

19852

ORIGINAL

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARK ELLIOTT,

APPELLANT

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT

STATE'S EXHIBIT #4 (DVD)
STATE'S EXHIBIT #11 (DEPOSITION OF LANCE O'BRYANT)
STATE'S EXHIBIT #15 (DVD)

VOLUME 1

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ARRAIGNMENT

1 DEPUTY:

2 All Rise.

3 THE COURT:

4 All right. Thank you. Please
5 be seated.

6 Okay. Yes ma'am?

7 MS. LIVESAY:

8 Your Honor, we are here for a --
9 uh -- arraignment hearing with Mark Elliott prior to his
10 trial.

11 Uh -- He is looking at an
12 indictment for CSC Second with a minor, Your Honor.

13 That is under 2010-GS-26-4327.

14 He is also looking at two other
15 indictments, Your Honor, that have been true-billed, for
16 kidnapping.

17 That's Indictment 2009-GS-26-2889,
18 and CSC First, which is 2009-GS-26-2890, Your Honor.

19 These -- uh -- indictments do
20 qualify the defendant for life without parole.

21 He was served with notice that if
22 this were to be a trial and was convicted, the State has
23 put him on notice that it would be a sentence of life
24 without parole, Your Honor, due to his prior record.

25 THE COURT:

1 And -- And his record?

2 MS. LIVESAY:

3 Uh -- Your Honor, his prior record
4 is:

5 From 1997, he has a kidnapping, a
6 robbery, first-degree burglary, as well as second-degree
7 sexual offense.

8 He did -- uh --

9 That was in 1997.

10 From what my understanding was, I
11 think he received quite a bit of time for that.

12 Uh -- He was recently released
13 from the North Carolina Department of Corrections -- uh
14 -- a little bit over a year ago.

15 THE COURT:

16 All right.

17 Uh -- Ms. Elliott --

18 DEPUTY:

19 Stand up, sir.

20 THE COURT:

21 -- uh -- would you place Mr.
22 Elliott under oath.

23 (WHEREUPON: The defendant was
24 placed under oath by the Clerk at 11:53 AM, November 15,
25 2010.)

1 THE COURT:

2 And -- uh -- Ms. Livesay, the
3 offer or the -- the State was willing to let him plead
4 to?

5 MS. LIVESAY:

6 Your Honor, the first offer from
7 the State was for a CSC First. And the offer was for 20
8 years.

9 That -- That obviously was the
10 offer prior to trial, Your Honor.

11 THE COURT:

12 All right.

13 Mr. Elliott -- uh -- you are
14 represented by Ms. Knowles and Mr. Hazzard, I believe.

15 Is that correct?

16 DEFENDANT:

17 Yes, Your Honor.

18 THE COURT:

19 And you've been incarcerated for
20 how long now?

21 DEFENDANT:

22 Uh -- 18 months.

23 THE COURT:

24 And I would assume that Mr. -- uh
25 -- Hazzard and Mr. -- and Ms. -- uh -- Knowles -- have --

1 uh -- had an opportunity to share with you the discovery
2 materials in this case?

3 That is, the evidence that the
4 State has against you?

5 DEFENDANT:

6 Yes sir.

7 THE COURT:

8 So you know what evidence the
9 State intends to produce at this trial?

10 DEFENDANT:

11 Yes sir.

12 THE COURT:

13 Uh -- Mr. Elliott, do you
14 understand that if the allegations of the State are
15 proven, that I will have absolutely no alternative but to
16 give you a life sentence without the possibility of
17 parole?

18 Do you understand that?

19 DEFENDANT:

20 Yes, Your Honor.

21 THE COURT:

22 You understand that you would
23 serve the balance of your natural life in the prison
24 systems for South Carolina?

25 Do you understand that?

1 DEFENDANT:

2 Yes sir.

3 THE COURT:

4 Okay.

5 Now it's my understanding that the
6 State would allow you to enter a plea for criminal sexual
7 conduct in the first degree.

8 You're not making any
9 recommendation now; is that right?

10 MS. LIVESAY:

11 Your Honor -- uh -- we won't make
12 a recommendation as to the sentencing sheet.

13 But of course, we will be asking
14 The Court for an amount of time over the 20, considering
15 at this time, we've prepared for trial.

16 THE COURT:

17 I understand that.

18 But you would allow him to plead
19 to the one charge?

20 MS. LIVESAY:

21 I'm sorry, Your Honor.

22 THE COURT:

23 The criminal sexual conduct first
24 degree?

25 MS. LIVESAY:

1 Yes sir.

2 THE COURT:

3 All right.

4 MS. LIVESAY:

5 Of -- Of course at this point, if
6 we are talking about any sort of pleas from the State, it
7 would have to be straight up to all of the pending
8 indictments that we're here for.

9 And obviously, we'd be asking for
10 more time than the 20 years.

11 THE COURT:

12 But you would withdraw the life
13 without parole?

14 MS. LIVESAY:

15 Yes sir.

16 THE COURT:

17 Okay. You understand that?

18 MS. LIVESAY:

19 Yes sir.

20 THE COURT:

21 All right.

22 So, Mr. Elliott, do you -- have
23 you had an opportunity to discuss with your attorneys
24 what that means?

25 DEFENDANT:

1 Yes, Your Honor.

2 THE COURT:

3 Do you understand that you have an
4 opportunity here that will go away whenever trial begins
5 to avoid life without parole.

6 Do you understand that?

7 DEFENDANT:

8 Yes, Your Honor, I do.

9 THE COURT:

10 Okay.

11 Now have you made a decision as to
12 whether to accept that or reject that?

13 DEFENDANT:

14 Not really. I don't have --

15 THE COURT:

16 Do you understand, Mr. Elliott,
17 that -- and we're about to begin this trial -- no
18 question about that.

19 The jury panel is downstairs being
20 set aside for me right now.

21 We are going to trial.

22 That if we begin this trial, the
23 State will not withdraw its notice of intent to seek life
24 without parole.

25 If we begin this trial, even if

1 you were to plead -- even if you were to plead -- I would
2 have no alternative other than to impose that life
3 sentence.

4 Do you understand that?

5 DEFENDANT:

6 Yes sir.

7 THE COURT:

8 Your opportunity to have life
9 without parole withdrawn is prior to trial.

10 Do you understand that?

11 DEFENDANT:

12 Yes, Your Honor.

13 THE COURT:

14 You -- And -- And your attorneys
15 have talked to you about that?

16 Do you understand that?

17 DEFENDANT:

18 (Nods in the affirmative.)

19 THE COURT:

20 Is that correct? Your attorneys
21 have discussed it with you?

22 DEFENDANT:

23 Yes sir.

24 THE COURT:

25 All right.

1 Now, I asked in a pretrial
2 conference if Mr. Hazzard has explained that to you; and
3 he tells me that he has even provided you with copies of
4 the statute that impose that, and has gone over that with
5 you.

6 Is that right, Mr. Hazzard?

7 MR. HAZZARD:

8 That's right, Your Honor.

9 THE COURT:

10 And you, without a doubt,
11 understand that?

12 DEFENDANT:

13 Yes sir.

14 THE COURT:

15 Do you understand that if we begin
16 the trial, it is not my choice to tell the State that
17 they must withdraw the notice of intent to seek life
18 without parole?

19 I have no control over that; Ms.
20 Livesay does.

21 And Ms. Livesay has made it very
22 clear on this record that that will not happen.

23 Do you understand that?

24 DEFENDANT:

25 Yes sir.

1 THE COURT:

2 All right.

3 All right.

4 I would assume then, that you're
5 going to engage in other conversations with Mr. Hazzard
6 about this?

7 DEFENDANT:

8 Yes sir.

9 THE COURT:

10 You understand that at one
11 o'clock, we're going to come back in here, and we're
12 going to start the motions in this case.

13 Do you understand that?

14 THE COURT:

15 Yes sir.

16 THE COURT:

17 Uh -- We're going to hear the
18 pretrial motions.

19 Essentially, that's the start of
20 this trial.

21 Do you understand that?

22 DEFENDANT:

23 Yes, Your Honor.

24 THE COURT:

25 I want to make certain that you're

1 clear about that. That's one hour from now.

2 You understand that?

3 DEFENDANT:

4 (Nods in the affirmative.)

5 THE COURT:

6 All right, Mr. Elliott, I hope
7 that you will is just make the right decision.

8 I have not heard the evidence in
9 this case.

10 The attorneys have briefly
11 explained to me what will be presented in this -- in this
12 trial.

13 Uh -- I know what motions or what
14 issues are going to come up in the motions.

15 Uh -- I don't know about all the
16 evidence.

17 I don't know whether this is a
18 good deal for you or a bad deal for you.

19 But what I do know is, that we're
20 at a critical point. And that, if you are to get the
21 advantage of having life without parole taken off the
22 table, you're going to have to act quickly and
23 decisively.

24 And I hope that you would follow
25 the recommendations of these tow fine attorneys that you

1 have.

2 I know both of them. I know them
3 both to be excellent attorneys.

4 And I -- I hope that they are
5 giving you good advice.

6 And I hope that you are following
7 their advice. Because that is what makes our system
8 work.

9 Uh -- It's entirely up to you.

10 Is that all we have to do right
11 now, Mr. -- uh -- Mr. Hazzard?

12 MR. HAZZARD:

13 With regard to -- uh -- this basic
14 arraignment, yes sir, Your Honor.

15 THE COURT:

16 Okay.

17 MR. HAZZARD:

18 I mean, there are other matters.

19 Uh -- Are you prepared to do
20 anything else with regard to Mr. O'Bryant's video, or --

21 MS. LIVESAY:

22 As far as?

23 MR. HAZZARD:

24 Are you prepared to address the
25 issue of my objections during Mr. O'Bryant's --

1 MS. LIVESAY:

2 As far as Mr. O'Bryant?

3 MR. HAZZARD:

4 Yes ma'am.

5 MS. LIVESAY:

6 Uh-huh. I would have to go
7 downstairs and get the projector and put it up, if he
8 asked me to do that, so --

9 MR. HAZZARD:

10 Uh -- I would ask at this time,
11 since it now appears to be approximately noon, that if
12 The Court were so inclined that if we were to take a
13 break until one o'clock, that would give Ms. Knowles and
14 I a chance to sit and speak again with Mr. Elliott
15 regarding this matter.

16 THE COURT:

17 All right.

18 MR. HAZZARD:

19 Thank Your Honor.

20 THE COURT:

21 Thank you.

22 MS. LIVESAY:

23 Thank Your Honor.

24 THE COURT:

25 Okay.

1 We'll see everybody at one
2 o'clock.

3 (WHEREUPON: The court was
4 declared in recess at 2:02 PM, November 15, 2010.)

5 (WHEREUPON: The court was called
6 to order by the Bailiff at 1:08 PM, November 15, 2010;
7 and all pertinent parties, along with their counsel, were
8 back and present in the courtroom.)

9 DEPUTY:

10 Order in the court. All Rise.

11 THE COURT:

12 Thank you. Thank you.

13 Thank you. Please be seated.

14 All right.

15 Mr. Hazzard, Ms. Livesay, Ms.

16 Knowles?

17 (WHEREUPON: Counsel for each party
18 conferred off the record with The Court at the bench at
19 1:09 PM November 15, 2010.)

20 THE COURT:

21 All right.

22 Why don't we have first?

23 MR. HAZZARD:

24 Okay, Your Honor.

25 First of all -- uh -- when we got

1 back here at one o'clock, Ms. Livesay notified me that
2 she had some discoverable documentation that had not been
3 turned over heretofore.

4 At this point, the Defense request
5 that there be a determination made as to whether there is
6 any other discoverable documentation that has not been
7 provided. And we also ask for sanctions for failure to
8 provide before now.

9 She --

10 THE COURT:

11 All right. What -- What do we
12 have?

13 What -- What was turned over?

14 MR. HAZZARD:

15 She -- It hasn't been turned over
16 yet.

17 THE COURT:

18 Oh, okay.

19 MR. HAZZARD:

20 She said she'd make me a copy of
21 it at some point.

22 MS. LIVESAY:

23 Your Honor, the -- uh -- detective
24 just ran me or gave me a report.

25 All it is, is a -- It looks like

1 the report from the police department showing just the
2 kind of -- the timeline of when police were called -- uh
3 -- when that they were advised, that he's notifying the
4 on-call detective.

5 It's basically notes as to when
6 Horry County PD was being notified and made a visual on
7 the suspect.

8 THE COURT:

9 Well, let me tell you --

10 MS. LIVESAY:

11 So, basically -- Yes, Your Honor?

12 THE COURT:

13 It's a radio log, essentially,
14 isn't it?

15 (No response.)

16 THE COURT:

17 It just seems to be a timeline.

18 All right, Mr. hazard, have you --
19 have you seen it? Here.

20 MR. HAZZARD:

21 No sir, I haven't seen it.

22 Uh -- I would point out to The
23 Court that Ms. Knowles filed a notice and motion for
24 production of specific evidence and disclosure of
25 witnesses, and served that on the prosecutor's office on

1 August 6, of 2009.

2 That, that request says, in
3 pertinent part, that we request to make available for
4 purposes of inspection and copy any and all police
5 reports relating to the investigation and the
6 circumstances surrounding the crime which the defendant
7 is charged with, including any and all statements taken
8 from the witness -- from witnesses and the defendant; a
9 supplemental request that asks for specific things; and
10 then in an umbrella fashion, says: any other discoverable
11 documentation in your position; was made on September 8th
12 of 2009.

13 I am now informed that there is
14 this documentation in the custody of the police -- has
15 been in the custody of the police since June 29th, of
16 2009, that they have failed and refused to provide.

17 THE COURT:

18 All right.

19 Well look at it, and -- and tell
20 me if your client is prejudiced in any way --

21 MR. HAZZARD:

22 Your Honor, our position is, of
23 course --

24 THE COURT:

25 -- by not providing -- by not

1 having that.

2 MR. HAZZARD:

3 -- of course we are prejudiced
4 because they have failed to comply with discovery.

5 MS. LIVESAY:

6 Your Honor --

7 THE COURT:

8 Well --

9 MR. HAZZARD:

10 That, that in and of itself --

11 THE COURT:

12 I under --

13 MR. HAZZARD:

14 -- is prejudicial.

15 THE COURT:

16 I understand that; but --

17 MS. LIVESAY:

18 Your Honor, if -- if I may?

19 Uh -- Mr. Hazzard actually came
20 over to my office twice, looked through -- uh -- the
21 entire file; my file, all the recordings; everything I
22 had in my possession at that time.

23 Uh -- Detective Abercrombie just
24 handed that over to me right then.

25 It's definitely not prejudicial to

1 the defendant.

2 And, in fact, it notes that -- uh

3 --

4 THE COURT:

5 Do you even intend to offer it?

6 MS. LIVESAY:

7 No. It's no evidence.

8 MR. HAZZARD:

9 And Your Honor --

10 MS. LIVESAY:

11 It's just notes from the Horry

12 County PD.

13 MR. HAZZARD:

14 Your Honor, our position is:

15 It's not an -- Discovery does not
16 require that it be something the State intends to offer.

17 It is with regard to all
18 discoverable evidence within the possession of the State.

19 THE COURT:

20 I don't know that it's evidence.

21 I mean, evidence of what?

22 It's just a --

23 MR. HAZZARD:

24 It is a document generated by a
25 state agency with regard to the crimes for which my

1 client is charged.

2 THE COURT:

3 Well, there are several things
4 that I can do.

5 Uh -- Tell me which?

6 MR. HAZZARD:

7 I have requested sanctions, Your
8 Honor.

9 And as The Court well knows, this
10 is not the first time that --

11 THE COURT:

12 You want me to suppress that?

13 MS. LIVESAY:

14 Your Honor, the rules states that
15 documents and tangible objects in possession, custody, or
16 control of the State, and materials for the preparation
17 of the defense.

18 I do not believe that this is
19 material; because everything on that document --

20 THE COURT:

21 And that's what I'm asking you.

22 MS. LIVESAY:

23 -- has been provided in video.

24 I mean, the entire --

25 THE COURT:

1 Is there anything there that -- uh
2 -- that would be material to your defense in any form or
3 fashion?

4 MR. HAZZARD:

5 Well Your Honor, since it was
6 handed to me approximately 30 seconds ago, I really don't
7 know.

8 THE COURT:

9 Well --

10 MR. HAZZARD:

11 And that's the whole point of the
12 discovery process.

13 THE COURT:

14 Well, I'm going to give you some
15 time to look at, then.

16 We'll go on with the other matters
17 and then I'll let you re-address this tomorrow morning
18 before we pull the jury.

19 You know, if there's something
20 there -- uh -- uh -- Essentially there -- there could be
21 no end to -- to what might come under the umbrella of
22 discoverable evidence.

23 Uh -- That's nothing more than a
24 -- a timeline; or where the officer made notes.

25 Does it contain anything relevant

1 at all?

2 It's just --

3 MR. HAZZARD:

4 Again, I don't know. I haven't
5 read it yet.

6 What I know is that:

7 Discovery says that if there's
8 documentation in possession of the State, or the State's
9 agencies, that relates to this case, I actually get to
10 view it.

11 THE COURT:

12 I understand.

13 MR. HAZZARD:

14 And I get to decide whether I
15 think it's inculpatory or not.

16 THE COURT:

17 And -- And you have it now.

18 MR. HAZZARD:

19 And for Ms. Livesay to say:

20 Well, we don't think it's

21 relevant.

22 Your Honor, they don't get to make
23 that call.

24 THE COURT:

25 I -- I understand.

1 But you have it now.

2 And --

3 MR. HAZZARD:

4 You want me to --

5 THE COURT:

6 -- what -- what -- what I do with
7 it depends on the nature of the document.

8 You know, if -- if it's something
9 that's absolutely irrelevant?

10 In some cases, I could suppress
11 the document.

12 She says:

13 I'm not even going to introduce
14 it. I don't have any -- any intentions of introducing
15 it. Uh -- It's not evidence as far as anything that I'm
16 going to use.

17 Now, if you show me where -- uh --
18 this document contains material that's not been made
19 available to you that goes to your defense or something
20 that you should -- you should have been given so you can
21 prepare your -- your defense.

22 If there's anything relevant in
23 there to your defense -- you know -- I may consider
24 continuing the case.

25 Uh --

1 MR. HAZZARD:

2 Well Your Honor, considering a
3 great deal of the discussion and interrogation that goes
4 on between Detective Abercrombie and Mr. Elliott has to
5 do with an alleged timeline, it would have been very
6 helpful for me in my preparation for trial had I known
7 what timeline the North Myrtle Beach Police Department
8 had as part of their records --

9 THE COURT:

10 But --

11 MR. HAZZARD:

12 -- prior to today.

13 THE COURT:

14 -- don't these types have time and
15 all on them as well? I mean, they're standard police
16 tapes.

17 MR. HAZZARD:

18 Your Honor, the police tapes in
19 and of themselves don't tell us everything we need to
20 know.

21 For instance:

22 Based on these tapes --

23 THE COURT:

24 Well, what I'm going to do --

25 MR. HAZZARD:

1 -- we -- based on these tapes, we
2 subpoenaed a -- an officer by the name of Bob Rogers.

3 Bob Rogers called me on Friday and
4 said:

5 I don't understand why you
6 subpoenaed me because my patrol car video cam is on
7 there; but I'm telling you, I wasn't driving the car that
8 night.

9 So just because there's something
10 on the tape doesn't make it so.

11 THE COURT:

12 Okay.

13 Well, what I'm asking you to do,
14 Mr. Hazzard is -- is this:

15 I'm going to give you time to go
16 over there --

17 MR. HAZZARD:

18 Thank you.

19 THE COURT:

20 -- and tell me if there's anything
21 on there that you feel was -- uh -- exculpatory, or is
22 there anything on there that was essential to your
23 preparation of the defense?

24 I'll consider continuing the case.

25 MR. HAZZARD:

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1 All right.

2 THE COURT:

3 If -- If -- She tells me she's not
4 going to introduce it into evidence, so I'm not going to
5 consider -- uh -- a sanction as -- as -- uh --
6 suppressing it.

7 There's no need to do that.

8 Tell me -- Tell me something about
9 that piece of paper.

10 Is it nothing more than a scrap of
11 paper; or does it have something on it that's relevant?

12 And were you given an opportunity
13 to go through her file?

14 MR. HAZZARD:

15 Yes sir. And that's not the
16 point.

17 The last I heard, the North Beach
18 Police Department was an entity of the State -- was an
19 entity --

20 THE COURT:

21 I understand that.

22 MR. HAZZARD:

23 -- that is a charging entity in
24 this State.

25 Now, the fact that, for some

1 reason, the prosecution doesn't obtain everything they
2 have for the purposes of discovery is beyond my purview.

3 THE COURT:

4 Uh-huh. I understand that.

5 MR. HAZZARD:

6 I have absolutely no control over
7 that.

8 Now, if The Court wants me to sit
9 down right now and review this document --

10 THE COURT:

11 No, I want you to -- I'm telling
12 you:

13 I'm reserving ruling on this.

14 I'm going to give you a chance
15 over night, if you want it --

16 MR. HAZZARD:

17 Uh-huh.

18 THE COURT:

19 -- to do it.

20 MR. HAZZARD:

21 Okay.

22 I believe that one of the --

23 THE COURT:

24 And tell me if there's any way in
25 the world -- I mean -- how you feel that you are

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1 prejudiced here?

2 What information is available
3 there that's contrary to information that you've already
4 been provided or is -- or pertinent to your defense?

5 Just tell me.

6 MR. HAZZARD:

7 It is already my understanding,
8 and Ms. Knowles is whispering in my ear, that she is
9 concerned with -- And Ms. Knowles will be handling the
10 various Jackson V. Denno hearings.

11 And she already indicates to me
12 that there are some things about this document that
13 concern her as far as the Jackson V. Denno hearing.

14 THE COURT:

15 Well, Ms. Knowles hasn't even
16 looked at it yet; has she?

17 MS. KNOWLES:

18 No.

19 MS. LIVESAY:

20 Your Honor, I don't see how the
21 document is material due to the fact that all the
22 information that's in that document is either on the
23 video or it's in the report of the officer.

24 THE COURT:

25 What -- What you asking me to do,

1 Mr. Hazzard?

2 I guess you're -- you're looking
3 for the ultimate sanction, dismissal of the case.

4 I mean, what other sanction are
5 you looking for?

6 MR. HAZZARD:

7 Well, there many, many, sanctions
8 within the -- uh -- decision power of the court, such as
9 --

10 THE COURT:

11 Such as?

12 MR. HAZZARD:

13 -- such as -- fining individuals
14 for knowing and willful violations, you know.

15 That has been done in this
16 courthouse before.

17 THE COURT:

18 I mean --

19 MR. HAZZARD:

20 I mean, my point is, Your Honor,
21 this isn't the first time this has happened. And unless
22 somebody does something, it won't be the last.

23 It is blatantly -- blatantly
24 unfair --

25 THE COURT:

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1 Uh-huh.

2 MR. HAZZARD:

3 -- for the prosecution to show up
4 with documentation in hand the day of the trial, and say:

5 Oh, by the way, we've got this.

6 That is blatant trial by possible
7 ambush.

8 And then to ask me:

9 Well, is it relevant or not? Is
10 it -- Is it whatever?

11 I don't know. I just got it.

12 THE COURT:

13 And if you can show me that it is,
14 I'll consider that sanction. I'll certainly consider
15 it.

16 But, if it's nothing more than the
17 State, out of an abundance of caution, turning over every
18 thing that might possibly be considered as material, when
19 in fact it's not, I'm not going to go there.

20 Now, if you can show me that this
21 is a material document; this is important; this is
22 something they should have turned over to you; it's
23 material for your defense; and it calls for a
24 continuation of this case, in fairness to your client,
25 I'll -- I'm going to impose sanctions on somebody for not

1 doing it.

2 MS. KNOWLES:

3 Your Honor --

4 THE COURT:

5 But --

6 MS. KNOWLES:

7 Your Honor, at the very least, can
8 we at least have ten minutes to look over this --

9 THE COURT:

10 I'm giving you --

11 MS. KNOWLES:

12 -- before the Jackson V. Denno
13 hearing?

14 THE COURT:

15 Okay. All right. We'll
16 certainly do that.

17 We'll -- And then, I'll give you
18 another opportunity to tell me what you think about it;
19 okay.

20 I want to be as fair as I can be
21 to you. But in the -- in the same vein, I -- I want to
22 be as fair to the State as I can, you know.

23 I look at the document and wonder:

24 What relevancy is has to -- to
25 your defense?

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1 Perhaps it does and perhaps you
2 can tell me what it -- what relevance it has to your
3 defense.

4 MS. KNOWLES:

5 What -- What I'm concerned with is
6 the fact that statements were made by my client to
7 officers; and a lot of what is important as to what they
8 knew before they located him --

9 THE COURT:

10 Well, I'll tell you this -- and
11 I'll tell Ms. Livesay this:

12 If that timeline contains other
13 statements that were made by your client, other than the
14 four that we had discussed in pretrial; they we are about
15 to have a Jackson V. Denno hearing on -- something
16 totally new -- I'm not going to allow it.

17 Now, do you have something other
18 then those four times that they talked with him that were
19 videotaped?

20 I mean, are you talking about:

21 They had another conversation with
22 him?

23 MS. KNOWLES:

24 I mean, not that I'm aware of.

25 But, I'd like to know what information they had to base

1 the stops off of, and that's here.

2 MS. LIVESAY:

3 That's going to come out in
4 testimony, Your Honor.

5 THE COURT:

6 They're -- They're going to have
7 to testify to that.

8 MS. KNOWLES:

9 But --

10 THE COURT:

11 I mean, wasn't there a BOLO?

12 Wasn't there unprovoked flight?

13 I believe it's Illinois versus
14 Ward -- Wardlow that says:

15 Hey, that gives you enough for a
16 Terry-type stop.

17 MS. KNOWLES:

18 Your Honor, there was some
19 question as to when the stop was made, whether there was
20 a female victim.

21 And one of the officers believed
22 that there was a female victim that exited the vehicle.

23 And this further supports that,
24 because it's in writing --

25 MS. LIVESAY:

1 Your Honor --

2 MS. KNOWLES:

3 -- that there was a female.

4 MS. LIVESAY:

5 -- all of this is on video.

6 The fact that another officer saw
7 and thought there was a female in a vehicle, that's on
8 the video.

9 THE COURT:

10 And Ms. Knowles, didn't you tell
11 me in -- in pretrial that your client told the officer
12 that the female had fled in the other direction --

13 MS. KNOWLES:

14 Not until --

15 THE COURT:

16 -- and on reviewing the videotape,
17 that was not the case.

18 MS. KNOWLES:

19 Not until he was prompted, Your
20 Honor.

21 THE COURT:

22 Not till he was prompted?

23 MS. KNOWLES:

24 He did not come up with that
25 story.

1 The client -- or the -- uh --
2 officer suggested it to him.

3 THE COURT:

4 Suggested what?

5 MS. KNOWLES:

6 That there was a female --

7 THE COURT:

8 Uh-huh.

9 MS. KNOWLES:

10 -- that was in the vehicle. He
11 then went for that story.

12 THE COURT:

13 Which story? That the female ran?

14 MS. KNOWLES:

15 That she was in the vehicle and
16 she exited when he did.

17 THE COURT:

18 Weren't -- Weren't they looking
19 for female?

20 MS. KNOWLES:

21 Yes.

22 THE COURT:

23 Wasn't there reasonable --
24 reasonable assumption, or -- or the -- uh -- at least in
25 the minds of these offices, that there was a -- a female

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1 with the defendant?

2 MS. KNOWLES:

3 That was reasonable, yes.

4 But this further supports the idea
5 that maybe there was.

6 I mean, I don't know.

7 MS. LIVESAY:

8 Your Honor --

9 THE COURT:

10 Well, doesn't the video show that
11 there was a -- I mean, didn't you tell --

12 MS. KNOWLES:

13 That -- That --

14 THE COURT:

15 -- Didn't you tell me that.

16 MS. KNOWLES:

17 -- That's confusing, because it
18 was such a high, I guess, graphic situation.

19 He was exiting.

20 Officers are running.

21 There's a lot of confusion.

22 You can't really tell that.

23 MS. LIVESAY:

24 Your Honor, there's a -- just to
25 clarify -- there is a video of Mr. Elliott's car from the

1 failure to stop for Horry County.

2 That video goes on Mr. Elliott.

3 He takes off running.

4 That video runs on that car the
5 entire time for 45 minutes; and nobody ever gets in and
6 out of that car except the officers that are looking for
7 the supposed missing girl.

8 All of this information is on that
9 video.

10 There's 4 in-car camera videos
11 from every angle of what's going on that night; and all
12 of them have audio and video recordings.

13 MS. KNOWLES:

14 You can not hear, on the three CDs
15 that I was given -- the DVDs -- you cannot hear --
16 Outside of the mumbling of a couple of officers and radio
17 static, you can not make clear anything, really --

18 THE COURT:

19 All right.

20 MS. KNOWLES:

21 -- as to what he said.

22 THE COURT:

23 Well, Ms. Knowles, I'm going to
24 give you time to look at it, tell me if there's a
25 discrepancy you need to further explore; and we'll see

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1 what we can do with it; okay?

2 Look at it and see.

3 And we'll -- we'll be at ease; so
4 you can do that if you wish.

5 You can even go back and talk with
6 your client about it.

7 MS. KNOWLES:

8 I mean, I'd prefer to be fully
9 prepared.

10 Can we take 10 minutes, Your
11 Honor?

12 THE COURT:

13 I told you, you could.

14 MS. KNOWLES:

15 Oh, I just didn't know if you
16 meant --

17 THE COURT:

18 Do you want to go back up into --
19 uh -- the lockup with your client --

20 MS. KNOWLES:

21 Yes sir.

22 THE COURT:

23 -- so he can look at it as well?

24 MS. KNOWLES:

25 Yes sir.

1 THE COURT:

2 Very well; let's go ahead and do
3 that; okay.

4 In fact, I'll give you 15 minutes.
5 We'll be back at -- uh -- 20 of.

6 MS. KNOWLES:

7 Thank you.

8 THE COURT:

9 All right. We are at ease.

10 (WHEREUPON: The court was
11 declared in recess at 1:27 PM, November 15, 2010.)

12 (WHEREUPON: During the recess,
13 the court reporter per The Court's instructions marked a
14 DVD as Court's Exhibit Number 1.)

15 (WHEREUPON: The court was called
16 to order by the Bailiff at 1:42 PM, November 15, 2010;
17 and all pertinent parties, along with their counsel, were
18 back and present in the courtroom.)

19 BAILIFF:

20 All Rise.

21 THE COURT:

22 All right. Thank you. Please
23 be seated.

24 Okay. All right, Mr. Hazzard or
25 Ms. Knowles?

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1 All right. I'll hear from you.

2 MS. KNOWLES:

3 We've had a chance to review this
4 additional evidence with -- uh -- our client and we're
5 ready to proceed forward, Your Honor.

6 THE COURT:

7 All right.

8 And I would, for the record, point
9 out that Criminal Rule 5(a)2, which deals with
10 information not subject to disclosure says that:

11 Except as provided in Paragraphs
12 A, B, and D, which relate to statements by the defendant
13 -- uh -- defendants by record -- uh -- and reports or --
14 of examinations and test -- There are certain things that
15 are not subject to disclosure.

16 And it very clearly says that:

17 The rule does not authorize the
18 discovery or inspection of reports, memorandum, or other
19 internal prosecution documents made by the attorney for
20 the prosecution or other prosecution agents in connection
21 with the investigation or prosecution of the -- of the
22 case, or, of course, statements made by prosecution
23 witnesses.

24 And I believe, looking at that
25 document, that's exactly what we have.

1 We have a memorandum that was
2 prepared giving a timeline of the actual -- uh -- events.

3 It was something compiled by the
4 prosecution agents following -- uh -- this case, and
5 after the investigation was begun.

6 Uh -- I don't even think it was
7 subject to -- uh -- discovery.

8 I --

9 MR. HAZZARD:

10 Your Honor, my understanding is
11 that that report, or that timeline, was actually
12 generated as a part of the 911.

13 THE COURT:

14 Is that what it is?

15 I don't know.

16 I don't think it is. I think they
17 got --

18 MR. HAZZARD:

19 That's one of the problems --

20 THE COURT:

21 -- I think that they --

22 MR. HAZZARD:

23 -- Your Honor, with them not
24 disclosing it.

25 THE COURT:

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1 -- I -- From what I looked at it,
2 it's got everything, not just the 911 call.

3 MS. KNOWLES:

4 Well, my main concern was just the
5 information that was included that obviously was what the
6 police officers relied on in stopping my client.

7 THE COURT:

8 All right.

9 But in any case, you're ready to
10 go forward?

11 MS. KNOWLES:

12 Yes sir.

13 THE COURT:

14 All right. Let's go forward.

15 Now, what is the -- the first
16 matter we're going to take up, Mr. Hazzard?

17 MR. HAZZARD:

18 Your Honor, first of all, the
19 Defense would like -- uh -- like to clarify or make the
20 motion to clarify the charges that the State is
21 proceeding on.

22 When we discussed this matter in
23 chambers as a form of a pretrial conference, it was my
24 understanding that the prosecution was not proceeding on
25 three counts of attempted armed robbery, those being

1 Indictments Number 2009-GS-26-2885, 2886, and 2887.

2 And I'm requesting clarification
3 on that at this time.

4 THE COURT:

5 My understanding is the State will
6 proceed under criminal sexual conduct second degree with
7 a minor, kidnapping, criminal sexual contact in the first
8 degree, and failure to stop for a blue light.

9 Is that correct?

10 MS. LIVESAY:

11 Yes sir, failure to -- The only
12 two that we added -- not added, but included today -- was
13 the failure to stop and resisting on top of two CSCs and
14 a kidnapping.

15 THE COURT:

16 All right. So, in addition --

17 MS. LIVESAY:

18 We're not going forward on the
19 armed robbery.

20 THE COURT:

21 -- in addition to what I just
22 said, then there is a resisting arrest as well?

23 MS. LIVESAY:

24 Yes sir.

25 THE COURT:

25 I have an indictment for criminal

1 sexual conduct with a minor second degree on that same
2 date. This is indictment number 2010-GS-26- 4327.

3 is that right?

4 MS. LIVESAY:

5 Yes sir.

6 THE COURT:

7 I have an indictment for criminal
8 sexual conduct; again the same date. And I assume that's
9 in the first degree?

10 Is that right?

11 MS. LIVESAY:

12 Yes sir.

13 THE COURT:

14 That indictment is 2009-GS-26-
15 2890.

16 MS. LIVESAY:

17 Yes sir.

18 THE COURT:

19 I have an indictment for failure
20 to stop for a blue light or siren. And that is 56 5 --
21 Section 56-5-750(b) 1.

22 Now, my understanding -- Section B
23 involves the assault of a police officer.

24 Is that correct?

25 MS. LIVESAY:

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1 Yes sir.

2 THE COURT:

3 Your indictment does not alleged
4 that.

5 MS. LIVESAY:

6 No sir.

7 THE COURT:

8 Okay.

9 Your indictment alleges that:

10 On June 29th, 2009, while
11 operating a motor vehicle -- uh -- did refuse to -- uh --
12 and failed to stop his vehicle when signaled by law
13 enforcement vehicle by means of siren and flashing light
14 in violation of -- of section.

15 Uh -- What do you say about that?

16 MS. LIVESAY:

17 That's vague, Your Honor.

18 Uh -- Those are the facts.

19 The facts in the indictment -- the
20 summary of the facts that the State plans on moving
21 forward.

22 We plan on making no testimony or
23 allegations that Mr. Elliott assaulted any of the
24 officers.

25 THE COURT:

1 All right. Very well.

2 That would be a lesser included.

3 All right.

4 And -- uh -- I have an indictment
5 for -- uh -- resisting arrest on June 29th, 2009 -- uh --
6 alleging that:

7 He did knowingly and willfully --
8 uh -- pose -- or resist an arrest when he knew or
9 reasonably known -- uh -- knew that -- uh -- by one he
10 knew or reasonable should have known was a law-
11 enforcement officer.

12 And again, no. That is Section A;
13 okay.

14 MS. LIVESAY:

15 Yes sir.

16 THE COURT:

17 Uh -- And again -- And I misspoke
18 a moment ago.

19 I -- I was trying to get the
20 resisting arrest.

21 But that is Section A, which does
22 not involve any sort of assault.

23 All right.

24 Now, Mr. Hazzard, do you have any
25 doubts as to what your -- uh -- the State intends to go

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1 forward on?

2 MR. HAZZARD:

3 No sir.

4 It's my understanding that they do
5 not intend to proceed on the three counts of attempted
6 armed robbery.

7 THE COURT:

8 All right. Is that correct?

9 MS. LIVESAY:

10 That is correct, Your Honor.

11 THE COURT:

12 All right.

13 So we're not going forward on
14 that. But you are going forward with life without
15 parole?

16 MS. LIVESAY:

17 Yes sir.

18 THE COURT:

19 Okay. All right.

20 MR. HAZZARD:

21 Okay. At this time, Your Honor,
22 the Defense makes a motion to suppress the search warrant
23 issued in this case.

24 And actually, there were two
25 search warrants that we received some discovery

1 regarding.

2 Uh -- The basis of the motion is
3 this:

4 On the documentation that the
5 Defense received, only one of the search warrants, in the
6 "Reason" section of the affidavit in support of --

7 THE COURT:

8 Can you help me out, Mr. -- uh --
9 Hazzard, and tell me -- uh -- what the search warrants
10 were issued for?

11 What area or -- or premises was
12 sought to be searched?

13 Uh -- What was recovered?
14 Just tell me something about them.

15 MR. HAZZARD:

16 Okay, Your Honor.

17 The North Myrtle Beach Police
18 Department -- uh -- Detective Abercrombie -- requested a
19 search warrant.

20 He wanted to search Mr. Elliott's
21 1991 Toyota vehicle.

22 THE COURT:

23 All right. His vehicle; okay.

24 MR. HAZZARD:

25 Okay. He wanted -- The

1 description of the property sought indicates he was
2 looking for cell phones, tire iron, clothes, latent
3 evidence linking the vehicle to CSC armed robbery and
4 kidnapping through the arrest of Mark Alan Elliott.

5 That's what it says with regard to
6 "description of property sought."

7 THE COURT:

8 All right.

9 MR. HAZZARD:

10 The description of premises,
11 again, is with regard to the 1991 Toyota burgundy
12 vehicle.

13 Now, below that, as The Court
14 knows, there's a "Reason for the affiant's belief that
15 the property sought is on the subject premises.

16 And what it says, simply, is:

17 See appendix.

18 It doesn't indicate in any way
19 shape or form -- uh --

20 THE COURT:

21 And who issued the search warrant?

22 MR. HAZZARD:

23 One of the North Myrtle Beach City
24 Judges.

25 The copy that I was provided --

1 and again, there two search warrants -- but, it looks
2 like it says "Kerry R. Smith."

3 And there's a search warrant was
4 issued on July 1st of 2009.

5 THE COURT:

6 All right.

7 Was there -- uh -- an appendix
8 attached to it, Ms. Livesay? I mean --

9 MS. LIVESAY:

10 Your Honor, on the search warrant
11 was --

12 THE COURT:

13 What affidavit was provided for
14 the magistrate?

15 MS. LIVESAY:

16 I'm sorry, Your Honor.

17 THE COURT:

18 What was provided to the
19 magistrate?

20 MS. LIVESAY:

21 Uh -- The officer provided the
22 affidavit, Your Honor, as well as the search warrant, as
23 well as the return.

24 Uh -- From my understanding,

25 Detective Abercrombie provided the magistrate with this

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1 information presenting the probable cause for the
2 warrant.

3 THE COURT:

4 And -- And what information is
5 that?

6 MS. LIVESAY:

7 I'm sorry, Your Honor.

8 THE COURT:

9 What information?

10 MS. LIVESAY:

11 He basically included the -- uh --
12 entire incident, Your Honor.

13 There's six paragraphs, including
14 from the time of the incident report that was taken from
15 the victim until the time that included pulling over the
16 defendant until after the -- uh -- the actual interview
17 with all the witnesses and the defendant.

18 THE COURT:

19 All right. Is -- Is --

20 MS. LIVESAY:

21 So he included all of those.

22 THE COURT:

23 Okay. Is -- Are you telling me
24 that that is Appendix A, or what was attached to the
25 warrants?

1 MS. LIVESAY:

2 I'm telling you that was his PC
3 for searching the car. It was after talking with the
4 witnesses and the defendant and collecting there stories,
5 he then had probable cause to search the vehicle.

6 THE COURT:

7 Well, let's hear from him. And --
8 Is her here?

9 MS. LIVESAY:

10 I'm sorry, Your Honor.

11 THE COURT:

12 Is -- Isn't Mr. Abercrombie here?

13 MS. LIVESAY:

14 Yes sir. He's right here.

15 THE COURT:

16 Well, why don't we hear from him
17 and see whether or not that's what he provided to the
18 magistrate.

19 MS. LIVESAY:

20 Okay. Let -- Can I call him to
21 the stand, Your Honor?

22 THE COURT:

23 Certainly.

24 I mean, that's what Mr. Hazzard
25 wants to hear.

VOIR DIRE OF DETECTIVE ABERCROMBIE

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1 WHEREUPON: DETECTIVE ABERCROMBIE
2 WAS DULY SWORN FOR VOIR DIRE AND TESTIFIED UNDER OATH AS
3 FOLLOWS:

4 CLERK:

5 Thank you. Please be seated.

6 If you will please state your full
7 name and spell your last name?

8 WITNESS:

9 My first name is Vance -- uh --
10 last name is Abercrombie; A-b-e-r-c-r-o-m-b-i-e.

11 VOIR DIRE EXAMINATION BY MS. LIVESAY:

12 Q. And where you currently employed?

13 A. North Myrtle Beach Department of Public Safety.

14 Q. And what are your responsibilities at the North
15 Myrtle Beach Police Department?

16 A. I'm an investigator.

17 Q. And how long have you been an investigator?

18 A. Approximately 8 years -- 9 years, somewhere in
19 there.

20 Q. Okay. And what kind of training have you undergone
21 as an investigator?

22 A. I've been to -- uh -- Colombia to the Criminal
23 Justice Academy School for Investigators, and I've also
24 been to the Sirchie School for -- uh -- Crime Scene -- uh
25 -- Technology.

1 Q. Okay. Are you familiar with the case that we're
2 here today for?

3 A. I am.

4 Q. Are you the Lead Investigator on that case?

5 A. Yes, I am.

6 Q. What did your investigation entail?

7 A. Uh -- The whole -- From the very beginning?

8 Q. (Nods in the affirmative.)

9 Q. The -- uh -- It -- It started with a phone call from
10 -- uh -- the North Myrtle Beach Dispatch.

11 I was the investigator who was on
12 call that week.

13 And when -- Basically, when you're
14 on call, anything that happens after -- uh -- say five
15 o'clock in the afternoon -- uh -- that requires an
16 investigator, I would be the one called from my
17 residence.

18 MR. HAZZARD:

19 Objection.

20 Your Honor, I realize we're here
21 for a motion hearing.

22 My understanding is that for the
23 purpose of this specific motion, the issue is not with
24 regard to what he knew; it's with regard to what he
25 provided to a magistrate.

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1 MS. LIVESAY:

2 Your Honor, the issue -- I will --
3 I'll get to it, Your Honor.

4 THE COURT:

5 Okay.

6 MS. LIVESAY:

7 I will. I'll quicken it up.

8 VOIR DIRE EXAMINATION BY MS. LIVESAY CONTINUED:

9 Q. Uh -- Do you remember obtaining a search warrant?

10 A. Yes, I do.

11 Q. And -- uh -- what was the process you underwent in
12 obtaining the search warrant in this case?

13 A. Uh -- I interviewed -- uh -- the defendant -- uh --
14 victims -- uh -- officers on the scene.

15 I gathered enough evidence, and
16 presented it in an affidavit form to the judge.

17 MS. LIVESAY:

18 Okay.

19 And, Your Honor, can I mark this
20 as State's Exhibit Number 1?

21 THE COURT:

22 All right, Mr. Hazzard?

23 Are you offering it?

24 MS. LIVESAY:

25 Yes sir.

1 THE COURT:

2 Okay.

3 It'll be a Court's Exhibit; okay.

4 Mr. -- uh --

5 MR. HAZZARD:

6 I don't whether she's offering it

7 or not.

8 THE COURT:

9 She's going to have to show it to
10 you.

11

12 COURT REPORTER:

13 Your Honor, I'm marking it as
14 Court's Exhibit 2. The DVD is --

15 THE COURT:

16 Yeah. Let's do it that way.

17 COURT REPORTER:

18 -- is marked as 1.

19 THE COURT:

20 Okay. And -- And let's do it
21 that way so there won't be any question as to what's been
22 offered for these hearings and in the actual trial for
23 the jury.

24 WHEREUPON: THE AFFIDAVIT FOR
25 SEARCH WARRANT WAS MARKED BY THE COURT REPORTER AS

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1 COURT'S EXHIBIT NUMBER 2.

2 MR. HAZZARD:

3 Without objection.

4 VOIR DIRE EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. Mr. Abercrombie, do you recognize what I'm showing
6 you now?

7 A. Yes, I do.

8 Q. And what is that?

9 A. It's the -- uh -- affidavit attached to the search
10 warrant.

11 Q. Okay. And -- uh -- was that affidavit presented to
12 the magistrate?

13 A. Yes it was.

14 Q. And after that magistrate read the -- uh --
15 affidavit, did they sign a warrant?

16 A. That's correct. They signed a warrant.

17 MS. LIVESAY:

18 Your Honor, at this time, can I
19 enter into States Exhibit Number 3?

20 THE COURT:

21 Mr. Hazzard?

22 MR. HAZZARD:

23 I have no objection to her
24 entering whatever she wants to --

25 THE COURT:

1 Just tell me what you got.

2 MS. LIVESAY:

3 I'm just going to say that this is
4 the warrant that --

5 THE COURT:

6 Okay.

7 MS. LIVESAY:

8 -- he received that --

9 THE COURT:

10 The search warrant; all right.

11 MS. LIVESAY:

12 Okay.

13 THE COURT:

14 How about handing me the
15 affidavit, then --

16 MS. LIVESAY:

17 I will, Your Honor.

18 THE COURT:

19 -- since it's in.

20 MS. LIVESAY:

21 It has my markings on it.

22 THE COURT:

23 Okay.

24 VOIR DIRE EXAMINATION BY MS. LIVESAY CONTINUED:

25 Q. Your Honor, the State desires that -- uh -- that

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1 affidavit be found as all that was required from Dr. --
2 uh -- Detective Abercrombie in order to get the search
3 warrant and --

4 THE COURT:

5 All right. Let's let Mr. Hazzard
6 cross-examine him.

7 MR. HAZZARD:

8 Thank you, sir.

9 VOIR DIRE EXAMINATION BY MR. HAZZARD:

10 Q. Detective Abercrombie, you indicated that that
11 document there, that I believe is listed as Court's
12 Exhibit Number 2, was the affidavit that was provided to
13 the magistrate.

14 Is that correct, sir?

15 A. Yes sir.

16 Q. Okay. And who was the magistrate or City Judge on
17 that day?

18 A. I -- I don't recall. Uh -- If I can take a look at
19 the -- uh -- document, I can tell you; but I don't
20 recall.

21 We have several there that it
22 could have been.

23 Q. Okay. Well, did the -- Is there somewhere on that
24 document that it indicates that the City Judge --

25 A. Uh -- No sir, that --

1 Q. -- saw that -- saw that statement?

2 A. This is -- uh -- would've been attached to the
3 search warrant.

4 Q. It would have been attached to it?

5 A. Yes sir.

6 Q. Attached in what fashion, sir?

7 A. Uh -- Probably a stapler.

8 Q. Probably a stapler?

9 A. Either that or sometimes I use a paper clip.

10 Q. Okay. If you would please -- And this is the -- Is
11 this the original?

12 A. Uh -- No sir.

13 Q. Okay. Where is the original, sir?

14 A. I do not know.

15 Q. You don't know?

16 A. Correct. It would have been turned over after the
17 return. And then the judge -- The -- uh -- search
18 warrant's handed back to the judge and that's where it
19 stays; with the judge.

20 Q. Uh-huh. So, whoever the judge is, then, would
21 have the original?

22 A. Correct.

23 Q. Okay. All right. Now you refer to this document
24 -- uh -- Court's Exhibit Number 2 as an evident; is that
25 correct?

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1 A. Yes sir.

2 Q. I find that strikingly strange. Because in my
3 possession, I have a document that says "Affidavit" with
4 your name and signature, and a signature of a judge or
5 what purports to be a signature of a judge.

6 Please review this document and
7 see if you're familiar with it?

8 A. Yes sir, I'm familiar with it.

9 Q. Okay. And what is that document, sir?

10 A. Uh -- Down here on the bottom -- I think the
11 confusion is, it says:

12 See Appendix.

13 And I think we were calling this a
14 affidavit; but technically this is the appendix that was
15 attached to the warrant affidavit.

16 Q. Okay. Now when you say "this" is the "Appendix,"
17 what are you referring to, sir?

18 A. Uh -- State's Exhibit 2, I believe, is what this is.

19 Q. Court's Exhibit Number 2?

20 A. Yes sir.

21 Q. Okay. So anywhere on this document, Court's
22 Exhibit Number 2, does it have written on it: "Appendix?"

23 A. No sir.

24 Q. Okay. Does it have any marking, or a dictation, or
25 anything on there, that would indicate that the

1 magistrate or judge who was responsible for issuing the
2 search warrant ever saw this document listed as Court's
3 Number 2?

4 A. Well, they would have had to have seen it, because
5 they wouldn't have signed it without that bottom portion
6 on the search warrant being completed.

7 Q. Okay, sir. I appreciate what you're saying.

8 My question is:

9 Is there anything on this document
10 that you have brought to court today, any signature, any
11 notation, or ask you marking, that indicates that any
12 judge ever saw this?

13 A. No sir.

14 Q. All right. And actually, this document has changed
15 and mutated over time; has it not?

16 A. Uh -- There's some writing on it now; yes sir.

17 Q. Okay. And how many paragraphs are on that
18 particular document, sir?

19 A. Six.

20 Q. Okay. Six. And there are other copies of this
21 document that has as many as nine paragraphs, correct?

22 A. Uh -- I'm not sure, sir.

23 MR. HAZZARD:

24 The Court's indulgence, Your
25 Honor?

1 MS. LIVESAY:

2 May I see it, Your Honor?

3 MR. HAZZARD:

4 It's what you provided me.

5 MS. LIVESAY:

6 Okay.

7 VOIR DIRE EXAMINATION BY MR. HAZZARD CONTINUED:

8 Q. Please take a look at that three page document, and
9 tell me if Pages 1 and 2 are the same as Court's Exhibit
10 Number 2 with regard to the first six paragraphs?

11 A. Yes sir. This is -- uh -- the appendix that goes to
12 the second search warrant that you mentioned earlier that
13 -- uh -- was -- uh -- retained to get -- uh -- DNA
14 evidence.

15 Q. And so what --

16 A. And base --

17 Q. -- is that --

18 A. -- base -- basically what this is -- uh -- took the
19 very same document that's saved on a Word document and
20 added extra lines rather than type the whole thing all
21 over thing all again --

22 Q. Uh-huh.

23 A. -- to mark the -- uh -- continued probable cause for
24 the -- uh -- search warrant for DNA evidence.

25 Q. Uh-huh. And anywhere on this other three page

1 document, that has nine paragraphs, does it indicate that
2 it's an appendix or the basis for probable cause or
3 anything of that nature?

4 A. It's not marked as that way; no sir.

5 Q. Okay. Now, you did indicate that are two search
6 warrants.

7 What happened to that -- Is the --
8 what you refer to as the appendix -- was that affixed or
9 allegedly affixed to the first search warrant or the
10 second search warrant?

11 A. First search warrant.

12 Q. Okay. And what happened to the second search
13 warrant, sir?

14 A. Uh -- Can I take a look at the search warrants so I
15 can tell?

16 MR. HAZZARD:

17 Do you have the originals here?

18 MS. LIVESAY:

19 I do not have a copy, actually,
20 with me.

21 That -- uh -- I don't have a copy
22 with me, Your Honor, because that search warrant was to
23 take DNA from a gentleman that ended up consenting; so we
24 never used the appendix -- or we never got a -- we never
25 needed to pursue a search warrant.

1 THE COURT:

2 Okay.

3 MR. HAZZARD:

4 No. The search warrant I'm
5 referring to is dated June the 30th, 2009, and what has
6 been provided to me by the State in this case, is four
7 pages of documentation, including a face page, stating:

8 Search warrant dated June 30th,
9 2009.

10 It says: Officer Abercrombie.

11 And then it has a second page
12 dealing with description of premises.

13 And then a third page that says:

14 Affidavit, description of property
15 sought; description of premises again; and the reason for
16 affiant's belief; and then a fourth page for a return.

17 And again, the face page on this
18 one is dated June 30th of 2009.

19 MS. LIVESAY:

20 Your Honor, can I get a look at
21 that search warrant?

22 THE COURT:

23 Who is the affidavit for Mr. -- uh
24 -- Hazzard?

25 MR. HAZZARD:

1 Who is it for?

2 THE COURT:

3 Who is the person that --

4 MR. HAZZARD:

5 Again, they ask to search the 1991
6 Toyota 4-door vehicle.

7 THE COURT:

8 Okay. I was thinking you were
9 talking about -- about a DNA -- uh --

10 MR. HAZZARD:

11 No sir.

12 THE COURT:

13 Uh --

14 MR. HAZZARD:

15 No sir.

16 THE COURT:

17 I was a little confused; okay.

18 MR. HAZZARD:

19 Okay.

20 THE COURT:

21 So you're talking about a second
22 affidavit or a search warrant --

23 MR. HAZZARD:

24 Yes sir; with a different --

25 THE COURT:

1 -- for the vehicle?

2 Okay.

3 All right, Mr. Hazzard, show it to
4 him and ask him what it is.

5 VOIR DIRE EXAMINATION BY MR. HAZZARD CONTINUED:

6 Q. I show you this document and I ask you what it is,
7 if you know?

8 A. (Hesitates.)

9 MS. LIVESAY:

10 Your Honor, just for The Court's
11 clarification, there's no signature of any magistrate on
12 that search warrant.

13 WITNESS:

14 This is just a extra copy that was
15 made. Uh -- This wasn't even served.

16 I didn't sign it. The judge
17 didn't sign it.

18 I sometimes make a couple of
19 copies of things just in case. But this was just a copy.

20 It was never -- never turned over
21 to a judge.

22 I never signed it. It was just --
23 uh -- a --

24 VOIR DIRE EXAMINATION BY MR. HAZZARD CONTINUED:

25 Q. What is the date on that document, sir?

1 A. Uh -- The 30th.

2 Q. The 30th of what month and what year, sir?

3 A. Uh -- June 30th, 2009.

4 Q. Okay. And this document; in it, you request the
5 right to search Mr. Elliott's vehicle; correct?

6 A. Correct.

7 Q. Okay. Now, what was the date on the search warrant
8 that this unnamed appendix, you refer to, was attached to
9 it, sir?

10 A. I believe it was the 29th.

11 Q. You believe it was the 29th, or you believe it was
12 July 1st, sir?

13 A. You'll have to show me a copy of it because I don't
14 remember.

15 Q. I hand you a three page document. The face sheet
16 says:

17 Search warrant, State of South
18 Carolina, County of Horry, dated July 1st, 2009.

19 Officer is Abercrombie.

20 Uh -- Contains search warrant and
21 affidavit.

22 I ask you to review this three
23 page document and tell me if you recognize it, sir?

24 A. Yes, I do.

25 Q. Okay. Now, your testimony here, today, has been:

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1 This so-called appendix -- This
2 unnamed appendix that is listed as Court's Exhibit Number
3 2 --

4 A. Uh-huh.

5 Q. -- was attached to a search warrant dated the 29th
6 of June 2009.

7 Is that correct?

8 A. Uh -- I don't recall the exact date. Uh -- That's
9 about right.

10 It should be on the 29th, I
11 believe.

12 Q. Okay.

13 A. Later on that --

14 Q. All right.

15 A. -- Later on that afternoon.

16 Q. Well, do you have in your possession, a copy of a
17 search warrant dated June 29th?

18 The ones I've been provided are
19 dated June 30th and July 1st.

20 A. Uh -- No sir.

21 Q. Okay. But you're saying you're saying a search
22 warrant dated June 29th, and what's Solicitor's --
23 Court's Exhibit Number 2 is what was provided to a
24 magistrate or a sitting judge for the purpose of getting
25 the right to search Mr. Elliott's car; correct?

1 A. Correct.

2 MS. LIVESAY:

3 Can ask him some questions, Your
4 Honor.

5 THE COURT:

6 If Mr. Hazzard's done.

7 MR. HAZZARD:

8 Nothing further at this moment,
9 Your Honor.

10 THE COURT:

11 Okay. All right.

12 MS. LIVESAY:

13 Your Honor, if I may, I need to
14 introduce this as a Court's Exhibit.

15 Mark that as Court's Exhibit
16 Number 3, please -- State's Exhibit.

17 COURT REPORTER:

18 Court's?

19 MS. LIVESAY:

20 Yes.

21 COURT REPORTER:

22 I believe these are all Court's
23 right now.

24 WHEREUPON: A SEARCH WARRANT WAS

25 MARKED BY THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 3.

1 VOIR DIRE EXAMINATION BY MS. LIVESAY:

2 Q. Detective Abercrombie --

3 MR. HAZZARD:

4 Your Honor, might I see that
5 document before she starts questioning him about it?

6 MS. LIVESAY:

7 It's the July 1st, 2009 that was
8 provided you in discovery.

9 MS. LIVESAY:

10 Thank you, ma'am.

11 VOIR DIRE EXAMINATION BY MS. LIVESAY CONTINUED:

12 Q. Detective Abercrombie, do you recognize what I'm
13 showing you there?

14 A. Yes I do.

15 Q. And what is it?

16 A. It's a search warrant.

17 Q. And who -- who signed that search warrant that's
18 marked Court's Exhibit Number 3?

19 A. Uh -- I did, along with -- uh -- Judge Terry Smith.

20 Q. I'm sorry; what was the judge's name?

21 A. Terry Smith.

22 Q. And who is Judge Smith?

23 A. Uh -- Judge Smith is one of the associate judges
24 there for the City of North Myrtle Beach.

25 Q. Okay. And what did you present to Judge Smith in

1 order to get this search warrant?

2 A. Uh -- The affidavit or appendix right here.

3 Q. Okay. And did any North Myrtle Beach Judge sign
4 any other search warrant in this case?

5 A. No.

6 Q. Okay. Did you present a search warrant to any
7 judge in reference to any evidence on this case, other
8 than the one in front of you?

9 A. No, I did not.

10 Q. Okay. The prior search warrant that Mr. Hazzard
11 showed you, were you familiar with that?

12 A. A little bit; yes.

13 Q. Okay. Did that have your signature on it?

14 A. No, it did not.

15 Q. Did it have a judge's signature on it?

16 A. No, it did not.

17 Q. Okay. When you searched the defendant's car, what
18 search warrant did you use to search that vehicle?

19 A. This one right here.

20 Q. Okay. And who is that signed by?

21 A. Uh -- Judge Terry Smith -- uh -- my signature; and
22 the return was signed by Judge Leghorn (? phonetic).

23 THE COURT:

24 All right. But let's get this
25 one introduced; okay?

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1 MS. LIVESAY:

2 Thank Your Honor.

3 THE COURT:

4 And that's July the 1st of 2009;

5 all right.

6 MS. LIVESAY:

7 2009; yes sir.

8 THE COURT:

9 All right.

10 That's not the one that's in

11 already?

12 MS. LIVESAY:

13 No -- No sir. I don't believe
14 there is one in already in a Court's Exhibit. This is
15 the first one.

16 THE COURT:

17 Okay.

18 MS. LIVESAY:

19 And this is the affidavit that was
20 used to get this warrant.

21 THE COURT:

22 Okay.

23 Mr. Abercrombie, let me -- uh --
24 or Investigator Abercrombie -- let me be certain.

25 That is the -- July 1 is the

1 search warrant that was issued, and the search warrant
2 upon -- warrant upon which a return was made?

3 WITNESS:

4 Yes sir.

5 THE COURT:

6 Okay.

7 All right, Mr. Hazzard.

8 MR. HAZZARD:

9 Thank you.

10 VOIR DIRE EXAMINATION BY MR. HAZZARD CONTINUED:

11 Q. I'm a little confused, because --

12 THE COURT:

13 What about the introduction of
14 this? You have any objection?

15 MR. HAZZARD:

16 No sir. Okay.

17 All right, without objection.

18 VOIR DIRE EXAMINATION BY MR. HAZZARD CONTINUED:

19 Q. I'm a little confused. Your testimony under oath
20 here is that:

21 This appendix -- uh -- that is
22 unsigned by your or anyone else -- undated -- was
23 attached to a search warrant dated June 29th.

24 Now, if that is the case --

25 A. Uh-huh.

1 Q. -- then obviously it could not have been provided on
2 a search warrant dated July 1st, now, could it?

3 A. Can I take a look at that document again?

4 THE COURT:

5 Yes.

6 WITNESS:

7 That's correct. And the return
8 was dated on July 1st -- or July 3rd, excuse me.

9 So this would be for the July 1st.

10 That was when the vehicle was
11 searched.

12 VOIR DIRE EXAMINATION BY MR. HAZZARD CONTINUED:

13 Q. Well, I know the one in front of you is from July
14 1st.

15 A. Yes sir.

16 Q. But the testimony was that:

17 The appendix, as you refer to it,
18 was attached to a search warrant dated June 29th.

19 I asked you very specifically.

20 Because we do have two search --
21 we've had at least two search warrant here; correct?

22 A. Yes sir.

23 Q. July 30th --

24 MS. LIVESAY:

25 Your Honor, if I may, we do not

1 have two search warrants. One is not signed.

2 A search warrant doesn't give you
3 any power until it has the signature of a magistrate.

4 We only have one search warrant
5 that is signed by a magistrate.

6 THE COURT:

7 I understand that

8 MS. LIVESAY:

9 Thank Your Honor.

10 VOIR DIRE EXAMINATION BY MR. HAZZARD CONTINUED:

11 Q. Okay. We have two documents that state "search
12 warrant" on their face; correct?

13 A. Yes sir.

14 Q. Okay. One is dated June 30th on its face.

15 Is that correct?

16 A. Yes sir.

17 Q. And one is dated July 1st on its face?

18 Is that --

19 A. That's correct.

20 Q. Now, after being shown those two documents, did you
21 not testify that the appendix was attached to another
22 search warrant dated the 29th?

23 A. The -- The appendix would have been attached to all
24 of them, even the subsequent search warrant for the DNA
25 evidence done much later.

2 Q. Okay.

5 Q. Okay. Okay. All right. Now, with regard to the
6 affidavit for the search warrant that is actually signed
7 by you, nowhere does that appendix form, bearing your
8 signature or the signature of the magistrate, or sitting
9 judge, who allegedly saw it.

11 A. This document here?

14 | A. That's correct.

17 | A. That's correct.

22 Is that correct?

23 | A. That's correct.

24 MR. HAZZARD:

25 All right. No further questions.

1 THE COURT:

2 All right.

3 MS. LIVESAY:

4 Nothing further, Your Honor.

5 THE COURT:

6 All right.

7 You may step down, Investigator

8 Abercrombie; thank you.

9 All right, Mr. Hazzard, and you

10 motion is?

11 MR. HAZZARD:

12 Your Honor, the motion is to
13 exclude any and all evidence seized from Mr. Elliott's
14 vehicle pursuant to any search warrant.

15 Uh -- At best, the information
16 obtained from the State regarding this matter is that
17 there were any number of search warrant documents that
18 were filled out.

19 Uh -- Mr. Abercrombie has said
20 very clearly that the appendix was attached to one dated
21 June 29th; and that that was one that he indicates that
22 was used for the purpose of searching the vehicle.

23 That is his testimony.

24 I've yet to see one dated June
25 29th.

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1 We've got a -- one that's
2 unsigned, dated June 30th; one that is signed, dated July
3 1st.

4 His testimony is:

5 It relates to one that has not
6 been presented to this Court for its review.

7 Uh -- With regard to the concept
8 of this appendix, as it were, there is no information or
9 no documentation provided to The Court that indicates
10 that this 6 paragraph document on a North Myrtle Beach
11 letterhead, that is unsigned and undated, was ever
12 actually affixed to the search warrant and affidavit and
13 the request therefor.

14 We move that any and all evidence
15 or information obtained pursuant to the search of Mr.
16 Elliott's vehicle be suppressed and excluded from the
17 trial of this case.

18 THE COURT:

19 Mr. Hazzard, isn't it clear that
20 these officers attempted to prepare -- uh -- an affidavit
21 -- or a search warrant on the 29th.

22 They actually did it on -- on July
23 the 1st.

24 The 29th document is not signed.
25 It's not completed.

1 It's -- His testimony was, it was
2 never presented to a -- a -- a Court.

3 Uh -- Thereafter on the first --
4 uh -- there was a -- uh -- search warrant prepared.

5 He makes reference to the after --
6 or to the affidavit or the six paragraph statement of the
7 facts.

8 He adopts that -- uh -- in his
9 search warrant.

10 He then -- uh -- adopts it further
11 by -- uh -- by entering the oath at the end of the -- uh
12 -- uh -- search warrant.

13 Uh -- Tell me what is not
14 sufficient about that?

15 Give me some case law.

16 MR. HAZZARD:

17 Well, I'll give you a factual
18 statement.

19 His testimony is that:

20 This appendix was attached to a
21 search warrant dated on its face June 29th of 2009.

22 THE COURT:

23 Both of them.

24 He said it was attached to both of
25 them; and even a third one later, that it was -- the one

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1 that was used for DNA.

2 MR. HAZZARD:

3 And see -- And the problem we have
4 there --

5 THE COURT:

6 And we got a search warrant that
7 was never submitted.

8 So what?

9 It was never submitted.

10 We don't even have to talk about
11 the sufficiency of a -- of an affidavit in that warrant.

12 It was never submitted.

13 There was never any evidence --
14 evidence gathered as a result of -- There was never a
15 search that was completed as a result of that June the
16 29th search warrant.

17 We're talking about the July 1st
18 search warrant; the one upon which the return was made.

19 That's the search warrant upon
20 which the search was -- was conducted.

21 You know, and I've looked at the
22 affidavit.

23 The affidavit certainly contains
24 -- uh -- sufficient information to justify the -- the --
25 uh -- the issuance of the search warrant.

1 And as a matter of fact, you've
2 not even challenged the sufficiency of that information
3 that's contained in that affidavit.

4 I find that this is clearly --
5 clearly -- uh -- an issue -- uh -- upon -- uh -- probably
6 cause and -- uh -- uh -- legal justification by the
7 magistrate.

8 Uh -- I'm going to allow the
9 results of that search warrant in.

10 MR. HAZZARD:

11 Might I be heard very briefly,
12 Your Honor?

13 THE COURT:

14 Certainly.

15 MR. HAZZARD:

16 His testimony, as I recall it, is
17 that:

18 He obtained a search warrant dated
19 June 29th; and that is what he used to search the
20 vehicle.

21 THE COURT:

22 He very clearly said that that was
23 not submitted.

24 MR. HAZZARD:

25 No. He submitted that the one

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1 that dated 30th wasn't submitted.

2 THE COURT:

3 Well, he --

4 MR. HAZZARD:

5 He testified to three search
6 warrants; the 29th, and 30th, and the 1st.

7 And his testimony was that the one
8 dated June 29th was the one that he use to search the
9 vehicle; the one that the appendix was affixed to; and
10 that's the one that has never been provided for --

11 THE COURT:

12 Didn't he just --

13 MR. HAZZARD:

14 -- anybody's review.

15 THE COURT:

16 -- say it on July the 1st?

17 MR. HAZZARD:

18 He said both, Your Honor.

19 THE COURT:

20 When was the search warrant
21 issued? July the 1st?

22 MR. HAZZARD:

23 He said both.

24 MS. LIVESAY:

25 Issued July 1st, Your Honor, and

1 the return was signed July 3rd.

2 And I asked him on the stand if
3 that was the -- uh -- signature signed copy; and he said:
4 Yes.

5 And asked him was that the search
6 warrant you used to search the car; and he said: Yes.

7 THE COURT:

8 Let me --

9 MR. HAZZARD:

10 Well both of us have asked him if
11 -- what search warrant was used to search the car; and
12 he's give two separate answers --

13 THE COURT:

14 Well, I --

15 MR. HAZZARD:

16 -- for two different dates. He
17 might have meant --

18 THE COURT:

19 -- I -- I know which one he meant.
20 I know what the -- what the record reflects.

21 I'm going to allow it.

22 I think it was probably issued.

23 And it was the July one search
24 warrant.

25 And that was one upon which the

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1 return was made and the search warrant was conducted.

2 His testimony's clear as to that.

3 Okay.

4 MS. LIVESAY:

5 Thank Your Honor.

6 THE COURT:

7 Let's move on.

8 MR. HAZZARD:

9 Well, Your Honor, the Defense,
10 based on Blockburger decision moves that the State has to
11 elect between the charges of criminal sexual conduct
12 first-degree and criminal sexual conduct with a minor
13 second-degree.

14 Uh -- Obviously the allegations --
15 or the charges -- are based on one set of alleged
16 actions, or one alleged course of conduct.

17 And we move that it is improper
18 for him to be charged twice for the same offense.

19 THE COURT:

20 All right.

21 Tell me about that, Ms. -- uh --

22 MS. LIVESAY:

23 Your Honor -- uh -- Blockburger --

24 THE COURT:

25 -- Livesay?

1 MS. LIVESAY:

2 -- says that -- uh -- if the two
3 crimes -- if the elements of the same for the two crimes,
4 then -- then you cannot bring both charges.

5 THE COURT:

6 Right.

7 MS. LIVESAY:

8 However, CSC First, in this case,
9 is met through the kidnapping -- that he was indicted for
10 kidnapping. That's how we got to CSC First.

11 CSC Second with a minor is
12 completely different elements.

13 We're looking for a sexual
14 incident between somebody -- the victim being between 14
15 and 16 and someone of an older age having sex with that
16 person.

17 In CSC Second , all I have to meet
18 is the fact that there was some sexual intercourse there.

19 That is completely different than
20 the elements I have to meet with CSC First.

21 In order for me to prove CSC First
22 to this jury, I have to prove that there was an
23 aggravating circumstance; in this case, kidnapping.

24 There's absolutely no age involved
25 in the CSC First; and there has to be an aggravating

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1 circumstance.

2 CSC Second's a completely
3 different crime. It requires no aggravating
4 circumstances; just merely the age of the victim is met
5 and the age of the defendant is met, Your Honor.

6 THE COURT:

7 All right.

8 What do you say about that, Mr. --
9 uh -- Hazzard?

10 MR. HAZZARD:

11 Well, I look at the indictments,
12 Your Honor.

13 And the indictment with regard to
14 criminal sexual conduct with a minor second degree
15 alleges that:

16 Mr. Elliott engaged in sexual
17 battery with the alleged victim.

18 I look at the indictment for
19 criminal sexual conduct first-degree. It says that:

20 Mr. Elliott did engage in sexual
21 battery with the alleged victim.

22 Now, those elements are the same.

23 Now, the prosecution wants to say
24 that:

25 They intend to prove that he is

1 guilty of criminal sexual conduct in the first degree by
2 proving a kidnapping.

3 My problem is:

4 That is something that has not
5 been proven.

6 Also, it requires that each of the
7 alleged offenses have an element totally separate and
8 distinct from the other.

9 And we submit that that is not so
10 in this case.

11 MS. LIVESAY:

12 Your Honor, I can appreciate that
13 Mr. Hazzard is looking at the indictment. But
14 Blockburger distinctly says that you have to look at the
15 elements of the crime.

16 And he's completely right. I have
17 to -- One element has to be completely distinct outside
18 of the other crimes.

19 In this case we have that. CSC
20 Fist is a completely different crime.

21 We're talking about something that
22 -- uh -- has aggravating circumstances.

23 Age is not a requirement. It's
24 not even in the elements.

25 CSC Second has nothing to do with

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1 aggravation; and it's all about the age of the victim.

2 THE COURT:

3 I mean, it -- it -- Doesn't each
4 of them contain -- uh -- an element that is distinct from
5 the other, such as CSC Second with a minor requires that
6 there be a minor.

7 CSC First does not require the
8 fact that the -- uh -- victim be a minor; just that there
9 be an aggravating circumstance such as kidnapping.

10 Uh -- Doesn't that satisfy
11 Blockburger, Mr. -- uh -- Hazzard?

12 MR. HAZZARD:

13 If The Court says it does, Your
14 Honor.

15 THE COURT:

16 All right. Well I think it does.

17 All right. Let's move on to the
18 next -- next motion.

19 MR. HAZZARD:

20 Ms. Knowles will handle the next
21 two motions on behalf of the Defense.

22 THE COURT:

23 All right, Ms. Knowles.

24 MS. KNOWLES:

25 Your Honor, it's my understanding

1 that our client made -- uh -- at least four different
2 statements to officers.

3 THE COURT:

4 Yes.

5 MS. KNOWLES:

6 We just would like to -- uh --
7 address those issues via Jackson V. Denno -- a hearing on
8 that.

9 THE COURT:

10 All right.

11 So, you are challenging the -- uh
12 -- voluntariness of the -- of the statements.

13 Is that correct?

14 MS. KNOWLES:

15 Yes sir.

16 THE COURT:

17 All right, Ms. -- uh -- Livesay,
18 that shifts the over to you, doesn't it?

19 MS. LIVESAY

20 Yes, Your Honor; and the statement
21 that she's referring to, I'm going to actually call -- uh
22 -- there appears to be 3 witnesses entailed in that
23 statement.

24 And I've also got a video --
25 video, Your Honor, that I'm going to ask The Court to

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1 mark as an exhibit and play.

2 THE COURT:

3 Okay. Well, let's hear it.

4 MS. LIVESAY:

5 Thank you.

6 Your Honor, at this time, the
7 State calls Sergeant Causey to the stand.

8 WHEREUPON: RUSSELL CAUSEY WAS
9 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

10 CLERK:

11 Thank you. Please be seated.
12 Please state your full name; and spell your last name.

13 WITNESS:

14 Russell Causey; C-a-u-s-e-y.

15 VOIR DIRE EXAMINATION BY MS. LIVESAY:

16 Q. Mr. Causey where are you currently employed?

17 A. The North Myrtle Beach Department of Public Safety.

18 Q. About how long have you been employed there?

19 A. About 13 and a half years.

20 Q. Okay. And what kind of training have you undergone
21 with the North Myrtle Beach Police Department?

22 A. The certification for a basic police officer at the
23 Academy in Columbia, as well as I've gone back to the
24 Academy for several classes including a basic detective
25 class and the Sirchie Class in North Carolina for

1 evidence collection.

2 Q. Okay. And what are your current responsibilities
3 in North Myrtle Beach?

4 A. Investigations.

5 Q. Okay. What were your responsibilities on or around
6 the morning of June 29th of 2009?

7 A. I was on road patrol.

8 Q. You were on road patrol?

9 A. Right.

10 Q. What area where you patrolling?

11 A. The north end of North Myrtle Beach --

12 Q. Okay.

13 A. -- which consisted of 11th Avenue North to the North
14 City Limits.

15 Q. Okay. And is that the area you normally patrol?

16 A. It varies from shift to shift.

17 Q. Okay. And what time of night did you go on that
18 night -- did you start your shift?

19 A. It was either 6 -- uh -- PM or 7 PM.

20 Q. Okay. From the night before?

21 A. Yes ma'am.

22 Q. Okay. And that night, did you come across Mark
23 Elliott, the defendant in this case?

24 A. Yes ma'am, I did.

25 Q. Okay. Tell the judge how you came across the

1 defendant.

2 A. It was -- uh -- Somewhere between 3:30 and 4 AM that
3 morning of the 29th, we received a BOLO in reference to
4 an incident that occurred in the 1900 block, I believe
5 it's Hillside drive.

6 Uh -- The suspect information that
7 was given out was that it was a black male wearing a
8 white tee shirt tank top style, dark pants, and driving
9 and late '80s -- early '90s model -- red Toyota Camry.

10 I -- After the BOLO come out, I
11 positioned myself at the North city limits out on Highway
12 17.

13 Shortly thereafter -- I'm not sure
14 of the -- the exact time frame -- a car matching that
15 description, along with an Horry County Police Officer,
16 was northbound on Highway 17.

17 Uh -- Just a few minutes -- a
18 minute or so after they passed by -- I received a call
19 from our dispatch center stating that a Horry County
20 Officer was behind the -- a vehicle matching the
21 description that was used in the crime on Hillside Drive,
22 and was asking for assistance in stopping that vehicle.

23 As I got pulled out onto 17 and
24 actually caught up to them, we were pulling into the BP
25 Station on Highway 9, at which time the burgundy car

1 stopped.

2 There was two County patrol cars
3 behind it, as well as myself.

4 When the car stopped, a black male
5 exited the vehicle and ran.

6 Uh -- I gave short chase to the
7 black male that had ran from the vehicle that was wearing
8 a white tank top style tee shirt and dark-colored shorts
9 that was matching the description that was given in the
10 BOLO.

11 And he was actually stopped and
12 apprehended in the parking lot of Billy the Kid's
13 Restaurant just across Sea Mountain Highway.

14 Q. Okay. Now did you pursue the defendant --

15 A. Yes ma'am, I did.

16 Q. -- when he jumped out of the car?

17 A. Yes ma'am, I did.

18 Q. Okay. And the car that you had, did it have a
19 video camera running?

20 A. Yes ma'am, it did.

21 Q. Okay. Does that video capture both audio and
22 visual?

23 A. Yes ma'am.

24 Q. When did that video come on?

25 A. It come on as soon as I activated my emergency light

1 switch -- was actually inside the city limits of North
2 Myrtle Beach.

3 Q. Okay. So it came on prior -- before even came in
4 contact with this defendant?

5 A. Yes ma'am.

6 Q. Okay. So you've got the lights on, the video is
7 running and the audio?

8 A. Yes ma'am.

9 Q. Okay. And you say you saw him at the BP on what
10 street?

11 A. On Highway 9 --

12 Q. Okay. And how --

13 A. -- just in the fork of the road.

14 Q. How many other officers are there?

15 A. There was two county offices that was pulled -- that
16 actually pulled in behind the suspect vehicle. And a
17 third County officer was coming up to that location as
18 well.

19 Q. Okay. And -- uh -- did you pursue him in your car,
20 or on foot?

21 A. Half the way was in my patrol car. He ran behind
22 the store.

23 I was in front so I cut the
24 parking lot in front of the store to try to head him off
25 on the opposite end of the -- the parking lot.

1 Q. Okay. And -- uh -- did you catch up to him?

2 A. Yes ma'am, eventually.

3 Q. Okay. And were you able to detain him?

4 A. Yes ma'am, he (sic) was.

5 Q. Okay. And was all of this on your audio and visual
6 camera running?

7 A. Yes ma'am, it was.

8 Q. Okay. And when you say "detain him," was the
9 defendant ever put in handcuffs?

10 A. Yes ma'am, by Horry County Officers.

11 Q. Okay. And -- uh -- are you familiar with the
12 constitutional right of the Miranda Warnings?

13 A. Yes ma'am; I am.

14 Q. Okay. And did you read this defendant his Miranda
15 Warnings that night?

16 A. Yes ma'am, I did.

17 Q. Okay. And -- uh -- did -- Is there a card you read
18 off, or did you do it from memory?

19 A. Uh -- I always -- Ever since I started my career in
20 law enforcement, I've kept a Miranda Card in my pocket.
21 And that's the card I read from.

22 Q. Okay. And what does that card say? Read it to
23 The Court.

24 A. It says:

25 Suspects Rights, Miranda Warnings.

1 You have the right to remain
2 silent.

3 Anything you say can and will be
4 used against you in a court of law.

5 You have a right to talk to an
6 attorney, and have him or her present with you while
7 you're being questioned.

8 If you cannot avoid to hire an
9 attorney, one will be appointed to represent you before
10 any questioning if you wish.

11 You can decide at any time to
12 exercise these rights and not answer any questions or
13 make any statements.

14 Do you understand each of these
15 rights I have explained to you?

16 Having these rights in mind, do
17 you wish to talk to us now?

18 MS. LIVESAY:

19 Okay.

20 And Your Honor, can I introduce
21 the card as Court's -- or State's Exhibit Number 4?

22 THE COURT:

23 Yes ma'am.

24 COURT REPORTER:

25 Do you want Court's or State's,

1 Your Honor?

2 We're still in Jackson Denno --

3 THE COURT:

4 Court's.

5 MS. LIVESAY:

6 Thank you.

7 VOIR DIRE EXAMINATION BY MS. LIVESAY CONTINUED:

8 Q. Is that the same card you had on you that night?

9 COURT REPORTER:

10 Whoa, wait. Wait a minute.

11 MS. LIVESAY:

12 Okay.

13 MR. HAZZARD:

14 The Court's indulgence, Your
15 Honor.

16 Do you -- Sir, do you know --

17 COURT REPORTER:

18 Wait -- Wait a minute. Wait a
19 minute. I'm marking the exhibit, please.

20 WITNESS:

21 I can't hear you, sir.

22 MR. HAZZARD:

23 Did you have another --

24 COURT REPORTER:

25 Wait a minute. I'm marking this

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1 exhibit, please.

2 MR. HAZZARD:

3 Okay. (Chuckles.) Okay.

4 WHEREUPON: THE MIRANDA WARNING

5 CARD WAS MARKED BY THE COURT REPORTER AS COURT'S EXHIBIT.

6 4.

7 MS. LIVESAY:

8 Are you ready?

9 COURT REPORTER:

10 (Nods in the affirmative.)

11 VOIR DIRE EXAMINATION BY MS. LIVESAY CONTINUED:

12 Q. Have you got a replacement card for this?

13 A. No ma'am; I don't.

14 Q. Okay. We'll put a photocopy in so you can keep

15 that one.

16 A. Thank you.

17 Q. Is that the card you keep always?

18 A. Yes ma'am; it is.

19 Q. Is that the cards you read off at night?

20 A. Yes ma'am; it is.

21 Q. Okay. Prior to reading the defendant his Miranda

22 Rights, did you ask him any questions?

23 A. No ma'am; I did not.

24 Q. Okay. Did anybody from North Myrtle Beach ask him

25 any questions?

1 A. No ma'am, they did not.

2 Q. To your knowledge, were you out there the entire
3 time?

4 A. Yes ma'am, it was.

5 Q. Did anybody ask him any questions?

6 Q. No ma'am, other than -- The only question he was
7 asked was his name.

8 Q. Okay. And that was prior to the Miranda Warnings?

9 A. Yes ma'am.

10 Q. Okay. Uh -- Did you read him Miranda warnings?

11 A. Yes ma'am, I did.

12 Q. Okay. Now have you seen the videotape?

13 A. Yes ma'am.

14 Q. Okay. And is that an accurate depiction of what
15 happened that night?

16 A. Yes ma'am; it is.

17 Q. Okay. Now, when -- You said you read off that
18 Miranda Card that night. Is that right?

19 A. Yes ma'am.

20 Q. And does the video show that?

21 A. Yes ma'am.

22 Q. What does it show?

23 A. My car was left out in Sea Mountain Highway.

24 After he was detained, I went and
25 got my patrol car out of the middle of the street and

1 pulled it into the parking lot to where the video was
2 heading straight toward everything that was going on.

3 Uh -- The video depicts me going
4 up to the County officers, asking them if they had
5 obtained the gentleman's name yet?

6 Uh -- It shows me reaching in my
7 right shirt front pocket, which is where I always keep my
8 little black case that my Miranda Card's in.

9 I walked around behind the
10 gentleman's feet.

11 He was still on the ground.

12 I come up to his head. I kneeled
13 down at his head to where the video is facing back
14 towards both of us.

15 Q. Okay.

16 A. So I hold the card, I believe it's in my left hand
17 and read straight from the card from what I read to
18 The Court.

19 Q. Okay. Uh -- Now did you -- Does he appear to
20 understand his rights?

21 A. Yes ma'am, he did.

22 Q. Okay. Now does his -- Did you ask him any
23 questions after you Mirandized him?

24 A. No ma'am; I did not.

25 Q. Okay. Did anybody out there ask him any questions?

1 A. At that particular moment, not to my knowledge.

2 Q. Okay. Uh -- Does he appear to be coherent at that
3 time?

4 A. Yes ma'am, he did.

5 Q. Okay. Now did he appear to understand what was
6 going on?

7 A. Yes ma'am, he did.

8 Q. Okay. While he was out there, did you threaten or
9 coerce him in any way?

10 A. No ma'am, I did not.

11 Q. Okay. To your knowledge, did he appear -- uh --
12 mentally or physically impaired to the point he couldn't
13 comprehend what was going on?

14 A. No ma'am.

15 Q. Okay. To your knowledge, did he appear impaired
16 from any alcohol or drugs to the point he could not
17 acknowledge what was going on?

18 A. No ma'am.

19 Q. Okay. Uh -- What about his appearance that night
20 symbolized to you that he was coherent and understood
21 what was going on?

22 A. When I asked him if he understood his rights, he
23 clearly answered: Yes.

24 I asked him if he was willing to
25 talk to us; and he clearly answered: Yes.

1 Q. Okay. And is that on the tape?

2 A. Yes ma'am.

3 Q. Okay. Now is there anything else -- Did you -- Did
4 anybody ask him any questions prior to you putting him in
5 your vehicle?

6 A. That I can't remember.

7 I know there was discussion
8 between the officers inquiring -- uh -- as to the
9 whereabouts of the female that was the victim in the
10 incident.

11 Uh -- One of the County officers
12 indicated that he thought that he saw her exiting the
13 vehicle.

14 Uh -- But as far as direct
15 questions to him at that time, there had not been any.

16 Q. Okay. But your knowledge, nobody started asking
17 him any questions until you read him Miranda?

18 A. It was several minutes after he was given Miranda
19 before anybody asked him anything.

20 Q. Okay. Uh -- Now was your tape player going the
21 entire time?

22 A. Yes ma'am, it was.

23 Q. Okay. And on the video, does the sound pick up you
24 reading him Miranda?

25 A. Yes ma'am, it does.

1 Q. Okay. Officer Causey do you recognize what I'm
2 showing you know? It's already been marked as State's
3 Exhibit Number 1. (sic) (Court's Exhibit Number 1).

4 A. Yes ma'am; I do.

5 Q. Okay. And what is it?

6 A. That's a video copy that our records division
7 whenever -- They'll burn the actual dash cam video onto a
8 CD disc.

9 Q. Okay.

10 A. And that's a copy that -- that is given out from the
11 records division.

12 Q. Now, have you watched this video?

13 A. Yes ma'am.

14 Q. Are you on this video?

15 A. Yes ma'am.

16 Q. Okay. And is the copy from your car camera on this
17 video?

18 A. No ma'am. At the -- As far as my actual car, it was
19 disabled at the time.

20 I was driving, I think the car
21 number is 4793, which is listed to Officer Bob Rogers.

22 That's the vehicle that I was
23 operating that night.

24 Q. So this is the video that you were operating that
25 night?

1 A. Yes ma'am.

2 Q. Okay. And does this video contain the testimony
3 you just gave?

4 A. Yes ma'am.

5 Q. And does this video contain the audiovisual of you
6 Mirandizing the defendant that night?

7 A. Yes ma'am.

8 Q. And does it contain the defendant acknowledging and
9 understanding those rights?

10 A. Yes ma'am.

11 Q. Okay. And does it show him being responsive to the
12 questions he was asked, if any, after being Mirandized?

13 A. Yes ma'am.

14 Q. While he was out there and -- uh -- you had him in
15 your custody, and he had already been Mirandized, did he
16 ever ask for an attorney?

17 A. No ma'am, he did not.

18 Q. Did he ever appeared not to want to answer your
19 questions?

20 A. No ma'am, he did not.

21 Q. Did he ever initiate his right to remain silent?

22 A. No ma'am.

23 Q. Okay. Did he ever at any time ask that you stop
24 asking him questions, or any other officer, stop asking
25 him questions?

1 A. No ma'am.

2 Q. Was he responsive to the questions he was asked?

3 A. Yes ma'am.

4 Q. While you were out there, did you see any other
5 officer threaten or coerce the defendant?

6 A. No ma'am.

7 MS. LIVESAY:

8 No further questions at this time,

9 Your Honor.

10 THE COURT:

11 All right.

12 Mr. Hazzard, would you cross-ex --

13 or Ms. Knowles, would you cross-examine him now; or would
14 you like to see the video first?

15 MS. KNOWLES:

16 Uh --

17 THE COURT:

18 I'll let you do it either way.

19 MS. KNOWLES:

20 I can ask my questions now.

21 THE COURT:

22 Go ahead.

23 VOIR DIRE EXAMINATION BY MS. KNOWLES:

24 Q. Officer Causey, can you tell me -- uh -- the date
25 and place of the arrest whenever it happened?

1 A. The date was June 29th. And it was in the parking
2 lot of Billy the Kid's Restaurant.

3 The exact address, I'm not
4 familiar with.

5 Q. And -- And what time was this?

6 A. It would have been somewhere around four -- shortly
7 after 4 AM.

8 Q. So it was early morning hours?

9 A. Yes ma'am.

10 Q. And how many officers were present whenever you
11 Mirandized and questioned my client?

12 A. I know there was myself, and I think two or three
13 County officers.

14 Q. Weren't there more than just three?

15 A. That's to the best of my memory.

16 Q. And --

17 A. I know there was more officers showed -- that
18 eventually showed up on the location. But I could not
19 tell you the exact number there.

20 Q. And whenever you Mirandized my client, how was he?
21 Was he face down?

22 A. Yes ma'am.

23 Q. On pavement?

24 A. Yes ma'am.

25 Q. Was he handcuffed?

1 A. Yes ma'am.

2 Q. And they were at least three by your own account --

3 A. Yes ma'am.

4 Q. -- officers around him?

5 A. Yes ma'am.

6 Q. And you explained to him that he had the right to
7 have an attorney present, and he had the right to not
8 incriminate himself by making statements?

9 A. What I advised him is exactly what's on the Miranda
10 Card that I read for The Court.

11 Q. And did you tell them at any point what he was
12 suspected of?

13 A. No ma'am. I did not ask him any questions.

14 Q. But there was an exchange. He did make
15 incriminating statements?

16 A. I --

17 Q. Wasn't there?

18 A. I did not ask him any questions.

19 Q. So why was Miranda even given then?

20 A. As general practice for myself, for every incident
21 that I've encountered, if I arrest somebody, I --

22 Q. So he was under arrest then?

23 A. He was placed in handcuffs and detained.

24 Q. Was he under arrest?

25 A. I did not place him under arrest. He was detained.

1 Q. So --

2 A. And I read him his Miranda rights.

3 Q. Okay. What was the purpose, then, of any question
4 that you were to engage in which would trigger Miranda?

5 A. Because the vehicle that he was driving matched the
6 description of the vehicle from the BOLO.

7 The -- Mr. Elliott matched the
8 description that was given out in the BOLO, as -- as well
9 as the clothing description.

10 Q. And that BOLO was for what crime that had been
11 committed?

12 A. For the incident that Officer Wells was on --

13 MS. LIVESAY:

14 Your Honor, if I may?

15 I'm not sure what that has to do
16 with whether or not his statement was voluntary as to why
17 the BOLO was put out.

18 THE COURT:

19 Well, we don't have a jury. I'm
20 going to let her go ahead.

21 VOIR DIRE EXAMINATION BY MS. KNOWLES CONTINUED:

22 Q. Who were the two officers that were present that you
23 mentioned just a few moments ago at the time of the
24 detainment?

25 A. There was two County officers.

1 Q. You don't know their names?

2 A. No ma'am; I do not.

3 Q. Okay. And after -- uh -- Whenever this case
4 occurred, in order to apprehend my client, was there not
5 a Taser deployed?

6 A. Yes ma'am, there was.

7 Q. And was it your weapon that was deployed.

8 A. Mine was; but it would not be -- it never made
9 contact with Mr. Elliott.

10 Q. Was there any other taser --

11 A. The County --

12 Q. -- that was used?

13 A. One of the County officers did tase him; yes ma'am.

14 Q. And so he had been Tased at the time that he was
15 Mirandized and possibly could have given statements
16 against his interests?

17 A. No ma'am. He was Tased, detained, and handcuffed.

18 I walked back to Sea Mountain
19 Highway and obtained my car.

20 There had been a -- a minute or
21 two. I'm not sure of the exact time frame. But was not
22 instamatic (sic).

23 Q. But just a minute or two?

24 A. That's just -- I could not tell you a time. I never
25 looked at my watch.

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1 Q. The probes were still in him whenever you Mirandized
2 him? Is that correct?

3 A. To the best of my knowledge, yes ma'am.

4 Q. Thank you. And again, tell me the conditions that
5 existed at the time that you Mirandized him and any
6 statements that he made were given?

7 A. Whenever Mr. Elliott was Mirandized, he was laying
8 down on the ground; was handcuffed.

9 I know there was the one county
10 officer that had deployed his Taser, who was standing
11 just a foot or two from him.

12 And there was -- I think there was
13 a County officer at his foot.

14 Q. Okay.

15 A. Or down toward his feet.

16 Q. You --

17 A. And nobody was talking to him at that time.

18 I asked the County officer that
19 had the Taser if he had obtained the gentleman's name?

20 I walked around to him. And I
21 knelt down to him and read him his Miranda rights.

22 Q. So you were not -- It is your testimony that there
23 was no discussion of a girl being missing, or questions
24 asked of him about that, prior to Miranda being read?

25 A. No ma'am; not to my knowledge.

1 MS. KNOWLES:

2 Thank you. No further questions.

3 MS. LIVESAY:

4 Just a few questions, Your Honor,
5 since we've got time.

6 VOIR DIRE EXAMINATION BY MS. LIVESAY:

7 Q. Uh -- When you were in the car with the defendant,
8 did you tell him that -- uh -- other people were going to
9 be asking him questions?

10 A. Yes ma'am. I told him that -- uh --

11 Q. Did you ask him if he wanted to speak to those
12 people?

13 A. Yes ma'am.

14 Q. Did you tell him that they were officers or
15 detectives?

16 A. Detectives.

17 Q. And what was -- Did he indicate to you that he
18 wanted to speak with them?

19 A. Yes ma'am, he did.

20 Q. At any point while he was in your presence, did he
21 indicate that he did not want to talk to the police?

22 A. No ma'am, he did not.

23 Q. Okay. Now there were several officer around. Uh --
24 Would you tell The Court why these officers were there?

25 A. Because of the way that the actual incident came out

VOIR DIRE OF RUSSELL CAUSEY

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1 that there was a kidnapping -- uh -- an armed robbery --
2 uh -- with a handgun or a weapon.

3 Q. How many officers did it take to detain this
4 defendant?

5 A. The one county officer that deployed the Taser and
6 one other county officer put handcuffs on him.

7 But only one county officer
8 actually physically detained him.

9 Q. And -- uh -- were you out there when he was Tased?

10 A. Yes ma'am. I had fallen, and was in the process of
11 getting up myself.

12 Q. Okay. You tried to deploy your Taser?

13 A. Yes ma'am.

14 Q. Why was that?

15 A. Due to the nature of the call, which the individual
16 fled -- uh -- and the incident that a weapon was involved
17 with him, as well as the kidnapping.

18 Q. Okay. But when you put him in the car, did he ever
19 indicate that he wanted an attorney?

20 A. No ma'am.

21 Q. Did he ever indicate that he didn't want to speak to
22 police?

23 A. No ma'am.

24 Q. And you made it clear to him that he didn't have to
25 talk to anybody?

1 A. Yes ma'am.

2 Q. And did ask him if other officers were going to talk
3 to him? Did you -- Did you notify him that other
4 officers were going talk to him -- or going to talk to
5 him?

6 A. Yes ma'am; that a detective would probably want to
7 speak to him.

8 Q. Okay. And he did ever indicate that he did not
9 want to speak to those officers?

10 A. No ma'am.

11 Q. Okay. And in fact, when you got back in the car,
12 did you ask him again:

13 Do you remember those rights?

14 A. Yes ma'am.

15 Q. And what did he indicate?

16 A. He started to recite, "you have the right to remain
17 silent" and so forth; and he said he understood.

18 MS. LIVESAY:

19 No further questions, Your Honor,
20 for this witness.

21 THE COURT:

22 Let me ask you a question. Was he
23 -- Was he still wired up? I mean, was he still hooked up
24 to the -- uh -- Tasers when this interrogation took
25 place?

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1 WITNESS:

2 No ma'am -- or No sir.

3 The -- The probes remained in him
4 until their -- their Sergeant, the County Sergeant Larry
5 Graham arrived.

6 Then the probes were actually
7 removed from him. And EMS come to check abrasions on his
8 arms, as well as the alcohol --

9 THE COURT:

10 And -- And he was questioned --
11 questions afterwards?

12 WITNESS:

13 Yes sir.

14 THE COURT:

15 All right. Thank you..

16 MS. LIVESAY:

17 Your Honor, I don't have any
18 further questions for this officer.

19 THE COURT:

20 All right.

21 MS. KNOWLES:

22 At this time, if she wants to play
23 the video, we can do that.

24 MS. LIVESAY:

25 Actually, Your Honor, I'm

1 reserving the -- uh -- playing of the video until I call
2 the other two officers that actually did ask the -- uh --
3 defendant some questions after this officer Mirandized
4 him.

5 THE COURT:

6 Okay.

7 Step down, sir. Thank you.

8 MS. LIVESAY:

9 Thank Your Honor.

10 At this time, Your Honor, The
11 State calls Mike Baldasarre to the stand.

12 WHEREUPON: MIKE BALDASARRE WAS
13 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

14 CLERK:

15 Thank you. Please be seated.

16 State your full name; and spell your last name.

17 WITNESS:

18 My name is Michael Baldasarre.

19 That is spelled B-a-l-d-a-s-a-r-r-e.

20 VOIR DIRE EXAMINATION BY MS. LIVESAY:

21 Q. Uh -- Where you currently employed?

22 A. I'm currently employed with the City of North Beach
23 Department of Public Safety.

24 Q. About how long have you been employed there?

25 A. I am about a month shy of 17 years now.

1 Q. Okay. And what are your current responsibilities?

2 A. I'm what's called a Watch Commander. I'm supervisor
3 for a shift for uniform patrol.

4 Q. Okay. And what were your responsibilities on June
5 the 29th of 2009; that morning?

6 A. The same responsibility as Watch Commander for the
7 shift that was working that evening -- morning.

8 Q. Okay. And were you working that night?

9 A. Yes ma'am.

10 Q. Okay. And did you have an occasion to come across
11 the defendant in this case that night?

12 A. Yes ma'am; I did.

13 Q. Okay. Could you tell The Court about that?

14 A. Uh -- As previously testified, the incident was
15 called through our dispatch, and officers responded to
16 the incident -- the initial incident location.

17 Uh -- They gathered information as
18 to the description of the suspect and the suspect
19 vehicle; and that information was given out over the
20 radio.

21 A short time later, Officer
22 Causey, who was working uniform patrol at the time -- uh
23 -- advised that he had observed the vehicle, along with
24 county officers, and they had initiated a pursuit.

25 Uh -- The pursuit travel north out

1 of the city limits of North Myrtle Beach to the parking
2 lot of a gas station on Highway 9 just south of the
3 Seacoast Medical Center there.

4 The suspect then left his vehicle
5 and fled on foot, and a short foot chase had ensued.

6 And they had apprehended the
7 suspect in the parking lot of a restaurant known as Billy
8 the Kid's.

9 Uh -- When I arrived on the scene,
10 he had already been taken into custody.

11 He was still at the Billy the
12 Kid's Restaurant location.

13 I arrived at the gas station
14 location where the vehicle was at.

15 There was -- uh -- two County
16 cars, I believe, at that location -- the red suspect
17 vehicle.

18 Uh -- Nobody was around any of the
19 vehicles.

20 I stayed there at that location.

21 Officer Causey advised me by radio
22 that the scene -- that the restaurant was secured.

23 And I then advised him, as he was
24 able, to bring the suspect back to the vehicle that he
25 had been driving, along with the two county vehicles.

1 Q. And are you familiar with Miranda warnings?

2 A. Yes ma'am; I am.

3 Q. Okay. And -- uh -- did you read this defendant his
4 Miranda Warnings?

5 A. No ma'am; I did not.

6 Q. And tell The Court why you didn't.

7 A. When Officer Causey arrived back at the gas station,
8 he immediately told me that the suspect had been caught
9 after the foot pursuit; described to me the actions that
10 were taken; and advised me that he had used his
11 department issued Miranda Card to advise the suspects of
12 his right under Miranda at the scene; and that it was
13 done and captured on his in-car mobile video system.

14 Q. And when you -- Did you actually speak to the
15 defender?

16 A. I did. After speaking with Officer Causey, I moved
17 to the vehicle.

18 The defendant was in the back seat
19 of the vehicle.

20 I opened the door. Introduced
21 myself to him. And I asked him if he was advised of his
22 rights under Miranda.

23 He replied that he had been
24 advised of those rights.

25 I asked him if he understood those

1 rights. And he said that he understood the rights that
2 were read to him.

3 I asked him if he was willing to
4 speak to me; and he said that he was.

5 Q. Okay. Did he -- uh -- Did he acknowledge to you
6 that he understood his rights and wanted to talk to you?

7 A. That is correct; yes ma'am.

8 Q. At any point, did you ever threaten or coerce him?

9 Q. No ma'am; I did not.

10 Q. And when you were in his presence, did he appear
11 physically or mentally impaired to the point he could not
12 understand what was going on?

13 A. No ma'am, he did not.

14 Q. Did he appear to be under the influence of any or
15 and drugs that would impair his understanding of what was
16 going on?

17 A. No ma'am, not to me. He was not.

18 Q. Okay. Did you ask him a train of questions?

19 A. I -- I did. Uh -- I -- My --

20 Q. Was his answers responsive to your questions?

21 A. Yes ma'am, they were.

22 Q. Okay.

23 A. In fact he -- he -- uh -- responded in a -- a
24 conversive manner.

25 He was -- He was polite.

1 Uh -- It was more of a -- a
2 conversation.

3 He answered all my questions --
4 you know -- as one would in a conversation.

5 Q. Okay. And did he ever indicate to you, while you
6 were talking to him, that he wanted an attorney?

7 A. No ma'am. As -- As a matter of fact, after my
8 initial question of what had taken place that evening, he
9 completed his -- his initial statement of what happened.

10 And then, I asked him again if he
11 understood his rights again. Because I was going to
12 continue to ask him a series of questions and I wanted to
13 ensure that he knew that he could stop questioning at any
14 time.

15 And he said that he wanted to
16 cooperate.

17 And at that point, I advised him
18 of the reason that we came into contact is that the -- uh
19 -- alleged crime of kidnapping.

20 Q. Okay. Now during that time, did he ever indicate
21 that he didn't want to talk to you?

22 A. No ma'am, he did not.

23 Q. Okay. Did he ever indicate anything other than he
24 wanted to cooperate?

25 A. No ma'am. That's all he indicated.

1 Q. Okay. Did he ever indicate to you that he felt any
2 pain or discomfort while he was in the vehicle?

3 A. No ma'am, he did not.

4 Q. Did he ever -- uh -- indicate that he wanted EMS or
5 any kind of medical attention?

6 A. No ma'am. I believe his only request during the
7 time that I had contact with him was that he wished to be
8 able to smoke a cigarette.

9 Q. Okay. So he didn't appear to be any discomfort
10 whatsoever?

11 A. No ma'am, not to me.

12 Q. Okay. He never appeared injured?

13 A. No ma'am.

14 Q. Did his mental abilities ever appear to be anything
15 other than coherent of what was going on that night.

16 A. No ma'am. He answered questions directly and
17 quickly.

18 He -- uh -- was not hesitant, or
19 did not appear to actually thinking or having problems
20 answering any questions?

21 Q. Okay. Was he able to respond to your questions?

22 A. Yes ma'am, he was.

23 Q. Okay. When you were questioning him about the
24 incident that we're involved here today with, did he
25 understand that's what you were talking to him about?

1 A. Yes ma'am.

2 Q. Okay. Did he acknowledge he understood that you
3 were asking about a girl in the vehicle?

4 A. Yes ma'am. He -- uh -- He used names. He used
5 **Complaining** name. And he referred to a gentleman by the
6 name he used both **M.H.** -- **M.H.** or **M.H.** meaning to say
7 a single person.

8 Q. Okay. So he was very coherent and very under --
9 understood why you were talking to him and what you were
10 talking to him about?

11 A. Yes ma'am, he did.

12 Q. Okay. Did he ever question you as to what you were
13 talking about when you asked him about a girl in the
14 vehicle?

15 A. No ma'am.

16 Q. Did he ever indicate to you that he didn't know what
17 you were talking about?

18 A. No ma'am.

19 Q. Okay. During the time that you were present, did
20 you ever threaten or coerce the defendant?

21 A. No ma'am; I did not.

22 Q. Did you ever promise him anything in reference to
23 him giving you any answers?

24 A. No ma'am.

25 Q. Okay. At any point during that time, did he ever

1 indicate to you that he didn't want to talk to you?

2 A. No ma'am, he did not.

3 Q. Okay. Did he ever ask you any questions about his
4 rights?

5 A. No ma'am, he did not.

6 Q. Did he ever ask you to clarify anything?

7 A. No ma'am.

8 Q. Okay. Uh -- Are you familiar with whether or not
9 that camera was running in the car?

10 A. The vehicle that he was in, in the evening; yes
11 ma'am.

12 Q. Okay.

13 A. It was -- It was operational. Uh -- If you've ever
14 seen the camera system, there is actually a viewable
15 screen in the vehicle itself.

16 Uh -- On that screen, when it's
17 activated in the -- in the active record mode, there is a
18 flashing red light about two-thirds of the way up the
19 screen on the left-hand side.

20 That light flashes continuously
21 while the system is in the active record mode.

22 Q. Okay. Uh -- Have you seen the video?

23 A. Yes ma'am, I have.

24 Q. Do you recognize what I'm showing you now that's
25 been marked State's Exhibit Number 1? (sick) (Court's

1 Exhibit)

2 A. Yes ma'am. This is a -- uh -- digital video disc
3 created by our record's division.

4 Uh -- It would be a disc that
5 contained video from in-car mobile video systems.

6 This one's identified by case
7 number and by Defendant's name; and it also has my name
8 on it.

9 And this would be the sleeve that
10 it was sent in.

11 Q. Have you watched it?

12 A. Yes ma'am.

13 Q. Is your voice on the tape?

14 A. Yes ma'am; it is.

15 Q. Is the defendant's voice on the tape?

16 A. Yes ma'am; it is.

17 Q. Do you recognized the other voices on the tape?

18 A. Yes ma'am. I -- You would have to point out at
19 certain times who you may be speaking of. But I should
20 be able to recognize the majority of the voices on the
21 tape.

22 Q. Okay. Uh -- Does that tape substantially and
23 adequately depict your conversation with the defendant?

24 A. Yes ma'am; it does.

25 Q. Okay. When you were questioning the defendant, was

1 there anybody else around?

2 A. No ma'am. Uh -- For the majority of the time, it
3 would be just me and him.

4 I had to step away at certain
5 times.

6 At that point, I -- I would close
7 the --

8 Q. So were there any other officers bearing down over
9 the vehicle or standing over the defendant?

10 A. No ma'am.

11 Q. Okay. Just you?

12 A. Just me; yes ma'am.

13 MS. LIVESAY:

14 No further questions for this
15 officer, Your Honor.

16 THE COURT:

17 All right, Ms. Knowles.

18 MS. KNOWLES:

19 Thank you, Your Honor.

20 VOIR DIRE EXAMINATION BY MS. KNOWLES:

21 Q. Where -- uh -- did your questioning take place --

22 A. Uh --

23 Q. -- Officer?

24 A. I'm sorry, I could not give you the name; but it was
25 -- and I don't know if you're familiar with the area --

1 Q. Was it -- Was it in your vehicle; or was it --

2 A. It was --

3 Q. -- on --

4 A. It was in -- It was not my vehicle. It was Officer
5 Causey's vehicle; the one he was using on the night in
6 question.

7 He -- He was in the -- uh --
8 backseat of that vehicle.

9 Q. Okay. And how many officers or patrol vehicles
10 were the on scene?

11 A. Uh -- In -- In that area -- uh -- it was where
12 Officer Causey returned to the scene.

13 It was on the side of the
14 building.

15 And it would have been Officer
16 Causey's vehicle, and then one other unoccupied vehicle
17 behind that.

18 Q. So only on other vehicle?

19 A. Yes ma'am. And then forward of Officer Causey's
20 vehicle would have been the suspect vehicle, probably --
21 I don't know if it would show on the video or not -- uh
22 -- may 20 -- 30 yards; and then, the county vehicles that
23 were involved in the initial pursuit where behind those
24 vehicles.

25 And then my vehicle is also behind

1 those.

2 Q. So it's safe to say that there were at least 5
3 vehicles -- patrol vehicles?

4 A. Uh -- In the immediate area or out in front of the
5 gas station?

6 Q. Surrounding where the questioning was taking place?

7 A. Uh -- If you're talking about the parking lot, there
8 was five; yes ma'am.

9 Q. Thank you. Uh -- And he was in the back of your
10 police car, or the police car that you were using?

11 A. No ma'am, the police car that Officer Causey was
12 using.

13 Q. Okay. But he was in the back --

14 A. Yes ma'am.

15 Q. -- whenever the questioning took place?

16 A. (Nods in the affirmative.)

17 Q. And you said that you had been informed that Miranda
18 Warnings had been read to him?

19 A. That is correct. Yes ma'am.

20 Q. And were you informed that there was a short chase
21 and that he had to be Tased to be apprehended?

22 A. Yes ma'am.

23 Q. And do you inquire from my client as to his physical
24 or emotional condition at the time of questioning.

25 A. No ma'am; I did not.

1 Q. And what was the time frame from when the
2 apprehension took place and when your questioning
3 started?

4 A. I -- I honestly can't say, because I wasn't there
5 for the apprehension.

6 So I would only be able to -- to
7 guess as to a time, because I -- I wasn't present during
8 the --

9 Q. Well, from what --

10 A. -- the apprehension.

11 Q. -- what you were told from Officer Causey when he
12 apprehended him.

13 A. I -- I can tell you from the time that I arrived on
14 the scene, it probably may have been five minutes.

15 He had -- He had already received
16 medical attention from EMS in between that time.

17 He had then been brought back over
18 to the gas station.

19 Q. So, if EMS had already treated him, it was probably
20 a little bit longer than five minutes?

21 A. It -- It could have been. I -- I'm -- Like I said,
22 I wasn't there for that portion of it.

23 So I -- I kind of hazard to make a
24 statement, 'cause I'm only assuming from time frames.

25 I couldn't give you an actual,

1 knowledgeable time frame.

2 Q. Most of the information you relied upon was from the
3 officer that actually initiated the stop; correct?

4 A. That is correct. Yes ma'am.

5 Q. Okay. And you said that you later reread Miranda
6 Warnings to my client.

7 Is that correct?

8 A. No ma'am, I -- I did not say that.

9 I asked if I -- if he understood
10 the Miranda that was give to him by Officer Causey. And
11 he advised me that he did.

12 I then asked him if he understood
13 that he did not have to talk to me if he did not wish to
14 do so.

15 And he advised me that he
16 understood that.

17 And then, I asked him if he was
18 willing to talk to us at that time.

19 And he advised that he was.

20 Q. Do you at any point, advise him as to what the
21 nature of the questioning was about?

22 A. Yes ma'am.

23 Q. What he was suspected of?

24 A. Yes ma'am; I did. Uh -- As I stated, after I
25 asked him generally what had -- he had been doing that

1 evening.

2 And he made a statement.

3 I then told him that I was going
4 to continue to ask him some questions and I wanted to
5 make sure that he understood he did not have to answer
6 them.

7 He actually, I believe -- and it
8 would -- It's -- It's been a while since I watched the
9 tape; but if I'm -- on the video, I believe he
10 interrupted me. I shouldn't say "interrupted me."

11 He -- He shortchanged my question
12 and actually said:

13 You mean the Miranda rights?

14 And I said:

15 Yes.

16 And -- And I told him that he did
17 not have to answer the questions.

18 And he said he understood and he
19 wished to cooperate.

20 And at that time, I told him that
21 the reason we were all here that morning was because the
22 alleged crime of the kidnapping, and that's probably what
23 he would be charged with.

24 Of course, at that time, I had now
25 knowledge of any sexual assault or anything of that

1 nature.

2 I just knew it was kidnapping.

3 Q. Yes sir. And how long would you estimate that the
4 questioning was that you gave him? 10 minutes? 15
5 minutes?

6 A. Probably in the neighborhood -- The -- The
7 questioning wouldn't have -- have been direct questioning
8 for this period of time.

9 Because, as I said, I was the
10 Watch Commander. And I -- And I did have to leave Mr.
11 Elliott for -- for times to assign other people to duties
12 and -- and other things. Then I would come back to him.

13 I would say probably, total from
14 the first time I -- I met Mr. Elliott until he left the
15 scene, probably about 20 minutes.

16 MS. KNOWLES:

17 Okay. I've no further questions,
18 Your Honor.

19 MS. LIVESAY:

20 Thank Your Honor. I just got one
21 more officer I'd like to call.

22 I have no further questions for
23 this one.

24 THE COURT:

25 All right.

VOIR DIRE OF JEFF SENTER

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1 MS. LIVESAY:

2 Thank Your Honor.

3 THE COURT:

4 You may step down, sir.

5 WITNESS:

6 Thank you, sir.

7 MS. LIVESAY:

8 At this time, the State asks to
9 call Officer Jeff Senter to the stand -- or Jeff Senter
10 to the stand.

11 WHEREUPON: JEFF SENTER WAS DULY
12 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

13 CLERK:

14 Thank you. Please be seated.

15 Please state your full name; and
16 spell your last name.

17 WITNESS:

18 Jeff Senter; S-e-n-t-e-r.

19 VOIR DIRE EXAMINATION BY MS. LIVESAY:

20 Q. Mr. Senter, were you -- uh -- working in North Beach
21 Police Department on or around June 29th of 2009?

22 A. Yes, I was.

23 Q. What was your responsibility at that time?

24 A. I was the Patrol Sergeant on the shift.

25 Q. Okay. And how long had you been working at that

1 point for North Myrtle Beach?

2 A. 16 years.

3 Q. Okay. And what kind of training had you undergone?

4 A. A lot. Uh -- Graduate of the Memphis Police
5 Academy. Graduate of South Carolina Criminal Justice
6 Academy.

7 Q. Okay.

8 A. Multiple years of training.

9 Q. Okay. Did you have an occasion -- uh -- that
10 morning on June 29th of 2009 to come across the
11 defendant, Mark Elliott, in this case?

12 A. Yes, I did.

13 Q. And tell the judge how you came across the
14 defendant?

15 A. I was -- uh -- working in the city. And I received
16 a broadcast through the -- uh -- police radio, a possible
17 robbery and kidnapping had occurred.

18 A description of the vehicle was
19 given out. So I was just searching the area.

20 A short time later, I heard -- uh
21 -- Officer Causey -- at that time he was an officer; now
22 he's a detective -- state that -- uh -- he was possibly
23 behind the vehicle; and another agency was behind the
24 vehicle.

25 In a short time later, it turned

1 into a pursuit.

2 So, I think I was the closest
3 backup officer for our agency. So I started in that
4 direction to -- uh -- provide backup Officer Causey.

5 Q. Okay. Did you actually speak to the defendant that
6 night?

7 A. Yes, I did.

8 Q. Did you actually question him?

9 A. Yes, I did.

10 Q. Okay. Uh -- Are you familiar with the Miranda
11 warnings?

12 A. Yes, I am.

13 Q. And did you Mirandize him?

14 A. I didn't. Not personally.

15 Q. And why not?

16 A. Because there was other officers that had been there
17 before me -- uh -- questioning the -- uh -- defendant.

18 So the -- the lead officer at that
19 time was Officer Causey.

20 Like always, I approached him and
21 asked:

22 Uh -- Officer Causey, have you
23 read his Miranda warnings, and was he willing to talk?

24 And he stated:

25 Yes.

1 Q. Okay. And did you talk to the defendant?

2 A. Yes, I did.

3 Q. Okay. And when you talked to him, did he -- uh --
4 appear coherent?

5 A. Sure; yes.

6 Q. Did he appear to be physically or mentally impaired
7 to the point he couldn't understand what was going on?

8 A. No, he wasn't.

9 Q. Okay. Did he appear mentally or physically
10 impaired at all in your opinion?

11 A. No, he didn't.

12 Q. Okay. When you spoke with him, did he ever ask for
13 an attorney?

14 A. No, he didn't.

15 Q. Did he ever indicate to you whether or not he wanted
16 an attorney?

17 A. He did not request one.

18 Q. Okay. Did he ever ask to not answer any questions
19 further?

20 A. No, he didn't.

21 Q. Okay. Did he freely answer your questions?

22 A. Yes, he did.

23 Q. Now was his answers responsive to your answers -- to
24 your questions?

25 A. Yes, they were.

1 Q. Okay. Did he ever appear to be confused about what
2 you were questioning him about?

3 A. No, he didn't.

4 Q. Okay. And what were his responses again and were
5 they responsive to the questions you were asking him?

6 A. Yes, they were

7 Q. Okay. Did he ever appear to be confused as to why
8 you were questioning him?

9 A. No, he wasn't.

10 Q. Did he ever appear to not understand -- or be
11 confused about what you were questioning him about?

12 A. No, he didn't.

13 Q. Okay. During the time that you were questioning
14 him, did you ever threaten him or coerce him in any way?

15 A. No, I didn't.

16 Q. Okay. While you were questioning him, did you see
17 any other officer threaten or coerce him in any way?

18 A. No, I didn't.

19 Q. Okay. Uh -- During the time that you were asking
20 him questions, did he ever appear to be any pain?

21 A. No, he didn't.

22 Q. Okay. Uh -- Were you aware that a video was going
23 that night and recording the incident?

24 A. I didn't personally look into Mr. Causey's -- uh --
25 vehicle or observe it. But I know that any time that we

1 activate our emergency lighting equipment, it is
2 automatically going to activate.

3 Q. Okay. And do you recognize what I'm showing you
4 now?

5 A. It looks like the -- uh -- uh -- disc that our city
6 downloads, or burns onto a disc for court procedures.

7 Q. Okay. And have you seen the video from that
8 incident?

9 A. Yes, I have.

10 Q. Okay. And did you recognize the voices on the
11 video from that incident?

12 A. From our agency, yes.

13 Q. Okay. And was your voice on that -- uh -- video?

14 A. Yes, it was.

15 Q. And were the questions that you asked this
16 defendant, were they on the video?

17 A. Yes, they were.

18 Q. Where the audio of his answers on that video?

19 A. Yes, they were.

20 Q. Okay. And were those questions and answers a
21 substantial and accurate reflection of what happened that
22 night?

23 A. Yes they were.

24 MS. LIVESAY:

25 Okay.

1 No further questions for this
2 Officer, Your Honor.

3 THE COURT:

4 Ms. Knowles?

5 MS. KNOWLES:

6 Thank you, Your Honor.

7 VOIR DIRE EXAMINATION BY MS. KNOWLES:

8 Q. Officer, where did your questioning take place?

9 A. In the exact same location that -- uh -- Lieutenant
10 Baldasarre's did.

11 Q. So, the physical surroundings was the police vehicle
12 or --

13 A. Uh -- The -- The defendant was inside the back seat
14 of the vehicle.

15 Q. And he was handcuffed?

16 A. Yes, he was.

17 Q. And how many officers were present -- or vehicles
18 present?

19 A. Well only one officer at a time was interviewing
20 him. Uh -- I could tell you exactly.

21 There was more than just two
22 because of the pursuit and back up arriving.

23 Q. And you that you relied Officer Causey's account of
24 what had happened and whether or not Miranda was read --

25 A. Yes ma'am.

1 Q. -- to my client?

2 A. Yes ma'am.

3 Q. And did he, at any point, tell you that a Taser had
4 been deployed in the apprehension of my client?

5 A. When I first arrived on the scene, he advised me
6 that -- uh -- the individual had been Tased.

7 Q. And whenever your questioning took place, what was
8 the time frame? What are we looking at as far as --
9 Whenever he was apprehended and the Taser deployed, when
10 did your questioning start?

11 A. Uh -- It was slightly after or before Lieutenant
12 Baldasarre.

13 We kind of flipped-flopped back
14 and forth.

15 Where he was first arrested is --
16 was across the street in Billy the Kid's parking lot.

17 So he actually had been loaded in
18 the vehicle and had driven across street.

19 So that took a little bit of time.

20 Q. Yes sir. And were you informed by Officer Causey
21 the nature of the circumstances that existed whenever he
22 was read Miranda; my client?

23 A. Well, he advised me. And of course I was listening
24 to radio traffic that he'd -- uh -- pursued the
25 individual; that he had been Tased.

1 When I got there, I could see the
2 individual was handcuffed, and kind of the circumstances
3 of why he was in the position he was at that time.

4 Q. And he was face-down, hands behind his back?

5 A. I can't really recall. They may have sat him up in
6 a sitting position at that time.

7 I can't really recall.

8 Q. When Miranda was read?

9 A. No ma'am.

10 Q. Or when --

11 A. I -- I can't recall.

12 Q. Okay. Did you ever at any point inquire as to my
13 client's physical or mental state?

14 A. Uh -- I didn't ask him. I just sat there and
15 observed him.

16 He seemed to be normal and
17 healthy.

18 Q. So you didn't know if he was in pain; or --

19 A. He didn't inquire -- He did not tell me he was in
20 pain and I did not observe any --

21 Q. Okay.

22 A. -- painful actions.

23 Q. And were you questioning my client under the
24 assumption that Miranda had been read and he had waived
25 his Miranda rights?

1 A. Yes, it was.

2 Q. By yet, you weren't present at the time that Miranda
3 was read?

4 A. I -- I -- I cannot remember. I could have been
5 pulling up on the scene while Officer Causey was reading
6 them.

7 I -- I just can't recall.

8 MS. KNOWLES:

9 Okay.

10 I have no further questions, Your
11 Honor.

12 THE COURT:

13 Ms. --

14 MS. LIVESAY:

15 Your Honor, I have no further
16 questions.

17 I just ask that the State be
18 allowed to play the video that the testimony has been
19 about.

20 THE COURT:

21 All right, sir. Step down.

22 Thank you.

23 MS. LIVESAY:

24 Can I play the video, Your Honor,
25 at this time?

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1 THE COURT:

2 Certainly.

3 MS. LIVESAY:

4 Thank you Your Honor.

5 THE COURT:

6 How long is this going to take,

7 Ms. Livesay?

8 MS. LIVESAY:

9 It's coming, Your Honor.

10 THE COURT:

11 Do you know -- Do you know how

12 long the video is?

13 MS. LIVESAY:

14 I'm sorry?

15 THE COURT:

16 How long is the video?

17 MS. LIVESAY:

18 Probably 30 minutes, wouldn't you
19 say, at least.

20 MS. KNOWLES:

21 If not more.

22 MS. LIVESAY:

23 I'd say about 30 or 45 minutes.

24 THE COURT:

25 Well, let's take about 10 minutes,

1 then, before we actually play the video.

2 MS. LIVESAY:

3 That'll give me time to get this
4 set up while we take that break, Your Honor.

5 THE COURT:

6 All right. Sure. We're at
7 ease.

8 (WHEREUPON: The court was
9 declared in recess at 3:14 PM, November 15, 2010.)

10 (WHEREUPON: The court was called
11 to order by the Bailiff at 3:22 PM, November 15, 2010;
12 and all pertinent parties, along with their counsel, were
13 back and present in the courtroom.)

14 DEPUTY:

15 Order in the court. All Rise.

16 THE COURT:

17 You ready to go Ms. Livesay?

18 Please be seated.

19 MS. LIVESAY:

20 We're ready, Your Honor.

21 THE COURT:

22 Okay. Let's look at it.

23 Ms. Livesay, is this one

24 continuous --

25 MS. LIVESAY:

1 Yes sir.

2 THE COURT:

3 -- video that includes all the --

4 MS. LIVESAY:

5 Yes sir. Yes sir.

6 THE COURT:

7 All right.

8 (WHEREUPON: AT 3:23 PM, NOVEMBER

9 15, 2010, THE DVD MARKED COURT'S EXHIBIT NUMBER 1 -- AND

10 LATER REMARKED AS STATE'S EXHIBIT NUMBER 4 -- WAS PLAYED

11 FOR THE COURT, SAID VIEWING ENDING AT 4:29 PM NOVEMBER

12 15, 2010.)

13 THE COURT:

14 All right, Ms. Livesay.

15 MS. LIVESAY:

16 Uh -- Your Honor, the State's

17 motion, obviously, is to allow the video and all the

18 statements that the defendant made.

19 It appears that he was not under

20 any coercion.

21 He was read Miranda right away.

22 Uh -- Everything about his answers

23 appeared coherent.

24 He never asked for any medical

25 care.

1 He never asked for -- or indicated
2 that he was in any pain.

3 All of his answers were obviously
4 responsive to the questions asked.

5 He apparently knew exactly what
6 was going on. Understood what was going on.

7 Never indicated anything other
8 than he wanted to cooperate.

9 The State asks, obviously, that
10 those statements be admissible in front of the jury, Your
11 Honor.

12 THE COURT:

13 All right, Mr. Hazzard; or Ms.
14 Knowles?

15 MS. KNOWLES:

16 Your Honor, we would ask that --
17 uh -- all of those statements made that were
18 incriminating in nature -- uh -- and they were made in a
19 coerced setting.

20 He was not told of what he was
21 suspected of: what the nature of the question was going
22 to be about until, I believe, the third interrogation.

23 In addition -- uh -- he had just
24 been Tased.

25 He was in handcuffs.

1 He was by the roadside there in
2 the parking lot, face-down when Miranda was given.

3 I just would argue against them
4 being allowed in.

5 And based upon the fact that I
6 believe that -- you know -- his rights were violated in
7 that respect.

8 He has a Fifth Amendment right
9 against self incrimination and a Sixth Amend -- A Sixth
10 Amendment right to have counsel present.

11 I do not believe that the totality
12 of the circumstances was one in which he could've
13 knowingly waived those rights.

14 So, we would just suggest to you
15 that they not be admitted.

16 THE COURT:

17 All right. Thank you.

18 MS. LIVESAY:

19 I just have one point, Your Honor,
20 on -- uh -- what Malinda said.

21 Under State v Crosby (? phonetic)
22 -- uh -- Officer Benton (? phonetic) admitted in this
23 case that he did not tell the defendant -- uh -- as --
24 the subject of the investigation before she arrived at
25 the Sheriff's Department, or before she signed a Miranda

1 warning.

2 However, The Court concluded that:

3 This does not effect the
4 voluntariness -- voluntariness of this confession.

5 Uh -- Obviously, the officer
6 didn't tell the defendant before he was Mirandized as to
7 what they were going to be investigating.

8 The state's position is that
9 doesn't go toward whether or not that confession was
10 voluntary.

11 THE COURT:

12 All right.

13 A baseline in any inquiry into
14 Jackson versus Denno is whether or not any waiver of his
15 Faith -- Sixth Amendment rights was knowingly and
16 voluntarily -- or knowingly and intelligently made.

17 Uh -- And that's the purpose of
18 Miranda.

19 Uh -- There's no question that
20 Miranda was given, and necessarily given, because the
21 circumstances were such that this defendant, and any
22 other reasonable defendant, would have certainly believed
23 himself to be in custody -- uh -- at the time -- uh -- he
24 was -- he was questioned.

25 I don't think there is any -- any

1 doubt -- uh -- about that.

2 However, I have considered the
3 defendant's demeanor during questioning, his responses
4 that were made during questioning -- uh -- the officers
5 testimony -- unrefuted testimony -- that there seemed to
6 be no problems with the -- uh -- defendant's
7 understanding of what they had to say; and the fact that
8 several times -- or I believe at least two more times --
9 during the interrogation, the defendant was again asked
10 about his Miranda rights; if he still understood them; if
11 there was any questions he had about the Miranda rights.

12 I don't think that there's any
13 question that this defendant made a knowing and
14 intelligent waiver of his Miranda warn -- uh -- rights.

15 There's no -- uh -- or his Fifth
16 and Sixth Amendment rights under Miranda.

17 There's no testimony that I have
18 heard concerning this defendant's mental dis -- uh --
19 deficits, or -- or intellectual deficits -- that would
20 suggest to me that -- uh -- what I was hearing on this
21 tape was not a true picture of his -- uh -- ability to
22 understand -- uh -- and waive -- uh -- his -- uh --
23 Miranda warnings.

24 Uh -- After a finding of a knowing
25 and intelligent waiver, we have to consider whether or

1 not there was a voluntary -- uh -- statement.

2 And the -- the keystone -- or the
3 necessary preface -- in making a finding that a
4 confession or admission is not voluntary is coercive
5 police activity.

6 Uh -- Reviewing the tape as a
7 whole, considering such things as the length of the
8 interrogation, the con -- continue -- uh -- continuity of
9 the -- uh -- interrogation -- uh -- the attitude of the
10 officers towards him -- uh -- uh -- the way they spoke to
11 him -- uh -- I see that -- or I heard several times in
12 the -- in the interrogation that he was informed that he
13 was being charged with -- uh -- at least -- uh --
14 kidnapping.

15 Uh -- Considering the -- the --
16 the totality of the -- uh -- of the interrogation, I find
17 no coercive -- uh -- police activity.

18 Uh -- In -- In fact, find just the
19 opposite -- uh -- in -- in this situation.

20 I'm sure that any defendant who is
21 ever arrested, ever placed in custody, is probably going
22 to be placed under some significant amount of -- of
23 stress.

24 But the stress level that I
25 detected from listening to this defendant and watching

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1 him when he was in view -- uh -- looking at what the
2 officers were saying -- uh -- the questions that they
3 were putting -- uh -- to him -- uh -- the situation that
4 he was in -- I do not believe that there is any question
5 that his statements -- uh -- on that video were
6 voluntarily made, knowingly -- after a knowing and
7 intelligent waiver of his -- uh -- Fifth and Sixth -- uh
8 -- uh -- Amendment rights.

9 So I'm going to allow it; okay.

10 MS. LIVESAY:

11 Thank Your Honor.

12 THE COURT:

13 Okay.

14 What else do we have?

15 MS. LIVESAY:

16 Uh -- I think we've probably got
17 another Jackson V. Denno motion, Your Honor, from the
18 Defense.

19 THE COURT:

20 Okay.

21 And -- Then there was another --
22 uh -- statement?

23 MS. LIVESAY:

24 Yes, Your Honor.

25 THE COURT:

1 Okay.

2 MS. LIVESAY:

3 There's a -- uh -- statement that
4 the defendant made -- uh -- in the investigative room
5 with Detective Abercrombie.

6 THE COURT:

7 Okay.

8 Is that one videotaped?

9 MS. LIVESAY:

10 Uh -- Yes, Your Honor. The video
11 is right there.

12 That one's been edited, Your
13 Honor.

14 THE COURT:

15 Okay. All right,

16 Let me hear from -- uh -- Ms.
17 Knowles.

18 MS. KNOWLES:

19 Your Honor -- uh --

20 THE COURT:

21 You're going to -- All you have to
22 do is make you motion.

23 The solicitor has said that you're
24 going to make one. I just need to hear you make it.

25 MS. KNOWLES:

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1 Yes -- Yes --

2 THE COURT:

3 And then it -- the burden shifts
4 to the State.

5 MS. KNOWLES:

6 -- Yes, Your Honor, we are moving
7 -- uh -- to suppress that statement as well, and all
8 other statements incriminating him in any --

9 THE COURT:

10 Is there -- You say "all other
11 statements."

12 Is there -- Is there just the one;
13 or are there many, or -- you know -- give me a little
14 clue here.

15 MS. KNOWLES:

16 Incriminating statements that he
17 made -- my client made -- to Officer Abercrombie or
18 Detective Abercrombie -- uh -- during the interrogation.

19 THE COURT:

20 At the investigator -- At the
21 station; right?

22 MS. LIVESAY:

23 Yes sir.

24 THE COURT:

25 Is that what we're talking about?

1 That was an interrogation made at
2 the police station; is that right?

3 MS. LIVESAY:

4 Yes sir.

5 THE COURT:

6 And was there only one?

7 MS. LIVESAY:

8 sir?

9 THE COURT:

10 Was there just one?

11 MS. LIVESAY:

12 Yes sir; just one investigator.

13 Uh -- The defendant comes in. He
14 Mirandizes him. He fills out the Miranda sheet; signs it

15 --

16 THE COURT:

17 Okay.

18 Let's be fair to the Defense now.

19 Do you know of any other

20 statements --

21 MS. LIVESAY:

22 No sir.

23 THE COURT:

24 -- you intend to use?

25 Ms. Knowles seems to vacillate a

1 little bit here about what -- whether there might be more
2 than one.

3 But you're talking about one
4 interview --

5 MS. LIVESAY:

6 Yes sir.

7 THE COURT:

8 -- and one statement.

9 MS. LIVESAY:

10 This is the only other statement.

11 THE COURT:

12 Is that right, Ms. Knowles.

13 MS. KNOWLES:

14 That -- That's my understanding.

15 He just made several incriminating statements --

16 THE COURT:

17 Okay.

18 MS. KNOWLES:

19 -- during that time.

20 THE COURT:

21 All right. Okay.

22 MS. LIVESAY:

23 Just to clear up the record too,

24 Your Honor, so the Defense knows;

25 Uh -- There was an issue. We had

1 the -- uh -- interview transcribed.

2 There was an issue because there
3 was some questioning regarding his prior record.

4 Uh -- I provided a transcript to
5 the Defense. They highlighted the portions that they
6 wanted removed in regards to any discussion about his
7 prior record.

8 Uh --

9 THE COURT:

10 As I understand --

11 MS. LIVESAY:

12 -- my investigator has edited all
13 those comments out.

14 THE COURT:

15 Okay.

16 So there's no -- uh -- We're not
17 going to talk about a prior record?

18 MS. LIVESAY:

19 No sir.

20 THE COURT:

21 We're not going to talk about
22 prior bad acts.

23 MS. LIVESAY:

24 Right.

25 Those particular statements have

1 already been edited out.

2 But obviously, we're asking for
3 the rest of it to be admissible.

4 THE COURT:

5 That is --

6 MS. LIVESAY:

7 Any other statement he made
8 outside --

9 THE COURT:

10 -- unless -- What about if the
11 defendant testifies? That may be a different situation.

12 MS. LIVESAY:

13 Yes sir.

14 THE COURT:

15 Okay. All right. Okay.

16 Let's hear it.

17 MS. LIVESAY:

18 Thank Your Honor.

19 At this time, the State calls
20 Detective Abercrombie to the stand.

21 CLERK:

22 Did you want him sworn in?

23 THE COURT:

24 No, he's still under oath.

25 Ms. -- Ms. -- uh -- uh -- Livesay,

1 isn't everything he's going to say going to be on the
2 tape?

3 MS. LIVESAY:

4 Yes sir.

5 THE COURT:

6 Why don't you just have him
7 identify --

8 MS. LIVESAY:

9 Okay.

10 THE COURT:

11 -- the tape and let's put it up
12 then.

13 MS. LIVESAY:

14 Do you want me to go ahead and
15 play the tape?

16 THE COURT:

17 Just have him identify it for the
18 record and let's put it up.

19 MS. LIVESAY:

20 I will, Your Honor.

21 Can I have this marked?

22 WHEREUPON: THE SUBJECT DVD WAS
23 MARKED BY THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 5.

24 MS. LIVESAY:

25 Thank you.

1 WHEREUPON: DETECTIVE ABERCROMBIE
2 WAS REMINDED OF HIS EARLIER OATH AND TESTIFIED OATH AS
3 FOLLOWS:

4 COURT REPORTER:

5 Your Honor, this will be Court's
6 Exhibit 5.

7 THE COURT:

8 Yeah.

9 VOIR DIRE EXAMINATION BY MS. LIVESAY:

10 Q. Detective Abercrombie, do you recognize what I'm
11 showing you?

12 A. Yes, I do.

13 Q. And what is it?

14 A. It's a DVD of an interview with -- uh -- Defendant
15 Mark Elliott.

16 Q. Okay. And where did this interview take place?

17 A. The interview room at the Detective Division of the
18 Police Department.

19 Q. Okay. How long did it take? How long did the
20 interview last?

21 A. Uh -- 45 -- 48 minutes; some -- something like that.

22 Q. Okay. And during that time of the interview, did
23 you -- Are you aware of what Miranda warnings are?

24 A. Yes I am.

25 Q. And during the time of the interview, did you notify

1 the defendant of his Miranda warnings?

2 A. Yes I did.

3 MS. LIVESAY:

4 Okay.

5 Mark this, as well, real quick.

6 WHEREUPON: THE MIRANDA STATEMENT

7 OF 6/22/09 WAS MARKED BY THE COURT REPORTER AS COURT'S

8 EXHIBIT 6.

9 MS. LIVESAY:

10 Do you recognize this? Sorry.

11 COURT REPORTER:

12 And Your Honor, this will be

13 Court's Exhibit 6.

14 THE COURT:

15 All right. Thank you.

16 MS. LIVESAY:

17 Thank you.

18 VOIR DIRE EXAMINATION BY M CONTINUED:

19 Q. Do you recognize Court's Exhibit Number 6?

20 A. Yes, I do.

21 Q. And what is it?

22 A. It's the -- uh -- City of North Myrtle Beach -- uh

23 -- Miranda rights form.

24 Q. And who's signature is on it?

25 A. Uh -- The Defendant, Mr. Elliott.

1 Q. Okay. And are those -- Is that the copy that you
2 used in the interview?

3 A. That's correct.

4 Q. Okay. And in the video, are you reading off this
5 copy?

6 A. Yes, I am.

7 Q. Okay. So this copy is from the date and time that
8 the video was on?

9 A. That's correct.

10 Q. Okay. And is the Defendant's signature there as
11 well?

12 A. Yes, it is.

13 MS. LIVESAY:

14 Okay. Thank you.

15 No further questions, Your Honor.

16 THE COURT:

17 All right, Ms. --

18 MS. KNOWLES:

19 Your Honor, may I see that?

20 THE COURT:

21 Yes.

22 MS. LIVESAY:

23 Miranda warnings that were
24 supplied in discovery.

25 THE COURT:

1 All right.

2 Now, Ms. Knowles, I'm going to let
3 you cross-examine him fully; okay. You understand?

4 VOIR DIRE EXAMINATION BY MS. KNOWLES:

5 Q. Detective Abercrombie, did you -- uh -- Mirandize
6 this defendant?

7 A. Yes, I did.

8 Q. And were you aware of the circumstances of his
9 arrest -- what had happened?

10 A. Yes, I was.

11 Q. And can you tell us about that?

12 A. You talking about pretty much exactly what we saw on
13 the video?

14 Q. Yes.

15 A. I was aware -- I was aware of the circumstances
16 behind how he was arrested; when and where.

17 As a matter of fact, I was there
18 shortly after the arrest -- uh -- and then left that
19 scene to go to the hospital.

20 So I'm familiar with his arrest.

21 Q. And so you know they -- uh -- he had been Tased and
22 it --

23 MS. LIVESAY:

24 Your Honor, can I object?

25 This interview had taken place the

1 next day after any of this happened; in fact, maybe even
2 more than a day.

3 THE COURT:

4 Well, let's just let Mr.
5 Abercrombie say that -- or Detective Abercrombie. He
6 can say that.

7 VOIR DIRE EXAMINATION BY MS. KNOWLES CONTINUED:

8 Q. For clarification, when you -- uh -- engage in -- in
9 interrogations with my client?

10 A. It was 3 o'clock that afternoon.

11 Q. That afternoon? What -- With what date?

12 A. Uh -- The 29th.

13 Q. Okay. And what was the setting of the
14 interrogation?

15 Tell me --

16 A. It's a --

17 Q. -- you said it was in the North --

18 A. It's a interview room. There's a desk and a couple
19 of chairs, and it's very informal.

20 Q. Okay. And did you inform him of his right to have
21 counsel present? And --

22 A. Yes I did.

23 Q. And you do understand that?

24 A. Yes, I did.

25 Q. And did you inform him that he did not have to speak

1 with you?

2 A. That's part of the Miranda rights; yes ma'am.

3 Q. But specifically?

4 A. Uh -- If you'll hand me the sheets.

5 Q. (Did as requested.)

6 A. This was the portion I read up here with the check
7 marks all -- and when I read it to them, I checked off
8 each line and made sure that he understood them.

9 Q. Okay. So there was no question as to that --

10 A. Correct.

11 Q. -- of -- of his understanding?

12 A. That's correct.

13 Q. And at any point, did you refer to his prior record
14 before you engaged in conversation as to the charge he
15 was looking at and you were interrogating him on?

16 A. No ma'am. The only time during the interrogation --
17 during the interview that -- uh -- his criminal history
18 was brought up was --

19 MS. LIVESAY:

20 Your Honor, if I may object?

21 As to his prior record, that's
22 been edited out.

23 So I don't know why we're even
24 discussing --

25 THE COURT:

1 Well, she may have some reason --

2 MS. LIVESAY:

3 -- that aspect.

4 THE COURT:

5 -- for asking. Go ahead Ms.

6 Knowles, ask your question.

7 WITNESS:

8 The -- uh -- The subject of his
9 prior record wasn't brought up until well into the
10 interview.

11 It wasn't something that was
12 discussed, as near as I can remember, right of the bat.

13 VOIR DIRE EXAMINATION BY MS. KNOWLES CONTINUED:

14 Q. But was it before or after you told him what he was
15 being charged with?

16 A. Yes. It -- The Miranda rights were -- uh -- read to
17 him before any discussion -- subsequent discussion after
18 that.

19 Q. For clarification, the discussion of his prior
20 history -- criminal history -- was that before or after
21 you discussed with him what had happened; and what he was
22 being charged with?

23 A. He -- Are we still talking about his prior criminal
24 history? Or is that what we're still talking about?

25 Q. Right. Correct.

1 A. That was somewhere in the middle of the interview.

2 Q. Was he made --

3 A. I don't exactly --

4 Q. Was he made aware of the charges that you were
5 looking to him --

6 A. He was made aware of the investigation -- what I was
7 investigating.

8 Q. Okay. And was that done immediately --

9 A. I --

10 Q. -- whenever -- before he started answering --

11 A. I don't --

12 Q. -- questions?

13 A. I don't recall.

14 Q. Okay. And did you make any misrepresentations at
15 all --

16 A. No ma'am.

17 Q. -- during your interrogation?

18 A. No ma'am.

19 MS. KNOWLES:

20 Nothing further, Your Honor.

21 THE COURT:

22 All right. You may step down.

23 WITNESS:

24 Thank you, sir.

25 MS. LIVESAY:

1 Your Honor, at this time, the
2 State wishes to play the interview.

3 THE COURT:

4 All right.

5 (WHEREUPON: State's Exhibit
6 Number 5, the DVD of the interrogation, was played for
7 The Court at 4:44 PM, November 15, 2010; said recording
8 ending at 6:01 PM, November 15, 2010.

9 THE COURT:

10 All right?

11 MS. LIVESAY:

12 Your Honor, obviously, the State's
13 going to ask that -- uh -- those statements be
14 admissible; and that they be found that Miranda was read.

15 The defendant acknowledged it by
16 signing the Miranda Rights Form.

17 And that his statement was
18 obviously voluntary. He was extremely cooperative
19 throughout the entire interview.

20 Uh -- He was even allowed to use
21 the phone.

22 And the detective answered any
23 questions he had.

24 THE COURT:

25 All right.

1 Let me hear from you, Ms. Knowles.

2 MS. KNOWLES:

3 Thank Your Honor.

4 We would make just the opposite
5 that -- uh -- our client engaged in conversation.

6 And the conversation and
7 statements made were not done after a knowing and
8 intelligent waiver was entered into.

9 Uh -- He was not even told what
10 the questioning was to be in reference to until after the
11 fact, well into the interrogation.

12 Uh -- The waiver was not even
13 signed until after the questioning.

14 Uh -- We just would submit that --
15 you know -- it was not freely and voluntarily entered
16 into.

17 THE COURT:

18 Do you have any doubt that your
19 client was read his rights prior to the interview
20 beginning?

21 MS. KNOWLES:

22 The waiver was not signed by him

23 --

24 THE COURT:

25 That's not what I asked you.

1 Was he read his rights prior to
2 the interrogation?

3 MS. KNOWLES:

4 He was.

5 THE COURT:

6 All right.

7 And tell me what you saw on that
8 tape that would make me believe, or suspect, that his
9 waiver, or agreement to talk, was not knowingly and
10 intelligently made?

11 MS. KNOWLES:

12 Well, all throughout the video --

13 THE COURT:

14 What would kept him from
15 understanding that he had the right not to talk?

16 MS. KNOWLES:

17 Throughout the video, it is clear
18 that there was a lot of confusion as to what he was even
19 being suspected of; what the nature; what the severity of
20 the questioning was; of the charges.

21 Like I said, he was suspected of
22 -- He was never told exactly what they were until
23 probably 10 minutes before the interview was over.

24 THE COURT:

25 Wasn't he told that it was

1 kidnapping, like the night before in the previous
2 interview?

3 MS. KNOWLES:

4 No, Your Honor.

5 THE COURT:

6 Didn't he keep talking about the
7 kidnapping charges.

8 MS. KNOWLES:

9 He made reference to it.

10 THE COURT:

11 Uh-huh.

12 MS. KNOWLES:

13 But it was after the fact of --

14 THE COURT:

15 And he wasn't told that there was
16 a rape charge -- all sorts of charges -- that were going
17 to be levied against him?

18 MS. KNOWLES:

19 He was told -- like -- like I said
20 -- probably 10 minutes before the close of the
21 interrogation.

22 THE COURT:

23 And was there anything about this
24 setting that you feel -- felt was coercive?

25 What was coercive about the

1 setting?

2 Was the officers actions -- Were
3 the officers actions coercive?

4 Was he threatened or intimidated
5 in any way?

6 MS. KNOWLES:

7 No. I'm not suggesting that the
8 officer acted in any way inappropriate.

9 I am just saying that:

10 I believe that my client was led
11 to believe that he was not being charged with anything.

12 They were just engaging in a
13 discussion.

14 So how could he enter knowingly
15 into a waiver, when he didn't really know what --

16 THE COURT:

17 Are you --

18 MS. KNOWLES:

19 -- the nature of the questioning
20 was to be about?

21 THE COURT:

22 Are you saying that your client
23 had no idea that he was being charged with anything?

24 MS. KNOWLES:

25 He had an idea that he was being

1 suspected of several things. But nothing was put down in
2 black and white.

3 THE COURT:

4 I understand that.

5 But he knew that he was being
6 charged; didn't he?

7 He -- He knew that there was a
8 problem there?

9 MS. KNOWLES:

10 Even by the detective's on
11 admission, he says that he is not, as the lead
12 investigator, signed off on any warrant, or warrant
13 affidavit, charging him with anything.

14 THE COURT:

15 I see.

16 Well, I believe that this video
17 clearly shows that:

18 Looking at the totality of the
19 circumstances, that there was no coercive conduct on the
20 part of the police.

21 Uh -- He had waived his rights to
22 Miranda the night before.

23 Uh -- There is no question that he
24 waived them again here.

25 Uh -- There's nothing to suggest

1 to me that he is unable to understand his Miranda rights.

2 I believe that he did.

3 There seems to be no -- nothing
4 that he was operating under that would cause him not to
5 -- uh -- any mental deficit -- drinking, that would cause
6 him not understanding his Miranda rights.

7 I believe there was a -- a knowing
8 and intelligent waiver of his rights under Miranda -- his
9 the rights protected by the Fifth and Sixth Amendment.

10 And that:

11 The interview was conducted,
12 essentially, in a very cordial atmosphere.

13 Uh -- There's nothing about the
14 room that would suggest that there was anything coercive;
15 certainly not the officer's -- uh -- uh -- conduct, as
16 you said.

17 Uh -- I'm going to -- uh -- allow
18 the -- uh -- the statement, for whatever purpose, I don't
19 know.

20 It's just about 45 minutes of
21 nothing, really.

22 But --

23 MS. LIVESAY:

24 Thank Your Honor.

25 MS. KNOWLES:

1 Your Honor -- uh -- the defense
2 would move to have two portions of this video redacted.

3 Uh -- I believe at 3:01, there's a
4 reference by our client of -- uh -- his prior record.

5 THE COURT:

6 I -- The only thing I saw was he
7 said:

8 I've only had a driver's license
9 for a month.

10 You know, knowing that he has a
11 prior record, I know where that's coming from.

12 But I'm not sure that a juror
13 would understand why -- what in the world that meant.

14 He just makes a comment.

15 Is that what you're talking about?

16 MS. KNOWLES:

17 Well, in -- in -- in abundance of
18 caution, I -- I don't know if we're talking about the
19 same thing.

20 But --

21 THE COURT:

22 Well, tell me what you're talking
23 about?

24 I mean, that's only thing that --

25 I -- I -- I was thinking about --

1 MS. KNOWLES:

2 He -- He mumbled a -- some
3 reference to a prior record; my client.

4 THE COURT:

5 I mean, do you have an idea what
6 -- Mr. Hazzard, you're raising your hand.

7 Have you -- Did you pick it up?

8 Did you catch it -- I did not.

9 MR. HAZZARD:

10 Yes sir. I did pick it up.

11 Uh -- And I mentioned it to Ms.

12 Knowles. But she is kind of hamstrung, because I don't
13 think she caught it.

14 At three o'clock, and one minute,
15 and about 00 seconds, basically Mr. Elliott is bemoaning
16 -- It's -- It's in the portion of the interplay where Mr.
17 Elliott is saying:

18 You know, these kids say
19 something, you believe it; but I say something, you don't
20 believe me.

21 And then kind of under his breath
22 and as an aside, he -- he almost -- he says something to
23 the lines of:

24 You know, just cause you look at
25 my record then -- you know -- they don't believe you.

1 But it is mumbled -- It's forto
2 votae (? phonetic) -- it's under his breath.

3 THE COURT:

4 Well, if --

5 MR. HAZZARD:

6 And I think --

7 THE COURT:

8 -- if he said that, then --

9 MR. HAZZARD:

10 -- that's what I heard.

11 THE COURT:

12 -- uh -- Ms. -- uh -- uh --

13 Livesay, then I'm going to redact it.

14 I didn't hear it.

15 MS. LIVESAY

16 I didn't hear it before, Your

17 Honor. My thing is --

18 THE COURT:

19 But if it's -- if it's there, it's
20 there.

21 MS. LIVESAY:

22 -- we've redacted everything that
23 the investigator -- uh -- got out thought a question.

24 He didn't ask a question regarding
25 this defendant's prior record.

1 He mumbled it under his breath.

2 That's the -- That's what he did. So that's where we're
3 at with it.

4 THE COURT:

5 I mean, is it there?

6 MS. LIVESAY:

7 I don't see why it's not --

8 THE COURT:

9 I don't --

10 MS. LIVESAY:

11 So I don't see why it would be
12 inadmissible?

13 THE COURT:

14 Is -- Is it there?

15 MS. LIVESAY:

16 It -- If it is, Your Honor, it
17 should be in this transcript, which I've given to
18 Defense.

19 MR. HAZZARD:

20 Well, the transcript is not a
21 certified court reporter transcript.

22 There are actually portions in
23 that transcript of there's where there questions --

24 THE COURT:

25 Well, I -- I'll say we'll redact

1 it if it's there.

2 I didn't hear it.

3 MR. HAZZARD:

4 All I'm asking you --

5 THE COURT:

6 Ms. Knowles apparently didn't hear
7 it.

8 MR. HAZZARD:

9 All I'm asking --

10 THE COURT:

11 Ms. Livesay says she didn't hear
12 it.

13 If you heard it and it's there,
14 we'll redact it.

15 MR. HAZZARD:

16 All I'm asking is that if they
17 plan to publish it, at three o'clock and one minute,
18 between 00 seconds and 05 seconds --

19 MS. LIVESAY:

20 Your Honor --

21 MR. HAZZARD:

22 -- just turn the sound down.

23 MS. LIVESAY:

24 -- we can --

25 THE COURT:

1 Don't you -- Don't you have a copy
2 of this?

3 MS. LIVESAY:

4 We've got a --

5 MR. HAZZARD:

6 Yes sir.

7 THE COURT:

8 Well, look at it tonight and find
9 it; and get it exactly right, and find out what it is;
10 we'll redact it.

11 If he said something about his
12 prior record, we'll take it out.

13 How -- How much more do you want?

14 MR. HAZZARD:

15 Just that. Just that.

16 THE COURT:

17 You got it.

18 MR. HAZZARD:

19 Thank you.

20 MS. KNOWLES:

21 And -- And the only other portion
22 that -- uh -- we want to make a point of is:

23 He makes a reference to the North
24 Carolina bond procedure, which seems to indicate that he
25 has had some sort of involvement.

1 THE COURT:

2 Where -- Where was that?

3 MS. KNOWLES:

4 3:15.

5 THE COURT:

6 I mean, I -- I must have been
7 asleep during that. 'Cause I haven't heard anything
8 about a bond hearing.

9 MS. KNOWLES:

10 3:15.

11 THE COURT:

12 What does he say, exactly?

13 MS. KNOWLES:

14 He makes a reference to:

15 I know how they do it in North
16 Carolina.

17 And it seems to indicate that he
18 has had some sort of involvement with North Carolina bond
19 procedure, and thus criminal charges.

20 THE COURT:

21 Nah, I'm -- I'm not going to go
22 there.

23 I -- I don't know what that means,
24 if anything.

25 I -- I'm not -- That's certainly

1 not a comment on his record.

2 I'm not -- I'm not -- I'm just not
3 going to go that far.

4 MS. KNOWLES:

5 Okay. Thank Your Honor.

6 THE COURT:

7 Anything else?

8 MR. HAZZARD:

9 Yes sir.

10 I think we have 4 or 5 more
11 matters at this point.

12 Uh -- Obviously we still have the
13 review of the video testimony of Lance O'Bryant, and --
14 uh -- the objections -- because all objections, of
15 course,, were held until we got in front of the judge.

16 And then, I believe I have 4 other
17 motions after that.

18 THE COURT:

19 What are your other motions?

20 MR. HAZZARD:

21 Uh -- One was for -- Nothing
22 major.

23 One with regard to courtroom
24 security.

25 You know, I don't want these

1 wonderful fellows here all ganged up behind my client;
2 this the jury the impression that he is some incredibly
3 dangerous man.

4 If the -- uh -- Horry County
5 Sheriff's Office wants to have them placed strategically
6 around the courtroom in even integrals, that's fine by
7 me.

8 Don't want all of them sitting
9 over here behind him though.

10 THE COURT:

11 One behind him; one by the -- uh
12 -- by the lockup door; and the others can be scattered
13 around the courtroom.

14 MR. HAZZARD:

15 Uh -- We would move to prohibit
16 the use of the term "victim" by the State in referring to
17 Ms. Eberhardt.

18 Our submission is that:

19 It presupposes the guilt of the
20 defendant.

21 I realize The Court may say:

22 Well, you know, she should --

23 THE COURT:

24 What would you like to have her
25 called?

1 MR. HAZZARD:

2 Ms. Eberhardt. Call her **Complaining**

3 Eberhardt. That's her name, Your Honor.

4 THE COURT:

5 Well --

6 MS. LIVESAY:

7 Your Honor, I have to object to
8 that. She is the victim in this case.

9 They're -- The jury's going to
10 know she's a victim in this case.

11 There's -- There's no doubt this
12 gentleman's the defend -- defendant and she's the victim.

13 I think it makes it more confusing
14 by not -- not calling her the victim.

15 THE COURT:

16 Why --

17 MS. LIVESAY:

18 And then we're going to have names
19 flurrying all around.

20 THE COURT:

21 -- are we going to call him

22 "Defendant?"

23 MR. HAZZARD:

24 I'm not going to call him

25 Defendant.

1 I'm going to call him Mark Eliot.

2 That's his name.

3 THE COURT:

4 All right.

5 Well, I don't have -- see any --

6 Do you have any authority for not mentioning "victim?"

7 MR. HAZZARD:

8 Because it --

9 THE COURT:

10 You know, or "alleged victim."

11 MR. HAZZARD:

12 -- presupposes -- Now, if they
13 want to refer to her as the alleged victim, that is
14 wonderful.

15 MS. LIVESAY:

16 She's -- She's the victim of a
17 crime.

18 She's been treated like a victim.

19 They're going to know she is the
20 victim of this crime.

21 They're going to know she's the
22 alleged victim by the fact that we're having this trial.

23 I don't think -- I think it's
24 ridiculous not to call her the victim; to keep it from
25 the jury.

1 The jury knows that she is the
2 victim in this case.

3 THE COURT:

4 Well --

5 MS. LIVESAY:

6 And the use of the term "victim"
7 presupposes that a crime has occurred, which is the
8 purpose for a trial.

9 MS. LIVESAY:

10 Well, the whole trial presupposes
11 that a trial --

12 THE COURT:

13 Absolutely.

14 MS. LIVESAY:

15 -- that a crime's been converted
16 (sic).

17 THE COURT:

18 I'll tell you what, Mr. Hazzard:
19 I'll let you call her the alleged
20 victim.

21 And you can call her the victim,
22 Ms. Livesay.

23 I mean -- you know -- that's a
24 term that we've used ad infinitum -- you know -- in this
25 courtroom and every courtroom in this country.

1 That's what the Legislature refers
2 to them as -- as when we talk about the victim's rights
3 and the right of victims to be present during the court
4 -- uh -- room proceedings.

5 I mean, that's just a term.

6 MR. HAZZARD:

7 Then we simply request a jury
8 instruction that tells the jury that; that that's simply
9 a term; that they are to place absolutely nothing on it
10 as far as an indication of any guilt whatsoever.

11 THE COURT:

12 I'll do it preliminarily.

13 MR. HAZZARD:

14 Thank you, Your Honor.

15 At some point before we begin --
16 begin the trial, the Defense would move that The Court
17 instruct all witnesses for the State, in advance, that
18 there is to be no mention made regarding Defendant's
19 prior record; or established as a sex-offender -- or a
20 registered sex offender, considering that there are no
21 Lyle issues in this case.

22 THE COURT:

23 I'm sure that Ms. Livesay knows
24 that.

25 MS. LIVESAY:

1 There won't be, Your Honor.

2 THE COURT:

3 She knows that that will lead to a
4 mistrial if she does. So she's going to tell her
5 witnesses not to do that.

6 MR. HAZZARD:

7 I hope --

8 THE COURT:

9 Right, Ms. Livesay?

10 MS. LIVESAY:

11 Yes sir.

12 THE COURT:

13 Okay.

14 MR. HAZZARD:

15 All right.

16 Now, other than with regard to
17 Lance O'Bryant's video deposition, the Defense doesn't
18 have any other motions at this time.

19 THE COURT:

20 All right.

21 What do you have in the way of
22 that deposition?

23 What kind of motions -- uh --
24 objections do you have?

25 MR. HAZZARD:

1 Hearsay.

2 THE COURT:

3 My understanding is:

4 He is just a person that likes --
5 picked up the victim?

6 MR. HAZZARD:

7 Allegedly; yes sir.

8 THE COURT:

9 Uh -- Or -- Or met the alleged
10 victim on the -- uh -- on the street that morning?

11 Is that right?

12 MR. HAZZARD:

13 Yes sir.

14 THE COURT:

15 Okay. And how are you going to
16 avoid an excited utterance?

17 MR. HAZZARD:

18 How am I going to avoid it?

19 What I'm saying is that:

20 There is a statement made by her
21 to this gentleman.

22 And he then testifies regarding
23 it.

24 And it's not a statement that --
25 you know -- he's basically testifying to what a third-

1 party said.

2 That's my understanding of
3 hearsay, Your Honor.

4 THE COURT:

5 But -- But she --

6 MR. HAZZARD:

7 Now --

8 THE COURT:

9 I understand that he -- he called
10 for a --

11 MR. HAZZARD:

12 -- if the State wants to raise the
13 issue of excited utterance, they can at that time.

14 Or if The Court sua sponte wishes
15 to do that, then I'll be more than happy to go into it.

16 THE COURT:

17 Okay.

18 Well, we'll go into it when we see
19 the -- Can we just look at that portion tomorrow; okay?

20 We don't have to look at all of
21 it; do we?

22 MS. LIVESAY:

23 Yes sir.

24 We've got the transcript here and
25 the -- uh -- the video, if you want me to -- Let's see,

1 there's two copies of the transcript of the deposition of
2 Lance O'Bryant.

3 I don't know if you want me to
4 leave it here for The Court for us to argue tomorrow?

5 Or I can certainly hand one over.

6 THE COURT:

7 Well, it's -- it's 6:15, and we're
8 going to argue it tomorrow for sure.

9 But I -- What I'm getting at:

10 Do -- Do we need to go through a
11 whole deposition?

12 Mr. Hazzard seems to zero right in
13 on the -- the objectionable part.

14 Right, Mr. Hazzard?

15 MR. HAZZARD:

16 That's right, Your Honor.

17 THE COURT:

18 He zeroes right in; we can locate
19 it, and we can go right to it in the morning.

20 MS. LIVESAY:

21 That's --

22 THE COURT:

23 No need to spend an hour watching
24 this -- the entire video, if the only issue before me is
25 going to be the admissibility of a statement by the -- uh

1 -- alleged victim.

2 MS. LIVESAY:

3 Yes sir. We can do that.

4 THE COURT:

5 What is objectionable?

6 Tell us up front, Mr. Hazzard?

7 Tell me what -- what statement is
8 objectionable?

9 MR. HAZZARD:

10 Uh -- My recollect --

11 THE COURT:

12 So there's no question.

13 MR. HAZZARD:

14 My recollection is that Mr.

15 O'Bryant says that:

16 He was running. Came -- uh --
17 into the middle of the street. Something about not
18 wanting to scare her.

19 So he ran off the sidewalk into
20 the middle of the street.

21 She then asked if she could use a
22 phone.

23 He said:

24 I don't have it with me, but it's
25 back at the house.

1 And as they are walking back to
2 the house, well after any excited utterance, she alleges
3 that she was raped; and -- uh -- basically that she
4 alleges that she was raped; and that she had been
5 wandering around for about an hour.

6 THE COURT:

7 Okay.

8 MS. LIVESAY:

9 So I'd just prefer to argue --

10 THE COURT:

11 So that was a series of -- uh -- a
12 conversation he had with her?

13 MR. HAZZARD:

14 Yes sir.

15 THE COURT:

16 Okay. All right.

17 And your position is going to be?

18 MS. LIVESAY:

19 I was inquiring -- So are we
20 arguing this tonight, Your Honor --

21 THE COURT:

22 No.

23 MS. LIVESAY:

24 -- or are we just narrowing it
25 down?

1 THE COURT:

2 No. We're just narrowing it
3 down.

4 MS. LIVESAY:

5 Yes sir. I -- I agree. That
6 would be the portion that we're going to be arguing
7 about.

8 And it's going to be whether or
9 not it's "excited utterance" or not.

10 THE COURT:

11 Okay.

12 MR. HAZZARD:

13 And, in fact, if I can borrow a
14 copy of the transcript overnight, I will review it and
15 may not even have the objection in the morning, Judge.

16 THE COURT:

17 Very well. Okay. All right.

18 We will -- uh -- see you all here
19 at nine in the morning; okay.

20 MR. HAZZARD:

21 All right.

22 MS. LIVESAY:

23 Thank Your Honor.

24 (WHEREUPON: The court was
25 declared in recess at 6:18 PM, November 15, 2010.)

1 (WHEREUPON: The court was called
2 to order by the Bailiff at 9:00 AM, November 16, 2010;
3 and The Court addressed a different case involving an
4 unrelated defendant, Jeffrey Wayne Riebe, until 9:09 AM,
5 at which time The Court directed it's attention back to
6 the Elliot case.)

7 THE COURT:

8 Where's the defendant?

9 MR. HAZZARD:

10 He's back in lockup, Your Honor.

11 THE COURT:

12 Let's get him out.

13 All right. I'll hear you, Mr.

14 Hazzard, or Ms. Knowles, either one.

15 MR. HAZZARD:

16 The Court's indulgence, Your
17 Honor?

18 (WHEREUPON: The defendant entered
19 the courtroom at 9:29 AM, November 16, 2010.)

20 MR. HAZZARD:

21 Where we left off yesterday was
22 with regard to the video taped statement of Lance
23 O'Bryant, and some contemporary objections I have that
24 have to be addressed by The Court.

25 Those objections, specifically

1 are, to statements made Mr. O'Bryant during the video
2 taped deposition that are hearsay statements -- uh --
3 statements allegedly made to him by Ms. Eberhardt.

4 THE COURT:

5 All right.

6 How about 801(d)1?

7 MR. HAZZARD:

8 801(d)1(d) -- uh -- specifically
9 indicates that:

10 Unless it's with regard to time

11 and place --

12 THE COURT:

13 All right; what does he say, then?

14 MR. HAZZARD:

15 He says that she says that -- uh
16 -- she was abducted and raped.

17 THE COURT:

18 Okay.

19 MR. HAZZARD:

20 And our position is that:

21 It is limited specifically to any
22 information regarding the allegations of what allegedly
23 occurred under 801(d)1(d) is limited only to time and
24 place to prevent there being improper bolstering
25 testimony, since it was my understand that Ms. Eberhardt

1 is available to testify.

2 THE COURT:

3 All right.

4 How about 801 -- uh -- (d)1, which
5 says:

6 A prior consistent statement -- uh
7 -- and it's offered to rebut an expressed or implied
8 charge against the declarant of recent fabrication or
9 improper influence and motive.

10 Isn't that exactly what you're
11 doing?

12 You're challenging her?

13 MR. HAZZARD:

14 Your Honor, we have made
15 absolutely no challenge at this point.

16 If they want to save Mr.
17 O'Bryant's testimony till rebuttal, then I could say --

18 THE COURT:

19 No, I'm talking about -- I would
20 assume, in either case, the alleged victim is going to
21 testify first.

22 MS. LIVESAY:

23 Uh -- Yes sir. The alleged
24 victim will testify first. And --

25 THE COURT:

1 All right.

2 MS. LIVESAY:

3 And if I may correct for the
4 record -- uh -- the deposition of Lance O'Bryant is -- uh
5 -- here. And she doesn't tell Mr. O'Bryant that she was
6 raped.

7 She just merely tells him that she
8 was kidnapped.

9 So as far as time and place, that
10 wouldn't even be relevant as to this statement, because
11 she's not telling anybody she was raped.

12 She tells him she was kidnapped;
13 she was told to get down on the ground by a person that
14 she thought had a gun.

15 At that time, the person put her
16 in the car; kept her in the car; took her phone; and then
17 dumped her out.

18 She never relates -- and I'm
19 looking at it now -- on the statement that he makes to --
20 uh -- the statement that Lance O'Bryant makes as regards
21 to what she told him is on Page 11.

22 She never said, and he never
23 answers in any way that says that she said anything about
24 being raped.

25 THE COURT:

1 Well --

2 MS. LIVESAY:

3 He says it's just kidnapping --

4 THE COURT:

5 -- 801(d)1 allows her to -- him to
6 recite that.

7 If -- If she -- If it's a sexual
8 criminal conduct case and she makes statements concerning
9 time and place, that's admissible as an exception to
10 hearsay.

11 You're saying that's not the case
12 here?

13 MS. LIVESAY:

14 I'm saying that's not the case.

15 And -- And even if it was the case -- uh -- this is the
16 first person that she ran into that night at 4:30 in the
17 morning --

18 THE COURT:

19 Well, upon what grounds do you
20 offer the testimony, then?

21 MS. LIVESAY:

22 Excited utterance, Your Honor.

23 THE COURT:

24 Well, give me the circumstances.

25 Tell me about it.

1 MS. LIVESAY:

2 Uh -- Your Honor, excited
3 utterance; in order for me to meet it, her statement has
4 to be related to a startling event.

5 And it's got to be found that it
6 was while under stress.

7 Uh -- Once she walks up to him,
8 she immediately says:

9 I've been kidnapped.

10 So that statement right there
11 meets the first element.

12 She had told him, as regards to
13 the startling event, the statement we already know,
14 talking about what's happened under the stress.

15 His testimony clearly says that
16 when he saw her, she appeared shook up and nervous.

17 And then, when you take that rule
18 that says you have to examine it under the totality of
19 the circumstances, when you add his testimony that she
20 was shook up and nervous, she immediately walked up and
21 said she was kidnapped.

22 And when you look at it, and the
23 fact it was 4:30 in the morning; she was out there
24 wandering around with no shoes on. She had no phone.

25 He testifies himself he was

1 running that morning. He never saw another person or
2 another vehicle out that night.

3 He all -- He also testified:

4 She is just shook up, nervous, and
5 just extremely thankful that he had stopped and helped
6 her get a phone.

7 I think it meets the elements of
8 excited utterance when you look at it in the totality of
9 the circumstances in regards to how she met him and when
10 she met him, what she said.

11 She immediately said:

12 I've been kidnapped. I need a
13 phone.

14 She's indicating right off the bat
15 what's happened.

16 He also says that he didn't ask
17 her any questions about what had happened that night,
18 which goes along with the fact it was an excited
19 utterance.

20 She just immediately starts
21 rambling on about what had happened.

22 He never asked her any questions
23 about what had happened to her that evening.

24 THE COURT:

25 All right.

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1 Mr. Hazzard, how about that?

2 I mean, she says that that's the
3 first thing out of her mouth. And the witness says that
4 she was upset -- uh -- and it occurred apparently right
5 after she was released.

6 Why would that not be -- uh --
7 come under the exception for excited utterance?

8 MR. HAZZARD:

9 Well, my understanding, Your
10 Honor, is that -- uh -- the first things out of her mouth
11 were:

12 Do you have a phone that I can
13 borrow?

14 Secondly, she indicates that she
15 had been walking around for approximately an hour.

16 So I don't believe this is a
17 matter of it be contemporaneous in time and place, when
18 obviously -- uh -- the dis -- the distance in time
19 between the alleged offense and the alleged utterance is
20 a matter for The Court's consideration in determining
21 whether it is considered to be an excited utterance, Your
22 Honor.

23 We would simply indicate, and our
24 position is, that:

25 It is hearsay.

1 That my -- our understanding is
2 Ms. Eberhardt is here and available to testify.

3 That to allow his previous
4 statement would be impermissible bolstering.

5 Uh -- As The Court has questioned
6 the State, apparently there's --

7 THE COURT:

8 Well, don't you challenge her
9 credibility?

10 MR. HAZZARD:

11 Your Honor --

12 THE COURT:

13 And doesn't it come under a prior
14 consistent statement?

15 MR. HAZZARD:

16 How am I challenging --

17 THE COURT:

18 Wouldn't it be ad -- admissible as
19 a prior consistent statement?

20 MR. HAZZARD:

21 Would it be admissible as a prior
22 consistent statement?

23 No sir.

24 THE COURT:

25 And why not?

1 MR. HAZZARD:

2 Because it's a pure faced
3 statement. There's no need for any corroboration of it
4 by -- by a prior consistent statement.

5 THE COURT:

6 Well, it allowed under 801(d)1 as
7 a prior consistent statement, if you attack that
8 statement that she will testify to.

9 If you allege or suggest, either
10 impliedly or expressly, that she has improper motive, or
11 has fabricated this story, then the State has a right to
12 introduce it as a prior inconsistent statement -- or a
13 prior consistent statement.

14 Does she not -- Does it not?

15 I mean, tell me why -- why -- why
16 801(d)1, that section, does not apply.

17 This -- This is what it says:

18 The declarant testifies prior
19 statements -- excuse me.

20 A statement is not hearsay if --
21 this is (d)1 -- the declarant testifies at a trial or
22 hearing and is subject to cross-examination concerning
23 the statement, and the statement is -- and I'm going to
24 go down to (b):

25 Consistent with declarant's

1 testimony and is offered to rebut an expressed or implied
2 charge against the declarant of a recent fabrication, or
3 improper influence, or motive, provided however, the
4 statement must have been made before the alleged
5 fabrication, or before the alleged improper influence or
6 motive arose.

7 Now, tell me why it's not -- would
8 not be admissible under 801(d)1(d)?

9 MR. HAZZARD:

10 (d)1(d), or (b)?

11 THE COURT:

12 Or (b), excuse me. Or that's that
13 subsection (b) there, as a prior inconsistent -- or a
14 prior consistent statement.

15 MR. HAZZARD:

16 Well, the issue The Court is going
17 to have to -- uh -- rule on is -- It states specifically:

18 If consistent with the declarant's
19 testimony and offered to rebut an expressed or implied
20 charge against the declarant of a recent fabrication or
21 improper influence or motive.

22 THE COURT:

23 So what I'm going to have to do --

24 MR. HAZZARD:

25 If what determines "recent" -- If

1 my -- If my -- uh -- cross-examination is that:

2 The motive and the improper nature
3 existed at the time of that statement.

4 Not saying that any --

5 THE COURT:

6 It wouldn't be admissible --

7 MR. HAZZARD:

8 -- motive --

9 THE COURT:

10 -- under that -- It wouldn't be
11 admissible under that.

12 I don't know about excited
13 utterance.

14 But what I believe I'm going to
15 have to do is wait and hear her testimony and see what
16 develops; see what attacks you have as far as her
17 testimony is concerned --

18 MR. HAZZARD:

19 Fair enough.

20 THE COURT:

21 -- during your cross-examination.

22 MR. HAZZARD:

23 Fair enough.

24 THE COURT:

25 I don't see what issues are

1 raised. I'm not at this time prepared to make a finding
2 as to whether or not it's an excited utterance.

3 I want to hear her testimony.

4 And I want to hear the testimony
5 of the witness leading up to the statement, or her -- his
6 observations, before I get into it; okay.

7 MR. HAZZARD:

8 Okay.

9 THE COURT:

10 All right.

11 Now, we've got a jury downstairs.

12 Mr. DeBusk, are your --

13 MS. LIVESAY:

14 One motion in the case, Your
15 Honor, to clarify that what we talked about pretrial as
16 to the rape shield, I'm assuming we've clarified there
17 won't be any questions asked of my victim regarding any
18 sexual activity outside of the activity between her and
19 the defendant.

20 THE COURT:

21 And we're going to see how that
22 develops.

23 I think I made it very clear that:

24 If you open the door as to that,
25 he may be able to do -- to -- uh -- to bring it up.

1 We'll just have to see.

2 MS. LIVESAY:

3 Okay.

4 THE COURT:

5 All right.

6 Mr. -- Otherwise, Mr. Hazzard, the
7 rape shield does protect her as far as any other sexual
8 activity.

9 But if we get into the issue of
10 why DNA -- uh -- protocol would not identify any -- any
11 DNA, and Ms. -- uh -- Livesay wants to go down that road,
12 and she talks about a mix, I'm going to let you explore
13 that at -- at least to a limited degree; okay.

14 MR. HAZZARD:

15 Understood, Your Honor.

16 THE COURT:

17 All right.

18 (WHEREUPON: The Court abruptly
19 began to address matters back on the same case The Court
20 had earlier addressed involving an unrelated defendant,
21 Jeffrey Wayne Riebe, and suspended matters involving this
22 case at 9:23 AM, November 16, 2011 until 9:28 AM,
23 November 26, 2011, when the jury venire pool for this
24 case entered the courtroom.)

25 THE COURT:

1 Now, what I want to do is:
2 Begin by telling you a little bit
3 about this case.

4 I want to tell you what the
5 indictments allege.

6 An indictment is nothing more than
7 the document that brings a charge to The Court.

8 It is absolutely not evidence. Nor
9 is anything alleged, or stated, or set forth in the
10 indictment, evidence.

11 You will not consider these
12 indictments as evidence.

13 As I said, they are nothing more
14 than the way -- or the document by which -- a case is
15 brought by -- uh -- brought to The Court. And it informs
16 the defendant of what the charges are.

17 Now listen very carefully as I
18 explain what the indictments allege in this case.

19 I have an indictment -- Indictment
20 Number -- if I can find it here -- 2009-GS-26-2889.

21 That indictment is an indictment
22 for kidnapping.

23 This alleges that:

24 The defendant, Mark A. Elliott,
25 did in Horry County, State of South Carolina on or about

1 June the 29th of 2009 unlawfully seize, confine,
2 inveigle, decoy, kidnap, abduct, or carry away one B. E.
3 -- and that's how the victim is -- is -- uh --
4 identified on this indictment -- without authority of
5 law.

6 And that was in violation of the
7 law and constitutes the offense and kidnapping.

8 I have an indictment which is
9 Indictment Number 2010-GS-26-04327.

10 That indictment -- uh -- is an
11 indictment for criminal sexual conduct with a minor in
12 the second degree.

13 That indictment alleges that Mark
14 A. Elliott did in Horry County, State of South Carolina,
15 on or about June the 29th of 2009 willfully and
16 unlawfully commit the crime of sexual -- criminal sexual
17 conduct with a minor in the second degree by engaging in
18 sexual battery with a minor who was at least 14 years of
19 age but who was less than -- uh -- 16 years of age, who
20 birthday is 8/7/1994.

21 And the defendant was in a
22 position of familial, custodial, or official authority to
23 coerce the victim to submit, or was older than the
24 victim, in violation of the law.

25 I also have an indictment -- uh --

1 which is Indictment 2009-GS-26-2890.

2 That indictment alleges criminal
3 sexual conduct in the first degree.

4 It says that Mark A. Elliott did
5 in Horry County, State of South Carolina, on or about
6 June the 29th of 2009 engage in sexual battery with B.
7 E., while the victim was also the victim of forcible
8 confinement. kidnapping, robbery, extortion, burglary,
9 housebreaking, or some similar act or offense.

10 And I have an indictment that is
11 Indictment Number 2009-GS-26-3471, that alleges failure
12 to stop for blue lights or sirens.

13 Uh -- And that indictment alleges
14 that Mark A. Elliott did, on the same day, June 29th of
15 2009, while operating a motor vehicle on a road or street
16 or highway of the State of South Carolina, did refuse and
17 fail to stop his motor vehicle when signaled to do so by
18 a law enforcement vehicle by means of a siren and/or
19 flashing lights.

20 And finally, I have an indictment,
21 which is Indictment Number 2009-GS-26-3472, which alleges
22 resisting arrest.

23 And this alleges that Mark A.
24 Elliott did, in Horry County, State of South Carolina, on
25 or about June 29th of 2009, knowingly and willfully

JURY SELECTION

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1 oppose or resist an arrest being made by one whom the
2 defendant knew, or reasonably should have known, to be a
3 law-enforcement officer.

4 Those are the charges that are
5 made against the defendant in this -- this particular
6 case. And that gives you a brief understanding of the
7 facts.

8 And it's my understanding that
9 this occurred in the North Myrtle Beach section of Horry
10 County.

11 Is that correct?

12 MS. LIVESAY:

13 Yes sir.

14 THE COURT:

15 Okay.

16 Now, before I get on with the
17 selection, I want to put you all under oath.

18 So, Madame Clerk, would you --
19 would you administer the oath?

20 (WHEREUPON: The jury venire was
21 sworn by the Clerk at 9:52 AM, November 16, 2010.)

22 THE COURT:

23 All right.

24 Now let me ask you:

25 Is there anyone of you who did not

1 affirm or -- uh -- or take the oath by swearing -- uh --
2 that was just administered?

3 And if you did not take the oath
4 or affirm what you would -- that your responses would be
5 truthful, please let me know by raising your hand?

6 (No response.)

7 THE COURT:

8 And there is no one.

9 MR. HAZZARD:

10 Your Honor, may we approach very
11 briefly?

12 THE COURT:

13 Yes.

14 (WHEREUPON: Counsel for each party
15 conferred off the record with The Court at the bench at
16 9:53 AM, November 16, 2010.)

17 THE COURT:

18 A moment ago, I said that the
19 indictment gives you a -- a brief understanding of the
20 facts -- the alleged facts in the case.

21 That is what the State alleges
22 occurred and what the State must prove to you beyond a
23 reasonable doubt.

24 Now, let me ask you this:

25 Has anyone ever been by -- related

MISCELLANEOUS DISCUSSION

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1 THE COURT:

2 All right.

3 At the sidebar, I was instructed
4 or -- uh -- informed by -- uh -- both the Defense and the
5 State that there was no challenge to the jury panel.

6 Is that right, Mr. -- uh --

7 Hazzard; no Batson issue?

8 MR. HAZZARD:

9 There is no Batson issue on behalf
10 of the Defense.

11 However -- uh -- the Defense would
12 request that the matter of, I believe, Juror 117, who was
13 excused for cause be placed on the record.

14 THE COURT:

15 All right; and I will.

16 Uh -- Juror 170, I think is his
17 number --

18 MS. LIVESAY:

19 Yes sir.

20 THE COURT:

21 -- Anthony Fowler.

22 MS. LIVESAY:

23 Who is -- Let me check.

24 THE COURT:

25 Or 117? Which one was it?

1 THE COURT:

2 My --

3 MS. LIVESAY:

4 Yes sir.

5 THE COURT:

6 -- My Clerk tells me 117.

7 MS. LIVESAY:

8 It was 117, Anthony Fowler.

9 THE COURT:

10 Uh -- Ms. -- uh -- Livesay
11 informed The Court that there was an outstanding warrant
12 and an extradition?

13 MS. LIVESAY:

14 Yes sir. He was wanted for
15 extradition.

16 THE COURT:

17 Presently, have you informed the
18 Sheriff of that?

19 MS. LIVESAY:

20 Yes sir.

21 THE COURT:

22 Okay.

23 So the Sheriff of Horry County has
24 been notified that he's in the building?

25 Is that correct?

1 MS. LIVESAY:

2 (Nods in the affirmative.)

3 THE COURT:

4 All right. And that was the
5 reason, Mr. Hazzard.

6 I thought you had heard that when
7 we were discussing it.

8 MR. HAZZARD:

9 Nah, I did hear it, Your Honor.

10 I just thought it was appropriate
11 that it be placed on the record.

12 THE COURT:

13 Okay.

14 MR. HAZZARD:

15 I didn't know if the court
16 reporter heard it or not.

17 THE COURT:

18 All right.

19 Uh -- And I had (sic) informed the
20 court reporter of that.

21 Uh -- And for that reason, he was
22 excused for cause.

23 I didn't want to end up with a
24 mistrial when a juror got arrested during -- during the
25 -- uh -- the trial.

1 Don't let your thoughts wander;
2 but give strict attention to the testimony in this case;
3 so that at the end of all the testimony, after the
4 arguments of counsel and the charge on the law by The
5 Court, you will then be in a position to determine what
6 the true facts are, and to apply the law to those facts,
7 and thus render a just and true verdict.

8 Now, Mr. Foreman, it is your duty
9 to preside in the jury room, and to be the jury
10 spokesperson.

11 Uh -- It will also be your duty to
12 write the verdict. But I will give you further
13 instructions about that at the conclusion of the case.

14 Now, anything further from the
15 State?

16 MS. LIVESAY:

17 No sir.

18 THE COURT:

19 Anything further from the Defense?

20 MR. HAZZARD:

21 Nothing from the Defense, Your
22 Honor.

23 THE COURT:

24 All right.

25 With those few remarks to let you

OPENING REMARKS BY COUNSEL

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1 know how we're going to proceed, we now turn the case
2 over to the Solicitor for her opening remarks.

3 MS. LIVESAY:

4 Thank Your Honor. If it please
5 The Court?

6 Ladies and gentlemen of the jury,
7 I'm Nancy Livesay. I'm the prosecutor in this case.

8 I am a prosecutor for a Horry
9 County, as well as Georgetown County.

10 In the opening statements, I'm
11 going to basically give you what the law is.

12 That way when you hear each
13 witness, you can decipher for yourselves whether or not
14 you believe that witness, and whether or not I've made my
15 case, and I've met the elements of that law.

16 Now there is several offenses that
17 the defendant in this case has been charged with.

18 The first one is criminal sexual
19 conduct of a first degree.

20 Now criminal sexual conduct of a
21 first degree has been made up of many elements.

22 But it is a sexual battery
23 involving some sort of an aggravating circumstances.

24 In this case, the aggravating
25 circumstance is kidnapping.

1 A sexual battery is just what you
2 would think it is.

3 CSC is penetration.

4 That is when a victim has been
5 penetrated without their consent.

6 And CSC first says:

7 Not only has that person been
8 penetrated, but it involves some sort of aggravating
9 circumstance.

10 In this case, it's kidnapping.

11 Kidnapping means that you are not
12 able to leave that person's control.

13 It's not necessarily me picking
14 someone up and taking them somewhere. It's me taking
15 control of that person.

16 And this person, the defendant,
17 has been charged with CSC first, which is a sexual
18 battery, which means we're claiming he penetrated the
19 victim in this case.

20 The kidnapping is us alleging that
21 this defendant, while he was sexually battering this
22 woman, he had her in his control, and he would not
23 release her.

24 That's where the kidnapping comes
25 from.

1. But in this case -- I'm going to
2 give you a summary of the facts in a -- in a minute.

3 But in this case, we are talking
4 about a case where a young lady was picked up and put in
5 a vehicle against her will, and kidnapped, and not able
6 to leave.

7 That -- That is going to be the
8 facts in this case.

9 Now criminal sexual conduct with a
10 minor second degree is also an offense that we've charged
11 this defendant with.

12 Criminal sexual conduct, again,
13 means sexual battery. We're talking about penetration.

14 Only in this case, we're talking
15 about a victim that's no older than 14 but older than 11.

16 So we're talking about a victim
17 between the ages of 11 and 14.

18 So we're talking about a victim
19 that's been penetrated, sexually assaulted, and she
20 breaches the ages between 11 and 14.

21 You're going to hear in this case
22 that our victim is 14 years old.

23 Now there's also two other charges
24 that we've got and indicted the defendant for.

25 One of them is failure to stop for

1 a blue light. And that's exactly what it sounds like.

2 When that officer puts his lights
3 on, and he's behind that vehicle, and that vehicle
4 doesn't stop, that's failure to stop for a blue light.

5 You're going to see -- In this
6 case, you're going to see this defendant, you're going to
7 see the officer with his blue lights on, you're going to
8 see him not stop.

9 Now you will see him eventually
10 stop. You will see that.

11 And then you're going to see him
12 get out of the car and take off running.

13 You going to hear the officers try
14 to detain him, try to place him under arrest, and that's
15 what you're going to see on the video.

16 We've also got him charged with
17 resisting arrest; because when he gets off that -- out of
18 the car -- takes off running, you're going to see the
19 officers follow behind him, you're going to act -- you're
20 going to see and hear them continually ask:

21 Put your hands up. Put your hands
22 out.

23 Continuously giving commands as he
24 refuses.

25 Now resisting arrest is when you

OPENING REMARKS BY COUNSEL

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1 believe, or you should reasonably believe, that you're
2 under arrest and you don't comply.

3 At that point, you're resisting
4 arrest.

5 That is the elements I have to
6 prove.

7 Now those are the crimes that he's
8 been indicted for.

9 Now the facts of the case that
10 you're going to hear -- you're not going to hear from a
11 whole lot of witnesses; but you're going to hear from
12 witnesses in this case, and you're going to see videos.

13 Now, the victim in this case is
14 **Complaining Witness** She's 14 years old.

15 What you're going to find out is
16 that:

17 She was here. She's not from
18 Myrtle Beach or Horry County. She's from North Carolina.

19 She came down here with her best
20 friend and the best friend's parents.

21 Like every other little girl about
22 14, going to the beach for the summer with their best
23 friend. That's the case we've got.

24 She comes down here. They've got
25 a place down here; a house.

1 They're staying in the house.

2 They're hanging out with her best
3 friend and the best friend's parents.

4 She's got a boyfriend.

5 The boyfriend's got a friend.

6 Of course, like every 14 -- 15-
7 year-old -- 16-year-old, the boyfriend drives down here
8 to meet her. Sneaks out. Wants to meet the boyfriend.

9 You're going to hear that the
10 night of the incident, she sneaks out of the house to
11 meet her boyfriend and his friend R.B. [REDACTED]

12 It's about three o'clock in the
13 morning in North Myrtle Beach.

14 You're going to hear:

15 The three of them are hanging out
16 in front of the house, right there in a residential
17 neighborhood in North Myrtle Beach.

18 She's 14.

19 Then you're going to hear:

20 They see a car drive by; a older,
21 4-door, burgundy vehicle, driving by.

22 That's what you're going to hear;
23 at 4:00 o'clock in the morning -- 3:00 o'clock in the
24 morning.

25 Nobody else is out.

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1 There's no cars on the road.
2 That car has the defendant in it.
3 And what you're going to hear is:
4 That defendant gets out of his
5 vehicle.

6 The victim is standing out there
7 with her boyfriend and his friend **RB.**

8 All of them are teenagers.

9 The defendant gets out of the car
10 and tells them all to get on the ground.

11 They think he's got a gun.

12 He's holding some that appears to
13 be a gun.

14 All three of them immediately get
15 on the ground.

16 Then you're going to hear he tells
17 the two guys:

18 Get up and start walking in that
19 direction.

20 The two guys get up and walk in
21 that direction.

22 Scared. Three o'clock; nobody
23 around.

24 Then you're going to hear that:

25 As they looked back, they see the

1 defendant putting that young lady in his car and taking
2 off.

3 Shortly later, you will hear a 911
4 call. 911's called.

5 Once 911's called, the police are
6 alerted that this vehicle is out and possibly has the
7 young lady in the vehicle.

8 Then you're going to hear from the
9 officer who gets behind that car; that follows that car;
10 blue lights is on. He doesn't stop.

11 Finally he stops.

12 You're going to hear and see from
13 that officer, the defendant immediately gets out of the
14 car takes off running.

15 Several officers take off behind
16 him in order to try to apprehend him.

17 At that time, the officers are
18 still looking for the victim.

19 At this point, it's about 4:30 in
20 the morning.

21 Nobody yet has seen the victim and
22 does not know where she is.

23 So immediately, they start
24 questioning who? The defendant.

25 He tells them:

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1 Yes, I had the vic -- I had her in
2 my car. She was in the car.

3 When I got out and ran, she got
4 out and ran at the same time.

5 Well, the video's running, folks.
6 But nobody sees anybody else get out of that car, but
7 him.

8 So the officers are scrambling and
9 looking for her. Nobody has yet to find her.

10 Another officer finally calls in.
11 She's found miles away from where
12 that car stopped, and miles away from where he picked her
13 up.

14 And what she's going to tell you
15 is:

16 She ended up there because he
17 picked her up, he drove her around North Myrtle Beach, an
18 area she wasn't familiar with.

19 He took her to a boat ramp and
20 sexually assaulted her; and then left her out there.

21 She was found wandering around at
22 about 4:30 in the morning; shorts, tee shirt, no phone,
23 and no shoes on.

24 That's where she was found; where
25 he left her, in an area she wasn't familiar with and

1 miles from where he picked her up from, and miles from
2 where the officer stopped him.

3 I'm going to ask you to listen to
4 all the facts in this case, all the evidence, plus all
5 the videos.

6 And if you believe that that
7 defendant kidnapped **Complaining Witness** put her in that
8 car, drove her around to an area she wasn't familiar
9 with, and sexually assaulted her, I'm going to ask you to
10 find him guilty of all the offenses we have him indicted
11 for.

12 Thank you for your time.

13 THE COURT:

14 Counsel, will you make an opening?

15 MR. HAZZARD:

16 Yes sir. Thank Your Honor.

17 Judge Hyman told you that this was
18 going to be a search for the truth.

19 Well keep you eyes and ears open,
20 because there's going to be a lot to this case.

21 Because what the prosecutor tells
22 you sounds pretty bad and pretty damning.

23 But just like in a coin, every
24 situation has two sides to it.

25 And what I ask is that you keep

1 your minds open. Keep your eyes peeled. Listen to the
2 evidence that's presented. Listen to where the evidence
3 comes from. And listen to -- or notice -- what evidence
4 you aren't given; okay.

5 Now, what the State has told you
6 -- and I normally try not to get too much into the facts,
7 because a determination of what the facts is, is your
8 providence (sic), not mind, and not hers.

9 But, then, I'm going to address
10 some of this riveting tale that she gave you.

11 The prosecutor says that:

12 Uh -- Ms. Everhart, who at the
13 time was 14, was standing outside of a home in North
14 Myrtle Beach around 3:30 in the morning, talking to her
15 17-year-old boyfriend.

16 What she fails to include to you,
17 and what evidence and testimony will show, is that:

18 This 17-year-old boyfriend had
19 been forbidden to see her by her father. Had been
20 forbidden to see her.

21 And that's why he had to sneak
22 down to see her, to spend some time with her.

23 The State contends that:

24 Old Mark Elliott, here, drives
25 through, and there are these three young people.

1 Complaining 14, I believe.

2 Uh -- The boyfriend, and his
3 friend, M.H. and R.B. are both 17.

4 They're at least 17. I know that
5 much.

6 And that:

7 Old -- Old Mark Elliott, here,
8 stops the car; and then, in the middle of a residential
9 neighborhood, houses all around -- I'm assuming he gets
10 out with something that they say looks like a weapon.

11 And I'm assuming he whispers:

12 (Whispering) Okay everybody, get
13 down on the ground.

14 You know, because, I'm thinking if
15 there was a whole lot of shouting and stuff, and when
16 there's a commotion going on, some of those neighbors
17 might have seen or heard something at some point.

18 But we'll see.

19 Because, again, the facts are for
20 you to determine -- what the actual facts are.

21 Now, the State also tells you that
22 -- There story is going to be that:

23 Old Mark, here, loaded Complaining up
24 in the car and took her off on this -- this wild drive
25 all around North Myrtle Beach; okay.

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1 This gentleman, here, Vance
2 Abercrombie -- uh -- works for the City of North Myrtle
3 Beach.

4 He's their detective. That's why
5 he's sitting here today.

6 He is the lead detective on this
7 case.

8 And evidence and testimony will
9 show that:

10 Vance sat down and talked with
11 Mark, and asked Mark what happened?

12 And evidence and testimony will
13 show -- and I'm assuming that you'll see the video, since
14 the prosecutor says you will -- that Mark says:

15 Look here, this was about drugs.
16 They wanted some drugs. I didn't have any on me.

17 I said:

18 I can take you -- uh -- maybe find
19 some.

20 That the girl then said:

21 Well, I know where these college
22 kids are saying, you know. Take me there.

23 Hops in the car. Takes her there.

24 Now, Vance asks him:

25 Well, Mark, I mean, well, where is

1 she? Where -- Where did she go?

2 Listen man, I dropped her off. I
3 dropped her off.

4 I took her the short distance that
5 she said she wanted to go and dropped her off; okay.

6 Now, let's back up a little bit.

7 Evidence and testimony will show
8 -- and when I mentioned earlier about "keep an eye on
9 what you don't hear and where it fits in."

10 Remember, according to the State's
11 version, these three young people are standing out there
12 before -- before big bad Mark Elliott comes, has them all
13 get on the ground, takes the girl, hustles her away;
14 okay.

15 That:

16 he takes these too scared,
17 frightened boys and makes them -- shoes them away and
18 makes them go away.

19 Evidence and testimony will show
20 that what these two young men did was:

21 They went and got in their car.

22 And I will leave it to you as the
23 finders of fact when it's all said and done, to determine
24 whether -- Well, let me break it down for you like this:

25 Evidence and testimony is going to

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1 show the student these two young men went and got in
2 their car, drove the car back around the block to the
3 house.

4 That when they saw that Mark and
5 **Complaining** had already driven off, do they call the police?

6

7 No.

8 Evidence and testimony is going to
9 show you that:

10 Of these three young people, not
11 one of them ever called the police, ever; never.

12 To this day, none of the three of
13 them have called the police; okay.

14 But yet, there's supposed to be a
15 crime here; okay.

16 But the two young men in the car
17 don't call the police.

18 They tell the police, Detective
19 Abercrombie and -- and Officers Wells, that:

20 Well, we drove around looking for
21 them.

22 And **M.H.** the 17-year-
23 old boyfriend who was supposed to stay away, evidence and
24 testimony will show that he actually called **Complaining** on
25 her cell phone.

1 Because, oh yeah, did we forget
2 that this girl who's been kidnapped, according to the
3 State, has her cell phone. And she answers it and she
4 talks to them.

5 That's what the evidence and
6 testimony is going to show you in this case.

7 (Chuckles.)

8 So, I won't belabor the whole
9 thing, but hopefully you've an understanding that:

10 Again, there's a little more going
11 on here than meets the eye.

12 I thank you for your time and your
13 attention.

14 THE COURT:

15 Ms. Livesay?

16 MS. LIVESAY:

17 Thank Your Honor.

18 At this time, the State calls R.B.

19 R.B. to the stand.

20 THE COURT:

21 All right.

22 WHEREUPON: R.B. WAS DULY

23 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

24 CLERK:

25 Thank you. Please be seated.

1 Okay, if you'll scoot up, speak
2 into the microphone. State your full name; and spell
3 your last name.

4 WITNESS:

5 Uh -- R.B. [REDACTED] [REDACTED]
6

7 DIRECT EXAMINATION BY MS. LIVESAY:

8 Q. R.B. just make sure you speak up so everybody back
9 here can hear, as well.

10 A. All right.

11 Q. R.B. how are you?

12 A. 18.

13 Q. And where are you currently working? Are you
14 working or in school?

15 A. Uh -- I'm working.

16 Q. And where are you working?

17 A. Uh -- Kangaroo Gas Station.

18 Q. And where is that?

19 A. Uh -- In Kannapolis, North Carolina.

20 Q. Okay. And where are you from?

21 A. Uh -- Kannapolis, North Carolina.

22 Q. Okay. And who do you currently live with? Do you
23 live by yourself or do you still live with your family?

24 A. I live with my mother.

25 Q. Okay. How long have you lived in Kannapolis?

1 A. All my life.

2 Q. Okay. And do you know Complaining Witness [REDACTED]

3 A. Yes, I do.

4 Q. Okay. And where is Complaining Witness [REDACTED] from?

5 A. Kannapolis.

6 Q. Okay. And how long have you known her?

7 A. Uh -- A couple of years.

8 Q. Okay. And do you know M.H. [REDACTED]

9 A. Yes I do.

10 Q. And how long have you known M.H. [REDACTED]

11 A. Uh -- Since I was in 9th grade, for like five years.

12 Q. Okay. And -- uh -- are all of these -- those
13 people from Kannapolis?

14 A. Yes ma'am.

15 Q. Okay. Did y'all go to high school together?

16 A. Yes ma'am, we did.

17 Q. And how -- how many times -- or have you ever been
18 to North Myrtle Beach?

19 A. Uh -- I've been to Myrtle Beach. But I've only been
20 to North Myrtle Beach like one other time, than this.

21 Q. Okay. Were you in North Myrtle Beach on or around
22 June 29th of 2009.

23 A. Yes ma'am, I was.

24 Q. Okay. And how old were you then?

25 A. Uh -- 17?

1 Q. Okay.

2 A. Yes.

3 Q. And -- uh -- how did you get to North Myrtle Beach?

4 A. M.H. [REDACTED] drove his car --

5 Q. Okay.

6 A. -- and we came down here.

7 Q. And did y'all know how to get down here?

8 A. Uh -- No. We had to get directions.

9 Q. How did -- Who gave you directions?

10 A. We looked them up on the Internet; and then, ended
11 up getting lost and had to call my mom.

12 Q. Okay. Uh -- Had you ever driven to North Myrtle
13 Beach before, or this area?

14 A. No.

15 Q. Okay. To your knowledge, had M.H. [REDACTED] ever driven to
16 this area?

17 A. No.

18 Q. Do you know anybody that lives down here?

19 A. Uh -- No.

20 Q. Okay. What brought you to the North Myrtle Beach
21 on that particular day?

22 A. Uh -- Because M.H. [REDACTED] wanted to come see [REDACTED] And
23 she was saying down here.

24 Q. Okay. Did y'all know anybody else down here?

25 A. Uh -- No. Uh -- He knew B.C. [REDACTED] but I didn't.

1 Q. Okay. And that was the young lady she was down
2 here with?

3 A. Yes.

4 Q. Okay. Now, what time did y'all get down here?

5 A. Uh -- Late afternoon, probably around six or seven.

6 Q. Okay. Six or seven at night?

7 A. Yes.

8 Q. Okay. Did y'all come into contact with Complaining
9 and B.C. [REDACTED] that night?

10 A. Yes.

11 Q. Okay. Did you know anybody else down here at that
12 time?

13 A. No.

14 Q. Okay. And how were y'all getting around down here
15 at the beach?

16 A. Uh -- We met -- Me and M.H. [REDACTED] met Complaining [REDACTED] and B.C. [REDACTED]
17 at the beach and parked his car, and just walked around
18 with them.

19 Q. Okay. But you had a vehicle down here? You and
20 M.H. [REDACTED] did?

21 A. Yes.

22 Q. Okay. Now, at what time did you meet up with
23 Complaining [REDACTED] and B.C. [REDACTED]?

24 A. Somewhere that night -- Sometime that night. And we
25 met them at the beach.

1 Q. Okay. And how did you find them?

2 A. Uh -- M.H. had called Complaining and found out where
3 they were at. And then we met up with them.

4 Q. Okay. And again, did you have to get directions;
5 or did you know how to get to her?

6 A. Uh -- We had to find out where they were at.

7 Q. Okay. Now did the guardians, B.C. parents,
8 know that y'all were down there?

9 A. No.

10 Q. Okay. At that point, had y'all spoken to them, or
11 come in any kind of contact with them?

12 A. No.

13 Q. Okay. So you met up with the girls at the beach?

14 A. Yes.

15 Q. Okay. Did y'all meet up with them again?

16 A. Uh -- Yeah, later that night at B.C. beach
17 house.

18 Q. Okay. And how did you know how to find that beach
19 house?

20 A. Uh -- Because M.H. called Complaining and found out
21 where it was located.

22 Q. Okay. And again, did y'all take M.H.'s car?

23 A. Yes.

24 Q. Okay. Now at what time, did y'all get to the beach
25 house?

1 A. Uh -- Probably early in the next morning, around
2 one, two, somewhere in there.

3 Q. Okay. And how -- And again, y'all were just riding
4 around the beach?

5 A. Yes.

6 Q. Okay. Now -- uh -- who was all out there when you
7 met them?

8 A. Uh -- It was me and M.H. [REDACTED] Complaining and B.C. [REDACTED]

9 Q. Okay. And was there anybody else out that night?

10 A. No.

11 Q. Okay. Did y'all see anybody else out that night?

12 A. No.

13 Q. Okay. Now while you're down there with M.H. [REDACTED] and
14 Complaining [REDACTED] did you ever come in contact with anybody else?

15

16 A. The -- The time we was down there? The whole time?

17 Q. What R.B. [REDACTED]

18 A. Like the entire time we was down there that night?

19 Q. (Nods in the affirmative.)

20 A. Yes.

21 Q. Now, about what time did you see this other person?

22 A. Uh -- Around 3:00 AM a little after three.

23 Q. Okay. Now, at that point, it was dark outside?

24 A. Yes.

25 Q. Okay. Had y'all seen anybody else riding around at

1 that point?

2 A. No.

3 Q. Had y'all seen anybody else even walking around at
4 that point?

5 A. No.

6 Q. Okay. Now, when that car rode up, who was all
7 standing out there?

8 A. Uh -- I was standing beside the house, like up the
9 driveway. And M.H. and Complaining were standing at the end
10 of the driveway closest to the road.

11 Q. Okay. Now where y'all were at, was that -- uh --
12 describe that area.

13 Was it a bunch of condos -- a
14 bunch of houses?

15 What'd it look like?

16 A. A bunch of beach houses; yes.

17 Q. Just beach houses?

18 A. (Nods in the affirmative.)

19 Q. Okay. And -- uh -- at this point, was B.C. out
20 there, the other young lady?

21 A. Uh -- No, she had just went inside.

22 Q. Okay. So it was just the three of you?

23 A. Yes.

24 Q. Okay. Tell the jury what happened when the car
25 rolled up?

1 A. Well, the car had been driving past. It drove past
2 about two times.

3 And I figure something suspicious
4 was going on.

5 So I got up and walked out to the
6 end, and it drove up again, and he stopped, and asked
7 M.H. for directions.

8 And it act -- It seemed like it
9 was going to pull off. And it pulled down the street a
10 little bit and stopped, and got out with something in --
11 in his hands, and told us to get face down on the ground.

12 Q. Okay. What did the car look like?

13 A. It was a nine -- early '90s red, Toyota Camry.

14 Q. Okay. And the person that got out of the car, what
15 did they look like?

16 A. Uh -- A tall black male. I didn't -- Like, I wasn't
17 out there talking to him like they were.

18 And I had got up and went out
19 there.

20 And as soon as I went out there,
21 he just got out the car and was like:

22 Get down on the ground.

23 Q. Okay. Was there any light where you were standing?

24 A. No.

25 Q. Okay. Uh -- What happened next?

1 A. Uh -- He asked if we had any money. And I told him
2 that I didn't have any money, and offered some change out
3 of my pocket. And he didn't take it.

4 I just put it on the ground in
5 front of me.

6 Q. Okay.

7 A. And then he told us, me and M.H. [REDACTED] to get up and face
8 the other direction and walk away and don't look back.

9 Well, we got up and turned and
10 went to walk away.

11 And took a few steps, and I looked
12 back and he was searching [REDACTED] Complaining like looking for
13 money.

14 And then we got to end of the
15 street and took off running around the block to get to
16 his car.

17 Q. Okay. Now where was your -- where was M.H. [REDACTED] car
18 parked?

19 A. On the opposite side from where we were walking, the
20 side street.

21 Q. Okay. But it was within walking distance?

22 A. Yes.

23 Q. Okay. Now, why was the car parked over there?

24 A. Because we didn't want to park it in front of the
25 house and let B.C. [REDACTED] parents know we were there,

1 because they didn't know we were down there.

2 Q. Okay. Now, you said he got out of the car. Had
3 you ever seen that car before?

4 Q. Not that day? Or before that day?

5 A. No.

6 Q. Okay. The guy that got out of the car, had you ever
7 seen him before?

8 A. No.

9 Q. Now, you look back, you see -- Did you see him put
10 **Complaining** in the car?

11 A. No.

12 Q. Okay. What did you do next?

13 A. We ran around the block as fast as we could, and
14 jumped in **M.H.** car, and sped towards the house where we
15 had just left **Complaining** and they were gone.

16 Q. Okay. Now was there anything wrong with **M.H.** car
17 --

18 A. No.

19 Q. -- when you get in?

20 A. No.

21 Q. Okay. Did the car crank up?

22 A. Yes.

23 Q. Did it take off?

24 A. Yes.

25 Q. Was it able to drive?

1 A. Yes.

2 Q. Was it in drivable condition?

3 A. (Nods in the affirmative.)

4 Q. Okay. So y'all jump in the car and take off?

5 A. Yes.

6 Q. And what -- And at that point, you're doing what?

7 Looking for --

8 A. We -- We sped to the house -- the beach house --

9 looking for **Complaining**

10 And I got out because -- you know

11 -- I figured we needed to tell somebody what just

12 happened.

13 And he left to go look for her.

14 Q. Okay. Now, when you got up off the ground, did you
15 ever scream, or yell, or make any --

16 A. No.

17 Q. When he first pulled up, did anybody scream or yell?

18 A. No.

19 Q. Because he just seemed like he was lost, looking for
20 directions. And I wasn't out there at the time.

21 And they seemed like he was just
22 asking where he was, like he didn't know where he was.

23 And that's it.

24 Q. Okay. Now, when you got up off the ground and
25 started walking away from the defendant, did you scream

1 and yell then?

2 A. No.

3 Q. Why not?

4 A. Because I didn't want to endanger [REDACTED] life.

5 Q. Okay. Uh -- When he first got out of the car, did
6 it ever occur to you to scream or yell?

7 A. No.

8 Q. Okay. Now, you said y'all drove around, looked for
9 the red car. Did you ever see it?

10 A. No.

11 Q. Okay. Uh -- What did you do when you got out of
12 the car?

13 A. I ran into B.C. [REDACTED] beach house and knocked on the
14 door, because it was locked, and waited for somebody to
15 come to the door, and told them they needed to call 911;
16 that [REDACTED] was just kidnapped.

17 Q. Okay. Now, where was M.H. [REDACTED] at this time?

18 A. In his car driving around looking for [REDACTED]

19 Q. Okay. Uh -- How would you describe your own
20 demeanor at that time -- how you were acting?

21 A. Uh -- Shocked and scared.

22 Q. Okay. Uh -- Now when you entered the house, did
23 you tell them what was going on?

24 A. Yes.

25 Q. Okay. How did they appear?

1 A. Uh -- At first, they thought that I was joking.
2 Like I had just -- B.C. [REDACTED] didn't take me serious at all.

3 She was like:

4 That's not funny.

5 And I'm like:

6 I'm not joking.

7 Q. Okay. But did they realize?

8 A. Then, they realized, and they panicked.

9 Q. Okay. Uh -- Now, were there adults in the house?

10 A. Yes.

11 Q. Okay. Did you alert the adults what was going on?

12 A. B.C. [REDACTED] did.

13 Q. Okay. About how much time was it between the time
14 that you saw that red card and the time you went and
15 notified B.C. [REDACTED] and the people in the house what had
16 happened?

17 A. Probably about 10 minutes.

18 Q. Okay. How long did you ride around in that car
19 before you got out to go up to the beach house?

20 A. We -- I got in his car. And he turned around the
21 corner to B.C. [REDACTED] beach house.

22 And I got out of the car. And he
23 took off.

24 And I went and tried to get

25 B.C. [REDACTED]

1 Q. Okay.

2 A. And then, call the cops.

3 Q. Okay. And how would you describe M.H. [REDACTED]
4 demeanor at the time?

5 A. Scared, and just try to find Complaining [REDACTED]

6 Q. Okay. Now -- uh -- when you were down here, were
7 there any parents with you and M.H. [REDACTED]

8 A. No.

9 Q. Was there anybody else with y'all at all?

10 A. No.

11 MS. LIVESAY:

12 Okay.

13 Your Honor, can I approach the
14 defendant -- I mean, I'm sorry -- the witness?

15 THE COURT:

16 Yes.

17 MS. LIVESAY:

18 Can I mark this as State's
19 Exhibit?

20 WHEREUPON: THE DVD OF THE 911
21 CALL WAS MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS
22 NUMBER 1 FOR IDENTIFICATION ONLY.

23 COURT REPORTER:

24 Your Honor, This will be State's
25 Exhibit 1.

1 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

2 Q. How would you describe the demeanor of the adults in
3 the house when they got up?

4 A. Confused and panicked.

5 Q. Okay. Now do you recognize what I'm showing you as
6 State's Exhibit Number 1?

7 A. Uh -- Yes.

8 Q. Have you listened to this?

9 A. Yes.

10 Q. Is your voice on this tape?

11 A. Yes, it is.

12 Q. Okay. Could you recognize your voice on the tape?

13 A. Yes, I can.

14 Q. Okay. And does this tape contain a accurate
15 depiction of what went on that night, with your voice on
16 it?

17 A. Yes, it does.

18 MS. LIVESAY:

19 Your Honor, at this time I'd like
20 to introduce State's Exhibit 1 into evidence as State's
21 evidence one, and publish it to the jury.

22 THE COURT:

23 What -- What is it?

24 MS. LIVESAY:

25 What is it?

1 THE COURT:

2 Yes.

3 MS. LIVESAY:

4 It's the 911 tape, Your Honor.

5 THE COURT:

6 Okay. All right.

7 MS. LIVESAY:

8 I'm sorry.

9 MR. HAZZARD:

10 Your Honor, I would submit that if
11 it's a recording that is kept in the course of business
12 out of North Myrtle Beach, that hey would need somebody
13 from North Myrtle Beach to say that that is what in fact
14 it is.

15 THE COURT:

16 I think he can identify it if he's
17 listened to it.

18 MS. LIVESAY:

19 He --

20 THE COURT:

21 It's his voice.

22 MS. LIVESAY:

23 He's listened to it, Your Honor.

24 And this is the --

25 THE COURT:

1 He -- He testified to that.

2 MS. LIVESAY:

3 Yes sir.

4 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. Have you listened to this tape?

6 A. Yes ma'am.

7 Q. Is this is a substantial and accurate depiction of
8 that night and what was said?

9 A. Yes ma'am.

10 MS. LIVESAY:

11 Thank Your Honor.

12 At this point, can I introduce it
13 into evidence and publish it.

14 THE COURT:

15 Any further objection, Mr.

16 Hazzard?

17 MR. HAZZARD:

18 No objection other than that
19 already stated, Your Honor.

20 THE COURT:

21 All right.

22 MS. LIVESAY:

23 Thank Your Honor.

24 THE COURT:

25 It's admitted as State's 1.

1 MS. LIVESAY:

2 Thank Your Honor.

3 At this time, I'm going to briefly
4 publish it to the jury.

5 THE COURT:

6 Is it State's 1?

7 MS. LIVESAY:

8 Yes sir.

9 THE COURT:

10 Okay. All right.

11 (WHEREUPON: Ms. Livesay proceeded
12 to begin playing the DVD of the 911 call that was marked
13 as State's Exhibit Number 1 for the jury at 11:33 AM,
14 November 16, 2010.)

15 (WHEREUPON: Mr. Hazzard
16 interrupted the playing of the DVD just after the start
17 of it with the following exchange at 11:34 AM, November
18 16, 2010.)

19 MR. HAZZARD:

20 Your Honor, that is not this --
21 That is not his voice.

22 THE COURT:

23 Wait a minute. Stop it.

24 (WHEREUPON: Ms. Livesay stopped
25 the playing of the tape as directed by The Court at 11:34

1 AM, November 16, 2010.)

2 THE COURT:

3 Okay. Take the jury out.

4 (WHEREUPON: The jury empanelled
5 in the case withdrew from the courtroom at 11:35 AM,
6 November 16, 2010; and was no longer present during the
7 following proceedings.)

8 THE COURT:

9 All right.

10 MR. HAZZARD:

11 Your Honor, what is being
12 published to the jury is statements being made by someone
13 other than this witness.

14 THE COURT:

15 I think Ms. Livesay, what you're
16 going to have to do -- I -- I believe I'm correct when I
17 ruled that this witness, if he was present, can
18 authenticate --

19 MS. LIVESAY:

20 Yes sir.

21 THE COURT:

22 -- this recording.

23 MS. LIVESAY:

24 Yes sir.

25 THE COURT:

1 All right.

2 Now, however, he's going to have
3 to identify the voices thereon, and it's going to have to
4 come under one of the exceptions to the hearsay rule;
5 okay.

6 MS. LIVESAY:

7 Yes, sir, Your Honor. I can do
8 that.

9 VOIR DIRE EXAMINATION BY MS. LIVESAY:

10 Q. Do you recognize voice on that tape?

11 A. Yes.

12 Q. Who is that?

13 A. B.C. [REDACTED] mother.

14 Q. And what is her name?

15 A. I don't know her name.

16 Q. Okay. Uh -- But you recognize that voice?

17 A. Yes.

18 Q. Who is the other voice on the tape?

19 A. Me.

20 Q. Okay. Are those the only other two voices on the
21 tape?

22 A. Yes.

23 Q. And do you clearly recognize those voices?

24 A. Yes.

25 Q. And is that tape a substantial and accurate

1 depiction of the call that was made that night?

2 A. Yes.

3 THE COURT:

4 Well, Mr. Hazzard -- I assume that
5 you are offering it as an exception to the hearsay rule
6 as an excited utterance.

7 Is that correct?

8 MS. LIVESAY:

9 Yes sir.

10 THE COURT:

11 On -- On the part of the other
12 speaker?

13 MS. LIVESAY:

14 Yes sir.

15 THE COURT:

16 Is that correct?

17 MS. LIVESAY:

18 Yes sir.

19 THE COURT:

20 All right. Now he has testified
21 that he had just reported a kidnapping?

22 MS. LIVESAY:

23 Yes sir.

24 THE COURT:

25 Whether that was correct or not,

1 he -- that was the -- uh -- had been reported to the
2 speaker?

3 Is that correct?

4 MS. LIVESAY:

5 Yes sir.

6 THE COURT:

7 And this was immediately
8 thereafter?

9 MS. LIVESAY:

10 Yes sir.

11 He testified that right after --

12 THE COURT:

13 All right, Mr. Hazzard, let me
14 hear from you?

15 MR. HAZZARD:

16 Well, with regard to this excited
17 utterance -- utterance issue -- uh -- there has been no
18 indication that this woman is unavailable to testify.

19 There has been actually no
20 indication that she was in fact excited or -- or anything
21 of that nature.

22 Uh -- There are three things that
23 the State has to prove by way of foundation.

24 And I don't really see how they
25 can prove it without Ms. Parents' testimony as to her

1 state of mind.

2 You know, The Court -- The -- The
3 State is asking The Court to make an assumption --

4 THE COURT:

5 It's an exception --

6 MR. HAZZARD:

7 -- of someone's state of mind.

8 THE COURT:

9 -- to the hearsay; is it not?

10 MS. LIVESAY:

11 Yes. Your Honor, and this

12 gentleman --

13 MR. HAZZARD:

14 Yeah, once her state of mind is
15 proven.

16 MS. LIVESAY:

17 He just --

18 MR. HAZZARD:

19 And they're asking you to make an
20 assumption as to what someone's state of mind is.

21 MS. LIVESAY:

22 Your Honor, I wasn't asking you to
23 make an assumption.

24 I asked this gentleman on the
25 stand how she appeared.

1 He said:

2 Upset -- uh -- confused; didn't
3 know what was going on.

4 Her voice on the tape --

5 THE COURT:

6 Panicking was the word he used.

7 MS. LIVESAY:

8 I'm -- I'm sorry, Your Honor.

9 THE COURT:

10 Panicking was the word he used.

11 MS. LIVESAY:

12 Yes.

13 And her voice is obvious on the
14 tape that she's upset.

15 THE COURT:

16 And the -- the issue is whether or
17 not this declarant was under the stress of excitement
18 caused by the event?

19 MR. HAZZARD:

20 And, one of the issues we've got
21 is --

22 THE COURT:

23 Now she -- he says she's
24 panicking.

25 Wouldn't that not be under the

1 stress of the event.

2 MR. HAZZARD:

3 But, basically, what we have is an
4 unidentified person.

5 THE COURT:

6 No, he's identified her.

7 MR. HAZZARD:

8 Identified her as "B.C. [REDACTED]'s mom."

9 THE COURT:

10 Yes.

11 MR. HAZZARD:

12 No objection, Your Honor.

13 THE COURT:

14 All right. Let's bring the jury
15 back in.

16 MR. HAZZARD:

17 Your Honor, again, I don't see how
18 in the world it is proper for this to be published --
19 this exhibit to be published through this young man.

20 My understanding is this a 911
21 call --

22 THE COURT:

23 He --

24 MR. HAZZARD:

25 -- to the --

1 THE COURT:

2 His testimony is that he was
3 present during the call.

4 He knows who the speakers are.

5 He has listened to it.

6 He can identify it, and he can
7 authenticate it.

8 MR. HAZZARD:

9 So he has identified the 911
10 operator as well?

11 THE COURT:

12 He says it's the 911 operator;
13 that that's who the call was made to.

14 MR. HAZZARD:

15 So The Court is saying there is no
16 need for any chain of custody with regard to this
17 recording?

18 THE COURT:

19 He can authenticate just like
20 y'all could -- can authenticate a photograph.

21 MR. HAZZARD:

22 Well --

23 THE COURT:

24 All right.

25 (WHEREUPON: The jury empanelled

1 in the case was escorted back into the courtroom at 11:42
2 AM, November 16, 2010; and was in fact present during the
3 following proceedings.)

4 THE COURT:

5 All right, Ms. Livesay.

6 MS. LIVESAY:

7 Thank Your Honor.

8 WHEREUPON: Ms. Livesay again
9 proceeded to play State's Exhibit Number 1, the DVD of
10 the 911 call, starting again from the beginning, for the
11 jury at 11:43 AM, November 16, 2010, and finished playing
12 the exhibit, without further interruption, at 11:46 AM,
13 November 16, 2010.)

14 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

15 Q. [REDACTED] what happened after -- after that call?

16 A. Uh -- I hung up because I was talking to another
17 officer who had just got there.

18 And he told me to hang up; so I
19 hung up, and started talking to him, instead.

20 Q. Okay. Did you talk to the officer that arrived?

21 A. Yes.

22 Q. Okay. Did you give that officer a statement?

23 A. Yes, I did.

24 Q. Okay. And is that statement the same thing you
25 told this jury today?

1 A. Yes, it is.

2 Q. Okay. And has what you told this jury today been
3 true?

4 A. Yes, it has.

5 MS. LIVESAY:

6 No further questions of this
7 witness, Your Honor.

8 THE COURT:

9 All right.

10 Mr. Hazzard?

11 CROSS-EXAMINATION BY MR. HAZZARD:

12 Q. Let me check -- Let me see, now.

13 Where were y'all staying in North
14 Myrtle Beach?

15 A. We weren't -- We didn't have a place to stay. We
16 were just going to sleep in his car.

17 Q. Just going to sleep in his car?

18 And you arrived in the area at
19 what time that day?

20 A. Around late afternoon sometime.

21 Q. Late afternoon?

22 A. Yeah.

23 Q. I think you said it was what; around 6:00 PM?

24 A. Yeah, it was six or seven.

25 Q. Okay. And then you got in contact somehow with Ms.

1 Eberhardt and her friend, B.C. [REDACTED] I believe you said?

2 A. Yes sir.

3 Q. Okay. And you spent time with them at that point.

4 Is that correct?

5 A. Yes sir.

6 Q. Okay. And how long were with you -- were you with
7 them at that period of time?

8 A. Uh -- A couple of hours. We walked round -- uh --
9 down by the beach.

10 Her parents were at a bar.

11 And we just walked around; went to
12 some stores.

13 And we went and sat out on the
14 beach for a little bit. I don't know exactly how long
15 it was.

16 I know it was at least a few
17 hours.

18 Q. And how old is B.C. [REDACTED]?

19 A. Uh -- Same age as Complaining [REDACTED] -- uh -- I guess, 15.

20 Q. So she was 14 at the time as well?

21 A. Uh -- I -- I guess so.

22 Q. And you were 17 at that time?

23 A. Yes.

24 Q. And M.H. [REDACTED] was 17 at that time?

25 A. Yes.

1 Q. And B.C. [REDACTED] parents didn't know that y'all were
2 coming?

3 A. No.

4 Q. Okay. And up until you went into -- or knocked on
5 the door of their home sometime after 3:30 in the
6 morning, they didn't know you were even there?

7 A. No.

8 Q. Is that correct?

9 A. Correct.

10 Q. Okay. Now you indicated you were with them from 6
11 to 8 while B.C. [REDACTED] parents were out at a bar, correct?

12 A. Yeah, around that time. I'm sure it's longer than
13 that because I know we were still out with them at 10:00
14 or 11:00 o'clock on the beach.

15 Q. Okay. So let's make sure we're clear on this time
16 timeline.

17 You get down here around 6:00 PM,
18 correct?

19 A. Six or seven.

20 Q. Six or seven. At any point did you leave [REDACTED] Complaining
21 and B.C. [REDACTED]

22 A. We didn't meet up with them right away.

23 Q. Okay.

24 A. We drove around until they left to go to the beach.

25 Q. Okay. Well, tell me this, then:

1 About what time did you meet up
2 with them?

3 A. I'd say -- It was night time. So, probably like
4 eight -- uh -- I'll say nine.

5 Q. Okay. From the time you met up with Complaining and
6 B.C. around 9:00 PM, did you ever leave their presence?

7 A. No.

8 Q. Okay. So then, you were with them at nine. And
9 what were y'all doing at that time?

10 A. We walked around; went to a couple of stores; went
11 and got some food. And then went and sat out on the
12 beach.

13 Q. Okay. And at some point did you leave the beach?

14 A. Yes.

15 Q. Around what time was that?

16 A. Uh -- After 11, so it was probably like 11:30 -- 12;
17 because they had to meet back up with B.C. parents so
18 that they could go back.

19 And me and M.H. left --

20 Q. Let me stop you right there.

21 A. Okay.

22 Q. When you say "they," are you referring to Complaining
23 and B.C.?

24 A. Yes.

25 Q. Okay. So sometime after 11:00, Complaining and B.C.

1 had to leave.

2 A. Yes.

3 Q. And why did they have to leave?

4 A. To go meet back up with B.C. [REDACTED] parents?

5 Q. Why did they have to meet back up with her parents?

6 A. Because that was their ride back to the beach house.

7 Q. Ahh. So where -- what part of the strand were y'all
8 on?

9 A. Like where we were at?

10 Q. Yes sir.

11 A. We was -- We were with them until they left and --
12 to walk into the place where her parents were at.

13 A. Okay. Got you. I'm asking you what part of the
14 beach you were on?

15 They were staying around 19th
16 Avenue South in North Myrtle Beach; correct?

17 A. Yes.

18 Q. Okay. I take it since they needed a ride back
19 there, that they must've been some distance away from
20 there?

21 A. Yes.

22 Q. Correct?

23 A. We --

24 Q. Were y'all up in Cherry Grove? Were y'all north of
25 there? South of there?

1 A. Uh -- I'm pretty sure we were north of there.

2 Q. Pretty sure you were north of there?

3 A. Yes.

4 Q. Okay.

5 A. Because we had to ride down, so yes. we was -- we
6 were north of there.

7 Q. Did you see anything up there that you recognized?

8 A. No.

9 Q. No? Didn't recognize anything?

10 A. (Nods in the negative.)

11 Q. There a bunch of hotels?

12 A. Yeah, both hotels and stores.

13 Q. A bunch of hotels and stores up in the north end of
14 North Myrtle Beach?

15 A. (Nods in the affirmative.)

16 Q. Okay. So y'all were up there from around 6:00 PM
17 until what time? 10:00 or 11:00?

18 A. Well, we --

19 Q. Or actually, you said you got down about --

20 A. Yeah.

21 Q. -- what, 9:00?

22 A. 9:00.

23 Q. Okay. From 9:00 until about what time you figure?

24 A. 11:30.

25 Q. Okay. 9:00 till about 11:30.

1 A. (Nods in the affirmative.)

2 Q. Okay. So at that point, you and M.H. [REDACTED] were on
3 your own.

4 [REDACTED] Complaining and B.C. [REDACTED] are gone;
5 correct?

6 A. Yes.

7 Q. Okay. Did you see [REDACTED] Complaining again that night or
8 early the next morning?

9 A. Yes.

10 Q. Okay. So 9:00 till 11:30? Okay. When did you see
11 her again?

12 A. We met back up with them -- uh -- sometime after
13 they left.

14 Uh -- We had to wait until her
15 parents were inside and asleep and -- before he could go
16 back over there.

17 A. Why in the world is it that her parents can't see
18 you two?

19 A. Uh -- Because we don't have a place to stay. And we
20 knew that [REDACTED] Complaining would probably get in trouble if M.H. [REDACTED]
21 was now there seeing her.

22 Q. Why would she in trouble? That's her boyfriend;
23 wasn't it?

24 A. Yeah, but her parents didn't really know about that.

25 So --

1 Q. They didn't know about it --

2 A. No.

3 Q. -- or they didn't want her to see them?

4 A. Both.

5 Q. Both? Well, I mean, it can't be both, now. I mean
6 you can't --

7 A. Well, they knew --

8 Q. -- you can't say they don't want him to see somebody
9 they --

10 A. -- they knew of him --

11 Q. -- don't know about.

12 A. -- and who he was --

13 Q. Say what now?

14 A. -- and they didn't want her to see him. So --

15 Q. Uh-huh. Okay. So you're with them from 9:00 till
16 11:30. Then they have to catch a ride back after the
17 folks they're staying with finish up at the bar; right?

18 A. Yes.

19 Q. And then sometime later on -- Do you have any idea
20 what time it was that y'all were able to sneak back over
21 there?

22 A. I'll say 1:00 or 1:30.

23 Q. 1:00 or 1:30 in the morning? Okay. So 1:00 to
24 1:30 AM.

25 Now, when you get back over there,

1 it was 1:00 to 1:30 AM, and the Parents [REDACTED] the parents --
2 B.C. [REDACTED] parents -- apparently are well tucked in bed and
3 they ain't going to be bothering you.

4 Did you go anywhere?

5 Or, what did you do?

6 A. No. We -- We parked on a side street, and went to
7 their beach house, and sat out on like this little -- uh
8 -- there were some concrete area right beside her house
9 with some chairs, and we sat out there.

10 Q. Kind of like a patio type thing?

11 A. Yes.

12 Q. Okay. All right. Now, up in that area, there's
13 not a whole lot of room in between houses; is there?

14 A. No.

15 Q. I mean, like:

16 There's your driveway right here,
17 and then, bam, there's the next house, right there --

18 A. Yes.

19 Q. -- correct?

20 A. Yes.

21 Q. And that's like all up and down the street, both
22 sides of the street from what you recall; right?

23 A. Yes.

24 Q. And this is a residential area. This ain't -- you
25 know -- there wasn't -- I'll put it this way:

1 Wasn't no vacant houses there,
2 were there?

3 A. Uh -- Not that I know of.

4 Q. Yeah. Every car -- Every driveway had cars in it,
5 right?

6 A. Yeah.

7 Q. All right. Now, you're sitting out there sometime
8 between 1:00 and 1:30.

9 Were you not concerned that the
10 Parents would be able to hear you talking?

11 A. No.

12 Q. No?

13 A. (Nods in the affirmative.)

14 Q. Okay. Now, the four of you were sitting down
15 there.

16 Did you ever leave there?

17 A. Uh -- Yeah. We left. Uh -- M.H. and Complaining
18 were arguing about something.

19 Q. Hmm.

20 A. And we left for about five minutes and came back;
21 because he realized that he was just being dumb --

22 Q. How much money.

23 A. -- and wanted to go see her. So we went back.

24 Q. Hmm. So M.H. and Complaining were arguing about
25 something that she wasn't too happy with.

1 Do you remember what time that was
2 that you left and then came back?

3 A. I'll say about 2:30.

4 Q. Okay. Now did M.H. [REDACTED] have his cell phone with
5 him?

6 A. Yes.

7 Q. Did you have your cell phone with you?

8 A. Yes.

9 Q. All right. Okay. And you told this jury that you
10 had known M.H. [REDACTED] for about five years; right?

11 A. Yes.

12 Q. Okay. Is he a close friend of yours?

13 A. He was.

14 Q. He was?

15 A. Yes.

16 Q. But he isn't now?

17 A. No.

18 Q. Okay. Back when he was a close friend of yours --
19 uh -- y'all were close enough that if he knew of the
20 situation -- or that you knew of the situation between
21 [REDACTED] him, and her parents; correct?

22 A. Yes.

23 Q. Or at least this side of the story?

24 A. Yes. Yes.

25 Q. Okay. All right. Now, let's get this right.

1 You've got your cell phone.

2 He's got his cell phone.

3 The Parents [REDACTED] have gone to sleep.

4 It's sometime after 1:30 in the
5 morning.

6 The 4 of you -- that being you,
7 M.H. [REDACTED] B.C. [REDACTED], and Complaining [REDACTED] are sitting outside the
8 house at Beach House [REDACTED]

9 Is that correct?

10 A. Yes.

11 Q. Okay. And then Complaining [REDACTED] and M.H. [REDACTED] get to an
12 argument. And they, y'all leave?

13 A. Yes.

14 Q. Okay. Where'd y'all go?

15 A. To a parking lot of a hotel.

16 Q. Hotel? So what were you doing there?

17 A. We were just sitting in his car.

18 Q. And around what time was this?

19 A. Around 2:30.

20 Q. Around 2:30. Argument and left. (Begins to make
21 notes on a pad in front of the jury.) Okay.

22 And then you say after going to
23 the parking lot of this motel -- uh -- you then
24 subsequently come back to the residence where the
25 Parents [REDACTED] are staying?

1 A. Yes.

2 Q. Okay. And what did you do then?

3 A. Uh -- Complaining and B.C. [REDACTED] had went inside. And they
4 came back outside.

5 And --

6 Q. How long were they inside there?

7 A. The whole time we were gone. So, probably like 5 or
8 10 minutes.

9 Q. Okay. So then it might have been more like 10
10 minutes that you were at the parking lot of this motel?

11 A. Well, we left; drove straight there. Sat in the
12 parking lot for all of like a minute; and then, turned
13 around and went back.

14 Q. How did M.H. [REDACTED] know about this parking lot of this
15 motel?

16 Uh -- He didn't. We just found it.

17 Q. You just found it?

18 A. Yes.

19 Q. Okay. And you sat in this parking lot for five or
20 10 minutes, according to you?

21 Is that correct, sir?

22 A. We sat in the parking lot for about two minutes.

23 Q. Okay. So you're saying the total time you were
24 gone was approximately 5 minutes?

25 A. Yes.

1 Q. Okay. And when you come back, how were you able to
2 get [REDACTED] and B.C. [REDACTED] to come back out of the house?

3 A. He called [REDACTED] on her phone and told them we
4 were there.

5 Q. Huh. Okay. And they immediately came back out?

6 A. Yeah.

7 Q. Okay. And then what did you guys do?

8 A. He wanted to talk to [REDACTED] alone.

9 So they went out and sat at the
10 end of the driveway. And I stood beside the house with
11 [REDACTED]

12 Q. Okay.

13 A. But she went inside and never came back out. So I
14 was just sitting there by myself.

15 Q. Uh-huh. Okay. And what time was it when Mark
16 Elliott drove by?

17 A. Around -- Probably a little after 3:00 AM. Uh --

18 Q. A little after 3:00 AM? How did you --

19 A. Probably right around 3:00 AM, he drove by the first
20 time.

21 Q. Uh-huh.

22 A. And circle around a couple more times within the
23 next 10 to 15 minutes.

24 Q. Uh-huh.

25 A. And then, on the third time, I believe, he stopped.

1 Q. Okay.

2 A. And that's when everything happened.

3 Q. Okay. And so what time was it the third time that
4 he drove by, according to you?

5 A. Probably around 3:15.

6 Q. Around 3:15?

7 A. (Nods in the affirmative.)

8 Q. And how much time -- so let's say, according to your
9 timeline, it was 3:15.

10 Mark Elliott drives up and stops
11 the car.

12 How much time passes between the
13 time he stopped the car and the time that [REDACTED] is
14 abducted?

15 A. Five minutes.

16 Q. Five minutes? So now, we're at 3:20. And [REDACTED]
17 has been abducted; right?

18 A. Yes.

19 Q. According to you?

20 A. It's was more like 3:30, yes. But --

21 Q. More like 3:30?

22 A. Well, he pulled up the first time --

23 Q. All right.

24 A. -- and asked for directions.

25 Q. Uh-huh.

1 A. And sat there and talked with M.H. [REDACTED] Complaining for a
2 second.

3 Q. Hmm.

4 A. And I figured something was going on.

5 Q. Uh-huh.

6 A. And I didn't know what it was. So I got up and
7 started to walk out there.

8 And when I started to walk out
9 there, he pulled off a little bit --

10 Q. Hmm.

11 A. -- and then stopped and got out of the car.

12 Q. Okay. Now, I'm totally confused.

13 You said that he drove by the
14 first time.

15 Did he stop and talk to Complaining
16 and M.H. [REDACTED] more than once?

17 A. No.

18 Q. Okay. So let's stick with the time that you say he
19 stopped to talk with Complaining and M.H. [REDACTED]

20 What time was that?

21 A. Uh -- 3:15.

22 Q. Okay. So 3:15; we're back to that.

23 Are you good with that?

24 A. Yeah.

25 Q. Okay. And my question was:

1 How long did you sit there and
2 talk with Complaining and M. H. [REDACTED]

3 A. A couple of minutes.

4 Q. A couple of minutes?

5 A. Uh -- It --

6 Q. Okay.

7 A. He seemed like he was lost and confused, and --

8 | O. | Hmm.

9 | A. -- M.H. didn't really understand what he was saying.

10 Q. Uh-huh. Okay. And you could hear them talking?

11. A. Yes.

12 Q. Okay. And how long after that was Complaining
13 abducted?

14 A. Okay. Well, he got out of car. Told us to get
15 down on the ground.

16 We laid on the ground.

17 I threw out change.

18 Uh -- Told us to get up and walk
19 off.

20 And we walked to the end of the
21 street. And then, ran around and got in his car.

22 O. Uh-huh.

23 A. So I'd say around eight minutes.

24 Q. Around eight minutes?

25 | A. Yeah.

1 Q. So now we're at 3:23?

2 A. Okay.

3 Q. Is that good for you?

4 A. Yes.

5 Q. Does that sound about right?

6 A. That's fine.

7 Q. That's fine. Okay. And when you say that you
8 went and got the car, we're really talking about,
9 according to you, that you and M.H. [REDACTED] literally circled
10 the block.

11 You made a square; correct?

12 A. Yes.

13 Q. And those are pretty short blocks up there; aren't
14 they?

15 Nothing long about 19th to 20th is
16 there?

17 A. Uh -- Not really.

18 Q. Not really. Short block. So, according to you,
19 y'all go up to 19th Avenue South; go down; come back; and
20 on 20th Avenue South, there's his car.

21 You hop in.

22 Is that correct?

23 A. Yes.

24 Q. Okay. And that -- All of that took about eight
25 minutes?

1 A. (No response.)

2 Q. According to you?

3 A. From when she got abducted?

4 Q. Yes sir.

5 A. That was about 8 minutes.

6 Q. Yes sir.

7 A. After that, to get back to his car and get back to
8 the house, it was --

9 Q. Hmm. How long?

10 A. -- probably another five minutes; yes.

11 Q. Another five minutes?

12 A. (Nods in the affirmative.)

13 Q. Okay. Now I'm totally confused. But that's all
14 right. We're going to get there.

15 Uh -- So at 3:15, according to
16 you, this man pulls up?

17 A. (Nods in the affirmative.)

18 Q. Okay. And he gets out of the car?

19 A. (No response.)

20 Q. Correct.

21 A. Yes.

22 Q. But not until after he had spoken with M.H. [REDACTED] and
23 Complaining.

24 A. Yes.

25 Q. Okay. And in fact, they exchanged names; didn't

1 they?

2 A. I don't know what they were talking about. I could
3 hear them talking; but I didn't know what they were
4 talking about.

5 Q. Oh? So you knew that they were talking, but you
6 didn't know what they were talking about?

7 A. I knew that he had asked for directions, because
8 M.H. was trying to explain to him where to go; because he
9 was pointing and talking about what street they were on.

10 Q. Uh-huh. So you're assuming that's what M.H. was
11 talking about; directions?

12 A. Nah, I know that's what he was talking about.

13 Q. You do?

14 A. I couldn't hear him talking --

15 Q. Hmm.

16 A. -- like, the -- the guy in the car.

17 Q. Uh-huh.

18 A. I could hear M.H. trying to explain to him where he
19 was at.

20 Q. Uh-huh.

21 A. And I knew he was trying to tell him where to go.

22 Q. Uh-huh.

23 A. So I know it was about directions.

24 Q. And where to go for what purpose, sir?

25 A. I don't know.

1 Q. You don't know? Okay. All right.

2 So you then, according to you, you
3 circle the block.

4 You go and you hop in his car.

5 I'm -- I'm kind of confused, sir.

6 You indicate that this -- this
7 young lady that you know has just been -- Well, first of
8 all, you indicated that supposedly you were the victim of
9 an attempted armed robbery; correct?

10 A. Yes.

11 Q. Okay. And this young lady that you know supposedly
12 has now been abducted?

13 A. Yes.

14 Q. Okay. And you've got a cell phone.

15 A. (No response.)

16 Q. Don't you?

17 A. Uh -- Yes.

18 Q. Okay. But you never dialed 911; did you?

19 A. Uh -- The only opportunity I had to dial 911 was
20 whenever I got back to his car.

21 And he was trying to call

22 Complaining -

23 And I didn't think about getting
24 my phone. I was more concerned with getting back to the
25 house and letting everybody know that she was missing.

1 Q. Uh-huh. Okay. So, are you are now telling the
2 jury that you had left your cell phone in his car?

3 A. Uh --

4 Q. Is that what your testimony is?

5 A. My cell phone was in his car.

6 Q. Okay. So we'll go with that, then.

7 Now you indicate that M.H. [REDACTED]
8 he's got his cell phone; correct?

9 A. Yes.

10 Q. But he ain't calling the police either; is he?

11 A. It was in his car as well.

12 Q. And when he gets to his car --

13 A. He calls [REDACTED] Complaining

14 Q. -- he doesn't call the police; did he?

15 A. He calls [REDACTED] Complaining

16 Q. Exactly. And once you got to the car and your cell
17 phone was there, did you ever call the police?

18 A. Uh -- No, it didn't occur to me.

19 Q. It didn't occur to you? You've just been the victim
20 of a crime? Someone you know has just been abducted.

21 Did not occur to you to contact
22 the police?

23 A. Not right away.

24 Q. Not right away. Okay. So now, according to you,
25 you get back to the house.

1 A. (No response.)

2 Q. Is that correct?

3 A. Yes.

4 Q. I'm sorry, sir. Am I boring you?

5 A. No.

6 Q. Okay. You get back to the house; correct?

7 A. Yes.

8 Q. Okay. And what did you do then?

9 A. Uh -- Ran and knocked on the door and told B.C. [REDACTED] to
10 tell her mom to call the cops.

11 Q. Okay. Why does B.C. [REDACTED] mom have to call the
12 police?

13 Why can't you call please, sir?

14 A. I told somebody to call the cops.

15 Q. You told somebody to call the cops.

16 A. I said:

17 [REDACTED] Complaining was taken. Somebody
18 needs to call the cops.

19 Q. Uh-huh. Actually sir, isn't it more along the line
20 of:

21 This was a drug deal.

22 And y'all wanted drugs.

23 Y'all asked this man regarding
24 drugs?

25 And when it didn't go quite like

1 you expected it was going to go, as far as where to go;
2 where to get them; and when it's time to come back; at
3 that point, then somebody's got to talk with some adult
4 figure?

5 Isn't that right?

6 A. No.

7 Q. No? Okay. So the two of you, Mr. Howard and
8 yourself, you hop in the car. And you come back around
9 to see if Ms. Eberhardt and Mr. Elliott are still there?

10 That's what you told the police;
11 right?

12 A. Yes.

13 Q. Okay. Your statement to the police, and everyone
14 else, has been that:

15 This terrifying man had a gun.

16 And he made the two of you get up and walk away?

17 A. Yes.

18 Q. Made you run away?

19 A. Yes.

20 Q. Right?

21 A. (Nods in the affirmative.)

22 Q. Okay. Did you or M.H. [REDACTED] have a weapon in the car?

23 A. No.

24 Q. Didn't have a gun?

25 A. No.

1 Q. Didn't have a knife?

2 A. No.

3 Q. What you had was two cell phones?

4 A. Yeah.

5 Q. All right. But yet, y'all hop in the car and you
6 come back to where somebody with a gun has just run up
7 away from?

8 A. Yeah.

9 Q. That's your testimony.

10 A. Yeah. M.H. was planning on trying to run him over.
11 (Chuckles.)

12 Q. (Chuckles.) All right. Okay. All right.

13 And you thought that was the way
14 to handle it as well; right?

15 A. I figured I just needed to let somebody know.

16 Q. Okay. Now -- Did you inform the police of this
17 alleged plot to rob you, and rob Complaining and -- and rob
18 M.H. [REDACTED]?

19 A. Yeah.

20 Q. Okay. All right. Okay. And you told police that
21 after the two of you had been told to get to stepping,
22 okay, that you turned around and you saw this gentleman
23 here, Mr. Elliott, supposedly frisking Complaining [REDACTED]

24 A. Yes.

25 Q. All right. Well, where had he put his weapon at

1 that point?

2 A. I don't know.

3 Q. You don't know?

4 A. I wasn't close enough to him to see that.

5 Q. Hmm.

6 A. We had already walked down the street before I
7 turned around.

8 Q. Uh-huh. Okay. Now, you're not telling this
9 jury, that that residential neighborhood in North Myrtle
10 Beach is pitch black; are you?

11 A. Uh -- It was really dark.

12 Q. They got street lights, though, don't they?

13 A. Yeah, I mean --

14 Q. Yeah. Yeah. The do; don't they?

15 A. Yeah.

16 MR. HAZZARD:

17 All right. All right.

18 The Court's indulgence, Your

19 Honor?

20 (Reviews documents at counsel
21 table at 12:09 PM, November 16, 2010.)

22 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

23 Q. I show you two photographs, sir, and ask you if you
24 can identify them; or if you recognize what's in the
25 picture?

1 A. Yes.

2 Q. Okay. And what is that that's in the picture?

3 A. That's B.C. [REDACTED] beach house.

4 Q. All right. And is that where y'all were, where all
5 this action occurs that night -- early morning?

6 A. Yes.

7 MR. HAZZARD:

8 Okay.

9 We'd move to enter these as

10 Defense Exhibits Number 1 and 2, sir.

11 THE COURT:

12 Ms. Livesay?

13 MS. LIVESAY:

14 No objection, Your Honor.

15 THE COURT:

16 All right.

17 Without objection, they're
18 admitted.

19 WHEREUPON: TWO PHOTOS WERE MARKED

20 BY THE COURT REPORTER AS DEFENDANT'S EXHIBITS NUMBERS 1

21 AND 2, AND WERE ENTERED INTO EVIDENCE WITHOUT OBJECTION.

22 MR. HAZZARD:

23 Okay.

24 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

25 Q. Sir, I'm handing you what's been marked and entered

1 as Defendant's Exhibit Number 1, and ask you if you can
2 tell me in that photograph if you see this patio area
3 that you were referring to?

4 A. Yes.

5 Q. All right. If you would, tell me where it is?

6 A. Right there. (Indicating.)

7 Q. Right there. You're saying, basically, as you face
8 the house, to the right of the house?

9 A. Yes.

10 Q. Okay. And so the four of you were standing there
11 basically kind of in the driveway by the house, then?

12 A. Yes.

13 Q. Okay. Okay. I wanted to be clear as to where
14 that was. All right.

15 And then Defendant's Number 2,
16 that's basically a shot of the driveway itself that
17 you're referring to; correct?

18 A. Yes.

19 Q. Okay. And immediately to the right of it, that's a
20 -- uh -- fence. And then immediately right side that is
21 the next house; right?

22 A. Yes.

23 Q. Because as we discussed, all those houses are right
24 there close, one upon the other; right?

25 A. Uh-huh.

1 MR. HAZZARD:

2 Okay. Okay.

3 Request authorization to publish
4 to the jury, Your Honor?

5 THE COURT:

6 You may.

7 MR. HAZZARD:

8 The Court's indulgence, Your
9 Honor.

10 Okay.

11 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

12 Q. Now sir, you indicated -- When you got back to the
13 house. was the door locked or unlocked?

14 A. Uh -- It was locked.

15 Q. Okay. So did you have to knock on the door?

16 A. Yes.

17 Q. Okay. And you said, I believe, B.C. [REDACTED] came to the
18 door?

19 A. Yes.

20 Q. Okay. And you've told this jury that you have just
21 been robbed, or the victim of an attempted robbery at
22 what you believe was gun point; correct?

23 A. Yes.

24 Q. That M.H. [REDACTED] was subject to the same offense;
25 correct?

1 A. Yes.

2 Q. And that [REDACTED] had been abducted and kidnapped;
3 correct?

4 A. Yes.

5 Q. But that your demeanor was such, when you made that
6 statement to [REDACTED] that she thought you were joking?

7 A. Yes.

8 MR. HAZZARD:

9 No further questions.

10 MS. LIVESAY:

11 Just a couple Your Honor.

12 THE COURT:

13 All right.

14 REDIRECT EXAMINATION BY MS. LIVESAY:

15 Q. [REDACTED] that night, had you been drinking?

16 A. No.

17 Q. Had you been under the influence of any drugs?

18 A. No.

19 Q. Uh -- To your knowledge, had anybody else that was
20 standing out there -- under the influence of any drugs?

21 A. No.

22 Q. Were you looking to buy alcohol?

23 A. No.

24 Q. Were you looking to buy drugs?

25 A. No.

1 Q. Were you familiar with the area?

2 A. No.

3 Q. What was your first instinct to do after the
4 incident occurs and [REDACTED] is kidnapped?

5 A. Find [REDACTED]

6 Q. Now was the police notified eventually?

7 A. Yes.

8 Q. Were you able to assist them in telling them who
9 kidnapped her.

10 A. Yes.

11 Q. Were you able to -- Were you able to assist them in
12 telling them the vehicle that was used?

13 A. Yes.

14 Q. When the police arrived, did they ever question you
15 if you had -- were under the influence of alcohol?

16 A. No.

17 Q. Was -- Did they ever question you, if you were under
18 the influence of any drugs?

19 A. No.

20 MS. LIVESAY:

21 No further questions, Your Honor.

22 MR. HAZZARD:

23 Very briefly.

24 RECROSS-EXAMINATION BY MR. HAZZARD:

25 Q. So, throughout this whole thing, no police officer

1 ever asked you if anything about this situation was
2 connected to drugs or any other illicit activity; did
3 they?

4 A. No.

5 MR. HAZZARD:

6 All right. No further questions.

7 MS. LIVESAY:

8 No further questions of this
9 witness, Your Honor.

10 THE COURT:

11 All right.

12 You may step down.

13 MS. LIVESAY:

14 Thank Your Honor.

15 At this time, the State wants to
16 call Officer Jernigan to the stand.

17 THE COURT:

18 How long is Officer Jernigan going
19 to take?

20 MS. LIVESAY:

21 It'll be a --

22 MR. HAZZARD:

23 May we approach, Your Honor?

24 THE COURT:

25 Yes.

1 MR. HAZZARD:

2 Uh -- May we approach?

3 THE COURT:

4 Yes.

5 (WHEREUPON: Counsel for each party

6 conferred off the record with The Court at the bench at

7 1:58 PM, November 16, 2010.)

8 MR. HAZZARD:

9 Thank you, sir.

10 THE COURT:

11 All right, Ms. Livesay.

12 MS. LIVESAY:

13 Thank Your Honor.

14 THE COURT:

15 We have all the jurors back in the

16 courtroom.

17 MS. LIVESAY:

18 Thank you. At this time, Your

19 Honor, The State wishes to call Officer Jernigan to the

20 stand.

21 WHEREUPON: JAMIE JERNIGAN WAS

22 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

23 CLERK:

24 Please be seated. Please state

25 your name and spell your last name for The Court.

1 WITNESS:

2 Jamie Jernigan; J-e-r-n-i-g-a-n.

3 DIRECT EXAMINATION BY MS. LIVESAY:

4 Q. Mr. Jernigan, where are you currently employed?

5 A. I'm a Patrol Officer with the Horry County Police
6 Department.

7 Q. And how long have you been an officer at Horry
8 County?

9 A. Since May of 2008.

10 Q. And what kind of training have you undergone as an
11 officer --

12 A. I --

13 Q. -- for the Horry County PD?

14 A. I graduated from the -- uh -- South Carolina
15 Criminal Justice Academy, as well as -- uh -- a field
16 training program through our department.

17 And also, every year there's an
18 annual in-service that's a week long; as well as any
19 other various trainings that we can sign for and get
20 approved throughout the year.

21 Q. Tell the jury what your responsibilities are as a
22 Patrol Officer?

23 A. Uh -- I'm directly assigned to the Little River
24 section of Horry County -- uh -- to be call responsive to
25 any of the citizens of this area, as well as the highways

1 and rural routes throughout the area -- uh -- to uphold
2 the South Carolina criminal statutes as they apply, as
3 well as any of the county ordinances, in the
4 unincorporated parts of the county.

5 Q. Okay. And were you working on or around the
6 morning of June 29th of 2009?

7 A. Yes ma'am, it was.

8 Q. And what were your responsibilities that night?

9 A. Uh -- The same -- uh -- I was assigned to the Little
10 River section on patrol and -- uh -- being responsive to
11 complaints at that time.

12 Q. And were you in uniform?

13 A. Yes, I was.

14 Q. The uniform you're in today?

15 A. Yes ma'am.

16 Q. Okay. And were you driving a marked police
17 vehicle?

18 A. Yes, I was.

19 Q. Okay. And describe what the vehicle looks like to
20 the jury?

21 A. It's a 2006 Chevy Impala with -- uh -- the full
22 stripings down both sides of the car, as well as a light
23 bar up top.

24 Q. Okay. And were you driving that vehicle that
25 evening?

TESTIMONY OF OFFICER JAMIE JERNIGAN

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1 A. Yes ma'am.

2 Q. Okay. And did you come across Mark Elliott that
3 night?

4 A. Yes ma'am; I did.

5 Q. Okay. And tell the jury about that?

6 A. Uh -- At approximately between four 4:00 and 4:30 AM
7 the morning -- early morning of the 29th, I was -- uh --
8 dispatched from the Little River area of the county to a
9 suspicious call located down in the Briarcliff -- uh --
10 area of North Myrtle Beach.

11 Uh -- Once I began to respond, I
12 was notified through our dispatch of a BOLO coming out of
13 North Myrtle Beach in reference to a kidnapping that had
14 just occurred in their jurisdiction.

15 Uh -- The BOLO indicated that
16 there was a white female who was possibly abducted at gun
17 point -- uh -- by a black male driving a late -- uh --
18 '80s model, Toyota Camry -- uh -- last seen in the
19 Hillside area of North Myrtle Beach -- uh -- unknown
20 direction of travel.

21 Q. Okay. And what is a BOLO exactly?

22 A. It's -- uh -- It stands for -- It's an acronym for
23 "be on the lookout..

24 Uh -- It's basically one of the
25 many ways that we can disseminate information from one.

1 agent to another -- uh -- especially -- uh -- in
2 circumstances were you have to have another department
3 close by -- uh -- to -- to get the information out there
4 to either try and ascertain additional information or --
5 uh -- control an investigation.

6 Q. Okay. So it's kind of like just a "be on the
7 lookout" for this vehicle?

8 A. Yes ma'am.

9 Q. Okay. And the description was a 4-door, burgundy
10 Camry -- or red Camry?

11 A. Uh -- Red, I think.

12 Q. Okay. And did the BOLO tell you who might be
13 inside the car?

14 A. Uh -- No name was released at that time. It just
15 gave descriptors for the -- the black male.

16 I believe it said that he would be
17 6 foot -- approximately 6 foot, 4, 200 pounds -- uh -- a
18 white in color top, and maybe a -- uh -- a head dressing
19 -- a grey or something -- uh --

20 Q. Okay.

21 A. -- doo-rag.

22 Q. And did you come across a vehicle that matched that
23 description that night?

24 A. Uh -- I did. Actually as I was heading to my car,
25 originally, I pulled into a service station.

1 I believe it's an EXXON there at
2 the -- the intersection of Second Avenue North and 17
3 Business.

4 Uh -- At that time I saw a 4-door,
5 red or burgundy in color -- uh -- what appeared to be a
6 newer model Camry or Honda parked just to the side of the
7 store between the -- the side of the store and Second
8 Avenue with the driver door open -- uh -- which struck me
9 as odd.

10 When I pulled in, I then saw an
11 older white gentleman coming from the newspaper terminal
12 where he was purchasing the early morning paper.

13 Uh -- At that time, I just turned
14 back around to take the red light back southbound to my
15 call.

16 And as I was sitting waiting on
17 the light to change -- uh -- the defendant, Mr. Elliott,
18 passed by driving his vehicle.

19 Q. Okay. And where were you when the red car passed
20 by you?

21 A. I was at the red light at Second Avenue -- uh --
22 North and 17 Business, in North Myrtle Beach.

23 Q. Okay. And what did you do upon seeing the vehicle?

24 A. Uh -- He passed by at a rather slow rate of speed.

25 Uh -- I got a look at the driver

1 -- uh -- and the vehicle, it -- that -- that vehicle
2 appeared to be a -- you know -- a late '80s or a '90
3 model car.

4 Uh -- So at that point, I turned
5 right northbound rather than southbound as I was
6 originally headed.

7 Uh -- Once I got behind the
8 vehicle, I began to run his tag information and
9 everything from my in-car terminal. And -- uh -- it
10 indicated that the -- uh -- registered owner was indeed
11 Mr. Elliott out of Tabor City, North Carolina.

12 Uh -- At that time, I contacted my
13 dispatch to have him notify North Myrtle Beach that I was
14 possibly behind what I thought to be the suspect vehicle;
15 and to try to get some additional units for -- for
16 assistance -- uh -- -- you know -- do a routine traffic
17 stop or a felony traffic stop at that time, as I was
18 following him.

19 Uh -- As we continued -- uh -- for
20 whatever reason North Myrtle Beach -- the information
21 didn't pass along quick enough before we were out of
22 their jurisdiction entering into ours.

23 So, as we pursued into my
24 jurisdiction of the county -- uh -- Highway 17 Business
25 -- I followed him as he took 9 out towards -- uh -- Loris

TESTIMONY OF OFFICER JAMIE JERNIGAN

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1 and Dillon, at which time, my units were in place; and I
2 then initiated my blue lights --

3 Q. Okay.

4 A. -- and attempted a traffic stop.

5 Q. Now, how long did you follow him before you put the
6 blue light on?

7 A. Uh -- Dispatch notes indicate that the BOLO went out
8 at 4:14 AM. And when I called in his information to my
9 dispatch to contact North Myrtle Beach, it was 4:20 AM.

10 Uh -- When we stopped at the --
11 finally came to a stop at the service station, it was --
12 uh -- 4:25 AM.

13 Q. Okay. And what service station did he stop at?

14 A. It's a BP service station on off of Highway 9 near
15 the intersection of Sea Mountain Highway.

16 Q. Okay. Now, so you were -- So distancewise, about
17 how long did you follow him for, would you say?

18 A. From Second Avenue North to where we came to a stop
19 -- uh -- I would say it's approximately 4 or 5 miles
20 maybe.

21 Q. And that was before you put the blue light on?

22 A. Correct.

23 Q. Okay. Now, while you behind him, did he ever
24 speedup -- slowdown?

25 A. No ma'am. He was consistent -- uh -- driving at --

1 uh -- I'd say an average speed of maybe 40 miles an hour.

2 Uh -- There was really no lane
3 changes or any -- any fluctuation with his speed or
4 anything like that.

5 Nothing -- No abrupt movements
6 inside the vehicle.

7 Q. Okay. Did he ever put a blinker on or look like he
8 was looking for a particular place?

9 A. Not until he pulled into the BP Station where we
10 came to a stop.

11 Q. Okay. So there was absolutely nothing about his
12 driving that appeared abnormal between the time you
13 followed him and he pulled into the BP?

14 A. No ma'am.

15 Q. Okay. And how far was it between the time you put
16 the blue light on and the time he pulled over?

17 A. Uh -- Somewhere between a half a mile and a mile.

18 Q. Okay. Uh -- Now when the blue lights running, are
19 the sirens running as well?

20 A. Uh -- Initially, no. I was thinking he would pull
21 over.

22 And when he didn't we then sounded
23 the sirens and -- uh -- also my -- my backup officer, who
24 was there, had his lights and sirens as well, prior to us
25 coming to a stop.

TESTIMONY OF OFFICER JAMIE JERNIGAN

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1 Q. Okay. Now, when you put your blue light on, was
2 there anybody behind you?

3 A. No ma'am.

4 Q. There was --

5 A. My --

6 Q. -- no officer behind you?

7 A. My backup officer was approaching from the rear.

8 Q. Okay. So there was an officer behind you -- a back
9 up officer?

10 A. Uh-huh. He was coming from -- uh -- 17 in Little
11 River, and we were coming from 17 Business out of North
12 Myrtle; so we kind of met there as we came down onto
13 Highway 9.

14 Q. Okay. And did to see his blue lights on?

15 A. Yes ma'am.

16 Q. Okay. Now where you stopped him, where was that
17 at; a BP Station, you said?

18 A. Yes ma'am.

19 Q. Okay. Was it well lit?

20 A. Yes ma'am.

21 Q. Okay. And you were in a marked car?

22 A. Yes ma'am.

23 Q. Okay. And at that point, was your siren going?

24 A. Uh -- Not in my car, but in my partner's car; yes
25 ma'am.

1 Q. Okay. So at this point, two people are pulling in
2 behind the defendant into the BP?

3 A. Uh-huh. I -- uh -- terminated my siren just prior
4 to coming to a complete stop, so that I could call him
5 out on the PA system.

6 Q. Okay. What happened next?

7 A. Uh -- By the time I could get my vehicle in park, he
8 -- uh -- the driver -- uh -- the defendant, Mr. Elliott,
9 exited the driver side of his vehicle and began to face
10 me -- uh -- at which time, I was exiting my vehicle.

11 And as soon as I got outside
12 standing -- uh -- to start giving him verbal commands, he
13 turned out of the apex of his driver side door and began
14 to -- uh -- flee on foot.

15 Q. Okay. Uh -- So he got out of the car?

16 A. Uh-huh.

17 Q. Took off?

18 A. Yes ma'am.

19 Q. Okay. Uh -- Is there any doubt in your mind that
20 he knew you were a police officer?

21 A. No doubt at all.

22 Q. Okay. You were in a marked car? And at that time,
23 the blue lights were going?

24 A. Yes ma'am.

25 Q. In fact, there was another officer with his blue

1 lights going?

2 A. Yes ma'am.

3 Q. Okay. What happened next?

4 A. Uh -- As soon as he began to flee on foot, I gave
5 chase.

6 Uh -- And at that instance, my
7 back up officer hadn't had an opportunity to exit his
8 vehicle, so he maneuvered in between my car and the
9 defendant's car and began to do what he could to get in
10 his vehicle to block off -- you know -- I guess create
11 some sort of a parameter until we could apprehend him --
12 uh -- at which time, I'm just chasing him on foot off
13 around a grassy area behind the store and out into the
14 vicinity of Highway 9 -- uh -- which is about the time
15 North Myrtle Beach became -- you know -- those units got
16 on the scene and we were able to kind of head him back
17 over towards a -- a restaurant off of Sea Mountain
18 Highway, Billy the Kid's.

19 Uh -- And it was in that parking
20 lot that I was able to -- uh -- apprehend him using my
21 Taser.

22 Q. Okay. And then what happened?

23 A. Uh -- When we got in the parking lot, I believe a
24 North Myrtle Beach officer attempted a Tase.

25 Uh -- It was unsuccessful and --

1 at which time, I deployed mine successfully -- uh --
2 striking him in the rear.

3 Uh -- He went down to the ground.

4 Uh -- We began to give him verbal
5 commands.

6 He continued to try and get up.

7 Uh -- I issued a -- a second -- uh
8 -- subsequent five second interval with the Taser -- give
9 him -- you know -- additional -- uh -- verbal commands.

10 Uh -- He still didn't want to put
11 his hands behind his back or -- or -- uh -- become
12 compliant, at which time, I gave him a third cycle.

13 And by then, we had enough
14 officers there that at the end of that five seconds, we
15 were able to apprehend him.

16 Q. Okay. Now, before you Tased him, did you ever
17 appear that he was going to comply with what you were
18 asking?

19 A. No ma'am.

20 Q. Okay. When he got out of the -- out of that car,
21 did you even have time to get out of your car?

22 A. He was out before I was out.

23 Q. Okay. And was he running before you got out of
24 your car?

25 A. Just as I was getting out, he -- that's when -- When

1 I stood up inside the apex of my door is pretty much when
2 he left his to -- to take off.

3 Q. Okay. Now once you got in behind him, about how
4 many other officers were behind him?

5 A. On foot?

6 Q. (Nods in the affirmative.)

7 A. I was the only officer on foot at that time.

8 Uh -- My backup officer, once
9 North Myrtle Beach got on scene and -- and they began to
10 -- to get out and create a parameter on foot, that's when
11 my other officer -- uh -- parked his car.

12 And we just kind of contained him
13 until we could get him, and then in close -- or enough to
14 where we could get our hands on him.

15 Q. Okay. And before you Tased him, did he ever look
16 like he was going to comply with any of your commands?

17 A. No ma'am.

18 Q. Okay. And even after you Tased him the first
19 time, did he appear like he was going to comply with your
20 commands?

21 A. No ma'am.

22 Q. Okay. Now in your car, was there a video camera?

23 A. Yes ma'am.

24 Q. Okay. Uh -- Was that video camera recording that
25 night?

1 A. Yes ma'am.

2 Q. Okay. Explain to the jury how that video camera
3 operates.

4 A. We have a digital -- uh -- video system in-car that
5 -- uh -- anytime we initiate our blue lights and sirens
6 -- uh -- they will activate; and/or if we have a body mic
7 on our person, we can manually activate it.

8 Uh -- In this instance, when I
9 initiated the traffic stop with blue lights, it came on
10 and began to record.

11 And it backtracks, I -- I believe,
12 up to one minute prior to those lights being initiated.

13 Q. Okay. Now, have you -- Let me show you something.

14 MS. LIVESAY:

15 Would you please mark this as
16 State's Exhibit?

17 WHEREUPON: A DVD OF THE VIDEO
18 RECORDING OF THE TRAFFIC STOP WAS MARKED BY THE COURT
19 REPORTER AS STATE'S EXHIBIT NUMBER 2 FOR IDENTIFICATION
20 ONLY.

21 COURT REPORTER:

22 Your Honor, this will be marked as
23 State's Exhibit 2.

24 MS. LIVESAY:

25 Thank you.

1 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

2 Q. Do you recognize what I'm showing you?

3 A. Uh -- Yes ma'am.

4 Q. What is it?

5 A. It's a DVD-R that was used to download the video
6 from that night of the incident off the DVD-R.

7 Q. And have you watched this DVD?

8 A. Yes ma'am.

9 Q. And tell the jury what' on it?

10 A. It shows -- uh -- coming down the -- uh -- overpass
11 onto Highway 9 from 17 Business initiating a traffic
12 stop.

13 It will show -- uh -- the
14 defendant, Mr. Elliott's, vehicle in front of mind,
15 traveling -- uh -- towards Loris and Dillon on Highway 9
16 just prior to pulling into the BP.

17 It should pick up, I think, a
18 glimpse of my assisting officer, Officer Martin's,
19 vehicle, both on Highway 9 as well as when he went in
20 between my vehicle and the defendant's car once the foot
21 chase ensued, as well as -- uh -- the audio that took
22 place between the time I left the viewing angle of the
23 vehicle and -- and the time we apprehended him.

24 Q. So is this is an exact record of what your camera
25 took in that night?

1 A. Yes ma'am.

2 Q. The audio and the visual?

3 A. That's correct.

4 Q. And you've watched it?

5 A. Yes ma'am.

6 Q. Has it been altered in any way or shape or fashion?

7 A. No ma'am.

8 Q. And is this a accurate depiction of what happened
9 that night?

10 A. Yes ma'am.

11 MS. LIVESAY:

12 Your Honor, at this time the -- uh
13 -- State wishes to place State's Exhibit Number 2 into
14 evidence and publish it in just a minute.

15 THE COURT:

16 Mr. -- uh -- Hazzard?

17 MR. HAZZARD:

18 No objection, Your Honor.

19 WHEREUPON: STATE'S EXHIBIT NUMBER
20 2, EARLIER MARKED BY THE COURT FOR IDENTIFICATION ONLY
21 WAS NOW ENTERED INTO EVIDENCE WITHOUT OBJECTION.

22 WHEREUPON: MS. LIVESAY SHOWS A
23 POSTER BOARD TO OPPOSING COUNSEL FOR THEIR REVIEW.

24 MR. HAZZARD:

25 The Court's indulgence, Your

1 Honor?

2 MS. LIVESAY:

3 Can approach the witness, Your

4 Honor?

5 THE COURT:

6 Yes.

7 MS. LIVESAY:

8 Can I go ahead and mark this as a

9 State's Exhibit.

10 WHEREUPON: A POSTER SHOWING A MAP

11 OF THE NORTH MYRTLE BEACH AND LITTLE RIVER VICINITY WAS

12 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 3

13 FOR IDENTIFICATION ONLY.

14 COURT REPORTER:

15 This will be marked State's

16 Exhibit 3, Your Honor.

17 THE COURT:

18 All right.

19 MS. LIVESAY:

20 Thank you.

21 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. Officer Jernigan, do you recognize what I'm showing
23 you now?

24 A. Yes ma'am.

25 Q. What is it?

1 A. It's a aerial -- uh -- map of the North Myrtle Beach
2 Little River area.

3 Q. Okay. And does this map include the area when you
4 started following the defendant?

5 A. Yes ma'am.

6 Q. And does it include where the location was when the
7 defendant finally pulled over?

8 A. Yes ma'am.

9 Q. And does it include the location where -- when he
10 got out and started running?

11 A. Yes ma'am.

12 Q. Would this assist you in your testimony?

13 A. Yes ma'am.

14 MS. LIVESAY:

15 Your Honor, at this time, can I
16 ask the officer to step down?

17 THE COURT:

18 Yes.

19 MS. LIVESAY:

20 Thank you.

21 MR. HAZZARD:

22 Your Honor, if she's going to
23 publish that to the jury, I would ask that she at least
24 lay the proper foundation and have it admitted into
25 evidence first.

1 MS. LIVESAY:

2 Your Honor, I'm just using it as a
3 demonstrative in order to help him --

4 THE COURT:

5 I understand. But why -- why
6 don't you go ahead and have him tell the jury what it is
7 and what it purports to show.

8 MS. LIVESAY:

9 I'm sorry, Your Honor?

10 THE COURT:

11 Have him tell the jury what it
12 purports to show; okay.

13 MS. LIVESAY:

14 Okay.

15 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

16 Q. Uh -- On this map, where did you first started (sic)
17 following the defendant?

18 A. The intersection near Second Avenue North and 17
19 Business.

20 Q. Okay. And how far did -- okay -- and what route you
21 take behind him?

22 A. Uh -- 17 Business northbound all the way up until
23 over the Intercoastal Waterway, and then we merged left
24 onto Highway 9 out towards Loris and Dillon, which is
25 this area up in here --

1 THE COURT:

2 All right.

3 WITNESS:

4 -- we crossed over the Waterway.

5 MS. LIVESAY:

6 Okay.

7 THE COURT:

8 It -- It is a map of the area of
9 this chase?

10 MS. LIVESAY:

11 As he following him --

12 THE COURT:

13 Is what it is?

14 MS. LIVESAY:

15 -- Yes sir.

16 THE COURT:

17 Okay. I -- I'm going to let her
18 use it, Mr. Hazzard.

19 MS. LIVESAY:

20 Thank Your Honor.

21 Can I ask him to step down?

22 THE COURT:

23 Okay.

24 MS. LIVESAY:

25 Thank you.

1 THE COURT:

2 I meant to say aerial photograph
3 of the area.

4 MR. HAZZARD:

5 Can we at least get a
6 determination for record as to whether it is or is not up
7 to scale, Your Honor?

8 MS. LIVESAY:

9 Your Honor, we're just using it
10 for demonstrative purposes, so he can explain to the jury
11 the exact location --

12 THE COURT:

13 It's an aerial photograph. It's a
14 photograph. It's not a sketch.

15 MS. LIVESAY:

16 It -- It's not going to be into
17 evidence, Your Honor.

18 THE COURT:

19 Okay.

20 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

21 Q. Uh -- Could you please show the jury exactly where
22 you were when you saw -- first saw the defendant?

23 A. Second Avenue North and -- uh -- 17 Business.

24 Q. And let's move down this way, if you don't mind.

25 A. Okay.

1 Q. Point it out again for the jury.

2 A. The gray area here, Second Avenue North and 17
3 Business.

4 COURT REPORTER:

5 I need him near a mic when he's
6 talking because his back's to me.

7 MS. LIVESAY:

8 Okay.

9 COURT REPORTER:

10 Can you repeat that please into
11 the mic?

12 MS. LIVESAY:

13 Okay.

14 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

15 Q. And where -- Show the jury the route when you
16 started following him?

17 A. The initial sighting was at the corner of Second
18 Avenue North and 17 Business.

19 Uh -- Once I made a right-hand
20 turn behind the defendant's vehicle, we -- uh --
21 continued northbound on 17 Business -- uh -- out this
22 way, all the way across -- through -- over the Waterway
23 up until the point we get up here to the -- Obviously,
24 you can go Little River one way or you can go
25 Loris/Dillon.

1 And we took the Highway 9 exit out
2 towards Loris/Dillon.

3 This is Highway 9 here.

4 He proceeded down on the way to
5 the -- right about here, which represents the BP Service
6 Station.

7 It was at that parking lot that
8 he came to a stop.

9 Q. Where were you when you initiated your blue lights?

10 A. Just -- There is a small overpass here. It was just
11 to the bottom side of these little white specs, somewhere
12 near that area by the waterpower.

13 Q. Okay. So what is this highway again? Show it to
14 the jury.

15 A. This whole route here is Highway 9. And we were
16 coming off 17 here into Highway 9.

17 It was just here that the lights
18 and siren were initiated.

19 Q. Okay. And you followed him from here somewhere?

20 A. Second Avenue North and 17, yeah, the gray area.

21 Q. Okay. And where did you get off here? Would you
22 show them which route you took.

23 A. We took -- uh -- 17 Business out. Uh -- We
24 continued on Highway 17 around over the Intercoastal,
25 back around onto Highway 9 here -- approximately the

1 stopping point.

2 Q. Okay. Now -- You can have a seat officer. Thank
3 You.

4 A. (Witness does as instructed.)

5 Q. Tell the jury: If -- If you kept going on that
6 road, where would it take you -- that you were on before
7 he pulled off?

8 A. The -- uh -- overhead indicates Loris/Dillon.

9 You can go to Loris -- uh -- Tabor
10 City, Dillon -- uh -- go to those outlets to about
11 anywhere that you -- you may want to go in the county.

12 You can go back 701 to Conway or
13 Tabor, or continue Highway 9 out towards Nichols/Dillon
14 -- out that area -- Mullins/Marion.

15 Q. Okay. The entire time you were behind him, did he
16 ever look like he was going to turn off or stop?

17 A. Uh -- After I initiated a blue lights?

18 Q. Yes sir.

19 A. We traveled -- uh -- Highway 9 for quite a while
20 before -- uh -- before he finally turned into the BP
21 Station.

22 Uh -- I really wasn't sure that he
23 was going to stop.

24 Uh -- He, again, didn't increase
25 his speed or anything to -- to -- to try to distance

1 himself from me.

2 But we had -- you know -- an open
3 road -- 4-lane road there with a -- uh -- unbroken median
4 -- open median -- plus several parking lots, a
5 dealership, a hospital -- uh -- as well as several
6 residential areas, and ample shoulder; and he just yet
7 continued on in his same lane of travel.

8 Q. Okay. Are you very familiar with that area you
9 just showed to the jury?

10 A. Yes ma'am.

11 Q. Okay. When you behind the defendant, was that the
12 straightest route you could've taken from that point to
13 the point you were at heading towards Loris, Dillon, and
14 Tabor city?

15 A. Yes ma'am.

16 Q. Okay. Were there other -- uh -- yields or avenues
17 he -- that could have been taken?

18 Were there any other turnoffs, or
19 forks in the road?

20 A. Uh -- Once we got on 9, not at that point.

21 Q. How about before then?

22 A. It -- There's a couple of other routes that could
23 have been used to go to, I guess, Tabor City, if you
24 will.

25 But it would've been out of the

1 way.

2 It wouldn't have been the shortest
3 route.

4 Q. Okay. But that was the straightest route from that
5 point to Loris, Dillon, and Tabor City?

6 A. Yes ma'am.

7 MS. LIVESAY:

8 Your Honor, at this time, can I
9 publish the video?

10 THE COURT:

11 Yes.

12 MS. LIVESAY:

13 Thank Your Honor.

14 THE COURT:

15 Any objections? We've already
16 admitted it, I believe.

17 MR. HAZZARD:

18 No objection --

19 THE COURT:

20 Okay.

21 MR. HAZZARD:

22 -- from Defense.

23 WHEREUPON: Ms. Livesay

24 unsuccessfully attempted to show State's Exhibit Number
25 2, the DVD of the traffic stop, to the jury at 2:19 PM,

1 (WHEREUPON: Mr. Hazzard returned
2 to the courtroom at 2:25 PM.)

3 MS. LIVESAY:

4 We're ready.

5 THE COURT:

6 Ready?

7 Uh -- See if the jury is ready to
8 come back.

9 (WHEREUPON: The jury empanelled
10 in the case was escorted back into the courtroom at 2:28
11 PM, November 16, 2010; and was in fact present during the
12 following proceedings.)

13 THE COURT:

14 All right, Ms. Livesay.

15 MS. LIVESAY:

16 Thank Your Honor.

17 WHEREUPON: Ms. Livesay began to
18 publish the video of the traffic stop, State's Exhibit 2,
19 at 2:29 PM, November 16, 2010.

20 WHEREUPON: At 4:31:30 minutes
21 into the tape, the following exchange took place in front
22 of the jury:

23 MS. LIVESAY

24 (Speaking over the tape while the
25 tape was still going.) Your Honor, can we stop the tape

1 now. The rest of the tape is just going to show --

2 THE COURT:

3 (Speaking over the tape while the
4 tape was still going.) Well, Mr. Hazzard's entitled to
5 the entire tape, unless he chooses not to.

6 (WHEREUPON: The video is paused
7 for the following exchange.)

8 MR. HAZZARD:

9 I'd like the jury to be able to
10 have the benefit of the entire tape, Your Honor.

11 THE COURT:

12 All right. Play it. Continue
13 it.

14 (WHEREUPON: Ms. Livesay again
15 began to play the tape for less than a minute, when the
16 following exchange took place.)

17 MS. LIVESAY

18 (Speaking over the tape while the
19 tape was still going.) Your Honor, the State's not going
20 to play anymore of it. If Mr. Hazzard wants (inaudible
21 as the video is still playing) he can.

22 But sir, I'm really concerned
23 (inaudible as the video is still playing) -- And it's in
24 evidence.

25 So, if they jury wants to watch it

1 (inaudible as the video is still playing) --

2 THE COURT:

3 (Speaking over the tape while the
4 tape was still going.) All right.

5 It's in evidence and just --

6 (WHEREUPON: The video was stopped
7 again at approximately the 4:35:30 area of the tape, and
8 the following exchange took place.)

9 MR. HAZZARD:

10 Your Honor, our position is:

11 Any time they play part of it,
12 we're entitled to have the jury to hear all of it at this
13 time, and we are so requesting, Your Honor.

14 MS. LIVESAY:

15 This is the only part we wish to
16 publish.

17 It's the rule of completion.

18 If he wants to publish it, the
19 rest, during his cross-examination --

20 MR. HAZZARD:

21 No.

22 MS. LIVESAY:

23 -- he can. But --

24 MR. HAZZARD:

25 I'm asking for it --

1 MS. LIVESAY:

2 -- we already know --

3 MR. HAZZARD:

4 -- that it be published now, so
5 that they can see it all at one time.

6 MS. LIVESAY:

7 They -- Your Honor, that's not how
8 I want to conduct my testimony.

9 THE COURT:

10 I'm -- I'm going to let her cut it
11 off.

12 Mr. Hazzard, it doesn't look like
13 anything's going on. And you're entitled to put it in.

14 And we'll make a note that it's
15 being cut off at 4:50 -- uh -- 35.29.

16 MS. LIVESAY:

17 Thank Your Honor.

18 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

19 Q. Officer Jernigan, when you got behind -- uh -- the
20 defendant, and after watching that video, were there any
21 other cars around?

22 A. No ma'am.

23 Q. Did you see any reason or anything impeding why he
24 couldn't pull over when you pulled the blue light on?

25 A. No ma'am.

1 Q. Would she describe that -- uh -- roadway to the
2 jury? Was there any place he could pull over?

3 A. Yes ma'am. It's a -- As the video illustrated,
4 it's a 4-lane highway. Also in the center is a open
5 median that's oftentimes used for turning into both the
6 dealership and hospital to go up to the medical center on
7 the right-hand side -- uh -- which is completely open.

8 There's no -- uh -- barricade or
9 anything pro -- prohibiting you from doing so; as well
10 as, both shoulders of the road were available at that
11 hour.

12 Q. Okay. Was there any traffic impeding him being
13 able to pull over?

14 A. No ma'am. I don't recall seeing another vehicle
15 other than my car, and my assisting officer's car, and
16 his car.

17 Q. Okay. Now, did you ever see anybody else get out
18 of that vehicle?

19 A. No ma'am. I did not.

20 Q. Okay. Now have you watched the complete video of
21 what we just saw?

22 A. Yes ma'am.

23 Q. Did you ever see anybody get out of at that BP Gas
24 --

25 A. No ma'am.

1 Q. -- of the vehicle?

2 A. No ma'am.

3 Q. Okay. And to your knowledge, was there anybody
4 else in that vehicle other than the defendant?

5 A. No ma'am.

6 Q. Officer Jernigan, at what time did the defendant
7 finally comply with your order?

8 A. Uh -- After we Tased him, which looked like it was
9 pretty close to 4:30, judging by the in-car video.

10 MS. LIVESAY:

11 Thank you.

12 No further questions, Your Honor.

13 WITNESS:

14 Okay.

15 MS. LIVESAY:

16 Please answer any questions Mr.

17 Hazzard may have.

18 THE COURT:

19 All right, Mr. Hazzard.

20 MR. HAZZARD:

21 All right.

22 CROSS-EXAMINATION BY MR. HAZZARD:

23 Q. Officer Jernigan, didn't you say at the time of
24 Mark's tasing, or after he was on the ground handcuffed,
25 facedown, didn't you indicate at that point that you saw

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1 someone -- saw a female get out of a car?

2 A. No sir.

3 Q. No sir? Who did? You heard someone say that;
4 correct?

5 A. My assisting officer -- uh -- Officer Martin made
6 the comment over the radio just prior to the stop.

7 Outside of that, I don't have any
8 recollection of -- uh -- anyone saying they had seen a
9 female?

10 Q. So you don't recall anyone saying, right there,
11 while Mr. Elliott was face down on the ground, having
12 been Tased four times, handcuffed, that they saw a girl
13 get out of the car?

14 A. No sir.

15 Q. You don't recall that?

16 A. No sir.

17 Q. Okay. But you don't deny it?

18 A. No sir.

19 Q. Okay. That's fine. Now you say you got behind
20 Mark, I believe you said, around Second Avenue North in
21 North Myrtle Beach?

22 Is that correct?

23 A. Yes sir.

24 Q. Okay. And that would be some 51 blocks south of
25 53rd Avenue North, right?

1 A. I suppose so. I would have to look at the map.

2 MR. HAZZARD:

3 The Court's indulgence, Your
4 Honor?

5 WHEREUPON: Mr. Hazzard pulls out
6 State's Exhibit Number 3 (for I.D. only) and hands it to
7 the witness.

8 WITNESS:

9 Okay. What was your question
10 again?

11 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

12 Q. You indicated you got behind him, I believe your
13 testimony was, around Second Avenue North?

14 Is that correct?

15 A. Yes sir, it is.

16 Q. In North Myrtle Beach?

17 A. Yes sir.

18 Q. And that that would be 51 block south of 53rd Avenue
19 North in North Myrtle Beach.

20 Is that correct?

21 A. Uh -- Yes sir.

22 Q. Okay. And when you came across Mark on Second
23 Avenue and 17 Businesses; is that correct?

24 A. Yes sir.

25 Q. Was he heading southbound or northbound?

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1 A. Northbound.

2 Q. He was heading northbound at that time?

3 A. (Nods in the affirmative.)

4 Q. Now when you got behind them and put on your blue
5 lights and did all that stuff, did you have a warrant for
6 his arrest?

7 A. No sir.

8 Q. Did you have any documentation whatsoever issued by
9 any Court that allowed you to detain him, and arrest him,
10 and take him into custody?

11 A. No sir. No documentation.

12 Q. Okay. Did you have an oral court order --

13 A. No sir.

14 Q. -- that allowed you to take him into custody?

15 A. No sir.

16 Q. Okay. Now in your report, you indicated that, I
17 believe you say, you used your Taser on Mr. Elliott three
18 times.

19 Is that correct, sir?

20 A. Yes sir.

21 Q. Okay. And I believe in your report you said that
22 you had to use your Taser three times because Mr. Elliott
23 wouldn't stay on the ground?

24 Is that correct?

25 A. Uh -- It's indicated in the report here that he

1 immediately began to get up, and would not obey verbal
2 commands; yes sir.

3 Q. Let's talk about those verbal commands.

4 From what I heard -- and my
5 hearing ain't what it used to be -- what you hear people
6 saying is:

7 Put your hands behind your back.

8 Put your hands up.

9 Isn't that correct?

10 A. I -- I'd have to listen to it again, sir.

11 I was commanding him, myself, to
12 put his hands behind his back.

13 Q. Okay.

14 A. There was multiple officer there at the time, sir.

15 Q. Uh-huh. And all of them were shouting at him,
16 weren't they?

17 A. Yes sir.

18 Q. Okay. Now, I don't recall hearing anybody say:

19 Stay on the ground.

20 Don't get up.

21 Do you recall hearing that?

22 A. I'd have to listen to it again.

23 Q. Okay. Is it your testimony before this jury that
24 he was instructed to stay on the ground but kept getting
25 up?

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1 A. Yes sir. That's what I put my written report.

2 Q. Okay.

3 A. Uh-huh.

4 Q. But yet the jury will be able to listen to it again
5 if they wish; and they will be able to hear exactly what
6 verbal commands were issued?

7 A. Yes sir.

8 Q. Okay. Now when Mark got out of the car, did you
9 notice he had something white in his left hand?

10 A. No sir.

11 Q. You didn't?

12 A. (Nods in the negative.)

13 Q. Okay. Do you recall whether or not has fist -- his
14 hand was opened or his fist was clenched?

15 A. I don't recall.

16 Q. You don't recall?

17 A. (Nods in the negative.)

18 Q. Okay. So you don't deny that he had something in
19 his left hand. You're just not sure?

20 A. I'm not sure if he did or he didn't.

21 Q. Okay. Now, the way Mark was driving:

22 As you indicated, he never sped
23 up. Never took any evasive action; correct?

24 A. That's correct.

25 Q. Okay. And that area up there, that's up there near

1 -- uh -- what's it called -- uh -- Steven's Crossroads?

2 A. It would be -- uh -- north of Stevens Crossroads;
3 yes sir.

4 Q. Okay. Just north of Stevens Crossroads.

5 Now that area -- If someone's not
6 familiar with that area, you can look at that video and
7 tell, it's not like the sides are incredibly well lit or
8 anything like that; correct?

9 A. Uh -- No sir. I -- I maintain it is a well lit
10 area.

11 There's a dealership and a
12 hospital, both the parking lots with overhead lights.

13 Q. Uh-huh. And so, if I'm on the right side heading
14 north, and the dealership and the hospital is on the left
15 -- you know -- there's no hiding in the middle to tell me
16 where I can pull over safely; where I can turn left into
17 that dealership or the hospital, is there, if you are not
18 familiar with the area?

19 Q. If the question's:

20 Were there lights in the median?

21 The answer's no.

22 Q. Okay. Fair enough. Now, where there is light
23 that you could see on here is when he gets to the left
24 lane and -- honestly, he kind of -- he puts the turn
25 signal on, and he's kind of like -- acts like:

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1 Okay, maybe I'll -- left lane
2 here, and then he comes back to the center lane; correct?

3 A. Yes sir.

4 Q. Okay. And then he puts his turn signal on again,
5 and he slides over into the left lane again; right?

6 A. Yes sir.

7 Q. And then, as soon as he gets to that BP, he turns
8 in; correct?

9 A. Correct.

10 Q. Okay. And then, he hops out of the car with
11 whatever he's got in his hand.

12 And he takes off running, which
13 apparently, he's not a very good runner.

14 A. (No response.)

15 Q. Who was your backup officer that night, sir?

16 A. Uh -- The officer that was there at the traffic stop
17 was -- uh -- Officer John Martin.

18 Q. I'm sorry. Officer who?

19 A. Officer Jonathan Martin.

20 Q. Jonathan Martin?

21 A. Yes sir.

22 Q. Okay. Now he didn't employ his Taser?

23 A. No sir.

24 Q. But you indicated the North Myrtle Beach police
25 officer also employed his Taser?

1 A. I think there was an attempt. I don't recall if he
2 had a mal -- equipment malfunction, or if he just missed
3 altogether.

4 I don't -- I don't recall.

5 It seemed to me that he had a
6 malfunction with the equipment.

7 Q. Okay. Now, you indicate in your report, I believe,
8 that you hit Mark here with three cycles of the Taser.

9 Is that correct?

10 A. That's correct.

11 Q. Okay. Now, when you hit somebody with the Taser,
12 what are they getting hit with?

13 A. It's -- uh -- The -- The X26 that we carry -- and
14 are issued by our department, we -- uh -- have a 25 foot
15 range with two probes that come out -- uh -- one up high;
16 I think the others on a 90 degree down bevel.

17 Uh -- With success they penetrate
18 the two areas of the -- the body, at which time, there's
19 50,000 volts at a low amperage that goes to the subject
20 in five-second intervals.

21 So, if you pull the trigger, it's
22 going to -- a little bit like you turn the device off --
23 it's five seconds each time the trigger is pulled.

24 Q. 50,000 volts?

25 A. At a low amperage rate. I don't have that

1 information with me.

2 Q. Uh-huh. Okay. But there's no question that it
3 didn't matter whether you're talking about a low amperage
4 rage or not, the whole purpose of it is to incapacitate a
5 person; right?

6 A. That's correct.

7 Q. Okay. Now with regard to -- uh -- Mark being
8 facedown -- I mean, you remember him being facedown on
9 the concrete -- or facedown in the parking lot with his
10 handcuffs behind him, and like six officers standing
11 around him?

12 A. Yes sir.

13 Q. You remember that?

14 A. Yes sir.

15 Q. And you were one of those officers; right?

16 A. Yes sir.

17 Q. Okay. Were you the one that told him:

18 You know, you don't want any more
19 of this juice?

20 Are you the one that told him
21 that?

22 A. No sir, I'm not.

23 Q. You're not? Okay. Do you know who it was?

24 A. I couldn't -- I don't recall.

25 Q. Okay. And so basically, you've got a situation

1 where Mark sits down on the ground, he's got his hands
2 cuffed behind him; correct?

3 A. Correct.

4 Q. Okay. And there's an officer there. You say you
5 don't remember who, who says:

6 They are sure they saw this girl
7 get out of the car and run at the time Mark got out of
8 the car?

9 But you don't recall that?

10 A. I don't recall that being said at the point we -- uh
11 -- apprehended him; no sir.

12 Q. Okay. Okay. And do you think that after being
13 hit three times with 50,000 volts of electricity, that he
14 was going to disagree with any question anyone asked him?

15 A. I've seen it before.

16 Q. You've seen it before?

17 A. Yes sir.

18 MR. HAZZARD:

19 Okay. All right. Thank you sir.

20 The Court's indulgence, Your
21 Honor?

22 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

23 Q. On that video where Mark gets out of the car, he
24 closes the driver's side door behind him; doesn't he?

25 A. I please so.

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1 Q. Okay. Do you have any idea who subsequently went
2 back and opened that door?

3 A. Uh -- I believe it was -- uh -- Horry County Police
4 Officer Duncan.

5 Q. All right. Thank you. No further questions. Oh,
6 well, let me ask you this now:

7 With the car door closed -- It is
8 obvious that -- uh -- you can't see the inside of the car
9 door with the car door closed; right?

10 A. Correct.

11 Q. From the outside?

12 A. (Nods in the affirmative.)

13 MR. HAZZARD:

14 All right. No further questions.

15 MS. LIVESAY:

16 Just a few questions, Your Honor.

17 REDIRECT EXAMINATION BY MS. LIVESAY:

18 Q. Uh -- Officer Jernigan, when you first pulled the
19 defendant over and he got out of the car and turned
20 around and looked at you, what you was your first
21 thought.

22 A. I thought he was going to pull a gun. I thought --
23 I was -- The information I had available to me at the
24 time was that he had a gun. And the kidnapping occurred
25 -- uh -- by -- with a gun.

1 So when he got out and faced me, I
2 immediately thought that we were going to -- uh --
3 exchange shots.

4 Q. Okay. Now, as a patrol officer, what -- what do
5 you normally do, patrol for traffic offenses?

6 A. Uh -- To -- With our department, we -- we do very
7 little traffic enforcement.

8 Mostly, we're -- uh -- call
9 responsive in the criminal sector -- uh -- domestics,
10 fights, loud noises -- uh -- disturbances -- uh -- you
11 know -- things of that nature.

12 But when we're not on a call or
13 having a large volume of calls, we try to -- uh -- patrol
14 all the -- the neighborhoods and things of that nature to
15 -- to deter crimes; to be seen.

16 And -- uh -- naturally, if there
17 is a traffic violation or something of that -- that
18 nature -- we can deal with it; but only when time
19 permits.

20 Q. But you do pull people over for speeding?

21 A. Yes ma'am.

22 Q. And you pull them over for not having a seat belt?

23 A. Yes ma'am.

24 Q. Okay. So how -- About how many tickets do you
25 write in a week?

1 A. Uh --

2 MR. HAZZARD:

3 Your Honor, I fail to see where
4 this is --

5 MS. LIVESAY:

6 I -- I'll get there in just
7 another question, Your Honor.

8 THE COURT:

9 All right. Let's let her go.

10 MR. HAZZARD:

11 -- responsive to my cross-
12 examination.

13 WITNESS:

14 I -- I couldn't say. I write a
15 lot of warnings, to be honest with you, for traffic
16 violations.

17 Uh -- That's not my particular
18 focal point with -- uh -- with our department.

19 MS. LIVESAY:

20 Okay.

21 REDIRECT-EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. Uh -- When you pull somebody over speeding, what
23 normally happens?

24 A. Uh -- I exchange information with them. Uh --
25 Typically, I try to find out where they're going; if

1 there's a reason for it; advise them of the -- uh --
2 parameters of the speed limit in the area that they're
3 violating, and -- uh -- just mostly try to get them to
4 slow it down, unless there's -- uh -- something else --
5 uh -- extenuating circumstances that require additional
6 action.

7 Q. Okay. So most of the time, when you pull people
8 out -- or pull people over -- they're not getting out of
9 the car and taking off running; are they?

10 A. No ma'am.

11 Q. Okay. Now, you said earlier you Tased him. How
12 many volts was it?

13 A. The Taser administers -- uh -- 50,000 volts at -- I
14 -- you'd have to talk with a Taser person.

15 Uh -- They're just a low amperage,
16 which is sustainable for the body.

17 Q. Okay. So you Tased him one time.

18 A. Uh -- The --

19 Q. Is that correct? The first time?

20 A. The probes -- The probes hit him the one time; and
21 then there was too subsequent -- subsequent -- uh --
22 five-second cycles that were administered.

23 Q. Okay. And you said somebody has Tased -- or tried
24 to tase him prior to that; is that correct?

25 A. Yes ma'am.

1 Q. Okay. Why didn't he get Tased from those probes?
2 Do you know?

3 A. It could've -- From what I recall, there was a
4 malfunction with his equipment.

5 I -- I can't -- I don't recall the
6 probes ever -- you know -- leaving the cartridge like
7 they're supposed to.

8 Q. Okay. But your Taser hit him the first time?

9 A. Yes ma'am.

10 Q. Okay. After that first bolt hit him, did he look
11 like he was going to comply at that point?

12 A. Uh -- When -- When the Taser initially hit him, he
13 was at that time trying to run.

14 So, of course, your -- your body
15 locks out.

16 Uh -- He then went to a knee.

17 Uh -- By that time the five
18 seconds was ending.

19 And you can fight through it to
20 some degree, depending on where the probes place on your
21 body.

22 Uh -- And at that time, that's
23 what he was doing -- trying to combat against -- uh --
24 what was happening to him.

25 Uh -- The second one -- After the

1 second one is when he laid out and became flat on his
2 stomach.

3 And then, the focal point was
4 trying to get hands behind the back so that we could get
5 -- uh -- restraints on him to -- you know --

6 Q. So after that first time, he was still trying to
7 fight and get away?

8 A. Yes ma'am.

9 Q. Okay. And after the second time, he still wasn't
10 complying?

11 A. He was -- The second -- At the end of the second
12 cycle, he was more so on his -- on his stomach -- uh --
13 facedown.

14 But we were having a hard time
15 getting him to comply with putting his hands behind his
16 back.

17 Q. Okay. So he was still fighting you after that
18 time?

19 A. Uh-huh.

20 Q. Okay. So after two volts of how much?

21 A. I'm sorry.

22 Q. How much is two Tases?

23 A. Uh -- They're five second intervals each. So he --
24 he ended up with three.

25 Q. Okay. And after that, he was still trying to get

1 away?

2 A. But we had the -- the -- the resources in at that
3 point to -- to apprehend him and -- and get him
4 restrained without using any additional cycles.

5 Q. Okay. Let me ask you this:

6 Uh -- Is that normal procedure to
7 pull your Taser on somebody?

8 A. Uh -- If the circumstance warrants it. It's a --
9 It's a nonlethal use of force. And it's a -- it's a way
10 that we can stay a step ahead of them on the -- the use
11 of force continuum, and -- and bring what could be a
12 volatile situation under control quicker with -- uh --
13 without using deadly force.

14 Q. Okay. Have you arrested people other than this
15 defendant?

16 MR. HAZZARD:

17 Objection.

18 THE COURT:

19 What's your objection.

20 MR. HAZZARD:

21 What does him having arrested
22 anyone else have to do with this --

23 THE COURT:

24 Well, you're sort of going beyond
25 proper redirect --

1 MR. HAZZARD:

2 Thank you, Your Honor.

3 THE COURT:

4 -- uh -- Ms. -- Ms. Livesay.

5 MS. LIVESAY:

6 Just as to the tasing, Your Honor,
7 one other question --

8 THE COURT:

9 All right.

10 MS. LIVESAY:

11 -- if you don't mind.

12 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

13 Q. Uh -- Is that normal procedure to tase everybody
14 that you handcuff?

15 A. No ma'am.

16 MS. LIVESAY:

17 No further questions, Your Honor.

18 THE COURT:

19 Mr. Hazzard?

20 MR. HAZZARD:

21 Oh? Thank Your Honor.

22 RECROSS-EXAMINATION BY MR. HAZZARD:

23 Q. All right. When Mark got out of the car, you said
24 you thought he was going to pull a gun and fire at you?

25 A. I thought he a -- potentially had a gun when he

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1 exited the vehicle and faced me; yes sir.

2 Q. Did he have a gun?

3 A. That was what was going through my mind. I'm sorry?

4 Q. Did he have a gun?

5 A. Not to my knowledge.

6 Q. Did he have any weapon in his hand whatsoever?

7 A. Not to my knowledge.

8 Q. Okay. And you've reviewed this tape more than
9 once; right?

10 A. Yes sir.

11 Q. All right. Ever seen a weapon in his hand?

12 A. No sir.

13 Q. All right. So when he hopped out of the car and
14 you hopped out of your car, you -- you drew your service
15 revolver; right?

16 A. I was in the process of getting it out; yes sir.

17 Q. Okay. And what does "in the process of getting it
18 out' mean?

19 A. It was never pointed at him. But I was -- I was
20 going for it; yes sir.

21 Q. Where was it?

22 A. It was in my holster. I was in the process of
23 removing it from the holster.

24 Q. So you were in the process of reaching for it, and
25 he could see you were in the process of reaching for it?

1 A. I -- I can't tell you what he did or didn't see.

2 Q. Okay. Uh -- Did you have hidden?

3 A. The gun; no sir.

4 MR. HAZZARD:

5 All right. No further questions.

6 THE COURT:

7 All right.

8 MS. LIVESAY:

9 No further questions, Your Honor.

10 THE COURT:

11 You may step down Officer

12 Jernigan.

13 WITNESS:

14 Thank you.

15 MS. LIVESAY:

16 Your Honor, at this time the State
17 would call of this is Scott Causey to the stand.

18 WHEREUPON: OFFICER SCOTT CAUSEY

19 WAS DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

20 CLERK:

21 Please state your name and spell
22 your last name for The Court.

23 WITNESS:

24 Russell Causey; C-a-u-s-e-y.

25 DIRECT EXAMINATION BY MS. LIVESAY:

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1 Q. Officer Causey, where do you currently work?

2 A. North Myrtle Beach Department of Public Safety.

3 Q. About how long have you been there?

4 A. Thirteen and a half years.

5 Q. And what are your responsibilities?

6 A. My current duties is that I'm as the investigations.

7 Q. And what kind of training have you undergo with the
8 North Myrtle Beach Police Department?

9 A. I've gone through the -- certified in the Criminal
10 Justice Academy for the State, as well as taking numerous
11 advanced classes back at the academy, ranging from basic
12 detective classes up to -- uh -- Sirchie's Crime Scene
13 Class in North Carolina.

14 Q. Okay. And what were your responsibilities on or
15 around the morning of June 29th of 2009?

16 A. I was all road patrol.

17 Q. And what was -- what are your responsibilities as a
18 patrol officer?

19 A. On road patrol, you're in a -- the uniform of the
20 day. You're driving a marked patrol car. And you patrol
21 an assigned area.

22 Q. Okay. And what were you wearing that night?

23 A. That particular night, I was wearing our Class B
24 uniform, which is -- uh -- navy pants with a stripe down
25 the leg, a short sleeve shirt marked with the city

1 patches emblem and city issued badge and name tag.

2 Q. And what kind of vehicle were you driving?

3 A. A marked patrol car. A white Crown Victoria with
4 overhead lights and stickers down the side for the city.

5 A. And what area were you patrolling that night?

6 A. North end of the city.

7 Q. Okay. And did you have an occasion to come across
8 Mark Elliott?

9 A. Yes ma'am; I did.

10 Q. And tell the defendant about -- I mean, tell the
11 jury about that.

12 A. On that particular evening, it was between 3:30 and
13 four clock in the morning on the 29th, received a BOLO,
14 which is a "be on the lookout for" from our dispatch
15 center over the police radios.

16 I position myself at the north end
17 of the city.

18 From the BOLO description, we were
19 looking for a late '80s -- early model -- or early '90
20 model red Toyota vehicle, a small four-door car.

21 I positioned myself on the north
22 end of the city out by Highway 17, which is the only
23 other way out of the north end of North Myrtle Beach.

24 Shortly after sitting there, a
25 county patrol car came by with -- it was following a

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1 vehicle that matched the description that was given out
2 in our BOLO over the police radios.

3 So a moment after that, as I was
4 attempting to get out on Highway 17, the county -- or
5 excuse me -- our dispatch radioed me that the county
6 dispatch center was requesting a assistance for backup
7 for one of their officers that was behind the vehicle
8 matching the description of the suspect's vehicle.

9 I get on Highway 17 and in an
10 attempt to catch up with them.

11 I actually located them as they
12 were going after out past Seacoast Medical Center.

13 They had their overhead lights
14 activated.

15 When I had got -- actually got out
16 on Highway 17, I activated my overhead emergency lights
17 in an attempt to catch up to them.

18 As I got up to them, they were
19 pulling into the BP station on Highway 9.

20 There was two county cars ahead of
21 me; another county vehicle that was coming toward us, as
22 I was pulling into the parking lot.

23 As I pulled into the parking lot,
24 the red vehicle that the county was attempting to stop,
25 once it came to an abrupt stop, the driver exited the

1 vehicle, which matched the description that we were give
2 out in a BOLO of a white tank top style tee shirt, and
3 dark colored shorts, and was a black male.

4 The male, once he exited his
5 vehicle, he started running towards the rear of the store
6 on foot.

7 I immediately turned in front of
8 the store, still in my marked patrol car, in an attempt
9 to cut him off on the opposite side of the store.

10 The suspect ran behind my patrol
11 car.

12 I proceeded out onto Sea Mountain
13 Highway in another attempt to apprehend the suspect and
14 cut him off and stop him.

15 I exited my vehicle and left it in
16 the middle of Sea Mountain Highway, and engaged in a
17 short foot pursuit, chasing the individual that left that
18 red Toyota vehicle.

19 We ran into the parking lot of
20 Billy the Kid's Restaurant.

21 I attempted to employ my Taser at
22 that time due to the nature of the call that had come out
23 through the police radio.

24 It delayed in discharging.

25 I had fallen.

1 The county officers had caught up.
2 I heard one of their Tasers
3 activate and looked over.

4 Mr. Elliott was on the ground --
5 or the gentleman that was shortly identified later as Mr.
6 Elliott was on the ground.

7 Had been Tased and handcuffed by
8 the county officers.

9 Q. How many officers had their blue lights when the
10 defendant pulled in the BP?

11 How many officers were behind him?

12 A. There was three that was directly behind him; two
13 county officers and myself.

14 A fourth county officer, which was
15 identified -- uh -- later as their shift supervisor or
16 Sergeant, was pulling into the parking lot of the BP
17 Station.

18 Q. Were they all in marked cars?

19 A. Yes ma'am, they were.

20 Q. And were the blue lights going in all of them?

21 A. Yes ma'am, they were.

22 Q. Okay. And you pursued the defendant?

23 A. Yes ma'am; I did.

24 Q. Okay. And did your ve -- did your car have a video
25 camera running that night or a camera?

1 A. Yes ma'am; I did.

2 Q. Tell the jury about the operation of that camera.

3 A. The in-car -- the video systems that are installed,
4 there is two means of activation.

5 One, where you can actually turn
6 it on by record butting on -- button on the machine
7 itself.

8 Uh -- We have a belt transmitter
9 that you can activate the camera system from it.

10 Or anytime that you activate the
11 overhead emergency equipment or overhead lights on the
12 car, the camera automatically turns on by itself.

13 Q. And you said a BOLO came out. What was the
14 description given on the "be on the lookout?"

15 A. It was for a late '80s -- early model -- uh -- red
16 Toyota car driven by a black male wearing a white tank
17 top style tee shirt and dark colored shorts.

18 Q. Now, a BOLO, does this go out to every officer in
19 the area?

20 A. It goes out to every officer that's working in the
21 City of North Myrtle Beach.

22 Q. Okay. Do you recognize what I'm showing you now,
23 Officer Causey? It's marked Court's Exhibit Number 1.

24 A. Yes ma'am; I do.

25 MS. LIVESAY:

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1 At this time, can we mark it
2 State's Exhibit Number 1?

3 THE COURT:

4 I think you already have a State's
5 Exhibit 1.

6 COURT REPORTER:

7 It would be State's Exhibit 4.

8 WHEREUPON: THE DVD FROM OFFICER
9 CAUSEY'S VEHICLE, EARLIER MARKED BY THE COURT REPORTER AS
10 COURT'S EXHIBIT NUMBER 1, WAS NOW MARKED AS STATE'S
11 EXHIBIT NUMBER 4 FOR IDENTIFICATION ONLY.

12 THE COURT:

13 Mr. Hazzard, have you seen it?

14 MR. HAZZARD:

15 It's my understanding I have, Your
16 Honor.

17 I of course -- uh -- so many of
18 these things have changed and everything; but --

19 MS. LIVESAY:

20 Thank you.

21 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. Do you recognize what I'm showing you, State's
23 Exhibit Number 4?

24 A. Yes ma'am; I do.

25 Q. What is it?

1 A. That is a CD that is burned by our record's division
2 at the City of North Myrtle Beach for the mobile dash --
3 mobile video systems in the cars.

4 Q. Okay. And have you seen this video?

5 A. Yes ma'am, I have.

6 Q. Okay. And what is on this video? Tell the jury.

7 A. The video system that was -- that were captured --
8 or the -- the video and audio that's recorded that are
9 captured by the system that was installed in my marked
10 patrol car that night are on that vehicle -- are on the
11 CD.

12 Q. And is this a substantial and accurate picture of
13 what your camera picked up?

14 A. Yes ma'am; it is.

15 Q. His name is. And have you watched the entire tape?

16 A. Yes ma'am, I have.

17 Q. Okay. And has it been altered in any form or
18 fashion?

19 A. No ma'am, it has not.

20 Q. Okay. Do you recognize all the voices on that
21 tape?

22 A. The ones from our department, I do.

23 Q. Okay. And whose voices are on that tape.

24 A. There is my voice on the tape with my watch
25 commander, Lieutenant Mike Baldassarre, and my shift

1 sergeant was Jeff Senter.

2 MS. LIVESAY:

3 Okay.

4 Your Honor, at this time, the
5 State wishes to place State's Exhibit Number 4 into
6 evidence and publish it at a later time.

7 THE COURT:

8 Are you offering it into evidence?

9 MS. LIVESAY:

10 Yes sir, I am..

11 THE COURT:

12 Mr. Hazzard?

13 MR. HAZZARD:

14 Subject to the previous objection,

15 Your Honor.

16 THE COURT:

17 All right.

18 MS. LIVESAY:

19 Thank Your Honor.

20 WHEREUPON: THE DVD EARLIER MARKED

21 BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 4 FOR

22 IDENTIFICATION WAS NOW ENTERED INTO EVIDENCE SUBJECT TO

23 PREVIOUS OBJECTION BY THE DEFENSE.

24 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

25 Q. Now, are you familiar with Miranda warnings?

1 Q. Yes ma'am, I am.

2 Q. What are they?

3 A. Miranda warnings are the warnings that the police
4 officers or law-enforcement give the individuals, that
5 are being questioned in custody or arrested, of their
6 constitutional rights to have an attorney.

7 Q. Okay. And did you read Miranda warnings to the
8 defendant?

9 A. Yes ma'am.

10 Q. Okay. And did you read them from memory, or --

11 A. No ma'am; from a pocket card that I keep with me at
12 all times.

13 Q. Okay. Have you got this pocket card on you now?

14 A. Yes ma'am, I do.

15 Q. Okay. And would you read off the card exactly, to
16 the jury, what you read the defendant that night.

17 A. What I read to the individual that night states:

18 You have the right to remain
19 silent.

20 Anything you say can and will be
21 used against you in a court of law.

22 You have the right to talk to an
23 attorney and have him or her present with you while
24 you're being questioned.

25 If you cannot afford to hire an

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1 attorney, one will be appointed to represent you before
2 any questioning, if you wish.

3 You can decide at any time to
4 exercise these rights and not answer any questions or
5 make any statements.

6 Do you understand each of these
7 rights as -- as I've explained to you?

8 Having these rights in mind, do
9 you wish to talk to us now?

10 Q. And is that the exact card you used?

11 A. Yes ma'am; it is.

12 Q. And on the video, does it show you reading from that
13 card?

14 A. Yes ma'am, it does.

15 Q. And does the audio pickup you reading from that
16 card?

17 A. Yes ma'am, it does.

18 Q. Okay. And after you read the defendant his rights,
19 did he acknowledge that he understood them?

20 A. Yes ma'am, he did.

21 Q. Okay. And did he appear to you to be mentally or
22 physically impaired to a point he couldn't understand his
23 rights?

24 A. No ma'am, he did not.

25 Q. Okay. At the time that you were with him, were you

1 -- how -- about how long were you around the defendant?

2 A. Initially in the beginning it was I would say
3 probably 20 minutes or so.

4 Q. Okay. And during that time, did he ever appear
5 intoxicated or under the influence of any drugs to the
6 point he could not understand his rights?

7 A. No, he did not.

8 Q. Okay. Now during the time you're with them, did he
9 ever indicate he was in any physical pain or discomfort?

10 A. No, he did not.

11 Q. Okay. Did he ever ask for a doctor or EMS?

12 A. No ma'am.

13 Q. Okay. During that time, did he acknowledged to you
14 that he understood the rights?

15 Q. Yes ma'am, he did.

16 Q. Okay. Did he acknowledge to you that he wanted to
17 answer any questions that the officers had for him?

18 A. Yes, he did.

19 Q. Okay. And were his answers responsive to their
20 questions?

21 A. Yes, they were.

22 Q. Okay. Now did you ever put him in your vehicle?

23 A. Yes ma'am; I did.

24 Q. And was handcuffed at that time?

25 A. Yes ma'am.

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1 Q. Okay. Was there anybody else in the car?

2 A. No ma'am, other than myself.

3 Q. Okay. And at that time, did you talk to him about
4 his rights again?

5 A. Once we started to pull off, he -- uh -- started to
6 -- a conversation with me.

7 I abruptly stopped him. Asked him
8 if he remembered the rights that I had read him.

9 He stated that he did, and
10 actually started to recite the first line or so of the
11 Miranda warnings that I had -- had read to him
12 previously.

13 He was asked if he still
14 understood those rights.

15 He stated that he did.

16 I asked him if he was still
17 willing to talk to us with having these rights in mind.

18 He stated that he did.

19 Q. Okay. Where was he the first time you read him his
20 rights?

21 A. He was on the ground out in front of the -- the car
22 in the parking lot.

23 Q. Okay. And about how much time passed between then
24 and when you put him in your car?

25 A. It would have probably been 15 or 20 minutes.

1 Q. Okay. And when you put him in your vehicle, did he
2 ever complain of any physical pain?

3 A. No, he did not.

4 Q. Did he ever appear to be impaired?

5 A. No, he did not.

6 Q. Okay. At that time, did he indicate to you whether
7 or not he wanted to cooperate with the police?

8 A. Yes ma'am. He stated very clearly that he did want
9 to cooperate and would talk to us.

10 Q. Okay. Was there anything about his behavior while
11 you were in contact with that defendant that let you to
12 believe he did not want to talk to officers?

13 A. No ma'am.

14 Q. Did he ever request an attorney?

15 A. No, he did not.

16 Q. Did he ever ask you or any of the other officers not
17 to question him any further?

18 A. No, he did not.

19 MS. LIVESAY:

20 Your Honor, at this time, the --
21 uh -- State wishes to publish State's Evidence Number 4.

22 THE COURT:

23 All right.

24 MS. LIVESAY:

25 Thank, Your Honor.

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1 MR. HAZZARD:

2 Your Honor, is it possible to dim
3 these other lights as well. I'm getting kind of a glare
4 off of the screen. I don't know if --

5 MS. LIVESAY:

6 It should only take a minute, Your
7 Honor.

8 MR. HAZZARD:

9 -- it's affecting the jury.

10 THE COURT:

11 You think you can, Mr. Roth?

12 WHEREUPON: The Bailiff did as
13 requested by The Court and dimmed the lights further.

14 THE COURT:

15 There you go.

16 MR. HAZZARD:

17 Thank Your Honor.

18 (WHEREUPON: Ms. Livesay began to
19 publish State's Exhibit Number 4 to the jury at 3:10 PM,
20 November 16, 2010.)

21 (WHEREUPON: During the playing of
22 the video, the following exchange takes place during the
23 viewing at approximately the video tape counter point of
24 6:28:9113:21:00 PST in the tape.)

25 MR. HAZZARD:

1 (Speaking over the tape while the
2 tape was still going.) Your Honor, there's a matter to
3 take up outside of the jury. If we just want to pause
4 this briefly --

5 THE COURT:

6 (Speaking over the tape while the
7 tape was still going.) Okay.

8 MR. HAZZARD:

9 -- (Speaking over the tape while
10 the tape was still going.) -- and then come back to it.

11 (WHEREUPON: The video was paused
12 approximately at the 6:29:2004:51:00 PST point.)

13 THE COURT:

14 Mr. Roth, take your jury out.

15 (WHEREUPON: The jury empanelled
16 in the case withdrew from the courtroom at 3:41 PM,
17 November 16, 2010; and was no longer present during the
18 following proceedings.)

19 THE COURT:

20 All right.

21 MR. HAZZARD:

22 Thank you.

23 At this time, the Defense is going
24 to renew its motion to suppress anything and everything
25 seized pursuant to the search warrant.

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1 Uh -- Also move to suppress
2 anything seized from the car prior to the search warrant,
3 or seen in the car prior to the search warrant.

4 I want to suppress any statements
5 made or questions asked regarding anything taken from the
6 car.

7 The Defense bases this on the
8 following:

9 Uh -- We had lengthy pretrial
10 motions regarding whether or not the search warrant -- uh
11 -- was proper or not.

12 And what the affidavit says -- or
13 one of the things that the affidavit is based on is that
14 the cell phone was seen in plain view from an open
15 driver's side door.

16 Uh -- That the defendant had
17 gotten out, leaving the car door open.

18 And that in plain view there the
19 phone was.

20 Well, Officer Jernigan, I believe,
21 has testified to the fact that -- uh -- and that the
22 video evidence clearly shows that:

23 When Mr. Elliott gets out of the
24 car, he closes the car door behind him,

25 All doors are closed.

1 Uh -- When he is brought back to
2 the scene, it is obvious that both car doors are open.

3 Now -- uh -- I know that there is
4 the argument that can be made that -- uh -- the
5 magistrate or officer who signed off on the search
6 warrant -- uh -- was doing it in good faith.

7 However, there's also the fruit of
8 the poisonous tree; that no agency of the State is
9 allowed to benefit from misleading The Court, or by doing
10 something else that violates our Constitution, Your
11 Honor.

12 MS. LIVESAY:

13 Your Honor, if I may?

14 If there were ever exigent
15 circumstances to look in that vehicle, it was the facts
16 of this case.

17 These officers are looking for a
18 girl that has allegedly been kidnapped.

19 In fact, it was the gentleman --
20 the defendant -- that gave the statement:

21 Yes, she was in the car with me.
22 She took off the same time I did.

23 Nobody saw her.

24 And in fact, on the first video we
25 watched, you see the officer open the door.

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1 He's look for her.

2 He bangs on the trunk.

3 They're looking for a girl that's
4 missing.

5 Somebody has called 911.

6 She has yet at this point to be
7 located.

8 THE COURT:

9 What do you say about that, Mr.
10 Hazzard?

11 I mean, we got a situation here
12 with a missing 14-year-old.

13 MR. HAZZARD:

14 Your Honor, the officer says at
15 the very beginning of the video that he saw the girl jump
16 out and leave the vehicle.

17 Therefore, if their knowledge --
18 or their thought process -- at the very beginning is
19 that:

20 She exited the vehicle when Mr.
21 Elliott exited the vehicle.

22 He obviously isn't look for a girl
23 in the car.

24 MS. LIVESAY:

25 Your Honor, they --

1 THE COURT:

2 Didn't know which girl.

3 MS. LIVESAY:

4 All right.

5 MR. HAZZARD:

6 Or who.

7 MR. HAZZARD:

8 Note our objection for the record,

9 Your Honor.

10 THE COURT:

11 All right.

12 Ms. -- uh -- anything further?

13 MS. LIVESAY:

14 Nothing further from the State,

15 Your Honor.

16 THE COURT:

17 All right.

18 We're going to take a quick break.

19 (WHEREUPON: The court was

20 declared in recess at 3:45 PM, November 16, 2010.)

21 (WHEREUPON: The court was called

22 to order by the Bailiff at 3:52 PM, November 16, 2010;

23 and all pertinent parties, along with their counsel, were

24 back and present in the courtroom.)

25 DEPUTY:

1 Order in the court. All Rise.

2 THE COURT:

3 Thank you. Please be seated.

4 All right. Are we ready to
5 proceed with it?

6 MS. LIVESAY:

7 Yes sir.

8 MR. HAZZARD:

9 Uh -- Your Honor, one thing we
10 would note:

11 Uh -- I don't believe that the
12 officer we hear doing the questioning is the officer
13 that's on the stand.

14 So if he can give some
15 clarification as to who's doing the questioning and what
16 the foundation is, we'd appreciate it.

17 MS. LIVESAY:

18 Your Honor, we've already laid the
19 foundation when I asked him if he recognized the voices.

20 He said yes, he knows who the
21 voices were. He recognized the tape. I think that's
22 sufficient as to who's doing the questioning.

23 THE COURT:

24 I believe Under Rule 9(1) that it
25 is.

1 MS. LIVESAY:

2 Thank Your Honor.

3 Can I have one minute to get my
4 assistant, Your Honor.

5 MR. HAZZARD:

6 Note our objection, Your Honor.

7 And that objection would be of an improper foundation.

8 So -- understand.

9 All right. Let's -- uh -- Let's
10 get the jury back in.

11 (WHEREUPON: The jury empanelled
12 in the case was escorted back into the courtroom at 3:55
13 PM, November 16, 2010; and was in fact present during the
14 following proceedings.)

15 THE COURT:

16 All right; continue.

17 (WHEREUPON: Ms. Livesay continued
18 playing the video until the playing of the video was
19 concluded at 4:30 PM, November 16, 2010.)

20 THE COURT:

21 All right, Ms. Livesay?

22 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

23 Q. Officer Causey, again, exactly what were your
24 responsibilities at that time?

25 A. At that moment -- uh -- during the whole incident

1 involving Mr. Elliott -- uh -- my responsibility
2 consisted of reading Miranda rights; and I was the
3 transporting officer.

4 Q. Okay. And at that time, you were a uniform
5 patrolman?

6 Is that correct?

7 A. Yes ma'am.

8 Q. Okay. So in general your job was to patrol and
9 look for traffic type citations?

10 A. Any type of criminal violations, whether it be -- uh
11 -- traffic violations or actual criminal offenses itself.

12 Q. Okay. And what is the procedure normally for a
13 traffic violation when you pull a vehicle over?

14 A. In pulling a vehicle over, you would -- uh -- radio
15 the traffic stop in; activate your emergency overhead
16 lights.

17 Uh -- You'd give the description
18 of the vehicle; the tag that was -- that was on the
19 vehicle, as far as license-plate-wise; and the location
20 of your stop.

21 Q. Okay. Uh -- Do you -- Does those types of stops
22 normally end in a foot chase?

23 A. No ma'am, they do not.

24 Q. Do people normally get out of the vehicle at all
25 when you initiate your blue lights and pull them over?

1 A. No ma'am, they do not.

2 Q. Okay. And you that night tried to tase the
3 defendant?

4 Is that correct?

5 A. Yes ma'am; I did.

6 Q. Okay. And why did you take your Taser out?

7 A. I deployed my Taser due to the nature of the -- the
8 BOLO that was put out that this a kidnapping and that the
9 suspect was armed with a weapon.

10 Uh -- Keeping this in mind, a
11 short chase had just been -- had ensued.

12 Uh -- I had no idea what the
13 individual was capable of or what he was going to do.

14 I made the -- the choice to deploy
15 my Taser.

16 Q. Uh -- Did he comply with any of your -- uh --
17 request before you Tased him?

18 A. No ma'am. And I never actually made contact with my
19 Taser.

20 Q. Okay. To your knowledge, from the time you made
21 contact and the time he was on the ground, did he ever
22 comply with any of your request before being Tased?

23 A. No ma'am.

24 Q. Okay. Did anything about his behavior or demeanor,
25 before he was Tased, indicated (sic) to you that he had

1 any intentions of complying with anything you asked him
2 to do?

3 A. No ma'am.

4 Q. At what point did he finally comply?

5 A. After the county officers had Tased him.

6 Q. And -- And when you blue lighted him, had you
7 already -- uh -- been made aware of the BOLO to "be on
8 the lookout?"

9 A. Yes ma'am. That's the reason why I was posted on
10 the north end of the city on Highway 17.

11 Q. Okay. And the vehicle that was out there that you
12 were pulling in behind, did that fit the description?

13 A. Yes ma'am; it did.

14 Q. Okay. And the defendant that you saw running, did
15 he fit the description?

16 A. Yes ma'am, he did.

17 MS. LIVESAY:

18 No further questions, Your Honor.

19 THE COURT:

20 All right.

21 Mr. Hazzard?

22 MR. HAZZARD:

23 CROSS-EXAMINATION BY MR. HAZZARD:

24 Q. All right, sir. Uh -- Were you carrying the
25 warrant for his arrest on your person at the time?

1 A. No sir; I was not.

2 Q. Okay. Had any judge issued a warrant for his
3 arrest?

4 A. No sir. They had not.

5 Q. Okay. Now -- uh -- did you listen to the -- the
6 video just then?

7 A. Yes sir, I did.

8 Q. Okay. So now was it you then that said:

9 Quote:

10 I swear I saw her in the passenger
11 seat.

12 And then you shout at Mark
13 Elliott:

14 Where'd your girl go?

15 A. No sir, it was not.

16 Q. So it wasn't you?

17 A. No sir.

18 Q. Who was it then?

19 A. It was a county officer..

20 Q. A county offer?

21 A. Yes sir.

22 Q. How many county officers were present?

23 A. I counted three.

24 Q. Three? Okay. So we've got Mr. Jernigan.

25 He says it wasn't him.

1 Now who were the other two?

2 A. I know one was Sergeant Larry Graham --

3 Q. Okay.

4 A. -- that showed up. I know the other one's face. I
5 do not know his name.

6 Q. Uh-huh. So now we have narrowed it down to it's
7 either Sergeant Larry Graham or some other unknown county
8 officer.

9 Is that your testimony, sir?

10 A. Yes sir. It was not Sergeant Graham's voice.

11 Q. So then it's an unknown county officer's voice then?

12 A. Yes sir.

13 Q. Okay. Now I believe before we watched the video,
14 Ms. Livesay asked a series of questions regarding:

15 Uh -- Did Mr. Elliott appear to be
16 injured?

17 Did he appear to be in any pain or
18 discomfort?

19 Uh -- Did he request medical
20 attention?

21 Did he need medical attention?

22 Do you recall those questions?

23 A. Yes sir.

24 Q. And your answers to all of those questions were
25 negative; correct?

1 A. Correct.

2 Q. So he appeared to be fine to you?

3 A. Yes sir, other than an abrasion, I believe, on his
4 left arm.

5 Q. Okay. Then, if you would, tell me why it is, then,
6 if he was fine and there was nothing wrong with him after
7 150,000 volts of electricity, why he was left lying face
8 down with his hands cuffed behind his back for five
9 minutes or more?

10 A. The probes had to be removed from him, which was the
11 county's responsibility --

12 Q. Uh-huh.

13 A. -- not mine.

14 Q. And who from the county removed the probes?

15 A. One of the county officers which was on the video.

16 Q. All right.

17 A. I could not tell you exactly which one.

18 Q. Well, there's three of them. So was it Jernigan?

19 A. I could not tell you which one it was, sir.

20 Q. All right. So after the probes were removed, he's
21 still facedown on the ground; correct?

22 A. To the best of my recollection from the video; yes
23 sir.

24 Q. And you've just seen the video within the last five
25 minutes; correct?

1 A. Yes sir.

2 Q. Okay. And then, even after he turned over, he's
3 left sitting on the ground for an additional 10 minutes;
4 correct?

5 A. Yes sir.

6 Q. Okay. And why is that?

7 A. The Horry County EMS, which was the gentleman that
8 came up with the shorts.

9 A. Hmm.

10 Q. If you would notice, he was doing something to his
11 left arm.

12 Q. Uh-huh.

13 A. He was applying a bandage or -- or some sort -- to
14 the abrasion that was on his arm.

15 Q. So he had to be left sitting on the ground waiting
16 on EMS.

17 Is it your testimony?

18 A. I -- Yes sir. That's where he was left sitting
19 until the EMS arrived.

20 Q. And whose decision was that, sir?

21 A. That was the county officers.

22 Q. The county officers?

23 A. (Nods in the affirmative.)

24 Q. Okay. Who was in charge of this thing? Was anyone
25 in charge of this thing?

1 A. In the parking lot where Mr. Elliott was handcuffed
2 at --

3 Q. Uh-huh.

4 A. -- there -- Sergeant Larry Graham came up. He
5 remained at that location until Mr. Elliott was
6 transported back over to the BP Station where his car was
7 located.

8 Q. Are you saying that Sergeant Graham was in charge?

9 A. I'm saying: Sergeant Graham was the ranking officer
10 that was on that particular location.

11 Q. He was the ranking officer? Is --

12 A. (Nods in the affirmative.)

13 Q. Okay. Did this occur within the corporate limits
14 of North Myrtle Beach?

15 A. That's what the crimes, or alleged crime, or
16 offense, initiated; yes sir.

17 Q. And where was Mark Elliott?

18 A. He was out of the jurisdiction of North Myrtle
19 Beach.

20 Q. Okay. Then what were y'all doing there?

21 A. We were called by Horry County Police Department for
22 a backup to their officer.

23 Q. Uh-huh. Okay. So Horry County shoots him with
24 hundreds of thousands of volts of electricity.

25 And then, according to you, Horry

1 County then says the girl was in the car and ran away.

2 And then, Horry County leaves him
3 facedown on the ground like a dead dog.

4 And then they leave him sitting on
5 the ground for another 10 to 15 minutes?

6 Is that your testimony to this
7 jury?

8 A. The Tasers are 50,000 volts; not 150,000. The
9 gentleman was left there, which for whatever reason, I'm
10 assuming it's their policy. They released --

11 Q. I'm not asking you to assume anything, sir. I'm
12 just asking you to tell me what you know.

13 A. The --

14 Q. If you don't know, that's fine. I'm not asking you
15 to assume anything.

16 A. The gentleman was left sitting on the pavement.

17 Q. Okay. All right. Now, you heard him -- the heavy
18 breathing and how he sounded once he's placed in the
19 patrol car?

20 Did you hear that, sir?

21 A. Yes sir, I did.

22 Q. Okay. Did he sound like he was in any distress to
23 you at that point?

24 A. No sir. It sounded no more than an individual that
25 had been running; which was the same way I was sounding.

1 Q. Okay. And what's 50,000 x 3, sir?

2 A. I guess 150,000.

3 MR. HAZZARD:

4 Thank you. The Court's
5 indulgence, Your Honor?

6 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

7 Q. And your name again is Causey; correct?

8 A. Yes sir.

9 Q. All right. Thank you, sir. Now I saw some fellows
10 on the video walked around with flashlights searching the
11 area.

12 What were you searching for?

13 Were you searching for your Taser
14 prongs, or what?

15 A. Are you referring to the two county officers that
16 were walking in between my patrol car and Mr. Elliott's.

17 Q. I'm talking about whoever was out there in blue,
18 which I thought was what North Myrtle Beach wore, who was
19 walking around with flashlights on the video.

20 I mean, you were present; right?

21 I mean, you've testified that you
22 recognize everybody's voice on there; right?

23 A. The county --

24 Q. Is that --

25 A. -- The county officers, sir, were wearing gray

1 uniforms.

2 Q. Okay. Well who were the two guys in blue walking
3 around with flashlights?

4 A. (No response.)

5 Q. You don't remember seeing them?

6 A. There were two county officers.

7 Q. And you're saying that there -- they were wearing
8 gray?

9 A. There night uniform is a gray uniform.

10 Q. All righty. Well, who were the guys with
11 flashlights, then?

12 Tell me that.

13 A. I do not recall who had flashlights.

14 Q. Well, again, we've only -- How many county officers
15 do we have, again?

16 A. There were --

17 Q. That were at the scene?

18 A. There was three that I remember; in the parking lot.

19 Q. Okay. Well, was this -- uh -- Officer Jernigan?

20 A. As I stated, I do not recall who had flashlights.

21 Q. Do you know them when you see them?

22 A. I know the officers.

23 Q. Uh-huh. Yes sir. Do you --

24 A. I was not -- I was not standing beside them the
25 entire time.

1 Q. oh, I'm just asking you about the video you just
2 saw.

3 Did you see them on there?

4 A. The individuals, or the officers that were looking
5 around on the ground --

6 Q. With flashlights; yes sir?

7 A. If -- If they had flashlights, that would have been
8 the two county officers --

9 Q. And --

10 A. -- which would've been Officer Jernigan and the
11 other officer that I could not tell you what his name is.

12 Q. The unnamed officer?

13 A. Yes sir.

14 Q. Okay. And what were they searching for? Do you
15 have any idea?

16 A. From the video, it looked like they were -- they had
17 removed from where they actually removed the probes from
18 Mr. Elliott.

19 There is the copper wiring is what
20 they were rolling up, as well as, I think they were --
21 they had picked up what is called the AFID tags --

22 Q. Uh-huh.

23 A. -- or some of the AFID tags.

24 Q. Uh-huh. Okay. Now -- and so we're clear -- when
25 you talking the AFID tags, it's simply -- kind of looks

1 like confetti the shoots out any time you shoot the
2 Taser, and it's got basically a serial number, or
3 identification number, on each little tag so you know
4 whose Taser was deployed; right?

5 A. Correct.

6 Q. Okay. Now -- uh -- the place where Mark is laying
7 facedown on the ground in front of the car; is that the
8 place where he was detained, or whatever y'all call it;
9 since he wasn't under arrest; right?

10 A. Correct.

11 Q. Okay. Where the shouting was going on, you know:

12 Put your hands behind your back.

13 Put your hands up.

14 Put your hands behind your back.

15 Okay.

16 On there, did you hear anybody
17 saying:

18 Get down on the ground and stay
19 down?

20 A. No sir.

21 Q. Okay. Now your report says:

22 A county officer came up and
23 discharged his Taser, and the probes made contact with
24 the subject's back.

25 And he complied with all orders

1 and laid prone on the ground.

2 Is that correct?

3 A. As far as I know at the time; yes sir.

4 Q. Well, you were standing there; weren't you?

5 A. No sir. At the time that Mr. Elliott was Tased by
6 the county --

7 Q. Uh-huh.

8 A. I had fallen to the ground.

9 Q. Uh-huh.

10 A. If you recall, once my car was brought from the --
11 actual from the highway into the parking lot --

12 Q. Uh-huh.

13 A. I exited my car, propped both legs, one at a time,
14 up on the front bumper --

15 Q. Uh-huh.

16 A. -- and raised my pants legs --

17 Q. Uh-huh.

18 A. -- I was checking injuries that I had sustained to
19 both knees whenever I had fallen in the parking lot.

20 Q. Okay. But you're not saying -- telling this jury
21 that Mark attacked you, pushed you, or anything of that
22 nature; are you?

23 A. No sir. The injuries I sustained to my knees; Mr.
24 Elliott sidestepped --

25 Q. Hmm.

1 A. -- as my -- as my Taser really delayed in firing.

2 Q. Hmm.

3 A. As he sidesteps, I attempted to sidestep as well, in
4 the loose parking lot, I fell down into the -- the
5 asphalt.

6 That's how I obtained the injuries
7 to my knees.

8 Q. Okay. Fair enough. Fair enough.

9 A. That's why it's -- it's never brought up or never --
10 never stated in my report that Mr. Elliott contributed to
11 my injuries.

12 Q. Okay. Fair enough. I appreciate that. Now,
13 then, why is in your report, if -- if you didn't see it?

14 Did you actually see what you're
15 writing about here?

16 A. The Taser was -- You could hear the Taser being
17 deployed.

18 Q. Uh-huh.

19 A. When I got up, Mr. Elliott was in handcuffs.

20 Q. Uh-huh. How long were you on the ground?

21 A. Sir, if you're running and you fall on some
22 pavement, it will take you a moment or two to -- to
23 actually get back up.

24 Q. A moment or two? Okay. And in that moment or
25 two, the Taser goes off. To knowledge, from what you

1 saw and heard, when the Taser went off, from that point,
2 Mark is on the ground, complies, never gets up, lays
3 prone on the ground.

4 Is that correct, sir?

5 A. Whenever I got up, he had been Tased.

6 Q. Uh-huh.

7 A. He was detained; handcuffed, as he was on the video
8 when my car pulled up -- when I actually pulled my car up
9 into the parking lot.

10 Q. Okay. So there ain't no: Him getting Tased. And
11 then him getting back up. And then him getting Tased.
12 And him getting back up; and all like this.

13 That didn't happen -- to what you
14 saw, or observed and heard; correct?

15 A. To what I personally saw?

16 Q. Yes sir.

17 A. I seen -- I heard a Taser, and then he was
18 handcuffed.

19 Q. All right. But yet, you are aware that he was
20 Tased with three cycles; correct?

21 A. No sir.

22 Q. So you're not aware of that? I mean, if you're
23 not, that's fine.

24 A. No sir.

25 Q. All right. Fair enough.

1 The Court's indulgence, Your
2 Honor?

3 Okay.

4 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

5 Q. You indicated, sir, that -- uh -- Horry County was
6 in charge of the scene at that point; and they were in
7 charge of providing any type of medical treatment;
8 removing the probes, and things of that nature.

9 Is that correct?

10 A. (No response.)

11 Q. Is that what your testimony was?

12 A. Yes sir.

13 Q. Okay. And therefore, as I recall the disk -- and
14 you tell me if you recall something different -- uh --
15 Mark is on the ground, facedown, hands cuffed behind his
16 back.

17 And some officer gets down on his
18 knees kind of like this (indicating) and -- uh -- starts
19 talking to him about his rights and all like that.

20 Do you recall that?

21 A. I read him his Miranda rights; yes sir.

22 Q. Okay. You're the one that's kind of hunched down
23 in front of him like that?

24 A. Yes sir.

25 Q. Okay. So that time, when you are reading him that

1 information, he's actually still got the electrical
2 hookup in his back?

3 Is that correct?

4 A. Yes sir, to the best of my memory.

5 Q. Okay. And there are like five other guys with guns
6 standing around him; right?

7 A. There is no guns that's unholstered, other than the
8 one county officer with the Taser is the only thing I've
9 seen on the video.

10 Q. Did you have a gun on you?

11 A. Yes sir.

12 Q. Did they have guns on them?

13 A. Yes sir.

14 Q. I didn't ask you if they were unholstered. I just
15 said they had guns; right.

16 A. Yes sir.

17 Q. All right.

18 The Court's indulgence, Your
19 Honor?

20 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

21 Q. Oh. Where -- On the video, you drive your car up
22 and -- or somebody drives that car up; because -- Well,
23 I'll leave it that way.

24 Uh -- That car comes up and that's
25 the scene that we see; correct?

1 A. Yes sir.

2 Q. Okay. Is the point where Mark is, the point where
3 he was Tased and dropped to the ground?

4 Or was he moved any distance?

5 A. To the best of my knowledge, he's where he -- you
6 see him on video is where he was detained.

7 Q. Okay. Fair enough. And to your knowledge, did
8 anyone, you, or any North -- North Myrtle Beach officer,
9 or any other Horry County officer, canvas that area
10 looking for any baggies, or drugs, or any drugs, or
11 anything like that?

12 A. No sir. I had no reason to -- to look for drugs.

13 MR. HAZZARD:

14 Okay. No further questions.

15 THE COURT:

16 All right, Ms. Livesay.

17 MS. LIVESAY:

18 Just a couple questions, Your
19 Honor.

20 REDIRECT EXAMINATION BY MS. LIVESAY:

21 Q. Uh -- Officer Causey, Mr. Hazzard asked you some
22 questions about EMS and his physical -- uh -- well-being.

23 Did he ever indicate to you that
24 he wanted a doctor?

25 A. No ma'am, he did not.

1 Q. Did you watch the video?

2 A. Yes ma'am.

3 Q. Did you hear him then ask for a doctor?

4 A. No ma'am; I did not.

5 Q. Did he ask for anything?

6 A. No ma'am.

7 Q. Okay. Did he ever ask for a cigarette?

8 A. Numerous times.

9 Q. Okay. But he never asked for a Doctor?

10 A. No ma'am.

11 Q. Okay. Now Mr. Hazzard asked you about:

12 Did you him get Tased?

13 And he fell over. And then

14 somebody Tased him again.

15 How does a Taser work once it

16 initially goes off.

17 A. When the Taser is discharged, there is a CO2
18 canister that propels the two probes that are inside the
19 cartridge.

20 Once they make contact, their
21 energizers are coming out.

22 Uh -- They come and 50,000 volts.
23 It rapidly decreases in 19,000 volts.

24 That's what the -- to the best of
25 my knowledge and recollection -- is what the person is

1 sustained (sic) to is 19,000 volts --

2 Q. Uh-huh.

3 A. -- which decreases on cycle. A cycle consists of 5
4 seconds.

5 At the end of the 5 seconds, the
6 Taser shuts itself off.

7 Q. So, when those initial prongs make contact, that's
8 it.

9 It's not like two more prongs hit
10 you and every time you're hitting it, prongs are coming
11 out of the gun?

12 A. No ma'am. It's two probes that's connected with a
13 very thin copper line about the size of a fishing line.

14 Q. Okay. So, if they hit that gun again, you wouldn't
15 see anything come out of it, once those prongs make
16 contact the first time?

17 A. Correct.

18 Q. Okay. Now -- uh -- he asked you some questions
19 about all those people standing around the defendant with
20 guns.

21 Uh -- After he was handcuffed, did
22 anybody pull a gun on him?

23 A. No ma'am, they did not.

24 Q. Did anybody pull a Taser on him?

25 A. No ma'am, they did not.

1 Q. Okay. Did anybody intimidate him with any kind of
2 weapon?

3 A. No ma'am, they did not.

4 Q. When he was out there laying down on his stomach and
5 you were reading him Miranda, was he showing you any kind
6 of sign of being in pain?

7 A. No ma'am.

8 Q. Okay. Was he moaning?

9 A. No ma'am.

10 MS. LIVESAY:

11 Okay. No further questions, Your
12 Honor.

13 MR. HAZZARD:

14 Nothing further, Your Honor.

15 THE COURT:

16 All right. You may step down.

17 All right.

18 Ladies and gentlemen, we're at the
19 point that we're going to break for the evening.

20 Mr. Roth, would you take them back
21 in their -- in their jury room.

22 And I'll let you be back in, in
23 the morning at 9:30.

24 Thank you.

25 (WHEREUPON: The jury empanelled

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1 CLERK:

2 Thank you. Please be seated.

3 Okay. If you would state your full name; and spell your
4 last name?

5 WITNESS:

6 My name is Michael John
7 Baldasarre. That is spelled B-a-l-d-a-s-a-r-r-e.

8 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

9 Q. And what rank are you?

10 A. Ma'am, I'm a Lieutenant.

11 Q. Okay. And where do you currently work?

12 A. I work with the City of North Myrtle Beach
13 Department of Public Safety.

14 Q. Okay. And how long have you been there?

15 A. I am about a month shy of 17 years now.

16 Q. Okay. And what kind of training have you undergone
17 at the police department?

18 A. Uh -- It's quite a lengthy list. Of course, I
19 started with the South Carolina Criminal Justice Academy,
20 where I became a -- uh -- South Carolina Certified Law
21 Enforcement Officer.

22 Uh -- From there, I did -- uh --
23 numerous types of training in different areas of
24 investigation, basic -- uh -- detective, traffic accident
25 investigation -- uh -- numerous leadership type courses

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1 as I progressed in the ranks.

2 Uh -- Also, I did training in the
3 area of special response as a tactical officer.

4 Uh --

5 Q. Okay. What are your responsibilities as a
6 lieutenant?

7 A. I am currently what's called a Watch Commander.
8 That means that I supervise a patrol shift. And I'm
9 responsible for the activity of that shift as they patrol
10 the city.

11 Q. Okay. And were you working for North Myrtle Beach
12 on or around the morning of June the 29th of 2009?

13 A. Yes ma'am, I was.

14 Q. And what would your responsibilities then?

15 A. Just the same as they are now. I was the watch
16 commander on that particular evening -- or morning.

17 Q. Were you working that morning?

18 A. Yes ma'am, I was.

19 Q. And were you in uniform?

20 A. Yes ma'am, I was.

21 Q. The same uniform you're in today?

22 A. Uh -- The same uniform I am in today with the
23 exception that at that time of year we were in short
24 sleeve shirts.

25 Q. And were you driving a marked police car?

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1 A. No ma'am, I was not. I -- I drive -- drove then,
2 and currently drive, an unmarked vehicle.

3 Q. Okay. And what area were you working that evening?

4 A. As watch commander, I'm responsible for the entire
5 city. So I don't work in a particular zone or district.

6 I have free reign of the city
7 itself.

8 Q. And that night, did you have occasion to come across
9 Mark Elliot?

10 A. Yes ma'am; I did.

11 Q. Okay. Tell the jury about that.

12 A. Uh -- On the morning in question -- uh -- initially
13 a call was received to our dispatch center.

14 The caller told our dispatcher of
15 an incident that had occurred where a gentleman had
16 approached them in a red vehicle asking for directions.

17 As -- As the conversation ensued,
18 the gentleman displayed an object which the caller
19 believed to be a handgun or firearm.

20 He advised all three parties that
21 were involved as victims to lie down on the ground and
22 asked them to empty their pockets of -- of any --
23 anything of value that they had with them.

24 Uh -- As the altercation ensued,
25 he advised the two male victims to get up and walk away,

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1 and left the scene with the female victim in his car --
2 the red vehicle.

3 Uh -- Officers responded to the
4 scene. Started the initial report. Gathered
5 information.

6 And what we called a BOLO was
7 given out.

8 That's just a -- a short acronym
9 for "be on the lookout" for whatever the incident may be.

10 In this case of course it was the
11 -- the red vehicle being occupied by a black male.

12 As the investigation continued,
13 officers positioned themselves in areas where a likely
14 approach from that vehicle would come.

15 One of those areas would be the
16 north end of the city.

17 And I'm not sure if anybody's
18 familiar with the city, but as you travel north out of
19 the City of North Myrtle Beach, there's only two avenues
20 that you can go; over a swing bridge, and over what --
21 what we refer to as the big bridge, which is a fixed
22 bridge that transgresses across the Intercoastal
23 waterway.

24 An officer had set up a position
25 there so he could observe both avenues in case the

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1 vehicle came that way.

2 Where by chance -- uh -- Horry
3 County police officers had also been given the
4 information, and they observed the same vehicle about the
5 time that Officer Causey, who worked on my shift and
6 worked with the Department of North Myrtle Beach observed
7 the vehicle.

8 The county police officer was
9 directly behind the vehicle.

10 Officer Causey got in with the
11 county officers that were there, and a short vehicle
12 pursuit ensued.

13 The vehicle pursuit went north out
14 of the city and ended up at a gas station.

15 And I'm not familiar with the
16 current name of that gas station, but it's on Highway 9
17 where Sea Mountain Highway and Highway 9 merge by a
18 restaurant known as Billy the Kid's.

19 And there is a stoplight right
20 there.

21 Uh -- The suspect pulled into that
22 gas station. Officers did the same.

23 The subject exited the vehicle
24 from the driver's side and fled on foot towards the
25 restaurant known as Billy the Kid's.

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1 He was apprehended there in that
2 parking lot and taken into custody.

3 A short time later, he was moved
4 back to the place where his vehicle was left in that gas
5 station parking lot, where he was, at that time, in
6 custody in the back of a patrol vehicle.

7 And that's where I came into
8 contact with Mr. Elliott.

9 Q: Okay. And when you came in contact with Mr.
10 Elliott, what was your first concern?

11 A. Well of course the initial call from the -- the two
12 male victims that were at the initial incident location
13 said that the female in question had been taken by this
14 gentleman.

15 So my first and -- and foremost
16 priority was to find out if this was indeed the gentleman
17 and where the young lady was at; because I was of course
18 concerned for her safety and well-being.

19 A. Now, did you actually interview or question the
20 defendant?

21 A. Yes ma'am; I did.

22 Q. Okay. Are you familiar with Miranda warnings?

23 A. Yes ma'am; I am.

24 Q. Uh -- Tell the jury what Miranda Warnings are.

25 A. Miranda is a term that came out of a -- a case -- uh

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1 -- many years ago.

2 Miranda was a -- a suspect in a
3 crime. And he was interrogated or interviewed. And
4 certain rights were not explained to him at the time.

5 Uh -- As the case pursued (sic)
6 through the Court -- uh -- he won his case, because he
7 was not advised of these rights that were given to him --
8 or available to him.

9 And Miranda being his last name,
10 as most cases are -- The -- The case in question was
11 Miranda versus Arizona. And that's where the term
12 Miranda came from. It just kind of stuck.

13 So now Miranda rights are really
14 -- uh -- advisements of the constitutional rights, and
15 the name Miranda is just kind of attached to them.

16 But the -- the rights -- and if I
17 may, I could read those rights:

18 Q. Yes.

19 A. Those rights would be as -- as follows, and of
20 course, you hear them all the time on television now too;
21 but:

22 You have the right to remain
23 silent.

24 Anything you say can and may be
25 used against you in court.

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1 You have the right to talk to a
2 lawyer and have him or her present with you while you are
3 being questioned.

4 If you cannot afford a lawyer, one
5 will be appointed to represent you before any
6 questioning, if you wish.

7 You can decide at any time to not
8 answer any questions or make any statements.

9 Those are the rights.

10 And then, of course, I ask:

11 Do you understand each of these
12 rights as I have explained them to you?

13 And I wait for the answer; and
14 then I say:

15 Having these rights in mind, do
16 you wish to talk to us now?

17 And this is a card that is issued
18 to us by the city.

19 Q. And did the defendant wish to speak with you?

20 A. He -- He did.

21 Q. Did he cooperate?

22 A. Yes ma'am. He was very cooperative.

23 Q. Was his answers responsive to your questions?

24 A. Yes ma'am, they were.

25 Q. Okay. And when you spoke to him, did he understand

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1 what you were talking about and what you were asking
2 about?

3 A. Yes ma'am, he did.

4 Q. Okay. At any point during your -- your questions
5 to -- to him, did he ever indicate that he was in any
6 pain or any discomfort?

7 A. No ma'am, he did not --

8 Q. Okay.

9 A. -- make any statements, or -- or --

10 Q. Did he ever appear to be physically or mentally
11 impaired to the point he could not understand what was
12 going on?

13 A. No ma'am.

14 Q. Okay. Uh -- Was he able to answer your questions?

15 A. Yes ma'am, he was.

16 Q. Okay. And what was he able to tell you?

17 A. Uh -- As the interview progressed -- uh -- and I
18 believe that -- that the tape has been shown already -- I
19 would -- I would have to leave at certain times.

20 Because, of course as the watch
21 commander, I had to make sure other officers were
22 completing tasks that needed to be completed in reference
23 to the investigation.

24 But throughout the interrogation,
25 the -- The initial questioning that I started with, of

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1 course, was:

2 Where is **Complaining**

3 That -- That was -- That was the
4 number one priority at that -- that moment; and act --
5 actually throughout the investigation, until the young
6 lady was actually located.

7 Uh --

8 Q. In the beginning, what did he tell you

9 A. He told me that he had been drinking in the area of
10 Loris and Tabor City.

11 He had then traveled into the City
12 of North Myrtle Beach and had come into contact with two
13 males and a female.

14 The reason for that contact was
15 they approached him and asked him --

16 MR. HAZZARD:

17 Objection.

18 WITNESS:

19 -- for drugs.

20 MR. HAZZARD:

21 Your Honor, I hate to interrupt or
22 shortchange the State's case.

23 However, I would say that his
24 testimony concerning what the jury has already seen is
25 cumulative.

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1 And I object on the grounds of it
2 being cumulative evidence.

3 THE COURT:

4 I know. But it's part of the res
5 gestae. I'm going to allow it.

6 MR. HAZZARD:

7 Okay. Thank you, sir.

8 MS. LIVESAY:

9 Thank Your Honor.

10 WITNESS:

11 I apologize. Uh -- I have to
12 catch up again.

13 Uh -- I asked him what he had been
14 doing.

15 He said that he had been drinking
16 in Loris and Tabor City, and then, he had traveled to the
17 City of North Myrtle Beach where he came into contact
18 with two white males and a white female.

19 The reason for that contact was
20 they approached him and asked if he had any drugs.

21 He said that he had told them he
22 did not.

23 At that point, the young lady --
24 the female of the three -- got into the vehicle with him;
25 and he drove her a few blocks away and left her there.

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1 And then he had traveled away from
2 that area. And -- And the next incident that happened
3 was when he came into contact with the law enforcement.

4 Did he ever -- uh -- indicate to
5 you that she was in the car when the car was pulled over?

6 A. He -- I apologize. He did.

7 But the initial story I got was
8 that she was with him the whole time; and that when he
9 left his vehicle from the driver's side, she left his
10 vehicle from the passenger side and ran in a different
11 direction.

12 I apologize.

13 Q. And what did you do while you out on the scene in
14 order to find **Complaining** the victim in this case?

15 A. Well, when you seen the tape, you'll see that after
16 that initial questioning, I -- I leave again.

17 At that point I had sent some
18 officers to some areas.

19 One would be the -- the swing
20 bridge in -- in the Cherry Grove area.

21 The -- uh -- bridge operator's
22 phone was not working. So our dispatcher couldn't
23 contact him by phone.

24 So I wanted to make contact with
25 him and see if he had seen a young lady; and if not, to

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1 advise him to -- to make contact with us in some form or
2 fashion if he did see her.

3 Uh -- We also went -- I don't know
4 if I -- north by -- by general direction. I don't know
5 if it's truly north; but north towards Sea -- Seacoast
6 Medical Center to check with them to make sure they
7 hadn't seen her and give her the description also.

8 Uh -- I'd also got on my public
9 address system in my vehicle and called out her name to
10 see if maybe she was in the wooded areas in the general
11 area; and see if I could get her to come out.

12 I also advised all our officers
13 still working in the city to be on the lookout for her;
14 and Horry County Police do the same.

15 Q. Okay. So the initial crimes was right there in
16 that area?

17 A. Yes ma'am.

18 MS. LIVESAY:

19 Your Honor, can I approach this
20 witness?

21 THE COURT:

22 Yes ma'am.

23 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Lieutenant, you recognize what I'm showing you now?

25 A. Yes ma'am. That appears to be a -- basically a GIF

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1 type map of -- uh -- the City of North Myrtle Beach.

2 Q. Okay. And where you found that defendant, is it
3 located on this map?

4 A. The -- The spot where the defendant was found is
5 located; yes ma'am.

6 Q. Now, is this the vicinity that you were --
7 THE COURT:

8 Ms. Livesay, you need to turn to
9 where you --

10 MS. LIVESAY:

11 I'm sorry. I --

12 THE COURT:

13 -- where your --

14 MS. LIVESAY:

15 -- was going to ask him to step
16 down.

17 THE COURT:

18 That would --

19 MS. LIVESAY:

20 Is that okay?

21 THE COURT:

22 That would be better.

23 MS. LIVESAY:

24 Thank you.

25 THE COURT:

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1 Uh -- The jury can't see what
2 you're referring to there.

3 (WHEREUPON: The witness steps
4 down in front of the jury rail.)

5 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

6 Q. Okay. Go ahead.

7 A. If -- If I may -- may point out -- uh --

8 THE COURT:

9 Counsel, you can move around at
10 your leisure.

11 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

12 Q. Where Ms. Knowles is at, so she can see.

13 A. The -- The red dot here is -- is where the young
14 lady, Ms. **Complaining** was finally located.

15 Uh -- The gas station here on --
16 on South Carolina 9, is where I was at with Mr. Elliott.

17 Uh --

18 Q. Now what vicinity on this map -- immediate vicinity
19 -- were you looking for her at?

20 A. Uh -- As you can see, this is Sea Mountain Highway,
21 and this is the section I was speaking of where South
22 Carolina 9 and Sea Mountain Highway merge.

23 Uh -- Up north of here just a ways
24 of course, is -- is Seacoast Medical Center.

25 Uh -- This would be -- uh -- the

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1 swing bridge where the bridge keeper was at.

2 Uh -- All through the, we were --
3 we were looking.

4 Uh -- I had county officers and
5 one of my officers looking in this area; and of course
6 inside the city limits of North Myrtle Beach here; and
7 basically centered in the northern area of the city,
8 officers were -- were looking for her also.

9 Q. Okay. Now, what is this area called down here?

10 A. Uh -- This section, basically from Sea Mountain
11 Highway as it runs down north of that section -- I know
12 it's hard to see on here -- is what's known as Cherry
13 Grove or Cherry Grove beach.

14 Uh -- And this area back towards
15 the end, you probably heard the term "The Point" -- is
16 what we refer to as The Point just because it's a point
17 there at the end of the -- the boulevard.

18 Q. Okay. And the map's hard to look at. Is there --
19 uh -- The Point, is there any way -- is this -- is this
20 the Ocean Boulevard here?

21 A. Yes ma'am. The -- The last yellow line closest to
22 this dark part would be the Atlantic Ocean at Ocean
23 Boulevard.

24 And here, you can see it ended --
25 that's just Ocean Boulevard right there where it dead

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1 ends.

2 Q. Okay. So you can't go any further --

3 A. No ma'am.

4 Q. -- down that way?

5 A. The ocean actually comes in there and turns into a
6 marsh in behind there.

7 Q. Okay. So once you get down here, the only way out
8 is to actually come back out this way?

9 A. You -- You have to turn around and come back out;
10 yes ma'am.

11 Q. Okay. Now, your people were looking for her in
12 this area.

13 Is that right?

14 A. Yes ma'am; all up in the original area where the
15 stop was -- you know -- clearly down to the bridges of --
16 uh -- of the waterway was the main focus.

17 Q. 'Cause this is kind of the immediate vicinity from
18 the beach; isn't it?

19 A. Yes ma'am. We were still working under the -- the
20 information of she was here --

21 Q. And jumped out of the car?

22 A. -- and she ran on foot at this point in time.

23 Q. Okay. And you got that information from who?

24 A. From -- From, basically, Mr. Elliott.

25 Q. Okay. Now about how much distance are we talking

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1 about from this BP to this area down here -- this Cherry
2 Grove area at The Point?

3 A. I -- I have not measured that. I --

4 Q. Are we talking one mile?

5 A. Oh, no ma'am. Uh -- This is probably from this
6 point to Sea Mountain Highway is probably closer to two
7 miles.

8 Q. Okay. Looking at this scale down here, would that
9 help you?

10 A. Yes ma'am, I think it would. Okay, that might be 2
11 miles there, so say 5 to 6 miles depending on the
12 curvatures of the road.

13 Q. Okay. Now -- uh -- when -- How long were you out
14 there with the defendant before you found out she was
15 found?

16 A. Probably 30 minutes.

17 Q. Okay. So -- uh --

18 A. That's me, personally, had been there 30 minutes.

19 Q. Okay. And that's when he was telling you that she
20 had jumped out of the car?

21 A. Yes ma'am.

22 Q. Okay. So if that were true, she would have done --
23 she would have had to make it all away from here down
24 here -- here -- over here?

25 A. Yes ma'am.

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1 Q. Is that right? In about 30 minutes?

2 A. Uh -- Probably from the time she would've exited the
3 vehicle that was true, about 40 minutes; because I wasn't
4 directly at -- at this moment that they had left the
5 vehicle.

6 There was probably about 10
7 minutes in between that point and my actually getting to
8 the vicinity.

9 Q. Okay. And y'all had officers all along in here
10 looking for her?

11 A. Yes ma'am.

12 Q. Did any of those ever find her?

13 A. No ma'am.

14 Q. Okay. The officer that found her, was he even
15 looking at this vicinity?

16 A. No ma'am, he was not.

17 Q. Okay. And where -- where was she found,
18 ultimately?

19 A. Uh -- Well this -- and I don't know if you're
20 familiar -- it pretty much ends at 60th Avenue North is
21 the last cross street that comes to the boulevard.

22 She was at about 57th Avenue
23 North, about three blocks south of that point, if you
24 will.

25 MS. LIVESAY:

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1 Okay. Thank you Lieutenant.

2 (Gestures for the witness to return to the stand.)

3 WHEREUPON: The witness went back
4 and again took the witness stand.)

5 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

6 Q. Now, the road that the defendant was on when he was
7 pulled, where does that road lead to?

8 A. When -- When the -- the stop was actuated?

9 Q. Yes.

10 A. It would have been US Highway 17 in the City of
11 North Myrtle Beach.

12 And of course they -- they went
13 over, again, what we call the -- the big bridge.

14 And if you're familiar with the
15 area, you can stay on US Highway 17 which would take you
16 along -- more along the coast going into North Carolina,
17 or you can stay on South Carolina 9, which takes you more
18 inland going up towards Conway.

19 Uh -- They of course merged left
20 and went up Highway 9 and ended up at that gas station.

21 And Highway 9 continues on towards
22 Loris and out towards, I guess, Marion County would be
23 where you are heading.

24 Q. So there is no doubt that road leads outside of
25 North Myrtle Beach?

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1 A. Yes ma'am. There's -- There's no way that you could
2 stay on road and ever get your way back into North Myrtle
3 Beach without making a complete U-turn and coming back
4 the same route.

5 Q. Okay. And Ocean Boulevard in that area that she
6 was found in, if you had kept walking, would have just
7 been a dead end?

8 A. Yes ma'am. That's -- That's -- From Sea Mountain
9 Highway north of -- of that road is only three roads
10 starting out, down to two, and then down to one.

11 And those three, two, and one,
12 roads are -- are landlocked, kind of like a peninsula
13 between the Atlantic Ocean, the inlet, and the marshland.

14 So once you turn left to go north
15 on Sea Mountain Highway you're in a very small area that
16 you're stuck in and would have to make a U-turn to come
17 back out.

18 Q. Now are you familiar with -- uh -- where Hill --
19 South Hillside is in North Myrtle Beach?

20 A. Yes ma'am.

21 Q. Okay. And could you point that out on this map?

22 A. Yes ma'am.

23 Q. Thank you.

24 WHEREUPON: The witness returns to
25 a point in front of the jury rail to illustrate for the

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1 jury.

2 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

3 Q. Where is that on this map?

4 A. Yeah. I know again, it's kind of hard to tell; but
5 it will be 1, 2, 3, 4, 5 streets up from -- from the
6 Boulevard; and it runs basically -- it runs basically the
7 length of what we call Crescent Beach.

8 Q. So that's off of the Boulevard.

9 A. Yes ma'am, about 5 blocks off the Boulevard.

10 Q. Okay. Now are you familiar with about how far
11 we're talking from this area and Hillside Drive to that
12 area near 57th?

13 About how far are we talking?

14 A. Probably about five -- five or six miles.

15 Q. Okay.

16 A. Again, depending on a straight line or curvature of
17 the road.

18 Q. Okay. So we're talking at least probably five or
19 six miles from the starting point to this point down
20 here?

21 A. Yes ma'am.

22 Q. Okay. Now, as far as these roads in here go, these
23 are all roads that are still considered in North Myrtle
24 Beach?

25 Is that correct?

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1 A. Yes -- Yes ma'am.

2 Q. Okay. And once we cross over a long in here
3 (indicating) we've actually left what we consider Myrtle
4 Beach and gone into the Cherry Grove type area?

5 Is that right?

6 A. Well -- Well, basically if you use the Waterway as a
7 dividing line to the Atlantic Ocean, everything you see
8 on this map -- all of this is in the City of North Myrtle
9 Beach.

10 Q. Okay.

11 A. And of course years ago this city was separate from
12 the beach and we still called those names: Cherry Grove,
13 Ocean Drive, Crescent Beach, Atlantic Beach, and Wendy
14 Hill.

15 Q. Okay.

16 A. And -- And we still refer to those names because
17 years ago that was -- those were city names; but now it's
18 really all North Myrtle Beach.

19 MS. LIVESAY:

20 Thank you, Lieutenant.

21 WHEREUPON: The witness again
22 resumes the witness stand.

23 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Now Uh -- you said earlier that you sent out
25 officers at different points in order to help locate her?

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1 A. Yes ma'am.

2 Q. Did you do anything else while you were on the scene
3 in order to try to find **Complaining** that night?

4 A. Just -- Just the search for her by Horry County and
5 our agency -- uh -- going to the businesses that were
6 open to check with them to see if they had seen her; and
7 then, to give the description in case they did come in
8 contact with her.

9 Q. When you're out there, did you ever try to locate --
10 uh -- a way to access her or anything of that nature?

11 A. No --

12 Q. At that point, did you have a phone number or
13 anything to help access her?

14 A. Uh -- We -- We didn't -- uh -- initially. But we
15 were -- we did have officers with the two young lads that
16 were with **Complaining**.

17 Uh -- We found out that she did
18 have a cell phone. So we were going to attempt to make
19 contact by cell phone.

20 We obtained that number from -- I
21 don't know which of the two -- or both -- the two young
22 lads that were -- were there at the scene.

23 That number was transferred from
24 those officers to the Sergeant that was working that
25 night that was at the scene with me.

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1 Uh -- He was going to call that
2 number. And when he called that number, a phone rang in
3 -- in the vehicle -- the suspect vehicle that was at the
4 scene.

5 Uh -- Again, as you would have
6 seen on the -- the tape, the suspect vehicle from when it
7 was parked, the driver's side door was left open.

8 And -- you know -- And vehicles on
9 the driver's doors and passenger doors, there's a little
10 compartment is there so you can store things in.

11 That's where the ringing was --
12 was coming from.

13 A county officer brought that to
14 my attention.

15 Uh -- We answered the phone to
16 find that Sergeant Senter -- a Sergeant that was on my
17 shift that night -- was at the other end of the phone.

18 He was calling that number in
19 hopes of contacting **Complaining**

20 But we found that the phone was in
21 the vehicle.

22 Q. Okay. So at that point you had her cell phone?

23 A. Yes ma'am.

24 Q. Okay. And you had gained her cell phone from the
25 defendant's vehicle?

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1 A. Yes ma'am.

2 Q. Okay. And what area of the vehicle exactly did you
3 get it from?

4 A. The driver's side door. The storage compartment in
5 the driver's side door.

6 Q. Okay. When you talked to him, did he ever say that
7 she was driving the car?

8 A. No ma'am, he did not.

9 Q. Did he ever tell you who was driving the car?

10 A. He did, ma'am. He said that he was the driver of
11 the vehicle.

12 Q. And he ever tell you who -- if there was anybody
13 else in the car with him and her?

14 A. Uh -- Initially, through the majority of the
15 conversation or interview, he said that the young lady --
16 and he named her as **Complaining** -- was in -- in the
17 passenger seat.

18 He said of course at the beginning
19 that as he stopped and exited the vehicle and ran from
20 the driver's side, she exited from the passenger side.

21 Q. Okay. Uh -- Did you talk to him further about
22 where to locate her?

23 A. I -- I did. That was -- of course was -- was my
24 main concern. So that was the main focus of -- of -- uh
25 -- the majority of my questions was, where was **Complaining**

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1 at?

2 Uh -- Through the majority of the
3 interview -- uh -- and I believe you -- you saw that --
4 he continued to say that as he exited and ran on foot,
5 she did the same.

6 Uh -- Of course later on through
7 the investigation, **Complaining** was able to make contact with
8 a citizen and used that citizen's phone to call her
9 friends, who in turn called us and advised us of the
10 location of **Complaining**.

11 Of course at that point everything
12 shifted.

13 Uh -- We found that she was way
14 outside of our containment zone and the areas we were
15 searching.

16 Uh -- An officer was sent to -- to
17 make contact with her. And I went back and spoke with
18 Mr. Elliott again; advised him that we had good news;
19 that we had found **Complaining** but we hadn't made contact
20 with her yet; but we had -- we had located her.

21 Uh --

22 Q. Lieutenant, while you were out there, did he ever
23 indicate to you that another officer had seen her run --

24 A. He --

25 Q. -- from the car?

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1 A. He -- He did. In the initial conversation, he said
2 that -- and he of course didn't know any of our -- our
3 names -- so he didn't identify the officer by name.

4 He just said:

5 One of the officers that was --
6 that had arrested him, I believe, or -- or words to that
7 effect, which were the officers that had made the arrest
8 over in the area of the restaurant know as Billy the
9 Kid's.

10 He said that one of those officers
11 said he saw somebody in the car.

12 Q. Okay. So he was coherent enough to hear what they
13 were saying?

14 A. Yes ma'am.

15 Q. Okay. And relay that to you?

16 A. Yes ma'am.

17 Q. And tell you, in fact, which officer had said:

18 I think she ran from the car as
19 well?

20 A. Yes ma'am.

21 Q. So at what point did he change his story from she
22 ran from the car.

23 A. Uh -- I came back to the vehicle and spoke to Mr.
24 Elliot again.

25 I told him that we had located the

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1 whereabouts of Complaining

2 I then told him that an officer
3 would be dispatched to locate her, and that we would
4 obtain information from her as to what had transpired
5 that morning.

6 I told him that if he needed to
7 change anything about the story, this would be the time
8 to do it -- you know -- kind of good faith -- you know --
9 explanation of how she ended up where she was at, which
10 would be all but impossible to get to in the time frame
11 from where we were at, for her to travel that distance
12 avoiding evidently all the police that were looking for
13 here in the area, and getting to way down there at the
14 point.

15 And at that time, he told me that
16 he had not had Complaining in the vehicle with him at the
17 time of the traffic stop; that it was a male subject that
18 was with him at the time of the traffic stop.

19 And when he exited the vehicle and
20 ran on foot, it was a male that exited from the passenger
21 side door and ran on foot in the opposite direction.

22 Of course, I asked him why he
23 didn't give me this information in the beginning.

24 And he said that he was afraid
25 that I would not believe him.

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1 Uh --

2 Q. So in the beginning, he said:

3 Yes, she ran from the car.

4 A. Yes ma'am. The -- The majority of -- of the
5 interview, he stayed with the original story of:

6 It was him and the white female,
7 which he identified as **Complaining** in the vehicle. And
8 when they were stopped, he and **Complaining** fled on foot from
9 the vehicle in different directions.

10 Q. Did you indicate to him what your primary concern
11 was?

12 A. Yes ma'am. I -- I told him that my main concern was
13 the safety and well-being of **Complaining** that I just wanted
14 to make sure she wasn't injured or dead somewhere, and we
15 needed to find her.

16 And he --

17 Q. And was he able to tell you where he picked her up?

18 A. Uh -- He couldn't give an exact location. He just
19 said:

20 In the area.

21 I -- I believe he said, near a
22 motel.

23 Q. Okay.

24 A. He -- He said he wasn't very familiar with the area
25 of North Myrtle Beach and couldn't give street names or

TESTIMONY OF MICHAEL BALDASARRE

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1 numbers. He just continued to say "a motel."

2 Q. Now as he's telling you this, are you inquiring as
3 to where he last saw her?

4 A. Yes. Uh -- And again, through -- through most of
5 the -- the interview, he contends that -- that **Complaining**
6 was with him up until the BP Gas Station where they fled
7 on foot.

8 Uh -- After we found **Complaining** he
9 then said that it was a male subject that was with him.

10 He said that **Complaining** had him take
11 her to an area in -- in like the Cherry Grove area and
12 drop her off at a motel where there were college kids.

13 He said his -- her -- his
14 intention -- or her intention -- was to buy drugs there.

15 He said this is where he came in
16 contact with the male subject and picked him up to give
17 him a ride home.

18 He said that he was not familiar
19 with the male subject other than that he lived on the
20 same street as he did; but didn't know a name, or could
21 not give a description of him.

22 Q. Okay. But he could never give you a street or
23 anything like that where he'd dropped her off?

24 A. No ma'am.

25 Q. Okay. Now -- uh --

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1 A. A -- Again, he used the term "motel."

2 Q. -- was he able -- Did he ever indicate to you about
3 what time it was that he ran across her?

4 A. I don't believe he did.

5 Q. Okay. Did he ever comment about seeing her out on
6 the street?

7 A. Just in -- in the initial interview of the fact that
8 she was with the two male subjects and the three
9 initially approached him to ask for drugs.

10 Q. Now, did he bring up the fact that -- anything about
11 drugs to you?

12 A. Uh -- He continuously spoke of drugs in -- in --

13 Q. What did you tell him?

14 A. I -- I -- I told him that -- you know -- I -- I was
15 -- He -- Every question I asked went to that topic.

16 And I told him:

17 I wasn't worried about drugs; to
18 not be worried about drugs. I didn't care if he had
19 drugs in the vehicle or him, that was not my purpose.

20 The -- The drugs were not a
21 concern of mine. I wasn't looking to make an arrest for
22 drugs. I was -- I wanted to find **Complaining** and make sure
23 she was healthy and okay.

24 That the drugs to me were a non-
25 issue. I just wanted to know about **Complaining** and where

TESTIMONY OF MICHAEL BALDASARRE

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1 she could be located at.

2 Q. Did you address with him the fact that her phone was
3 found on his side of the car?

4 A. Yes ma'am; I did.

5 Q. And what did he say?

6 A. Well, I -- I first asked him again who was driving
7 the vehicle. And he said he was?

8 And then I told him that the phone
9 was found in the vehicle?

10 And he said:

11 She must have left it there when
12 she ran.

13 I said:

14 Well, how would the phone have
15 come to be in the driver's side door compartment?

16 And he didn't really have an
17 answer for that.

18 Q. Now, when did first officer indicate that maybe she
19 ran from the car?

20 A. I --

21 Q. Or maybe he saw her run from the car?

22 A. I got the information actually from Mr. Elliott. No
23 officer ever gave me that information.

24 Uh --

25 Q. Let me ask you this:

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1 When -- When he was in the car
2 talking to you, he indicated to you that he had already
3 heard that from an officer?

4 Is that right?

5 A. That's correct. I -- I had the -- uh --

6 Q. So, it was before he had gotten in the car?

7 A. Yes ma'am. It -- It -- It -- Which if he had heard
8 that, it had come from the arrest site by the restaurant
9 known as Billy the Kid's.

10 And he relayed that information to
11 me at the gas station while I was interviewing him.

12 Q. Okay. So --

13 A. I --

14 Q. -- when he was down on the ground, and the officer
15 saying:

16 Yeah, I think I saw the girl run.

17 He was coherent enough to pick
18 that up?

19 A. Yes ma'am.

20 Q. And tell you about it?

21 A. Yes ma'am.

22 Q. And, in fact, tell you which officer had said it?

23 A. Yes ma'am; that he couldn't tell me by name because
24 he was not familiar with names; but he could point --

25 Q. And then he told you that she ran from the car?

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1 A. Yes ma'am.

2 Q. Okay. How -- How long was it before he changed his
3 story?

4 A. Probably between 20 and 30 minutes.

5 Q. Okay. And that was after you said:

6 We found her and she's too far for
7 her to run from the car?

8 A. Yes ma'am.

9 Q. And then he said:

10 Well, I dropped her off awhile
11 back?

12 A. Yes ma'am.

13 Q. But he never gave you a location where he dropped
14 her off; did he?

15 A. No ma'am, other than "motel."

16 MS. LIVESAY:

17 No further questions for this
18 officer, Your Honor.

19 THE COURT:

20 Counsel? Ms. Knowles?

21 CROSS-EXAMINATION BY MS. KNOWLES:

22 Q. Good morning Lieutenant Baldasarre.

23 A. Good morning, ma'am.

24 Q. You said that -- uh -- you were provided the details
25 of Mr. Elliott's apprehension?

TESTIMONY OF MICHAEL BALDASARRE

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1 Can you explain to the jury -- uh
2 -- what they were?

3 A. You mean the events that led up to -- to his arrest?

4 Q. Yes sir.

5 A. Uh -- I was not present for the arrest. Uh -- The
6 officers at the scene did give me a brief description of
7 what had transpired.

8 Uh -- As -- As I told earlier --
9 you know -- the vehicle pursuit ended, and a foot pursuit
10 ensued after that.

11 Uh -- I believe the pursuit
12 involved two Horry County officers and one City of North
13 Myrtle Beach police officer.

14 Uh -- They pursued him on foot to
15 the area of the parking lot of what's known as Billy the
16 Kid's restaurant.

17 Uh -- One of the Horry County
18 police officers -- and I could not give you the name of
19 which one of the two it was -- deployed his Taser -- the
20 X26 Taser -- and activated that Taser; and caught Mr.
21 Elliott -- I don't know the exact location where the
22 probe engaged his body -- with -- with the Taser.

23 And that's when they took him into
24 custody.

25 Q. So you did not know the names of these two county

TESTIMONY OF MICHAEL BALDASARRE

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1 officers?

2 A. The -- One of the officers is PFC Jernigan.

3 Q. Uh-huh.

4 A. And I don't know the name of the other officer; but

5 I don't know which one of the two was the one -- I

6 believe it was Mr. Jernigan that deployed his Taser.

7 Q. Okay. And so Mr. Elliott was, according to the

8 video, which you have seen; correct?

9 A. Yes ma'am.

10 Q. Was face down, in cuffs, and had just been Tased

11 when his Miranda rights were read to him; correct?

12 A. Yes ma'am.

13 Q. And tell the jury how a Taser -- What's the purpose

14 of a Taser? What is the purpose?

15 A. A -- A Taser is designed to interrupt your body's

16 communication.

17 What it does is:

18 It uses the electrical volts that

19 travel through the current to cut off communication from

20 your brain to your muscles.

21 So basically, while the current is

22 -- is there -- the pulses, your body can't communicate.

23 So you -- you lose the ability to

24 run, walk, use your arms, pick -- pick up objects, swing,

25 fight at people, use weapons, until the current is ended.

TESTIMONY OF MICHAEL BALDASARRE

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1 And what it is, is:

2 It's a monofilament cable attached
3 to probes. The probes carry the current.

4 And when the probes interact with
5 your -- your body, it sends out pulses for 5 seconds.

6 And these pulses carry 400 volts
7 per pulse or/and .0021 amps of electricity.

8 Uh -- I guess to give you kind of
9 a -- uh -- a comparison if you will:

10 I'm sure you know it's getting to
11 be that time of year in winter time; and I'm sure we're
12 all going to walk across that carpet floor and touch a
13 doorknob and you feel that -- that shock.

14 That shock actually at the low end
15 is usually about 35,000 volts of electricity.

16 And the Taser uses pulses that
17 enter your body at 400 phones.

18 So it -- it's a safe -- a safer
19 device. But the neat thing about it is, it does cause
20 you to not be able to fight or combat somebody during
21 that -- that electrical impulse.

22 Q. So in other words, it's fair to say that it's used
23 to incapacitate an individual?

24 A. Yes ma'am. During that five-second interval, you
25 are incapacitated.

TESTIMONY OF MICHAEL BALDASARRE

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1 Q. Uh -- Let me ask you this.

2 Did you, at any point before you
3 questioned him -- uh -- explain to him what he was even
4 suspected of -- of doing?

5 A. Uh -- If -- If I may? Uh -- And -- And I'm sure
6 you saw this in the video.

7 I initially made contact with Mr.
8 Elliott. And Officer Causey -- who I don't know if you
9 have spoken to you (sic) or not -- if you are familiar
10 with him -- he was the -- the North Myrtle Beach officer
11 that was involved in the pursuit -- in the foot pursuit
12 and the -- the taking into custody of Mr. Elliott.

13 He's the gentleman that, on the
14 tape, read the Miranda warnings to Mr. Elliott off of the
15 card.

16 Uh -- I spoke to him before I
17 spoke with Mr. Elliott, and explained to me, like he
18 said, everything that transpired throughout the pursuit,
19 the foot pursuit, the taking into custody, and the
20 advising of Miranda.

21 Uh -- I then went to the rear of
22 the vehicle, opened the door, and made my first contact
23 with Mr. Elliott.

24 Uh -- I did ask Mr. Elliott if he
25 -- what he had been doing that evening. And that's when

TESTIMONY OF MICHAEL BALDASARRE

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1 he told me about his travels.

2 I then asked him if he understood
3 what he was given as Miranda? And he told me he did
4 understand the advisements that were given to him by
5 Officer Causey.

6 I then ask him if he was willing
7 to speak we speak to us? And he said that he was; that
8 he wanted to cooperate.

9 I then told him of the alleged
10 crime that brought us to our interaction with each other;
11 that **Complaining** friends were alleging that she had been
12 kidnapped by him.

13 Q. So you did tell him, in fact, he was a suspect in
14 the kidnapping --

15 A. Yes ma'am.

16 Q. -- before you engaged in any type of questioning?

17 A. Yes ma'am.

18 Q. Okay. Uh -- You said that you viewed the video.
19 And we've discussed that.

20 Uh -- And on that video, I know
21 that I saw several occasions where someone -- I'm
22 assuming it was an officer -- says something about a girl
23 being in the passenger side of the vehicle.

24 Did -- Did you recall seeing that?

25

TESTIMONY OF MICHAEL BALDASARRE

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1 A. Yes ma'am. Mr. Elliott made several --

2 Q. Not Mr. Elliott. Not Mr. Elliott. It's an
3 officer. it's not Mr. Elliott's voice.

4 A. Uh -- I spoke of it in conversation with Mr.
5 Elliott.

6 Q. But was there not any mention -- uh -- from other
7 officers that told you what had transpired before you
8 arrived, of a girl leaving the vehicle?

9 A. Yes ma'am. Like -- Like I said -- uh -- the
10 officers -- On the scene, there were two county officers
11 and one North Myrtle Beach police officer.

12 One of the county officer said
13 that he so saw somebody in the vehicle.

14 Q. Thank you very much. And when you spoke with Mr.
15 Elliott, did he not in fact tell you that he had been
16 drinking earlier that night?

17 A. He said that he had been drinking in the area of
18 Loris and Tabor City.

19 Q. And let's go back to when you arrived on the scene.

20 The suspect vehicle was there.

21 And tell me again about the
22 driver's side door and the passenger side door?

23 Were they opened or closed when
24 you arrived?

25 A. I -- I cannot speak for the passenger side door. I

TESTIMONY OF MICHAEL BALDASARRE

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1 apologize. But the driver's side door was open.

2 Q. And did you view the video of the stop itself? Let
3 me ask you that.

4 A. Uh --

5 Q. Of the vehicle -- the stop taking place. Did you
6 view that?

7 A. Yes ma'am.

8 Q. When he get's -- When my client's getting out of the
9 car?

10 A. No ma'am. I'm sorry. That was the Horry County
11 video.

12 Q. Was it? You didn't view that?

13 A. And I did not view that tape. I apologize, ma'am.

14 Q. Okay. Did any of the officers on scene search the
15 area at all for weapons, since he was also apparently
16 suspected of an armed robbery as well?

17 A. Yes ma'am; they did.

18 Q. They searched the area for weapons?

19 A. Yes ma'am.

20 Q. Okay. Uh -- Tell me about that search.

21 A. Uh -- I know -- and again, I -- I don't know his
22 name. It was the other Horry County police officer; not
23 Mr. Jernigan but the other officer --

24 Q. It was the other officer?

25 A. -- searched the vehicle.

TESTIMONY OF MICHAEL BALDASARRE

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1 Q. It wasn't Officer Jernigan?

2 A. It -- It may have been. I know the other officer
3 was the one that told me about it.

4 So I'm say -- I'm going on the --
5 the fact that, since he was the one that told me of the
6 search, he completed the search.

7 But Officer Jernigan may have.

8 Q. Of the surrounding area?

9 A. Of the vehicle and the area around the vehicle.

10 Q. Okay. And wasn't -- uh -- In your conversations
11 with Mr. Elliott, I believe that you indicated in your
12 testimony earlier that:

13 He had pointed out to you the
14 officer that made some mention of a female being in the
15 vehicle and fleeing at the time that he did?

16 A. Yes ma'am.

17 Q. Who did he point to?

18 A. He -- He pointed to -- There -- There was three
19 officers there.

20 It was the same three officers,
21 Officer Scott Causey --

22 Q. Uh-huh.

23 A. -- Officer Jernigan, and the second Horry County
24 police officer.

25 Q. That we don't know the name of?

TESTIMONY OF MICHAEL BALDASARRE

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1 A. That -- I -- I apologize; but I do not know the
2 man's name.

3 Q. Okay. And he pointed to that person?

4 A. He pointed to that group; the three officers that
5 were standing there.

6 Q. But --

7 A. They were in a tight group. And -- you know --
8 like I said, he did not know the name -- the names of
9 those officers.

10 He said:

11 That officer there.

12 But --

13 Q. And you just didn't ask him any other specifics?

14 A. Right.

15 Q. Uh -- Were you made aware that my client spoke to a
16 couple of other officers before speaking to you?

17 A. No ma'am.

18 Q. You were not made aware of that?

19 A. (Nods in the negative.)

20 Q. Okay. But in your conversations, there was no
21 mention of drugs being involved in any of this?

22 A. Numerous times; yes ma'am.

23 MS. KNOWLES:

24 Okay. The Court's indulgence,
25 Your Honor, for a moment.

TESTIMONY OF MICHAEL BALDASARRE

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1 CROSS-EXAMINATION BY MS. KNOWLES:

2 Q. I have just a couple of more questions for you,
3 Lieutenant.

4 A. Okay.

5 Q. Whenever you were -- uh -- interrogating my client
6 and you said that the victim had been found and that you
7 had already spoken to the other alleged victims of the
8 robbery?

9 A. The two male subjects?

10 Q. Yes.

11 A. Okay.

12 Q. Uh -- You -- You make some mention -- or actually,
13 my client says:

14 Well if they're in the area, bring
15 them over here.

16 Is that not what happened?

17 A. (No response.)

18 Q. Did he not say:

19 Bring them over here?

20 A. (No response.)

21 Q. Sort of implying that --

22 A. I -- I don't know that he said:

23 Bring them over there.

24 I know he told me to call them.

25 Q. To call them?

TESTIMONY OF MICHAEL BALDASARRE

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1 A. And I told him that I had no need to call them
2 because there was a police officer standing next to them
3 at the moment; and that they were the ones that were
4 advising that he -- meaning Mr. Elliott -- had kidnapped
5 **Complaining**

6 Q. How was there a positive ID made at that point?

7 A. There was no positive ID.

8 Q. So how did they know who Mr. Elliott was?

9 A. They did not.

10 Q. And you said -- let's go back to the car door -- and
11 this is the last question that I have.

12 Who told you that the car door was
13 open?

14 If you weren't on-scene whenever
15 he fled to see that, and you didn't see the video, who --
16 who told you that the car door was open, and that the
17 phone had been found?

18 A. I -- I didn't say that ma'am. I say that:

19 When I arrived on the scene, the
20 car door was open.

21 Q. And there was a phone found?

22 A. Yes ma'am.

23 Q. Okay. Who told you that -- that there was a phone
24 found?

25 Because it wasn't you that found

TESTIMONY OF MICHAEL BALDASARRE

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1 it; right?

2 A. No ma'am. The phone started ringing. I picked the
3 phone up and answered it. And Sergeant Senter was at the
4 other end --

5 Q. So you found the phone?

6 A. Yes ma'am.

7 MS. KNOWLES:

8 No further questions, Your Honor.

9 MS. LIVESAY:

10 Maybe a couple, real brief, Your
11 Honor.

12 THE COURT:

13 All right.

14 RECROSS-EXAMINATION BY MS. LIVESAY:

15 Q. Uh -- Ms. Knowles asked you about an officer saying
16 that she fled from the car when he did?

17 A. Yes ma'am.

18 Q. Okay. Didn't he later tell you that she didn't
19 flee from the car when he did?

20 A. I'm -- I'm sorry. Say that question again.

21 Q. I'm sorry. Was it the defendant, that at a later
22 time when you were talking to him, that actually admitted
23 to you:

24 She didn't run when I ran. I had
25 already dropped her off.

TESTIMONY OF MICHAEL BALDASARRE

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1 A. That is correct. He -- He changed it to it was a
2 male subject that had run from the vehicle; not a female
3 subject.

4 Q. Did you run the tape back? Was there a tape on
5 that car?

6 A. Uh -- I had Horry County Police Department run their
7 tapes back.

8 Ours were, of course, still --
9 still actively involved in the incident. And to stop
10 that tape to look at it would not be appropriate.

11 And the Horry County officers
12 reviewed their tapes and said that no one had exited from
13 the passenger side of the vehicle and ran.

14 Q. Okay. So once y'all ran the tape back, y'all never
15 saw a girl run out of the car?

16 A. No ma'am, we did not.

17 Q. And in fact, the defendant later told you that is
18 when she ran from the car?

19 A. That is correct.

20 Q. Okay. Now, Ms. Knowles asked you about if you
21 searched the area?

22 A. Yes ma'am.

23 Q. You did search the area?

24 A. Yes ma'am.

25 Q. You searched the area around his car, and around the

1 defendant?

2 A. Yes ma'am.

3 Q. Did you find anything?

4 A. I did not -- I -- Well, I don't know if other
5 officers found anything. I didn't.

6 Q. Did anybody bring it to your attention that they
7 found anything?

8 A. No ma'am.

9 Q. Okay. Were you the Lieutenant?

10 A. Yes ma'am.

11 Q. Okay. So you were the highest guy out there at
12 that time?

13 Is that right?

14 A. At the moment; yes ma'am.

15 Q. Okay. And nobody brought it to your attention that
16 anything was found?

17 A. No ma'am.

18 Q. So -- Weapons or drugs?

19 A. No ma'am.

20 Q. Okay. So when y'all searched that area, nothing
21 like that was found?

22 A. No ma'am. We didn't find anything that I'm aware
23 of like that.

24 Q. Okay. Now, she asked you about a phone?

25 A. Yes --

TESTIMONY OF MICHAEL BALDASARRE

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1 Q. A phone was found?

2 A. Yes ma'am, a cellular phone.

3 Q. Okay. Did you figure out who the phone belonged
4 to?

5 A. Yes ma'am. It belonged to the victim.

6 Q. Okay. So it wasn't just any phone; it was the
7 victim's phone?

8 A. That's correct. Yes ma'am.

9 Q. Okay. Now, when you said you ran the tape back,
10 did you ever see a male jump out of that car?

11 A. I -- I didn't view it. The senior Horry County
12 officer on the scene at the time did. And he advised me
13 that they did not.

14 Q. Okay. So actually, the -- uh -- county car -- or
15 the county video -- had their tape on that vehicle the
16 whole time.

17 Is it right?

18 A. Yes ma'am. They were what would be known as the
19 lead vehicle and the police vehicle right behind the
20 suspect vehicle.

21 And there was actually a county
22 vehicle, a county vehicle, and then our city vehicle.

23 Q. Okay. And nobody brought it to your attention
24 that they saw a man or a woman jump out of that car; did
25 they?

TESTIMONY OF MICHAEL BALDASARRE

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1 A. No ma'am, they did not.

2 Q. Okay. In fact, it was brought to attention they
3 did not --

4 MS. KNOWLES:

5 Your Honor, Objection; leading.

6 THE COURT:

7 Yes, it is --

8 MS. LIVESAY:

9 Your Honor, I'm following up on
10 her question --

11 THE COURT:

12 I know; but it's leading.

13 MS. LIVESAY:

14 -- as to whether or not somebody
15 jumped into the car.

16 THE COURT:

17 Just -- Just re -- rephrase the
18 question. It's leading.

19 MS. LIVESAY:

20 I will, Your Honor. I'm sorry.

21 THE COURT:

22 And she's object to that.

23 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Uh -- Did anybody ever jump out of that car that
25 night except for the defendant, to your knowledge?

TESTIMONY OF MICHAEL BALDASARRE

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1 A. To my knowledge, no one ever exited from the
2 passenger side of that vehicle.

3 Q. Okay. Neither a man, nor a woman?

4 A. Male nor female.

5 MS. LIVESAY:

6 No further questions, Your Honor.

7 THE COURT:

8 All right.

9 MS. KNOWLES:

10 I just have one more question.

11 RECROSS-EXAMINATION BY MS. KNOWLES:

12 Q. Lieutenant, you said that you were the highest guy
13 out there?

14 Uh -- And being the highest guy
15 out there, you didn't know the names of the officers on
16 scene?

17 A. No ma'am. I could give you the names of almost
18 everybody out there. But we don't work with Horry County
19 Police Department.

20 There is, I don't know, hundreds
21 of officers. And I wish I could remember that name.

22 And it's -- Unfortunately, it's
23 hard enough for me to remember the hundred names of my
24 officers that work with the city.

25 It gets kind of complicated after

TESTIMONY OF MICHAEL BALDASARRE

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1 that.

2 Q. Who is responsible for the evidence log, and the --
3 and the scene log, and all of the activities reporting --

4 MS. LIVESAY:

5 Your Honor, I'll have to object.

6 I'm pretty sure that's outside the -- uh -- the scope of
7 my redirect.

8 MS. KNOWLES:

9 I'm trying to find the name of
10 this unknown officer.

11 THE COURT:

12 Well, you already -- uh --
13 addressed that in your -- in your cross; didn't you?

14 Didn't you ask him; and he said he
15 didn't know.

16 MS. KNOWLES:

17 I'm actually referring to her
18 reference of him being the highest guy out there and the
19 fact that -- Once that he --

20 THE COURT:

21 Well, let's just -- Let me ask
22 you:

23 Do you have any record -- any way
24 of knowing who that officer may have been?

25 WITNESS:

TESTIMONY OF MICHAEL BALDASARRE

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1 I -- I'm -- I can check, Your
2 Honor. It would be in the record. It's just I don't
3 have his name stored in my memory.

4 I could look into the reports --

5 THE COURT:

6 Well, if --

7 WITNESS:

8 -- and just get the name.

9 THE COURT:

10 -- after your testimony you should
11 happen to be able to find that; please let Ms. Knowles
12 know.

13 MS. KNOWLES:

14 Thank you, Your Honor.

15 No further questions.

16 MS. LIVESAY:

17 No further questions for this
18 witness, Your Honor.

19 THE COURT:

20 Okay. You may step down,

21 Officer.

22 WITNESS:

23 Thank you, Your Honor.

24 MS. LIVESAY:

25 Your Honor, at this time the State

1 MS. LIVESAY:

2 You want her back on the stand at
3 this time, Your Honor?

4 THE COURT:

5 Yes. Put Ms. Eberhardt back on
6 the stand.

7 WHEREUPON: [Complaining Witness]

8 HAVING BEEN SWORN EARLIER RESUMED THE WITNESS STAND AND
9 TESTIFIED UNDER OATH AS FOLLOWS:

10 (WHEREUPON: The jury empanelled
11 in the case was escorted back into the courtroom at 10:47
12 AM, November 17, 2010; and was in fact present during the
13 following proceedings.)

14 THE COURT:

15 All right.

16 I believe this witness has been
17 sworn. Is that correct?

18 MS. LIVESAY:

19 Yes sir. Thank Your Honor.

20 THE COURT:

21 And the jury's back in the jury
22 box.

23 All right.

24 You may begin your examination.

25 MS. LIVESAY:

TESTIMONY OF Complaining Witness

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1 Thank Your Honor.

2 DIRECT EXAMINATION BY MS. LIVESAY:

3 Q. Complaining if you don't mind -- uh -- say your name
4 and spell your last name.

5 A. Complaining Witness E-b-e-r-h-a-r-d-t.

6 Q. Okay. And how old are you?

7 A. 16.

8 Q. Okay. And where are you from?

9 A. Kannapolis, North Carolina.

10 Q. And where do you currently live?

11 A. Kannapolis, North Carolina.

12 Q. And who lives in the house with you?

13 A. My father, his girlfriend, and her two children.

14 Q. Okay. And have you always lived in Kannapolis?

15 A. With the exception of about a year; yes.

16 Q. And are you currently in school in Kannapolis?

17 A. I am currently enrolled in Penn Foster online high
18 school.

19 Q. Okay. And have you always been online high school?

20 A. No, I have not.

21 Q. Okay. When did you start doing online high
22 school?

23 A. This school year.

24 Q. Okay. And what kind of grades are you making?

25 A. I've maintained a B average, I believe.

1 Q. Okay. And before you were doing online schooling,
2 were you going to just a normal high school?

3 A. Yes ma'am.

4 Q. Okay. And what kind of grades were you making
5 then?

6 A. Uh -- A's and B's, with the occasional C.

7 Q. Okay. So it wasn't until this year that you
8 started doing the online school at home?

9 A. Yes ma'am.

10 Q. Okay. And are you doing any extra curricular
11 activities as far as sports or clubs?

12 A. No ma'am.

13 Q. Now, are you familiar with North Myrtle Beach?

14 A. Not particularly. I've been there maybe three or
15 four times.

16 I'm not very familiar with it at
17 all.

18 Q. Okay. Have you been here about three or four times
19 in your entire life?

20 A. Yes.

21 Q. Now, were you down here on or around June the 29th,
22 of 2009?

23 A. Yes ma'am, I was.

24 Q. Okay. And how old were you the?

25 A. 14.

TESTIMONY OF **Complaining Witness**

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1 Q. Okay. And tell me who you came down here with?

2 A. I came down here with my friend **B.C.** and her
3 mother Penny, and her stepfather Kit.

4 Q. Okay. And when did y'all get down here?

5 A. I believe it was the 26th.

6 Q. Okay. And where we y'all staying?

7 A. We were staying at their beach house on Hillside
8 Drive.

9 Q. Okay. And who was staying in that beach house?

10 A. It was me, **B.C.** her mother, and her stepfather.

11 MS. LIVESAY:

12 Okay.

13 May I approach the witness, Your
14 Honor?

15 THE COURT:

16 Yes.

17 MS. LIVESAY:

18 Uh -- I'm showing her State's
19 Exhibit Number 5, 6, and 7.

20 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

21 Q. Uh -- **Complaining** do you recognize what I'm showing
22 you now?

23 A. Yes ma'am. T

24 Q. What is it?

25 A. That is the beach house that I was staying at.

1 Q. Okay. And this is the beach house you were staying
2 at on June the 29th --

3 A. Yes ma'am.

4 Q. -- of 2009?

5 A. Uh-huh.

6 Q. Okay. And is this an exact photograph of that
7 beach house?

8 A. Yes ma'am.

9 Q. Okay. Do you recognize what I'm showing you now
10 marked as State's Exhibit Number 6?

11 A. It looks like the road on Hillside, I believe.

12 Q. Okay. And is this is a substantial and accurate
13 depiction of that road?

14 A. Yes ma'am.

15 Q. And do you recognize what I'm showing you now marked
16 as State's Exhibit Number 7?

17 A. I believe so.

18 Q. Okay.

19 A. It looks like a another view of the street.

20 Q. Okay. And this is a substantial and accurate
21 picture of that street?

22 A. Yes ma'am.

23 MS. LIVESAY:

24 Your Honor, at this time, the
25 State wishes to admit 5, 6, and 7, into evidence and

1 publish it to the jury?

2 MR. HAZZARD:

3 No objection, Your Honor.

4 THE COURT:

5 Without objection, it's admitted.

6 MS. LIVESAY:

7 Thank Your Honor.

8 WHEREUPON: 3 PHOTOS EARLIER

9 MARKED BY THE COURT REPORTER AS STATE'S EXHIBITS NUMBERS
10 5, 6, AND 7, WERE ENTERED INTO EVIDENCE WITHOUT
11 OBJECTION.

12 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

13 Q. So tell the jury what this is again.

14 A. That is the beach house that I was staying at.

15 Q. Tell the jury what that area looked like around that
16 beach house?

17 A. Uh -- It -- The houses are very close together. Uh
18 -- There is mainly -- It's a residential area.

19 There -- I don't believe there is
20 too many children. It's mostly older couples, I
21 believe.

22 And it's a pretty quiet
23 neighborhood.

24 Q. So you don't remember it being a lot of -- uh --
25 traffic in that street?

1 A. Oh, no. Barely any.

2 Q. Okay. Now tell the jury what this is -- this is a
3 picture of -- that's marked State's Exhibit --

4 A. I believe that's the view of Hillside.

5 Q. So this is just the road that house is on?

6 A. Uh-huh.

7 Q. And tell the jury what this is, State's Exhibit --
8 uh -- State's Evidence Number 7?

9 A. I believe that would be another view of the road.

10 Q. This is that same road that that house is on?

11 A. I believe so, yes.

12 Q. Do you remember there being any motels or high-rises
13 on this street?

14 A. Not on that street. If you go down a couple of
15 streets, then yes, there is hotels.

16 Q. Okay. But there was none on that street?

17 A. No.

18 Q. Do you remember whether or not it was a high traffic
19 area?

20 A. No, barely any traffic at all; maybe the occasional
21 golf cart or bike rider.

22 Q. Now at that time, did you have a driver's license?

23 A. No.

24 Q. Okay. Did [REDACTED] have a driver's license?

25 A. No.

TESTIMONY OF [REDACTED] Complaining Witness

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1 Q. Did you have a vehicle?

2 A. No.

3 Q. Okay. Uh -- Were you familiar with that area you
4 were staying in?

5 A. I had only stayed there one other time. And I went
6 everywhere with her parents. So, no, I was not familiar
7 with that area.

8 Q. Okay. Uh -- Now about how many times had you
9 stayed at that beach house?

10 A. One other time.

11 Q. Okay. And how long ago was that from this time?

12 A. It was a year prior to that night. We stayed there
13 a year before the same time.

14 Q. Okay. So you had only been at that beach house
15 about twice in your entire life?

16 A. Yes.

17 Q. Okay. Who did you ride down with?

18 A. [REDACTED] her mother, and her stepfather.

19 Q. Okay. And what was the -- uh -- the inside of the
20 house? How was that set up? Was there anybody else
21 staying in that beach house other than y'all?

22 A. No.

23 Q. Okay. Now when you came down here with [REDACTED] and
24 her parents, did you know anybody else down here?

25 A. No.

1 Q. Okay. Now, did anybody from Kannapolis come down
2 to -- to hang out with you and B.C.?

3 A. Yes, my boyfriend at the time, M.H. and R.B.

4 Q. And when did they come?

5 A. I believe it was around six or seven the evening of
6 July 29th.

7 Q. Okay. And how did they get down here?

8 A. They drove M.H.'s car down here.

9 Q. And how long have you known them?

10 A. Uh -- I known both of them about two years now.

11 Q. And how did they know how to get down here?

12 A. They called me and asked for directions, I believe,
13 to get the specific area that we were in.

14 But other than that, I believe
15 that they -- you know -- got the directions from the
16 Internet or something like that.

17 I'm not too sure about that one.

18 Q. Okay. And to your knowledge, were they very
19 familiar with this area?

20 A. No.

21 Q. Okay. About how many times had they been down here
22 to your knowledge?

23 A. I didn't know if either of them had been there at
24 all.

25 I only -- I had known them for a

TESTIMONY OF Complaining Witness

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1 short period of time then.

2 And we never discussed -- you know
3 -- vacationing or anything like that.

4 Q. And they drove a car down here?

5 A. Yes.

6 Q. Who's car did they drive?

7 A. M.H.

8 Q. Okay. And did anybody else come down here with
9 them?

10 A. No.

11 Q. Now once they got down there, did you meet up with
12 him?

13 A. After -- A couple of hours after they got here, yes,
14 I did.

15 Q. Now did they have anywhere to stay down here to your
16 knowledge?

17 A. No, they did not.

18 Q. Now where did you first meet up with them?

19 A. At -- uh -- the beach. Her parents were going to a
20 bar. And I believe they parked right across the street
21 from where the bar was at. And we just walked over there
22 and met them.

23 Q. Okay. Now, did her parents know they were here?

24 A. No, they did not.

25 Q. Why not?

1 A. Because at that time my parents didn't approve of my
2 relationship with [REDACTED] So I had to sneak around to
3 see the -- you know -- to see him.

4 And we didn't want her parents to
5 know. Because we figured that if they did, then they
6 would tell my parents and I would get in trouble.

7 Q. Okay. So y'all met up with them just at the beach?

8 A. Uh-huh.

9 Q. Okay. Now -- uh -- did you -- What were you
10 wearing that night?

11 A. I believe I was wearing a -- like a little sundress;
12 spaghetti strap. It was flat, I believe, and it had like
13 a little bow here (indicating).

14 And that was -- I was wearing that
15 while we were at the beach. but later on, I changed that
16 night when we got back.

17 Q. Okay. So you were dressed up at that point to kind
18 of go out on the beach.

19 A. Uh-huh.

20 Q. Okay. Or to go out -- Did y'all go out and eat?

21 A. No.

22 Q. Okay. So y'all were just kind of going out and
23 enjoying whatever was going on at the --

24 A. Yeah, we were just walking around. I believe we got
25 a smoothie and some ice cream or something; but as -- you

TESTIMONY OF [Complaining Witness]

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1 know -- to sit down and eat dinner; no, we did not do
2 that.

3 Q. Okay. Now -- uh -- about what time did y'all leave
4 that area?

5 A. I believe it was around 11:30.

6 Q. Okay. Now who all was at that area that you were
7 at?

8 A. Uh -- It was B.C. and her mother, and her
9 stepfather.

10 M.H. and R.B. walked us back to
11 the bar, because we had to go and check in with her
12 parents a little after 11:00.

13 And we stayed at the bar with her
14 parents for a few minutes while they -- you know --
15 finished up talking to the people that they were speaking
16 with.

17 And then we left. And it was just
18 me, B.C. her mother, and her stepfather, when we left.

19 Q. Okay. So y'all all left together?

20 A. Uh-huh.

21 Q. Where did y'all go back to?

22 A. We went back to their beach house.

23 Q. Okay. Now, did M.H. and R.B. come back to the
24 beach house?

25 A. Yes, they did.

1 Q. Now, how did they know how to get to that beach
2 house?

3 A. [REDACTED] M.H. called me and asked me how to get there;
4 which I had to ask [REDACTED] B.C. because I wasn't sure about it.

5 Q. Okay. So [REDACTED] B.C. gave [REDACTED] M.H. directions.

6 A. She told me where to go and I told him.

7 Q. Okay. And were they able to make it to the beach
8 house?

9 A. Yes.

10 Q. Now did they drive his car to the beach house?

11 A. Yes.

12 Q. Now was his car somewhere near that beach house when
13 he got there?

14 A. I believe it was parked on the street next to the
15 beach house.

16 Q. Okay. So it was close enough he could get to it?

17 A. Yes.

18 Q. Okay. Now when -- Did you come back out and meet
19 him again?

20 A. Yes.

21 Q. Okay. So you go back to the house with [REDACTED] B.C. and
22 her parents?

23 A. Uh-huh.

24 Q. Okay. And during that time you're giving them
25 directions on how to get to the house?

TESTIMONY OF [REDACTED] Complaining Witness

559

1 A. Uh-huh.

2 Q. Okay. Now when you get in the house, what's going
3 on at that time?

4 A. Uh -- We were just changing; winding down for the
5 night.

6 I believe we ate.

7 And that's when [REDACTED] M.H. called and
8 said that he was there. And we went outside.

9 Me and [REDACTED] B.C. went outside to hang
10 out with [REDACTED] M.H. and [REDACTED] R.B. right there at the patio area
11 where the outside shower is, right front of the door.

12 Q. Okay. Now had [REDACTED] B.C. parents -- were they up at
13 that time?

14 A. No, they were in the bed.

15 Q. Okay. Had they locked down the house?

16 A. They -- They knew we were going to be up longer.
17 They figured we were -- you know -- probably going to
18 stay up all night.

19 But they were pretty well passed
20 out at that point. So they weren't really aware of
21 anything that was going on.

22 Q. Okay. And then you and [REDACTED] B.C. came back out of the
23 house?

24 A. Yes.

25 Q. Okay. Now, what were you wearing when you came

1 back out of the house?

2 A. I believe I was wearing a navy blue Homestead
3 Baptist tee shirt -- uh -- blue sophie-shorts.

4 I'm not too sure of the color of
5 my socks.

6 And that's all I was wearing.

7 Q. Okay. So you had changed out of your dress?

8 A. Yes, I was wearing my pajamas then.

9 Q. Okay. Would you recognizes that stuff if I showed
10 it to you now?

11 A. Yes.

12 MS. LIVESAY:

13 The Court's indulgence, Your
14 Honor?

15 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

16 Q. Complaining do you recognize what I'm showing you?

17 A. Yes ma'am; I do.

18 Q. And what is this?

19 A. That is my navy blue Homestead Baptist tee shirt I
20 was wearing that night.

21 Q. Okay. And is this the exact same tee shirt?

22 A. Yes ma'am.

23 MS. LIVESAY:

24 Your Honor, at this time the State
25 wishes to put the tee shirt into evidence and show it to

TESTIMONY OF Complaining Witness

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1 the jury.

2 THE COURT:

3 All right, Mr. -- uh -- Hazzard
4 and Ms. Knowles?

5 MR. HAZZARD:

6 May we approach, Your Honor?

7 THE COURT:

8 Yes.

9 (WHEREUPON: Counsel for each party
10 conferred off the record very briefly with The Court at
11 the bench.)

12 MR. HAZZARD:

13 Without objection, Your Honor.

14 MS. LIVESAY:

15 Thank Your Honor.

16 Can they -- uh -- Can I publish it
17 to the jury at this time, Your Honor.

18 THE COURT:

19 Yes.

20 MR. HAZZARD:

21 Is it marked?

22 THE COURT:

23 Let her mark it. Or let the -- uh
24 -- uh -- court reporter mark it.

25 WHEREUPON: THE TEE SHIRT WAS

1 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT 8 AND WAS
2 ENTERED INTO EVIDENCE WITHOUT OBJECTION.

3 COURT REPORTER:

4 Your Honor, that's State's Exhibit
5 8.

6 MS. LIVESAY:

7 Uh -- I'm just now moving it into
8 evidence, Your Honor.

9 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

10 Q. Is this the tee shirt you were wearing?

11 A. Yes ma'am.

12 Q. When you changed out of that dress and you changed
13 into this tee shirt, were you planning on going out
14 anywhere that night?

15 A. No. I was just -- My intentions were to just stand
16 in the patio and just talk.

17 Q. Okay. Ma'am, I need you to look over here. Do you
18 recognize what I'm showing you?

19 A. Yes ma'am; I do.

20 Q. And what are these?

21 A. Those are my blue sophie shorts that I was wearing
22 that night.

23 Q. Okay. And are these the exact same shorts?

24 A. Yes ma'am.

25 Q. And were these the one's you were wearing that

TESTIMONY OF Complaining Witness

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1 night?

2 A. Yes ma'am.

3 MS. LIVESAY:

4 Your Honor, at this time, the
5 State ask to move this into evidence, State's Number 9.

6 THE COURT:

7 Mr. Hazzard?

8 MR. HAZZARD:

9 No objection.

10 MS. LIVESAY:

11 Publish it to the jury?

12 THE COURT:

13 Without objection.

14 WHEREUPON: THE SOPHIE SHORTS

15 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT

16 NUMBER 9 WERE ENTERED INTO EVIDENCE WITHOUT OBJECTION.

17 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

18 Q. So when you had these shorts and that shirt on, were
19 you getting ready for bed?

20 A. Yes ma'am.

21 Q. Okay. Do you recognize what I'm showing you?

22 A. Yes ma'am.

23 Q. What am I showing you?

24 A. Those are the socks I was wearing that night.

25 MS. LIVESAY:

1 Okay.

2 Your Honor, State's, I believe,
3 Number 9?

4 COURT REPORTER:

5 10. State's 10.

6 WHEREUPON: THE SOCKS WERE MARKED
7 BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 10.

8 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

9 Q. So these were the socks you were wearing that night?

10 A. Yes ma'am.

11 Q. So is this all you were wearing? Any shoes?

12 A. No ma'am.

13 Q. Okay. So when you walked outside to talk to [REDACTED] M.H.
14 and [REDACTED] R.B., you wearing those shorts, that tee shirt, and
15 just some socks?

16 A. Yes ma'am.

17 Q. So at that point, with no shoes on, you were not
18 planning on going anywhere?

19 A. No ma'am.

20 Q. And when y'all were standing out there, where were
21 you standing?

22 A. Initially, we were right at the door where the
23 concrete area is, right in front of the outside shower.

24 Q. Let me say if I can -- Can you show me on this
25 picture, [REDACTED] Complaining

TESTIMONY OF [REDACTED] Complaining Witness

565

1 A. Yes ma'am.

2 Q. If you don't mind, show the jury where y'all were
3 standing?

4 A. We were standing right here (indicating) on that
5 little concrete area right there beside the door.

6 Q. Okay. And who all was standing out there?

7 A. Me, [REDACTED] M.H. [REDACTED] R.B. [REDACTED] and [REDACTED] B.C. [REDACTED]

8 Q. Okay. And what happened next? About what time was
9 it?

10 A. I believe it was around 1:00 when they got there.

11 Q. Okay.

12 A. And at -- We were probably staying out there for
13 around an hour before [REDACTED] M.H. [REDACTED] and [REDACTED] R.B. [REDACTED] left.

14 Q. Okay. Now during that time when all of y'all were
15 standing out there, did you see a lot of traffic in the
16 area?

17 A. No --

18 Q. You see a lot of --

19 A. -- none at all.

20 Q. -- a lot of people walking around?

21 A. No.

22 Q. Okay. Now, you said that [REDACTED] M.H. [REDACTED] and [REDACTED] R.B. [REDACTED] left?

23 A. Yes.

24 Q. Where did they go?

25 A. I'm not sure. Me and [REDACTED] M.H. [REDACTED] got into a little

1 argument. And him and [REDACTED] left.

2 They were gone for maybe 5 to 10
3 minutes.

4 And I'm not sure where they went.
5 I didn't ask.

6 But at that point they came back.

7 And I had went inside with [REDACTED]
8 to go get a drink or go get some food or something.

9 I'm not really sure why I went
10 inside.

11 But I came back out when [REDACTED]
12 called me and told me that he was coming back.

13 Q. Okay. Now -- So you went back outside to meet him?

14 A. Yes.

15 Q. Okay. Was [REDACTED] out there with you then?

16 A. I'm not very sure. She may have been behind me
17 following me out of the door; but I just went straight to
18 [REDACTED] because we had been arguing and -- you know -- we
19 were kind of wanting -- you know -- in the make-up phase.

20 We just wanted to hug and kiss
21 each other or whatever. So --

22 Q. Okay. Now, when y'all were all out there under
23 that -- uh -- on that cement area, were y'all out there
24 drinking?

25 A. No.

TESTIMONY OF [REDACTED] Complaining Witness

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1 Q. Were you out there doing any drugs?

2 A. No.

3 Q. Were you trying to get alcohol that night?

4 A. No.

5 Q. Were you trying to get any kind of drugs?

6 A. No.

7 Q. Now, did just the four of you hang out that night?

8 A. Yes.

9 Q. Out there?

10 A. Yes.

11 Q. Okay. Now, did anybody ever come back?

12 A. Uh -- Could you rephrase that? I'm not sure exactly
13 what you mean.

14 Q. That's okay. Did y'all ever make contact with
15 anybody else --

16 A. No.

17 Q. -- out there that night?

18 A. No. Well, aside from Mr. Elliott, no.

19 Q. Okay. Now at any point, did [REDACTED] go inside?

20 A. She went inside sometime while I was in the driveway
21 speaking with [REDACTED] I'm not sure exactly when.

22 I wasn't paying attention to what
23 her and [REDACTED] were doing.

24 Q. Okay. Now -- Now did [REDACTED] ever go inside?

25 A. I don't believe so.

1 Q. Okay. Now did the guys ever get a place to stay to
2 your knowledge while they were there?

3 A. No.

4 Q. Okay. Tell me about what happened next?

5 A. We -- I believe it was definitely after [B.C.] went
6 inside, [R.B.] came and stood around -- There is a small it
7 looks like concrete blocks, I believe, separating -- uh
8 -- the driveway of the beach house from the driveway of
9 the next house beside of that.

10 And there's a tee right there.

11 And I believe [R.B.] was standing
12 right there minding his own business.

13 And me and [M.H.] were further
14 over to the -- if you're looking directly at the beach
15 house -- the front of it -- to the left.

16 Q. Could you show the jury on this picture?

17 A. Yes.

18 Q. Where were y'all standing?

19 A. I believe me and [M.H.] were standing right around
20 here (indicating) and [R.B.] was over here (indicating).

21 Q. Okay. Now what happened when you were standing out
22 there?

23 A. Uh -- I had my back turned to the road. I was
24 holding onto [M.H.]

25 And -- uh -- [R.B.] and [M.H.] said

TESTIMONY OF Complaining Witness

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1 that they had noticed a red car that had drove around a
2 couple times around the block.

3 And I didn't -- It seemed
4 suspicious; but I didn't think anything of it at the
5 time.

6 And the -- I believe the third
7 time the car came around, he stopped, and asked where he
8 was.

9 And I believe -- I'm not sure if
10 it was myself or M.H. that told him he was on
11 Hillside.

12 And I think he proceeded to ask
13 for directions somewhere.

14 I wasn't exactly paying attention
15 to what M.H. was saying.

16 And then, he pulled up a little
17 bit, like he was going to just drive off; stopped, and
18 got out of the car.

19 And it looked like he was holding
20 somebody behind his right arm, kind of trying to hold it
21 -- you know -- to the back so we couldn't see it.

22 At the time I believed it was a
23 handgun.

24 That's -- you know -- the only
25 assumption that I could make.

1 And he told us all to get on the
2 ground and empty our pockets.

3 I didn't have any pockets. So I
4 just laid myself on the ground.

5 And I believe [M.H.] didn't have
6 anything on him, or -- I'm not sure. But he didn't empty
7 his pockets out.

8 And [R.B.] had some change, and laid
9 it on the ground.

10 Q. Did y'all get on the ground?

11 A. Yes.

12 Q. How do you get on the ground? Face-down, or you
13 just sat down?

14 A. Yes. We -- Facedown, we were laying out on the
15 ground.

16 Q. Okay. Had you ever seen that car before?

17 A. No.

18 Q. Had you ever seen the man that stepped out of that
19 car before?

20 A. No.

21 Q. Did [M.H.] or [R.B.] appear to know anything about
22 what that person was?

23 A. No.

24 Q. Okay. So he gets out of the car and all three of
25 you are face down?

TESTIMONY OF Complaining Witness

571

1 A. Uh-huh.

2 Q. At this point, did anybody scream?

3 A. No.

4 Q. Did you scream?

5 A. No, I did not.

6 Q. Why not?

7 A. I -- At that point, I was just shocked and scared.

8 I didn't -- I believed that he had a weapon. And I

9 didn't know what it was.

10 And I wasn't -- you know -- going
11 to put my life in danger more than it already was -- you
12 know -- to scream, and make a whole bunch of noise, and
13 -- you know -- create a lot of racket so -- to upset him.

14 So I wasn't thinking about -- you
15 know -- screaming or doing anything. Because I figured
16 nobody would hear me anyway.

17 It was the middle of the night.
18 People were probably asleep. And I figured -- you know
19 -- they had maybe -- I know B.C. parents had been
20 drinking. So I figured they were pretty much out.

21 And I wasn't really thinking about
22 too much at that point just -- you know -- getting passed
23 that situation right that I was in.

24 Q. Okay. What happened next after y'all all got on
25 the ground?

TESTIMONY OF [REDACTED] Complaining Witness

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1 A. Uh -- When he asked us to empty our pockets, I put
2 my phone on the ground.

3 Uh -- [REDACTED] emptied the change out.

4 And the [REDACTED] proceeded to tell
5 him that he knew of a hotel where some college kids were
6 staying at and they had a lot of money.

7 He then asked me if I had any
8 money in the house that I was staying at.

9 And I said: No.

10 And after -- you know -- After --
11 I believe him and [REDACTED] went back and forth about the
12 college kids in the hotel for a minute maybe.

13 And then he told [REDACTED] and [REDACTED]
14 to stand up, and to walk the other way, and to not look
15 back.

16 Then he told me to stand up.

17 And he kind of patted me down to
18 see if I had anything on me. And he told me to get the
19 car.

20 So I got in the passenger side of
21 the car.

22 I don't remember if he opened the
23 door for me or if I opened it myself.

24 But I got in the car. And we rode
25 around.

TESTIMONY OF [Complaining Witness]

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1 He made a lot of turns.

2 I wasn't familiar with the area.

3 I don't know where we were at.

4 Uh -- He was -- He kept asking me
5 if I knew where we were; if I knew how to get around; and
6 I believe he might've asked me about that hotel where the
7 kids were staying at that [M.H.] had mentioned.

8 Uh --

9 Q. Tell me about that. What did [M.H.] and [R.B.] tell
10 him about that hotel?

11 A. I don't believe [R.B.] spoke directly to him. I'm not
12 sure.

13 But I know [M.H.] told them that
14 -- After he had asked us to empty our pockets, he asked
15 -- or he told him that he knew of a place where some
16 college kids were staying at that had a load of money.

17 Q. Did you know where these college kids were at?

18 A. No. I just believed that -- you know -- [M.H.] was
19 just making it up to get him to leave.

20 Q. Uh -- Did you know anybody else down here -- any
21 college kids down here?

22 A. No.

23 Q. So you got in the car -- or you ended up in the car?

24 A. Uh-huh.

25 Q. And he's driving around asking if you know where

1 you're at?

2 A. Uh-huh.

3 Q. What -- What's happening now?

4 A. He was kind of trying to make -- you know -- small
5 talk.

6 He was asking me my name.

7 Where I was from?

8 If I was down here on vacation?

9 Who I was staying with?

10 He asked me about M.H. [REDACTED] and

11 [REDACTED] R.B. who they were?

12 He asked me if one of them was my
13 boyfriend?

14 And then -- you know --

15 Q. Let me ask you this:

16 When you got in the car with him,
17 did you think he was under the influence of any drugs or
18 alcohol?

19 A. The -- I'm not sure if -- you know -- him, himself,
20 or it was the car; but it reeked of alcohol.

21 Q. Okay. And so he's driving around and talking to
22 you. Did you know where y'all were at when y'all were
23 driving around?

24 A. I had no idea.

25 Q. What did the car look like?

TESTIMONY OF Complaining Witness

575

1 A. It was -- The inside of it looked like it had like
2 red velvet seating.

3 The -- It looked -- you know -- a
4 pretty older car.

5 The radio in the dashboard was
6 just not -- It didn't look too modern to me.

7 Q. Okay. And the man that was in the car, what did he
8 look like?

9 A. I believe he was wearing a white doo-rag, a -- uh --
10 white tank top.

11 I'm -- I'm not sure as to the
12 shorts. I believe they were maybe gray.

13 It -- In the dark, they looked
14 like a dark color.

15 But in the light, it looked kind
16 of -- it looked like a lighter color.

17 Q. Was there anybody else in the car with y'all?

18 A. Not to my knowledge; no.

19 Q. Okay. When he got out of the car, was there
20 anybody else around except you, the two guys, and the
21 defendant?

22 A. No.

23 Q. Okay. Did he ever stop and pick anybody up?

24 A. No, not while I was in the car. No, he did not. Q.

25 Q. Okay. So -- uh -- what happens next? You're in

1 the car with him. He's talking to you.

2 You -- Do you have any idea where
3 he's taking you?

4 A. No.

5 Q. Okay. Did you talk to him?

6 A. I -- Not aside from asking them to take me back to
7 where he picked me up from and answering his questions --
8 you know -- just giving him short answers.

9 I wasn't really in the mood to
10 make conversation.

11 Q. Did you have your phone with you?

12 A. Yes I did.

13 Q. When you had the phone with you, did you try to call
14 the police?

15 A. No, I did not.

16 Q. Why not?

17 A. I didn't see if -- you know -- where that would get
18 anywhere.

19 It -- I was worried about my
20 safety.

21 And at that point I wasn't really
22 thinking about -- you know -- calling the police.

23 I didn't figure it would do me any
24 good. And I didn't want to upset him in any way.

25 So I just didn't call anyone

TESTIMONY OF [REDACTED] Complaining Witness

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1 except for when my phone rang.

2 Q. Okay. Tell the jury about when your phone rang?

3 A. [REDACTED] had called me a couple times, I believe,
4 already.

5 The maybe third time he called, he
6 -- Mr. Elliott told me to answer the phone and tell
7 [REDACTED] that:

8 I was on my way.

9 I was out of the car.

10 And I was walking back.

11 And I was safe.

12 [REDACTED] I'm guessing, didn't
13 believe me any kept asking me questions:

14 If I was all right?

15 Where I was at?

16 And I hung up on him, because he
17 seemed like he was getting pretty agitated.

18 So I believe -- you know -- a
19 short bit later [REDACTED] called me. And I did not answer
20 the phone.

21 I then turned my phone off.

22 And he asked me to hand him my
23 phone.

24 I'm not sure where he put it at.

25 I didn't pay any attention. I just handed it to him and

1 -- you know -- looked straight ahead.

2 Q. Okay. So you -- Did he ever tell you what -- what
3 to say when you were on the phone?

4 A. He -- Whenever [REDACTED] called me, he told me to
5 answer and tell him that I was safe and I was on my way
6 back to the beach house then.

7 Q. Okay. And did he ever let you use the phone after
8 that?

9 A. No.

10 Q. Okay. What happened next? When he was in the car
11 did have a gun or a knife on you?

12 A. No, he did not. I believe he had a weapon. But it
13 was not -- you know -- from what I could see, it wasn't
14 pointed towards me.

15 It wasn't -- you know -- anywhere
16 around me where I could immediately see it.

17 Q. So what happened once y'all were driving around in
18 the car after he takes your phone?

19 A. He was -- you know -- he continued to ask me the
20 questions -- just the same thing.

21 And he started getting a little
22 more personal with those questions; asking me about me
23 and [REDACTED] if we were dating; after I told him -- you
24 know -- who they were.

25 And he asked me how my parents

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1 felt about our relationship together; if they approved or
2 not?

3 And then, he asked me how he
4 thought my -- I believe -- I'm not sure if either he said
5 my father specifically or my parents in general; how they
6 would react if they found out that I had been with a
7 black man?

8 And I -- I believe my answer was:

9 It wouldn't be consensual; so I
10 don't believe that question needs to be -- even needs to
11 be asked.

12 Q. And what else did he say? Or did he say anything
13 else?

14 A. After that, he stopped somewhere. I don't know if
15 he just stopped in the middle of the road -- if he pulled
16 over somewhere. I'm not exactly sure.

17 He turned to me and asked me to
18 kiss him.

19 And I said -- you know:

20 If I do, will you let me leave?

21 And he said: Yes.

22 And at that point I was just
23 sitting there. And he leaned in and kissed me; and then
24 went back to driving; and we pulled off and started
25 driving again.

1 Q. So at that point did you ask him to get out of the
2 car?

3 A. I had asked him numerous times if he would let me go
4 back; if he would just drop me off and let me go back
5 home; which was -- I was referring to the beach house
6 that I was staying at.

7 Q. And what was he saying?

8 A. He said that he would take me home; that he wasn't
9 going to hurt me.

10 And he kept telling me not -- I
11 was not exactly full-on crying, but I was whimpering a
12 bit.

13 And he told me not to cry because
14 he wasn't going to hurt me (begins to weep slightly) and
15 that -- you know -- to calm down.

16 And I believe he even told me to
17 shut up a couple of times.

18 Q. Okay. Now, when you were in the car with him, did
19 he ever put his hands on you?

20 A. He asked me -- I'm not -- It was -- I'm not sure at
21 what point in time he --

22 Q. I'm not -- Don't -- Did -- Did he put his hands on
23 you?

24 A. Yes, he did.

25 Q. Where did he put his hands on you?

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1 A. In my crotch region down my pants.

2 Q. Okay. And at that point, did you have your clothes
3 on?

4 A. He had told me to remove my shorts before that. And
5 -- But -- uh -- I still had my underwear on.

6 Q. Okay. And did he touch you?

7 A. Yes he did.

8 Q. Did he penetrate you?

9 A. I don't believe so at that point; no.

10 Q. Okay. Did you say anything to him?

11 A. No, I did not.

12 Q. Okay. Was he threatening you at that point?

13 A. No. He just kept telling me that he wasn't going
14 to hurt me; that he was going to take me back; and that
15 -- not to be upset because I was going to be all right.

16 Q. Did you believe that?

17 A. No.

18 Q. Okay. At that point when that was going on did you
19 know where you were?

20 A. No, I did not.

21 Q. Did you have your phone at that point?

22 A. No, I did not.

23 Q. Okay. What happened next?

24 A. We drove around a bit more. And he continued to
25 ask me if I knew I was at.

1 Uh -- I noticed that I believe we
2 might have went over a bridge or something. I know I
3 saw water.

4 And he was making a lot of turns,
5 so I guess he wanted to get me -- you know -- as lost as
6 possible.

7 I guess -- I'm not sure he didn't
8 believe me when I told him that I didn't know where I was
9 at.

10 And -- uh -- eventually he
11 stopped.

12 And I believe we went left into
13 what I believe was a boat ramp.

14 There was a small parking lot. Uh
15 -- There was a couple of lights.

16 Uh -- The area itself was very
17 well lit.

18 There was -- you know -- condos
19 around. There wasn't really hotels. It was just a
20 bunch of condos.

21 And he then told me to get out of
22 the car.

23 And I asked him if I could put my
24 pants back on; and he said: Yes.

25 And I started to walk around the

TESTIMONY OF [REDACTED] Complaining Witness

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1 back of the car. And he told me to go back over there.

2 And at that point, he walked
3 around the back of the car. He opened the door and told
4 me to bend over and put my hands in the seat.

5 Uh -- He then penetrated me anally
6 first, then vaginally. And I do not believe he was
7 erect. And I do not believe he ejaculated.

8 Q. What made you think that?

9 A. Uh -- The whole incident lasted at most maybe two
10 minutes.

11 And then he abruptly stopped and
12 said:

13 I can't do this to you baby.
14 And told me to put my clothes back
15 on.

16 Then I asked if I could leave; and
17 he said: Yes.

18 He told me to walk the -- up the
19 opposite way, which was going right out of the parking
20 lot, and not to look back.

21 And --

22 Q. During -- During that time, were you saying anything
23 to him?

24 A. No.

25 Q. Okay. Before that time were you saying anything to

1 him?

2 A. Uh -- Aside from:

3 Can you take me home?

4 Can I leave?

5 Can I put my pants back on?

6 And just answering the questions
7 that he was asking me.

8 Q. Was he showing you any sign he was going to let you
9 out of that car?

10 A. Not while we were in it; no. And I didn't believe
11 that he was going to let me leave -- after the fact --
12 until he told me to leave

13 Q. Okay. Did you recognize the area y'all were
14 stopped at?

15 A. Not at all.

16 Q. Did he appear to recognize the area?

17 A. Uh -- I'm not -- He would stop at certain points and
18 back up and turn.

19 I'm not sure if he maybe just
20 missed a turn or if he knew.

21 I wasn't really paying attention
22 to where we were going in -- at all.

23 So I can't say as to whether he
24 was or was not familiar with the area.

25 Q. Now I'd like to ask you a couple more questions

TESTIMONY OF Complaining Witness

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1 about what happened at the boat ramp.

2 A. Uh-huh.

3 Q. You said that he told you to stay there when you
4 were trying to walk away from the car; is that right?

5 A. Yes.

6 Q. At that point, you had your clothes on?

7 A. Yes.

8 Q. And he told you to do what next?

9 A. He told me -- When -- After he told to walk back
10 around to the passenger side of the car, he told me to
11 bend over.

12 That was after he opened the door.

13 Q. During this time, did it ever occur to you, or did
14 you ever think about trying to scream or run?

15 A. No, I did not.

16 Q. Okay. So did you comply with what he asked you to
17 do?

18 A. Yes, I did.

19 Q. Okay. Now were any of your clothes removed?

20 A. I believe he asked me to pull down my pants and my
21 underwear when I got back over to the passenger side of
22 the car.

23 Q. And did you do that?

24 A. Yes, I did.

25 Q. Okay. Did you take off any other of your clothes?

1 A. No, I did not.

2 Q. At any point during all of this, did you have an
3 shoes on?

4 A. No, I did not.

5 Q. So when you got in that car, you didn't have shoes
6 on?

7 A. No.

8 Q. When you got out, you didn't have shoes on?

9 A. No.

10 Q. Okay. At that point, did you have any idea where
11 your phone was?

12 A. I didn't see where he put it. I had no idea at
13 all.

14 I wasn't paying attention to what
15 he did with it.

16 I -- I don't want to say "I
17 assume," but I -- I just don't know at all. I have
18 absolutely no idea what he had done with it.

19 Q. Okay. But you knew at that point you didn't have
20 your phone?

21 A. Yes; I did not have my phone.

22 Q. Okay. Now he -- he -- Did you take your own pants
23 off and underwear at that point when you were standing by
24 the car?

25 A. Yes.

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1 Q. Okay. And did you bend over into the car?

2 A. Yes.

3 Q. Okay. So the door was open?

4 A. Yes.

5 Q. Okay. Now did he say anything to you before he
6 assaulted you at that point?

7 A. Aside from telling me to remove my pants and
8 underwear and to bend over; no -- and what he said
9 afterwards; no.

10 Q. And did he penetrate you?

11 A. Yes, he did.

12 Q. Where did he penetrate you first?

13 A. Anally first.

14 Q. Okay. And how long did that last; or do you
15 recall?

16 A. I do not recall how long that specific event lasted.

17 Q. Okay. When that was happening, was he touching you
18 anywhere else?

19 A. I don't believe so. I was kind of -- I was crying
20 and trying to block that out -- what was going on and --
21 you know --

22 Q. Okay. Did he ever say anything to you about
23 crying; or did he ever say anything?

24 A. Not during that time; no. Whenever we were in the
25 car, he had told me not to cry --

1 Q. And --

2 A. -- that I was going to be all right and he wasn't
3 going to hurt me.

4 Q. Okay. Now after he penetrated you anally, did he
5 penetrate you anywhere else?

6 A. Yes.

7 Q. Where?

8 A. Vaginally.

9 Q. Okay. And during that time, did he say anything to
10 you?

11 A. No.

12 Q. Did he touch you anywhere else?

13 A. I don't believe so.

14 Q. At that time, did you see a gun or weapon that he
15 was showing to you?

16 A. No, I did not.

17 Q. Now you told this jury -- To your knowledge, was he
18 able to ejaculate?

19 A. No; not to my knowledge.

20 Q. Okay. And tell the jury as much detail as you can
21 about what you felt when this was going on?

22 A. I wasn't -- I was kind of blocking all of it out.
23 So I knew I had an idea; but I didn't -- It wasn't -- My
24 entire body -- I kind of just lost feeling in general.

25 And I was trying to -- (begins to

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1 weep again) -- not to think about what was happening
2 anyway.

3 (WHEREUPON: The Bailiff hands the
4 witness Kleenex.)

5 WITNESS:

6 Thank you.

7 I don't want to say it wasn't
8 painful. But it didn't feel like -- you know -- much was
9 happening.

10 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

11 Q. But did he penetrate you?

12 A. Yes, he did.

13 Q. All right. And then what did he say right after
14 this happened?

15 A. He stopped and said:

16 I can't do this to you baby.

17 And told me to -- I asked -- I
18 believe I -- I may have asked -- or he told me to put my
19 pants back on.

20 And then he told me to walk off.

21 Q. Okay. At that point, did he ever give you your
22 phone back?

23 A. No, he did not.

24 Q. Did he allow you to put your pants on?

25 A. Yes.

1 Q. Did he say anything else to you?

2 A. Aside from -- you know -- walk off the other way;
3 no, he did not.

4 Q. At that point how were you acting?

5 A. I was -- uh -- I don't want to say excited. I was
6 extremely happy that I was able to get away.

7 I was scared -- uh -- nervous;
8 anxious to speak to anyone so I could get help to find --
9 you know -- my way back to where I was supposed to be; or
10 have someone come get me.

11 Q. Okay. Did you recognize the area you were in?

12 A. Not at all.

13 Q. Did you know how to get back to your house from that
14 area?

15 A. No.

16 Q. Was he following you at any point? Or did you just
17 get to walk off?

18 A. After I walked off, he got back in the car and he
19 pulled up behind me.

20 I guess I walked maybe a couple of
21 blocks while he was following behind me.

22 He pulled up next to me and told
23 me to run the -- to the right, and not to turn around and
24 look back at him.

25 Q. Uh-huh.

TESTIMONY OF **Complaining Witness**

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1 A. And I believe I asked if I could have my phone back.

2 And he said: Yes; and then told me
3 to run and then just drove off without giving me my phone
4 back.

5 Q. Okay. So did you take off running?

6 A. Yes, I did; in the right direction.

7 Q. Okay. And which direction was he going; do you
8 remember?

9 A. I believe he went straight.

10 Q. Now, did you ever see his car again that night?

11 A. No. After that; no, I did not.

12 Q. Okay. Were you ever able to get any way to a
13 phone, or to anybody?

14 A. Uh -- After I walked around for quite a while; I was
15 knocking on -- you know -- the doors of people's condos.

16 No one answered.

17 And I was -- I wasn't exactly
18 walking around. I was more like sprinting around the
19 area.

20 And I eventually -- I believe the
21 runner ran up behind me.

22 And as he was going across the
23 street, I asked him if he had a phone that I could use?

24 And I told him that I had been
25 kidnapped and that I didn't have a phone; and I needed to

1 get to one to call my boyfriend.

2 And he said that he had a phone
3 back at his condo; that he hadn't brought it with him.

4 So we went back to his condo,
5 where he told me to sit outside on the steps while he
6 went inside and got his cell phone.

7 And I called [REDACTED] M.H. and -- long
8 enough for him to hear my voice, and to know that I was
9 okay.

10 (Begins to weep again.)

11 And -- uh -- a police officer got
12 on the phone and asked me where I was at.

13 And I had no idea.

14 So I just handed the phone to the
15 man that let me use it.

16 And he told them where I was at
17 told him where I was at.

18 And -- uh -- maybe -- I'm not sure
19 exactly how long it was until they got there and picked
20 me up and took me to the hospital.

21 Q. Okay. Now, did you know this guy that was running
22 behind you?

23 A. No, I did not.

24 Q. Had you ever seen him before?

25 A. No.

TESTIMONY OF Complaining Witness

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1 Q. Okay. When you called -- When you got the phone,
2 why didn't you call the police first?

3 A. Because I didn't want to have to go through
4 everything else that I knew I would have to.

5 I didn't want to have to -- you
6 know -- explain to anybody else would had happened.

7 And I didn't -- It was very early
8 in the morning. I hadn't slept. I just wanted to --
9 you know -- find some comfort with somebody that I knew
10 and that I cared about.

11 And I didn't want to have to deal
12 with anything else that night.

13 So that's why I called M.H.
14 first.

15 That was my first instinct; to
16 just call him, and to have him come and pick me up.

17 Q. Okay. Now, were you able finally to make contact
18 with the police?

19 A. Yes.

20 Q. And you said the guy that was -- uh -- running; you
21 told him what happened.

22 A. I told him -- I don't believe I should shared the
23 details.

24 I -- I told him that I was
25 kidnapped, and that I'd been dropped out, and I had no

1 idea where I was at.

2 Q. What you told that guy, is that the same thing
3 you're telling us here?

4 A. Yes.

5 Q. Okay. Did a police officer ever make it to you
6 that night?

7 A. Yes.

8 Q. Did you get in the car with that police officer?

9 A. Yes, I did.

10 Q. Okay. Now did you talk to the police officer about
11 what happened that night?

12 A. Yes, I did.

13 Q. Okay. Did you convey to him what had happened to
14 you that night?

15 A. Yes.

16 Q. Okay. What you told him, is that same thing that
17 you're telling us today?

18 A. Yes, it is.

19 Q. Now when he picked you up, did you know where you
20 were once y'all started driving and you were in the car
21 with the officer?

22 A. No. Every -- Everything was extremely unfamiliar
23 to me.

24 Q. Okay. Did the officer ask you any questions as to
25 whether or not you were familiar with the area?