard the argument, he was
21 talking about the fact that the — I'm sure — I think he was going that the
22 expert had alluded to the fact that, if somebody sees a weapon, they focus on
23 the weapon. They don't necessarily look at the person's face.

24 And, when that testimony was given, I didn't hear any examination of
25 the expert concerning when that weapon fixation occurs.

1 Now, in this particular case, I recall no testimony indicating that the
2 victim in this case saw the weapon before feeling the attack. And I think
3 that's what Mr. Barnette was saying.

4 **MR. BARNETTE:** Yes, sir.

5 **THE COURT:** So I'm going to allow him to make the argument.

6 **MR. SHEALY:** Yes, sir.

7 **THE COURT:** Now, I don't think he was going to say that she
8 never saw a weapon. I think he was going to say that she didn't see it before
9 the attack.

10 **(Brief Pause)**

11 **THE COURT:** I'm going to let — I'm going to allow him to make
12 that argument.

13 **MR. BARNETTE:** Thank you, Your Honor.

14 **THE COURT:** I didn't want to comment on the facts before the
15 jury so I didn't make the comment in front of the jury.

16 **MR. SHEALY:** Yes, Your Honor.

17 **THE COURT:** Bring the jury in.

18 **(Whereupon, the jury was summoned.)**

19 **MR. BARNETTE:** Your Honor, I would ask for your ruling when they
20 come back in, that it was overruled; if you can, overrule when they come back
21 in.

22 **THE COURT:** Oh, I'm — I intend — I always announce my ruling
23 when they come back.

24 **MR. BARNETTE:** Yes, sir.

25 **(Whereupon, the jury returned to the courtroom at 1:41 p.m.)**

1 **THE COURT:** All right. The jury has returned to the courtroom. I
2 have overruled the objection. You may proceed, Mr. Barnette.

3 **MR. BARNETTE:** Thank you, Your Honor.

4 **THE COURT:** Yes, sir.

5 **MR. BARNETTE:** As I was saying, ladies and gentlemen, when she
6 turned around, she felt the pain. And, like I said, you remember the testimony
7 the way you heard it.

8 But, when she turned around, she felt the pain and she was looking
9 right at him, eight (8) to 12 inches away. She sees him. She describes him.
10 That BOLO was sent out from that standpoint. You heard her testimony.

11 Here's a nurse. They don't know her — they bring this expert in and
12 the expert says, "No, I don't know D.P. Each person is individually
13 different just like all of you are individuals.

14 Each person remembers things differently. But here's a lady that was
15 a nurse for 30 years that's trained — and you all have been treated by
16 nurses. They come in and they evaluate you. They come in.

17 They're different from other folks from that standpoint because they're
18 trying to help folks trying to go through there and go through everything they
19 do; checking, looking in the eyes, checking your temperature. That's their
20 thing.

21 And they write this information down. And you all seen her put it down
22 the pad. So she's one of those people that does that from that
23 standpoint.

24 Then, you had the nurses both come down. Ms. Eubanks told you and
25 Ms. Rudicill told you what she told them and what time from there.

1 They keep making this issue of time. I can't explain why Mr. Cox did
2 what he did. He makes accusations — I'm confused now even to his time.

3 Some people believe in certain things, want certain things to be true;
4 that a certain individual or a certain person or a certain race does a certain
5 thing. I don't know why he made that comment.

6 This lady was laying there for a period of time, there's no question
7 about it, before she was found. The description was sent out.

8 And the reason why I asked about the bus route — and I'll be honest
9 with you, before really getting into the bus routes, the evidence shows the
10 Defendant had the ability to get rides. He got a ride from downtown Vic
11 Bailey all the way to his mom's and dad's house.

12 **(Brief Pause)**

13 **MR. BARNETTE:** The reason I brought up the bus stop is to show
14 you — let me show you State's Exhibit 13.

15 **(Brief pause while exhibit is retrieved and placed on overhead.)**

16 **(Off-the-Record Comments)**

17 **MR. BARNETTE:** The bus stop is somewhere in this area right here
18 (indicating), which is well within the walking distance, seven (7) or 10 after
19 even, to walk down and use the bus.

20 But he may not have even used the bus. He had that available to him
21 and he goes down to downtown so he gets here (indicating). He also had a
22 ride available to him obviously.

23 He's familiar with the area.

24 His parents, which he hadn't visited for two years, live two — 2.8 miles I think
25 — make sure — I think that's what was testified to by — by the Investigator.

1 I mean, he's familiar with the area; he knows it. Do you think he could
2 leave out to the bus stop from that standpoint?

3 You got to remember the 911 call didn't even go in until about 7:40 or
4 something like that. So he could be long gone to wherever he needs to be
5 getting a ride or riding the bus either way to get downtown.

6 And you've seen the video. And, please, look at it again. He goes in
7 and he's looking through — he goes through the whole store for whatever
8 reason and comes back and he's checking up, looking up. I don't know if he
9 was checking for cameras or whatever or he didn't realize that camera was
10 right there at the door or what.

11 And you see his reaction going down. And he's looking up and he
12 goes back and, I don't know, he's reaching for something else. I don't know
13 what he's reaching for; it seems like she put it underneath his coat.

14 And you all can take that evidence and look at it from the standpoint of
15 what you see in the video.

16 (Brief Pause)

17 MR. BARNETTE: And, then, Officer Weatherman gets the BOLO.
18 And the police officer talks to him and he goes back and he goes back and
19 talks to him again. And he's just talking to him there.

20 But I specifically asked this question — and the reason why I did, when
21 the County unit pulled up, the police officers, the two city officers there, are in
22 black and white patrol cars.

23 I think everybody has seen black and white, which is County.
24 Everybody knows that.. He sees the County — he doesn't know to get out of
25 there until he sees a County unit pull up.

1 And do you know why he got out of there when he saw a County unit
2 pull up? He knew the gig was up. If he was only worried about this arrest
3 warrant, believe me, he wouldn't stop there talking to an officer awhile there.
4 He would have already been getting out of there. And that's when he saw the
5 black and white.

6 And you remember his mom talking about Rick McAbee that works at
7 — at Vic Bailey right here (indicating). He didn't stop to talk to him. He didn't
8 get a check.

9 His own mother said he went through the building and jumped over the
10 fence. That's what he told her.

11 And the officer did tell you he went to try to serve a search warrant.
12 He even went up to the cold weather shelter, which is right down here
13 (indicating) between — right there at the scene (phonetic) and checked and
14 they weren't there. I mean, him or the lady either one wasn't there from that
15 standpoint.

16 **(Brief Pause)**

17 **MR. BARNETTE:** One thing I got, the DNA report, we went through
18 this. We tried to show everything we could. I wish it was video tapes there,
19 but there wasn't any at that time. But that's not this lady's fault (indicating).

20 She's had to come to court and tell you what she went through and
21 what she saw up there, who she said did this — who did this to her from that
22 standpoint.

23 **MR. BARNETTE:** And he gets a ride and goes out to his parents'
24 house, which he hadn't been there for two years, and making this big deal
25 about this check.

1 Well, I'm assuming he gets checks out there periodically if they had
2 that address on there. Why hadn't he been out there for two years? Then,
3 he goes out there after two years and guess what he asks for, a buzz cut.

4 And literally the officers are walking up on the deck and sees him
5 getting a haircut and shave — shaving the hair. And who knows, the next
6 thing might have been taking care of the mustache and — and the goatee.

7 You don't go there for two years and all of a sudden you go out there
8 after you ran from the police?

9 Yeah, I'm going to talk about running from the police because he was
10 running from the County because he knew exactly why he ran from the
11 County.

12 And, when he went downtown, he just went right back in with
13 everybody else when he got back down there. And he knew that.

14 But the evidence shows you differently, ladies and gentlemen. It
15 shows he knew exactly what he was doing.

16 (Brief Pause)

17 **MR. BARNETTE:** And the one thing the judge will tell you, when
18 he's charging you, is to leave you firmly convinced. We don't have to prove
19 this case beyond any reasonable doubt.

20 We just have to show it — show it to you so that you're firmly
21 convinced of this man's guilt.

22 And the other thing that was kind of interesting here — and you'll have
23 pictures of the way he looked. And you've seen these pictures, the way he
24 looked that day. And you'll also have the lineup.

25 (Brief Pause)

1 **MR. BARNETTE:** And, you know, what was interesting was, I think
2 you can see how truthful Ms. Pruitt was. She said she felt a puffy coat
3 (phonetic). She didn't describe what color it was number one.

4 And what was she doing? She was concentrating on the face, looking
5 at this individual who is attacking her.

6 She saw the gray hoodie. And, like I said, we do have the hoodie
7 here. We don't have the denim jacket, but obviously, we had it at some point.
8 The pictures show that. And like I said, pictures are a thousand words, ladies
9 and gentlemen, in this thing.

10 **(Brief Pause)**

11 **MR. BARNETTE:** And you'll have the line-up back there where you
12 can look at it too. And obviously that's the way he looked. Except this day,
13 his hair was long. And Ms. Pruitt testified to that.

14 And the curious thing is, when he comes to court, you saw him on
15 Monday. He looks completely different today than Monday when he came in,
16 completely different.

17 I'll tell you why in my opinion and this is my opinion and you can take it
18 for what it's worth. He can change his looks. He is going to try to look as
19 different as he can when he comes to court.

20 And I'll tell you what, he looks totally different from those pictures right
21 there (indicating), doesn't he?

22 Ladies and gentlemen, this is a situation where a lady came and talked
23 to you and testified and looked at you all face-to-face and told you who did
24 this to her. And the evidence points to this man right here (indicating) as
25 being the one that did it.

1 (Brief Pause)

2 MR. BARNETTE: This thing — you know, they talk the reason why
3 he ran was because of the warrant; he didn't run because of that. He had run
4 from law enforcement long before that. He ran because he believed they
5 knew what he had done. When he saw that County unit pull up, he knew.
6 And he ran.

7 He knew he needed his hair cut. And, like I said, he probably was
8 getting the beard next; I don't know because like I said they were working on
9 a hair at that time. And he was gray headed; everything matches up.

10 You had two nurses that testified that saw her initially that went with
11 her and stayed with her and what they told you.

12 And a lot of times, I'll be honest with you, I call a lot of lay witnesses
13 because they come in and talk to you and take it from there. And we call the
14 police officers so you could see what happened and what he did; he ran.

15 This memory thing they talk about, she didn't know anything about the
16 individual in the case, she didn't know any of the details in the case other
17 than she was a nurse and things like that.

18 And — and I know Mr. Shealy keeps telling about how poor they are,
19 but the lady gets a consultation fee of one thousand and a hundred dollars
20 (\$1,100) and \$275 an hour to come testify in front of you.

21 (Brief Pause)

22 MR. BARNETTE: And they keep talking about these different levels
23 of memory. The one thing that you bring to this courtroom — and I think
24 Judge Couch told you in his opening charge — and, please, remember what
25 he tells you and what you saw in court today, not what Mr. Shealy

1 remembered or what I remember, it's what you remember because you're the
2 fact -- you're the fact finder in this case.

3 But he told you, I believe, that you bring your common sense to court
4 here. And you use your common sense. And that's what you need to do in
5 this case is use that common sense to tell you what really happened here.

6 And use that common sense. And everything the evidence shows is
7 that this man did it. And he ran away from it and he was hoping to get away
8 with it.

9 But, fortunately, thanks to law enforcement reaching out and doing
10 what they did, he didn't get away with it.

11 But, now, they've came today -- remember I asked you -- obviously I
12 ask you -- they're saying there's not enough evidence in this case, well,
13 ladies and gentlemen, there's enough evidence.

14 You've got what Ms. Pruitt told you and you got what he did
15 afterwards.

16 Don't let him get away with this, don't, because women like D.P.
17 needs to be able to go to work and not face what she faced that day,
18 not face the horror.

19 There's no question what happened to her. And what I'm going to ask
20 you, ladies and gentlemen: The evidence is in. And I ask you, on behalf of
21 Ms. Pruitt and on behalf of the State, to return guilty verdicts on all counts.
22 And thank you for your service and thank you all for being here.

23 Thank you, Your Honor.

24 **THE COURT:** Yes, sir.

25 **(Mr. Barnette's closing concluded at 1:55 p.m.)**

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Jury Charge

1:56 p.m.

THE COURT:

Ladies and gentlemen of the jury, that concludes the closing arguments by the attorneys in the case. And I had told you that, when we reached this stage of the proceeding, it would be my responsibility to charge you concerning the law that you are to apply to the charges in this matter.

Earlier, I went over with you the indictments in this case. The indictments are the documents, as I've told you, that bring the case before the Court. And it informs this Court of the charges that have — that are to be tried. It informs the Defendant of the charges lodged against him.

There are four different indictments in this case. And those indictments charge four separate crimes.

And I'm going to remind you the fact that a defendant has been arrested, charged, and indicted in this case, those factors are not evidence in this case and cannot be considered by you as evidence of guilt in this matter.

Nor do the fact that those documents exist create any presumption or inference of guilt. Those are simply the documents that bring the case into the Court. And, again, they inform the parties of the charges that have been lodged in this matter.

I'm going to go over the indictments with you at this time. And I will tell you that you will be allowed to take the indictments themselves into the jury room and review them if you need to do that in your deliberations.

The first indictment I will discuss with you is assault and battery in the first degree, case number 2013-GS-42-1811. That indictment says that the Defendant, Richard Todd — Todd Culberson, did in Spartanburg County, on

1 or about August — well, excuse me — January the 24th of 2013, commit an
2 act causing an unlawful injury to D.P.

3 And the act one, involved non-consensual touching of the private parts
4 of an adult, with a lewd and lascivious intent, or two, occurred during the
5 commission of a robbery, burglary, kidnapping or theft or three, involves an
6 offer or an intent — an intent to injure another person with the present ability
7 to do so;

8 And the act is accomplished by means likely to produce death or great
9 bodily injury or occurred during the commission of a robbery, burglary,
10 kidnapping or theft, all in violation of Code Section 16-3-600 of the Code of
11 Laws of South Carolina, 1976 as amended, against the peace and dignity of
12 the State and contrary to the statute in such case made and provided. That's
13 the first indictment in this case.

14 The second indictment, case number 2013-GS-42-1812 is for the
15 offense of kidnapping. That indictment says that the Defendant, Richard
16 Todd Culberson, did in Spartanburg County on or about January 24th of
17 2013, willfully and unlawfully, with criminal intent, seize, confine, inveigle,
18 decoy, kidnap, abduct, or carry away the victim, D.P. without —
19 without authority of law, all in violation of Section 16-3- 910 of the Code of
20 Laws of South Carolina, 1976 as amended.

21 And all of these have the same language — and it's standard language
22 --- against the peace and dignity of the State and contrary to the statute in
23 such case made and provided.

24 The next indictment is for the offense of attempted armed robbery.
25 That indictment states that the Defendant, Richard Todd Culberson, did in

1 Spartanburg County, on or about January 24th of 2013, while armed with a
2 deadly weapon, feloniously attempt to take, by means of force or intimidation,
3 goods or monies from the person or presence of D.P. In violation of
4 Section 16-11-330(b) of the Code of Laws of South Carolina as amended
5 1976, against the peace and dignity of the State and contrary to the statute in
6 such case made and provided.

7 Finally, the fourth indictment in this case, or the fourth charge, case
8 number 2013-GS-42-1814, is for assault with intent to commit criminal sexual
9 conduct in the first degree.

10 That indictment states that the Defendant, Richard Todd Culberson,
11 did in Spartanburg — did, on or about January 24th of 2013, willfully and
12 unlawfully commit an assault with intent to commit criminal sexual conduct in
13 the first degree against the victim, D.P. all in violation of Section
14 16-3-656 and 16-3-6542, of the Code of Laws of South Carolina, 1976 as
15 amended, against the peace and dignity of the State and contrary to the
16 statute in such case made and provided.

17 Now, each indictment, as I told you, charges a separate and distinct
18 offense. You must decide each indictment separately from the other
19 indictments based upon the evidence and the law that's applicable to those
20 indictments.

21 And your decision on each indictment should be uninfluenced by your
22 decision on the other indictments in this case. For that reason, a Defendant
23 may be convicted or acquitted on any or all of the offenses charged. And you
24 will be asked to write a separate verdict as to each of the charges on each
25 indictment.

1 Now, to each of those indictments, the Defendant has pled not guilty.
2 That plea under the law and the constitution of this state and of the United
3 States places the burden of proof upon the State. That burden of proof is to
4 prove the defendant guilty of the offenses alleged in the indictment by proof
5 beyond a reasonable doubt.

6 Now, a person charged with the commission of a criminal offense in
7 South Carolina is never required to prove himself innocent. I charge you that
8 it is an important rule of law the a defendant in a criminal case -- and it's no
9 matter what the seriousness of the crime might be -- will always be
10 presumed to be innocent of the crime for which the indictment has been
11 issued until and unless guilt has been proven to you, the jury, by proof that
12 satisfies you of the defendant's guilt beyond a reasonable doubt.

13 Some people describe the presumption of innocence like the robe that
14 a judge wears into the courtroom. In other words, at the beginning of the trial,
15 that presumption of innocence or robe is about the defendant's shoulders.

16 It remains about the defendant's shoulders throughout the trial. It
17 remains about his shoulders as you enter your jury room to begin your
18 deliberations.

19 It remains — that presumption of innocence or that robe remains
20 about his shoulders into your deliberations until such time as it might be
21 stripped from him by proof that satisfies you of the defendant's guilt beyond a
22 reasonable doubt.

23 **(Brief Pause)**

24 **THE COURT:** So the presumption of innocence is not a mere
25 legal theory. And it's not just a legal phrase. It's a substantial right that every

1 defendant is entitled to unless you, the jury, are satisfied from the evidence of
2 the defendant's guilt beyond a reasonable doubt.

3 Now, you've heard me already refer to the phrase "of proof beyond a
4 reasonable doubt" several times. It's an important concept in our
5 jurisprudence.

6 And you may ask yourself, "Well, what do you — what does the law
7 mean by reasonable doubt? Just what is a reasonable doubt?"

8 And I will tell you that the — the law has defined a reasonable doubt as
9 that kind of doubt that would cause a reasonable person to hesitate to act.
10 And the State has the burden of proving the Defendant guilty beyond a
11 reasonable doubt.

12 I don't want you to be confused by one thing so I'll just touch on this so
13 that you're aware of it.

14 You may have been involved or may be aware of civil cases in our
15 court system. Civil cases are cases where people seek monetary damages.
16 It can be because someone has breached a contract or someone has failed
17 to pay for an item or pay a debt or a bill.

18 **(Brief Pause)**

19 **THE COURT:** Or someone maybe has been accused of
20 personal injury and is responsible for paying damages. Those are civil cases
21 where the relief sought is monetary in nature; somebody is asking for money
22 for one reason or another.

23 In civil cases, the standard of proof is different than the standard of
24 proof in a criminal case. In a civil case, the standard of proof is proof by the
25 greater weight or the preponderance of the evidence.

1 What that means is the scales of justice tilt ever so slightly on one side
2 or the other. And the side to which it tilts, that side is entitled to a verdict. So
3 it's the greater weight of the evidence in a civil case.

4 Criminal cases, the standard of proof is more powerful than that. It's
5 proof beyond a reasonable doubt.

6 **(Brief Pause)**

7 **THE COURT:** Now, I will tell you there are very few things that
8 go on in people's lives that can be proven beyond any doubt whatsoever.
9 And the State is not put to that standard. They're not required to offer proof
10 that overcomes every possible doubt.

11 I will tell you that, if after your consideration of the evidence, if you are
12 firmly convinced of the Defendant's guilt, again, beyond a reasonable doubt,
13 you must find the Defendant guilty.

14 However, on the other hand, if you think there is a reasonable
15 possibility that the Defendant is not guilty, then, you must give the Defendant
16 the benefit of that doubt and find the Defendant not guilty.

17 I will remind you that you and I have had certain duties to perform.
18 And they are different duties. As the trial judge, it's been my responsibility to
19 preside over the trial and to rule on questions that have arisen concerning
20 various items of evidence or questions that were asked, arguments that were
21 made, things of that nature.

22 And I'm going to tell you and caution you that you should not take from
23 anything that I have said or done or anything that I might say or do during this
24 charge even that you somehow think indicates that I have an — an opinion
25 one way or the other as to how you should determine the facts in this case;

1 I can assure you the law does not allow me an opinion concerning the
2 facts. I do not have an opinion as to how you determine the facts in this case
3 because you are the sole judges of the facts in this matter.

4 So don't think — take from anything that I might have said or done or
5 say or do to indicate otherwise to you because I can assure you I have no
6 opinion as to how you determine the facts in this matter.

7 (Brief Pause)

8 **THE COURT:** You are the sole judges of the facts in this case.
9 You are to consider only the testimony that has been presented from the
10 witness stand and the evidence that has gone into the record through that
11 testimony.

12 And, if there was anything that I overruled or ruled out of order or did
13 not allow to come in, you should not consider those matters at all in reaching
14 a verdict in this case.

15 (Brief Pause)

16 **THE COURT:** I told you that you are the sole judges of the facts.
17 And I also explained earlier that I am the sole judge of the law in this case.

18 The same law that makes you the sole judge of the facts makes me
19 the sole judge of the law.

20 You are to take the law exactly as I give it to you, apply that law to the
21 facts as you decide those facts to be. That should put you in a position to
22 render a verdict in this matter.

23 I will tell you that, if you came into the courtroom, again, with an
24 opinion as to what the law ought to be, or you have a belief as to what the law
25 ought to be, leave those notions outside of the jury room.

1 Take the law exactly as I give it to you, again, and apply that law to the
2 facts as you determine those facts to be.

3 Now, you the — you as jurors have the duty of determining, from the
4 evidence, the effect, the value, the weight, and the truth of the evidence that's
5 has been presented in this case.

6 And in doing so you have the right to consider two types of evidence.
7 And let me explain to you what I mean by two types of evidence.

8 The two types of evidence I'm referring to is — have been classified by
9 our law as direct evidence or circumstantial evidence. You have a right to
10 consider both types of evidence.

11 Direct evidence is testimony from a witness who claims to have direct
12 knowledge of the facts about which that witness testifies. That means the
13 person testifies that they actually experienced the matters that they testify
14 about.

15 They were an eyewitness, a participant in an event, things of that
16 nature. That's what we mean by direct testimony or direct evidence on a
17 particular issue that's sought to be proven.

18 The other type of evidence that a jury has the right to consider is what
19 we refer to as circumstantial evidence.

20 Now, circumstantial evidence is proof of a chain of facts or
21 circumstances that indicate the existence of a fact. It's been described as
22 proof of collateral facts for which a main fact might be inferred.

23 Now, I use a very simple example. I've been using it for years and I'll
24 use it again in this case to describe to you what we mean by proof of a fact by
25 circumstantial evidence or by inference.

1 Let's say last night, before you went to bed, you walked to the window
2 in your bedroom. You looked outside and the stars might have been shining
3 and it was a beautiful night. And you went to bed and slept well all night;
4 didn't wake up at all.

5 The next morning you got up and you walked over to the same window
6 in your bedroom and looked outside. Now, the sun might be shining, but,
7 then, you noticed, when you looked a little closer, that there's water dripping
8 from all the trees. There's puddles in the driveway. The road in front of your
9 house is wet. And it wasn't that way the night before.

10 Now, you slept all night. You didn't see it rain. You didn't hear it rain,
11 so, you didn't directly experience the fact that it rained. But from those
12 collateral facts that you know to be true; wet trees, dripping water, puddles in
13 — in the driveway, from those facts, you could reasonably infer that, at some
14 time during the night, it rained.

15 So that's what we mean by proof of a fact by inference or from
16 collateral facts.

17 When you use that collateral fact description, that's kind of fancy
18 language for a fairly simple concept I believe.

19 Now the law doesn't make any distinction between the weight or value
20 that you, the jury, can give to either direct or circumstantial evidence. Nor is
21 there a greater degree of certainty required of circumstantial evidence than
22 that of direct.

23 I will tell you as jurors and finders of fact, you have the right
24 to weigh all of the evidence; both direct and circumstantial
25 evidence.

1 Again, after weighing all of the evidence, if you are not convinced of
2 the Defendant's guilt, beyond a reasonable doubt. you must find the
3 Defendant not guilty.

4 But, on the other hand, after considering all of the evidence, if you are
5 firmly convinced of the Defendant's guilt, beyond a reasonable doubt, you
6 must find the Defendant guilty.

7 **(Brief Pause)**

8 **THE COURT:** Now, in weighing the evidence, it's going to be
9 necessary for you to determine the credibility or the believability of the
10 testimony that you've heard.

11 And that's what credibility means. It means believability. It's your duty
12 as jurors to analyze and evaluate the evidence you've heard and made a
13 determination as to which evidence convinces you that it was true.

14 In determining the believability of witnesses who testified in this case,
15 as the sole triers of the fact, you have the right to believe one against all the
16 other witnesses, all the others against one.

17 You have the right to believe all of, part of, or none of what a witness
18 may have testified to.

19 You have the right to consider such factors as whether or not a witness
20 might have a stake in the outcome of the trial, whether or not a witness may
21 have exhibited a bias or prejudice one way or the other, whether or not the
22 witness actually had the ability to know the facts about which the witness
23 testified.

24 And you've observed the witnesses. They were all right here on the
25 witness stand in front of you and how they testified and the way they spoke.

1 I'll call on you, again, to use your own good common sense and make
2 a determination as to the credibility and believability of the testimony that you
3 heard and the weight that you choose to assign to the testimony that you
4 heard.

5 (Brief Pause)

6 THE COURT: Now, I told you we had a couple of witnesses who
7 testified during this trial that were classified as expert witnesses. I told you,
8 when the first one was qualified, that I would talk to you further about that
9 during my charge on the law.

10 And I explained at that time the rules of evidence ordinarily do not
11 permit witnesses to testify about their opinions as to matters or their
12 conclusions on certain things.

13 An exception to that rule exists for a witness that's been qualified as
14 an expert witness. That's a witness who, because of their education or
15 experience, has become an expert in an art, a science, a profession, or a
16 calling.

17 And, as to those witnesses, they can state an opinion as to relevant
18 and material matters which are within the area of expertise that they claim to
19 have.

20 And they can also state the reasons why they have those opinions.
21 You, the jury, can consider the opinion of an expert received into evidence in
22 this case like any other evidence in the case. You have the right to give it the
23 weight you think it deserves.

24 If you decide that the opinion of an expert witness is not based on
25 sufficient education or experience or should you conclude that the reasons

1 given in support of the opinions are not sound or should you determine that
2 the opinion is outweighed by other evidence, you, the jury, have the right to
3 disregard the opinion of an expert entirely.

4 An expert witness' testimony is not to be given greater weight simply
5 because the individual has been qualified as an expert. And you're not
6 required to accept an expert's opinion even though it might not be
7 contradicted by other evidence.

8 Again, you're the sole judges of the facts. You're the sole judges of
9 the evidence, the weight of the evidence, and what inferences you choose to
10 draw from that evidence. So that decision would be up to you as to how to
11 take that testimony.

12 Now, I will instruct you, and I'm going to emphasize to you, that the
13 fact that the Defendant did not testify in this case is not a factor to be
14 considered by you in any way in your deliberations and in your consideration
15 of the question of the guilt or the innocence of the Defendant.

16 It must not be considered by you in any manner whatsoever. A
17 Defendant has a constitutional right to remain silent. The assertion of one's
18 right to remain silent must not be considered by you in your deliberations.

19 I repeat to you, under your oath, you are to draw no conclusions from
20 the fact the Defendant did not testify. In fact, that fact should not even be
21 discussed by you at all in your deliberations.

22 The Defendant is not required to prove himself innocent. The burden
23 of proof is upon the State. And the burden of proof remains upon the State,
24 throughout the trial, to prove the Defendant's guilt beyond a reasonable
25 doubt.

1 Now, one of the issues in this case is identification of the Defendant as
2 the person who committed the crime. And I will tell you the State has the
3 burden of proving the identity of the Defendant as the — the person who
4 committed the crime beyond a reasonable doubt.

5 You must be satisfied, beyond a reasonable doubt, of the accuracy of
6 the identification of the Defendant before you may convict the
7 Defendant.

8 Identification testimony is an expression of belief or an impression by a
9 witness. You must determine the accuracy of the identification of the
10 Defendant.

11 You must consider the believability of each identification witness in the
12 same way as any other witness. You may consider whether the witness had
13 an adequate opportunity to observe the offender at the time of the offense.

14 This can be affected by such things as how long or short a time was
15 available, how far or close was the witness to the person, the lighting
16 conditions, whether the witness had a chance to see another person in the
17 past.

18 Again, once again, I'll instruct you the burden of proof is upon the
19 State. And it extends to every element of a crime charged. And this
20 specifically includes the burden of proving, beyond a reasonable doubt, the
21 identity of the Defendant as the person who committed the crime.

22 I will tell you, if after examining all of the testimony, if you have a
23 reasonable doubt as to the accuracy of the identification, you must find the
24 Defendant not guilty.

25 (Brief Pause)

1 Now, in order to establish criminal liability — and in just a minute I'm
2 going to get to the exact charges in this case, and you — at that time you
3 may hear in some of those the element of intent; in other words, what a
4 person intended to do at a given moment.

5 In order to establish criminal liability, for some criminal
6 offenses, criminal intent is required. In other words, that's the mental state
7 that's required to be proven by the State for a particular crime.

8 And those things might be purpose, intent, knowledge. It can even be
9 recklessness or criminal negligence. You'll have to listen to that and for that
10 in the particular crimes as I go over those; that is, the element of intent
11 required.

12 Criminal intent, therefore, must be proven by the State as any other
13 element beyond a reasonable doubt. The criminal intent is always a matter
14 that must be determined by a jury from the circumstances that surround the
15 situation.

16 I'll tell you why that's true; because there's no way we can cut open
17 somebody's head and look at their brain at the moment they're committing
18 an act and know what they intended to do.

19 So there's no scientific way or no direct way to determine what
20 someone intended to do at a given moment. So there's no way to prove that
21 by direct evidence.

22 I will tell you that criminal intent may be inferred from the
23 circumstances shown to have existed. That's how you make a
24 determination as to whether or not an element requiring intent was
25 present.

1 It's not necessary to establish intent, therefore, by direct evidence, but
2 it may be established by inference, the same way as any other fact, taking
3 into consideration the acts of the parties and all the facts and circumstances
4 of the case.

5 I will tell you that criminal intent is a mental state. It's a conscious
6 wrongdoing. And it will be up to you to determine what a defendant intended
7 to do based upon the circumstances that were shown to have existed.

8 **(Brief Pause)**

9 **THE COURT:** Now, I'm going to go over the charges in this
10 case. And the first one I'll discuss with you is assault and battery in the first
11 degree.

12 That's the first indictment I'll discuss with you — and I'll try to hand
13 these to you in that particular order — assault and battery in the first degree.

14 Now, a person commits the offense of assault and battery in the first
15 degree if the person unlawfully injures another person and the act either —
16 now these are alternatives — involves the non-consensual touching of the
17 private parts of an adult, either under or above the clothing, with lewd and
18 lascivious intent or it occurred during the commission of a robbery, burglary,
19 kidnapping, or theft.

20 And, when we talk about private parts, that means the genital area or
21 buttocks of a male or in a female, it would include the genital area, buttocks,
22 or the breasts of a female.

23 Now, number two, a person may also commit the offense of assault
24 and battery in the first degree if the person unlawfully offers or attempts to
25 injure another person — (coughs) excuse me — with the present ability to do

1 so and the act is either accomplished by means that's likely to produce —
2 produce death or great bodily injury or occurred during the commission of a
3 robbery, burglary, kidnapping, or theft.

4 Great bodily injury means bodily injury which causes a substantial risk
5 of death or which causes serious or permanent disfigurement or protracted
6 loss or impairment of the function of a bodily — body member or organ.

7 **THE COURT:** (Coughs) Excuse me. Now, let me explain to you
8 — and just briefly I want to touch on this — what an assault and battery is
9 because they have a legal meaning as well.

10 And I'll give you an example as to what I mean. An assault is when
11 someone offers or attempts to injure someone illegally.

12 And — and the example that I would give — give is, if you and I were
13 to meet in the hallway and I walked up close enough to you that I was within
14 an arm's length of you, and I pulled back my hand as if to hit you, that would
15 put you in fear of great bodily injury because I'm close enough to hit you and
16 I'm taking action to hit you.

17 So, then, an assault would have occurred because I put you in fear of
18 an attack or great bodily injury. Battery is the carrying out of that threat. In
19 other words, if I were to, then, to bring my hand forward and touch you, in a
20 rude manner or some type of violent manner, that touching is a completion of
21 the assault by the unlawful touching of someone.

22 So, when we talk about assault and battery, that's what we're talking
23 about; the assault — an assault is the offer to injure somebody when you
24 have the present ability to carry out the assault. And the battery is the
25 completion of that by the actual touching of someone.

1 Now, the next crime that we're going to talk about that has been
2 charged is the crime of kidnapping. The Defendant is charged with
3 kidnapping. And the State must prove, beyond a reasonable doubt, that the
4 Defendant knowingly and unlawfully seized, confined, inveigled,, decoyed,
5 kidnapped, abducted, or carried away another person without the authority of
6 law.

7 To do a thing unlawfully is to do it willfully against the law. Knowingly
8 means with knowledge; consciously; not accidentally. Seized means to take
9 all of suddenly or forcibly. Confine means to limit or restrict or enclose within
10 bounds, imprison or to shut in or keep in.

11 Inveigle means to lure, entice, or lead astray by false representations,
12 promises, or deceitful means. Decoy also is a luring. A decoy is something
13 to entice a person into a trap.

14 Kidnap is to remove a person against their will by unlawful force or
15 fraud. And abduct means to carry off secretly by force or illegal purpose.
16 Carry away means to — to remove.

17 Now, the State doesn't have to prove that the Defendant did all of
18 those things. Instead, if you find that — beyond a reasonable doubt, that the
19 Defendant did any of those things, you may find the Defendant guilty of the
20 offense of kidnapping.

21 Something is done without authority of law if that something is done
22 and the law does not sanction, permit, allow, condone, or provide justification
23 for that action.

24 Kidnapping does not have to be for any personal or monetary gain or
25 for any legal purpose. It can — it may be for any reason whatsoever.

1 So that's the offense of kidnapping.

2 (Brief Pause)

3 THE COURT: The next offense is attempted armed robbery.

4 Now, first of all, I will — I will talk about what it means to attempt a crime.

5 Then, I'll talk about the crime of armed robbery.

6 The act constituting an attempt must be done with the intent to commit
7 that particular crime. To constitute an attempt, there must be an intent to
8 commit the particular crime, but the crime itself was never completely
9 accomplished.

10 The act constituting the attempt must be done with the intent to
11 commit the particular crime. An attempt to crime — specific intent means the
12 Defendant consciously intended the completion of the act, consti —
13 constituting the underlying offense.

14 And the State must prove the Defendant's specific intent was
15 accomplished by some overt act beyond mere preparation in an act done in
16 furtherance of the intent.

17 An overt act is — is — that is done with the intent to commit a crime,
18 but falls short of completing the crime. And the Defendant is charged with
19 attempted armed robbery. And I'll define what an armed robbery is under the
20 law.

21 In order to prove that offense, the State must prove, beyond a
22 reasonable doubt, that the Defendant took personal property from the person
23 or presence of another person.

24 Property is in the presence of a person if it's within the person's reach,
25 observation, or control so that the person could have,

1 if not overcome by violence or prevented by fear, could have kept possession
2 of their property.

3 The State must also prove, beyond a reasonable doubt, that the
4 Defendant carried the property away intending to permanently deprive the
5 owner of the property and to keep the property for the Defendant's own use.

6 The slightest removal of property or the complete possession of the
7 property, if even for a instance by a defendant, is sufficient to show a taking
8 and carrying away of the property.

9 Taking and carrying away of property must be done by violence or by
10 putting a owner in fear of violence.

11 Finally, the State must prove another element. And that is that the
12 Defendant was armed with a deadly weapon during the robbery.

13 Now, a deadly weapon under the law can be any article, instrument, or
14 substance which is likely to cause death or great bodily harm. Now, whether
15 any particular instrument has been used as a deadly weapon depends upon
16 the facts and circumstances of each case.

17 So it will be up to you, the jury, to determine whether or not the
18 Defendant is guilty of having attempted an armed robbery as I defined that
19 offense of armed robbery in this case.

20 The next offense is assault with the intent to commit criminal sexual
21 conduct in the first degree. The Defendant is charged with that crime.

22 The State must prove, beyond a reasonable doubt, that the Defendant
23 committed an assault on the victim with the intent to commit first-degree
24 criminal sexual conduct.

25 The first element is the State must prove,

1 beyond a reasonable doubt, an assault.

2 And I talked to you in the other charge about what an assault is. That
3 occurs, again, when a person violently or forcibly attempts to hurt another
4 person and has the present ability to complete the attempted injury.
5 The assault, therefore, is the intentional creation of fear of immediate bodily
6 harm.

7 Next the State must prove, beyond a reasonable doubt, that the
8 Defendant intended to engage in a sexual battery with the victim.

9 Now, intent means intending the result which actually occurs; not
10 accidentally or involuntarily. And intent can be shown, again, from the acts
11 and conduct of the perpetrator and the other circumstances from which you
12 might naturally or reasonably infer intent.

13 I will tell you that a sexual battery is sexual intercourse, cunnilingus,
14 fellatio, anal intercourse, or any intrusion however slight of any part of a
15 person's body or any other object into the genital and/or anal openings of
16 another person's body except when that's accomplished for a medically
17 recognized treatment.

18 The State must prove, beyond a reasonable doubt, that the Defendant
19 intended to use aggravated force to accomplish a sexual battery.

20 Aggravated force means the use of physical force or physical violence,
21 of a high and aggravated nature, to overcome the victim. This includes the
22 use of a deadly weapon;

23 The Defendant intended for the victim to submit to sexual — to the
24 sexual battery while the victim was — and also the victim of a forcible
25 confinement, kidnapping, robbery, extortion, burglary,

1 housebreaking, or other similar act or offense.

2 (Brief Pause)

3 THE COURT: Now, those are the four crimes that have been
4 charged in this case. And I will tell you that it will be your responsibility to
5 determine a verdict as to each and every one of the crimes that I've just gone
6 over. And I'll be giving you a verdict form that will include a way for you to do
7 that.

8 Miranda Petit (phonetic), please raise your hand.

9 (Juror complied with the Court's request.)

10 THE COURT: You're going to be the foreperson of the jury.
11 That means that you will be responsible to conduct the discussions of the
12 jury.

13 Now, if the jury should have a question during your deliberations, it will
14 be your job to write that on a piece of paper, submitted it to the bailiff, and the
15 bailiff will submit it to me.

16 I cannot answer ever question you may have in deliberations. I can't
17 inter into your discussions concerning the facts in the matter. You're the sole
18 judges of the facts.

19 But I'm not asking you to edit any question the jury may have. Write it
20 down, send it to me, and I'll decide what the appropriate answer is or if I can
21 answer it at all.

22 (Brief Pause)

23 THE COURT: Now, once a verdict has been reached, it will be
24 your responsibility to record that verdict on the form that I'll go over with you
25 in a minute so that you'll understand what that form is and how it operates.

1 As I told you at the beginning of the trial, your verdicts must be
2 unanimous on each question. All of you must agree upon the verdict before it
3 becomes the verdict of the jury.

4 So no one juror is more important. The fact that I have appointed Ms.
5 Petit as the foreperson makes her no more important than any other jurors in
6 the case.

7 It be must be unanimous before the jury can reach a verdict. There is
8 no verdict until it is unanimous on each question.

9 I've gone over a good bit with you. And we've got a good bit of
10 evidence we're going to submit to you back in the jury room. And we want to
11 be sure we only give you the properly admitted documents and evidence for
12 your consideration. So we've got a little housekeeping matter to take care of
13 right now.

14 I'm going to ask you to step back to the jury room one more time.
15 Madam Forelady, do not let any discussions about the case begin until I bring
16 you back into the jury room [sic] for final instructions.

17 You may retire to the jury room at this time.

18 **(Whereupon, the jury exited the courtroom 2:29 p.m.)**

19 **THE COURT:** Objections or exceptions to the charge from the
20 State?

21 **MR. BARNETTE:** None from the State, Your Honor.

22 **THE COURT:** From the Defense?

23 **MR. SHEALY:** None, Your Honor.

24 **THE COURT:** All right. I'll ask you to come forward and
25 segregate the evidence for the jury, please. I have the verdict form here. If

1 you'll step up to the bench and take a look at that and be sure it's okay as
2 written.

3 (Brief pause while Counsel reviewed the verdict form.)

4 (Off-the-Record Comments)

5 (Brief pause while Counsel checked marked exhibits.)

6 THE COURT: Okay. Any — and was there any objection to the
7 verdict form from the State?

8 MR. BARNETTE: No, sir.

9 THE COURT: Any from the Defense?

10 MR. SHEALY: No, Your Honor.

11 THE COURT: All right. Let's bring the jury in.

12 (Off-the-Record Comments)

13 (Whereupon, the jury was summoned and returned to the
14 courtroom at 2:38 p.m.)

15 (Off-the-Record Comments)

16 (Document handed to the forelady by the bailiff.)

17 THE COURT: Now, Ms. Petit, I have had the bailiff hand you — if
18 you'll look at the very top document there, that is the verdict form we're using
19 for this case. At the top it indicates the state and county we're in, the court
20 that we're in, the parties, The State of South Carolina against the Defendant.

21 Below that it — it asks for your verdict. Then, there are four separate
22 questions, one question for each indictment, each charge. And, as to the
23 particular indictments, it will state that "The jury unanimously finds the
24 Defendant either not guilty or guilty."

25 Now, depending on the verdict as to each charge,

1 you'll either put a check or an "x" on the blank line next to the appropriate
2 verdict once a unanimous verdict has been reached on that charge.

3 Now, please, don't take from the fact that I put those choices, in any
4 particular order on that form, to indicate a preference from the Court. I will
5 tell you that I've been on the Circuit bench now about 10 years. Every verdict
6 form I've done I've put it in the same order.

7 So there's no preference on my — my part. It's the way it is on my
8 computer. I don't change it for any case. So you'll either check "not guilty" or
9 "guilty," move on to the next question, and, as to each — each charge, there
10 will be a separate verdict.

11 Now, once you've completed the verdict form, you would sign that
12 form, knock on the door, pass it to the bailiff, and the bailiff will let me know a
13 verdict has been reached. We'll bring you back into the courtroom to receive
14 the — the verdict form.

15 If you have questions, I will receive the questions. Again, you'll be
16 returned to the courtroom for me to discuss those questions with you.

17 Now, if at any time it becomes necessary for a bailiff to enter the jury
18 room while you've in deliberations, I will instruct you to stop your deliberations
19 while the bailiff is present.

20 Don't discuss the case at all, discuss whatever business the bailiff has
21 with you. And, then, once the bailiff has left, then, you can resume your
22 discussions. You understand how that would be handled?

23 And the situations might be, if we go past the dinner hour, you may
24 want to order something to eat. So they may have to come in and take that
25 order.

1 If we go late enough, we may have to call family or friends to let them
2 know where you are. So we'd have to gather that information.

3 So the bailiff may come in for things like that. But it would be rare for
4 the bailiff to step into the jury room. But, while they're there, stop your
5 deliberations and let them — let them do their business and, then, leave.

6 Now, the exhibits will be given to you. There is a recording in there
7 and we're going to a computer that it's blank except for a player that will allow
8 you to play the — the recording. So, if you want to view the recording, you
9 have a computer available to do that in the jury room.

10 If you any technical difficulties, knock on the door, let the bailiff know.
11 We'll try to clean that — clean that up and fix that up for you if you need to
12 look at that. But it's up to you as to how you view the evidence and — and
13 what you look at in the evidence.

14 Now, I'm going to ask now that the jury retire to begin your
15 deliberations, hopefully working toward a unanimous verdicts on all of the
16 questions that have been presented. I will ask the alternate to remain seated.
17 So you may retire to begin your deliberations. Thank you.

18 **(Whereupon, the jury exited and began their deliberations at 2:40**
19 **p.m.)**

20 **(Whereupon, the alternate was excused.)**

21 **THE COURT:** Any objections to my final instructions from the
22 State?

23 **MR. BARNETTE:** None from the State, Your Honor.

24 **THE COURT:** Any from the Defense?

25 **MR. SHEALY:** None, Your Honor.

1 **THE COURT:** All right. We'll be in recess in this case until a
2 verdict is reached.

3 **(Off-the-Record Discussion)**

4 **(Other matters were heard while the jury deliberated.)**

5 **(The jury had a question/request at 3:49 p.m.)**

6 **THE COURT:** I'll ask the attorneys to approach. I have an
7 inquiry from the jury.

8 **(Whereupon, a bench conference was had with both attorneys**
9 **present.)**

10 **THE COURT:** Bring the jury in.

11 **(Off-the-Record Comments)**

12 **(Whereupon, the jury was summoned and entered the courtroom**
13 **at 3:51 p.m.)**

14 **THE COURT:** All right. The record will reflect that the jury has
15 returned to the courtroom. I received the following inquiry: "Can we get a
16 description by the victim of the suspect (dash) written testimony from the
17 initial testimony?"

18 Madam Forelady and ladies and gentlemen of the jury, we do not have
19 a written transcript of the testimony at this point in time. That's usually
20 produced by the court reporter some days or weeks after the trial is
21 completed.

22 We do have the vid — the audio tapes of the testimony of those
23 witnesses. Now, generally it's difficult — as a judge, I'm not allowed to pick
24 and choose from that testimony what I play for you and what I don't play for
25 you.

1 And, of course, there is direct examination by the State and cross
2 examination by the Defense. So, if there are particular portions of the
3 testimony that you would like to have played, then, I can — I can have that
4 done and you can tell me, when you've heard it.

5 But, of course, I may have to supplement that because, in the interest
6 of completeness, you should listen to the description and all the examination
7 given concerning that issue.

8 So is there something specific you want us to play or we can — I can
9 play everything, the entire testimony by the — by the victim and the cross of
10 that testimony by the — by the Defense.

11 So I'm not sure what you're wanting. I'm going to ask you, if you
12 would, to step back into the jury room, discuss it among yourselves, decide
13 what you would like for the Court to do. Again, the tapes do exist and we
14 have the tapes. And I can — we can set them up so we can play them for
15 you.

16 However, I have to be sure that I haven't picked or chosen that
17 because, again, I can't get involved in your decisions on the facts. And I can't
18 decide what you listen to and what you don't listen to. That's up to you, the
19 jury. Do you understand, Madam Forelady?

20 **MADAM FORELADY:** Yes, sir.

21 **THE COURT:** I'm going to ask you to step back in the jury room
22 and discuss it among yourselves and see if you can refine your inquiry.

23 **(Whereupon, the jury exited the courtroom at 3:46 p.m.)**

24 **THE COURT:** Any objections to my response thus far from the
25 State?

1 **MR. BARNETTE:** Not from the State, Your Honor.

2 **THE COURT:** Any from the Defense?

3 **MR. SHEALY:** None, Your Honor.

4 **THE COURT:** I'll have the inquiry marked as a Court's Exhibit

5 and made a part of the record. I'll remain on the bench for a little while and

6 see if they have a — a back-up inquiry.

7 **(Whereupon, Court's Exhibit 10 was marked for identification and**
8 **admitted into the record.)**

9 **THE COURT:** We're in recess right now until I hear from the
10 jury.

11 **(Off-the-Record Discussion)**

12 **(The jury responded to the Court at 3:48 p.m.)**

13 **(Off-the-Record Comments)**

14 **THE COURT:** They ask that we play the entire testimony of Ms.
15 Pruitt. Bring the jury in.

16 **(Whereupon, the jury was summoned and re-entered the**
17 **courtroom at 3:55 p.m.)**

18 **THE COURT:** Madam Forelady, my understanding is you do
19 wish to hear all of Ms. Pruitt's testimony. I'll ask the court reporter to get that
20 ready. You may proceed, Ms. Faucette.

21 **(The court reporter complied with the Court's request and**
22 **replayed Ms. Pruitt's entire testimony.)**

23 **THE COURT:** All right, ladies and gentlemen. That's the
24 testimony I believe that you wanted replayed. I'll ask you to step back to the
25 jury room and continue with your deliberations.

1 (Whereupon, the jury exited the courtroom at 4:39 p.m.)

2 THE COURT: All right. Objections to the Court's response from
3 the State?

4 MR. BARNETTE: Nothing from the State, Your Honor.

5 THE COURT: Anything from the Defense?

6 MR. SHEALY: No, Your Honor.

7 THE COURT: All right. The inquiry will be made a Court's
8 Exhibit and part of the record. We'll be in recess until a verdict is reached.

9 (Whereupon, Court's Exhibit 11 was marked for identification and
10 admitted into the record.)

11 (Whereupon, a verdict was reached at 5:14 p.m.)

12 THE COURT: Thank you very much. You can be seated.

13 (All in courtroom complied with the Court's request.)

14 (Brief Pause)

15 THE COURT: All right. I've been informed that a verdict has
16 been reached. Is the State ready to receive the verdict?

17 MR. BARNETTE: Yes, sir, we are.

18 THE COURT: Is the Defense ready?

19 MR. SHEALY: We are, Your Honor.

20 THE COURT: Bring the jury in, please.

21 (Whereupon, the jury was summoned and entered the courtroom
22 at 5:17 p.m.)

23 THE COURT: Okay. Madam Forelady, I've been informed by
24 the bailiff that a verdict has been reached; is that correct?

25 MADAM FORELADY: Yes, sir.

1 **THE COURT:** Pass the form to the bailiff, please.

2 **(The Forelady complied with the Court's request.)**

3 **THE COURT:** Thank you.

4 **(Brief pause while the Court reviews verdict form.)**

5 **THE COURT:** Madam Clerk, you may publish the verdict.

6 **MADAM CLERK:** Yes, sir. *"The State of South Carolina versus --*

7 *versus Richard Todd Culberson, we, the jury, unanimously find the*

8 Defendant, Richard Todd Culberson, concerning the offense of assault and

9 battery first-degree on indictment number 2013-GS-42-1811, guilty.

10 "As to the indictment of kidnapping, indictment number 2013-42-1812,

11 the verdict is guilty.

12 "As to attempted armed robbery, indictment number 2013-GS-42-

13 1813, guilty.

14 "Assault with intent to commit criminal sexual conduct first degree,

15 indictment number 2013-GS-42-1814, the verdict is guilty. Signed by the

16 foreperson, dated June the 18th of 2014."

17 Ladies and gentlemen of the jury, is this your verdict and still your

18 verdict? If so, please, raise your right hands.

19 **(All jurors complied with the request.)**

20 **MADAM CLERK:** So say you all.

21 **THE COURT:** Anything further from the State before I release

22 the jury?

23 **MR. BARNETTE:** Nothing from the State, Your Honor.

24 **THE COURT:** Anything further from the Defense?

25 **MR. SHEALY:** No, Your Honor.

1 **THE COURT:** All right.

2 Ladies and gentlemen of the jury, this completes your service in this
3 case. And I want to thank you very much for your attention to your duties in
4 this matter.

5 We will not be starting another jury trial this week so this will end your
6 service on the jury. So we'll be releasing you altogether.

7 Throughout this trial, I told you not to discuss this case with anyone. I
8 will advise you that you now have the right to do so; you also have the right
9 not to do so.

10 A citizen owes no one an explanation for their service on a jury. And
11 should anyone harass you or bother you concerning your service on the jury,
12 please, report that to the clerk's office as soon as possible. And we'll take
13 the appropriate action.

14 Now the bailiffs will be checking you out. If you need an excuse for
15 your work for the time that you've spent here, they'll see that you get that
16 through the clerk's office.

17 Also, you'll receive a voucher next week for your pay from the clerk's
18 office as well. And it'll have instructions as to how you go about handling
19 that.

20 You're not required to be here for sentencing, but you have the right to
21 do so.

22 You can ask the bailiffs about being here for sentencing if you wish to
23 do that. But, again, you're not required to do that.

24 Madam Forelady, you will need to see the clerk before you leave.

25 You have to sign some additional papers. So if you would just step out when

1 you leave, she'll take care of that with you.

2 Again, thank you for your service in this matter. We appreciate the
3 time that you spent and your attention. You're released. The bailiffs will
4 check you out at this time. Thank you very much.

5 **(Whereupon, the jury was excused and exited at 5:20 p.m.)**

6 **MR. BARNETTE:** All right. Can I hand these up?

7 **THE COURT:** Uh-huh (affirmative).

8 **(Documents handed up.)**

9 **MR. BARNETTE:** Can I approach the clerk [sic], Your Honor, to
10 mark some — the rap sheet as well as his prior certified convictions?

11 **THE COURT:** You may.

12 **MR. BARNETTE:** Thank you, Your Honor.

13 **(Off-the-Record Comments)**

14 **(Whereupon, Court's Exhibits 12 through 17 were marked for**
15 **identification and entered into the record.)**

16 **(Pause)**

17 **(Off-the-Record Comments)**

18 **THE COURT:** Okay. All right. Mr. Shealy, if you wish to file
19 post-trial motions, would you'd like to do so within the next 10 days in writing?

20 **MR. SHEALY:** Yes, sir, I would.

21 **THE COURT:** All right. I'll give you the right to do that.

22 **MR. SHEALY:** Thank you, Your Honor.

23 **THE COURT:** All right. Mr. Culberson, you have been found
24 guilty, by a jury of your peers, of the offenses of assault with intent to commit
25 criminal sexual conduct, armed robbery, attempted armed robbery,

1 kidnapping, and assault and battery first-degree.

2 At this time, I'm going to hear from your attorney concerning
3 sentencing. I'll give you an opportunity to speak to me if you would like. So,
4 at this time, I'll hear from you, Mr. Shealy.

5 **MR. SHEALY:** Thank you, Your Honor. This is Richard Todd
6 Culberson. As you've heard, he is 47 years old. He has two children, a son
7 who's 25 and a daughter who's 23. That daughter works at Red Lobster here
8 in town.

9 He also has a grandson and a granddaughter. The daughter has the
10 granddaughter; the son has the grandson. The grandson's name is Weston
11 (phonetic) I believe, and was born in September; Your Honor; September of
12 last year. That was, unfortunately, the same month that my client's father
13 died of I believe throat cancer.

14 Your Honor, cancer does run in my client's family. His mother died of
15 cancer when he was 12. At that point, unfortunately, my client's father kind of
16 lost it for a bit for a — for a lack of any better term.

17 And my client was left alone with his 5-year-old brother, who he's tried
18 to raise for a good portion of that 5-year-old child's life. His little brother now
19 works at Tietex; has now for 30 years, or roughly 30 years. And my client is
20 pretty proud of him.

21 **(Brief Pause)**

22 **MR. SHEALY:** Your Honor, my client has a high school
23 education. He's from Dorman — or he graduated from Dorman. As
24 mentioned, cancer runs in his family. He also recently had skin cancer
25 frozen off of his face for a lack of a better term.

1 That's basically how they do it.

2 Judge, he has had a drug and alcohol problem in the past. He tells me
3 it's primarily an alcohol problem.

4 Obviously, as to the trial, Judge, we thought we had a defense. We
5 pressed that defense. And the jury found him — convicted him, but obviously
6 we continue to plead not guilty. Thank you.

7 And we ask that you be as lenient as you can be. Thank you.

8 **THE COURT:** Thank you. Mr. Culberson, I'll be happy to hear
9 from you.

10 **MR. CULBERSON:** I just wish there was some way I could
11 make you all believe that I ain't done none of this. I mean, a jury of my peers,
12 that's what America — you know, I — I paid attention to all the details.

13 And I just want to tell you I didn't do it. And I don't know what's going
14 on.

15 **(Brief Pause)**

16 **MR. CULBERSON:** I wish there was some kind of — like a truth
17 serum or something you all could put into me. I — I don't know. I'm just —
18 there's no way I can prove I didn't do it. And the jury has found me guilty, but
19 I'll always stand firm that I didn't do it.

20 If I — I can go ahead and talk to you, man. It's over now. I mean...

21 **(Brief Pause)**

22 **THE COURT:** Well, this is primarily concerning sentencing.

23 **MR. CULBERSON:** Yes, sir.

24 **THE COURT:** But this is your opportunity to speak freely to the
25 Court as long as you are civil.

1 **MR. CULBERSON:** Yes, sir. I appreciate it.

2 If I had done this, you know about the plea and all of that, the plea
3 agreement? I was offered ----

4 **THE COURT:** Well, I was told, at the beginning of the trial, that
5 a plea offer was made and it was rejected.

6 **MR. CULBERSON:** Yes, sir.

7 **THE COURT:** That's all I know about it.

8 **MR. CULBERSON:** If I had done — if I had done this, I would
9 have took that and been as happy as I could be. But I am innocent. I will
10 stand firm that I am innocent.

11 I don't know what — it's over. I just want you to know that I am
12 innocent. And, if there is anything I can do to make everybody realize, I'm
13 just not that kind of person.

14 I mean, I've done some stupid stuff, drunk man stuff, but never attack
15 a woman and try to molest her or something. No, sir, that's me. And that's
16 all. The talking is over I guess.

17 **(Brief Pause)**

18 **THE COURT:** I'll hear from the State.

19 **MR. BARNETTE:** Yes, sir. Your Honor, I'm going to enter Court
20 Exhibit 12. I've shared these with Mr. Shealy. This is rap sheet of the
21 Defendant I'll be passing up to the Court.

22 Then, I've also got certified copies in case he testified I was going to
23 try to use. Court Exhibit 13 is indictment 2000-GS-42-4386 for grand larceny.

24 2007-42-2561, Your Honor, for breaking into motor vehicle; 2007-GS-
25 42-2559, Your Honor, third or subsequent property offense;

1 11-GS-42-5329, petit larceny subsequent offense;

2 Then, 11-GS-42-5328, which are subsequent property offenses, Your
3 Honor. And those are Court Exhibits 13, 14, 15, 16, and 17.

4 I'd like to pass these up to the Court, Your Honor, along with the rap
5 sheet, Your Honor.

6 **THE COURT:** All right.

7 (Documents handed up.)

8 **MR. BARNETTE:** And I'll read off the prior convictions, Your Honor,
9 if that's okay.

10 **THE COURT:** Please do read off the prior — the prior
11 convictions.

12 **MR. BARNETTE:** Your Honor, in 1986, he was convicted of failure to
13 stop, Your Honor, and also driving under suspension second.

14 In 1986, a public disorderly conduct; 1988, public disorderly conduct;
15 1991, a drug possession — or a drug paraphernalia, Your Honor, and driving
16 under suspension again.

17 Another DUS in 1995, Your Honor. Driving under the influence in
18 1996; open container as well as no bull pit license (phonetic) in 1996; giving
19 — giving false information, 1997.

20 Convicted of the grand larceny in 2000, Your Honor.

21 Convicted of failure to stop in 2001, Your Honor.

22 (Brief Pause)

23 **MR. BARNETTE:** Convicted of criminal domestic violence first
24 offense in 2004, Your Honor; breaking into a motor vehicle, Your Honor, in
25 2007; third or subsequent property offense 2007;

1 possession of marijuana in 2011. Third or subsequent property offense in
2 2011.

3 I believe he pleaded on two counts there, Your Honor. And his
4 probation was revoked I think in 2013, Your Honor, for this offense and he
5 was given one year on those two from there, Your Honor.

6 Very briefly, I did talk with Ms. Pruitt. She does not want to address
7 the Court. She appreciates the Court and appreciates all that was done here
8 today. And obviously she'd like to have justice.

9 The one thing, Your Honor, we can -- and I know you -- I know you
10 know this, but we cannot have people attacking people going to work like this;
11 we just can't have it.

12 And he -- he decided not to testify. I know what he said here, but he
13 didn't testify -- of course the Court gave him every opportunity and he don't
14 have to.

15 But, obviously, he gave a statement and things like that. And it just
16 didn't match up, you know, his statement. And I know the Court hasn't seen
17 it, so...

18 Your Honor, obviously, I think with his prior record and what has
19 happened in this event, I think it should be a very severe punishment
20 (someone coughed, inaudible).

21 **THE COURT:** Anything further from the Defense at this time?

22 **MR. SHEALY:** Your Honor, I believe my client would like to speak
23 again. I don't know that I would advise it, but I believe he's ---

24 **THE COURT:** All right.

25 **MR. SHEALY:** --- wanting to.

1 THE COURT: Yes, sir?

2 MR. CULBERSON: I'm listening to you.

3

4 MR. SHEALY: Okay. Well, never mind then.

5 THE COURT: Do you wish speak again?

6 MR. SHEALY: No, Your Honor. I believe he just — he just said

7 no.

8 THE COURT: All right.

9 (Brief Pause)

10 THE COURT: Is he claiming credit for time served?

11 MR. SHEALY: Well, Your Honor, he's been in jail since January

12 24th of 2013.

13 (Pause while the Court fills out paperwork.)

14 THE COURT: All right. Mr. Culberson, as to the offenses that
15 are before this Court, first of all the assault and battery in the first-degree, the
16 sentence is 10 years run concurrent, given credit since you've been serving,
17 as in all cases, since January 24th of 2013.

18 On the other three charges, the sentence is the same run concurrent
19 except under the — under the assault and battery with intent to commit
20 criminal sexual conduct first-degree, sex offender registration will be required
21 in that case.

22 And the other three — all cases run concurrent — the sentence is 20
23 years. Good luck to you, sir.

24 MR. BARNETTE: Thank you, Your Honor.

25 MR. SHEALY: Thank you, Your Honor.

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THE COURT: Thank you. Court is adjourned.

**(Whereupon, the proceeding concluded and court was adjourned
at 5:28 p.m.)**

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 147, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

August 23, 2014


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RICHARD TODD CULBERSON,

APPELLANT

APPELLATE CASE NO. 2014-001390

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred by failing to direct a verdict of acquittal on the charge of attempted armed robbery, where there was no direct or substantial circumstantial evidence introduced at trial that Appellant had the intent to steal the victim's purse and permanently deprive her of the purse, where the purse was found next to the victim and nothing was missing from it?

ARGUMENT

On March 29, 2013, a Spartanburg County Grand Jury indicted Appellant for assault and battery, first degree, kidnapping, attempted armed robbery, and assault with intent to commit criminal sexual conduct, first degree. R. 442 – R. 449. Appellant's case proceeded to a jury trial before the Honorable Roger L. Couch and a jury on June 16, 2014. R. 1. Matthew Shealy represented Appellant. R. 1. Barry Barnette represented the State. R. 1.

After a three-day trial, Appellant was found guilty on all four indictments. R. 138. Judge Couch sentenced Appellant to ten years imprisonment for the assault and battery, first degree, and twenty years imprisonment for the kidnapping, attempted armed robbery, and assault with intent to commit criminal sexual conduct, first degree, charges. R. 146. All four sentences were to run concurrent. R. 146.

Appellant appealed his convictions and sentences. This brief follows.

STATEMENT OF FACTS

The trial judge erred by failing to direct a verdict of acquittal on the charge of attempted armed robbery, where there was no direct or substantial circumstantial evidence introduced at trial that Appellant had the intent to steal the victim's purse and permanently deprive her of the purse, where the purse was found next to the victim and nothing was missing from it.

The Charge of Attempted Armed Robbery

To prove attempted armed robbery, the State must show that a person "had the specific intent to commit armed robbery." State v. Thompson, 374 S.C. 257, 647 S.E.2d 702 (Ct. App. 2007); State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (Ct. App. 2001) ("Attempt crimes are generally ones of specific intent such that the act constituting the attempt must be done with the intent to commit that particular crime."). There must be "acts toward the commission of robbery, and with such intent, but falling short of actual perpetration of the completed offense." State v. Hiott, 276 S.C. 72, 80, 276 S.E.2d 163, 167 (1981).

Robbery is "the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another in his presence by violence or by putting such person in fear." State v. Bland, 318 S.C. 315, 317, 457 S.E.2d 611, 612 (1995). Armed robbery is "when a person commits a robbery while armed with a deadly weapon." S.C. Code Ann. § 16-11-330 (1976). See Broome v. State, 351 S.C. 219, 221, 569 S.E.2d 336, 337 (2002) ("[T]he intent to permanently deprive is . . . implicit in the definition of armed robbery.").

Relevant Facts

On January 24, 2013 at 7:05 am, D.P. arrived at the Carolina OB-GYN in Spartanburg, South Carolina, where she worked as a nurse manager. R. 142, lines 9 – 16. After Pruitt parked her car, she walked to the door to go into the building. R. 146, lines 11 – 12. As she opened the door, she “felt a tug on [her] coat, and [she] turned around.” R. 146, line 14. Pruitt stated as she turned around, a man stabbed her on the right shoulder with a screwdriver. R. 146, lines 15 – 17. The man then touched her breast and pushed her against the glass partition. R. 146, lines 19 – 23. Pruitt slid down the glass onto the ground. R. 147, lines 1 – 3.

According to Pruitt, while she was on the ground, the man tried to pull her pants down. R. 147, lines 3 – 4. She started kicking him, but he stabbed her again on the right side under her rib. R. 147, lines 7 – 9. The last thing Pruitt remembered was the man running away into a field. Her pocketbook was found on the ground across from where she was lying. R. 147, line 23 – R. 148, line 1. Pruitt admitted that her attacker never demanded her purse or any of her belongings. R. 175, lines 2 – 21. In fact, nothing was missing from her purse that was found across from her. R. 175, lines 2 – 21.

An elderly man and woman came over to help Pruitt and called 9-1-1. R. 147, lines 12 – 13. Officers from the Spartanburg County Sheriff’s Department responded to the scene and dispatched to other officers on patrol the description Pruitt gave of her attacker. R. 195, lines 1 – 8. She described the man who attacked her as “a white male” around “six feet” tall. R. 147, line 3. He had “bad teeth” and a “scruffy face with . . . beard and a mustache, and his hair was kind of longish.” R. 147, lines 5 – 7. Pruitt also told officers that he had on a “gray hoodie.” R. 147, lines 7 – 8. She stated that she thought the man had on another

coat as well. R. 147, lines 13 – 15. However, Pruitt never gave a written statement. R. 175, line 23 – R. 177, line 4.

Officers with the Spartanburg Police Department encountered Appellant at the QT Convenience Store in Spartanburg, South Carolina, hours after Pruitt's attack. R. 195, lines 9 – 14. However, the city officers "didn't quite put it together and let him leave" after checking his identification. R. 195, lines 14 – 17. After receiving information from city police that a man fitting the description of the suspect was at the QT, county officers responded to the convenience store. R. 196, lines 12 – 20. After obtaining Appellant's name and address, a six-person photographic lineup with Appellant's picture was created. R. 196, lines 12 – 20. Pruitt was shown the lineup and picked out Appellant as the man who attacked her. R. 156- 157.

Motion for Directed Verdict of Acquittal

After the State presented its case, defense counsel moved for a directed verdict of acquittal on the charge of attempted armed robbery. R. 285, line 19. Counsel argued that the State failed to establish the intent to commit an armed robbery. R. 286, lines 4 – 6. Specifically, argued counsel, there was no evidence presented that "there was a demand for goods or money" and Pruitt stated she "dropped her purse" during the attack. R. 286, lines 7 – 12. Further, there was no claim that her attacker "tried to take [the purse] away with him" and that the "tug" was on her shirt, not the purse. R. 286, lines 12 – 13; R. 287, lines 10 – 11.

The solicitor argued that Pruitt's attacker used a screwdriver and that her purse was removed as she was fighting back. R. 286, line 22 – R. 287, line 1. He argued that the

attempted robbery ended when Pruitt “resisted.” R. 287, lines 2 – 3. The trial judge denied defense counsel’s motion. R. 288, line 17.

Discussion

The trial judge erred by failing to direct a verdict of acquittal on the charge of attempted armed robbery. There was no direct or substantial circumstantial evidence introduced at trial that Appellant had the intent to steal D.P. t’s purse, which was found on the ground across from where she was assaulted.

A criminal defendant is entitled to a directed verdict when the State fails to present evidence of the offense charged. State v. McCombs, 368 S.C. 489, 493, 629 S.E.2d 361, 362-63 (2006); State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004); State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001). When reviewing the trial judge’s denial of a directed verdict, an appellate court must review the evidence presented at trial in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006); State v. Buckmon, 347 S.C. 316, 321, 555 S.E.2d 402, 404 (2001). An appellate court is concerned with the existence or non-existence of evidence. State v. Green, 327 S.C. 581, 491 S.E.2d 263 (Ct. App. 1997).

Where the State relies “exclusively” on circumstantial evidence, such evidence must be “substantial” before the judge submits the case to a jury. State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2001). When the evidence merely raises a suspicion that the defendant is guilty, the trial judge should grant a directed verdict motion. State v. Lollis, 343 S.C. 580, 584, 541 S.E.2d 254, 256 (2001).

Here, Pruitt admitted that her attacker never demanded her purse or her belongings. She stated that her attacker stabbed her with a screwdriver and grabbed her breast. She said

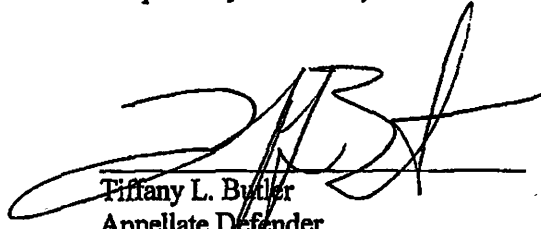
nothing about her attacker grabbing her purse or trying to take anything else from her person. In fact, her purse was lying on the floor across from where she was attacked. Pruitt never informed the police that anything was taken from her purse or her person. Rather, she admitted that the purse fell off during the struggle with her attacker.

There is absolutely no evidence of any intent to rob Pruitt of her purse or any other possessions she may have had. The specific intent to commit armed robbery is a key element of attempted armed robbery. State v. Nesbitt, 346 S.C. 226, 550 S.E.2d 864 (Ct. App. 2001) ("A person is guilty of attempted armed robbery if the person has the specific intent to commit armed robbery."). Because there was no evidence introduced at trial that Appellant had the specific intent to rob Pruitt, the trial judge should have granted a directed verdict of acquittal on that charge.

CONCLUSION

For the grounds argued, Appellant Richard Culberson respectfully requests this Court to direct a verdict of acquittal on the charge of attempted armed robbery.

Respectfully submitted,


Tiffany L. Butler
Appellate Defender
ATTORNEY FOR APPELLANT

This 9th day of July, 2015.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR.

July 9, 2015

A handwritten signature in black ink, appearing to read 'T. Butler', written over a horizontal line.

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Chief Appellate Defender

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

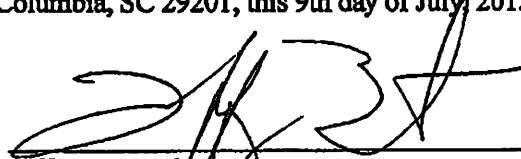
V.

RICHARD TODD CULBERSON,

APPELLANT

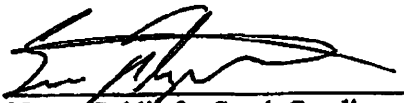
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Susannah R. Cole, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9th day of July, 2015.


Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 9th day of July, 2015.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Roger L. Couch, Circuit Court Judge

Appellate Case No. 2014-001390

THE STATE,

Respondent,

v.

RICHARD TODD CULBERSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly denied the defense's motion for a directed verdict on the attempted armed robbery charge when the evidence, viewed in the light most favorable to the State, reasonably proved Appellant's guilt when Appellant attacked Victim in the morning, in a public area, and on the same side of the body as her purse, and her purse was found across the room from the assault.

STATEMENT OF THE CASE

Appellant was indicted for Assault with Intent to Commit Criminal Sexual Conduct, First Degree, Attempted Armed Robbery, Kidnapping, and Assault and Battery First Degree on March 29, 2013 in Spartanburg County. (R. p. 442-49) His jury trial was presided by the Honorable Roger L. Couch on June 16, 2014. Appellant was represented by Mathew Shealy, Esq. and the State was represented by Solicitor Barry Barnette. (R. p. 1.) Appellant was found guilty of all four charges. (R, p. 431, lines 6-18.) Judge Crouch sentenced Appellant to ten years' imprisonment for the Assault and Battery First Degree, and twenty years' imprisonment for the remaining three charges, all to run concurrently. (R. p. 439, lines 14-21.) This appeal follows.

STATEMENT OF FACTS

Victim, an employee of Carolina Ob-Gyn for approximately thirty years, arrived early to work on the morning of January 24, 2013. (R. p.142, lines 9-16.) She was meeting a maintenance man before the office opened at 8:00 a.m., and she arrived around 7:05 a.m. (R. p. 144, lines 12-18.) Victim was wearing scrubs, a corduroy coat, and gloves. (R. p. 144, lines 22-24.) Her purse was on her right arm. (R. p. 148, lines 5-7.) Victim walked to the entrance of the building. (R. p. 146, line 12.) She felt a tug on her coat, and as she turned, Appellant stabbed her in the right shoulder with a screwdriver. (R. p.146, lines 15-17.) Appellant grabbed Victim's breast, and pushed her against the glass door. Victim testified at this point she didn't know where her purse was. (R. 146, lines 19-23.) She struck her head and back on the glass, and slid down to the floor. (R. p. 146, lines 24-25.) As Victim was lying on the ground, Appellant started pulling at the waistband of her pants. (R. p. 147, lines 3-4.) When Victim realized what Appellant was doing, she began kicking him. (R. p. 147, line 7.) Appellant stabbed Victim again on her right side under her rib, and "that's about the last thing I knew." (R. p. 147, lines 8-9.) Victim testified she was in shock, and didn't know how long she was lying on the ground. (R. p. 161, lines 13-18.) She was found later by an elderly couple who called 911. (R. p. 147, lines 12-13.) Her purse was found on the opposite corner of the room, diagonally across from where Victim was attacked. (R. p. 151, lines 11-19.)

Victim was able to describe her attacker to law enforcement. (R. p.168, lines 10-11.) A BOLO went out that morning with Appellant's description. (R. p. 258, lines 10-12) At one point, city officers stopped Appellant four miles away for questioning about another matter, but let him go. (R. 195, lines 11-16.) Officers found Appellant again later that day and recognized him from the BOLO. (R. p. 259, lines 7-12.) The officer

obtained his identification, but did not yet detain him, and Appellant walked across the street to another business. (R. p. 261, lines 1-10.) When officers followed Appellant across the street, they were told by the employees of the business that Appellant had exited the rear of the building. (R. p. 262, lines 1-12.) When officers arrived at his address, which was his parent's house, they found Appellant's mother cutting his hair (R. p. 214 lines 15-21.) Investigators also found the hoodie and jacket that matched the Victim's description. (R. p. 217, lines 18-19.) Appellant was taken into custody and arrested later that day. (R. 218, lines 5-6.) Victim was able to identify Appellant from a photo lineup. (R. p. 197, lines 1-25.)

ARGUMENT

The trial court properly denied the defense's motion for a directed verdict on the attempted armed robbery charge when the evidence, viewed in the light most favorable to the State, reasonably proved Appellant's guilt when Appellant attacked Victim in the morning, in a public area, and on the same side of the body as her purse, and her purse was found across the room from the assault.

In his appeal of his conviction for attempted armed robbery, Appellant argues the trial court should have granted defense's motion for a directed verdict. The trial court, finding sufficient evidence of his intent to rob Victim from the locus of his attack and the final resting place of her purse, properly sent the charge to the jury to determine his guilt on the attempted armed robbery charge, in addition to three others¹.

When ruling on a motion for a directed verdict, the trial court is concerned with the existence of evidence, not its weight. State v. Burdette, 335 S.C. 34, 46, 515 S.E.2d 525, 531 (1999); State v. Wakefield, 323 S.C. 189, 197, 473 S.E.2d 831, 835 (Ct.App.1996). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, an appellate court must find that the case was properly submitted to the jury. State v. McGowan, 347 S.C. 618, 622, 557 S.E.2d 657, 659 (2001). On the other hand, a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis. State v. Hepburn, 406 S.C. 416, 753 S.E.2d 402, 409 (2013) (quoting State v. Cherry, 361 S.C. 588, 593, 606 S.E.2d 475, 478 (2004) (citations and internal quotations omitted)

¹ Appellant has not challenged his kidnapping, assault and battery, and assault and battery with intent to commit criminal sexual conduct convictions on appeal, and has a concurrent, aggregate twenty-year sentence based on his other convictions. His appeal, even if granted, does not change his circumstances from a practical standpoint. In Benton v. Maryland, 395 U.S. 784 (U.S. 1969) the Supreme Court concluded that the concurrent sentence doctrine could not, be justified on mootness grounds but stated that it "may have some continuing validity as a rule of judicial convenience."

“Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion.” State v. Mann, 560 S.E.2d 776, 781 (N.C. 2002).

“Substantial evidence” is evidence that is existing and real, not just seeming or imaginary. State v. McAvoy, 417 S.E.2d 489 (N.C. 1992). Thus, the substantial evidence standard, as used by the courts in Mann and McAvoy requires enough evidence of substance to be reasonably persuasive to a jury of a defendant’s guilt, even if another reasonable hypothesis exists, as stated in Hepburn. This is consistent with the United States Supreme Court’s observation concerning circumstantial evidence:

Admittedly, circumstantial evidence may in some cases point to a wholly incorrect result. Yet this is equally true of testimonial evidence. In both instances, a jury is asked to weigh the chances that the evidence correctly points to guilt against the possibility of inaccuracy or ambiguous inference. In both, the jury must use its experience with people and events in weighing the probabilities. If the jury is convinced beyond a reasonable doubt we can require no more.

Holland v. United States, 348 U.S. 121, 137-38 (1955) *cited with approval in* Jackson, at 317 n.9.

In the instant case, the question is whether the State offered substantial evidence of Appellant’s intent to rob Victim of her purse, or any other belongings, when he attacked her with the screwdriver. On appeal from the denial of a directed verdict, an appellate court must view the evidence in the light most favorable to the State. State v. Lollis, 343 S.C. 580, 583, 541 S.E.2d 254, 256 (2001); Burdette, 335 S.C. at 46, 515 S.E.2d at 531. By that standard of review, the location of the attack on the right side of her body, where she carried her purse, and the final resting place of the purse support a reasonable hypothesis of Appellant’s intent to commit armed robbery. Likewise, the fact

that the attack occurred directly in front of the entry to an urgent care facility, in an open and public area, at around 7:00 am further supports a reasonable conclusion Appellant intended to rob Victim, as opposed to sexually assault her, in an open, public location. The evidence supports another plausible hypothesis: Appellant intended to sexually assault Victim. The existence of such a hypothesis does not entitle Appellant to a directed verdict by Hepburn standards. The State submits, however, that the attempted sexual assault was not an alternative explanation but an additional one.

Robbery is defined as the felonious or unlawful taking of money, goods, or other personal property of any value from the person of another or in his presence by violence or by putting such person in fear.” State v. Bland 318 S.C. 315, 317, 457 S.E.2d 611, 612 (1995). An attempt to commit a robbery has been defined by our Courts as “the doing of acts towards the commission of a robbery and with such intent, but falling short of actual perpetration of the completed offense”. State v. Hiott, 276 S.C. 72, 80, 276 S.E.2d 163, 167 (1981). Additionally, “it must appear that the circumstances were such that the crime would have been robbery had the attempt been successful.” In the instant case, the State presented evidence to suggest several crimes would have been committed had Victim not fought off her attacker.

Regarding the element of intent in general, a defendant cannot be convicted unless it is proven he acted with the required criminal intent for a particular criminal offense. State v. Fennell, 340 S.C. 266, 271, 531 S.E.2d 512, 515 (2000). In State v. Tuckness, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971), the South Carolina Supreme Court examined criminal intent:

The question of criminal intent with which an act is done is one of fact and is ordinarily for jury determination except in extreme cases where there is no evidence thereon. The intent with which an act is done denotes a state

of mind, and can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent is seldom susceptible to proof by direct evidence and must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred.

(citation omitted). Without an entirely truthful statement of intent by an actor, proof of intent must naturally be determined by inferences from conduct. State v. Haney, 257 S.C. 89, 91, 184 S.E.2d 344, 345 (1971).

Appellant argues because Victim never heard a demand for money, nor was anything taken from her purse, there is no evidence of intent to commit the crime. By comparison, Appellant made no demand for sex, nor was Victim sexually assaulted, but the jury had no trouble finding evidence of Appellant's attempt in that crime. Appellant need not have demanded money if the jury believed he grabbed her purse from her. Similarly, nothing needed to have been missing from her purse for Appellant to have made the attempt. His intent can otherwise be inferred from the evidence presented at trial.

Victim was attacked at the entrance of the building shortly after 7:00 a.m. (R. p. 146, line 12.). She testified her purse was on her right arm. (R. p. 148, line 7.) Appellant approached Victim from behind, and grabbed her coat. (R. p. 146, lines 12-13.) Appellant stabbed Victim in the right shoulder, then stabbed her again in the right side — the same side of her body as her purse. (R. p. 147, lines 7-8.) Victim testified when she hit her head and he grabbed her breast, she lost track of her pocketbook at some point. (R. p. 146, line 20.) She further testified she was in shock, and remained on the floor for some time before anyone else arrived on the scene. (R. p. 147, lines 11-12.) Her purse, however, was across the room. (R. p. 147, lines 25.) The defense questioned Victim as to whether the "suspect did never attempt to get to your purse or other belongs?" (R. p.

175, lines 19-20.) Victim stated, "That's -- could be." (R. p. 175, line 21.) She did not testify that she dropped her purse; instead, she was consistent in her testimony she did not recall how her purse landed across the room. Victim's purse traveled by some means, and it was for the jury to decide if Appellant took it from her in the scuffle or if she threw it somehow with her injured right shoulder.

Appellant asks the court to see the forest and ignore the trees, as if indication of intent of one crime necessarily precludes intent of another. The evidence supporting the attempted sexual assault, kidnapping, and assault and battery arguably overshadows the evidence supporting the attempted armed robbery, but it should not diminish its existence. Put another way, suppose Appellant did not grab Victim's breast and the waistband of her pants, and Victim was only attacked with the screwdriver, and her purse was found lying across the room. Suppose the attack also occurred in an open, public location. A court would likely have no trouble finding sufficient evidence of an attempted armed robbery to send the charge to the jury. In this case, the evidence of the attack supports Appellant's intent to commit multiple crimes. Though he may have abandoned his efforts to rob and sexually assault Victim, there is sufficient evidence Appellant intended to take Victim's property from her, in addition to committing the other crimes for which he was charged. Thus, the jury, as the finder of fact, could have fairly and logically deduced from the evidence presented by the State Appellant intended to rob and sexually assault Victim when he began his attack.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

SUSANNAH R. COLE
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BARRY J. BARNETTE
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ATTORNEYS FOR RESPONDENT

June 29, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Roger L. Couch, Circuit Court Judge

Appellate Case No. 2014-001390

THE STATE,

Respondent,

v.

RICHARD TODD CULBERSON

Appellant.

CERTIFICATE OF COUNSEL

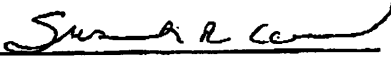
The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
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ATTORNEYS FOR RESPONDENT

June 29, 2015

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
The Honorable Roger I. Couch, Circuit Court Judge

Appellate Case No. 2014-001390

THE STATE,

Respondent,

v.

RICHARD TODD CULBERSON,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Tiffany L. Butler, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 14th day of May, 2015.


ANNE MUELLER
Legal Assistant

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Richard Todd Culberson, Appellant.

Appellate Case No. 2014-001390

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2015-UP-546
Submitted September 1, 2015 – Filed December 2, 2015

AFFIRMED

Appellate Defender Tiffany Lorraine Butler, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Staff
Attorney Susannah Rawl Cole, both of Columbia; and
Solicitor Barry Joe Barnette, of Spartanburg, for
Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Moore*, 374 S.C. 468, 473, 649 S.E.2d 84, 86 (Ct. App. 2007)

("In criminal cases, an appellate court sits to review errors of law only. Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous." (citations omitted)); *id.* at 475, 649 S.E.2d at 87 ("On appeal from the denial of a directed verdict in a criminal case, an appellate court must view the evidence and all reasonable inferences in the light most favorable to the State."); *State v. Nesbitt*, 346 S.C. 226, 231, 550 S.E.2d 864, 866 (Ct. App. 2001) ("Attempt crimes are generally ones of specific intent"); *State v. Tuckness*, 257 S.C. 295, 299, 185 S.E.2d 607, 608 (1971) ("[Intent] can be proved only by expressions or conduct, considered in the light of the given circumstances. Intent . . . must ordinarily be proven by circumstantial evidence, that is, by facts and circumstances from which intent may be inferred." (citation omitted)); *id.* ("The question of the intent with which an act is done is one of fact and is ordinarily for jury determination except in extreme cases where there is *no evidence* thereon." (emphasis added)).

AFFIRMED.¹

FEW, C.J., and KONDUROS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

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December 21, 2015

The Honorable M. Hope Blackley
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REMITTITUR

Re: The State v. Richard Todd Culberson
Lower Court Case No. 2013GS4201811, 2013GS4201812,
2013GS4201813, 2013GS4201814
Appellate Case No. 2014-001390

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

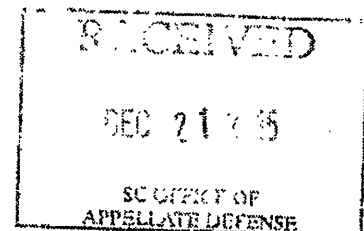
Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Barry Joe Barnette, Esquire
Tiffany Lorraine Butler, Esquire
Susannah Rawl Cole, Esquire
The Honorable Roger L. Couch



FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF Spartanburg

Full name and prison number (if any) of Applicant.

Richard Todd Culbertson

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-42-0417

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention BROAD RIVER CORR - INST 1, 4460 BROAD RIVER
2. Name and location of Court which imposed sentence GENERAL SESSIONS,
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) (13-GS-42-1814) (16-3-656) (16-3-652)
 - (b) (16-11-330) (16-03-910) (16-3-600)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) (6-18-14) 10-YEARS RUN CONCURRENT
 - (b) WITH 20-YEARS

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty NO
- (b) after a plea of not guilty YES
- (c) after a plea of nolo contendere NO
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. RELIEF DENIED
- iii. _____
- (c) the date of each such result:
- i. SUBMITTED 6-18-14 - FILED 3-4-15
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION No. 2015-110
- ii. 546 (SUBMITTED 9-1-15 - FILED 12-2-15)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) THE APPLICANT'S TRIAL COUNSEL
- (b) FINELY NOTICE OF INTENT TO APPEAL
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) THE APPLICANT RECEIVED INEFFECTIVE ASSISTANCE
 (b) OF COUNSEL PRIOR TO AND DURING HIS TRIAL IN VIOLATION
 (c) OF HIS RIGHTS PURSUANT TO 6TH & 14TH AMENDMENT

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SEE ATTACHED MEMORANDUM FOR 10
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof: N/A
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed: N/A
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof: N/A
 i. _____
 ii. _____
 iii. _____

2016 JAN 29 AM 9:13
 M. HOPE BLACKLEY
 CLERK OF COURT

- iv. _____
- (d) the date of each such disposition: N/A
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- N/A

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground ~~has not~~ previously been presented:

- (a) THE APPLICANT WAS ON A DIRECT PETITION
- (b) FROM THE SENTENCE AND CONVICTION
- (c) IMPOSED BY TRIAL AND IS NOW PURSUING PETITION

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. MATTHEW W. STEADY FOR ALL RECORDS
- ii. CONTACT THE SPARTANBURG Co. Public
- iii. DEFENDER OFFICE (TITANY L. BUTLER APPELLATE
DEFENDER
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL & SENTENCING
- ii. DIRECT APPEAL
- iii. _____

19. State clearly the relief you seek in filing this application:

VACATION OF JUDGEMENT AND SENTENCE, SEEKS A NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

SPARTANBURG COURT
2016 JAN 29 AM 9:13
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

George R. Culhoun

SWORN to and subscribed before me this 26
day of January, 2016.

Terrence J. Montgomery (L.S.)
Notary Public

My Commission Expires: 6/10/2018

SPARTANBURG COUNTY
2016 JAN 29 AM 9:13
M. HOPE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Gadd R. Culhnan
Applicant

SWORN or affirmed to and subscribed before me this

26 day of January, 2016.
Tammie S. Montgomery
Notary Public

My Commission Expires: 6/10/2018

SPRINGFIELD COUNTY
2016 JAN 29 AM 9:19
M. HOPE BLACKLEY

Revised 3/2003

C.A. No:

481

DEAR MRS. M HOPE BLACKLEY

COULD YOU PLEASE FILE ORIGINAL
PCR APPLICATION WITH MEMORANDUM TO
SUPPORT APPLICATION, AND RETURN STAMP.
CHECKED FILE COPY BACK TO ME. THANK
YOU FOR YOUR ASSISTANCE IN THIS MATTER

1-26-16

/S/ Todd D. Culhane

COMMUNICATIONS SECTION
2016 JAN 29 AM 9:13
M. HOPE BLACKLEY

Lot 5

THE STATE OF SOUTH CAROLINA
SPARTANBURG COUNTY COURT/HOUSE
SEVENTH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

#355804
Richard CUBERSON
Applicant

VS.
THE STATE OF SOUTH CAROLINA
Respondent.

PCR No: _____

MEMORANDUM TO SUPPORT
APPLICATION FOR POST-
CONVICTION RELIEF ON BE-
HALF OF RICHARD CUBERSON

NOW COMES ONE, RICHARD CUBERSON, 355804, PRO-SE,
APPLICANT WHO SHALL MOVE BEFORE THIS HONORABLE
COURT WITH THE FOLLOWING:

PURSUANT TO MY APPLICATION FOR POST-CONVICTION
RELIEF, PAGE 3, QUESTION 10. (A), (B) & (C), I SHALL
FORTHWITH THE FOLLOWING LANGUAGE:

10. (A) INEFFECTIVE ASSISTANCE OF COUNSEL

TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING
OBJECT TO IMPROPER COMMENTS AND PREJUDICIAL
REMARKS MADE BY PROSECUTION DURING CLOSING
ARGUMENTS WHEREIN THE PROSECUTION ADVISED

2 of 5

FILED JAN 29 AM 11:13
CLERK OF COURT
HONORABLE

THE JURY THAT THE STATE DIDN'T HAVE TO PROVE
 HIS CASE BEYOND A REASONABLE DOUBT. (SEE
 TR P 105 LINES 16-21) THIS ERRONEOUSLY LEAD
 THE JURY TO BELIEVE THE STATE DIDN'T HAVE
 TO MEET THE BURDEN OF PROOF. THE LAW STATES
 THE DEFENDANT MUST BE FOUND GUILTY BEYOND
 A REASONABLE DOUBT AS INSTRUCTED BY THE
 JUDGE IN HIS CHARGE TO THE JURY (P 112 LINES
 1-5) (P 113 LINES 3-11) (TR P 114 LINES 11-13)
 TRIAL COUNSEL FAILURE TO OBJECT TO IMPROPER
 CLOSING REMARKS AMOUNTED TO PERFORMANCE BELOW
 THE OBJECTIVE STANDARDS OF REASONABLENESS
 (2) TRIAL COUNSEL WAS INEFFECTIVE FOR FAILING
 TO PURSUE ISSUE OF MISTAKEN IDENTITY
 (CON) WHEN VICTIM STATED TO MR. FARN COX
 THAT THE PERPETRATOR WAS BLACK MAN IN A
 GREY COAT (TR OF THE THIRD DAY OF TRIAL TR P 47
 LINE 21-25) (TR P 48 LINES 1-5) THE DEFENDANT
 AT TRIAL WAS AND IS WHITE MALE.

3075

JAMES BLACKLEY

JAN 29 AM 9:13

(3) TRIAL COUNSEL WAS INEFFECTIVE WHEN HE FAILED TO PURSUE MISIDENTIFICATION DEFENSE WHERE PETITIONER DIDN'T HAVE SCAR ON HIS HAND, THE RIGHT OR THE BACK OF HIS HAND, NOR A SCAR BETWEEN HIS RING FINGER (TR. P. 124, LINES 11-25) (TR. P. 125, LINES 1-25)

THE APPLICANT ASSERTS THAT HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE 6TH & 14TH AMENDMENT TO THE UNITED STATES CONSTITUTION, AS WELL AS ARTICLE 1 SECTION 14 OF THE SOUTH CAROLINA CONSTITUTION, WAS VIOLATED PRIOR TO AND DURING HIS TRIAL PROCEEDING IN THE COURT OF GENERAL SESSIONS

4075

2016 JAN 29 AM 9:13
M. HOPE BLACKLEY

CERTIFICATE OF SERVICE

I RICHARD CULBERSON, DO HEREBY CERTIFY
THAT I HAVE SERVED COPY OF PCR APPLICATION
AND MEMORANDUM TO SUPPORT APPLICATION
ON CERT OF COURT SPARTANBURG COUNTY,
P.O. BOX 3483, S.C. 29304-3483 BY
DEPOSITING IN THE U.S. MAIL PROPERLY
ADDRESSED FIRST CLASS MAIL, WITH
SUFFICIENT POSTAGE AFFIXED THERETO
THIS _____

5075

2016 JAN 29 AM 9:13
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Richard Todd Culberson, #355804,	)	Case No.: 2016-CP-42-0417
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on January 29, 2016, would respectfully show this Court:

I.

Richard Todd Culberson ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the March 2013 term of the Spartanburg County Grand Jury for assault with intent to commit criminal sexual conduct, first degree (2013-GS-42-1814); assault and battery first degree (2013-GS-42-1811); kidnapping (2013-GS-42-1812); and attempted armed robbery (2013-GS-42-1813). Matthew Shealy, Esquire, represented Applicant. On June 16-18, 2014, Applicant proceeded to trial before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to imprisonment for concurrent terms of 20 years each for assault with intent to commit criminal sexual conduct, first degree, kidnapping, and attempted armed robbery, and to 10 years for assault and battery, first degree.

Applicant filed a timely notice of appeal and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Culberson,

Op. No. 2015-UP-546 (S.C. Ct. App. filed December 2, 2015). The Remittitur was returned on December 21, 2015.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction, the transcript from Applicant's trial, and Applicant's records for the Department of Corrections and appellate records. Respondent reserves the right to amend its return upon the receipt of other relevant records.

II.

In his Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel, in that:
 - a. "Trial Counsel was ineffective for failing to object to improper comments and pre-trial remarks made by prosecution during closing arguments
 - i. "the prosecution advised the jury that the state didn't have to prove this case beyond a reasonable doubt (See Tr. P. 105, Lines 16-21). This is erroneously lead the jury to believe the State didn't have to meet the burden of proof. The law states the defendant must be found guilty beyond a reasonable doubt as instructed by the judge in his charge to the jury (p. 112, lines 1-5)(p. 113, lines 3-11)(Tr. P. 114, lines 11-13).
 - ii. "Trial counsel failure to object to improper closing remarks amounted to performance below the objective standard of reasonableness."
 - b. "Trial counsel was ineffective for failing to pursue issue of mistaken identity when victim started to Mr. Faron Cox that the perpetrator was black man in a grey hoodie (Tr. Of the third day of trial, Tr. P. 147, line 21-25)(Tr. p. 48, lines 1-5). The defendant at trial was and is a white male.
 - c. "Trial counsel was ineffective when he failed to pursue misidentification defense where Petitioner didn't have scar on his hand, the right or the back of his hand, nor a scar between his ring finger (Tr. p. 124, lines 11-25)(Tr. p. 125, lines 1-25).

III.

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not

conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent will move to strike any amendments withheld until the last minute where such amendments result in prejudice to Respondent. See Rules 15(a)-(b), SCRCP.

V.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VI.

WHEREFORE, having made its Return, Respondent requests that a hearing be held solely on the claims of ineffective assistance of trial counsel and appellate counsel.

(signature on following page)

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

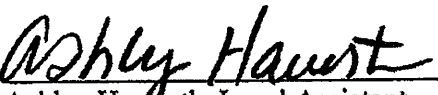
October 13, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG	)	
	)	
	)	2016-CP-42-0417
RICHARD T. CULBERSON, #355804,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Susannah C. Ross, Esquire
 Ross & Enderlin, PA
 330 East Coffee St.
 Greenville, SC 29601

DATED this 13th day of October, 2016.


 Ashley Haworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

RICHARD TODD CULBERTSON,
APPLICANT.

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)
)

) SUPPLEMENTAL APPLICATION
)
)
)

) CASE # 2016-CP-42-0417
)
)
)

This matter comes before the Court by way of application of post conviction relief filed January 29, 2016, alleging ineffective assistance of trial counsel. A Return was made on October 13, 2016, requesting a hearing on the allegation of ineffective assistance of counsel. This application is intended to incorporate the application and with the additions of the following allegations:

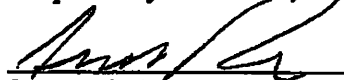
1. Ineffective assistance of trial counsel for

- (a) failure to object to improper rebuttal testimony,
- (b) failure to effectively impeach rebuttal witnesses,
- (c) failing to argue for delay to present alibi witness,
- (d) releasing alibi witness from subpoena,
- (e) failure to effectively object to State bolstering his witness with untrue facts contrary to prior testimony (See trial transcript p. vol II, 35, l.3, & pp. 142, l.14 & 143, l. 3), and
- (f) failure to object to improper argument the State's closing argument. (See trial transcript p. 97, l.21, p. 101, l. 17, p. 105, l. 17, & p. 108.)

2. Ineffective assistance of appellate counsel for failing to brief issues of :

- (a) error in Judge's overruling objection to Solicitor bolstering his witness with facts contrary to evidence, (See trial transcript vol II, 35-3 & pp. 142-14 & 143-3)
- (b) denial of due process when Judge allows trial attorney to release alibi witness from subpoena, (See trial transcript vol II p. 79) and
- (c) judge error of allowing the reply testimony of Stephanie Eubanks and Kelly Rudicill

Respectfully submitted,



Susannah Ross
Attorney for the Applicant
330 E. Coffee St,
Greenville, SC 29601
(864) 242-0029

Greenville, South Carolina

This 21 day of June, 2017

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT
)
)

RICHARD TODD CULBERTSON,
APPLICANT.

) AFFADAVIT OF SERVICE BY MAIL
)
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2016-CP-42-0417
)
)

1. I am the attorney for the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Reply to Conditional Order of Dismissal** in the above-captioned matter on the following person by depositing the same in the United States mail with proper postage affixed thereto:

Office of Attorney General Alan Wilson
P.O. Box 11549
Columbia, SC 29211


Attorney for Defendant

Greenville, South Carolina
This 21 day of June, 2017.

1 STATE OF SOUTH CAROLINA }

2 COUNTY OF SPARTANBURG }

COURT OF COMMON PLEAS NONJURY

3
4 RICHARD TODD CULBERSON, }

5 APPLICANT, }

6 vs. }

7 THE STATE OF SOUTH CAROLINA, }

8 DEFENDANT. }

TRANSCRIPT

OF

RECORD

2016-CP-42-417

9
10 September 19th, 2017
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE GRACE GILCHREST KNIE, Judge.
15

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

17 SUSANNAH C. ROSS

18 ESQ.

Attorney for the Applicant

19 VALERIE GIOVANOLI

20 ASSISTANT ATTORNEY GENERAL

Attorney for the State
21
22

23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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P R O C E E D I N G S

MS. GIOVANOLI: May it please the Court?

THE COURT: Yes, ma'am.

MS. GIOVANOLI: Thank you, Your Honor.

This is the case of Richard Todd Culberson versus The State of South Carolina. Docket Number 2016-CP-42-0417.

Mr. Culberson was indicted in 2013 for assault with intent to commit criminal sexual conduct first degree, assault and battery first degree, kidnapping, and attempted armed robbery. He was represented on those charges by Matthew Shealy.

He proceeded to trial before the Honorable Roger L. Couch and a jury, and, on June 16th, 2014, the case was prosecuted by Solicitor Barry Barnette. After a three day trial, the jury returned a verdict of guilty on all counts, and, on June 18th, 2014, Judge Couch sentenced Mr. Culberson to an aggravate total of 20 years incarceration.

Applicant filed a Notice of Appeal and an appeal was perfected by Tiffany Butler of the Office of Appellate Defense. That appealed raised the issue of whether the Trial Court properly denied a directed verdict on the attempted armed robbery charge. The Court of Appeals affirmed the conviction by an unpublished opinion filed December 2nd, 2015, and the remittitur was issued on

1 December 21st, 2015.

2 This PCR was filed on January 29th, 2016, and amended
3 on June 23rd, 2017. The State is present and ready to
4 proceed. The Applicant is also present and he's represented
5 by Ms. Susannah Ross to whom I'll hand it over.

6 THE COURT: Thank you.

7 Yes, ma'am.

8 MS. ROSS: Thank you, Your Honor.

9 May it please the Court.

10 This is Richard Culberson. I will, I will state first,
11 for the record, I've had a number of continuances in this
12 case in order to locate an alibi witness, Heather Marie
13 Holmstrom. I did hire an investigator. We did locate where
14 we believed Ms. Holmstrom was. We left messages for her
15 stepmother, and, and herself. I attempted to call a number
16 of times after the investigator had done all that she could
17 do. Ms. Holmstrom refused to answer her phone, and there
18 was no voice mail to leave a message. So, I do not have her
19 present as she lives in Texas. I was not able to force her
20 to be here.

21 So, that being what we may -- what it is, we are just
22 gonna go forward today. That is one issue that we'll get in
23 in the hearing was the failure to proffer any testimony from
24 this alibi witness. We also have failures to object in
25 closing. There were statements on, and I can go through

1 this now or wait until afterwards?

2 THE COURT: I will---

3 MS. ROSS: whichever you prefer.

4 THE COURT: I looked -- and I apologize. I know that
5 this is your first day in front of me. I will give you an
6 opportunity to make an argument at the conclusion.

7 MS. ROSS: Okay. Well, then just to briefly summarize
8 the main points, there would be failures to object during
9 closing arguments, failures to object to what we would
10 maintain is an improper rebuttal, failure to impeach and
11 make other objections that I'll get into more as the case
12 proceeds.

13 THE COURT: Yes, ma'am.

14 MS. ROSS: At this point, I'd like to hand up two cases
15 that we'll be referring to or would you rather me wait till
16 the end?

17 THE COURT: Counsel, have you seen those?

18 MS. GIOVANOLI: I have them now. Thank you.

19 THE COURT: Yes, ma'am, that's fine.

20 MS. ROSS: Okay. May I approach?

21 THE COURT: Yes, ma'am.

22 MS. ROSS: So, these cases go to the reply.

23 THE COURT: Thank you.

24 MS. ROSS: And to the arguments made in closing.

25 THE COURT: So, State v. Prather and Vasquez v. State?