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VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM HORRY COUNTY

Larry B. Hyman, Jr., Circuit Court Judge

ORIGINAL

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)

TESTIMONY OF **Complaining Witness**

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1 A. I don't believe so.

2 Q. Okay. Did you notify or tell the officer that you
3 didn't know where you were?

4 A. I believe I told him that I was down on vacation
5 with a friend. I'm not exactly sure. It's been quite a
6 while. So I couldn't tell you exactly what I said to
7 him.

8 Q. Okay. Where did the officers take you?

9 A. He took me to the hospital. I'm not sure what
10 hospital it was. But he took me straight to the
11 hospital.

12 Q. Okay. When you at the hospital, did you ever come
13 in contact with another officer?

14 A. I can't say for sure. I was half asleep. I was --
15 you know -- in the hospital bed half asleep.

16 I know -- uh -- I believe -- uh --
17 a woman named Krista, I believe she was an advocate; and
18 she was in the hospital room with me -- you know --
19 talking to me; because I couldn't have any Uh -- My
20 father wasn't down to the beach yet.

21 And according to what I've heard,
22 the police wouldn't let **MH** leave to come to the
23 hospital to see me.

24 Q. Okay. Now did you talk to an officer the next day?

25 A. Yes, I did.

TESTIMONY OF **Complaining Witness**

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1 Q. Okay. Where did you talk to him at?

2 A. At the police station. I'm not sure exactly what
3 the name of it is or where it's at.

4 Q. Okay. Now was that the afternoon of when this
5 happened?

6 A. Yes it was.

7 Q. So all this happened early morning between --
8 sometime between 1:00 and probably five o'clock in the
9 morning?

10 A. Yes.

11 Q. Okay. And then you talked to that officer at the
12 police station that afternoon?

13 A. Yes.

14 Q. Okay. Now did you tell him what had happened?

15 A. Yes, I did.

16 Q. Okay. What you told him that afternoon, is that
17 the same thing that you're telling us today?

18 A. Yes it is.

19 Q. Okay. Now, the defendant in this case, have you
20 ever met him before?

21 A. No I have not.

22 Q. Okay. To your knowledge, had anybody down there,
23 **M.H.** or **R.B.** met him before?

24 A. No.

25 Q. Okay. Have you ever seen him since?

TESTIMONY OF **Complaining Witness**

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1 A. Oh, since the incident?

2 Q. Yes. I mean, has there ever been any contact
3 between you and him after that day?

4 A. No, aside from --

5 Q. Okay. Except with this; okay. Now, when you
6 talked to the officer that afternoon, did you tell him
7 exactly what you told us today?

8 A. Yes, I did.

9 Q. Okay. When were you raped that morning? Do you
10 know?

11 A. Uh -- I just remember looking at the clock while I
12 was in the car with him and it being around 3:30.

13 I -- I didn't have my phone at
14 that point. I didn't -- I wasn't thinking about --
15 Everything seem like -- It seemed like a lifetime.

16 But I couldn't tell you what time
17 exactly it was.

18 Q. Did you see anybody else around or out that night?

19 A. No; aside from the runner, no, I did not.

20 Q. Okay. Was it still dark outside when you got out
21 of that car?

22 A. Yes.

23 Q. Did you even see any traffic on the roadway at that
24 night?

25 A. No.

1 Q. **Complaining** -- uh -- when that officer picked you up,
2 where did he take you?

3 A. Straight to the hospital.

4 Q. Okay. And while you were in the car with the
5 defendant, did he ever strike you, or --

6 A. No, he did not.

7 Q. -- hit you, or anything like that?

8 A. No.

9 Q. Did you -- Did he ever pull a knife or a weapon on
10 you?

11 A. No.

12 Q. The entire time you were around him, did he ever
13 intimidate you with a weapon, or hit you, or strike you
14 in any kind of way?

15 A. No, he did not.

16 Q. Okay. When you got to the hospital, what did they
17 do?

18 A. Uh -- I walked in. It's -- I'm guessing someone
19 had already called.

20 And I was in the hospital bed for
21 a pretty good while until someone came in there and
22 performed a rape kit.

23 Q. And where did you go right after you left the
24 hospital?

25 A. **B.G.** mother, Penny, came and picked me up. And

TESTIMONY OF [REDACTED]

599

1 we went straight back to the beach house.

2 Q. And what time did your family finally make it down
3 there?

4 A. I can't be sure as to when. I'm -- I don't believe
5 I even got out of the hospital until around maybe 10
6 o'clock that morning.

7 But I cannot be sure at all.

8 I was not looking at the clock.

9 I wasn't paying attention to the
10 time.

11 Q. Okay. And do you remember about how long it was
12 between you when you left the hospital and when you
13 talked to Detective Abercrombie?

14 A. Uh -- I had to drive back to the beach house. I
15 then sat and talked with [REDACTED] for a little while.

16 My parents showed up.

17 I packed my things.

18 And then, we went to the police
19 station. And it could've been an hour or so.

20 But I -- Like I said, I cannot be
21 sure.

22 MS. LIVESAY:

23 Okay. No further questions, Your
24 Honor.

25 THE COURT:

1 THE COURT:

2 Counsel?

3 MR. HAZZARD:

4 Thank Your Honor.

5 CROSS-EXAMINATION BY MR. HAZZARD:

6 Q. Ma'am -- uh -- the prosecutor asked you whether or
7 not everything you've said here today is what you said
8 that night and the following morning; is that correct?

9 A. Yes sir.

10 Q. All right. Now this whole thing about **M.H.**
11 telling Mark something about some college kids with a lot
12 of money; you never told Detective Abercrombie that?
13 And you never told Officer Wells about that; did you?

14 A. I -- I'm guessing that if you say that I didn't,
15 then if you have that statement in front of you, then,
16 no; I guess I did not.

17 Q. Okay. So we know that's a little bit different.

18 And you never told Detective
19 Abercrombie or Officer Wells that when you were on the
20 phone with **M.H.** that Mark asked you to tell him
21 anything; did you?

22 A. I have just recently watched the videotape from me
23 talking to Detective Abercrombie --

24 Q. Hmm.

25 A. -- and yes, I did mention that he told me to tell

TESTIMONY OF **Complaining Witness**

601

1 **M.H.** that I was safe and I was out of the car and
2 walking back to the beach house.

3 So yes, I did mention that.

4 Q. Okay. So they just forgot to put in the report,
5 then?

6 A. Uh -- Yes.

7 Q. Okay. Fair enough. Now, the prosecution was good
8 enough to provide me with your telephone records. And
9 they indicate that after you got -- or say that you got
10 in the car with Mark -- uh -- by force, that there is a
11 call from **M.H.** to you at 3:34 AM and 43 seconds; and
12 that this call was for a minute and a half.

13 Now exactly what are you talking
14 to someone on the phone about for a minute and a half
15 when you are in an abduction situation, ma'am?

16 A. He told me to answer the phone and tell **M.H.** that
17 I was on my way back; that I had exited the car and I was
18 walking back to the beach house and that I was safe.

19 Uh -- I maybe repeated it a couple
20 of times. And **M.H.** was panicking. He continued ask
21 me questions:

22 If I was all right.

23 Where I was at?

24 And I didn't know.

25 Q. Hmm.

1 A. And he was just rambling on. So eventually I hung
2 up the phone on him.

3 Q. Uh-huh. Okay. That sounds more like the 25
4 second conversation that was the first one before that;
5 or, was it not?

6 A. I may have answered -- He kept calling, so I may
7 have pushed "talk" on the phone, and then hit "end."

8 I know I spoke to him once.

9 Q. Uh-huh. Okay. All right. Now you indicated
10 that you were standing out there with [M.H.] [R.B.] and
11 [B.C.] correct?

12 A. Yes.

13 Q. And [B.C.] was kind of like your co-conspirator in
14 this whole thing, because she knew that [M.H.] and [R.B.]
15 were coming down. And she helped keep that information
16 from her parents; correct?

17 A. Yes, she did keep the information from her parents;
18 yes.

19 Q. Okay. And on the date in question, both you and
20 [B.C.] were 14; is that correct?

21 A. Yes. Uh -- [B.C.] -- I know -- Her birthday was, I
22 believe, the day that we came down to the beach.

23 So I believe she was 15.

24 Q. Okay. So you were 14 at the time? She was 15?

25 A. Yes.

TESTIMONY OF **Complaining Witness**

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1 Q. And **M.H.** and **R.B.** were both at least 17; correct?

2 A. Yes, they were both 17.

3 Q. Okay. Now you told the jury that when Mark drove
4 by, that there was some kind of conversation.

5 Well first, let's talk about the
6 area.

7 Uh -- There's no question that
8 there is lighting in the area, because you can see a
9 light pole in one of those pictures the State has put in
10 evidence; correct?

11 A. Yes, it is -- There's a couple of streetlights. But
12 it is still very dark outside --

13 Q. With a couple --

14 A. -- regardless -- regardless of the streetlights.

15 Q. With a couple of streetlights, it's still dark
16 outside?

17 A. Yes, it is. It's very lightly lit. It's not a
18 well lit area I wouldn't say.

19 Q. Okay. Well, these aren't personal streetlights
20 we're talking bout? We're talking about heavy-duty
21 streetlights that the power company provides?

22 Is that correct?

23 A. Yes, but as to if they were on that night or if they
24 had went out, I couldn't tell you.

25 But I know from experience from

1 being there that it was not a very well lit area.

2 Q. Uh-huh. Okay. So now the power company didn't do
3 their job and the lights went out?

4 A. I'm not saying that. I'm just -- I'm saying that I
5 -- I know that it's not an extremely well lit area.

6 I don't know the power of the
7 lights, if all of them were even on.

8 But I know that it was still
9 rather dark to me.

10 Q. Okay. Now, you -- you say Mr. Elliott got out of
11 the car and that he had what appeared to you to be a
12 weapon?

13 Is that correct?

14 A. Yes.

15 Q. Okay. And that he somehow was holding what you
16 thought was a gun; but that somehow he was holding it
17 behind his right hand and hiding it with his forearms?

18 A. Yes.

19 Q. Okay. Uh -- And then, once he did that, he what;
20 very quietly and solicitously said:

21 The three of you need to come over
22 here and lay down in the street?

23 A. He did not yell. But he did not whisper. It was
24 a normal tone.

25 Uh -- He seemed a bit agitated, I

TESTIMONY OF [REDACTED] Complaining Witness

605

1 would say.

2 But it was -- you know -- a normal
3 speaking voice for a conversation with someone.

4 He didn't yell.

5 Q. Uh-huh.

6 A. And he told us to lay down on the ground and empty
7 our pockets.

8 Q. Uh-huh. Okay. And so you then put down the one
9 thing you had, which was your cell phone; correct?

10 A. Yes.

11 Q. But yet when he abducted you, he let you pick up
12 that one thing that would give you communication to the
13 outside world?

14 Is that your testimony?

15 A. I picked it up when I stood up.

16 Q. Uh-huh.

17 A. And I don't know if he noticed it. I didn't make
18 light of the fact that that was the only thing I had on
19 me.

20 Q. Uh-huh.

21 A. So if he knew that I had it with me or not when I
22 got into the car, I can't say.

23 Q. Okay. But at some point, once you got in the car,
24 obviously he knew that you had it on you, because you
25 were talking [REDACTED] right?

1 A. Because it was ringing and he told me to answer it;
2 yes.

3 Q. Yeah. And at any point, did he say:

4 Look here, throw that out the
5 window.

6 A. No, he did not tell me to throw it out of the
7 window. He asked me to give it to him.

8 Q. He asked you to give it to him?

9 A. (Nods in the affirmative.)

10 Q. Okay. All right. So, now let's go back to the
11 abduction, as you call it.

12 Uh -- So you're on the ground and
13 -- The three of you are on the ground -- laid out on the
14 ground?

15 A. Yes.

16 Q. And then what happened?

17 A. Then he asked us to empty our pockets.

18 Q. Okay.

19 A. I did not have pockets.

20 Q. Uh-huh.

21 A. I laid my phone cell phone on the ground next to me.

22 Q. Uh-huh.

23 A. [REDACTED] didn't empty his pockets. He was -- you
24 know -- kind of sitting up, trying to talk to him --

25 Q. Hmm.

TESTIMONY OF [REDACTED] Complaining Witness

607

1 A. -- telling him that he knows a place where college
2 kids were staying at; that they had money.

3 Q. Uh-huh.

4 A. [REDACTED] emptied out some change --

5 Q. Uh-huh.

6 A. -- on the ground, and said that's all that he had.

7 Q. Hmm.

8 A. And he proceeded to ask me if there was any money in
9 the house --

10 Q. Hmm.

11 A. -- that I was staying at? And I said: No.

12 Q. Uh-huh. Okay. So now, your testimony is:

13 He was going to roll up in the
14 house and talk to the [REDACTED] Parents.

15 A. I can't tell you what he was going to do. Uh -- I
16 don't know what his plans were at that point.

17 Q. Hmm.

18 A. I know -- All I know is he asked me if there was
19 money in the house?

20 Q. So your testimony then is, this man was looking for
21 money?

22 A. I -- I'm guessing so, because he asked us to empty
23 our pockets and then asked me if there was money in the
24 house.

25 So, I'm guessing yes, that's what

1 he was after -- was money.

2 Q. And you didn't have any money?

3 A. No, I did not.

4 Q. Didn't know anybody who had any money?

5 A. I knew that -- uh -- I didn't have money on me.

6 Q. Yes, ma'am?

7 A. I did have money in the house. But I told him no,
8 for fear of him running in the house and endangering the
9 lives of the three people that were in there --

10 Q. Yeah.

11 A. -- that had no knowledge of what was going on.

12 Q. Okay. So based on your testimony then, to his
13 knowledge -- this person who's looking for money -- who
14 says they're all about finding money -- they're talking
15 to one person who definitely, to his knowledge, has no
16 money. And that's you; right?

17 A. Yes.

18 Q. Okay. And to his knowledge, you don't know where
19 any money is?

20 A. Yes.

21 Q. Right?

22 A. (Nods in the affirmative.)

23 Q. Now, according to you, [REDACTED] has told him:

24 Dude, there's this place where
25 these college kids are. You know, I can probably take

TESTIMONY OF **Complaining Witness**

609

1 you there. And you can get all the money you want.

2 Right?

3 A. Yes.

4 Q. They got a lot of money; okay. But this person
5 that you say wanted money, he isn't interested in that;
6 according to you?

7 A. I'm -- I'm not exactly sure what you mean.

8 Q. Well, your testimony has been that:

9 Rather than Mark passing by and
10 y'all asking him about drugs when he asked y'all about
11 directions; that he starts his conversation, get's you --
12 puts you down on the ground. And what he wants is money.

13 He wants so much money, according
14 to you, that he's asking:

15 Is there money in the house?

16 Do the people in the house have
17 money?

18 Correct?

19 A. I did not ask for drugs. No one asked for drugs.

20 We didn't speak to him at all
21 until he stopped and asked us where he was; and then
22 proceeded to ask for directions.

23 So, no; there was no exchange of
24 any type of talk about drugs at all --

25 Q. Hmm.

TESTIMONY OF [REDACTED] Complaining Witness

610

1 A. -- between any of us.

2 Q. Yes, ma'am. Yes ma'am. You indicated that you
3 and [REDACTED] had a little argument about something.

4 Isn't that correct?

5 A. Yes.

6 Q. Okay. And that [REDACTED] and [REDACTED] took off?

7 Is that correct?

8 A. Yes.

9 Q. They took off?

10 A. (Nods in the affirmative.)

11 Q. Okay. Now your testimony, and I believe [REDACTED]
12 testimony, is that:

13 They even knew less about the area
14 than you did.

15 Correct?

16 A. Yes.

17 Q. You know, they had just driven down that afternoon?

18 A. Yes.

19 Q. Had to get directions to get there?

20 A. (Nods in the affirmative.)

21 Q. But, when y'all have this argument, they take off;
22 and they go right where?

23 Right to a hotel and motel.

24 Is that correct?

25 A. Uh -- According to what [REDACTED] said yesterday, yes.

TESTIMONY OF [REDACTED] Complaining Witness

611

1 I did not ask where he went.

2 So according to what [REDACTED] said
3 yesterday, yes.

4 If he says that they went to a
5 hotel parking lot, then I'm assuming that they did.

6 Q. Yes, ma'am. Now, let's get back to the money
7 issue.

8 You're down on the ground.

9 And you -- Well, you don't have
10 any pockets. All you've got is your cell phone, which
11 he allows you to keep.

12 A. (Nods in the affirmative.)

13 Q. Your testimony is that whatever money there is, he
14 doesn't take; correct?

15 A. It's only loose change.

16 Q. Okay.

17 A. So, no, I don't believe he took it.

18 Q. Okay. And did he ever search [REDACTED] pockets or
19 [REDACTED] pockets looking to see if they were holding out
20 on him?

21 A. No, he did not.

22 Q. All right. And at some point then, I guess, he
23 tells the three of you to get up?

24 A. He tells [REDACTED] and [REDACTED] to stand up.

25 Q. Okay. So at this point, you're still on the

1 ground?

2 A. Yes, I am.

3 Q. Okay. And then what did he tell [M.H.] and [R.B.]
4 to do at that point?

5 A. To walk the other way and not to turn around and
6 look back.

7 Q. To walk the other way?

8 A. Yes.

9 Q. Okay. Where were you and him and [M.H.] and [R.B.]
10 at that point?

11 The four of you in relationship to
12 each other, where were you, according to your story?

13 A. I was not looking at [M.H.] and [R.B.] I was still
14 on the ground.

15 Q. Uh-huh.

16 A. I'm assuming they walked the other way like he told
17 them to.

18 Q. Hmm.

19 A. I was facing the back of the car. He was standing
20 on what would be the left side of the car near the tail
21 light over there.

22 And I was still on the ground, I
23 believe, closer to the right side of the car.

24 Q. Was the car headed north or south ma'am?

25 A. Uh --

TESTIMONY OF **Complaining Witness**

613

- 1 Q. Well, let me ask you this way -- a simple way.
2 Based on this house here -- That's
3 -- That's the house you were staying with them for -- I'm
4 looking at State's Exhibit Number 5.
5 A. Yes.
6 Q. Okay. That's the house?
7 A. Yes.
8 Q. All right. Was Mark's car door close -- face --
9 closest to the house or away from the house, ma'am?
10 A. Closest to the house.
11 Q. Okay. So the car's heading south?
12 A. I'm guessing -- I'm not good at the direction. If
13 that's what you say, then, yes.
14 Q. Okay. And you're saying that he tells them to walk
15 away. He's standing closer to the house. You're on the
16 other side of the car in the street?
17 A. Yes, I was behind the car on the right side of it
18 laying down in the street, yes.
19 Q. Okay. And so he left you laying in the street as
20 he walked around to the other side of the car closer to
21 the house?
22 A. He had never actually walked over to my side of the
23 car at that point. He had not. He had stayed on the
24 left side where he had been the entire time at that
25 point.

1 Up until then, when he told them
2 to walk away, he had not moved from that spot.

3 Q. So your testimony then is:

4 He pulls up; opens his car door.

5 When he gets there, the three of
6 you are in the yard; correct?

7 A. We were at the very end of the driveway.

8 Q. Or at least the two of you were you and M.H.
9 right?

10 A. Yes.

11 Q. And R.B. was farther back closer to the house;
12 right?

13 A. I'm assuming so. I wasn't paying attention to what
14 he was doing.

15 Q. Okay. So you just know he wasn't up there near the
16 street with you?

17 A. He was further back at least. I know he was not
18 right -- you know -- right beside us.

19 So we had to have been behind us
20 somewhere.

21 Q. Fair enough. So now at this point, then, when Mark
22 pulls up, based on your story, y'all are basically in the
23 same spot as far as with relation to the yard?

24 A. (No response.)

25 Q. His -- His car door -- His -- His driver's door is

TESTIMONY OF Complaining Witness

615

1 right here. The yard's here. The house is there.

2 You and [REDACTED] are standing here
3 where you are?

4 So y'all are pretty close at that
5 point; right?

6 A. Uh -- When he stopped --

7 Q. Uh-huh.

8 A. -- uh -- and first asked us for directions, yes, he
9 was closer.

10 But after that, he pulled up quite
11 a few feet and stopped and got out of the car.

12 So his car was closer to the house
13 next to them --

14 Q. Uh-huh.

15 A. -- instead of the driveway of the house that I was
16 staying at.

17 Q. So he was past the driveway and practically in front
18 of the house that's south of Beach House.

19 A. It's -- The driveway, from what I remember, is a
20 very wide driveway.

21 Q. Hmm.

22 A. So, he was probably somewhere in there. I --
23 Again, it was dark and I wasn't exactly paying attention
24 to where he was placing his car at when he was getting
25 out of it.

1 Q. Okay. But still, him getting out of the car, that
2 places him basically stepping into the driveway or
3 stepping into the yard; correct?

4 A. Uh -- I'm -- Sure. I'm not sure --

5 Q. Now ma'am, I ain't asking you to agree with me just
6 because I want to hear it.

7 I want you to testify to the
8 truth.

9 That's what we're trying to get to
10 here is the truth.

11 A. I understand that.

12 Q. So do you recall or do you not recall?

13 A. I do not recall exactly. No, I don't.

14 Q. Okay. Fair enough. So now, after he gets them up
15 and walking away -- Well, let me get this right now.

16 He gets out of his car door, which
17 is closer to the house.

18 So he's basically stepping into
19 the yard.

20 You and M.H. are basically in
21 the yard; correct?

22 A. Yes.

23 Q. So then, is it your testimony that he tells you
24 basically to go around the car and get in the street?

25 A. Yes, he told us to lay on the ground. So -- I

TESTIMONY OF **Complaining Witness**

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1 don't believe he specifically said:

2 Get in the middle of the street
3 and lay on the ground.

4 But that's where we ended up, was
5 behind the car, in the street, laying down.

6 Q. So instead of just getting whatever you had right
7 there when you're basically beside him, or having you lay
8 down right there were you are, your testimony, then, is:

9 Somehow, with his mystery weapon,
10 he marches you out to the street?

11 But no; he didn't march you;
12 right? Because he never left his side of the car; right?

13
14 A. Right.

15 Q. Okay. So, now the three of you are in the middle
16 of the street, according to you and your story.

17 And you then can say that he tells
18 them to get up and -- and hit the road; correct?

19 A. Yes.

20 Q. Did they have a way -- Which -- Which direction did
21 they head?

22 Well, let me ask you this:

23 Uh -- You say you're not good with
24 directions.

25 Did they walk away towards where

1 the front of the car was, or walk past the front of his
2 car, according to your story.

3 Or, did they walk away past the
4 back of his car --

5 A. They --

6 Q. -- according to your story?

7 A. They walked away from the back; opposite from the
8 way that he drove off with me in the car.

9 They went the opposite way.

10 Q. Okay. So they went headed a little bit north;
11 correct?

12 A. If you're saying that the other way is south, then,
13 yes, that would've been north.

14 Q. Okay. Imagine you are standing there facing the
15 house like that photograph.

16 Are you with me?

17 A. Yes.

18 Q. Okay. They went to the left; is that correct?

19 A. Yes.

20 Q. All right. Fair enough. Now -- So Mark is still,
21 according to your story, he's still over on the driver's
22 side near the back of his car.

23 And you are, according to you, on
24 the ground over near the passenger side out in the
25 street.

TESTIMONY OF **Complaining Witness**

619

1 And at this point, **M.H. [REDACTED]** and
2 **R.B. [REDACTED]** are walking away from the back of Mark's car.

3 Is that correct?

4 A. Yes.

5 Q. Okay. And based on your story, what does -- what
6 does Mark do then?

7 I'm -- I'm -- What does he do
8 then?

9 A. He asked me to stand up.

10 Q. Okay.

11 A. And he patted me down.

12 Q. Okay. Now, where were you standing when he patted
13 you down?

14 A. The same place I was laying at. I just stood
15 directly up there. And he patted me down, I guess to
16 see if I had anything on me.

17 Q. Okay. Let's back up. So at some point -- and I'm
18 going to apologize to you in advance, because I'm trying
19 to get every step of what occurred.

20 A. Uh-huh.

21 Q. And I realize that you want to tell us what you
22 think is important.

23 And what you think is important
24 may not be as important as what I do.

25 A. I understand that.

1 Q. So I may ask you to stop and come back; okay.

2 A. Okay.

3 Q. I appreciate that, ma'am.

4 So, where we left off is:

5 Mark's over by the driver's side

6 -- uh -- tail light of his car basically; correct?

7 A. Yes.

8 Q. And, from over there, he then orders you to stand
9 up?

10 A. Yes.

11 Q. Okay. Doe he ever move from that spot?

12 A. He walks over --

13 Q. He walks over?

14 A. -- to where I am --

15 Q. Uh-huh.

16 A. -- and pats me down.

17 Q. Okay. And which direction were you facing when
18 this allegedly occurred?

19 A. I believe I was kind of facing towards the house --
20 the front of the house.

21 Maybe like, if the house was right
22 here, I was standing like this.

23 Q. Okay.

24 A. So, basically, looking at the trees beside of the
25 house, in between the two driveways.

TESTIMONY OF Complaining Witness

621

1 Q. Okay. And which direction, according to you, is
2 Mark facing?

3 A. Facing towards me.

4 Q. Okay.

5 A. Started patting me down.

6 Q. Okay. So now based on where Mark is facing, am I
7 correct in stating that M.H. and R.B. according to
8 you, are now at his back?

9 A. They walked that way. He came towards me.

10 Q. Uh-huh.

11 A. So, no. Uh -- They would be -- If they were lines
12 in the road, they would be perpendicular to each other,
13 maybe.

14 Q. Okay.

15 A. I believe.

16 Q. Okay. But he's not facing them. He doesn't have
17 them in eyesight; correct?

18 A. If he looks out of peripheral -- out of his
19 peripheral vision, yes, I believe he could see them.

20 Q. Okay. And what does he do with the mystery weapon
21 while he's patting you down?

22 A. I didn't look. I could not tell you what he did.

23 Q. Well, was he use -- According to you -- your story
24 -- was he using two hands or one?

25 A. I believe two.

1 Q. All right. So -- But you have no idea where the
2 mystery weapon went?

3 A. No, I do not.

4 Q. All right. All right. Fair enough.

5 Now, let's jump forward just a
6 little bit.

7 Uh -- Well, first of all, I want
8 to ask you one thing.

9 You told Officer Wells, and you
10 told Detective Abercrombie, and really everyone that you
11 have told regarding -- regarding your truth, is that:

12 You were walking around after your
13 release for about an hour?

14 A. It seemed to have been that long.

15 Q. Hmm.

16 A. I'm not saying for sure that it was that long,
17 because I did not have a clock.

18 Q. Uh-huh.

19 A. I did not have my cell phone. I did not have a
20 watch.

21 Q. Hmm.

22 A. I did not look at a clock.

23 Q. Hmm.

24 A. After such a -- uh -- shocking and traumatizing
25 event, then anything -- the shortest amount of time --

TESTIMONY OF [REDACTED] Complaining Witness

623

1 could seem like it lasted for hours and hours.

2 So, yes; it did seem like an
3 extremely long time that I was walking around where no
4 one else was, looking simply for a phone to call someone.

5 So, yes; everything seemed like it
6 took --

7 Q. Hmm.

8 A. -- an extremely long time. I could not tell you how
9 long exactly though.

10 Q. Yes ma'am.

11 A. But I believed it to be about an hour.

12 Q. Okay. Now this -- this -- uh -- Samaritan -- uh --
13 Mr. O'Bryant -- uh -- he's from Asheboro, North Carolina;
14 right?

15 A. I don't where he's from. I don't know him. I've
16 met him one time.

17 Q. Okay. Okay. No problem.

18 Uh -- You didn't -- I take it
19 then, your testimony is:

20 You didn't look at his phone
21 regarding the time that was on his phone; correct?

22 A. No, I didn't. I immediately dialed the number that
23 I was calling.

24 Q. Dialed [REDACTED] number?

25 A. Yes, I did.

1 Q. Yes. Okay. So let's back up just a little bit
2 more.

3 You said that Mark took you, and
4 that you ended up at some kind of boat ramp; correct?

5 A. Yes.

6 Q. And you did testify that this boat ramp actually is
7 -- has a nice parking lot, and is very well lit.

8 And we can agree on that one;
9 right?

10 A. The --

11 Q. The boat ramp was very well lit.

12 A. -- parking lot itself was lit.

13 Q. Okay.

14 A. Not well lit. The area on the road was extremely
15 well lit.

16 Q. Uh-huh.

17 A. So, yes; though I'm not sure if the parking lot had
18 lights in it.

19 Q. Okay.

20 A. But the light -- If not, then the light from the
21 streets and the condos, the extremely large buildings
22 around, did emit -- uh -- a decent amount of light into
23 the parking lot.

24 Q. So we're talking about streetlights.

25 We're talking about ambient

TESTIMONY OF ~~Complaining Witness~~

625

1 lighting from the extremely large hotels around it;
2 right?

3 A. Condos.

4 Q. Okay. Condos. So you're saying there weren't any
5 hotels nearby?

6 A. That -- Not that I came across, no; because I was
7 specifically looking for hotels, because I figured they
8 would be open and people would be in them.

9 Q. Well, you told Mr. O'Bryant -- Mr. O'Bryant asked
10 you about hotels. And you claimed that you had knocked
11 on the hotel doors, but nobody would answer; right?

12 A. I may have called it hotels at that time; because I
13 didn't know exactly what it was.

14 Q. Hmm.

15 A. I wasn't familiar with the area.

16 Q. Uh-huh.

17 A. I just knew that -- uh -- it -- they appeared to be
18 hotels at the time.

19 Q. Uh-huh.

20 A. But I have -- you know -- found out after that they
21 weren't actually hotels, they were condominiums.

22 Q. Uh-huh.

23 A. So, I'm not --

24 Q. That's what --

25 A. I didn't --

1 Q. -- you found out afterwards?

2 A. Yes. I didn't know that the next day, or when I
3 submitted my written statement.

4 Q. Okay. So you're telling this jury that:

5 There is a portion of North Myrtle
6 Beach that doesn't have any hotels at all?

7 A. I'm not sure if there are hotels. I didn't walk
8 around the entire area.

9 I couldn't tell you exactly where
10 I went; exactly what doors I knocked on --

11 Q. Hmm.

12 A. -- but to my knowledge, to what I saw and
13 experienced, there were either -- the hotels either
14 weren't open --

15 Q. Hmm.

16 A. -- or there just weren't any.

17 Q. Hmm. Got you. Okay. Now, let's go back to the
18 boat ramp and the parking lot area.

19 The area you told Detective
20 Abercrombie about -- or maybe it's his assumption --
21 maybe that's -- He knows the area better than me.

22 Maybe that's the only boat ramp in
23 that area -- is on 53rd Avenue North.

24 Are you familiar with that fact?

25 A. Uh -- I'm not familiar with exactly where it's at.

TESTIMONY OF Complaining Witness

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1 But I hear that it's not the only boat -- uh -- From my
2 knowledge, there's an -- a large amount of boat ramps in
3 that general area.

4 Q. Okay. So now we're searching for a different boat
5 ramp?

6 Is that your testimony?

7 A. I'm not saying it's different. I'm saying, I don't
8 know what the exact one, because there are so many in
9 that area.

10 Q. Okay. Let's keep it simple.

11 Regardless of what boat ramp it
12 is, you've testified that it's well lit with direct
13 lighting and ambient lighting from the big buildings
14 nearby; correct?

15 A. Uh -- I'm -- I don't know what "ambient" means. So
16 I don't want to agree to something that I don't know.

17 Q. I apologize, ma'am.

18 A. But if you would explain that to me, please.

19 Q. Yes ma'am. I apologize.

20 Ambient lighting is basically
21 reflective lighting like -- uh -- say:

22 If you go down to the beach at
23 night -- uh -- if you're in a -- a -- a area with hotels,
24 the beach itself appears to be pretty well lit because of
25 the light that's being given off --

TESTIMONY OF [REDACTED] Complainant Witness

628

1 A. Yes.

2 Q. -- from the hotels?

3 A. Then, yes; there was --

4 Q. Okay.

5 A. -- as you said "ambient" lighting --

6 Q. Yes ma'am.

7 A. -- in the parking lot.

8 Q. Okay. And they are actually other condos nearby;
9 correct?

10 A. Yes.

11 Q. Okay. Uh -- And it's your testimony -- or what
12 you're telling the jury is that:

13 June 29th -- The morning of
14 Monday, June 29th, 2009, that there wasn't a single
15 person who would open their door when you knocked on it?

16 A. If -- I can say that:

17 If it were I, I would not answer
18 my phone for -- or my door for anyone that knocked on it
19 at such an early hours.

20 It seems odd for anyone to come
21 and knock on a door that time of the morning.

22 And I didn't knock on an extreme
23 amount -- I knocked on maybe a handful or so.

24 Q. But --

25 A. And the ones that I --

TESTIMONY OF Complaining Witness

629

1 Q. I'm sorry -- I'm sorry to interrupt you ma'am.

2 Can you quantify "handful?"

3 MS. LIVESAY:

4 Your Honor, can she answer the
5 question before Mr. Hazzard cuts her off?

6 THE COURT:

7 I'm going to let you answer fully.

8 You said a handful. You can go on from there.

9 MR. HAZZARD:

10 Sure.

11 WITNESS:

12 I couldn't tell you exactly how
13 many; maybe a handful.

14 But I know that the ones I did
15 knock on, nobody answered. And I didn't see anyone
16 walking around.

17 MR. HAZZARD:

18 Hmm.

19 WITNESS:

20 I didn't, except for the runner, I
21 didn't see any cars.

22 MR. HAZZARD:

23 Uh-huh.

24 WITNESS:

25 It looked -- you know -- for lack

1 of a better term, "dead" at that point in time.

2 MR. HAZZARD:

3 Uh-huh.

4 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

5 Q. So the end of June, beginning of July, we're coming
6 up on the 4th of July weekend at the beach, and it's dead
7 up there, is your testimony?

8 Nobody answers any doors.

9 No hotels will answer the door
10 when you knock on it?

11 A. No.

12 Q. All right. All right. Fair enough.

13 Now, you indicated that -- uh --
14 the police took you to the hospital for a rape kit;
15 correct?

16 A. Yes.

17 Q. Okay. And what does that process entail, from
18 what you recall?

19 A. Uh -- It seemed somewhat like a gynecological exam,
20 I'm guessing.

21 I -- I didn't -- It wasn't my
22 intentions on remembering exactly everything that was
23 going on.

24 There was a sheet over my leg.

25 I couldn't see.

TESTIMONY OF Complaining Witness

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1 The doctor was explaining it to
2 me, but I don't remember.

3 It wasn't really high on my list
4 of priorities of -- you know -- to know what a doctor was
5 doing to me; because I know that that's what was supposed
6 to happen.

7 So I didn't really pay attention
8 to what he was saying or exactly what went on.

9 Q. Okay. Do you recall them indicating that they were
10 going to take -- uh -- anal swabs and rectal swabs for
11 DNA evidence?

12 A. Yes, I do recall that.

13 Q. Okay. Do you recall them indicating they were
14 going to attempt to obtain -- uh -- cuttings of pubic
15 hair?

16 A. Yes, I do recall that.

17 Q. Okay. To your knowledge, were they able to
18 successfully complete these functions?

19 A. Uh -- Do you mean in the hospital?

20 Q. Yes ma'am.

21 A. Actually, yes.

22 Q. Yes. Yes.

23 A. Uh -- Yes. They --

24 Q. So your testimony --

25 A. -- completed that, yes.

1 Q. Okay. I'm sorry for cutting you off.

2 Your testimony is:

3 They did the anal swab.

4 They did the rectal swab for DNA;

5 and that they were able to obtain pubic hair cuttings
6 from you.

7 A. From what I remember, they got the swabs. Uh -- I
8 don't want to get too personal.

9 I -- you know -- I shave, so I
10 didn't have any pubic hairs for them to get.

11 So I'm guessing they didn't get
12 that.

13 Q. All right.

14 A. But I know they got the swabs. I do remember that.

15 Q. Okay. And you were how old at this time, ma'am?

16 A. 14.

17 Q. All right. Thank you, ma'am.

18 Now you indicated this -- There's
19 been a lot of talk about -- What's the nature of your --
20 Are you -- you and [REDACTED] still in a relationship?

21 Or what's your status with him
22 now?

23 A. No, we are not together.

24 Q. Okay. All right. Okay. And I believe you told
25 Ms. Livesay that your father had -- that all this secrecy

TESTIMONY OF [REDACTED] Complaining Witness

633

1 was necessary because your father had prohibited him, or
2 forbidden him, from being around you.

3 Is that correct?

4 A. Yes.

5 Q. Okay. And still, you went against his express --
6 expressed wishes; correct?

7 A. As any 14-year-old would do in that sit -- Most --
8 The most -- of the ones that I know -- most teenagers,
9 it's -- we have a natural reaction to rebel against our
10 parents.

11 And at the time, I really -- I
12 didn't agree with his decision --

13 Q. Hmm.

14 A. -- or my mothers --

15 Q. Uh-huh.

16 A. -- for me not see [REDACTED] I wanted to see him.
17 And I found a way to do so.

18 Q. Uh-huh. All righty. And you enlisted your friend
19 [REDACTED] in this conspiracy?

20 A. Uh -- If you want to call it conspiracy. It's --
21 Sure. I -- uh -- It was --

22 Q. I mean, she had to help you keep your secret; right?

23 A. Yes.

24 Q. Because you didn't want the [REDACTED] Parents to find out?

25 A. Correct.

1 Q. Okay. Because obviously that would have put them
2 in an awkward situation?

3 I assume they are friends with
4 your parents?

5 A. They weren't exactly -- They knew -- They exchanged
6 words because I was her friend, so, yes. They --

7 Q. Okay.

8 A. They spoke.

9 Q. Okay. So they basically aren't really friends.
10 But you and B.C. are friends. And so as a result, they
11 have a knowledge of each other?

12 A. Yes.

13 Q. Okay. All right. Fair enough. Fair enough.

14 So you didn't want the Parents -- to
15 know that you were there -- or that he was there?

16 A. No, I did not.

17 Q. Okay. Now, let's get back for a second to this
18 frisking.

19 We've established, we don't know
20 where the mystery weapon went; correct?

21 A. Correct.

22 Q. Okay. And how is it that you ended up in the car?

23 A. He had told me to get in the car.

24 Q. He told you to get in the car?

25 A. Yes.

TESTIMONY OF **Complaining Witness**

635

1 Q. Didn't grab you by the arm, or pull you, or shove
2 you, or anything like that?

3 A. No.

4 Q. Okay. Because at the hospital, obviously, you told
5 them that you had absolutely no bruises, or abrasions, or
6 injuries, or scratches, caused by Mark Elliot; correct?

7 A. Correct.

8 Q. Okay. So based on -- according to you -- your
9 story -- based on your -- his instruction -- you got in
10 the car?

11 A. Yes.

12 Q. Okay. And where did he then go to?

13 A. He got in the driver's side of the car.

14 Q. Okay. So at this point, he's -- he's frisking you.
15 And I think, if I remember correctly, you're standing
16 where the car is in between the two of you and the house;
17 right?

18 You're more in the roadway?

19 You're more on the passenger side
20 of the car?

21 A. Yes.

22 Q. Okay. And he then tells you to get in the car?
23 And then he walks around behind the car, and over, and
24 gets in the driver's side?

25 A. He didn't have to walk around the car. He was

1 already on the -- it -- a little bit -- He was not on the
2 front side of the passenger side. He was more towards
3 the back in the middle where I was standing at.

4 Q. Hmm.

5 A. So, yes, he did have to walk around; but not all the
6 way around the car.

7 Q. Okay. Well, let's make sure we're clear on this.
8 When this frisking is taking place, I thought you said it
9 was more the -- the passenger side of the car out in the
10 street?

11 Was it more towards the rear of
12 the car?

13 A. Yes, the rear of the car. Like I said, I was -- I
14 told you that I -- When he told me to stand up, I stood
15 up in the exact same spot that I was laying in; which I
16 said was towards the rear right of the car.

17 Q. Okay. So we're back over here by the -- the
18 passenger-side taillight, then?

19 A. Yes.

20 Q. Basically?

21 A. Yes.

22 Q. Okay. And then, he then comes over to the
23 passenger-side taillight area where you are, according to
24 your truth, correct?

25 A. Yes.

TESTIMONY OF **Complaining Witness**

637

1 Q. And then you say that he frisked you in some
2 fashion?

3 A. Yes.

4 Q. Okay. And then, where is he standing when he then
5 tells you to go get in the car?

6 He was still standing right there?

7 A. I wasn't paying attention to him. He told me to get
8 in the car. So I walked and got in the car.

9 I wasn't -- you know -- paying
10 attention what he was doing. I was just following the
11 orders that I was given.

12 Q. All right. So you got in the car. Then he walks
13 around, and he gets in the car?

14 A. Yes.

15 Q. All right. Okay. Now, this car -- this 1991
16 Camry -- we ain't talking about a car with electric
17 windows.

18 We're not talking about a car with
19 electric door-locks, are we, ma'am?

20 A. I'm guessing not. I wasn't paying attention as to
21 what was electric and what was not.

22 Q. Well, once he got in the car -- You're sitting in
23 the car. And then, once he walks around and assumes his
24 position in the driver's seat -- you know -- you didn't
25 hear any door locks come down, or anything like that, did

1 you?

2 A. I can't say for sure. It's been a while. And I
3 wasn't paying attention to the sound of the car.

4 Q. Yes ma'am. So now your testimony has been that:

5 Y'all drove around and meandered
6 around.

7 And there's nobody else out there;
8 correct?

9 A. There may have been maybe one car that passed us the
10 entire time.

11 I don't even know if it was that.

12 Q. Uh-huh.

13 A. But, to my knowledge, I didn't see any people
14 walking --

15 Q. Hmm. Hmm.

16 A. -- any people riding a bike -- or any cars.

17 Q. Uh-huh.

18 A. But again, I wasn't paying attention to what was
19 going on the outside of the car. Because I was more
20 worried about what's about to happen to me on the inside.

21 Q. Yes ma'am. I got you. Now, from what you recall
22 going on outside the car, y'all weren't driving down any
23 deserted roads, or dirt roads, or uninhabited areas; were
24 you?

25 A. From what I remember, I don't believe we went down

TESTIMONY OF **Complaining Witness**

639

1 any dirt roads; no.

2 Q. Okay. So everywhere he's driving around is paved
3 roads of the municipality -- municipality of North Myrtle
4 Beach?

5 A. I believe so.

6 Q. Okay. And your truth is that:

7 He's basically aimlessly going up,
8 and making turns, and weaving around throughout the
9 municipality with a woman in the car -- or a young lady
10 in the car -- that most likely, since this -- you know --
11 thief here -- this -- this -- this attempted armed
12 robber, supposedly, has kidnapped.

13 That at some point, somebody's
14 going to be out looking for; right?

15 A. I'm -- If they were looking for me at that point, I
16 don't know.

17 Q. Hmm.

18 A. Uh -- But I do know there weren't other people
19 around. It wasn't --

20 Q. Uh-huh.

21 A. -- obvious to someone walking on the side of the
22 road, or driving up, that I was in any type of distress,
23 or I had just been kidnapped --

24 Q. Hmm.

25 A. -- because I wasn't screaming --

1 Q. Hmm.

2 A. -- and yelling --

3 Q. Hmm.

4 A. -- and hollering.

5 Q. Uh-huh.

6 A. And he was acting -- you know -- To any -- If I was
7 parked at a stoplight beside of that car --

8 Q. Hmm.

9 A. -- that I was in, I would have just assumed that
10 they were having a conversation --

11 Q. Hmm.

12 A. -- and that the woman was upset about something.

13 Q. Hmm.

14 A. I wouldn't know what.

15 Q. Uh-huh.

16 A. But there was anyone out there to look and see if I
17 was worried.

18 So they were -- you know -- No one
19 could have made an observation as to what was going on in
20 the car; because there was no one out there.

21 Q. But of all the combinations of people that you could
22 tell the police to look for that would be distinctive,
23 you don't think an older black man and a young white girl
24 at 3:30 in the morning wouldn't stand out if you're doing
25 something wrong?

TESTIMONY OF Complaining Witness

641

1 MS. LIVESAY:

2 Your Honor, I'm going to have to
3 ask object to the inappropriateness of the question.

4 And I certainly don't see how this
5 witness is going to be able to testify as to what
6 somebody else would think.

7 MR. HAZZARD:

8 That's --

9 THE COURT:

10 I think he's just asking her for
11 her opinion?

12 MR. HAZZARD:

13 Yes sir.

14 WITNESS:

15 In my opinion --

16 MR. HAZZARD:

17 Uh-huh.

18 WITNESS:

19 -- from -- uh -- my experience, I
20 know where I live, it's not uncommon to see a -- an older
21 black male riding around with a younger looking white
22 female.

23 But that's just where I live.

24 MR. HAZZARD:

25 Yes ma'am.

1 WITNESS:

2 So, it's not uncommon in this day
3 and age to see a white female and a black male riding
4 around in a car together.

5 MR. HAZZARD:

6 Yes, ma'am.

7 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

8 Q. But if the police are told to look for them? That's
9 -- That's kind of an easy distinction to make; wouldn't
10 you say?

11 A. I guess so. But -- uh -- according to what I heard
12 earlier, they weren't looking in the area that I was
13 found in.

14 So there wasn't any cops out there
15 to look for me.

16 Q. Uh-huh.

17 A. Anyway, they were looking in a different area --

18 Q. Hmm.

19 A. -- from where I was at.

20 Q. Okay.

21 A. I don't know.

22 Q. That's right. Because, based on your truth, he took
23 you some 70-something blocks from where you were up to the
24 north end of -- of -- of the Cherry Grove area; correct?

25 A. Yeah. I was extremely far from anywhere that I

TESTIMONY OF Complaining Witness

643

1 knew --

2 Q. Uh-huh.

3 A. -- any familiarity with anything.

4 Q. Hmm.

5 A. So, yes; I was -- uh -- rather far away from my
6 original place out from the beach out there.

7 Q. Hmm.

8 A. I was pretty far away.

9 Q. Okay. And when you came upon Mr. O'Bryant, the guy
10 that -- that -- uh -- was out jogging at four o'clock in
11 the morning -- uh -- you indicated to him that you needed
12 to use a phone; correct?

13 A. Yes.

14 Q. And he said:

15 Well, I don't have a phone on me,
16 but I've got one back where I'm staying; right?

17 A. Yes.

18 Q. Okay. And you had no problem with walking with him
19 back to where he was staying?

20 A. At that point he was the only person that I had seen
21 at all when I was walking around.

22 So I wasn't -- uh -- Of course I
23 was nervous.

24 Q. Hmm.

25 A. And -- uh -- I believe the word's "apprehensive" --

1 uh -- about what I was going to do.

2 I was -- you know -- worried.

3 But I was happy to get any type of
4 help whatsoever.

5 So, yes; I was willing to take any
6 help at that point.

7 And I did -- uh -- against -- I
8 was upset, scared, worried.

9 I wouldn't have made that decision
10 if I were in the same state of mind that I am right now.

11 But at the time, I was extremely
12 shook up. And I was willing to do what I had to do to
13 get help for myself.

14 Q. Hmm.

15 A. So, yes; that does include flagging down a stranger
16 on the side of the road to ask for help.

17 So, yes; that's -- that's what I
18 did.

19 Q. Okay. And I believe you told Assistant Solicitor
20 Livesay that, in your story:

21 When Mark takes your phone from
22 you, that you didn't pay attention to where it went?

23 Is that correct?

24 A. Correct.

25 Q. Okay. The one thing that connects you possibly to

TESTIMONY OF **Complaining Witness**

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1 the outside world and can save you from this horrific
2 abduction, and you don't pay attention to where it goes?

3 A. No. I wasn't exactly -- uh -- I wasn't too worried
4 about my phone at that point.

5 I was more worried about my
6 safety.

7 Q. Hmm.

8 A. So -- uh -- an object seemed extremely -- uh -- It
9 didn't -- It seemed pointless for me to pay attention to
10 a mere object when I was worrying about my life.

11 Q. Hmm.

12 A. So, no; I did not pay attention to where he placed
13 my phone.

14 Q. You never told the police this story about asking
15 for the phone back in this supposed conversation between
16 you and Mark after you got out of the car; did you?

17 A. I did tell him what he said to me after I got out of
18 the car.

19 I mentioned it a couple times when
20 I was speaking to Detective Abercrombie.

21 I know that for a fact.

22 Q. Hmm.

23 A. As -- If I -- you know -- told him that I asked for
24 my phone back when he drove up, I can't say for sure.

25 But I know for a fact that I did

1 tell him what he said to me after I got out of the car --

2 Q. Hmm.

3 A. -- and he told me to leave.

4 Q. Hmm. I believe you told the prosecutor that you
5 wanted to see [M.H.] but the police -- the police would
6 not let him leave from where he was?

7 Is that correct, ma'am?

8 A. That's what I was told.

9 MR. HAZZARD:

10 Okay. The Court's indulgence

11 Your Honor?

12 All right, ma'am.

13 Uh -- No further questions.

14 REDIRECT EXAMINATION BY MS. LIVESAY:

15 Q. [Complaining] Mr. Hazzard asked you about:

16 Uh -- Have you ever told the
17 police before about this hotel with these college kids.

18 Now, as to the details that you
19 told this jury about the way you were raped, did you tell
20 Detective Abercrombie those details?

21 A. About -- uh -- the -- About what you saying about
22 the college kids?

23 Q. About the penetration --

24 A. Oh?

25 Q. -- and where you were penetrated?

TESTIMONY OF **Complaining Witness**

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1 A. Yes, I did.

2 Q. And is that the same thing you told this jury?

3 A. Yes, it is.

4 Q. Okay. About where it happened and when it

5 happened; you tell Detective Abercrombie that?

6 A. Yes, I did.

7 Q. Okay. And is that the same thing you told this
8 jury?

9 A. Yes, it is.

10 Q. Okay. About him telling you to get down on the
11 ground and telling those two boys to walk away?

12 A. Yes.

13 Q. Did you tell Detective Abercrombie that?

14 A. Yes, I did.

15 Q. Is that the same thing you told this jury?

16 A. Yes, it is.

17 MS. LIVESAY:

18 No further questions, Your Honor.

19 MR. HAZZARD:

20 Very briefly, Your Honor.

21 RECROSS-EXAMINATION BY MR. HAZZARD:

22 Q. And you spoke with Officer Wells and Detective
23 Abercrombie after you had -- after you spoke with **M.H. 2311**
24 on the telephone; correct ma'am?

25 A. Uh -- If Officer Wells is the officer that picked me

1 up; then, yes, I did speak to him.

2 I don't know who I spoke to on the
3 phone.

4 And I don't know the name of the
5 officer that picked me up.

6 All I know is:

7 I did speak to Detective
8 Abercrombie later on that day.

9 Q. Okay. And any police presence you might have
10 spoken to, you spoke with them after you spoke with
11 [REDACTED] on the phone; correct?

12 A. He was standing right beside of the police officer.
13 He got --

14 Q. Ma'am, are you deaf?

15 A. I'm sorry.

16 Q. (Laughs.)

17 A. According to what I was told, and I --

18 Q. No; I'm not asking about what you were told.

19 My question very simply is "yes"
20 or "no."

21 Did --

22 MS. LIVESAY:

23 And actually that question is
24 outside of my redirect, Your Honor.

25 THE COURT:

TESTIMONY OF [REDACTED]

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1 Well, I'm going to let him ask it.
2 But I think she's answered it. And I think that's
3 already in the evidence.

4 But go ahead Mr. Hazzard.

5 MR. HAZZARD:

6 No, if The Court feels it's --

7 THE COURT:

8 You're -- You're asking her if she
9 knew whether [REDACTED] was standing by a police officer?

10 MR. HAZZARD:

11 My questions was:

12 If every police officer she spoke
13 to, she spoke to after she spoke with [REDACTED]

14 Yes or no?

15 WITNESS:

16 Yes.

17 MR. HAZZARD:

18 Thank you, ma'am.

19 THE COURT:

20 All right.

21 MS. LIVESAY:

22 No further questions, Your Honor.

23 THE COURT:

24 All right. Thank you very much.

25 Uh -- You may step down.

DISCUSSION OUTSIDE OF JURY'S PRESENCE

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1 November 17, 2010; and was no longer present during the
2 following proceedings.)

3 THE COURT:

4 All right.

5 Let me hear from you.

6 MS. LIVESAY:

7 Your Honor, if I may?

8 Uh -- Mr. Hazzard's objection's
9 going to be on Page Number 11 to the hearsay.

10 Uh -- Lance O'RB. I asked him
11 her demeanor; the circumstances when he came across her
12 -- uh -- all of those questions.

13 And then, I asked him -- uh -- if
14 he asked her any questions, and if he gained any
15 information?

16 He said that:

17 Uh -- After she asked for the cell
18 phone, she said that she had been kidnapped.

19 She said that she had -- that
20 somebody had stopped and asked her and her friends
21 directions.

22 She smelled alcohol and thought
23 the person had been drinking.

24 She thought the person had a gun.

25 And the person told her friends to

DISCUSSION OUTSIDE OF JURY'S PRESENCE

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1 get on the ground, and for her to get in the car.

2 And then, they drove around for
3 awhile.

4 He took her cell phone.

5 And then, he let her out.

6 She said she had been walking
7 around for about an hour and could not find anybody open
8 with a phone.

9 Is that the objection that we're
10 going to argue about?

11 MR. HAZZARD:

12 Correct.

13 MS. LIVESAY:

14 Okay.

15 THE COURT:

16 All right.

17 MR. HAZZARD:

18 Basically, any hearsay.

19 MS. LIVESAY:

20 That way we can -- uh -- read it
21 right off that transcript.

22 THE COURT:

23 All right.

24 MS. LIVESAY:

25 Your Honor, I believe after -- uh

DISCUSSION OUTSIDE OF JURY'S PRESENCE

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1 -- Ms. Eberhardt has testified, it's no doubt that -- uh
2 -- Mr. Hazzard has questioned her credibility; and as
3 well as implied that this story was not told right way;
4 and that she somehow has fabricated this story,
5 especially the aspect of her having to get in the car and
6 the robbery.

7 I think this should be allowed
8 under both prior consistent statement, as well as the
9 fact that looking at the totality of the circumstances it
10 was a excited utterance, Your Honor.

11 THE COURT:

12 Well, also -- uh -- Mr. -- uh --
13 Hazzard, didn't you not insinuate in your cross
14 examination of her that she fabricated this story after
15 talking with M.H. [REDACTED] that is, after she had gone to --
16 uh -- the witness's home.

17 Uh -- You -- uh -- indicated that
18 that statement was never told to a police officer until
19 she had -- uh -- uh -- had a chance to speak to M.H. [REDACTED]

20 Well, this statement, in my view,
21 would be prior to any opportunity she had to fabricate by
22 talking to M.H. [REDACTED] and would be a -- admissible as a
23 prior consistent statement; would it not?

24 MR. HAZZARD:

25 Actually, her testimony is that

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1 she had at least two prior conversations with M.H. [REDACTED]
2 before making this alleged statement to Mr. O'Bryant.

3 THE COURT:

4 But the one you were talking about
5 was when she used his phone; was it not?

6 MR. HAZZARD:

7 No; my question simply was:

8 You did not tell this story to the
9 police until after you had spoken with M.H. [REDACTED]

10 THE COURT:

11 Right. But you were talking at
12 that same time about the -- uh -- the conversations that
13 occurred from -- uh -- the witness's telephone.

14 MR. HAZZARD:

15 No; I'm just talking about any
16 conversation, Your Honor.

17 THE COURT:

18 Well, I -- I think that that would
19 certainly be the effect it would have on the jury.

20 I find that it was, under the
21 circumstances, an excited -- uh -- utterance.

22 Uh -- Even if it were not an
23 excited utter -- utterance, it is a prior consistent
24 statement -- uh -- that is -- uh -- admissible -- uh --
25 as a statement made before any opportunity to have made

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1 any -- uh -- or fabricated -- uh -- her story.

2 And certainly -- uh -- your cross
3 examination -- uh -- challenged the veracity of her story
4 and -- uh -- suggested to the jury a fabrication.

5 So I'm going to admit it.

6 I'll hear you further, though, if
7 you have other grounds?

8 MR. HAZZARD:

9 No, Your Honor. Our position is
10 that it is not a situation that falls under any exception
11 to the hearsay rule.

12 Whether it's excited utterance, or
13 whether it's a prior consistent statement to -- uh --
14 rebut -- you know -- because my question specifically
15 was:

16 You did not -- You did not speak
17 to any police officer until after you had spoken to
18 [REDACTED] on the phone?

19 Her testimony was that she spoke
20 [REDACTED] there for at least three times; twice when she
21 was in the presence of Mr. Elliott, and once afterwards.

22
23 With regards to excited utterance,
24 our position is that:

25 Uh -- She indicates that she had

DISCUSSION OUTSIDE OF JURY'S PRESENCE

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1 been -- uh -- away from the -- the scene of the alleged
2 event for at least an hour.

3 Uh -- Mr. O'Bryant says that he
4 did not --

5 THE COURT:

6 I don't know if that was an hour.
7 I don't remember that testimony.

8 I remember you saying that
9 earlier. But I don't remember that testimony.

10 And even if it did -- you know --
11 what we have is a -- a -- uh -- an alleged sexual
12 battery, and a -- an abduction.

13 She has testified that she was
14 upset -- uh -- agitated.

15 Uh -- Her testimony is replete
16 with that sort of thing; scared.

17 Uh -- I certainly think that it
18 was a situation where she was under the stress of
19 excitement caused by the event or the condition. And it
20 would be an excited utterance.

21 I also believe that this would be
22 admissible as a prior consistent statement where she has
23 been -- where her -- uh -- credibility has been
24 challenged, or -- uh -- the possibility of -- of
25 fabrication has been raised.

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1 I mean, isn't that your position,
2 that she fabricated this -- this -- uh -- her description
3 of the event?

4 MR. HAZZARD:

5 Yes sir; after speaking with
6 M.H. [REDACTED] which would be prior to her statement to
7 Mr. O'Bryant.

8 THE COURT:

9 Well, any -- uh -- any statement
10 that she may have -- uh -- any other opportunities she
11 may have had to speak to M.H. [REDACTED] she was in the presence
12 of your client.

13 And of course your client can put
14 up testimony concerning that -- any -- any -- uh --
15 collusion between those two; and not be subject to cross-
16 examination on any other matter.

17 And he could do it outside the
18 presence of the jury, if that's the case.

19 MS. LIVESAY:

20 Your Honor, she didn't even get
21 the phone and talk to M.H. [REDACTED] until after she told this
22 to Lance O'Bryant.

23 It's already been implicated that
24 Mr. Hazzard's trying to say that she came up with this
25 story with her boyfriend. And she called her boyfriend

DISCUSSION OUTSIDE OF JURY'S PRESENCE

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1 first.

2 She didn't talk to her boyfriend.

3 And there wasn't even a phone in sight.

4 She's walking back with Mr.

5 O'Bryant and this is what she's telling him.

6 And he even says:

7 I didn't ask her any questions. I

8 was very hesitant at the time. I was uncertain what was

9 going on.

10 And I was walking on the sidewalk.

11 She's walking in the street. And she starts telling me

12 about what happened.

13 Under "consistent statement," as

14 well as under Jeffcoat, it says:

15 In particular in these cases

16 whenever there's an allegation that there's fabrication,

17 everything prior to that fabrication as to details should

18 come in as to that victim's testimony as a prior

19 consistent statement.

20 THE COURT:

21 And I agree with you. I believe

22 that it is admissible.

23 MR. HAZZARD:

24 Note my objection for the record.

25 THE COURT:

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1 Yes sir.

2 MR. HAZZARD:

3 Thank you, Your Honor.

4 THE COURT:

5 Okay. Now let's bring them back
6 in.

7 MS. LIVESAY:

8 Let's go ahead and get that case
9 geared up, so when they come in we can have it --

10 THE COURT:

11 It's my understanding that this
12 information was taken by consent of the parties?

13 MS. LIVESAY:

14 I'm sorry, Your Honor.

15 THE COURT:

16 That both parties have consented
17 to the use of this deposition; is that correct?

18 MR. HAZZARD:

19 Yes, sir.

20 Uh -- The attorney for the
21 hospital has asked whether it's okay if Ms. Douglas sit
22 in the courtroom.

23 But we do have a sequestration
24 order.

25 Does The Court have a problem with

DISCUSSION OUTSIDE OF JURY'S PRESENCE

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1 the chain witnesses in the courtroom?

2 THE COURT:

3 I don't know. What do you say --

4 MS. LIVESAY:

5 No sir.

6 THE COURT:

7 She has no problem with it.

8 MR. HAZZARD:

9 Okay. I believe she's here too.

10 And you can have a seat on the back row.

11 MS. LIVESAY:

12 Give us one -- one second to get
13 this going, so when they come in, it can be going.

14 THE COURT:

15 Okay.

16 COURT REPORTER:

17 We need to mark that first, so
18 that I can note here that we played State's Exhibit
19 whatever.

20 MS. LIVESAY:

21 Okay. Yeah, we can mark it. I
22 thought it was already marked.

23 COURT REPORTER:

24 No, you just gave it to me for
25 safekeeping.

1 WHEREUPON: THE DVD OF THE VIDEO
2 DEPOSITION OF LANCE O'BRYANT WAS MARKED BY THE COURT
3 REPORTER AS STATE'S EXHIBIT NUMBER 11, AND WAS APPARENTLY
4 ENTERED INTO EVIDENCE WITHOUT OBJECTION, MR. HAZZARD
5 HAVING ANSWERED THE COURT EARLIER THAT BOTH PARTIES HAD
6 IN FACT CONSENTED TO THE VIDEO DEPOSITION.

7 (WHEREUPON: The jury empanelled
8 in the case was escorted back into the courtroom at 1:34
9 PM, November 17, 2010; and was in fact present during the
10 following proceedings.)

11 THE COURT:

12 All right.

13 Ladies and gentlemen of the jury,
14 we are about to see -- uh -- or -- or view a video
15 deposition of a witness that was taken pursuant to the
16 consent of the parties.

17 That is normally not done in
18 criminal matters; but in this case, the parties have
19 consented to do it because of the anticipated absence of
20 this witness from the country at the time of this trial.

21 Uh -- I am going to allow it.

22 You will -- uh -- note that this
23 witness was placed under oath at the deposition; and that
24 the testimony should be viewed by you under the same test
25 -- credibility that you would apply if the witness were

PUBLISHED VIDEO DEPOSITION OF LANCE O'BRYANT 663

1 here in the courtroom; and you would accept his testimony
2 on the same conditions that you would accept the
3 testimony of a witness were he here in this courtroom.

4 (WHEREUPON: State's Exhibit
5 Number 11, the video deposition of Lance O'Bryant, was
6 played in open court beginning at 1:35 PM and ending at
7 1:50 PM, November 17, 2010.)

8 THE COURT:

9 All right. Are we ready to
10 proceed.

11 MS. LIVESAY:

12 Can you take that up? (Referring
13 to the drop down screen in the courtroom.)

14 Your Honor -- Your Honor, at this
15 time, the State's ready to call its next witness if The
16 Court is ready?

17 THE COURT:

18 I am ready.

19 MS. LIVESAY:

20 Thank you, Your Honor. At this
21 time, the State calls Sean Downey to the stand.

22 WHEREUPON: SEAN DOWNEY WAS DULY
23 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

24 CLERK:

25 Thank you. Please be seated.

TESTIMONY OF SEAN DOWNEY

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1 Please state your full name; and
2 spell your last name.

3 WITNESS:

4 Sean Robert Downey; spelling of
5 the last name; D-o-w-n-e-y.

6 DIRECT EXAMINATION BY MS. LIVESAY:

7 Q. Officer Downey, where do you currently work?

8 A. North Myrtle Beach Department of Public Safety.

9 Q. And how long have you worked there?

10 A. I've worked there since -- uh -- December of 97.

11 Q. And what is your -- uh -- current position at North
12 Myrtle Beach?

13 A. I've recently been assigned as a watch commander for
14 -- uh -- C-Shift --

15 Q. Okay. And what --

16 A. -- temporarily.

17 Q. What responsibilities do you have?

18 A. Uh -- To supervising all the -- uh -- members of the
19 shift; to ensure that their paperwork is done right; and
20 -- you know -- any scenes are handled correctly; any
21 evaluations -- performance evaluations are handled.

22 Q. Okay. And what kind of training have you
23 undergone?

24 A. I received basic treatment training from the South
25 Carolina Criminal Justice Academy.

TESTIMONY OF SEAN DOWNEY

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1 Uh -- I had traffic investigation,
2 DUI detection. Uh -- We receive yearly -- uh -- legal
3 updates; CDV training, along with any kind of advanced
4 training that comes up throughout the year.

5 Q. Okay. And were you working -- uh -- on or around
6 June the 29th of 2009?

7 A. I was.

8 Q. And what were your responsibilities at that time?

9 A. That night I was working the south end. Uh -- I was
10 actually on another shift at that time.

11 I was on the south end --
12 supervisor -- a Sergeant -- Road Sergeant -- at that
13 evening.

14 Q. Okay. So what -- What were you basing basically
15 doing? Patrolling?

16 A. Yes ma'am.

17 Q. And were you in --

18 A. Answering calls; patrolling. And -- uh --

19 Q. Okay. Were you in a uniform?

20 A. Yes, I was.

21 Q. Okay. Were you in a marked car?

22 A. Yes, I was.

23 Q. Okay. Now, do you remember --- uh -- what the
24 traffic was like that morning?

25 A. It was -- uh -- fairly light. There wasn't a lot

1 moving about.

2 Uh -- As the morning progressed,
3 it became even lighter -- the traffic.

4 Q. Did you -- uh -- come across **Complaining Witness** that
5 morning?

6 A. I did.

7 Q. And about what time was that?

8 A. That was right -- approximately 5 o'clock in the
9 morning.

10 Q. How did you know where Ms. Eberhardt was?

11 A. We had received a phone call -- uh -- that --
12 relayed through one of our officers that was still on
13 scene of the incident location that she had given her
14 location in Cherry Grove.

15 Q. And did you know where that location was?

16 A. Yes, I did.

17 Q. Where were you at that time?

18 A. I believe I was out on the highway, oh, somewhere
19 between -- uh -- Main Street and -- uh -- the north city
20 limits.

21 Q. And did you actually finally locate Ms. Eberhardt?

22 A. I did.

23 Q. And what area was she located in?

24 A. She was located in front of a condo unit at 5709
25 North Ocean Boulevard.

TESTIMONY OF SEAN DOWNEY

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1 MS. LIVESAY:

2 Can I approach the witness, Your
3 Honor?

4 THE COURT:

5 Yes.

6 MS. LIVESAY:

7 Can I ask him to step down?

8 THE COURT:

9 Cert -- (coughs) --

10 MS. LIVESAY:

11 Thank you, Your Honor.

12 THE COURT:

13 Excuse me -- Certainly.

14 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

15 Q. Now about where were you when you were -- uh --
16 notified of her location?

17 A. I would say approximately on the highway -- Highway
18 17, somewhere the north side of Main Street.

19 Q. But somewhere in here? (Pointing to map board.)

20 A. Yes, ma'am.

21 Q. And where was she located?

22 A. At 57th Avenue North -- between 57th and 58th Avenue
23 North Ocean Boulevard -- the -- uh -- Cherry Grove
24 section.

25 Q. And can you tell the jury what route you took to get

TESTIMONY OF SEAN DOWNEY

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1 to Ms. Eberhardt from where you were from?

2 A. I took the highway north to the Cherry Grove exit --
3 uh -- eastbound Sea Mountain Highway to Duffy Street.

4 And Duffy Street leads back around
5 onto Lake Avenue.

6 53rd Avenue, I turned -- uh --
7 right. Got on Ocean Boulevard and headed north to her
8 location.

9 Q. And was it dark out at that time?

10 A. It was.

11 Q. Okay. And when you were on your way to locate the
12 victim in this case, how would you describe traffic?

13 A. Very light.

14 Q. Okay. Did you pass any cars on your way to the
15 victim?

16 A. If I did, it was sparse -- you know -- just a few
17 cars here and there.

18 Q. Did you pass anybody walking around on the street?

19 A. I don't recall.

20 Q. Okay. Now what route -- Where did you take Ms.
21 Eberhardt?

22 A. After speaking with her for a period of time, I
23 turned north, and then turned -- uh -- west on 58th
24 Avenue down to Lake Avenue -- Lake Drive; and then,
25 southbound to 53rd; again, southbound on Lake Drive, back

TESTIMONY OF SEAN DOWNEY

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1 -- basically retraced how I had gotten there on Duffy
2 Street to Sea Mountain Highway.

3 Took Sea Mountain Highway. Merged
4 off of Highway 17 across the bridge and then towards
5 Loris to the Sea Coast Medical Center.

6 Q. So was it still dark at that point?

7 A. It was.

8 Q. Okay. And how would you describe the traffic from
9 the time you left -- uh -- Cherry Grove to the time you
10 got to that hospital?

11 A. Uh -- Reviewing the tape -- the tape rolled the
12 whole time -- I didn't pass another vehicle until we
13 actually got onto Sea Mountain Highway, somewhere around
14 the Century 21 Thomas Office.

15 And then of course when we hit the
16 highway, there was 4 or 5 cars on the highway that we
17 passed before we got to the hospital.

18 Q. Okay. And is Sea Mountain Highway a major highway?

19 A. It's South Carolina 9; yes ma'am.

20 Q. Okay. Now -- So you took her from this location to
21 Sea Mountain Highway?

22 A. To Sea Mountain Highway.

23 Q. Okay. So you didn't pass one vehicle from here all
24 the way to Sea Mountain Highway?

25 A. The only vehicle, if you will, I passed, was on 58th

TESTIMONY OF SEAN DOWNEY

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1 Avenue.

2 There was a -- uh -- golf cart --
3 somebody driving a golf cart towards the ocean; and that
4 was it.

5 Q. Okay. And not another vehicle until you got to
6 that main artery?

7 A. Until we got onto South Carolina 9.

8 Q. Thank you, officer. (And the witness resumes the
9 witness stand.) Now, when you reached the victim in this
10 case, was there anybody else out there with her?

11 A. Yes, there was.

12 Q. And who was that?

13 A. I don't recall his name. He was -- He was dressed
14 in jogging clothes, and a white male.

15 Q. Okay. And once you located her, what did you do?

16 A. I pulled up right in front of her and got out of the
17 car.

18 I asked her if she was okay.

19 She said: Yes.

20 I asked her if she needed
21 anything.

22 She said: No.

23 I asked her if she would sit in
24 the car.

25 She agreed. And I moved her and

TESTIMONY OF SEAN DOWNEY

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1 put her in the front seat of my patrol car.

2 Q. Do you remember what she was wearing?

3 A. She had on just a tee shirt and some -- uh -- gym
4 shorts and no shoes --

5 Q. Okay.

6 A. -- and had her hair in a ponytail.

7 Q. Okay. Did it strike you as odd that she didn't
8 have any shoes on?

9 A. It was a bit odd; yes.

10 Q. Okay. And did she indicate to you whether or not
11 she was familiar with the area?

12 A. When I asked her how -- you know -- I asked her how
13 she got there, she said -- uh -- she was just walking and
14 she came across a jogger and asked him for phone. And
15 they had to go back to the -- uh -- unit and -- uh -- use
16 the phone to -- to contact her folks --

17 Q. Now did you --

18 A. -- or the people she was saying with.

19 Q. Once you got her in the car and you took her to the
20 hospital, did you talk to her?

21 A. I did. I asked her what had happened that evening?

22 Q. Did you smell any alcohol on her?

23 A. No, I didn't.

24 Q. Any drugs on her?

25 A. No.

TESTIMONY OF SEAN DOWNEY

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1 Q. Did she appear to you in any form or fashion to be
2 impaired?

3 A. No ma'am.

4 Q. Okay. Now, was she able to relay to you what
5 happened?

6 A. Yes, she did.

7 Q. Okay. Now from -- We've heard from some other
8 officers testify.

9 Did your car have a camera in it?

10 A. It did.

11 Q. Okay. And when did that camera pop on?

12 A. Uh -- It -- It -- It -- The way it works is:

13 If you turn it on through your --

14 uh -- microphone that's on your person, it -- it has
15 already recorded the minute prior.

16 So when I first saw her, is when I
17 activated with my camera, but it had already recorded the
18 minute prior to my actually getting out of the car and --
19 and walking up to speak to her.

20 Q. Okay. And did it record the entire --

21 A. It did.

22 Q. -- time she was in the vehicle?

23 A. It did.

24 Q. Okay. And did you have a conversation with her
25 while she was in the vehicle?

TESTIMONY OF SEAN DOWNEY

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1 A. I did.

2 Q. Okay. Was she able to relay to you what had
3 happened that night?

4 A. She did.

5 Q. Okay. And what did she tell you?

6 A. She said that -- uh -- basically -- you know -- you
7 know -- there was several times I asked her questions of
8 -- Her and two male friends were in front of a -- a house
9 she was staying at on 19th and Hillside, when a car
10 pulled up and the gentleman in the car started speaking
11 to them.

12 She couldn't hear what they were
13 -- she was -- or the guy was saying.

14 So they moved closer to it. And
15 he asked where he was.

16 And they explained to him that he
17 was at 19th South and Hillside. I think she referred to
18 it as Hillcrest.

19 Uh -- At that time, he pulled up
20 just a little bit. Got out of a car. And told them all
21 to get on the ground and -- uh -- empty their pockets;
22 and which they did.

23 And one -- one -- As she
24 explained, one of the males had given just -- they just
25 had some change -- put it on the ground.

TESTIMONY OF SEAN DOWNEY

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1 And she put her cell phone on the
2 ground; which was all she had.

3 Uh -- At one point, he told the
4 boys -- the two males -- to walk the opposite direction.

5 Told her to get in the car.

6 And he left with her in the car.

7 And they began driving through the
8 city -- uh -- taking turns -- you know -- aimlessly,
9 taking different turns and what not.

10 And he kept asking her where she
11 was at, and did she know where she was at.

12 And she would tell him: No.

13 And he would tell her:

14 You're lying; according to what
15 she was telling me.

16 That she -- He was -- She was
17 lying. That she did know where she was at.

18 She didn't know where she was at.

19 And she kept telling him.

20 And at some point, her phone rang
21 and -- uh -- she answered it.

22 And I believe that was her
23 boyfriend.

24 He told her to tell him that he --
25 she was walking, and she would be home soon; she was

TESTIMONY OF SEAN DOWNEY

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1 fine.

2 She hung up that.

3 Uh -- He --

4 She relayed that he was hysterical
5 on the other end of the phone.

6 So she hung up the phone and an --
7 another call came in, I believe from a friend she was
8 saying with.

9 She then turned the phone off.

10 And they continued to drive
11 throughout the city, and -- uh -- ended up at a boat
12 landing, where -- uh -- he took her from the car and --
13 uh -- sexually assaulted her.

14 She said throughout -- that
15 sometime during the sexual assault, he -- uh -- he said
16 he couldn't do this to her anymore.

17 Told her not to cry. It was going
18 to be okay.

19 And -- uh -- put her back in the
20 car and went a short distance.

21 Told her to get out of the car and
22 go the opposite direction. And he drove off.

23 Q. How did she appear to you when she told you what had
24 happened?

25 A. Uh -- Initial contact -- you know -- her voice was

1 cracking. Her arms were crossed. She was upset
2 obviously.

3 Uh -- She never did cry; but she
4 was on the verge of crying several times.

5 But she -- you know -- she kept it
6 together pretty well, you know.

7 But she was -- she was -- she was
8 visibly upset when she talked about certain aspects of
9 everything.

10 Q. Now, do you come in contact with victims of crimes
11 normally in your job?

12 A. Yes.

13 Q. And is there one particular way you expect them to
14 react?

15 A. You get all kinds of different reactions from
16 different situations.

17 Q. Tell the jury the array of emotions you see?

18 A. You could -- You could go to a traffic accident --
19 to a fender-bender and people are just falling to pieces;
20 hyperventilating -- you know -- it's the end of the
21 world.

22 And then -- you know -- you could
23 go to a violent crime and people are just cool, calm and
24 collected, just telling just what -- you know -- what
25 went on and how it transpired.

TESTIMONY OF SEAN DOWNEY

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1 It runs the gamut.

2 Q. Okay. Now when you were in the presence of Ms.
3 Eberhardt, did she appear to understand all of the
4 questions you were asking her?

5 A. Yes, ma'am.

6 Q. Was she responsive?

7 A. Yes.

8 Q. Now when you -- Before you had ever come across Ms.
9 Eberhardt, there's been testimony that there was a BOLO
10 out --

11 A. Uh-huh.

12 Q. -- for a red vehicle. Are you familiar with that?

13 A. Yes, I am. At the -- At the time they called --
14 the original incident took place -- I was on another call
15 with another officer down in the Barefoot Resort section
16 working a domestic violence situation.

17 So -- uh -- once we were able to
18 clear that call and get it handled and got on the road --
19 you know -- we -- we asked for whatever information we
20 needed.

21 And -- And --

22 Q. Now you tell me that this entire -- from the time
23 you start towards Ms. Eberhardt to the time she's at the
24 hospital, that's all video recorded.

25 Is that correct?

TESTIMONY OF SEAN DOWNEY

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1 A. Not the time that I started towards her; but -- uh
2 -- a minute prior to actually coming in contact with her
3 is where the recording starts, and then, to the hospital.

4 It's not turned off.

5 Q. Do you recall whether or not you saw a red Toyota in
6 that area when you came across her?

7 A. Uh -- No ma'am.

8 Q. Okay. Did you see a red Toyota when you came
9 across her?

10 A. No.

11 Q. Okay. Do you recall seeing one ever in that area
12 that night?

13 A. In the Cherry Grove area; no ma'am.

14 Q. Okay. And just to point out to the jury right here
15 real quick from where you're sitting.

16 Point out the Cherry Grove area
17 where you were at.

18 A. This basically encompasses the Cherry Grove area
19 (indicating).

20 Q. Okay. This area right here?

21 A. Yes. You could probably incorporate some portions
22 of Springland in here, but that's the Ocean Drive-Cherry
23 Grove area in -- the Grove-Tidewater area.

24 Q. Okay. And during that time, you never saw a
25 burgundy Toyota Camry?

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1 A. No ma'am.

2 Q. Have you watched that video that was in your car
3 running?

4 A. Yes, I have.

5 Q. Okay. And is your testimony consistent with
6 everything on that video?

7 A. Yes, it is.

8 MS. LIVESAY:

9 No further questions of this
10 officer.

11 THE COURT:

12 Mr. Hazzard and Ms. Knowles?

13 MR. HAZZARD:

14 Thank Your Honor.

15 CROSS-EXAMINATION BY MR. HAZZARD:

16 Q. Good afternoon Officer Downey. How are you, sir?

17 A. Fine, sir. How are you?

18 Q. I'm doing good. Thank you for asking.

19 Uh -- Just a couple of brief
20 questions.

21 Did you prepare an incident report
22 regarding your inter-action --

23 A. No sir.

24 Q. -- with -- No incident report?

25 A. No sir.

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1 Q. Okay. Do you recall whether you ever asked her
2 whether this event had anything to do with a drug
3 transaction or anything of that nature, sir?

4 A. No sir.

5 Q. Okay. You never asked her that?

6 A. No sir.

7 Q. Okay. And I believe you indicated that you came in
8 contact with Ms. Eberhardt around 5:00 AM; correct?

9 A. Yes sir.

10 Q. Okay. And that would've been after you received
11 notification that another officer had previously spoken
12 to her; correct?

13 A. Yes, sir. The -- The phone call -- I don't know if
14 he actually spoke to her directly; but he was on scene of
15 the original incident location; and relayed the
16 information to the office of where she could be found.

17 Q. Relayed that he had been told where she was?

18 A. Yes sir.

19 Q. Okay. And you were talking about Sea Mountain
20 Highway.

21 Where -- Where is that?

22 A. If you -- uh -- If you're familiar with Seacoast --
23 or if you come out of Loris and Little River where that
24 all filters into -- uh -- into the North Myrtle Beach
25 area --

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1 Q. Yes sir.

2 A. -- the Cherry Grove exit is Sea Mountain Highway.
3 That's South Carolina 9. That runs all the way to the
4 ocean.

5 And it runs back up towards
6 Highway 9 through Nixon's Crossroads and -- uh -- North
7 Myrtle Beach High School.

8 Q. Okay. Where does it -- You say it runs all the to
9 the ocean?

10 A. Yes sir.

11 Q. And is that by the Cherry Grove pier?

12 A. No sir. The Cherry Grove pier is about 35th Avenue
13 North.

14 Q. Okay.

15 A. So you would -- uh -- That's -- uh -- roughly, I
16 think 22nd -- 21st Avenue North is -- If you would
17 consider that an avenue, that would be kind of where --
18 uh -- Sea Mountain Highway would be.

19 Q. Okay. And so that actually dead ends at the
20 oceanfront?

21 A. Yes, sir. There's an intersection at Ocean
22 Boulevard that runs north and south from there.

23 Q. Is this considered to be -- I'm not really familiar
24 with that area. Is it considered to be kind of the main
25 street for Cherry Grove; or not?

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1 A. It would be the main highway that brings you into
2 Cherry Grove; yes sir.

3 Q. Okay. And so, if I were coming from, say around
4 53rd to 57th North --

5 A. Yes sir.

6 Q. -- and I wanted to leave the area by the most direct
7 route to head towards Loris, or to head towards the North
8 Carolina line, would that be the route I would take, sir?

9 A. Yes, sir. That would be the shortest route.

10 Q. Okay. Are there signs on it indicating that if you
11 get on this highway, it will take you to Loris, or
12 Dillon, or Tabor City, or North Carolina?

13 A. There's no signs down in the Cherry Grove area that
14 would indicate that.

15 Q. Uh-huh.

16 A. Uh -- I believe the first signs would be actually
17 out on Highway 17 --

18 Q. Uh-huh.

19 A. -- that would kind of give you those kind of
20 directions.

21 Q. Okay. But you can turn there and it'll -- it --
22 actually kind of a straight shot; isn't it?

23 A. Basically, yes sir.

24 Q. Okay. So someone would not need to leave 53rd to
25 57th, drive all the way down to around Ocean Boulevard or

TESTIMONY OF SEAN DOWNEY

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1 to -- to -- uh -- Ocean Drive -- Main Street, North
2 Myrtle Beach --

3 A. Yes sir.

4 Q. -- they wouldn't have to drive to Second Avenue
5 North, then turn around and head south again; correct?

6 A. If they knew where they were going; no sir.

7 MR. HAZZARD:

8 Okay. All right.

9 Thank you. No further questions.

10 MS. LIVESAY:

11 A few questions, Your Honor.

12 May I?

13 REDIRECT EXAMINATION BY MS. LIVESAY:

14 Q. Now, Mr. Hazzard was asking you about Second Avenue.
15 Where is that at?

16 A. Second Avenue -- Well, there's actually Second
17 Avenue South and Second Avenue North on either side of
18 the Main Street.

19 Q. Okay. Now are there a lot of signs here telling
20 you how to get to Loris, Dillon, and Tabor City?

21 A. No ma'am.

22 Q. Okay. Uh -- Where do you start hitting the first
23 signs?

24 A. Uh -- The first signs would be on the north end of
25 the city --

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1 Q. Okay.

2 A. -- here on Highway -- There -- There may be some
3 signs up here at Main Street Connector now that that's
4 open.

5 Q. Okay. But -- uh -- how about -- uh -- First --
6 Second Avenue is right around here?

7 A. That's all Ocean Boulevard. It's a residential
8 area.

9 Q. Okay. So -- But where is -- where is Second
10 Avenue?

11 A. Right here (indicating).

12 Q. Okay.

13 A. That's leading all the way up to the highway.

14 Q. Okay. So -- But there are no signs along in here --

15 A. No, there --

16 Q. -- of how to get to Loris, Dillon, Tabor City?

17 A. No ma'am.

18 Q. Okay. So you would have to be at least familiar
19 enough with the area to be able to get from here around
20 here, up here, to see the signs?

21 A. Yes, ma'am.

22 Q. Okay. Now Mr. Hazzard asked you about -- uh -- if
23 there was any mention of drugs?

24 A. Yes, ma'am.

25 Q. Okay. Was there any mention of drugs?

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1 A. Not in my conversation; no ma'am.

2 Q. Okay. Uh -- Did you speak with Lance O'Bryant, the
3 jogger?

4 A. No ma'am.

5 Q. Okay. You just spoke to **Complaining Witness**.

6 A. Yes ma'am.

7 Q. Okay. So there was never any mention of any of
8 drugs?

9 A. No ma'am.

10 MS. LIVESAY:

11 Okay.

12 No further questions, Your Honor.

13 MR. HAZZARD:

14 One very briefly, Your Honor.

15 RECROSS-EXAMINATION BY MR. HAZZARD:

16 Q. You brought up a good point, sir. Uh -- Do -- When
17 you first said "at the Main Street Connector."

18 A. Yes sir.

19 Q. Okay. Now that now will take you from -- uh --
20 Ocean Drive -- or Main Street in North Myrtle -- that'll
21 take you out to Highway 31, now; correct?

22 A. Yes sir.

23 Q. But in June of '09, that wasn't open; was it?

24 A. It had not been completed.

25 MR. HAZZARD:

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1 All right. Thank you.

2 No further questions.

3 THE COURT:

4 All right. You may step down.

5 MS. LIVESAY:

6 No further questions, Your Honor.

7 THE COURT:

8 Any -- uh -- need to keep this
9 officer here today?

10 Is he needed further --

11 MS. LIVESAY:

12 Your Honor --

13 THE COURT:

14 -- from the State?

15 MS. LIVESAY:

16 May -- This would be a good
17 breaking point.

18 This is not out last -- uh --
19 witness. But if we're --

20 THE COURT:

21 Do you need this witness?

22 MS. LIVESAY:

23 No sir.

24 THE COURT:

25 Do you need him, Mr. Hazzard?

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1 MR. HAZZARD:

2 No sir, I don't, Your Honor.

3 THE COURT:

4 You're excused from your subpoena.

5 WITNESS:

6 Thank you, sir.

7 THE COURT:

8 Thank you.

9 Who's your next witness?

10 MS. LIVESAY:

11 Uh -- It's going to be Detective

12 Abercrombie.

13 THE COURT:

14 All right. Call him.

15 MS. LIVESAY:

16 Would you like to start his
17 testimony now, Your Honor?

18 THE COURT:

19 Yes, I -- I would. Let's start
20 it.

21 MS. LIVESAY:

22 Okay.

23 I'd like at this time to call
24 Detective Abercrombie to the stand.

25 WHEREUPON: DETECTIVE VANCE

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1 ABERCROMBIE WAS DULY SWORN AND TESTIFIED UNDER OATH AS
2 FOLLOWS:

3 CLERK:

4 Please state your full name; and
5 spell your last name.

6 WITNESS:

7 Vance Abercrombie; that's A-b-e-r-
8 c-r-o-m-b-i-e.

9 DIRECT EXAMINATION BY MS. LIVESAY:

10 Q. Detective, where do you currently work?

11 A. North Myrtle Beach Department of Public Safety.

12 Q. And how long have you worked there?

13 A. Approximately 16 years.

14 Q. And what is your current position at North Myrtle
15 Beach?

16 A. I'm a detective.

17 Q. And what kind of training have you undergone since
18 you've been with that Police Department?

19 A. Uh -- Of course going through the South Carolina
20 Criminal Justice Academy.

21 Uh -- Also going back to the -- uh
22 -- South Carolina Criminal Justice Academy for
23 Investigation School.

24 Also going to crime scene schools
25 such as Sirchie, which is in Raleigh.

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1 Q. So were you a detective in June -- on or around June
2 29th in 2009?

3 A. Yes, I was.

4 Q. And exactly what are your responsibilities as a
5 detective?

6 A. That particular week I was the on-call-detective.
7 And what that means is that pretty much anything that
8 happens after regular business hours, if there is such a
9 thing in law-enforcement -- uh -- that requires some
10 special attention, the on-call-detective would be
11 identified, such as -- uh -- burglaries -- uh -- you know
12 -- any -- any type of crime like that that requires
13 processing.

14 Q. Okay. And were you on-call on or around June 29th
15 of 2009?

16 A. Yes, I was.

17 Q. Okay. And were you called out?

18 A. Yes, I was.

19 Q. And are you familiar with this incident?

20 A. Yes, I am.

21 Q. Okay. And how did you become involved in the
22 incident that we're here today for?

23 A. At approximately 10 after 4:00 in the morning,
24 somewhere around in there, I received a call from
25 dispatch stating that there had been an abduction and a

1 kidnapping; and that the -- uh -- road officers were in
2 active -- uh -- uh -- looking for this individual; and
3 that -- uh -- I had probably better get -- get my clothes
4 on and head to -- towards the scene.

5 Once I got dressed, I -- uh -- got
6 into my vehicle -- uh -- which is an unmarked -- uh --
7 vehicle with a radio in it.

8 I got into my vehicle and started
9 heading towards the city, not really knowing exactly what
10 I had -- just a brief description from dispatch as far as
11 what was going on.

12 And it was about that time that I
13 realized, when I was listening to the radio, that -- uh
14 -- North Myrtle Beach officers were in pursuit -- uh --
15 of a vehicle that matched the description that was given
16 out -- uh -- from the -- uh -- kidnapping or abduction.

17 So rather than proceed to the
18 address they told me to go proceed, which would've been
19 1906 -- or Beach -- uh -- Beach, I went instead and
20 proceeded to where the chase had ended.

21 Uh -- I got to the chase.

22 As a matter of fact -- uh --
23 reviewing the -- uh -- video of -- uh -- I believe it was
24 Scott Causey -- Officer Scott Causey -- I get there right
25 about the time that he's reading Miranda rights to the

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1 defendant Mark Elliott.

2 Q. Okay. And what did you do upon arriving on the
3 scene?

4 A. Basically just asking what we've got.

5 Uh -- If you can imagine that type
6 of situation with that many officers involved, it gets
7 kind of hectic.

8 Uh -- Not everybody's on the same
9 page.

10 There might be an officer that's
11 -- uh -- back -- uh -- over towards where the -- uh --
12 gas station is that might've seen something different.

13 There was -- you know -- the
14 officers involved in the actual arrest.

15 Uh -- I did briefly speak to
16 Officer Causey. And he gave me a rundown -- a very
17 short rundown -- of basically what they had.

18 That -- uh -- a BOLO had been put
19 out of a -- uh -- I believe is said late '80s -- uh --
20 maroon Toyota; that a -- uh -- they were -- they were
21 looking for a black male who abducted a white female from
22 the Beach -- or Beach -- Beach House address; and that
23 at some point during -- uh -- this Horry County Officer
24 had spotted the vehicle that they had believed was the
25 vehicle involved -- matched the description.

1 And when they try to stop him, he
2 ran. And the chase ended there.

3 Uh -- There was a little bit of
4 confusion there.

5 I asked him where the vehicle that
6 the -- uh -- defendant was driving? And he pointed out
7 that it was back over towards where the gas station is.

8 And I don't really remember right
9 now what the gas station's name is.

10 So I went back over toward where
11 the vehicle was because, to be honest with you, I'm not
12 sure if the -- uh -- victim is still there; if the victim
13 is hurt.

14 I mean, all I had was the -- the
15 kidnapping and the subsequent -- uh -- uh -- car chase.

16 So I get back over to where the
17 vehicle is.

18 And I'm not exactly 100 percent
19 sure, but I believe by the time I get over there -- uh --
20 Lieutenant Baldasarre was already on the scene.

21 So I made contact with him.

22 Uh -- There was a little bit of
23 confusion as far as how many people ran from the vehicle;
24 if it was just the defendant or not.

25 So it's still unclear rather --

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1 where the victim, Ms. **Complaining** was at.

2 All we knew at that time was that
3 -- uh -- the defendant ran from the vehicle.

4 So considering the fact that -- uh
5 -- we had sort of an emergency situation here -- uh -- I
6 believe at that point in time -- uh -- I began to look in
7 the vehicle.

8 Uh -- As a matter of fact, I even
9 opened up the trunk to make sure, God forbid, that her
10 body was in the trunk.

11 Uh -- Once we cleared that and
12 realized that -- uh -- uh -- **Complaining** was not there, we --
13 -- uh -- started collecting notes as far as talking to
14 each other as far as -- uh -- what could've happened.

15 Uh -- I believe somewhere in that
16 timeframe is when -- uh -- we -- I was notified that the
17 -- **Complaining** cell phone was found in the -- uh -- door
18 pocket of the -- uh -- driver's side door.

19 Uh -- And it was somewhere around
20 in the there in which -- uh -- the phone was called, so
21 we knew that we had the right phone.

22 We knew -- We knew we had the
23 right vehicle.

24 We knew we had the right suspect.

25 And we also knew that -- uh --

1 **Complaining** had indeed been inside the -- uh -- the vehicle.

2 Uh -- At -- I believe I -- I was
3 aware that Scott -- uh -- Officer Causey had been talking
4 to the defendant.

5 Uh -- I had also -- was aware that
6 -- uh -- Lieutenant Baldasarre had been talking to the --
7 uh -- defendant in the car.

8 And I believe that I remember
9 seeing -- uh -- Sergeant Senter -- uh -- lean over and
10 talk to the defendant in the car, asking where **Complaining**
11 was; getting the story from him.

12 My opinion at the time was:

13 It wouldn't have done any good to
14 have another face -- you know -- stick their head in the
15 vehicle and basically ask the same questions that they
16 had been asking.

17 Because my priorities were the
18 same as the other officers' priority; and that was:

19 Where was **Complaining**

20 So I just mostly just sat back and
21 just listened to what they had to say.

22 They -- They would come in.

23 They would talk to him.

24 They would come back and let me
25 know what the situation was.

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1 Uh --

2 Q. Were you able to gain any information from that
3 scene to figure out where the victim was?

4 A. Uh -- I -- I knew that at one point there was a
5 little confusing (sic) as far as someone else running
6 from the vehicle.

7 And -- And that somewhere along
8 through this talking to -- uh -- the defendant talking to
9 the other officers -- uh -- at some point in there -- uh
10 -- someone had looked at the video.

11 And we were able to definitively
12 be able to tell no one else exited that vehicle except
13 for **Complaining**.

14 Q. So you didn't gain any information --

15 A. I mean, excuse me, except for the defendant. Uh --

16 Q. So you didn't gain any information that would lead
17 you to find where that victim was?

18 A. No. No.

19 Q. Was it ever brought to your attention where the
20 victim was?

21 A. Eventually, after we were there for -- uh -- 20
22 minutes maybe -- I'm not really sure -- uh -- we got a
23 call.

24 I heard over -- and I was probably
25 standing next to -- uh -- Lieutenant Baldasarre.

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1 But we got a call stating that --
2 uh -- she had been found wandering around the Cherry
3 Grove area; and that we were sending an officer -- uh --
4 Sergeant Downey, as it turns out, to her location to talk
5 to her and find out what the situation was.

6 Q. Okay. Now are you familiar with -- uh -- the
7 incident where the police were call from on Hillside
8 Drive?

9 Are you familiar with that area?

10 A. With that location?

11 Q. Yes.

12 A. Yes, I am.

13 Q. Okay. Are you familiar with the location -- uh --
14 where the defendant pulled in at that BP?

15 A. Yes, I am.

16 Q. Are you familiar with the location of where that
17 victim was found?

18 A. Yes, I am.

19 Q. Okay. Would this map assist you in your testimony
20 in explaining those --

21 A. Yes.

22 Q. -- sites to the jury?

23 A. Yes, ma'am.

24 MS. LIVESAY:

25 Your Honor, at this time, can I

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1 ask the detective to step down?

2 THE COURT:

3 Certainly.

4 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. All right. Detective Abercrombie, tell us where
6 the -- the location is that the police were called from?

7 A. Uh -- The initial incident location at -- uh --

8 Beach House -- Beach House was down in
9 this area here.

10 Q. Okay. And where was the victim picked up from?

11 A. The victim was picked up -- At that time, all I knew
12 is that she was picked up somewhere in the north end of
13 Cherry Grove.

14 I wasn't -- wasn't sure exactly.

15 Uh -- I believe, if I'm not
16 mistaken, they said somewhere near a boat ramp, which
17 would have put it somewhere around 53rd Avenue

18 But that -- that's all I knew at
19 the time.

20 Q. Okay. And how much distance are we talking from
21 Hillside until North Myrtle Beach at that location?

22 A. Uh -- Approximately 6 miles.

23 Q. Now where -- Explain to the jury -- or show to the
24 jury where the defendant was when you come across him?

25 A. The defendant was actually -- uh -- still -- uh --

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1 in cuffs -- handcuffs -- up here in the parking lot of
2 Billy the Kid Restaurant -- which you can't really tell
3 on this map, but -- uh -- this is the BP Station.

4 It would have been behind it,
5 maybe a hundred yards or so.

6 Q. Okay. Now about how long -- or how many miles are
7 we talking from this location in Cherry Grove to this BP
8 Service Station?

9 A. It's a little bit less than from Hillside, so I'm
10 going to -- uh -- say approximately 5 miles.

11 Q. Okay. Thank you, Detective. (And the witness
12 resumes the witness stand.)

13 So, if we are talking about
14 getting in a car and going from North Ocean Boulevard,
15 where the victim was located, and that BP, it's not a
16 very long time?

17 A. From the boat ramp -- 53rd Avenue?

18 Q. Right.

19 A. No, it's not a very long time.

20 Q. If you were in your car, and you drove from that
21 location in Cherry Grove to that BP, how long do you
22 expect it would take you?

23 A. That time of night?

24 Q. (Nods in the affirmative.)

25 A. Uh -- With that time of night, and with that kind of

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1 traffic conditions, five minutes maybe.

2 Q. Okay. Now after you left the scene, as the
3 detective, what did you do next?

4 A. I stayed there until I was advised that Sergeant
5 Downey was in route to Sea Coast Medical Center.

6 Uh -- Someone -- uh -- I am going
7 to assume it was -- uh -- Lieu -- uh -- Lieutenant
8 Baldasarre -- had notified that the victim had complained
9 of being sexually assaulted; so they were going to take
10 her directly there.

11 Q. Okay. And then what did you do?

12 A. I went to Sea Coast Medical Center to -- uh -- talk
13 to the victim.

14 A. And did you talk to the victim?

15 A. Yes, I did. Uh -- It was -- you know -- a hit and
16 miss here.

17 Because -- you know -- our primary
18 concern is a victim's physical and mental well-being.

19 Uh -- You want to -- kind of have
20 to handle it with kid gloves.

21 Uh -- You have to be able to get
22 the necessary information that you need at that time
23 without bombarding her with an awful lot of questions,
24 when she's already in a very stressful situation.

25 So you have to instead of play it

1 by ear.

2 And in situations like this
3 everyone's a little bit different.

4 Everyone reacts to -- uh --
5 situations differently.

6 So you kind of have to play it by
7 ear.

8 Uh -- When I talked to -- uh --
9 the victim, she was very responsive, and -- and did not
10 mind talking to me.

11 Which incidentally is one of the
12 first things that I do as a male officer, when I have to
13 deal with a victim of a sexual assault, sometimes they
14 are reluctant to talk to -- uh -- a male officer.

15 So one of the first things I do is
16 -- you know -- ask her if -- Do you mind talking to me?
17 Do you feel comfortable talking to me? Because I might
18 have to ask you some very personal questions.

19 And at that point -- uh --
20 **Complaining** said that she didn't mind talking to me.

21 Q. Did you ever do a formal interview?

22 A. Later on. I didn't want to bombard her with an
23 awful lot of questions at that time.

24 She -- The -- The nurses and the
25 doctors needed to do their thing.

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1 And of course, I'm not going to be
2 present during that exam.

3 So I just wanted to get the basics
4 down, just to make sure that everything that we were
5 hearing, and everything that we've -- uh -- we've heard
6 so far, as to what -- uh -- **Complaining** has been telling us.

7 Q. And did you do a formal interview at the police
8 station?

9 A. I did. I told her -- I stayed -- I stayed at the
10 hospital for quite a while -- uh -- even though I wasn't
11 with -- uh -- uh -- the victim.

12 Because later on, I believe some
13 of some the -- uh -- the chaperones -- I believe is the
14 right way to call them -- uh -- showed up, which
15 presented a different set of problems.

16 Because since -- uh -- **Complaining**
17 was 14 years old and her parents were there, I'm kind of
18 limited in what I can or should tell them.

19 Uh -- A lot of the things that
20 need to be discussed, need to be discussed with her
21 parents.

22 And I believe I talked to the
23 chaperone.

24 And I believe they -- at that
25 time, they told me that **Complaining** parents were already

1 in route down here.

2 So I -- I wanted to -- You kind of
3 have to handle that kind of situation with kid gloves as
4 far as -- you know -- what -- what to tell other
5 individuals, unless they're immediate family.

6 Q. Now did you come in contact -- How -- How much time
7 passed from when you saw her at the hospital and when you
8 had a formal interview with her at the police station?

9 A. The -- uh -- The medical exam takes quite a while.

10 Uh -- And -- uh -- I wanted to
11 stick around and talk to her afterwards, and make
12 arrangements for her to go home -- gather yourself.

13 At that point in time, it was okay
14 for her to take a shower -- uh -- get some new clothes
15 on; if she could, possibly take -- uh -- a -- a nap; try
16 and get refreshed, and try and recover, before she comes
17 up.

18 So I let that be her decision and
19 the chaperone's decision as far as when they were going
20 to come back.

21 I told them -- you know -- I would
22 be there whenever they needed me, and to call me when
23 they felt comfortable -- when **Complaining** felt comfortable
24 coming back to the PD and sitting down and discussing a
25 more formal -- uh -- uh -- or to interviewing her a

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1 little bit more formal.

2 And if I'm not mistaken, by the
3 time that they got there to the hospital -- uh -- it was
4 probably around lunchtime, 11:00 -- 12:00 o'clock, maybe
5 somewhere around there.

6 Q. Okay. And -- uh -- did you interview her?

7 A. Yes, I did.

8 Q. And was she able to tell you what had happened that
9 night?

10 A. Yes, she was.

11 Q. Okay. And what did she tell you?

12 A. She told me that -- uh -- while standing out in
13 front of the -- uh -- house that -- uh -- she was staying
14 at, along with some family -- friends -- uh -- her -- uh
15 -- her boyfriend, another male -- uh -- subject were
16 standing out, and by the roadway in front of the house --
17 that general area, when an individual -- a black male
18 individual drove up in a -- uh -- a maroon, older model
19 looking, Toyota.

20 Uh -- She had told me that -- uh
21 -- this vehicle had driven by a couple of times and then
22 had stopped under the guise of asking for directions.

23 Uh -- And that at this point, that
24 her, along with her boyfriend and the other male subject,
25 approached the vehicle.

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1 Somewhere in about this time, the
2 individual -- the defendant got out of the vehicle and
3 ordered them down on the ground.

4 She stated that he asked them if
5 they had any money; if -- uh -- they had any valuable on
6 them -- something to that effect.

7 Uh -- Had them down on the ground.

8 I believe most of them had said:

9 No.

10 I believe one of the individual --
11 one of the male individuals -- I don't know which one --
12 mentioned that he had some change in his pocket, and
13 pulled the change out and -- and laid it out.

14 Uh -- Somewhere in -- in this time
15 frame, the -- uh -- defendant ordered the other two males
16 to get up and walk away.

17 Uh -- It was at this point in
18 which the victim told me that she was ordered into the
19 vehicle -- uh -- and they drove away.

20 Q. Did she tell you what happened next?

21 A. She stated that --

22 Q. I'm sorry. Before I ask you that, was she able to
23 describe the vehicle?

24 A. Yes. Uh -- She described the vehicle. And it
25 matched the description that the defendant was driving

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1 that evening.

2 She said it was a -- uh -- older,
3 red car.

4 Uh -- See also described the
5 interior.

6 When I asked her what the interior
7 looked like, she said it was -- uh -- not kept up the
8 best in the world and it was an older looking interior.

9 She thought that it had -- uh --
10 cloth seat covers -- to that effect -- or cloth seats.

11 But -- uh -- that it wasn't a --
12 it wasn't a new car. It was an old -- old -- older model
13 car.

14 Q: Did she ever tell you what happened next, after she
15 was in the vehicle?

16 A. She stated that they drove around. Uh -- She wasn't
17 exactly sure for how long; but that she (sic) drove
18 around -- uh -- for a period of time.

19 She stated that the defendant
20 asked her repeatedly:

21 Do you know where you're at?

22 Uh -- She also told me that -- uh
23 -- they made -- they went -- going down several different
24 blocks.

25 It was at that point that I asked

1 -- uh -- the victim did she know where she was at. And
2 she stated:

3 No. We drove around like this for
4 a long time.

5 Uh -- At some point -- uh -- the
6 victim told me that the defendant -- uh -- asked her to
7 kiss her (sic).

8 And -- uh -- I asked her if she
9 did. And she said she -- she did because she -- uh --
10 had asked him that -- you know:

11 If I -- If I kiss you, will you
12 let me go?

13 And -- uh -- I believe she told me
14 that the defendant told her:

15 Yeah.

16 So she went ahead and kissed him.

17 Uh -- But he never let her go
18 after that.

19 They continued to drive around.

20 She wasn't sure where.

21 And she wasn't exactly for sure
22 how long.

23 Uh -- She said that they came to
24 what she described as a boat ramp.

25 And the defendant asked **Complaining**

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1 to exit the vehicle.

2 It was at this point that -- uh --
3 after they exited the vehicle over on her side -- on the
4 passenger side of the vehicle -- the -- uh -- she stated
5 that the defendant got out; got behind her on the outside
6 of the vehicle; and -- uh -- told her to pull her pants
7 down and her underwear down.

8 It was at this time that she told
9 me that she was sexually assaulted, both anally and
10 vaginally.

11 But she told me that she wasn't
12 quite sure if he penetrated.

13 Uh -- I asked her if -- uh -- if
14 he was hard?

15 She stated:

16 I don't think so.

17 That:

18 Uh -- It -- It appears as though
19 it only took a minute or two, she felt.

20 And that:

21 He appeared as though he started
22 regretting what he had done; and at that point, told her
23 that she can pull her -- uh -- shorts up, and that she
24 could leave.

25 Uh -- She then stated that she

1 walked away, and that the defendant was still in the
2 area.

3 She stated that he drove by her at
4 least once, that I can remember right now -- uh -- and
5 then, at one point, drive -- drove by and told her to
6 walk the other way.

7 And that was the last time she
8 had seen the defendant and the vehicle.

9 After that, she told me that she
10 walked around again.

11 She wasn't too familiar with the
12 area.

13 She didn't know where she was
14 exactly.

15 But she -- she walked around
16 trying to find somebody to flag down to help her -- uh --
17 because she didn't have her telephone.

18 And that was when she came upon
19 the jogger. Uh -- He was jogging down the road.

20 Q. Let me ask you some questions about -- uh --
21 location using the map.

22 You're familiar with the Cherry
23 Grove area?

24 A. Yes, I am.

25 Q. Point out to this jury -- uh -- where the boat ramps

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1 in the Cherry Grove area are located?

2 A. Well, that particular evening when she told me that
3 she was at -- at a boat ramp, I immediately thought of
4 53rd Avenue Boat Ramp, which is the main boat ramp.

5 It's a commercial boat ramp that
6 -- where everybody goes to go fishing.

7 It's where the public can go.
8 It's a public boat ramp.

9 Uh -- The -- uh -- And that is
10 right here at 53rd Avenue North.

11 That's the area -- When she
12 mentioned that she was near a boat ramp, that's the
13 impression that I got, is that this -- uh -- boat ramp
14 right here --

15 Q. Is there another boat ramp in that area.

16 A. There -- There are. There's some -- uh -- private
17 little slips that's -- that's not open for the public.

18 Uh -- And there's various ones
19 here and there.

20 There's not as many as there used
21 to be because of -- uh -- uh -- building over the past --
22 uh -- 20 years.

23 You know, things in Cherry Grove
24 aren't what they used to be.

25 But there's still a few little

1 boat ramps here and there, but I think they're private
2 boat ramps.

3 Q. Now -- uh -- just because they're private, does that
4 mean you can't drive your vehicle up in them?

5 A. No; you can still drive your vehicle in them. B

6 Q. Okay. So, they're private, but the public could
7 access them if they wanted to? There's no gate or
8 anything?

9 A. That's correct.

10 Q. Okay. And are there some boat ramps along in this
11 area that are private boat ramps.

12 A. There is. There's a couple of them through here.
13 There's one that -- uh -- uh -- if I'm not mistaken --
14 and I'm -- To be honest with you, I'm not too familiar
15 with it.

16 If you traveling north -- If
17 you're traveling north on -- uh -- the Boulevard, it
18 would on your left-hand side.

19 And it's right over in here
20 somewhere.

21 Q. Okay. But there are some boat ramps along in this
22 area?

23 A. That's correct.

24 Q. Okay. Now are you familiar with Lance O'Bryant's
25 statement?

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1 A. Yes, I am.

2 Q. Okay. And are you familiar with the fact he said
3 he was running from his condo here, south?

4 A. Yes, I am.

5 Q. Okay. Now -- uh -- And he came up behind her? Is
6 that correct?

7 A. Uh -- I believe so, yes.

8 Q. Okay. So if you were leaving one of these boat
9 ramps, and you got out here, and you took a left, where
10 would you end up?

11 A. Uh -- If you took at left, you'd end up here in the
12 point.

13 Q. Okay. And is there anywhere to go from that point?

14 A. Nothing there.

15 Q. Okay. So the only choice you have is to go down
16 this street here from those boat ramps?

17 A. Is to head southbound on -- uh -- Ocean Boulevard.

18 Q. Okay. Thank you detective. (And the witness
19 resumes the witness stand.)

20 Now you said there was some -- uh
21 -- little private boat ramps in that area?

22 A. There is a few. I'm -- To be honest with you, I'm
23 not that familiar with them, since they are mostly on a
24 private basis; or you have to be a member of a condo to
25 -- uh -- to have access to them.

1 Q. Uh -- Somebody that wasn't from around here, would
2 you expect them to know where those boat ramps were?

3 A. No, I wouldn't.

4 Q. Okay. Somebody that's been in North Myrtle Beach
5 twice in their entire life, would you expect them to know
6 that there's a boat ramp right there at the end of that
7 point?

8 A. No, I would not.

9 Q. Okay. She was staying at Hillside, right here?

10 A. That's correct.

11 Q. Okay. Would you expect somebody that stays in this
12 vicinity to know that there is a boat ramp down here all
13 the way at the end of almost North Myrtle Beach?

14 A. Not if they were visitors, I wouldn't expect them
15 to; no.

16 Q. Okay. Now, and how long have you been in this
17 area?

18 A. I've been with the Department for about -- uh -- 16
19 years.

20 I've lived in the area since -- uh
21 -- 1986.

22 Q. Okay. And you would say you're not even familiar
23 with all of those little boat ramps along in there?

24 A. They're kind of tucked away. No. I'm -- Even I'm
25 not familiar with everything.

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1 And there's little boat ramps
2 behind people's homes -- uh -- that have access to the
3 Intercoastal Waterway.

4 Uh -- I am not familiar with all
5 those either.

6 Q. Okay. And are there any stores, or anything, in
7 that area --

8 A. No.

9 Q. -- at the end?

10 A. No, there's not.

11 Q. Okay. Uh -- What kind of area would you describe
12 it as?

13 A. Residential and -- Yeah, I would describe it as
14 residential.

15 Q. Okay. So if you didn't have a house in that area,
16 you really wouldn't have a reason to be down there?

17 A. Everything on that end just dead ends at -- at a
18 point.

19 So unless -- uh -- you were
20 staying or living there, you wouldn't go -- necessarily
21 go down a dirt road -- I mean -- uh -- a dead-end, which
22 is essentially what the Boulevard is.

23 Once you get past a certain point,
24 it dead ends.

25 Q. Now you said -- uh -- you took -- you interviewed

1 Complaining

2 A. Yes, I did.

3 Q. And she was able to tell you this information?

4 A. That's correct.

5 Q. Okay. Now did you interview the two other guys
6 that were standing out there with Complaining

7 A. Yes, I did.

8 Q. Okay. And were what they told you consistent with
9 what she told you?

10 A. That's correct.

11 Q. Okay. Who else did you interview?

12 A. Uh -- Just -- uh -- Complaining and the two based on
13 your story, and -- uh -- the defendant.

14 Q. Now, what else did you do as part of your
15 investigation in this case?

16 A. Well, the first thing to do is to interview
17 everybody involved.

18 Uh -- That would have been the two
19 boys -- uh -- and Complaining and of course the defendant.

20 And, after that, the vehicle was
21 towed to our impound lot.

22 I knew eventually that I was going
23 to have to issue a search warrant for the vehicle.

24 Q. Okay. So eventually you searched the defendant's
25 car?

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1 A. I did. When the vehicle was originally searched at
2 the scene, when we were looking for -- God forbid -- the
3 body of -- of -- of ~~Complaining~~ in the trunk and all -- uh
4 -- Of course we notified -- We noticed the cell phone
5 present there.

6 Uh -- As I -- Well, looking
7 through the vehicle, I also noticed a -- uh -- crow --
8 crowbar that was sitting on the -- uh -- uh -- front
9 passenger seat.

10 Q. Okay. And that was her cell phone?

11 A. That's correct. It was her cell phone.

12 Q. Okay. Did you ever confirm later on with the
13 victim that that indeed was her cell phone?

14 A. Yes, I did.

15 Q. And was she able to confirm that indeed was the cell
16 phone?

17 A. Yes.

18 Q. Okay. And was that the same cell phone you got out
19 of his front pocket?

20 A. That's correct.

21 Q. Okay. Now, you searched the vehicle. Is that
22 correct?

23 A. Yes, I did.

24 Q. Okay. Did you take any items out of the vehicle?

25 A. I took a -- the cell phone that belonged to

TESTIMONY OF DETECTIVE VANCE ABERCROMBIE

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1 Complaining

2 I took a crowbar -- or seized a
3 crowbar that was found in the front passenger seat.

4 And I seized a pair of underwear
5 that was in the backseat.

6 Q. Okay. Now -- uh -- what kind of underwear were
7 they?

8 A. Men's -- uh -- underwear, if I remember --

9 Q. Sir?

10 A. Men's underwear.

11 Q. Okay. And they were found where?

12 A. In the backseat.

13 Q. Okay. Of the red, burgundy car?

14 A. Of the red -- uh -- Toyota.

15 MS. LIVESAY:

16 Okay.

17 May I approach the witness, Your
18 Honor?

19 THE COURT:

20 (Nods in the affirmative.)

21 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. You recognize what I'm showing you now?

23 A. Yes, I do.

24 Q. And what is it?

25 A. It's a crowbar that was found in the -- uh --

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1 defendant's vehicle.

2 Q. Okay. And is this the exact crowbar?

3 A. Yes, it is.

4 MS. LIVESAY:

5 Okay.

6 Can I have this marked as State's
7 next number, please.

8 WHEREUPON: THE CROWBAR WAS MARKED
9 BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 12 (FOR
10 IDENTIFICATION ONLY).

11 COURT REPORTER:

12 Your Honor, this will be State's
13 Exhibit 12.

14 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

15 Q. Now where did you find this?

16 A. It was -- uh -- in the front passenger seat.

17 Q. Front passenger seat?

18 A. (Nods in the affirmative.)

19 Q. What -- uh -- What made you search the defendant's
20 vehicle?

21 A. To seize items that I saw in plain view?

22 THE COURT:

23 Are you going to ask to have that
24 admitted Ms. -- uh -- Livesay.

25 MS. LIVESAY:

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1 And exactly what were --

2 THE COURT:

3 Ms. Livesay, you want to have that
4 admitted?

5 MS. LIVESAY:

6 Yes, sir.

7 THE COURT:

8 Any objection?

9 MR. HAZZARD:

10 Subject to the objections
11 previously raised, Your Honor.

12 THE COURT:

13 All right.

14 You may publish it now.

15 MS. LIVESAY:

16 Thank Your Honor.

17 WHEREUPON: THE CROWBAR, EARLIER
18 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 12
19 WAS ENTERED INTO EVIDENCE SUBJECT TO WHAT MR. HAZZARD
20 CALLED PREVIOUSLY RAISED OBJECTIONS (?).
21 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. Now, what exactly were you looking for in the car?

23 A. Well, I did notice, when the vehicle was at the --

24 uh -- BP Station -- excuse me -- that -- uh -- **Complaining**

25 phone was there.

TESTIMONY OF DETECTIVE VANCE ABERCROMBIE

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1 So I wanted to -- to lawfully
2 seize that.

3 I also noticed that crowbar there.

4 Uh -- After that, I wanted to make
5 sure that we didn't have any other -- uh -- uh -- items
6 from the vehicle that would -- uh -- pertain to this
7 particular incident.

8 Q. Okay. And where was that crowbar located again?

9 A. Up on the front passenger seat -- uh -- tucked down
10 somewhere around in here about the middle section of the
11 vehicle.

12 Q. Okay. And you seized that crowbar. Is that
13 correct?

14 A. That's correct.

15 Q. Did you find anything else in that car like a
16 weapon?

17 A. No; just that right there.

18 Q. Other than this crowbar?

19 A. That's correct.

20 Q. Okay. And did you do a full search of the vehicle?

21 A. Yes, I did.

22 Q. Okay. Did you find any drugs in the vehicle?

23 A. No, I did not.

24 Q. Did you do anything that would believe you -- or
25 lead you to believe that there were drugs in the vehicle

1 at the time?

2 A. No, I did not.

3 Q. Did you anything to do with drugs in the vehicle?

4 A. No, I did not.

5 Q. Okay. You said you found what else in that car
6 that you seized?

7 A. Uh -- A pair of men's underwear.

8 Q. Do you recognize what I'm showing you?

9 A. Yes, I do.

10 Q. And what is it?

11 A. It's a pair of men's underwear.

12 Q. And are these the underwear that came out of that
13 car? O

14 A. That's correct.

15 Q. And where were these underwear located?

16 A. Located -- uh -- in the back -- uh -- behind the
17 passenger seat on the floorboard.

18 Q. Okay. Were there any other clothes you found in
19 the car?

20 A. There was some folded clothes like they had been
21 washed and were just folded in the trunk.

22 But that was it as far as inside
23 the vehicle itself.

24 MS. LIVESAY:

25 Your Honor, at this time, can the

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1 State admit into evidence this underwear?

2 THE COURT:

3 What's the relevance?

4 MR. HAZZARD:

5 Uh -- Your Honor, I don't really
6 see the relevance. I fail to see the relevance.

7 THE COURT:

8 What's the relevancy, Ms. -- uh --

9 MS. LIVESAY:

10 Uh -- It's a sexual assault, Your
11 Honor.

12 The relevance is he had to take
13 off his underwear to assault her.

14 THE COURT:

15 Okay.

16 MR. HAZZARD:

17 If the State has established that
18 he was wearing unaware, then that's -- I mean, I don't
19 see how they're going to tie that together.

20 But --

21 THE COURT:

22 Go ahead.

23 MS. LIVESAY:

24 It's --

25 THE COURT:

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1 It's admitted. Okay.

2 WHEREUPON: A PAIR OF MEN'S

3 UNDERWEAR WAS MARKED BY THE COURT REPORTER AS STATE'S

4 EXHIBIT 13, AND WAS ENTERED INTO EVIDENCE APPARENTLY OVER

5 OBJECTION(?).

6 COURT REPORTER:

7 Your Honor, this will be State's

8 Exhibit 13.

9 THE COURT:

10 All right.

11 MS. LIVESAY:

12 Thank Your Honor. Can I publish

13 it to the jury?

14 THE COURT:

15 Yes.

16 MS. LIVESAY:

17 Thank Your Honor.

18 THE COURT:

19 Ms. Livesay, bag it --

20 MS. LIVESAY:

21 I will.

22 THE COURT:

23 -- if you're going to publish it

24 to the jury.

25 MS. LIVESAY:

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1 Thank you.

2 I'm going to put them back in
3 there, Your Honor.

4 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. Did you find any other clothes in that car?

6 A. No, I did not.

7 Q. Okay. Uh -- What was the description of the
8 defendant as far as what he was wearing --

9 A. He was --

10 Q. -- that was given out on that BOLO?

11 A. That was given out on the BOLO?

12 Q. Uh-huh.

13 A. Uh -- The description was a -- uh -- black male
14 approximately 6 feet -- 6 foot-two -- I think is what the
15 BOLO said -- weighing approximately 200 or 220 pounds,
16 wearing a white muscle-type tee shirt.

17 And I believe the BOLO mentioned
18 that he had dark shorts on and white tennis shoes.

19 Q. Okay. Did you come in contact with him that night?

20 A. Yes, I did.

21 Q. What was he wearing?

22 A. He was wearing a -- uh -- white muscle tee shirt and
23 -- uh -- silvery-looking -- uh -- shorts.

24 Q. Okay. And did you take a clothes into evidence
25 that he was wearing that night?

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1 A. Yes, I did.

2 Q. And what did that consist of?

3 A. It consisted of just the white tee shirt -- the
4 muscle type tee shirt -- and the -- uh -- shorts.

5 He -- He was not wearing any
6 underwear.

7 Q. Okay. Now was he wearing shoes when you found him?

8 A. Yes, he was.

9 Q. And when you interviewed him, what was he wearing?

10 A. When I interviewed him, he was wearing -- uh --
11 tennis shoes -- white tennis shoes.

12 Q. Okay. When you saw him that night, he was wearing
13 tennis shoes?

14 A. That's correct.

15 Q. Okay. Now when you search car, did you find
16 anything in there -- any items to confirm that indeed
17 that was his vehicle?

18 A. Uh -- Yes, the registration. Of course the tag was
19 run anyway; but the registration.

20 Q. Okay.

21 A. And -- uh -- I believe during the -- uh -- interview
22 -- uh -- the defendant mentioned that he left his cell
23 phone -- described his cell phone -- and that was in the
24 vehicle as well.

25 Q. Okay. And where was his cell phone found?

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1 A. It was found in the -- uh -- center console -- the
2 area between the front seat.

3 Q. Okay. Did -- uh -- Did you -- So you interviewed
4 him?

5 A. That's correct.

6 Q. Okay. Are you familiar with Miranda warnings?

7 A. I am.

8 Q. And did you read him his Miranda warnings?

9 A. Yes, I did.

10 Q. Okay. Did he acknowledge to you that he understood
11 them?

12 A. Yes, he did.

13 Q. Okay. Did you advise him in any sort of written
14 form about his Miranda warnings?

15 A. Yes, I did. We have a standard Miranda Form that
16 we read to individuals.

17 MS. LIVESAY:

18 All right. Mark this here as a
19 Court's (sic) exhibit.

20 WHEREUPON: THE MIRANDA FORM WAS
21 MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT NUMBER 14
22 (FOR IDENTIFICATION ONLY).

23 MS. LIVESAY:

24 Thank you. Thank you.

25 At this time, I'm showing the

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1 detective Court's (sic) Exhibit Number 6.

2 MR. HAZZARD:

3 Without objection.

4 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

5 Q. Do you recognize what I'm showing you?

6 A. Yes, I do.

7 Q. And what is it?

8 A. This is the standard Miranda Form that we use when
9 we interview -- uh -- individuals -- uh -- in the -- uh
10 -- interview room -- uh -- that we read to them before we
11 discuss anything with them.

12 Q. Okay. And did you read that form to him?

13 A. Yes, I did.

14 Q. Is there anything up there to indicate that you read
15 that form to him?

16 A. The defendant -- uh -- signs on the -- uh -- form
17 itself that he --

18 Q. Detective, it's not in evidence. Just, if you could
19 just --

20 A. Okay.

21 Q. Okay.

22 A. The defendant signs -- uh -- on the form that he
23 understands his Miranda.

24 Q. Okay. And is his signature up there?

25 A. It is.

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1 Q. Is your signature up there?

2 A. Yes, it is.

3 MS. LIVESAY:

4 At this time, can the State place
5 Court's Exhibit Number 6 into State's evidence and
6 publish it?

7 THE COURT:

8 Mr. Hazzard?

9 MR. HAZZARD:

10 Without objection.

11 THE COURT:

12 Without objection.

13 WHEREUPON: THE MIRANDA FORM,
14 EARLIER MARKED BY THE COURT REPORTER AS STATE'S EXHIBIT
15 NUMBER 14 WAS ENTERED INTO EVIDENCE WITHOUT OBJECTION.

16 COURT REPORTER:

17 Your Honor, this will be State's
18 Exhibit Number 14.

19 THE COURT:

20 Very well.

21 MS. LIVESAY:

22 Thank you.

23 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Now what time did you interview the defendant in
25 this case?

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1 A. It was late in the afternoon 2:00 o'clock to 3:00
2 o'clock, somewhere around in the early afternoon.

3 Q. And did you -- uh -- search the vehicle before or
4 after?

5 A. After our interview.

6 Q. Okay. So, did you do anything else with the
7 vehicle other than search the vehicle, as far as crime
8 scene type -- trying to collect evidence.

9 A. No. Uh -- Well, I processed the outside for latent
10 prints.

11 Q. Okay. And did you find any prints that matched the
12 victim?

13 A. Uh -- No. We found some that matched the defendant.

14 Q. Okay. Now, was there anything else in that car
15 that links the victim to that vehicle?

16 A. Uh -- I can't think of anything else offhand besides
17 what I've already discussed.

18 Q. Okay. Now tell me again:

19 What time did you interview the
20 defendant?

21 A. It was 2:00 -- 3:00 o'clock in the afternoon;
22 somewhere around there.

23 Q. And during that time, you had already read him
24 Miranda?

25 A. During the interview, yes.

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1 The first thing I did was to read
2 him Miranda.

3 Q. Okay. And were you recording the interview?

4 A. Yes, I was.

5 Q. Okay. Now was the entire interview recorded from
6 Miranda until the time that --

7 A. The entire interview between the time that we walked
8 in till the time that we left.

9 MS. LIVESAY:

10 Can I have this marked?

11 WHEREUPON: THE DVD OF THE
12 INTERVIEW WITH DEFENDANT MARK ELLIOT, EARLIER MARKED BY
13 THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 5, WAS NOW
14 MARKED AS STATE'S EXHIBIT NUMBER 15 FOR IDENTIFICATION
15 ONLY.

16 MS. LIVESAY:

17 Thank you.

18 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

19 Q. I'm showing you Court's (sic) Exhibit Number 5. Do
20 you recognize what I'm showing you?

21 A. Yes, I do.

22 Q. And what is that?

23 A. It's a DVD of the recording of the interview with
24 the Defendant Mark Elliott.

25 Q. Okay. And is this -- Have you reviewed this

1 interview?

2 A. Yes, I have.

3 Q. And is this a accurate recording of that interview?

4 A. Yes, it is.

5 MS. LIVESAY:

6 Okay.

7 Your Honor, at this time the State
8 wishes to place into evidence Court's (sic) Number 5, and
9 publish it at a later time.

10 THE COURT:

11 All right. Any objection?

12 MR. HAZZARD:

13 Without objection, Your Honor.

14 Or I should say subject to the
15 previous motion regarding Jackson V. Denno.

16 THE COURT:

17 Okay.

18 COURT REPORTER:

19 Your Honor, this will be State's

20 Exhibit 15.

21 WHEREUPON: THE DVD OF THE
22 INTERVIEW WITH DEFENDANT MARK ELLIOT, EARLIER MARKED BY
23 THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 5, AND THEN
24 REMARKED AS STATE'S EXHIBIT NUMBER 15 WAS ENTERED INTO
25 EVIDENCE SUBJECT TO PREVIOUS OBJECTION RAISED IN THE

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1 EARLIER JACKSON V. DENNO HEARING.

2 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

3 Q. Now, when you interviewed the defendant, did you
4 interview him about the incident involving the victim?

5 A. Yes, I did.

6 Q. Okay. And did he indicate to you if he knew what
7 you were talking about?

8 Q. Yes, he did.

9 Q. Did he indicate he knew who that girl was?

10 A. Yes, he did.

11 Q. Okay. Did he indicate that he knew that she was in
12 the car?

13 A. Yes, he did.

14 Q. Okay. Did he indicate that she was in the car?

15 A. Yes, it did.

16 Q. Okay. Did he indicate that anybody else was in the
17 car?

18 A. Uh -- No, he did not.

19 Q. Okay. So there's no doubt she was in that vehicle?

20 A. That's correct.

21 Q. Okay. Now when you interviewed **Complaining** was that
22 consistent with what she told you?

23 A. Yes, it was.

24 Q. Okay. Now in an effort to try to identify who the
25 suspect was, did you show her a lineup?

1 A. Yes, I did.

2 Q. Okay. Was she able to pick him out?

3 A. No. She was not able to pick him out.

4 Q. Okay.

5 A. You know, that's not necessarily unusual. Uh --

6 Considering how many crimes that we work; who many -- uh

7 -- witnesses that we have, it's not unusual --

8 MR. HAZZARD:

9 Objection; non-responsive.

10 MS. LIVESAY:

11 Your Honor, he's answering --

12 THE COURT:

13 I think it is. I'm going to let

14 him answer.

15 MR. HAZZARD:

16 Okay.

17 WITNESS:

18 It's not unusual for people not to

19 be able to pick somebody off a lineup.

20 As a matter of fact, it's unusual

21 for someone to be able to pick somebody up out of a

22 lineup.

23 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Okay. And you didn't find her prints on the car?

25 A. No.

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1 Q. She wasn't able to pick him up out of the lineup?

2 A. That's correct.

3 Q. So really, the only for sure confirmation you had
4 that there was no doubt was that that defendant told you
5 she was in the car?

6 A. That's correct.

7 Q. Okay. Now, was she able to describe him?

8 A. Yes, she did. Uh -- When I interviewed -- she --
9 her back at the -- uh -- uh -- police department in the
10 interview room, she gave a further description of him
11 with a more accurate description of him.

12 And she had made mention of some
13 tattoos that matched tattoos that were on the defendant.

14 Q. Okay. Did you see the defendant close up?

15 A. Yes, I did.

16 Q. Okay. Did he have tattoos on him?

17 A. That's correct.

18 Q. Was she able to tell you where those tattoos were
19 located?

20 A. She said that they were on his arm.

21 Q. Okay. Did he have a tattoo on his arm?

22 A. Yes, he did.

23 Q. But she was able to give you that much detail?

24 A. That's correct.

25 Q. But couldn't pick him out of a lineup?

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1 A. That's correct.

2 Q. Now was she able to give you details about the
3 sexual assault itself?

4 A. Yes, she did. Uh -- She explained to me that -- uh
5 -- he, once he got her out of the car -- uh -- at some
6 point in time -- uh -- forced her to pull her panties
7 down or shorts down, where -- uh -- she stated that he
8 sexually assaulted her while she was -- uh -- behind --
9 uh -- she would've been in front of him pointed away.

10 In other words, he was behind her.

11 Q. Did you ask her any further questions to go into any
12 more detail of the specifics about that sexual assault?

13 A. No, I didn't want to get overly detailed about it.
14 She's 14 years old at the time, and been through
15 something pretty traumatic.

16 So I got -- uh -- really enough
17 that I needed for the -- the situation that I had and the
18 case that I had.

19 Q. Was she able to give you any details as to the
20 sexual assault as to any sort of pain or discomfort that
21 it may have caused her?

22 A. No. She didn't mention any pain or discomfort.

23 The only thing she did mention is
24 the fact that she -- she felt like he -- he wasn't
25 completely erect; that -- uh -- that he was having

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1 difficulty with that; and the fact that -- uh -- he had
2 just given up and told her he couldn't do this anymore.

3 Q. Okay. Now during your interview with the
4 defendant, was what he told you about when he picked her
5 up, and who was out there with her, consistent with what
6 she told you?

7 A. Except for the timing, pretty much; yes, it was
8 consistent.

9 Q. Okay. Did he tell you there were two other boys
10 out there standing?

11 A. Yes, he did.

12 Q. Okay. Now did he tell you that she -- what her
13 name was -- what that other boy's name was?

14 A. I believe he did mention her name, **Complaining**
15 specifically.

16 Uh -- And I believe he did mention
17 **MH** which was one of the other boys that was out
18 there as well.

19 Q. Now, did you ever talk to him about the idea that
20 somebody else -- or that she had jumped out of the car
21 when he jumped on the car?

22 A. When I talked to him?

23 Q. Yes, in your interview, did you address that?

24 A. No, I didn't address that.

25 Q. Okay. Did you address where he dropped her off at?

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1 A. Yes.

2 Q. Okay. Where did he tell you that he had dropped
3 her off?

4 A. Well, it -- it kind of changed here and there -- uh
5 -- descriptions, directions, this and that.

6 But eventually, he stated that he
7 had dropped her off at a motel.

8 And I think he had described it as
9 -- uh -- having pink writing on it, or something of that
10 nature, that was two blocks away from the Beach House
11 address.

12 Q. Okay. And was he able to give you a name of the
13 motel?

14 A. No, he was not.

15 Q. Okay. So he told you it was just a couple of
16 blocks away?

17 A. That's correct.

18 Q. Okay. Did you ever ask him about her boy fin --
19 boyfriend having his car down here?

20 A. Ask --

21 Q. The defendant? Did he know that her boyfriend had a
22 vehicle down there?

23 A. I don't recall if I asked him that specifically or
24 not.

25 Q. Okay. But he tells you that he only dropped her

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1 off a couple of blocks from where he picked her up at
2 Hillside?

3 A. That's correct.

4 Q. Okay. Now, did he say anything about her not
5 having any shoes on?

6 A. No, he did not.

7 Q. Did you ask him about her not having any shoes on?

8 A. Uh -- I don't call me asking if she had any shoes on
9 or not.

10 Q. Okay. Did -- uh -- he tell you, or indicate to
11 you, why he picked her up, or where she was looking to
12 go?

13 A. He stated that -- uh -- she asked him if she could
14 have a ride two blocks away because she knew -- uh --
15 some -- something to the effect that there was some
16 college students staying at a motel a couple of blocks
17 away.

18 Q. Okay. Did he ever tell you why he was in that
19 area?

20 A. He told me that he was -- uh -- coming from Conway.
21 Uh -- Told me he had lived in -- uh -- that he lived
22 Tabor City. He had driven over to Conway and decided
23 that he would drive to North Myrtle Beach -- uh -- on
24 the way home.

25 MS. LIVESAY:

1 All right.

2 And The Court will take note that
3 -- uh -- the witness is still under oath.

4 WHEREUPON: Ms. Livesay began to
5 publish State's Exhibit Number 15 for the jury, beginning
6 at 9:37 AM, November 18, 2010; but stopped the video (at
7 the 3:17:56 point on the tape counter) at 10:44 AM,
8 November 18, 2010; and the proceedings continued as
9 follows:

10 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

11 Q. Okay. Detective Abercrombie, what's on the rest of
12 that video; just the phone call.

13 A. Just a phone call. He's talking to -- uh -- a
14 relative or -- uh --

15 Q. So is that the end of the discussion as far as the
16 understanding we're here for today?

17 A. That's the last time that we discussed anything as
18 far as the case is concerned.

19 MR. HAZZARD:

20 Your Honor, actually following the
21 phone call there is a discussion regarding -- uh -- the
22 search warrant and his request for him asking Mark
23 whether or not Mark will agree to allow him to search the
24 vehicle.

25 And I would ask that that part be

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1 published the jury at this time.

2 MS. LIVESAY:

3 Your Honor, it's just --

4 THE COURT:

5 I'm going to let you do it.

6 MS. LIVESAY:

7 Thank you.

8 THE COURT:

9 I mean, you cross examine him if
10 you want to -- uh -- put any more up, then I'll let you
11 do so.

12 So let's just leave it right
13 there.

14 MS. LIVESAY:

15 I'm just going to minimize it and
16 put this down like that.

17 THE COURT:

18 Okay.

19 DIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

20 Q. Uh -- Now Detective Abercrombie, you interviewed the
21 victim before you interviewed the defendant?

22 A. That's correct.

23 Q. Okay. And at that point, has she already told you
24 that he had penetrated her?

25 A. That's correct. She stated that -- uh -- uh -- in

1 her words, she wasn't quite sure if he was completely
2 hard or not; but that -- uh -- that he had penetrated
3 her.

4 Q. Okay. Now, you searched the vehicle. Is that
5 right?

6 A. That's correct.

7 Q. Did you ever find an opened container in the car?

8 A. No, I did not.

9 Q. Okay. Did you ever find anything else in the car
10 like an opened container of alcohol, or drugs?

11 A. No, I did not.

12 Q. Okay. Now in that interview, you asked Mr. Elliott
13 about that you found her near a boat ramp; is that right?

14 A. That's correct.

15 Q. Okay. Did he ever acknowledge that he didn't know
16 anything about a boat ramp?

17 A. No, he wouldn't acknowledge knowing anything about
18 anything as far as where he was at or what he had done.

19 Q. Okay. Now -- And he told you that there was drugs
20 involved, or she was going to buy drugs; is that right?

21 A. The story had switched. I think -- uh -- the --
22 Initially, it was that they had flagged him down to get
23 for him if he had any drugs (sic).

24 And then, when that didn't
25 succeed, he was -- uh -- take her to a motel a couple of

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1 blocks away (sic).

2 Uh -- When I asked him if that was
3 to buy drugs, I believe he stated that he wasn't sure
4 what she wanted to go there for.

5 Q. Okay. Now you -- you took into -- her clothes into
6 evidence; didn't you?

7 A. That's correct.

8 Q. Okay. Were there any pockets in her shorts?

9 A. Uh -- No, I don't believe so.

10 Q. Okay. And did you ever take any shoes from her
11 that she was wearing?

12 A. She wasn't wearing shoes.

13 Q. Okay. So she certainly wasn't dressed like she was
14 -- appeared to be going anywhere; did she?

15 A. That's correct.

16 Q. Now when he first talked to you, did he tell you
17 anything about her kissing him?

18 A. No. That did not come out until -- uh -- I brought
19 up -- uh -- you know -- the possibility of DNA.

20 It wasn't until then that he
21 stated that -- uh -- she kissed him.

22 Q. Okay. So before then, did he ever claim he had
23 known her before that night?

24 A. No.

25 Q. Okay.

1 A. He -- He had not known her before that night.

2 Q. Okay. Did he tell you when he had first met her?

3 A. At the time that he drove by -- uh -- and asked for
4 directions and was flagged down.

5 Q. Okay. And how far did he take her?

6 A. He stated: a couple of blocks away. Uh --

7 Q. Okay. Did he ever mention he had talked to her
8 since then?

9 A. No.

10 Q. Okay. Now did he ever tell you how her phone got
11 into his side pocket?

12 A. He stated that she left the phone in the vehicle
13 when she got out; and discovered (sic) I guess later on,
14 and stuck it over there in the side pocket of the
15 passenger side of the -- uh -- door -- or excuse me --
16 driver's side door.

17 Q. Well he knew where he had dropped her off? Is that
18 what he told you?

19 A. He stated: Yes. Uh-huh. That it was a couple of
20 blocks away from their location.

21 Q. Okay. And he never said anything about trying to
22 take that phone back to where she was?

23 A. No.

24 Q. How about taking the phone back to where those two
25 guys were?

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1 A. No.

2 MS. LIVESAY:

3 No further questions for this
4 witness, Your Honor.

5 THE COURT:

6 All right, Mr. Hazzard.

7 MR. HAZZARD:

8 At this time, Your Honor, we'd
9 move to go ahead and play the rest of that exhibit for
10 the jury.

11 THE COURT:

12 Do you want the telephone call as
13 well?

14 MR. HAZZARD:

15 If -- It doesn't matter to me,
16 really. Uh --

17 THE COURT:

18 Well, let's see if --

19 MR. HAZZARD:

20 -- The part I'm interested in is
21 after the telephone; but I'm not --

22 THE COURT:

23 All right. Well, then, can we --
24 Is there a way that we can go forward then?

25 COURT REPORTER:

1 Your Honor, I have to have a way
2 to put it in the record exactly what we're doing here.

3 THE COURT:

4 All right.

5 MR. HAZZARD:

6 Well, we --

7 THE COURT:

8 What we're doing is:

9 We're going to skip over that
10 portion of the tape where the defendant was merely
11 contacting a -- a -- a -- a family member or a friend to
12 let him know where he was.

13 Is that a fair statement, Mr. --
14 uh -- Hazzard of what was transpiring there?

15 MR. HAZZARD:

16 Where we stopped --

17 THE COURT:

18 And we're going forward to --
19 we'll note it in just a moment -- where his interchange
20 with -- or exchange with the police officer -- or the
21 investigator -- takes back up.

22 Is that correct?

23 MR. HAZZARD:

24 Yes sir.

25 THE COURT:

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 Is that a fair statement of -- of
2 what we're doing, Mr. Hazzard -- or what you require?

3 MR. HAZZARD:

4 I would just as soon play the
5 whole thing.

6 I know that The Court -- uh --
7 wants to -- uh --

8 THE COURT:

9 Well, we're going --

10 MR. HAZZARD:

11 -- be efficient with our time.

12 THE COURT:

13 We'll do -- do it all, if that's
14 what you require.

15 MR. HAZZARD:

16 Then, that's what we request --

17 THE COURT:

18 Just start it back up at --

19 MR. HAZZARD:

20 Just start it back up.

21 THE COURT:

22 -- where it last ended and we're
23 going straight through.

24 MR. HAZZARD:

25 Okay.

1 THE COURT:

2 Okay.

3 MS. LIVESAY:

4 It might take a minute to find out
5 where we're at.

6 THE COURT:

7 I mean, we --

8 MR. HAZZARD:

9 It's probably another 9 minutes,

10 Your Honor --

11 THE COURT:

12 Okay.

13 MR. HAZZARD:

14 -- for the whole thing.

15 THE COURT:

16 Okay.

17 I thought it was -- we could just
18 start right where it was.

19 MS. LIVESAY:

20 It's started back --

21 THE COURT:

22 Okay.

23 MS. LIVESAY:

24 -- whenever it -- whenever we
25 stopped it.

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1 THE COURT:

2 WHEREUPON: Ms. Livesay, at 10:41
3 AM, November 18, 2010, continued playing State's Exhibit
4 Number 15 where she had stopped it and continued playing
5 it until the end of the video, at 10:51 AM, November 18,
6 2010.

7 THE COURT:

8 All right.

9 Was that the end of it, Mr.
10 Hazzard, as far as you know?

11 MR. HAZZARD:

12 As far as I know, Your Honor,
13 that's the end of it.

14 THE COURT:

15 All right.

16 You may cross examine.

17 MR. HAZZARD:

18 Okay.

19 CROSS-EXAMINATION BY MR. HAZZARD:

20 Q. Detective Abercrombie -- uh -- based on your
21 knowledge and investigation of this case -- First of all,
22 let's clear something up.

23 When he says:

24 Get a hold of Tony at the
25 Detention Center, he is referring to his brother who

1 works at the Detention Center; correct?

2 A. I have no idea.

3 Q. Okay. So you don't know about that, then. All
4 right.

5 And Ms. Livesay asked you about
6 whether or not Mark ever attempt -- or told you he ever
7 attempted to return Ms. Eberhardt's phone; correct?

8 A. That's correct.

9 Q. You never asked him any questions about whether or
10 not he went back to Beach House, or went back to where
11 he dropped her off; did you?

12 A. I didn't ask him specifically if he went back. But
13 I did ask him what he did after he left there.

14 And according to -- uh -- the
15 defendant -- uh -- he stated that he was on his way home
16 -- uh -- eventually -- that he was on his way home.

17 Q. Okay. Sir, you prepared an affidavit for a search
18 warrant on or about July 1st of 2009; correct?

19 A. That's correct.

20 Q. Because you wanted to search Mark's car?

21 A. That's correct.

22 Q. Okay. And an affidavit is a written document under
23 an oath, and it is sworn to be true; correct?

24 A. That's correct.

25 Q. Okay. Now, yesterday, you testified that you

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1 searched Mark's car looking for Ms. Eberhardt the -- that
2 morning at around 4:35 AM, or whatever; correct?

3 A. I'm sorry?

4 Q. You testified yesterday that you searched Mark's car
5 looking for Ms. Eberhardt -- uh -- at the place where
6 Mark was stopped --

7 A. At --

8 Q. -- at the BP Station?

9 A. At the place of the arrest, or the gas station; yes,
10 that's correct.

11 Q. Yes. Okay. And you viewed the car camera video a
12 couple of days ago in this trial showing Mark getting out
13 of the car; closing the car door behind him; right?

14 A. Uh -- I believe the dash cam from the county officer
15 -- uh -- he exited -- the defendant exits the vehicle and
16 leaves.

17 And I think a short time later
18 another officer, who I think is a county officer, came by
19 and closed the vehicle door.

20 Q. That's what you recall.

21 A. That's what I recall; yes sir.

22 Q. Okay. But of course that is in evidence for the
23 jury to review and see whether or not he gets out of the
24 car and shuts the car door behind him; correct?

25 A. Yes, sir.

1 Q. Okay. Now, your sworn affidavit for the search
2 warrant says:

3 The subject stopped his vehicle.
4 Exited out the driver's side door. In the process
5 leaving it open, running away from the scene.

6 And so your testimony is:

7 You believe that he left the car
8 door open?

9 A. That was my assumption when I typed up the search
10 warrant affidavit.

11 Q. Your assumption?

12 A. Yes sir.

13 Q. What was that assumption based on, sir?

14 A. Because when I came around to the vehicle after the
15 defendant -- uh -- was arrested, I went from the side of
16 Billy the Kid's parking lot where he was arrested to the
17 site where the -- uh -- vehicle -- his vehicle came to a
18 rest.

19 And if I'm not mistaken, when I
20 got there, the car door was open.

21 Q. Uh-huh. So you put assumptions in your sworn
22 affidavit?

23 A. No sir. Uh -- I'm just saying that at that time my
24 feelings were that the car door was open.

25 Q. Well, what it says here is that:

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1 He stopped the car. He got out of
2 it. And he ran. And he left the car door open.

3 And you swore to that as a fact;
4 correct?

5 A. That's correct.

6 Q. Okay. And that wasn't fact that you knew; and in
7 fact, it isn't a fact at all; is it?

8 A. I do not know.

9 Q. You don't know? So, the affidavit doesn't say:
10 I think this is what happened.

11 A. That's correct.

12 Q. This says:

13 Sworn factual testimony, this is
14 what I know. I'm presenting it to a judge for their
15 consideration?

16 A. That's correct.

17 Q. Okay. When Ms. Livesay asked you -- let's see --
18 whether you interviewed Mr. RB and Mr. Howard, and
19 whether their statements were substantially the same as
20 Ms. Eberhardt's; correct?

21 A. Correct.

22 Q. Okay. And Mr. Howard, however, is the one that
23 asked you: Did he need an attorney?

24 Didn't he?

25 A. I believe I recall something like that.

1 Q. Yeah. And don't you find it kind of strange that
2 someone who is supposedly a victim of an armed robbery
3 would be asking you if they need to hire an attorney to
4 defend them?

5 A. No -- uh -- you know -- considering the fact that he
6 was 17 years old and doesn't understand the criminal
7 process.

8 Q. Uh-huh.

9 A. Uh -- A lot of people think that to prosecute
10 somebody, they need to get an attorney.

11 They don't realize that the State
12 in the form of a district attorney's office -- or in this
13 case, the solicitor's office -- is the attorney for them.

14 Q. Okay. So you were making the assumption that Mr.
15 Howard had no knowledge of the criminal process at the
16 time you spoke with him?

17 A. That's -- That's correct. And it's -- it's not
18 unusual when -- you know -- especially when you're
19 dealing with -- uh -- somebody who has no experience, or
20 -- uh -- someone who is young and who understands what
21 happens from the time that somebody is arrested all the
22 way through up to -- to trial.

23 They just don't understand.

24 Q. And again, though, that is your assumption; correct?

25 A. Yes sir.

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 Q. That he didn't know the process?

2 A. Yes sir.

3 Q. Okay. And Mr. Howard never told you anything about
4 telling Mark -- uh -- about some college kids having
5 money that Mark could go rob; did he?

6 A. That's correct.

7 Q. Okay. And in fact when you spoke with Ms.
8 Eberhardt later on in the day on June 29th of '09, she
9 never mentioned that story either; did she?

10 A. That's correct.

11 Q. Okay. Now, after you obtained your search warrant
12 with this affidavit, you didn't find any weapons; did
13 you?

14 A. No, I did not.

15 Q. No guns. No knives. No razors. Nothing of that
16 nature; correct?

17 A. That's correct.

18 Q. And Ms. Eberhardt's cell phone, as I think has been
19 clearly established, was in the driver's side door
20 pocket; correct?

21 A. Yes sir.

22 Q. And the one thing you did take out the car as far as
23 -- was this -- this short tire jack; right?

24 A. That's correct.

25 Q. Now yesterday, I believe you testified that it was

1 found wedged between the seats in the middle console; is
2 that correct?

3 A. It was laying over towards that area of the seat;
4 yes sir?

5 Q. Okay. So it was lying in the seat, or wedged
6 between the seat; or --

7 A. I -- I don't recall exactly. It was right there on
8 the passenger seat. It was in plain view.

9 Q. Uh-huh. Okay. Because your affidavit for the
10 search warrant, again, says that:

11 The tire iron was lying on the
12 passenger floor board?

13 A. Okay. Well then, I was mistaken.

14 Q. Okay. So now, you're saying it was lying on the
15 floorboard?

16 A. Yes, sir.

17 Q. Okay. Well, the prosecution has been good enough
18 to provide me with some photographs here -- or copies of
19 photographs.

20 Let's take a look at these right
21 quick.

22 The Court's indulgence, Your
23 Honor?

24 Okay.

25 MS. LIVESAY:

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1 following proceedings.)

2 WHEREUPON: 8 PHOTOS WERE MARKED
3 BY THE COURT REPORTER AS DEFENDANT'S EXHIBITS NUMBERS 3
4 THROUGH 10 FOR IDENTIFICATION.

5 COURT REPORTER:

6 Your Honor, these series of
7 photographs will be marked Defendant's Exhibits 3 through
8 10.

9 THE COURT:

10 Very well.

11 MS. LIVESAY:

12 Thank you, sir.

13 MS. LIVESAY:

14 Can I go ahead and get a look at
15 them, Your Honor?

16 MR. HAZZARD:

17 The Court's indulgence?

18 (WHEREUPON: Mr. Hazzard and Ms.
19 Livesay again have an inaudible conversation about the
20 pictures.)

21 MS. LIVESAY:

22 All right, Your Honor.

23 THE COURT:

24 Let me ask you, then:

25 Do you have any objections to

1 these?

2 MS. LIVESAY:

3 No sir.

4 THE COURT:

5 All right.

6 They're all admitted without
7 objection. You intend to admit them, Mr. Hazzard.

8 MR. HAZZARD:

9 Yes, sir, Your Honor.

10 THE COURT:

11 All right. Go ahead.

12 MR. HAZZARD:

13 All right. Thank you, Your
14 Honor.

15 WHEREUPON: THE 8 PHOTOS EARLIER
16 MARKED BY THE COURT REPORTER AS DEFENDANT'S EXHIBITS
17 NUMBERS 3 THROUGH 10 WERE NOW ENTERED INTO EVIDENCE
18 WITHOUT OBJECTION.

19 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

20 Q. All right. Now, we we're talking about the tire
21 jack.

22 A. Yes sir.

23 Q. The little tire jack. Uh -- And I believe you
24 testified yesterday that it was wedged in between the --
25 uh -- seats in the center console --

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 A. Yes --

2 Q. Is that correct?

3 A. Yes sir.

4 Q. And now you say today that it was actually found on
5 the seat?

6 Is that correct?

7 A. Well, yes sir. This was a year and a half ago,
8 almost.

9 I don't remember exactly where, in
10 relationship, this crowbar was.

11 I know it was found on the
12 passenger seat area.

13 Uh -- The search warrant -- and if
14 you have the search warrant, if I could take a look at it
15 -- would tell you specifically where I found it at the
16 time.

17 Uh -- I -- I don't recall a year
18 and a half from now to be honest you where exactly I -- I
19 found it at that -- at that time to recall it a year and
20 a half later.

21 So I don't remember.

22 Q. Yes sir. Well, let me hand you Defense Exhibits
23 Number 3 and 4, which I believe are in evidence without
24 objection, and ask if that refreshes your recollection?

25 It appears to me in those

1 pictures, one of them shows the -- uh -- tire jack wedged
2 in between the seat and the console?

3 Is that correct?

4 A. Uh -- The photograph here that you have marked
5 Exhibit 3 --

6 Q. Yes sir.

7 A. -- is a shot of the -- uh -- center console showing
8 -- uh -- where the -- uh -- defendant's telephone is?

9 Q. Yes, sir.

10 A. Okay. And then Defense Exhibit Number 4 shows the
11 -- uh -- uh -- tire iron laying on the passenger seat --
12 front passenger seat.

13 Q. Okay. And who takes these photographs?

14 A. I took the photographs.

15 Q. You took the photographs.

16 A. (Nods in the affirmative.)

17 Q. Okay. And the photographs are supposed to -- Are
18 the photographs supposed to accurately reflect what you
19 see when you come upon the car?

20 A. No. Sometimes, because of lighting or because of
21 the fact that -- uh -- I use a -- an older digital
22 camera. It's not the best in the world.

23 And -- uh -- So in order to get a
24 shot with it being lit up -- you know -- I'll -- I'll
25 take the shots while it's in the vehicle that way.

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 Q. So what you're testifying to, then, is:

2 It is not unusual for you to
3 actually move evidence around, and then take a photograph
4 of it?

5 A. In -- In this particular case, no; because the fact
6 that I couldn't get the lighting where it was using my
7 digital camera.

8 And so -- uh -- I had to take the
9 -- uh -- photographs such as this right here where the
10 sun was shining --

11 Q. What are you referring to when you say "this right
12 here," sir?

13 A. Uh -- Defense Exhibit Number 4 --

14 Q. Okay.

15 A. -- where the tire iron is on the front seat.

16 Q. Uh-huh. Okay. So let's get back to yesterday.
17 Your testimony was that it was found wedged between the
18 seat and the console; correct?

19 A. Correct.

20 Q. As would be represented in Defense Exhibit Number 3.
21 And then, today, you testified that you believed it was
22 found on the seat; correct?

23 A. The photograph marked Defense Exhibit Number 3 -- uh
24 -- doesn't show a crowbar.

25 Q. You don't believe it does, sir?

1 A. No sir.

2 Q. Okay. That's fine.

3 A. This -- This is just a shot of the center console.

4 MR. HAZZARD:

5 The Court's indulgence, Your
6 Honor.

7 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

8 Q. So it's your testimony, sir, that this item I am
9 pointing to is not considered to be the tire jack in
10 question?

11 A. No sir. I believe that's part of the seat belt.

12 Q. You believe that's part of the seat belt?

13 A. Yes sir. This is part of the seat right here --

14 Q. Uh-huh.

15 A. -- and over here.

16 Q. Hmm.

17 A. That's not a representation of the crowbar.

18 Q. Okay. And the jury will be able to look at that
19 and make their determination.

20 Now, in your affidavit, however,
21 you stated in Paragraph 3 of that affidavit:

22 Also in plain view was a tire iron
23 lying on the passenger floorboard.

24 Is that correct sir?

25 A. Yes sir.

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 Q. Okay. So now we've had sworn testimony that it was
2 in between the seat and the console?

3 Is that correct?

4 A. I believe that's what I said yesterday.

5 Q. And we have sworn testimony today that it was on the
6 car seat?

7 Is that correct, sir?

8 A. No sir. Uh -- Like I said, I -- I don't remember
9 exactly where this crowbar was a year and half later.

10 The affidavit was typed and
11 written at the time that the incident took place. So
12 that's where it was located at.

13 Uh -- As I said before --

14 Q. So then -- I'm sorry. Go ahead.

15 A. As I said before -- uh -- I had an older digital
16 camera. And it doesn't pick up items -- you know --
17 specifically in shadows or where it's dark.

18 So in order to take a photograph,
19 it was placed here.

20 Q. Without a doubt, though, your affidavit, which is a
21 sworn document, is inconsistent with your testimony
22 yesterday and today, which is also under oath?

23 Is that correct, sir?

24 A. That's correct. Like I said, I don't remember
25 where it was a year and a half ago.

1 If I -- If I said that it was
2 there yesterday, I was mistaken.

3 I don't remember. And I guess
4 that's probably what I should have said:

5 I don't remember.

6 Q. Uh-huh. All right. Thank you, sir. Now based
7 on the allegations made by Ms. Eberhardt, and Mr. Howard,
8 and Mr. **R.B.** you swore out 3 warrants for attempted
9 -- attempted armed robbery against Mark on June the 29th,
10 of 2009; correct.

11 MS. LIVESAY:

12 Your Honor, if I may?

13 I do not see how those pending
14 charges are relevant in this trial here?

15 THE COURT:

16 I'm going to let him proceed.

17 WITNESS:

18 I'm sorry. Could you repeat that?

19 MR. HAZZARD:

20 Yes sir.

21 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

22 Q. Based on what Ms. Eberhardt, Mr. **R.B.** and Mr.
23 Howard told you --

24 A. Uh-huh.

25 Q. -- you swore out 3 warrants on June 9th -- June

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 29th, 2009, against Mark Elliott for 3 counts of
2 attempted armed robbery; correct?

3 A. I believe so.

4 Q. Okay. And here we are today for the trial of his
5 case for what occurred on June 29th, of 2009 --

6 A. That's correct.

7 Q. -- and we're not going forward on those charges,
8 sir; are we?

9 A. That's correct.

10 Q. Okay. Now you filed warrants against Mark for
11 kidnapping, and criminal sexual conduct, and resisting
12 arrest, on that same day -- on June 29th of '09 --

13 A. I --

14 Q. -- and that was less than 12 hours after Mark was
15 detained; right?

16 A. I didn't sign any warrants for resisting arrest.

17 Q. You didn't?

18 A. I don't believe so. I believe the county charged
19 him for resisting arrest.

20 MR. HAZZARD:

21 Let's see. The Court's
22 indulgence, Your Honor?

23 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

24 Q. Yeah. Who is John Jemp (? phonetic)? Do you know?

25 A. No sir.

1 Q. Okay. You don't know who John Jemp (? phonetic)
2 is. Okay.

3 So your charges, then, were
4 kidnapping, criminal sexual conduct, and three counts of
5 attempted armed robbery; correct?

6 A. Yes sir.

7 Q. Okay. Now -- And these warrants were sworn out
8 less than 12 hours after Mark Elliott was detained;
9 correct?

10 A. I suppose so. I don't know the exact time.

11 Q. Well, I mean, let's go through it. I want -- don't
12 want you to guess.

13 A. Okay.

14 Q. I mean, we -- We don't need to be guessing anymore;
15 okay.

16 A. If -- I would have written the warrants shortly
17 after -- uh -- the interviews were completed. I guess
18 that was on the 29th.

19 Q. Okay. Ms. Eberhardt goes to the hospital the
20 morning of the 29th.

21 Mark is detained around 4:15 --
22 4:30 AM -- the morning of the 29th; correct?

23 A. Yes sir.

24 Q. And then we just saw the video of you talking to
25 Mark. And that was -- was two -- sometime between two

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 and three o'clock, or thereabouts, in the afternoon of
2 the 29th; correct?

3 A. Yes sir.

4 Q. Okay. So you're talking to him around 10 or 11
5 hours after he was initially detained; right?

6 A. Yes sir.

7 Q. And your warrants state that they were done on the
8 29th; and that they were signed by magistrate on the
9 29th.

10 Is that a fair statement, sir?

11 A. Yes sir.

12 Q. Okay. So that same day?

13 A. Yes sir.

14 Q. Okay. Okay. Now, you spent a lot of time on that
15 video talking to Mark about this -- this rape kit;
16 correct?

17 A. Yes sir.

18 Q. Okay. And about how you would have the DNA
19 evidence, and it would tell you everything you needed to
20 know basically; correct?

21 A. Yes sir.

22 Q. Okay. And when you signed these warrants, and sent
23 them to the magistrate, and got the magistrate to sign
24 the warrants, saying that:

25 He had kidnapped someone.

1 That:

2 He had raped someone.

3 That:

4 He had attempted to rob three
5 people.

6 You didn't have the DNA results,
7 or the rape kit results; did you?

8 A. That's correct.

9 Q. Okay. And in fact, you didn't send -- Well, who's
10 responsible in North Myrtle Beach for sending something
11 off to SLED for -- uh -- for -- uh -- evaluation,
12 processing, and analysis, sir?

13 A. Uh -- That would be the evidence custodian; usually
14 drive -- travel to Columbia in person.

15 Q. Hmm. And do they automatically take things, once
16 you give it to them; or do they wait for some instruction
17 to take something?

18 A. It's generally not immediate, depending on the case.

19 Q. Okay. Can you give us any idea, then, what would
20 trigger the evidence custodian to take something in his
21 or her custody and control to the South Carolina Law
22 Enforcement Division in Colombia for analysis?

23 A. Well, DNA analysis is expensive. And SLED is -- uh
24 -- very busy, as you can imagine; and has to run, not
25 only our evidence, but evidence from every agency in the

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 state.

2 So it's time prohibitive to send
3 everything there.

4 If everything you collected, you
5 sent there the minute where you got it -- uh -- there
6 would be an awful lot that would not be needed later on.

7 Uh -- Not every particular case is
8 necessary to have evidence processed -- uh -- for one
9 reason or another.

10 It could be the fact that -- uh --
11 defendant pleads guilty.

12 Uh -- If something looks as though
13 it's going to go to trial, then you would process the
14 evidence at that time, simply because of the fact that --
15 uh -- there's such an overwhelming amount of material
16 that's sent to SLED, they asked us to cut stuff down and
17 only send what's necessary.

18 Q. And wouldn't it be necessary in a case like this,
19 where a man tells you:

20 No sir; I didn't touch her.

21 There's no reason for my DNA to be
22 around her, or on her, or near her private parts.

23 Wouldn't that be an incident --
24 instance where you've got two different statements that
25 are diametrically opposed?

1 Wouldn't that be a good time to
2 send it to SLED, sir?

3 A. Well, it depends on the case. Every incidence is a
4 little bit different.

5 You know, not all cases come to
6 trial.

7 Q. Hmm.

8 A. Some cases -- uh -- the defendant pleas beforehand,
9 and it's not necessary.

10 Q. And some cases are dismissed; correct?

11 A. That's correct.

12 Q. Okay. And in this case though, the kit wasn't sent
13 -- sent to SLED for processing and analysis until
14 September 17th of this year?

15 And that's about 14 or 15 months
16 after this man was charged; correct?

17 A. I don't know when the kit was sent.

18 Q. Okay. Now, sir, how long have you been a police
19 officer?

20 A. Uh -- Approximately 16 years.

21 Q. Okay. And of that time, how long have you been a
22 detective, sir?

23 A. Uh -- Approximately 9 years.

24 Q. Okay. And in that time, how many criminal sexual
25 conduct investigations have you been a part of?

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1 A. Oh, I couldn't tell you. I -- I don't know. You
2 know, there's numerous ones.

3 Q. Okay. Would you say -- and I don't want you to
4 guess -- but if you can kind of ballpark it, would you
5 just say -- would it be fair to say more than 10?

6 A. Probably so; yes sir.

7 Q. Okay. And you, I take it, have received some form
8 of basic training, or seminars, with regard to DNA
9 evidence; correct?

10 A. Yes, sir.

11 Q. Okay. And based on this knowledge -- you know --
12 we just saw the video -- You told Mark that it didn't
13 take much contact to find enough DNA evidence to test
14 after sexual involvement between two people; correct?

15 A. It -- It -- In most instances, that's correct.

16 A. Yes sir. And you were in the courtroom yesterday
17 when Ms. Eberhardt testified that -- testified that Mark
18 penetrated her anally, and penetrated her vaginally;
19 correct?

20 A. That's correct.

21 Q. She didn't say he tried to penetrate her?

22 A. (No response.)

23 Q. Right?

24 A. That's correct.

25 Q. Okay. Now, when you spoke with Ms. Eberhardt on

1 the 29 -- uh -- of that afternoon, she didn't tell you
2 anything about Mr. Howard and Mr. R.B. leaving Beach
3 Beach House and heading over to a hotel or motel or
4 condo for a little while and then coming back; did she,
5 sir?

6 A. Uh -- I don't recall that; no sir.

7 Q. Okay. And when you spoke with -- Well, let me back
8 up.

9 Basically, you spoke with -- or
10 did your formal interview with all three of the alleged
11 victims and with Mark Elliott on the same day; correct?

12 A. That's correct.

13 Q. You know, later on in the afternoon of the 29th?

14 A. That's correct.

15 Q. All the action took place early that morning?

16 A. That's correct.

17 Q. Okay. And -- you know -- you've received training
18 in witness and suspect interrogation; right?

19 A. Yes sir.

20 Q. Okay. And one of the techniques of police officers
21 and detectives commonly used is:

22 They will ask questions just to
23 gauge the witness or suspect's response; correct?

24 A. Sometimes.

25 Q. Sometimes. Yes sir. Yes sir. And in this case,

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 by the time you were doing you formal interview with Ms.
2 Eberhardt, Mr. Howard, and Mr. [REDACTED] you've already
3 spent a little time with Mark Elliott earlier that
4 morning; correct?

5 A. Uh -- I first talked to Mr. Elliott, I believe
6 sometime around two when that interview was there.

7 Q. Okay. So then, it's your testimony that you didn't
8 speak to Mark until after you had spoken with Ms.

9 Eberhardt, Mr. [REDACTED] and Mr. Howard?

10 Is that correct?

11 A. Yes sir.

12 Q. Okay.

13 A. I might've gone down to the jail and asked him if he
14 was still willing to come upstairs and talk to me.

15 But as far as any formal setting
16 of sitting down and talking --

17 Q. Uh-huh.

18 A. -- uh -- I don't believe I talked to him until the
19 time that we interviewed him at the interview room.

20 Q. Okay. And prior to that, any -- did you speak with
21 any of the various and sundry officers who were on the
22 scene when Mark was detained at the BP Station?

23 A. Yes, sir.

24 Q. Okay. Because you were there that night?

25 A. Yes sir.

1 Q. And you're in one of the videos that the jury has
2 that they can look at?

3 A. That's correct.

4 Q. While Mark's laying on the ground, you pulled up,
5 talked to somebody for a minute or two, and then you go
6 away, presumably back to the car; correct?

7 A. That's correct.

8 Q. Okay. So in talking to them, did any of them ever
9 tell you anything about -- uh -- Mark's assertion that
10 this was all about a drug deal?

11 A. I believe it was mentioned sometime during all that
12 that -- uh -- he had mentioned that to -- uh -- uh -- one
13 of the officers; yes sir.

14 Q. Okay. So then when you talked with Ms. Eberhardt,
15 Mr. Howard, and Mr. R.B. [REDACTED] you are were aware of Mark's
16 assertion, at least to some bare-bones extent; correct?

17 A. Uh -- I hadn't -- just from what he mentioned at the
18 scene; yes sir.

19 Q. Yes sir. And yet you never asked any one of the
20 three of them -- even if just to see what their reaction
21 would be -- never asked any one of the three of them
22 about this being a drug deal; did you, sir?

23 A. I don't recall if I did prior to me taking him into
24 the interview and was sitting down talking to him or not?

25 I don't recall that.

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 Q. Okay. But there's definitely -- You don't believe,
2 or don't recall having done it outside the presence of
3 the cameras?

4 And there's no question there's no
5 video evidence of it; is there?

6 A. Uh -- I never asked him as far as the video in the
7 interview room.

8 Q. All right. And in fact, as you testified
9 yesterday, you handled them with kid gloves, so to speak;
10 correct?

11 A. I'm not sure I understand.

12 Q. Well, I mean, that's what you testified to
13 yesterday; correct?

14 You said that certain witnesses
15 had to be handled very carefully -- uh -- based on the
16 situation; that you --

17 A. You're talking --

18 Q. -- had to handle them with kid gloves?

19 A. You're talk about rape -- rape victims?

20 Q. Uh-huh.

21 A. Yes, sir. You know, I mean, you're not going to --
22 You have to talk to them and it's a traumatic experience.

23 You're not going to -- You have to
24 lead up it and talk to them. It -- It's difficult for
25 them -- some of them -- to talk about certain things.

1 Q. Uh-huh. Uh-huh. And I understand. You're in a --
2 You're in a difficult position as a man in a CSC case?

3 I understand that; right?

4 A. Sometimes; yes sir.

5 Q. Does North Myrtle Beach have any -- uh -- female
6 detectives?

7 A. Uh -- We used to. She's gone back out on the road.

8 Q. Okay. So, basically then, there is no choice in a
9 CSC case but for a male detective to speak to the vic --
10 the alleged victim; right?

11 A. No. If -- If it warranted it, we would get a female
12 police officer -- uh -- also, in this particular case --
13 uh -- the victim's advocate for the City of North Myrtle
14 Beach, who is a female.

15 Uh -- She was notified as well by
16 the -- just in case -- uh -- the victim felt more
17 comfortable talking to her.

18 Q. Understood. But there -- But you did interview all
19 three of them; correct?

20 A. That's correct.

21 Q. Yeah. And that -- those interviews were videotaped;
22 right?

23 A. That's correct.

24 Q. Okay. And there's no question that in none of the
25 interviews did you ever question any of them in -- in a

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1 fashion that would cause them to believe that you doubted
2 their stories; did you, sir?

3 A. No sir. Uh -- The -- Of course, any time you talk
4 to somebody, you want to make sure that -- uh -- you
5 don't get the same story from everybody.

6 You want to try and get them
7 separated.

8 In this particular case here -- uh
9 -- the -- the two boys -- that would have been almost
10 impossible because of the timeframe between the time I
11 got a chance to talk to them and the timeframe that the
12 incident took place.

13 Uh -- You know, they were around
14 each other.

15 So that --

16 Q. Yes.

17 A. -- would've been impossible to do.

18 Q. No question.

19 A. Uh -- On **Complaining** side though, she wasn't around
20 them at all.

21 And that's where I felt as though
22 getting her side of the story and it matching up with the
23 rest of them was important.

24 Q. Hmm. That was important to you?

25 A. Yes sir.

1 Q. Okay. Now, when you interviewed Mark, he even
2 asked you if you were simply taking their statements at
3 face value?

4 But you denied that when you
5 talked to him; right?

6 You told him that you would rely
7 more on the rape kit evidence; right?

8 A. I don't recall exactly how I worded it. Uh -- I did
9 tell him several times that I had gone into this
10 interview with an open mind; that -- uh -- I wasn't here
11 to accuse him, but I was here to get his side of the
12 story.

13 Q. Okay. And you testified yesterday that a pair of
14 men's underwear was found in the backseat of Mark's car.

15 And I remember the prosecutor
16 saying it had to come from us, that there wasn't any
17 relevance it.

18 Do you remember when the
19 prosecutor said:

20 Oh, it had to come in, because
21 those were the drawers that Mark took off after he
22 committed this heinous crime; right?

23 Do you remember that?

24 A. Uh -- I remember the underwear being placed into
25 evidence -- uh -- I believe based on the search warrant.

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1 Q. Hmm. And you testified, I believe, that the --
2 that the -- the significance of that underwear was that
3 that was the only clothing in the passenger compartment
4 of the vehicle; correct?

5 A. I don't recall.

6 Q. You don't recall?

7 A. Right. But I -- I believe it was.

8 Q. You believe it was? All right, sir. Let me show
9 you Defense Exhibit Number 5, and Defense Exhibit Number
10 6; Defense Exhibit Number 7; and ask you if you can
11 identify those 3 pictures, sir?

12 A. Defense Exhibit Number 6 --

13 Q. Yes sir.

14 A. -- is a pair of underwear.

15 And Defense Exhibit Number 7 and 5
16 is a hat.

17 And I'm not sure what the other --
18 other item is -- a baseball; but I'm not sure what the
19 other item is.

20 Q. Okay. Now, with regard to 7, and 6, and 5, no
21 question all of these items were found inside the
22 vehicle; correct?

23 A. Yes, sir.

24 Q. Okay. All right. So then there are definitely
25 other items of clothing inside the vehicle, not just one

1 pair of underwear?

2 A. Well, the reason why -- uh -- I took the underwear
3 and seized it, is because the defendant -- uh -- wasn't
4 wearing any underwear at the time.

5 Q. Uh-huh.

6 A. Uh -- As far as the baseball cap is concerned, I
7 didn't really have any reason to seize that.

8 It didn't seem important.

9 And I don't think it still is
10 important.

11 Q. I understand that, sir. My question is:

12 Your testimony under oath
13 yesterday was that:

14 There was no other items of
15 clothing in the passenger part -- compartment of the
16 vehicle but that pair of underwear?

17 A. Uh --

18 Q. I mean, do you deny saying that under oath
19 yesterday?

20 A. Uh -- I don't recall. Uh -- I remember saying that
21 there's -- uh -- but I don't recall there being any other
22 items of clothing except for the underwear.

23 Q. Hmm.

24 A. I also mentioned that there was clothes in the trunk
25 which were folded that looked like they had never been

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 worn.

2 Q. Yes sir. Now you indicated that the pair of
3 underwear in the -- in the passenger compartment of the
4 car was very important to you, and so you seized it
5 pursuant to the search warrant; correct?

6 A. Yes sir.

7 Q. Okay. And it was so important, when was it sent
8 off to SLED, sir?

9 A. Uh -- It wasn't.

10 Q. It wasn't?

11 A. That's correct.

12 Q. Why not?

13 A. I didn't think it was important at the time to have
14 sent it off to SLED.

15 Q. Okay. Your testimony is:

16 You had figured that was the pair
17 of underwear he was wearing when he committed a sexual
18 assault.

19 But you didn't think it was
20 important to send it to SLED for testing and analysis to
21 see maybe if some hairs, some fibers, some DNA fluid from
22 Ms. Eberhardt might be found on them?

23 That would not be significant to
24 you, sir?

25 A. Not if he took them off prior to all that.

1 Q. Hmm. Okay. Actually what it is, is those
2 underwear were taken from the trunk of the car?

3 Isn't that correct, sir?

4 A. Uh -- No sir.

5 Q. No? They weren't? Okay? Just like the tire iron
6 wasn't moved two or three places and photographed; right?

7 A. No sir.

8 Q. No sir? Okay. So we have this underwear that's
9 in evidence that's never been tested and has no
10 significance to you now; correct?

11 But it's in evidence?

12 A. That's correct.

13 Q. All right. Now when you interviewed Ms. Eberhardt
14 on the afternoon of June 29th of '09, she told you that
15 Mark had forced her to lean up against the passenger side
16 door of the car, and that he had sex with her from behind
17 outside the car; correct, sir?

18 A. I believe so.

19 Q. Okay. Uh -- I've got a copy of the report. Would
20 it help refresh your recollection as to what you exactly
21 wrote?

22 A. Yes, sir.

23 Q. All right. It's on Page 3, sir.

24 A. That's correct.

25 Q. Okay. So specifically, what you indicate in your

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 report that Ms. Eberhardt told you is that:

2 At some point, **Complaining** stated
3 that Elliott drove her to the boat ramp and told her to
4 get out of the vehicle.

5 Elliott told her to pull off her
6 panties and shorts off, and while she was leaning against
7 the passenger car door, he sexually assaulted her.

8 That was what she told you at that
9 time; correct?

10 A. Yes, sir.

11 Q. Okay. And as a result of her telling you that, you
12 had -- uh -- Detective Lieutenant Don Repec -- uh -- dust
13 the passenger side of the car for fingerprints; correct?

14 A. Yes, sir.

15 Q. Okay. Because the thought process you had was
16 that:

17 Okay, she's being forced to lean
18 up against the car, and he's behind her, and they're both
19 leaned all up against car like this (indicating); right?

20 A. Yes, sir.

21 Q. Okay. And the results of this test were that:

22 They were negative for **Complaining**
23 Eberhardt's prints; right?

24 A. That's correct.

25 Q. So then she comes into court. You were in court

1 when she testified yesterday; right?

2 A. Yes sir.

3 Q. So then the story changed to:

4 The passenger car door is open,
5 and my hands are on the seat; right?

6 A. That's correct.

7 Q. All right. Now, you saw the tape just now -- or
8 the video just now, where Mr. Elliott asked if he could
9 be present when you searched his car?

10 A. That's correct.

11 Q. Okay. And you denied that request?

12 Why would you deny that request,
13 sir?

14 A. Well, it's just -- just not done to -- you know --
15 to have to search a vehicle -- car -- with -- you know --
16 someone standing there?

17 Q. Why not? You got something to hide?

18 A. No sir.

19 Q. Then why can't he be present when you search his
20 car?

21 A. It's just not policy. It's not done, to go and take
22 a defendant out there to the car while you search it.

23 Q. Hmm. Okay. Because he asked you. And basically
24 the last thing that you see on that video is him saying:

25 Y'all aren't going to plant

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 anything in there; are you?

2 A. Yes, sir.

3 Q. And you say -- You laughed. You said:

4 No, we don't have that.

5 Right?

6 A. That's correct.

7 Q. Okay. Now you were present with Ms. Eberhardt the
8 morning of June 29th at the Seacoast Medical Center;
9 correct?

10 A. Yes sir.

11 Q. Okay. And in fact, you signed some of the hospital
12 paperwork; right?

13 A. Yes sir.

14 Q. Okay. Now, did you obtain the results of a rape
15 kit performed on Ms. Eberhardt that morning from a nurse
16 at Sea Coast that same morning prior to leaving the
17 hospital?

18 I mean, that's kind of a weird way
19 -- way to word it.

20 A. Yeah. I'm --

21 Q. If you want me to rephrase it, I will.

22 A. Yeah. I mean, I'm not sure --

23 Q. Okay; let's back up.

24 You're with -- You're with Ms.
25 Eberhardt that morning at the hospital?

1 A. Yes sir.

2 Q. Okay. To your knowledge, a rape kit was performed
3 by a doctor with a nurse in attendance; correct?

4 A. Yes sir.

5 Q. Did you at some point receive from a nurse of Sea
6 Coast a -- a rape kit?

7 A. Yes, sir.

8 Q. Okay. And it was listed as **Complaining Witness**
9 rape kit; right?

10 A. Yes sir.

11 Q. Okay. And it was that morning? It wasn't like
12 days later?

13 A. That's correct.

14 Q. Okay. And that's what that weird question was all
15 about.

16 Okay. Now, how was it packaged?

17 How do they package these rape
18 kits, sir?

19 A. It's in a box.

20 Q. A box?

21 A. Yes sir. It's a white box.

22 Q. Okay. Are they sealed?

23 A. Yes sir.

24 Q. Okay. And this one in particular, it was sealed?

25 A. Yes sir.

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 Q. Okay. Have you had the opportunity -- uh -- or
2 been in a situation where you had to deal with a -- a
3 rape kit in the past?

4 A. Yes sir.

5 Q. Okay. Was this one sealed appropriately as you
6 would expect a rape kit to be sealed?

7 A. Yes sir.

8 Q. Did it appear that it had been altered, tempered
9 with, or messed with in any way before it got to you?

10 A. No sir.

11 Q. Okay. And once it was given over to you, and
12 placed in your care, custody, and control, sir, what did
13 you do with it? His place in the refrigerator at the
14 lab. I'm sorry?

15 A. It's placed in a refrigerator in the lab.

16 Q. I'm sorry. Could you repeat that?

17 A. It's placed in a refrigerator in the lab.

18 Q. Okay. In what lab?

19 A. In the Detective's Lab.

20 Q. I didn't know y'all had a lab?

21 A. Yes sir.

22 Q. It's at the North Myrtle Beach Police Department or
23 Department of Public Safety?

24 A. Yes sir.

25 Q. Okay. All right. So you actually placed it in

1 the refrigerator in the lab?

2 A. That's correct.

3 Q. Okay. And did you, at some point, retrieve it from
4 that refrigerator?

5 A. Uh -- Eventually, when it was handed over to a
6 records custodian to be sent to -- uh -- Colombia.

7 Q. Okay. Now when you retrieved it from the
8 refrigerator, was it in substantially the same condition
9 as it had been when you placed it in the refrigerator?

10 A. Uh -- Yes, sir.

11 Q. Did it appear to have been altered or tampered with
12 in any way, sir?

13 A. No sir.

14 Q. Okay. Uh -- Is it packaged in such a way that
15 alteration or tampering would be somewhat readily
16 apparent?

17 A. Yes sir.

18 Q. Okay. And when you retrieved it from the
19 detective's refrigerator and turned it over to the
20 record's custodian, or -- or property and evidence
21 custodian for the North Myrtle Beach Department of Public
22 Safety, it was in substantially the same condition as
23 when it was entrusted to you?

24 Is that correct?

25 A. Yes sir.

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1 MR. HAZZARD:

2 Okay.

3 The Court's indulgence, Your
4 Honor?

5 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

6 Q. As the lead investigative officer on this case, were
7 you provided with the test results when they came back
8 from SLED, sir?

9 A. Yes sir.

10 Q. Okay. Now, at Sea Coast on that morning, were the
11 specimens taken and the rape kit prepared at your
12 request?

13 A. Yes, sir.

14 Q. Okay. Not my request? Not Mark's request? Your
15 request?

16 A. Yes sir.

17 Q. Okay. You were present here -- it might have been
18 in this very courtroom -- on October 19th of this year
19 when the prosecutor obtained a court order asking Mark to
20 provide some DNA -- a DNA sample; correct?

21 A. Yes, sir.

22 Q. Okay. And in fact, you took the samples from Mark,
23 personally; correct?

24 A. That's correct.

25 Q. Okay. If you would -- And you did it by using a

1 buccal swab?

2 A. Correct.

3 Q. If you would, please explain to the jury how buccal
4 swabs work as far as obtaining DNA.

5 A. Uh -- It's very low-tech and very simple. It's --
6 uh -- basically a sterile Q-tip that's -- uh -- applied
7 to the inside of the mouth to get -- uh -- cells from the
8 Q-tip onto the -- uh -- excuse me -- from the inside of
9 the mouth onto the Q-tip.

10 Q. Okay. And what did you do after you used the Q-tip
11 on the inside of each of Mark's cheeks?

12 A. Uh -- Placed them in a container to be sent to SLED.

13 Q. Okay. And is this a -- uh -- standard industry
14 recognized and used container; or just whatever cardboard
15 box you had --

16 A. No sir.

17 Q. -- laying around in the lab?

18 A. Uh -- It's specifically designed for that.

19 Q. Okay. So you used an appropriate container;
20 correct?

21 A. Yes sir.

22 Q. Okay. Is there a mechanism or method by which you
23 seal that container?

24 A. Yes sir.

25 Q. Okay. And did you follow that procedure and seal

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 the container?

2 A. Yes sir.

3 Q. Once you sealed the container with Mark's DNA
4 samples inside by way of the use of buccal swabs, what
5 did you do with that container, sir?

6 A. It's -- uh -- Forms have to be signed. And then,
7 it's sent to -- uh -- SLED.

8 Q. Okay. Now when you say: "It's sent to SLED," is it
9 sent by mail, or is turned over to the evidence
10 custodian; or how is that sent?

11 A. The evidence custodian.

12 Q. Okay. So it went from you to the evidence
13 custodian for the City of North Myrtle Beach Department
14 of Public Safety?

15 Is that correct?

16 A. Correct.

17 Q. Okay. While it was in your care, custody, and
18 control, did you alter or tamper with, or in any way
19 change the -- uh -- DNA sample obtained from Mark
20 Elliott?

21 A. No sir.

22 Q. Okay. When you turned it over to the evidence
23 custodian, was it in substantially the same condition as
24 when you received it, sir?

25 A. Yes sir.

1 Q. Okay. And was the package sealed when you turned
2 it over to the evidence custodian, sir?

3 A. That's correct.

4 Q. Okay. Up to that point, did you have anything --
5 any other further involvement with the buccal swabs, sir?

6 A. No sir.

7 Q. All right. Now, sir, yesterday there was some talk
8 about these different private boat ramps up in North
9 Myrtle Beach or in the Cherry Grove area.

10 Do you recall that?

11 A. Yes sir.

12 Q. Okay. And your testimony, I believe, was that:

13 There were -- I don't know --
14 several private boat ramps; correct?

15 A. Yes sir.

16 Q. Okay. Are all of these private boat ramps well lit
17 near large hotels and condominium complexes with paved
18 parking lots as Mr. car described the one that she
19 allegedly was at during her testimony?

20 A. No sir.

21 Q. Okay. And in fact the one that best fits that
22 description is one on 53rd; correct?

23 A. Yes sir.

24 Q. Okay. And with regard to the one on 53rd, there's
25 no question that -- uh -- Well, let's look at it this

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 way:

2 First of all, to get to the boat
3 ramp, you have to drive through, I guess, what is a
4 neighborhood; right?

5 A. (Nods in the affirmative.)

6 Q. Is there house on both sides?

7 A. Yes sir.

8 Q. Okay. And Ms. Eberhardt mentioned something about
9 -- uh -- water; that she -- she passed over water or
10 something of that nature; or knew she was on a bridge
11 because she saw water, right?

12 A. I don't recall.

13 Q. Okay. If that were indeed what she said, in order
14 to get the boat ramp at 53rd, you do have to drive over a
15 short bridge; right?

16 A. Uh -- Yes sir.

17 Q. And in fact, people -- which I don't understand --
18 people actually stand there and fish off of the bridge;
19 right?

20 A. Yes sir.

21 Q. Okay. Uh -- So when you get to the boat ramp
22 itself, there is no question that immediately adjacent to
23 the boat ramp -- like no more than 50 yards away -- is
24 just a big house that has to be worth at least three
25 quarters of a million dollars, sir?

1 A. Yes sir.

2 Q. Because in fact, that's the first house in the
3 little neighborhood that's kind L-shaped; right?

4 A. Yes sir.

5 Q. Okay. All of them big, nice, houses?

6 A. Yes sir.

7 Q. Okay. Some for rent. Some -- uh -- residential --
8 people year round; correct?

9 A. Yes sir. Can I further describe the area?

10 Q. Sure; go ahead.

11 A. Uh -- Also there to the left, as you're facing the
12 water -- excuse me -- is a -- uh -- off to the side, is a
13 big, gravel, dirt, lot.

14 There's nothing around it.

15 It's completely surrounded by
16 trees and bushes and things like that.

17 Q. I'll disagree with you on that. Do you have any
18 pictures here the jury can see that shows this secluded,
19 hidden area, you're talking about?

20 A. Uh -- No sir; unless you can see it on the -- uh --
21 photograph.

22 Q. Which photograph, sir?

23 A. The -- uh -- The board. I don't know if it's still
24 down there or not.

25 Q. Yes sir. Here it is right here.

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 A. I don't -- I don't even know if you can see it on
2 here.

3 Q. Well, there's a boat ramp right there.

4 A. It's this little area right here, sir.

5 Q. So you think it's that area right there?

6 A. This area right here is just a big gravel lot.

7 Q. Uh-huh.

8 A. And as you pointed out, all the houses are right
9 over here, and over in here as well.

10 Q. Uh-huh. All right. Thank you sir.

11 So you say it's that little area
12 right there is the boat ramp.

13 A. I'm just saying that that's an area there next to
14 the -- you know -- that's at the boat ramp as well.

15 Q. All right. Okay. And was there any testimony
16 from Ms. Eberhardt, either on June 29th of '09, or
17 yesterday, regarding being taken on any gravel area?

18 A. I don't recall.

19 Q. And was there any testimony about being hidden
20 behind some trees?

21 A. No sir.

22 Q. Okay. Now, how long have you -- Do you live in
23 North Myrtle Beach, sir?

24 A. No sir.

25 Q. Where do you live?

1 A. I live in the Longs' area.

2 Q. Okay. But how long have you worked in North Myrtle
3 Beach, sir?

4 A. Uh -- For the city?

5 Q. Period?

6 A. Uh -- I moved up here in '86.

7 Q. Uh-huh. So you have worked in the North Myrtle
8 Beach area for approximately 24 years; correct?

9 A. Yes sir.

10 Q. And at that time, it would have been about 22 and a
11 half -- 23 years; right?

12 A. Yes sir.

13 Q. Okay. Help me out here. You -- You are definitely
14 more familiar with the area than I am.

15 Is there only one way in and one
16 way out from that boat ramp?

17 In other words, do you have to
18 cross back over 53rd in order to get back to Ocean
19 Boulevard?

20 A. Yes sir.

21 Q. Okay. Because once you come across that bridge,
22 there is -- that's the only way back?

23 A. Yes sir.

24 Q. There's that neighborhood back there; but there is
25 no egress -- no way to get out from that neighborhood;

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 right?

2 A. That's correct.

3 Q. All right. Now sir, is it -- For North Myrtle
4 Beach, is it police protocol to maintain an activity log
5 showing all officers who report to an incident scene?

6 A. No sir.

7 Q. No sir?

8 A. It depends. If you are talking about a crime scene
9 that's confined -- say like a burglary, or -- not even
10 then.

11 Uh -- If we're talking about a
12 murder at a house in which it's important to log on who
13 goes in and who goes out; yes, there is a crime scene --

14 Q. But otherwise --

15 A. -- log.

16 Q. -- you can just have all kind of general milling
17 around. There's no way to determine who was there; who
18 said what; who did what?

19 A. That's correct.

20 Q. Okay. So as a result of that, there is no record
21 of the unknown Horry County Police Department officer who
22 claims he saw a girl in the car and -- and did all of
23 these other things; correct?

24 A. Uh -- I would imagine -- I'm just guessing, but I
25 would imagine that there should be a radio log of who

1 signed out there -- uh -- for Horry County.

2 Q. Uh-huh. And on the afternoon of June 29th of 2009,
3 when you spoke with Ms. Eberhardt, you actually showed a
4 -- showed her a photo lineup containing six pictures;
5 correct?

6 A. Yes sir.

7 Q. Okay. And when you showed her that lineup and
8 those few pictures, one of those pictures was Mark
9 Elliott's picture; right?

10 A. That's correct.

11 Q. Okay. And at that time, not only was it a matter
12 of her saying -- uh -- she didn't know, she actually
13 picked another picture; didn't she, sir?

14 A. I don't recall.

15 Q. You don't recall that?

16 A. That's correct.

17 Q. All right. But it would be on the video of her
18 testimony; correct?

19 A. I showed her the lineup at that time, yes sir.

20 Q. Uh-huh. Okay. Because you indicated to her:

21 If you're not sure, let's just say
22 you're not sure, as opposed to picking someone other than
23 Mark Elliott; correct?

24 A. Yes. I explained to her that -- you know -- don't
25 guess.

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1 Q. Now, when you interviewed Mark, based on your
2 training and experience, you told him:

3 Any time you have a sexual
4 encounter, evidence is left behind; correct?

5 A. Yes sir.

6 Q. All right. And what evidence did Mark Elliot leave
7 behind, sir?

8 A. I do not know.

9 Q. You do not know, sir? 15 -- 16 months later, we're
10 here for trial --

11 A. That's correct.

12 Q. -- and you do not know?

13 A. That's correct.

14 Q. All right. Does your report of investigation --

15 MR. HAZZARD:

16 The Court's indulgence, Your
17 Honor?

18 Okay.

19 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

20 Q. When you spoke with Mr. Howard, you were speaking
21 with him as a part of your job as an employee for the
22 City of North Myrtle Beach; correct?

23 A. Yes sir.

24 Q. And you took information from him for that purpose;
25 correct?

1 A. Yes sir.

2 Q. In furtherance of your official capacity; right?

3 A. Yes sir.

4 Q. And you then did a document that's called an
5 Investigative Case Report as part of your employment;
6 correct?

7 A. Yes sir.

8 Q. And in furtherance of your job capacity; right?

9 A. Yes sir.

10 Q. If you would, please view the document and tell me
11 the telephone number that you have listed for Mr. Howard?

12 MS. LIVESAY:

13 Your Honor, anything that Mr.
14 Howard wrote on that statement is going to be hearsay.

15 MR. HAZZARD:

16 Your Honor, it as an official
17 document of the City of North Myrtle Beach.

18 MS. LIVESAY:

19 It's not an official document;
20 it's a voluntary statement that that witness wrote out
21 for the investigator.

22 Anything --

23 MR. HAZZARD:

24 It is a document that --

25 MS. LIVESAY:

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 -- on there is hearsay.

2 MS. LIVESAY:

3 It is a document that -- It is a
4 document --

5 THE COURT:

6 What is it?

7 MS. LIVESAY:

8 It's a phone number. It's a
9 phone number. It's his phone number.

10 It's the phone number he gave.

11 That's all I'm asking?

12 THE COURT:

13 Well, just ask him that.

14 Did he --

15 MR. HAZZARD:

16 Okay.

17 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

18 Q. Did he tell you his phone number was -- let's see --

19 [REDACTED]?

20 A. Yes sir.

21 MR. HAZZARD:

22 All right. Thank you, sir.

23 The Court's indulgence, Your

24 Honor?

25 Move to publish Defense Exhibits

1 7, 5, 6, 3, and 4, to the jury at this time, Your Honor.

2 THE COURT:

3 You may publish.

4 MR. HAZZARD:

5 Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. HAZZARD CONTINUED:

7 Q. One of the last things you told Mark when you
8 interviewed him was this, sir:

9 You told him that if his DNA were
10 found in or around Ms. Eberhardt's vagina or rectum, then
11 her story must be true.

12 Isn't that correct?

13 A. Yes sir.

14 MR. HAZZARD:

15 All right. Thank you. No
16 further questions.

17 MS. LIVESAY:

18 Just a few, Your Honor.

19 REDIRECT EXAMINATION BY MS. LIVESAY:

20 Q. Detective Abercrombie, do you work a lot of criminal
21 sexual conduct cases?

22 A. A few.

23 Q. Okay. Is it unusual for them not to have physical
24 evidence?

25 A. I'm sorry?

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 Q. Is it is unusual for them not to contain any
2 physical evidence?

3 A. It -- It happens.

4 Q. Okay. Now in this case, how did **Complaining** describe
5 to you the rape as far as the defendant's concerned?

6 MR. HAZZARD:

7 Objection; asked and answered?

8 MS. LIVESAY:

9 Your Honor, this goes to exactly
10 to what he was cross --

11 THE COURT:

12 I'll -- I'll let her ask it.

13 MS. LIVESAY:

14 -- cross-examining him about as
15 far as the physical evidence.

16 WITNESS:

17 Uh -- She described him as -- uh
18 -- there's no easy way to say this -- but he wasn't hard.

19 Uh -- She felt as though he wasn't
20 hard.

21 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

22 Q. Okay. But he was able to penetrate?

23 A. That's correct.

24 Q. Okay. Now if he was not hard, would you expect to
25 see physical evidence from him?

1 A. Not a lot.

2 Q. Okay. Now Mr. -- uh -- Hazzard asked you did you
3 ask the victim about drugs or anything to do with drugs?

4 You remember that?

5 A. Yes.

6 Q. Okay. Did the victims ever give you a inconsistent
7 statement this entire time?

8 A. No, they did not.

9 Q. Okay. Where was the inconsistent statement coming
10 from?

11 A. It was coming from the defendant.

12 Q. Okay. Did you find any evidence that corroborated
13 what the victims were telling you?

14 A. Yes, I did.

15 Q. And what evidence was that?

16 A. Well, the two statements that the two boys gave was
17 pretty consistent with the statement that -- uh -- uh --

18 **Complaining Witness** gave as well.

19 Q. Okay. Now did you -- did you hear the 911 call
20 that was made?

21 A. Yes, I did.

22 Q. Okay. Was that statement consistent with what
23 everybody else said?

24 A. That's correct.

25 Q. Okay. Now, was there any evidence in the vehicle

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 that corroborated that victim's statement?

2 A. Uh -- Her telephone.

3 Q. Okay. Now, they told you -- or he asked you about
4 the search of the car and where the crowbar was found?

5 Why did you seize the crowbar;
6 because -- What -- What reason did you seize it for?

7 A. It could have at night and in the heat of -- uh --
8 the incident taking place -- being confused for a weapon.

9 Q. Okay. So you didn't feel like it was just ironic
10 that they told you they saw something that looked like a
11 handgun, when you pull him over 45 minutes from that, and
12 there's a crowbar in the car?

13 A. That's correct.

14 Q. Okay. Now Mr. Hazzard asked you about -- uh -- the
15 underwear?

16 Did you take anything out of the
17 trunk of that vehicle?

18 A. No, I did not.

19 Q. Okay. Was there anybody else present while you
20 were searching the vehicle?

21 A. That's correct.

22 Q. Okay. Did that person ever take anything out of
23 the trunk of that vehicle?

24 A. No, they did not.

25 Q. Okay. Did you ever move anything around that was

1 in that vehicle, other than to seize it, or take a
2 picture of it?

3 A. That's correct. That's all I did.

4 Q. Okay. Now you took statements from everybody
5 involved?

6 Is it right?

7 A. That's correct.

8 Q. Okay. And did you ever find any evidence to
9 corroborate Mr. -- the defendant's story about any drugs?

10 A. No, I did not.

11 Q. Okay. Did you find any evidence anywhere that
12 corroborated his story?

13 A. No, I did not.

14 Q. Okay. Did you have any reason to believe this case
15 was anything about drugs?

16 A. No, I did not.

17 Q. Okay. Do you work drug cases?

18 A. Very seldom.

19 Q. Okay. Did this look like a drug case when you
20 started investigating it?

21 A. No, it did not.

22 Q. Okay. To your knowledge, did the victims have any
23 drugs on them?

24 A. No, they did not.

25 Q. Okay. Now when the defendant was searched, did he

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 have any drugs on him?

2 A. No, he did not.

3 Q. Okay. Now, did you see the video where -- uh -- he
4 fled from the car -- the Horry County video?

5 Were you present for that?

6 A. Yes, I was.

7 Q. Okay. Were you present when he was down on the
8 ground?

9 A. Yes, I was.

10 Q. Okay. Were you present when he was talking about:

11 She ran at the same time I ran?

12 Were you present for that?

13 A. Yes, I was.

14 Q. Okay. Was that one of the first statements he
15 made?

16 A. Yes, I was.

17 Q. Okay. Did he make any statements at that point
18 about any drugs?

19 A. Shortly afterwards, somewhere in that time frame, he
20 started mentioning that.

21 Q. Okay. So it wasn't until he was put in the
22 vehicle?

23 Is that right?

24 A. That's correct.

25 Q. Okay. So the first statement he said with --

1 regarding that girl and her running from the car?

2 A. That's correct.

3 Q. Okay. Now -- uh -- Mr. Hazzard asked you earlier
4 about:

5 Did the victim -- Is this the
6 first time the victim's ever said -- uh -- that she --
7 the door was open and she was placed down in the car?

8 Is that right?

9 A. That's correct.

10 Q. Okay. Did you interview her?

11 A. That's correct.

12 Q. Okay. Does this look familiar to you?

13 A. Yes, it does.

14 Q. And if you viewed this interview?

15 A. Uh -- Not recently; but, yes, I have viewed the
16 interview.

17 Q. Okay. Well, in this interview, didn't she say that
18 that was opened up?

19 A. I don't recall.

20 Q. Okay. Do you recognize it?

21 A. Yes, I do.

22 Q. Okay. Is this indeed the interview of the victim?

23 A. Yes, it is.

24 MS. LIVESAY:

25 Your Honor, at that time, the

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 State wishes to place the victim's interview into
2 evidence.

3 MR. HAZZARD:

4 Without objection.

5 THE COURT:

6 All right.

7 We're going to -- uh -- break, and
8 let his jury go to lunch.

9 I would ask you to be back at
10 1:30.

11 (WHEREUPON: The jury empanelled
12 in the case withdrew from the courtroom at 12:17 PM,
13 November 18, 2010; and was no longer present during the
14 following proceedings.)

15 WHEREUPON: THE DVD OF **Complaining**
16 EBERHARDT'S INTERVIEW WAS MARKED BY THE COURT REPORTER AS
17 STATE'S EXHIBIT NUMBER 16, AND WAS APPARENTLY ENTERED
18 INTO EVIDENCE WITHOUT OBJECTION.

19 COURT REPORTER:

20 Your Honor, this will be State's
21 Exhibit 16.

22 THE COURT:

23 All right. And how long was
24 this?

25 MS. LIVESAY:

1 Your Honor, I'm not publishing it.
2 I'm just putting it into evidence.

3 If they request to watch it, they
4 can. But I'm not publishing it at this point.

5 It's a consistent prior statement
6 that --

7 THE COURT:

8 Whoa, wait a minute.

9 You're putting it into evidence,
10 but you're not publishing it to the jury. And you're
11 letting them make the choice of whether they want to see
12 it?

13 No ma'am. We're not doing that.

14 We're going to publish it, or it's
15 not going to be an exhibit.

16 We're not going to have something
17 for this jury to come back and forth and decide whether
18 or not they want to look at it.

19 Now, we're going to do it one way
20 or the other.

21 We're going to publish it.

22 I'm going to see it.

23 Or:

24 We're going to -- You can Mark it
25 for identification if you want.

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 But -- you know -- we're not going
2 to have evidence that the jury hasn't reviewed during the
3 trial available to them during the deliberations.

4 We're just not going to do that.

5 Now, What do you want to do?

6 MS. LIVESAY:

7 I don't want to publish it, Your
8 Honor, because I don't want to have to let them listen to
9 the entire thing just to get out the fact that her
10 statement is the same on that as it is the statement that
11 she gave in this courtroom.

12 THE COURT:

13 Just ask him if it's the same.

14 MS. LIVESAY:

15 Okay.

16 THE COURT:

17 He says he -- he -- he's familiar
18 with it.

19 All you got to do is ask him; or
20 you can publish it.

21 MS. LIVESAY:

22 I -- I'm not going to publish it,
23 Your Honor, if I get an answer.

24 THE COURT:

25 Okay; very well then.

1 caution, and at the request of both the State and the
2 Defense, I am going to excuse you.

3 And you are excused from further
4 service on this jury.

5 JUROR CAIN:

6 Okay.

7 THE COURT:

8 You may leave; okay.

9 (WHEREUPON: The dismissed juror
10 left the courtroom at 2:14 PM, November 18, 2010.)

11 THE COURT:

12 All right.

13 Mr. Abercrombie, if you would,
14 return to the witness stand.

15 I think Ms. Livesay has one or two
16 questions left for you; right?

17 MS. LIVESAY:

18 Yes, sir.

19 THE COURT:

20 Okay.

21 And number four was Mr. Alley.

22 DEPUTY HEMINGWAY:

23 Is it okay to bring everybody else
24 back in?

25 THE COURT:

TESTIMONY OF DETECTIVE ABERCROMBIE CONTINUED

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1 Yes.

2 (WHEREUPON: The jury empanelled
3 in the case was escorted back into the courtroom at 2:15
4 PM, November 18, 2010; and was in fact present during the
5 following proceedings.)

6 THE COURT:

7 Mr. Alley, if you would, move over
8 to one of -- to the seat by you.

9 You will be -- uh -- replacing --
10 uh -- one of our jurors, and now you're on the jury.

11 And Ms. Lynn, you are the only
12 remaining alternate; okay.

13 Thank you.

14 Ms. Livesay, if you would?

15 MS. LIVESAY:

16 Just a couple of questions, Your
17 Honor.

18 REDIRECT EXAMINATION BY MS. LIVESAY CONTINUED:

19 Q. Uh -- In this investigation, did you fully
20 investigate everything you could possibly investigate?

21 A. With the time I had, yes ma'am.

22 Q. Okay. And about how long did it take you to
23 complete the investigation?

24 A. As far as paper work is concerned, it takes days to
25 complete all the paperwork involved.

1 Q. Okay. And are you familiar with these type of
2 cases?

3 A. They come around often; but it's not your everyday
4 type of case that we run into; at least not in North
5 Myrtle Beach.

6 Q. Okay. And do you always have physical evidence in
7 these type of cases?

8 A. Not always.

9 MS. LIVESAY:

10 No further questions, Your Honor.

11 THE COURT:

12 All right, Mr. Hazzard?

13 MR. HAZZARD:

14 Nothing further from the Defense,
15 Your Honor.

16 THE COURT:

17 Thank you.

18 All right, sit -- uh -- if you
19 would, step down, Detective Abercrombie.

20 MS. LIVESAY:

21 Your Honor, at this time the State
22 rests its case.

23 THE COURT:

24 All right.

25 Ladies and gentlemen of the jury,

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1 of the State has rested its case; that is the State has
2 completed the process of putting up the evidence that you
3 will consider in this trial.

4 I must now take up a matter -- uh
5 -- uh -- of law -- uh -- between the parties.

6 Uh -- I'm going to ask you to
7 return to your courtroom -- I mean, to your juryroom.

8 I know we've had you in and out
9 today, but we are trying to -- uh -- to move this along
10 as expeditiously as possible.

11 But if you would, go to your
12 juryroom, and I'll have you back in, in a few moments.

13 (WHEREUPON: The jury empanelled
14 in the case withdrew from the courtroom at 2:18 PM,
15 November 18, 2010; and was no longer present during the
16 following proceedings.)

17 THE COURT:

18 All right, Mr. Hazzard?

19 MR. HAZZARD:

20 Thank Your Honor. A couple --

21 THE COURT:

22 Or Ms. Knowles?

23 MR. HAZZARD:

24 A couple of matters on behalf of
25 the Defense.

1 Uh -- First of all, before
2 Detective Abercrombie stepped down off the stand and
3 before we broke for lunch -- uh -- the State attempted to
4 put in a videotape of the -- of Ms. Eberhardt's interview
5 by Detective Abercrombie -- uh -- but then indicated she
6 did not wish to publish it.

7 The Court indicated at that time
8 that it would not be allowed in.

9 I know that that -- uh -- piece of
10 evidence was marked, and initially admitted.

11 And I don't --

12 THE COURT:

13 No. It -- It -- It's not going in
14 because any evidence that's placed in this record that I
15 have not had a chance to review could not be considered
16 by me on motions.

17 Uh -- And it's just not
18 appropriate that any evidence come in that's not viewed,
19 particularly a videotape or something like that -- uh --
20 not viewed by this jury during this trial.

21 And I gave everybody the option:

22 Put it in.

23 Leave it out.

24 But we're going to have to watch
25 it; okay.

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1 It's not in.

2 All right.

3 MR. HAZZARD:

4 Yes sir. I simply wanted to make
5 sure the record reflected that that was not in evidence.

6 THE COURT:

7 Okay.

8 MR. HAZZARD:

9 Okay.

10 Uh -- At this time, Your Honor,
11 the Defense -- uh -- makes motions for a directed verdict
12 -- uh -- on all counts.

13 And we'll start with the
14 kidnapping count.

15 With regard to the charge of
16 kidnapping, the Defense makes a motion for a directed
17 verdict on the grounds that:

18 The evidence submitted to this
19 point -- uh -- even taking the light most favorable to
20 the State, is not sufficient -- uh -- to send it to the
21 jury for their consideration, Your Honor.

22 THE COURT:

23 You want to do them one at the
24 time?

25 Okay, go ahead.

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1 MR. HAZZARD:

2 Well, I mean, if you want --

3 THE COURT:

4 Ms. -- uh -- Ms. -- uh -- Livesay

5 --

6 MS. LIVESAY:

7 We can do one at a time.

8 THE COURT:

9 All right. We'll do them one at
10 the time.

11 MS. LIVESAY:

12 Okay.

13 THE COURT:

14 That'll --

15 MS. LIVESAY:

16 Your Honor, as to the kidnapping,
17 I believe there was sufficient evidence.

18 The first testimony was from R.B.

19 R.B. who testified he was an eyewitness; that:

20 Uh -- The defendant told him to
21 get down. Then he turned around and looks back; sees the
22 defendant patting down Complaining and then putting her in
23 the car.

24 Then we played the 911 tape, which
25 again reiterated the fact that the defendant took

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1 **Complaining** without her permission.

2 Later, the victim testified that
3 she was not allowed to get out of the car.

4 And in fact, at one point, she --
5 uh -- kissed the defendant in an effort to try to let him
6 -- get -- get him to let her out of the car.

7 He would not let her out of the
8 car, Your Honor.

9 Uh -- The State believes that the
10 elements of kidnapping were met through the eyewitness
11 testimony as well as the 911 tape and the victim's
12 testimony.

13 THE COURT:

14 Of course, in a directed verdict
15 situation, I must look at the evidence in the light most
16 favorable to the nonmoving party, which would be the
17 State in this instance.

18 My question is not whether or not
19 -- is not -- does not concern the weight of the evidence,
20 but the existence of evidence.

21 And I think that there is ample
22 evidence from the victim and the eyewitness -- uh --
23 certainly to -- uh -- to -- uh -- send this matter on to
24 the jury; okay.

25 Mr. Hazzard?

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1 MR. HAZZARD:

2 Thank you.

3 Your Honor, with regard to the
4 balance of the charges -- uh -- the Defense will
5 recognize -- uh -- The Court's explanation of its -- uh
6 -- consideration, so that it doesn't have to be repeated
7 over and over again.

8 THE COURT:

9 All right.

10 MR. HAZZARD:

11 Uh -- With regard to the charge of
12 criminal sexual conduct first-degree and criminal sexual
13 conduct second-degree with a minor, I'll do those two
14 together, Your Honor.

15 The Defense -- uh -- request a
16 directed verdict on those two counts.

17 Uh -- Our position is that:

18 Uh -- The evidence submitted to
19 the jury for their consideration thus far, even if taken
20 in the light most favorable to the State, is not
21 sufficient -- uh -- for the jury to consider a verdict of
22 guilty.

23 MS. LIVESAY:

24 Your Honor -- uh -- the victim
25 very plainly testified that she was penetrated, both

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1 anally and -- uh -- vaginally.

2 That is enough.

3 She testified to her age at the
4 time being 14 years of age.

5 That would be sufficient to meet
6 the CSC second with a minor.

7 Uh -- She also testified that
8 during the time of the CSC, she was not allowed to leave.

9 She was afraid.

10 At one point, she thought he had a
11 weapon, which incorporates the aggravating circumstance
12 of kidnapping.

13 Uh -- This exact story was told
14 time and time again, as she was relaying it to each
15 officer, and the jogger after that.

16 THE COURT:

17 And again, Mr. -- uh -- Hazzard,
18 for the same reasons, I would respectfully -- uh -- deny
19 your motion.

20 I've applied the same test.

21 And there is evidence for the
22 charge.

23 Again, I -- I'm not concerned with
24 the weight of that evidence; merely the fact that the
25 evidence is there.

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1 And I would respectively deny your
2 motion.

3 Now, as to the -- uh -- resisting
4 arrest?

5 MR. HAZZARD:

6 With regard to the resisting
7 arrest, Your Honor, we are -- we make a motion for a
8 directed verdict on that count.

9 Our position is that:

10 It is squarely on all fours with
11 the case of State versus Brannon.

12 Uh -- That is by our Supreme
13 Court, 388 South Carolina 498, decided August of 2010,
14 Your Honor.

15 Uh -- And the Brannon case, an
16 individual was --

17 THE COURT:

18
19 I'm familiar with Brannon.

20 MR. HAZZARD:

21 Okay.

22 Our position is that:

23 This fact situation is squarely on
24 all fours with that one; that:

25 All of the State's witnesses have

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1 testified that Mr. Elliott was not under arrest; that
2 they were simply attempting to make a detention -- an
3 investigative detention.

4 Uh -- And -- And we would submit
5 that:

6 Uh -- By law -- by prevailing --
7 uh -- case law, that count of the indictment should be
8 dismissed.

9 THE COURT:

10 All right.

11 Let me hear from you on that, Ms.

12 Livesay?

13 MS. LIVESAY:

14 Thank Your Honor.

15 In looking at the rule on -- uh --
16 Brannon, which is the case Mr. Hazzard just noted, the
17 rule says:

18 Intention -- That one must look at
19 the intentions of the parties, referring to the
20 subjective intentions of the law enforcement officer, as
21 well as the suspect.

22 Uh -- There is no objective test.

23 I do believe that -- uh -- the
24 officer read -- wrote him for failure to stop.

25 He would not stop for a blue

1 light.

2 At that point, the defendant had
3 committed a crime.

4 He gets out of the car;
5 immediately takes off on foot.

6 Obviously at that point, he knows
7 that they are seeking his arrest.

8 Uh -- I think that that is well
9 within the videotape when it shows him taking off.

10 He's obviously fleeing from the
11 possibility of being arrested.

12 Uh -- Several officers chase him
13 -- or -- uh -- chase after him.

14 Uh -- At this point, obviously the
15 officer's telling him to:

16 Put your hands up.

17 Uh -- To -- He's asking him
18 several commands in order to place him under arrest.

19 I think when you listen to the
20 testimony of the officer, and you listen to the video,
21 when the defendant first gets in the car and he's in
22 custody, the first thing he asks Officer Causey was:

23 Why did you arrest me? For
24 resisting arrest?

25 He was obviously under the

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1 impression that they were seeking to arrest him.

2 Uh -- I think the officer, maybe
3 initially, was looking just to stop him and investigate
4 him under the BOLO.

5 But once he did not stop for that
6 blue light, and once he got out of that vehicle and
7 started running, obviously at that point, they were
8 seeking to arrest him and place him into custody, Your
9 Honor.

10 I think when you look at the
11 subjective intentions, which is what this case asks in
12 order to find whether or not there is resistance, I think
13 the intentions of the defendant is obviously to flee from
14 being arrested.

15 So he obviously thought he was
16 being sought for arrest.

17 And I think that officer, once he
18 did not stop for the blue light and he got out of his car
19 and took off running, I think it was then that officer's
20 intention to place him under arrest.

21 So I think under the rules of
22 Brannon, and under the statute of resisting arrest, I do
23 believe that this defendant was under the subjective
24 intention that he reasonably thought they were seeking to
25 arrest him.

1 And once he thought that, he did
2 take off and flee.

3 He never complied with any
4 commands until he was Tased.

5 So I think the essence of
6 resisting arrest, and under this rule, are met under
7 these facts, Your Honor.

8 THE COURT:

9 I find that Brannon is -- uh -- is
10 somewhat troublesome.

11 It would appear to me from your --
12 your -- uh -- your argument, Ms. Livesay, that -- uh --
13 it's logical and that it made sense.

14 However, The Court of Appeals, to
15 which the Brannon case was first appealed, very clearly
16 adopted a seizure type analysis; seizure as that term
17 applies to the Fourth Amendment.

18 And on Cert to the Supreme Court,
19 the Supreme Court says:

20 No, that is not the -- uh -- the
21 analysis that should be made.

22 And in doing so, and disagreeing
23 with The -- uh -- with The Court of appeals -- uh -- they
24 -- while disagreeing, they still agreed as to the result.

25 The Supreme Court -- uh -- stated

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1 that:

2 The seizure analysis was incorrect
3 because the concepts of arrest and seizure are different.

4 The Court noted that they are
5 related because an arrest is the highest form of a -- a
6 seizure under the Fourth Amendment.

7 But all seizures are -- do not
8 result in arrests.

9 In determining whether an arrest
10 has occurred, under the Brannon, the focus is on the
11 intent of the police officers -- uh -- and -- and the
12 suspect.

13 In contrast, a seizure occurs when
14 the circumstances would make a reasonable person believe
15 that he was not free to leave.

16 So that -- that's the difference.

17 If we have a seizure, it is
18 nothing more than a subjective -- or objective -- uh --
19 rule where you would look at the circumstances of the
20 facts of the case to determine whether a reasonable
21 person would think that he is not free to leave.

22 But in an arrest, as it applies to
23 the resisting arrest statute, we look at the intent --
24 not only of the officer -- but the defendant as well.

25 And that was some of the -- the

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1 problems -- or problems that are created by the Brannon
2 analysis.

3 In Brannon -- or under a Brannon
4 analysis, the fact that the officer intended to seize the
5 defendant, as that term is used in the Fourth Amendment,
6 is not dispositive of the case.

7 I must determine -- uh -- if an
8 arrest was being made at the time of the defendant's
9 flight as that term is defined, not under the Fourth
10 Amendment, but under the common law.

11 Brannon sites State versus
12 Williams as The Court's pronouncement, our jurisprudence
13 -- uh -- of the specific elements to determine when an
14 arrest has occurred.

15 Under Williams, where the police
16 officer does not manually touch the subject -- that seems
17 to be a -- a -- a cornerstone of this determination --
18 where the police officer has not manually touched the
19 subject, an arrest requires an intent on the part of the
20 officer to arrest the subject and -- and this is the
21 troublesome part to me -- an intent on the part of the
22 suspect to submit to the arrest under the belief that
23 submission was necessary.

24 And this is an ongoing process.

25 It's not something that happens

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1 immediately, or -- uh -- it's -- it's sort of ongoing.

2 And my initial inquiry must be:

3 Whether the arresting process was
4 actually under way when the defendant fled.

5 Now the Brannon Court rejected the
6 State's argument that The Court should evaluate the
7 officer's intent under an objective standard to determine
8 if the officer had probable cause to arrest when the --
9 when Brannon fled, and in this case, when the defendant
10 Fred -- uh -- fled.

11 That would, prior to Brannon, have
12 been my opinion that that was the primary concern of The
13 Court whether there was probable cause?

14 That would be an objective
15 standard.

16 But The Court adopted, instead, a
17 subjective test of the officer's intent and the
18 defendant's intent as suggested by the William's Court.

19 In the present case, the officers
20 all testified that the defendant was stopped because of a
21 BOLO.

22 They wanted to question him.

23 And even if we concede that they
24 had probable cause to arrest him, their purpose was to
25 question him concerning the kidnapping of the victim at

1 the time he fled.

2 Likewise, and most significantly,
3 there has been no evidence presented to demonstrate that
4 Mr. Elliott -- and this is directly from the Brannon case
5 -- the decision in the Brannon case -- there is no
6 evidence to demonstrate that Mr. Elliott intended, or
7 ever submitted to the police officers.

8 And to the contrary, as -- as in
9 the Brannon case, he immediately fled.

10 As soon as he saw the police
11 officers stop the car, he immediately fled.

12 Now there was a strong dissent by
13 Chief Just -- Justice Toal.

14 She based it upon the fact that --
15 or primarily from the fact that it just makes no sense;
16 that in order to commit -- uh -- a resisting arrest
17 offense, you first have to have intended to submit to the
18 arrest.

19 That was -- uh -- the basis of the
20 Chief Justice's dissent.

21 Uh -- It certainly seems to make
22 sense.

23 But nevertheless, the majority
24 opinion is the law of the case.

25 As I said earlier, in relying on a

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1 motion for directed verdict, I must concern myself with
2 the existence of the evidence and not its weight.

3 In viewing the evidence as to that
4 charge, and all reasonable inferences that may be drawn
5 from it, and looking at it in the light most favorable to
6 the State, I find that:

7 The State has failed to offer
8 proof that the arrest process was ongoing at the time of
9 the -- that the defendant fled under the Brannon case.

10 And what I'm going to do is:

11 Grant your motion for a directed
12 verdict as to the -- uh -- resisting arrest; okay.

13 MR. HAZZARD:

14 Thank Your Honor.

15 THE COURT:

16 All right.

17 Now, let's go on.

18 MR. HAZZARD:

19 Uh -- Failure to stop for blue
20 light, Your Honor:

21 Uh -- In reviewing that particular
22 statue -- uh -- and the basis of the charge itself, the
23 Defense makes a motion for a directed verdict.

24 That motion for a directed verdict
25 is based on the assertion that:

1 The evidence produced and
2 submitted by the State, even taken in the light most
3 favorable to the State, is insufficient to allow it to be
4 sent to the jury for an ultimate determination of guilt
5 or innocence.

6 We therefore make a motion for a
7 directed verdict on the charge of failure to stop for a
8 blue light, Your Honor.

9 THE COURT:

10 And I would disagree.

11 And -- uh -- I believe that there
12 is certainly ample evidence that would support a blue
13 light charge; okay.

14 All right.

15 Let's -- uh -- bring the jury back
16 in.

17 Are you prepared to go forward,
18 Mr. Hazzard?

19 You have your witnesses?

20 MR. HAZZARD:

21 Yes sir, I do.

22 That's my understanding that
23 they're all present.

24 THE COURT:

25 Very good.

VOLUME III

Volume II STATE V MARK A. ELLIOTT

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 (WHEREUPON: The jury empanelled
2 in the case was escorted back into the courtroom at 2:36
3 PM, November 18, 2010; and was in fact present during the
4 following proceedings.)

5 THE COURT:

6 All right, Mr. Hazzard?

7 MR. HAZZARD:

8 Thank Your Honor.

9 At this time, the Defense would
10 call -- uh -- Susan Davis to the stand -- Susan Douglas,
11 I'm sorry, Your Honor.

12 WHEREUPON: SUSAN DOUGLAS WAS DULY
13 SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

14 CLERK:

15 Thank you. Please be seated.

16 Okay, scoot up and speaking into
17 the microphone.

18 WITNESS:

19 Okay.

20 CLERK:

21 If you will state your full name;
22 and spell your last name?

23 WITNESS:

24 Susan M. Douglas; D-o-u-g-l-a-s.

25 DIRECT EXAMINATION BY MR. HAZZARD:

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 Q. Good afternoon Ms. Douglas. Thank you so much for
2 being with us here today.

3 A. Yes.

4 Q. Uh -- Would you please tell us how you are employed
5 at the current time?

6 A. I'm an RN at Sea Coast Emergency Center.

7 Q. Okay. And that means a Registered Nurse ma'am?

8 A. Yes, sir.

9 Q. Okay. And were you employed in that capacity back
10 on June 29th, of 2009, ma'am?

11 A. Yes sir.

12 Q. Okay. And on that date, did you have occasion to
13 be present when a Ms. **Complaining Witness** was brought to
14 the hospital?

15 A. I was not there when she was brought in. Uh -- But
16 I was probably -- uh -- between five and six or five and
17 seven.

18 I go on duty at 20 till 7:00.

19 Q. Uh-huh.

20 A. And -- uh -- I completed -- uh -- her time there.
21 Uh --

22 Q. Were you present -- uh -- when a rape kit procedure
23 was done on Ms. Eberhardt that morning?

24 A. Yes, sir. I did that kit.

25 Q. Okay. And when you say you "did that kit," please

1 tell the jury what all that entails?

2 A. Okay. Uh -- The hospital has rape kits there that
3 are fully sealed.

4 Uh -- We speak to the -- uh --
5 alleged victim and explain to them what is going to
6 happen.

7 Uh -- And in their presence, and
8 me, I -- we open the kit.

9 And then, we do -- uh -- samples.

10 I do a oral -- mouth oral exam --
11 uh -- with samples; and all other -- other than the
12 vaginal and the anal swabs, which are done by the
13 physician.

14 Q. Okay. And were you present when the physician --
15 uh -- collected the vaginal and anal swabs?

16 A. Yes sir.

17 Q. Okay. And he did that your presence?

18 A. Yes sir.

19 Q. Okay. And once he did the vaginal and anal swabs,
20 what did he do with them, ma'am?

21 A. He gave them to me. I take them and package them
22 right there -- uh -- in the room there, then place in
23 that -- uh -- kit --

24 Q. Uh-huh.

25 A. -- sealed -- uh -- before they're placed in the kit.

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 Uh -- Then, when we complete all
2 exams from head to toe -- uh -- and visual with a wood
3 lamp, we seal that -- uh -- kit.

4 And it's kept in my presence until
5 I turn it over to the -- uh -- North Myrtle Beach Police,
6 or whoever it might be.

7 That particular one went to North
8 Myrtle Beach.

9 Q. Okay. Now you mentioned a wood lamp. What is a
10 wood lamp; and what is it used for, ma'am?

11 A. Uh -- The wood lamp is used to indicate any kinds of
12 any semen, or anything that's on the outside?

13 Q. Okay. Now, did you conduct the wood lamp -- wood
14 lamp in this case --

15 A. No.

16 Q. -- or did the doctor conduct the wood lamp exam?

17 A. No.

18 Q. Okay.

19 A. The doctor did it.

20 Q. And did you make the notes regarding that; or did he
21 make the notes regarding that?

22 A. He made the notes regarding that. Uh-huh.

23 Q. Okay. Now once the -- uh -- rape kit was completed
24 --

25 A. Uh-huh.

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 Q. -- what did you, if any -- what did you do with it?

2 A. What did I do with it?

3 Q. Yes ma'am.

4 A. Well, it's sealed -- I seal it up. I have to put my
5 name on it -- uh -- at the time I give it to the -- uh --
6 police officer.

7 And he signs it. And then he
8 takes it to wherever.

9 I don't know where it goes from
10 there.

11 Q. Okay. So your testimony is then, that:

12 You got it. You sealed it. Uh --
13 Signed it and gave it to a representative of the North
14 Myrtle Beach Police Department?

15 A. Yes sir.

16 Q. Okay. Did you have any contact or dealings with
17 the rape kit after you gave it to the detective?

18 A. No sir. Uh-uh.

19 Q. Okay. When you gave it to the detective, was the
20 kit in the same condition as when you first packaged it?

21 A. Yes sir.

22 Q. Did you alter it; tamper with it in any way?

23 A. No sir. Uh-uh.

24 Q. Not while it was in your care, custody, and control?

25 A. No.

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 Q. All right.

2 A. Uh-uh.

3 MR. HAZZARD:

4 Thank you. I have no further
5 questions for this witness, Your Honor.

6 THE COURT:

7 Ms. Livesay?

8 MS. LIVESAY:

9 Thank Your Honor. Just a few
10 questions.

11 CROSS-EXAMINATION BY MS. LIVESAY:

12 Q. Uh -- Ms. Douglas, as a nurse, do you have to -- uh
13 -- find out -- Triage -- is that the kind of nurse --

14 A. Yes.

15 Q. Explain to the jury exactly what a Triage Nurse is.

16 A. Well, a -- a Triage Nurse is the first one that sees
17 the -- uh -- patient.

18 And they get their --

19 Q. Okay. And so --

20 A. -- story. I mean, if this is a rape case, we -- uh
21 -- investigate what happened to them during the event and
22 the crime.

23 Q. And do you have to -- uh -- figure out what happened
24 to them in order to find what kind of procedure to
25 perform on them, or how to treat that patient?

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 A. No. Actually -- uh -- the kit itself -- uh --
2 identifies what needs to be done.

3 Now we do speak with them to see
4 what has happened -- uh -- what type of -- uh -- sex as
5 far as any other -- uh -- investigation that we have to
6 do -- as far as swabs.

7 Q. Okay.

8 A. Uh -- And that's fully explained to them exactly
9 what a rape kit means -- uh -- and what will be involved
10 in it as far as -- uh -- their participation -- what we
11 have to do to them.

12 We have to take all their clothes
13 totally separate. And it's -- uh -- that it's a head to
14 toe, full examination.

15 Uh -- And it's not always pleasant
16 for them, especially after their experience.

17 Q. And do you have to get information from them to even
18 figure out whether or not a rape kit needs to be done?

19 A. Yes ma'am.

20 Q. Okay. And did you get that information from

21 **Complaining Witness**

22 A. Yes ma'am.

23 Q. Okay. So she was able to convey to you that she
24 had been sexually assaulted?

25 A. Yes ma'am.

TESTIMONY OF NURSE SUSAN DOUGLAS

868

1 Q. Now when she's in the -- uh -- medical room --

2 A. Uh-huh.

3 Q. -- I'm assuming you're asking her some questions
4 just to figure out whether or not she needs to be treated
5 for any other kind of physical problems?

6 A. Yes ma'am.

7 Q. Okay. Do you put that in the medical records?

8 A. Yes. Uh-huh.

9 Q. Okay. So you put that on the kit; or in the form
10 that's used for the kit -- what she tells you?

11 A. Yes. There is -- uh -- a paper there that -- uh --
12 it's basically her statement that we write down.

13 And it does go in the kit; yes.

14 MS. LIVESAY:

15 Okay.

16 Your Honor, can I approach this
17 witness?

18 THE COURT:

19 Yes.

20 (WHEREUPON: Ms. Livesay shows
21 some documents to Mr. Hazzard and Ms. Knowles.)

22 MR. HAZZARD:

23 The Court's indulgence, Your
24 Honor?

25 MS. LIVESAY:

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 Your Honor, can we -- uh -- have a
2 motion outside the jury?

3 THE COURT:

4 Yes, ma'am..

5 Take the jury out, Mr. Roth.

6 (WHEREUPON: The jury empanelled
7 in the case withdrew from the courtroom at 2:43 PM,
8 November 18, 2010; and was no longer present during the
9 following proceedings.)

10 MS. LIVESAY:

11 Your Honor, I'm going to ask -- or
12 I'm going to ask Ms. Douglas as regarding to what
13 **Complaining Witness** told her in the hospital as to what
14 had happened that night.

15 And I'm trying to obviously get it
16 in through the medical records and diagnoses exception,
17 which is says that:

18 Anything in the medical records --

19 THE COURT:

20 803(4)?

21 MS. LIVESAY:

22 (No response.)

23 THE COURT:

24 803(4)?

25 MS. LIVESAY:

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 Yes, Your Honor. It's allowed to
2 come in.

3 Now Mr. Hazzard's under the
4 impression that that would open up the door for testimony
5 about the fact that **Complaining** told the nurse that she had
6 sex with her boyfriend earlier that night.

7 Uh -- Obviously the rape shield
8 keeps that out.

9 There is no rule that allows that
10 to come in.

11 And Mr. Hazzard's already
12 extracted information regarding the rape kit from Ms.
13 Eberhardt when he asked her whether or not pubic hair was
14 collected on -- on the rape kit -- or for rape kit
15 purposes, Your Honor.

16 MR. HAZZARD:

17 And Your Honor, obviously our
18 position is:

19 She is not allowed to ask this
20 witness -- uh -- about part of what a person told her but
21 not allow the entirety of the discussion between the
22 parties.

23 MS. LIVESAY:

24 Sure I can. The rule allows for
25 that testimony to come in.

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 THE COURT:

2 The -- The rule, Mr. Hazzard, 803,
3 Subsection 4, says:

4 Statements made for the purpose of
5 medical diagnosis or treatment, and describing medical
6 history, or past and present symptoms, pain or sensation,
7 or the inception or -- or general character of its cause
8 or external source thereof insofar as reasonably
9 pertinent to the diagnosis or treatment; provided that --
10 however, that the admission of statements made after
11 commitment -- commencement of the litigation is left in
12 The Court's discretion.

13 Now, 803 says that:

14 That is not excluded by the
15 hearsay rule, even though the declarant is available as a
16 witness.

17 MR. HAZZARD:

18 And what she says as far as having
19 sex with her boyfriend; about her bruising on either her
20 shoulder or collar bone that came from having sex with he
21 boyfriend, all of that has to do with treatment and
22 diagnosis, Your Honor.

23 I mean, if she wants --

24 MS. LIVESAY:

25 That's kept out by the rape

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 shield.

2 THE COURT:

3 Well, why -- Why do you want to
4 put in -- I mean, y'all are leaving me in the dark here.

5 MR. HAZZARD:

6 What she's asking her about is
7 something the victim's already testified to; something
8 that Detective Abercrombie's already testified to --

9 MS. LIVESAY:

10 It's her statement that night that
11 she told the nurse when the nurse asked her what had
12 happened, which is procedure in the rape kit.

13 The victim said:

14 I was out around 3:15, sitting
15 outside, and that's when it does in the fact that a
16 gentleman drives up, tells my friends to get down on the
17 ground.

18 It's about a 1, 2, 3, 4 -- 5
19 sentence summary of what she told this nurse what had
20 happened that night.

21 MR. HAZZARD:

22 That has already been testified
23 to, Your Honor.

24 THE COURT:

25 I understand it. And I'm going to

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 let her testify to that; okay.

2 MS. LIVESAY:

3 Thank Your Honor.

4 MR. HAZZARD:

5 And as a result, then, do I get to
6 ask Nurse Davis (sic) regarding the other statements made
7 for the purpose of diagnosis and treatment?

8 THE COURT:

9 That is entirely different.

10 That's -- That has nothing to do
11 with hearsay. That has to do with the rape shield
12 statute.

13 MS. KNOWLES:

14 But Your Honor, it goes to the
15 medical history, and --

16 MS. LIVESAY:

17 Your Honor, there --

18 THE COURT:

19 It -- It -- It's not admissible,
20 even if it came directly from the mouth of the defendant
21 -- I mean, the victim.

22 What we're talking about is
23 whether or not statements made to her, or to the witness
24 by the victim, are hearsay.

25 Rule 803 clearly says that:

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 It is admissible because it is not
2 excluded by the hearsay rule because of the obvious
3 reliability of statements made for the purpose of medical
4 diagnosis or treatment.

5 It comes out of the hearsay rule.

6 What you're attempting to do, is
7 get the matters that I agree are not protected by the
8 hearsay rule.

9 She could testify to it normally.

10 But we have a rape shield statute
11 that also comes into play and does not allow that
12 testimony.

13 MR. HAZZARD:

14 Well, what The Court is indicating
15 that it is going to allow the State to do is publish part
16 of a document, thus prohibiting the jury from having the
17 full benefit of the entire --

18 MS. LIVESAY:

19 Here's the thing, Your Honor --

20 MR. HAZZARD:

21 -- statement made that -- excuse
22 me.

23 THE COURT:

24 She's not going to publish the
25 document; are you?

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 MS. LIVESAY:

2 No; I may --

3 MR. HAZZARD:

4 She's going to ask here about it?

5 THE COURT:

6 She's going to ask her what she
7 told her about this event.

8 MR. HAZZARD:

9 So -- And then the Defense does
10 not have the benefit of the entirety of that
11 conversation?

12 THE COURT:

13 You can cause examine her about
14 what she testifies here; about the event; but the rape
15 shield statute, Mr. Hazzard, will not let you go into it
16 except under -- or any other sexual activity other than
17 under very, very, limited circumstances.

18 MR. HAZZARD:

19 And I would -- On behalf of the
20 Defendant, I would submit allowing the State to put in
21 this obviously cumulative testimony, and having it being
22 a non-complete statement as to the -- the alleged
23 victim's actual statement for the purposes of diagnosis
24 and treatment is misleading to the jury and improper.

25 THE COURT:

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 Well, I'm not going to let it in.
2 I think it's protected by the rape shield.

3 MS. LIVESAY:

4 Thank you, Your Honor.

5 MR. HAZZARD:

6 All right. Note the objection
7 for the record, Your Honor.

8 THE COURT:

9 All right, sir.

10 Now, you're not going to put that
11 in, are you Ms. Livesay?

12 MS. LIVESAY:

13 No ma'am -- No sir.

14 THE COURT:

15 All right. Bring them --

16 MS. LIVESAY:

17 I'm just going to ask her about
18 that summary.

19 (WHEREUPON: The jury empanelled
20 in the case was escorted back into the courtroom at 2:51
21 PM, November 18, 2010; and was in fact present during the
22 following proceedings.)

23 CROSS-EXAMINATION BY MS. LIVESAY CONTINUED:

24 Q. Uh -- Ms. Douglas, are you familiar with the
25 document I'm showing you now?

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 A. Yes ma'am.

2 Q. And what is it?

3 A. Uh -- That's the -- one of the forms of the rape kit
4 during that -- that was done for --

5 Q. Okay. And this is part of the protocol you used?

6 A. Yes.

7 Q. Okay. And is part of the protocol you used taking
8 a summary of what happened that evening in order to know
9 how to treat that victim?

10 A. Yes ma'am.

11 Q. And was that summary taken in this case?

12 A. Yes.

13 Q. And could you tell the jury what that summary was.

14 A. You mean, right here?

15 Q. Do you need -- Yes ma'am.

16 A. Uh -- She just stated -- uh -- when the event
17 happened, which was around 3:30 -- uh -- 3:15.

18 She and -- uh -- two boys were
19 sitting outside of the house on the -- where they were
20 staying.

21 Uh -- And someone -- uh -- drove
22 by -- uh -- a guy in a car.

23 And he got out telling them to all
24 lay down on the ground face down -- uh -- and then
25 encouraged them to take everything out of their pockets

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 -- uh -- and told her to get in the car.

2 And -- uh -- he drove off with
3 her.

4 Q. Okay.

5 A. So --

6 Q. Okay. And when did you -- uh -- get this
7 information from **Complaining Witness**?

8 A. I got that information right at the beginning of the
9 -- uh -- rape kit -- uh -- procedure.

10 Uh -- That was right after the
11 rape kit's opened up. And that's the first thing that
12 we do.

13 Q. Okay. Was there anybody -- uh -- back there with
14 her during this time?

15 A. No.

16 Q. So --

17 A. It was just she and I.

18 Q. Okay. Uh -- To your knowledge, did she have a
19 phone or access to anybody else?

20 A. No.

21 Q. Okay.

22 A. I do not remember a phone. Uh-uh.

23 Q. Okay. Was there a guardian, or anybody else out
24 there -- back there with her?

25 A. No; not at that time.

TESTIMONY OF NURSE SUSAN DOUGLAS

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1 MS. LIVESAY:

2 No further questions, Your Honor.

3 THE COURT:

4 Anything further?

5 MR. HAZZARD:

6 Nothing further from -- for -- uh

7 -- Ms. Douglas, Your Honor; and asked that she be excused
8 from her subpoena at this time.

9 THE COURT:

10 Very well.

11 Uh -- Well, any -- uh -- need for

12 Ms. Douglas?

13 MS. LIVESAY:

14 Not if the Defense doesn't.

15 THE COURT:

16 All right.

17 Ms. Douglas, you're released from
18 your subpoena.

19 WITNESS:

20 Thank you.

21 MR. HAZZARD:

22 Your Honor, the Defense would call
23 **Complaining Witness** to the stand.

24 THE COURT:

25 Okay.

TESTIMONY OF [REDACTED]

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1 WHEREUPON: [REDACTED]
2 WAS AGAIN DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

3 CLERK:

4 Thank you. Please be seated.

5 Okay. If you will State your
6 full name, and spell your last name?

7 WITNESS:

8 [REDACTED] E-b-e-r-h-a-r-
9 d-t.

10 DIRECT EXAMINATION BY MR. HAZZARD:

11 Q. Okay. Ms. Eberhardt, thank you for coming back and
12 taking the stand.

13 Uh -- I wanted to clarify a few
14 things -- uh -- regarding the phone records based on what
15 -- uh -- Detective Abercrombie has said -- uh -- and your
16 other statements that have been testified to here today.

17 Clarify for me, if you will -- uh
18 -- what time did Mr. Howard and Mr. [REDACTED] get to the
19 house at [REDACTED] that evening?

20 A. I believe around 1:00 AM?

21 Q. Okay. Around 1:00 AM. And did they -- When did
22 they leave the house, ma'am?

23 A. Around I believe 2:30?

24 Q. Around 2:30?

25 A. I believe so.

1 Q. And how long were they gone at that time?

2 A. Around 10 minutes, I would say.

3 Q. Okay. So they were gone about 10 minutes and then
4 -- then they came back?

5 A. Yes.

6 Q. So they would've been back sometime around 2:30 --
7 2:45?

8 I mean, they -- If they got there
9 at 1:00 AM, left at 2:30, gone for 10 minutes, would have
10 been back around 2:40 or 2:45?

11 Is that fair to say?

12 A. Yes.

13 Q. Okay. And were they at the house there at Hillside
14 from that point until you indicate that you were
15 abducted?

16 A. Yes.

17 Q. Okay. In looking at your phone records that the
18 State has provided to me, though, I -- I note -- and I'll
19 be more than happy to show them to you, if you wish.

20 A. That's fine.

21 Q. Okay.

22 A. Sure.

23 Q. I note that they show a series of texts between you
24 and Mr. Howard from 1:27 AM to 1:33 AM; okay.

25 And that is when you say that he

TESTIMONY OF Complaining Witness

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1 was with you?

2 So can you explain why you would
3 be texting him if he was with you at that time, ma'am?

4 A. We -- If we had something that we wanted to discuss,
5 privately, we would have texted each other.

6 Because R.B. was outside with us.

7 And it's not unusual for myself to
8 sit directly beside someone and still send them text
9 messages back and forth --

10 Q. Hmm.

11 A. -- for the purpose of keeping my conversations to
12 myself.

13 Q. Yes, ma'am. Uh -- And then you have phone calls:

14 from 2:12 to 2:15 to Mr. Howard;

15 from 2:20 to 2:22 to Mr. Howard;

16 a 25-second phone call at 2:24 to

17 Mr. Howard;

18 Uh -- A 2-minute phone call from

19 2:36 to 2:38;

20 a 50-second phone call at 2:41 AM;

21 and then,

22 a 13-minute phone call from 3:04

23 AM to 3:17 AM?

24 Do you also talk to people on the
25 phone when they are in your presence, ma'am?

1 A. It wasn't unusual for us, in the relationship that
2 we were in, to be around each other and be in different
3 areas and still not speak directly to one another but to
4 call each other if we didn't feel the need to be right
5 next to each other.

6 Q. I thought your testimony was that all of y'all were
7 standing in that area right there by the house in the
8 driveway.

9 A. At that point when -- right before I was taken, yes,
10 we were.

11 Q. Uh-huh.

12 A. It's been almost a year and half now.

13 Q. Hmm.

14 A. I cannot tell you exactly why I would have called
15 him or texted him, because it has been an extremely long
16 time.

17 Q. Uh-huh.

18 A. And I spoke to him on the phone and through text
19 messages all day, every day, almost.

20 So as to the nature of each call
21 or text message, I can't tell you.

22 Q. Hmm.

23 A. So you have my phone records.

24 Q. Uh-huh.

25 A. And I can't tell you exactly what the conversation

TESTIMONY OF Complaining Witness

884

1 was about; why I chose to speak to him on the phone
2 instead of talking to him directly when he was with me.

3 Q. Hmm. Okay. And I guess what concerns me is that
4 all the testimony -- all the testimony has been that his
5 phone was in his car.

6 So if he was --

7 MS. LIVESAY:

8 Your Honor, is there a question.

9 MR. HAZZARD:

10 So --

11 MS. LIVESAY:

12 I do believe at this point --

13 THE COURT:

14 He hasn't finished the question.

15 Let him -- Let him ask the
16 question.

17 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

18 Q. So, if he was with you at 3:04, then this phone call
19 -- this 13-minute phone call from 3:04 to 3:17 -- and
20 even assuming that he had left sometime around 2:00 or
21 2:30 and he had the phone with him, but then he came back
22 and left it in the car; and he's with you between 3:04
23 and 3:17, how is he -- how are you talking to him on the
24 phone?

25 A. I don't believe I personally said that he didn't

1 have his phone with him.

2 Q. Uh-huh.

3 A. I believe that it was [REDACTED] that said that he didn't.

4 Q. Yes, ma'am; the person who was in the car with him;
5 yes ma'am.

6 Q. So, I -- If I was on the phone with him, I'm
7 assuming he didn't leave it in the car.

8 But my main concern wasn't -- you
9 know -- with where he was or was not keeping his phone.

10 Q. Hmm.

11 A. So like I said, it's been quite a while.

12 Q. Hmm.

13 A. And many details from -- you know -- the unimportant
14 ones like where his phone was at before the incident --

15 Q. Hmm,

16 A. -- have not stuck in my mind.

17 Q. Thank you ma'am. Did -- Are you aware of whose
18 phone numbers is area code [REDACTED]

19 A. I believe that is [REDACTED] phone number, the girl
20 that I was staying with it at the beach.

21 MR. HAZZARD:

22 Okay. And -- Okay. All right.

23 Thank you, ma'am. No further
24 questions.

25 MS. LIVESAY:

TESTIMONY OF [REDACTED] Complaining Witness

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1 Just a couple of questions, Your
2 Honor.

3 CROSS-EXAMINATION BY MS. LIVESAY:

4 Q. Uh -- While you were in the car with the defendant,
5 did anybody call you?

6 A. Yes.

7 Q. Who called you?

8 A. [REDACTED] M.H. and [REDACTED] B.C.

9 Q. Okay. Did you pick up the phone?

10 A. I picked up -- I believe [REDACTED] M.H. had already called
11 me a couple of times.

12 And then, finally I picked up,
13 because he had told me to answer the phone and tell
14 [REDACTED] M.H. that I had left the car; that I was walking back;
15 and I was safe.

16 And [REDACTED] B.C. called me shortly after
17 that, because I hung up on [REDACTED] M.H. because he was
18 somewhat hysterical asking me questions.

19 And I didn't want to agitate him.

20 And I just wanted to get off the
21 phone.

22 Q. Okay.

23 A. And I believe [REDACTED] B.C. called me after that. And I
24 did not answer.

25 And after that, I turned my phone

1 off.

2 Q. Okay. And did you make any phone calls out from
3 that phone?

4 A. No, I did not.

5 Q. Okay. So all of the conversations that Mr. Hazzard
6 was asking about is all stuff before you were even in the
7 car with that defendant?

8 A. Yes.

9 Q. Okay. Now before you got in the car with that
10 defendant, did you ever come in contact with him?

11 A. No.

12 Q. Did you know his phone number?

13 A. No.

14 Q. To your knowledge, did he ever know your phone
15 number?

16 A. No.

17 Q. Okay. And to your knowledge, were there anything
18 on the phone records showing any outgoing calls during
19 that time from your phone?

20 A. Not to my knowledge.

21 Q. Okay. So there were no outgoing calls from that
22 time you were picked up until you were getting your phone
23 back?

24 Is that right?

25 A. Correct.

TESTIMONY OF RENEE WALTERS BEST

888

1 MS. LIVESAY:

2 Okay. No further questions, Your
3 Honor.

4 MR. HAZZARD:

5 Nothing further, Your Honor.

6 THE COURT:

7 You may step down.

8 Mr. Hazzard?

9 MR. HAZZARD:

10 Defense calls Renee Best, North
11 Myrtle Beach Police Department, to the stand.

12 WHEREUPON: RENEE WALTERS BEST WAS
13 DULY SWORN AND TESTIFIED UNDER OATH AS FOLLOWS:

14 CLERK:

15 Thank you. Please be seated.

16 Please state your full name and
17 spell your last name?

18 WITNESS:

19 Renee Walters Best; B-e-s-t.

20 DIRECT EXAMINATION BY MR. HAZZARD:

21 Q. Good afternoon, ma'am. How are you?

22 A. Fine.

23 Q. Okay. Uh -- How are you employed, ma'am?

24 A. I'm employed with the City of North Myrtle Beach
25 Department of Public Safety as their evidence custodian

TESTIMONY OF JASPER HUMBERT

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1 Thank you. Please be seated.

2 Okay. If you will State your
3 full name, and spell your last name.

4 WITNESS:

5 My name is Jasper Humbert; H-u-m-
6 b-e-r-t.

7 DIRECT EXAMINATION BY MR. HAZZARD:

8 Q. Uh -- Mr. Humbert, how are you employed at present?

9 A. Uh -- I'm employed at the -- uh -- South Carolina
10 Law Enforcement Division, also known as SLED.

11 Q. And what do you do for the South Carolina Law
12 Enforcement Division, also known as SLED?

13 A. I'm a forensic DNA Analyst in the DNA Department.

14 Q. If you would, tell me what course of education and
15 training does one have to be to hold that position?

16 What's your education and
17 training, sir?

18 A. Well -- uh -- I have a Bachelors of Science Degree
19 in -- uh -- Biology from Armstrong Atlantic State
20 University in Savannah, Georgia.

21 I have a Masters in Biological
22 Sciences from -- uh -- the University of Iowa.

23 And I have a further three years
24 of -- uh -- graduate education in a Genetics' PhD Program
25 from the Penn State Medical College in Hershey,

TESTIMONY OF JASPER HUMBERT

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1 Pennsylvania.

2 Q. And again, how long have you been employed at SLED
3 in that position as a Forensic DNA Analyst?

4 A. Uh -- Approximately 4 and a half years.

5 Q. Okay. And in that position, did you have the
6 opportunity and cause to analyze some evidence on a case
7 listed as L-10- -- L-10 --- L10-10426, sir?

8 A. Uh -- Yes, I did.

9 A. Okay. And that deals with -- uh -- samples taken
10 from Ms. **Complaining Witness** sir?

11 A. Uh -- That is correct.

12 Q. Okay. And did you also have the opportunity and
13 cause to deal with some buccal swabs -- uh -- taken from
14 Mark Alan Elliott?

15 A. Uh -- The swabs were labeled "Mark Elliott."

16 Q. "Mark Elliott?" Okay. And did you do anything, or
17 have any interaction with those swabs?

18 A. Uh -- I basically did a DNA test on those swabs.

19 Q. Okay. Now what did you receive? Or, Let me show
20 you these items.

21 I have here, items that have been
22 marked for identification as Defendant's 12, Defendant's
23 11, and Defendant's 13 for identification.

24 A. Uh -- This -- uh -- evidence pouch -- uh -- should
25 hold the buccal swabs from a -- uh -- **M.H.**

1 Uh -- Item 4 will be buccal swabs
2 from Mark Elliott.

3 Q. Okay.

4 A. And -- uh -- Defendant's Exhibit 11, which SLED Item
5 1 -- uh --

6 Q. Uh-huh.

7 A. -- should be the sexual assault kit.

8 Q. Okay. And what all does -- As part of the sexual
9 assault kit, did you have -- uh -- 1.3 as a subpart of
10 the total kit, and 1.5?

11 A. Uh -- Yes, I did.

12 Q. And should those be included, and to your knowledge,
13 are they the included in -- in that item you're holding?

14 A. Uh -- They should be. Uh -- I could open it and
15 pull them out if need be.

16 But, if -- I have sealed this
17 pouch and have my initials on it, so I would assume that
18 those items are in it.

19 Q. Okay. When you say you are referring to that
20 pouch, please read the -- uh -- evidence number on it.

21 A. Evidence item -- uh -- Defendant's Exhibit Number
22 11.

23 Q. Okay. All right. So you recognize the
24 Defendant's Exhibits that I've handed you.

25 And that's what again?

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1 11, 12, and 13?

2 A. Uh -- That is correct.

3 MR. HAZZARD:

4 Okay.

5 Move to have these items admitted
6 into evidence at this time as Defense Exhibits, Your
7 Honor.

8 THE COURT:

9 Counsel.

10 MS. LIVESAY:

11 There was no objection, Your
12 Honor.

13 THE COURT:

14 All without objection.

15 WHEREUPON: ITEMS EARLIER MARKED
16 BY THE COURT REPORTER AS DEFENDANT'S EXHIBITS NUMBERS 11,
17 12, AND 13, WERE NOW ENTERED INTO EVIDENCE WITHOUT
18 OBJECTION.

19 MR. HAZZARD:

20 Okay.

21 The Court's indulgence?

22 Are we ready, sir? Okay.

23 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

24 Q. Now, over the course of your employment with SLED --

25 uh -- roughly do you -- can you tell the jury how many --

1 uh -- CSC Kits you've analyzed and processed?

2 How many DNA samples you've done?

3 A. Uh -- For sexual assault kits, I've probably done in
4 the hundreds at this time.

5 And as far as samples go, well
6 into the thousands.

7 Q. Okay. And I'm going to -- uh -- focus my position
8 in this case -- or my questions in this case -- uh --
9 specifically on Item 1.3, which are the -- which are
10 vaginal swabs, and Item 1.5, which are rectal swabs -- uh
11 -- taken from Ms. Complaining Witness

12 Is that correct based on your
13 documentation?

14 A. Uh -- That is correct.

15 Q. Okay. With regard to those two items, did you
16 perform analysis on them, sir?

17 A. Yes, I did.

18 Q. Okay. And as part of that analysis, did you also
19 analyze the buccal swabs taken from Mark Elliott?

20 A. Uh -- Yes, I did.

21 Q. And did you do -- How do you -- And how do you
22 compare these things?

23 Why -- How do you compare his DNA
24 results with something from someone else?

25 A. Well, basically the way that I test items is:

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1 I will get a -- uh -- evidence
2 item or a buccal swab, and I'll extract the DNA, and run
3 some tests on it.

4 And I will then get a series of
5 numbers which is a DNA profile.

6 Uh -- I then would compare --

7 Q. Is this like the lottery? The numbers just pop up?
8 Or is there some scientific means to this?

9 A. Uh -- The numbers correspond to -- uh -- basically
10 the number of repeats that are tested at different areas
11 on someone's DNA.

12 Q. Okay.

13 A. So we test -- uh -- 15 locations for these repeats.
14 And we test for a sex determination.

15 And we get a set of numbers from
16 the number of repeats that at these locations.

17 And then we can compare items to
18 one another to see that they are the same or not.

19 Q. All right. To keep it a little simpler:

20 Is it a fair statement -- of very
21 watered down scientific -- to say that:

22 With regard to DNA, it's basically
23 a road map, or a set of instructions for the creation of
24 the human body?

25 A. Uh -- That is what the -- uh -- general consensus is

1 for what it does.

2 Q. Uh-huh.

3 A. Uh -- DNA is the blueprint for a person.

4 Q. Uh-huh.

5 Q. Uh -- And the way that I use it is that:

6 I test for those repeats and show
7 comparisons.

8 Q. Okay. And now with regard about what, 95 percent
9 of all human DNA is about the same; right?

10 A. Uh -- Not --

11 Q. I mean, is that -- can you determine --

12 A. -- or more.

13 Q. Or more?

14 A. I mean, some estimates, that's higher; but --

15 Q. And --

16 A. -- uh -- for what I do, I test regions that are --
17 show a lot of difference between people.

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

20 A. That is what I did in this case, yes.

21 Q. Okay. So with regard to the vaginal swab taken
22 from -- uh -- Ms. Eberhardt, and the rectal swab taken
23 from Ms. Eberhardt, and your comparison -- uh -- to the
24 buccal swab taken from Mr. Howard, is it a fair statement
25 to say that:

1 There was not a mat -- That --
2 That Mark Elliott's DNA is not there with regard to those
3 items? That it was not a match, very simply?

4 A. Uh -- On 1.3 and 1.5 -- uh --

5 Q. Okay. Let me stop you right there. Let me come up
6 here and look at it.

7 A. Okay.

8 MR. HAZZARD:

9 We have a matter to take up
10 outside the jury -- from the jury, Your Honor.

11 THE COURT:

12 All right. Okay.

13 Take the jury out.

14 (WHEREUPON: The jury empanelled
15 in the case withdrew from the courtroom at 4:22 PM,
16 November 18, 2010; and was no longer present during the
17 following proceedings.)

18 MR. HAZZARD:

19 Now, Mr. Humbert, what I'm going
20 to need from you specifically -- or what I am --

21 THE COURT:

22 Let me -- Let me talk to Mr.
23 Humbert.

24 MR. HAZZARD:

25 Yes sir.

1 THE COURT:

2 Mr. Humbert -- uh -- in this
3 matter, we're -- we're dealing with several principles of
4 law, one of which is Rape Shield Statute.

5 And the Rape Shield Statute in and
6 the cases that follow indicate unless absolutely
7 necessary for a full and fair trial of the defendant, no
8 evidence of prior specific sexual activity by a victim
9 should be admitted.

10 So from what I have heard from
11 these -- both of these attorneys -- uh -- about the test
12 that you have run in this case, that that creates
13 somewhat of a problem; because there may have been a
14 contributor -- uh -- at least on the -- uh -- the vaginal
15 swab and the rectal swab that -- uh -- the evidence would
16 indicate, engaged in a sexual act with Ms. Eberhardt, but
17 it was not Mr. --

18 MR. HAZZARD:

19 Elliott.

20 THE COURT:

21 -- uh -- Mr. -- uh --

22 MR. HAZZARD:

23 Elliott.

24 THE COURT:

25 Mr. Elliott. I'm sorry.

1 It was not Mr. Elliott.

2 And we would like to get to the
3 fact that there was no evidence of sexual contact from
4 the anal swabs and the -- uh -- rectal swabs -- uh -- on
5 the part of Mr. Elliott.

6 Do you understand where we're
7 trying to go?

8 WITNESS:

9 Yes.

10 THE COURT:

11 Now, are you able to, based on
12 your -- your knowledge, and -- and the things that you
13 have testified to, and the test that you ran, are you
14 able to present that fact to a jury without going into
15 the fact that there was -- uh -- uh -- what appears to
16 have been other sexual conduct; that is, there was
17 another contributor.

18 WITNESS:

19 I should be able to do that.

20 THE COURT:

21 Then you understand what our
22 problem is here.

23 WITNESS:

24 Yes, I do.

25 THE COURT:

1 Okay.

2 There is some evidence we'd like
3 to get in; that needs to get in. But we don't -- uh --
4 There's some evidence that, if it is possible to exclude
5 it, I wanted it excluded.

6 You understand that?

7 WITNESS:

8 Yes sir.

9 THE COURT:

10 All right.

11 Now, any problem with what I have
12 instructed this witness, Mr. Howard -- uh -- Mr. Hazzard?

13 MR. HAZZARD:

14 None from the Defense, Your Honor.

15 THE COURT:

16 How about it, Ms. -- uh --

17 MS. LIVESAY:

18 No sir.

19 THE COURT:

20 -- Livesay?

21 MS. LIVESAY:

22 No sir.

23 THE COURT:

24 Okay.

25 Let's bring them in.

1 (WHEREUPON: The jury empanelled
2 in the case was escorted back into the courtroom at 4:27
3 PM, November 18, 2010; and was in fact present during the
4 following proceedings.)

5 THE COURT:

6 All right. We have our jury
7 back.

8 Mr. -- uh -- Hazzard, proceed.

9 MR. HAZZARD:

10 Thank Your Honor.

11 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

12 Q. Uh -- Jasper, when we took a break, I was asking you
13 about your testing of the -- the vaginal swabs and the --
14 the rectal swabs taken from Ms. Eberhardt as part of the
15 rape kit protocol.

16 Do you remember that?

17 A. Yes, I do.

18 Q. Okay. And you received these items -- uh -- listed
19 as Item 1.3, and 1.5, as a part of the total Item Number
20 1 of the CSC Kit.

21 Is that correct sir?

22 A. That's correct.

23 Q. And sometime subsequent to that, you also received
24 buccal swabs containing Mark Elliott's DNA.

25 Is that correct?

1 A. That is correct.

2 Q. Okay. And subsequent to receiving that, did you
3 test both the Item 1.3, the vaginal swabs; 1.5, the
4 rectal swab; and -- uh -- the items that is -- uh -- the
5 buccal swab from Mark Elliott. I believe, it's Item 4?

6 A. Uh -- That is correct. I tested them.

7 Q. Okay. As simply as I can put it -- uh -- based on
8 your -- uh -- knowledge and experience, and your
9 professional opinion --

10 MR. HAZZARD:

11 And I will back up on that and
12 based on -- uh -- Mr. Humbert's training and experience,
13 I ask that he be qualified as an expert in the State of
14 South Carolina in the area of Forensic DNA Analysis, Your
15 Honor.

16 THE COURT:

17 Ms. -- uh -- Livesay?

18 MS. LIVESAY:

19 I have no objection.

20 THE COURT:

21 All right.

22 Mr. Humphries (sic) is known to
23 The Court. And he has been qualified as an expert in
24 this state before; and he is so qualified as an expert in
25 DNA Analysis for the purposes of this trial.

1 MR. HAZZARD:

2 Okay.

3 DIRECT EXAMINATION BY MR. HAZZARD CONTINUED:

4 Q. Now, would it -- There is -- Mr. Elliott's DNA is
5 not in the vaginal swab, Item 1.3; it's not in the rectal
6 swab, Item 1.5; is it, sir?

7 A. Uh -- No.

8 MR. HAZZARD:

9 Thank you.

10 No further questions, Your Honor.

11 MS. LIVESAY:

12 I have a few, Your Honor.

13 THE COURT:

14 All right.

15 CROSS-EXAMINATION BY MS. LIVESAY:

16 Q. Mr. Humphrey (sic), do -- you do a lot of tests on
17 these rape kits; don't you?

18 A. Yes, I do.

19 Q. Is it unusual for a suspect's DNA not to show up on
20 one of these rape kits?

21 A. Uh -- It's not unusual.

22 Q. Okay. Now, we're talking about DNA; so we're
23 basically talking about semen; aren't we?

24 A. Uh -- I do a -- When I get a kit, I do a test for
25 semen. And then, I will try to develop a DNA Profile

1 from the -- the semen.

2 Q. Okay. So you're testing first to see if there is
3 even semen there?

4 A. Yes, that's correct.

5 Q. Okay. Now -- So really, what it's evidence of, is
6 not whether or not there's been a sexual assault; but
7 whether or not the defendant has ejaculated?

8 Is that right?

9 A. Uh -- All I can say is that:

10 If I don't get a DNA Profile there
11 -- uh -- I can't really say why.

12 I mean, whether or not someone
13 doesn't ejaculate or not -- uh -- could explain why.

14 But I'm not sure.

15 Q. Okay. But indeed, it would take ejaculation for
16 there to be semen on the rape kit?

17 Is that right?

18 A. Uh -- I wouldn't -- I can't be sure.

19 All I can say is that:

20 Uh -- A lot of the time, I'll test
21 the rape kit, and a good portion of the time, I do not
22 get a suspect on the rape kit.

23 Uh -- Whether or not it is because
24 of ejaculation, or some other factor, I can't be certain.

25 Q. Okay. But obviously, it would be more likely that

1 semen would be found if a defendant ejaculated?

2 A. I -- I would assume so.

3 Q. Okay. Just as a man, you would assume so. And
4 would that be right?

5 A. I -- Just logically, I would assume that. But --

6 Q. Okay.

7 A. -- that's my opinion.

8 Q. Right; I understand. And so, if a defendant didn't
9 ejaculate, it probably wouldn't be unusual that there was
10 no semen?

11 Is that right?

12 A. Uh -- If he didn't put his DNA into her, or semen,
13 or whatever, I would not get a profile off of it, because
14 it wouldn't be there.

15 Q. Okay. And -- And you are testing a semen profile?
16 That's what you're testing?

17 Is that right?

18 A. I'm testing and getting a DNA Profile from what I've
19 tested for semen?

20 Q. Okay. So obviously every time you test a rape kit,
21 semen is not there?

22 A. That's correct.

23 Q. Okay. And it would certainly make sense -- you are
24 an expert -- that it would be less likely that semen
25 would be there if there was no -- there would not be

1 semen if there was no ejaculation?

2 Is that right?

3 MR. HAZZARD:

4 Your Honor, I would ask that
5 counsel be mindful to keep her theorizing --

6 THE COURT:

7 You know, you've asked that
8 question about six times.

9 Do you need to ask it again?

10 MR. HAZZARD:

11 Because if she wanted to talk
12 about --

13 MS. LIVESAY:

14 No, Your Honor.

15 MR. HAZZARD:

16 -- whether there's semen there.

17 THE COURT:

18 Okay.

19 CROSS-EXAMINATION BY MS. LIVESAY CONTINUED:

20 Q. So basically, whether -- Your -- Your basic test is
21 just whether or not -- the first test is just whether or
22 not there's semen?

23 A. That's correct.

24 Q. Okay. And if there's not, that's the end of it.

25 Is that correct?

1 A. Uh -- That's correct.. Typically, we won't look any
2 further.

3 Q. Okay. So there has to be semen there for you to be
4 able to run a test?

5 A. Uh -- Yes, in most cases.

6 MS. LIVESAY:

7 No further questions, Your Honor.

8 REDIRECT EXAMINATION BY MR. HAZZARD:

9 Q. Ms. Livesay asked you -- or indicated there had to
10 be semen there to run a test.

11 Is that correct, sir?

12 A. Uh -- For the test for semen --

13 Q. Uh-huh.

14 A. -- we test to see if semen is there.

15 Q. Uh-huh. And in this case, what were you testing
16 for?

17 A. Uh -- I typically test for semen on swabs I get in a
18 rape kit.

19 Q. Hmm.

20 A. So that's what I do for when I screen the rape kit.

21 Q. Okay. If there is penetration, can there be a
22 transfer -- Well, let me ask you like this:

23 She asked you about all the ways
24 that you would get a negative result.

25 Is one way to get a negative

1 result, is someone doesn't have sex with somebody else?

2 A. Yes --]

3 Q. Thank you.

4 A. -- that's correct. That is one way.

5 Q. And she indicated one of the ways would be that
6 semen isn't present; that that would be a way you
7 couldn't get a -- get a test result?

8 Is that correct?

9 A. That is correct.

10 Q. In the instant case, was there semen present?

11 MS. LIVESAY:

12 Your Honor --

13 THE COURT:

14 Don't answer that.

15 Send the jury out.

16 (WHEREUPON: The jury empanelled
17 in the case withdrew from the courtroom at 4:34 PM,
18 November 18, 2010; and was no longer present during the
19 following proceedings.)

20 THE COURT:

21 No, Mr. Hazzard. We're not going
22 there.

23 MR. HAZZARD:

24 Your Honor, she gets to ask him
25 about how:

1 There's no match because there's
2 no semen present, which is blatantly unfair --

3 THE COURT:

4 Well, you can take care of that.

5 You're going to ask him:

6 Did you retrieve any semen -- uh

7 -- that matches Mr. -- uh -- Elliott?

8 MR. HAZZARD:

9 Then, that's how I'll ask it.

10 THE COURT:

11 All right. Well, you ask it that
12 way.

13 MR. HAZZARD:

14 I'll ask it that way.

15 THE COURT:

16 Ms. Livesay, you talked all about
17 it. Now, I'm not letting you go any further.

18 But I'm going to let him say:

19 Did you get any semen that matched
20 him?

21 And you're going to stop it right
22 there.

23 (No response.)

24 THE COURT:

25 Okay.

1 DEPUTY:

2 Bring them in?

3 THE COURT:

4 All right.

5 MR. HAZZARD:

6 Okay.

7 So the question is:

8 If any semen was tested, none of
9 it matched Mark Elliott, correct?

10 THE COURT:

11 No.

12 MR. HAZZARD:

13 How do you want me to ask it?

14 THE COURT:

15 Did you recover any semen that
16 matched him?

17 MR. HAZZARD:

18 Any semen that matched him. Got
19 you. I got you.

20 THE COURT:

21 Okay. And I want it left right
22 there.

23 MR. HAZZARD:

24 Okay.

25 WITNESS:

1 Can I -- uh -- say something real
2 quick.

3 THE COURT:

4 Yes.

5 WITNESS:

6 Uh -- I get a DNA profile. I
7 can't -- So basically, if you ask me, I wouldn't know if
8 I got a profile from semen specifically, because I did
9 the two test separately.

10 MR. HAZZARD:

11 Okay.

12 WITNESS:

13 Does that make sense? So --

14 THE COURT:

15 Or skin cells, probably?

16 WITNESS:

17 Yes. I mean -- So just to
18 clarify that before -- okay --

19 THE COURT:

20 Okay. All right.

21 MS. LIVESAY:

22 I don't know how -- you know -- we
23 can make -- I mean, the question was completely
24 inappropriate:

25 Was there semen present?

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1 That was the whole thing we were
2 trying to keep out.

3 MR. HAZZARD:

4 You're the one who asked him all
5 this wild thing about:

6 If there's no semen there --

7 THE COURT:

8 All right. All right.

9 You know where I'm going with this
10 thing.

11 I'm going to let you ask:

12 If there was any semen, or any
13 other source of DNA, that would -- that matched your
14 client?

15 And that's what I want you to ask?

16 MR. HAZZARD:

17 Okay.

18 THE COURT:

19 Okay.

20 (WHEREUPON: The jury empanelled
21 in the case was escorted back into the courtroom at 4:37
22 PM, November 18, 2010; and was in fact present during the
23 following proceedings.)

24 THE COURT:

25 Go ahead.

1 MR. HAZZARD:

2 Thank Your Honor.

3 REDIRECT EXAMINATION BY MR. HAZZARD:

4 Q. Mr. Humbert, I'm trying to keep it as simple as I
5 can.

6 In regards to this case, Ms.

7 Complaining Witness [REDACTED] and Mark Elliott, in your
8 test, was there any semen or any other source of DNA that
9 matched Mark Elliott?

10 A. No.

11 MR. HAZZARD:

12 Thank you. No further questions.

13 MS. LIVESAY:

14 Just one question, Your Honor.

15 THE COURT:

16 Go ahead.

17 RECROSS-EXAMINATION BY MS. LIVESAY:

18 Q. Did you to a presumptive test first on this case?

19 A. Uh -- I had done presumptive tests on this case;
20 yes.

21 Q. And do you do one on every case?

22 A. Uh -- If it's requested?

23 Q. Uh -- On -- On all of the rape kits, are you looking
24 for some sort of physical evidence?

25 A. Uh -- I'm looking for some -- or -- I'm asked to

1 test items from rape kits.

2 Q. Okay. And is it unusual when you're looking at the
3 rape kit for there not to be any DNA on the item?

4 A. Uh -- It's possible that that can happen.

5 Q. Okay. So when you're testing all of these rape
6 kits for -- to see whether or not a suspect's DNA is on
7 the rape kit --

8 MR. HAZZARD:

9 Again, Your Honor, I would ask
10 that --

11 THE COURT:

12 And we've been there. That's it.
13 We've been there.

14 That question's been asked and
15 answered. It's not a proper question for redirect.

16 Okay. Call your next witness.

17 You may step down, Mr. Humbert.

18 WITNESS:

19 Thank you.

20 THE COURT:

21 Any further need for Mr. Humbert?

22 MR. HAZZARD:

23 None from the Defense, Your Honor.

24 MS. LIVESAY:

25 None from the State, Your Honor.

1 THE COURT:

2 All right.

3 Mr. Humbert, you're released from
4 your subpoena.

5 MR. HAZZARD:

6 Thank you for coming, sir; and
7 have a safe trip back.

8 THE COURT:

9 All right. Who's your next
10 witness?

11 MR. HAZZARD:

12 Your Honor, at this time, the
13 Defense rests.

14 THE COURT:

15 All right. Take your jury out.
16 Let me speak for moment to the --
17 uh -- defendant.

18 (WHEREUPON: The jury empanelled
19 in the case withdrew from the courtroom at 4:39 PM,
20 November 18, 2010; and was no longer present during the
21 following proceedings.)

22 THE COURT:

23 All right.

24 Would you please stand, Mr.

25 Elliott?

DEFENDANT ADVISED OF RIGHTS

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1 THE COURT:

2 Do you understand what I've told
3 you, Mr. Elliott?

4 DEFENDANT:

5 Yes, sir.

6 THE COURT:

7 All right.

8 Now, Mr. Elliott, we've reached
9 the stage of the trial where you may present your defense
10 -- or your attorney has been presenting your defense.

11 And you have the right to claim
12 the protections given to you by the Fifth Amendment of
13 the Constitution to the United States.

14 And that amendment says in part:

15 No person shall be compelled in
16 any criminal case to be a witness against himself.

17 This means that:

18 You cannot be required to testify
19 in this case.

20 You have the right to testify on
21 your own behalf.

22 However, no one can make you
23 testify.

24 And this is a personal right. And
25 no one can waive this right except you.

1 If you decide to testify, you will
2 be subject to the same rules that govern other witnesses,
3 and you may be examined and cross-examined on any
4 relevant issue in the case.

5 In addition, if you have any
6 convictions involving dishonesty or false statements, or
7 for crimes punishable by imprisonment for more than one
8 year, and This Court determines that the probative value
9 of admitting the evidence outweighs its prejudicial
10 effect to you, the Solicitor will be able to introduce
11 your record to attack your credibility.

12 If you decide to testify, the
13 decision on your part must be freely, voluntarily, and
14 intelligently made, with knowledge of the protections
15 given to you by the Fifth Amendment -- uh -- and the
16 consequences of your decision to testify; okay.

17 Do you -- If you decide not to
18 testify, I will instruct the jurors that they cannot give
19 the fact that you did not testify any consideration
20 whatsoever; and that there is to be absolutely no
21 prejudice to you because you did not testify.

22 It is left entirely up to you
23 whether or not you will testify in this case.

24 Now, you may talk with your
25 attorney, your family, your friends, or anyone else. But

1 the final decision will be left entirely up to you.

2 Do you understand what I've
3 explained to you?

4 DEFENDANT:

5 Yes, Your Honor.

6 WITNESS:

7 Do you have any questions about
8 what I've explained to you?

9 WITNESS:

10 No sir.

11 THE COURT:

12 Have you discussed this with your
13 lawyer -- uh -- and -- uh -- talked with him about
14 whether or not you should testify?

15 WITNESS:

16 Yes, I have

17 THE COURT:

18 Do you wish to talk with your
19 lawyer anymore?

20 WITNESS:

21 No, I don't.

22 THE COURT:

23 Do you wish to testify?

24 WITNESS:

25 No I don't want to testify.

1 THE COURT:

2 All right. Very well. Thank you
3 very much.

4 Uh -- Bring them back in.

5 The Defense rests?

6 MR. HAZZARD:

7 The Defense rests, Your Honor; and
8 renews its motions for a directed verdict.

9 THE COURT:

10 Okay. We will get to that in just
11 a second and let you put it on the record.

12 MR. HAZZARD:

13 Okay.

14 (WHEREUPON: The jury empanelled
15 in the case was escorted back into the courtroom at 4:44
16 PM, November 18, 2010; and was in fact present during the
17 following proceedings.)

18 THE COURT:

19 Ladies and gentlemen, we have
20 concluded the testimony in this case.

21 The Defense has rested, as has the
22 -- uh -- the State.

23 We will hear no further testimony.

24 But it is five o'clock, or right
25 at it. So I want to do is this:

1 Your Honor, as the testimony is
2 closed in this matter, the Defense -- uh -- not to
3 belabor the points, but the Defense does renew their
4 motions for directed verdicts with regard to the charge
5 of kidnapping; with regard to the charges of CSC First;
6 CSC Second with a Minor; and failure to stop for blue
7 light.

8 And the Defense stands on those
9 arguments previously made.

10 THE COURT:

11 All right, Mr. Hazzard.

12 And I appreciate your -- uh --
13 your effort on behalf of your client, but I would
14 respectfully deny your -- your motions -- uh -- upon the
15 same grounds that I have previously stated.

16 Let me tell you -- uh -- Counsel
17 -- uh -- that I have -- uh -- or Claire and I have
18 prepared -- uh -- my proposed charge -- uh -- that I will
19 be giving tomorrow.

20 I -- uh -- have copies for you, so
21 that you can have them at your disposal this evening.

22 Uh -- Ms. -- uh -- Green has the
23 over by the door, a copy for each of you.

24 Also, I think she has a copy of
25 the verdict form -- uh -- for you as well.

1 opportunity to speak you concerning the -- the law that
2 you will apply -- uh -- in your deliberations.

3 Please understand -- uh -- that --
4 uh -- if they should deviate from the law as I give it to
5 you, you will disregard that. Because you are bound to
6 apply only the law that I charge you, because I am, as I
7 said earlier, the sole giver of the law in this case;
8 okay.

9 Now, Mr. Hazzard, are you ready?

10 MR. HAZZARD:

11 The Defense is ready, Your Honor.

12 THE COURT:

13 All right. Go -- uh -- Go ahead.

14 MR. HAZZARD:

15 Thank Your Honor. May it please

16 The Court?

17 Good morning ladies and gentlemen.

18 How are you?

19 FOREPERSON AND SOME OTHERS:

20 Good morning, sir.

21 MR. HAZZARD:

22 We are at the end of a trial. It
23 has taken us a week. And you have heard all of the
24 evidence that there is to hear; all of the testimony; all
25 of the physical evidence; all of the photographs; it is

1 all in.

2 And now that it is all said and
3 done, the one thing we know is this, that:

4 According to the State of South
5 Carolina, Mark Elliott is the most interesting man in the
6 world.

7 He is a robber who robs without a
8 weapon and doesn't take anything.

9 He is a kidnapper who kidnaps
10 without a weapon, without any sign of force, and from a
11 distance by simply saying:

12 Get in the car.

13 And he is the only person on the
14 face of the earth we go in can have sexual relations with
15 someone and leave no physical evidence, no DNA behind.

16 That is the case the State has
17 brought you.

18 Now, how did we end up here in the
19 first place?

20 There was the allegation made --
21 or what the State say happens, is this:

22 Sometime between 3:00 and 3:30 AM
23 on Monday morning, June 29th, 2009, Mark Elliott comes
24 into contact with Mr. Howard, Ms. Eberhardt, and Mr.

25  okay.

1 That:

2 He then, in this quiet
3 neighborhood full of older people with houses close
4 together, as the pictures show, tells them all to get
5 down on the ground and he's going to rob them.

6 But then, he decides, I guess, not
7 to rob them; or who really knows.

8 And that's one of the real
9 problems with this case, is:

10 No one really knows what happened
11 that morning.

12 Because out of all the people
13 involved, no one's telling the absolute truth.

14 Mark isn't telling the absolute
15 truth when he's talking to Detective Abercrombie, because
16 Mark is in the drug game. And one of the first rules of
17 the drug game is:

18 You don't give up the game.

19 You don't tell about people in the
20 game.

21 You never admit that.

22 Now, what's the one area where
23 Mark is always consistent and steady forth:

24 I did not rob anyone.

25 I did not kidnap anyone.

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1 I did not rape anyone; okay.

2 With regard to Ms. Eberhardt, it
3 will be your determination whether she is telling the
4 truth as to what happened that morning.

5 And we talked a lot about the cell
6 phone records and things of that nature because remember,
7 her testimony is that:

8 These young men came down to
9 visit..

10 They arrived around 6:00 PM on the
11 previous evening, June 28th, that being a Sunday.

12 That:

13 They spent time together while the
14 -- uh -- chaperones, the Parents are out at a bar.

15 Uh -- That:

16 These two young ladies, the
17 Parents daughter, B.C. and -- uh -- Ms. Eberhardt,
18 meet back with the Parents at the bar later on. And
19 someone drives somebody home.

20 I don't know if the kids had to
21 drive the Parents home or the Parents drove the kids
22 home.

23 But somehow, they get back to Beach
House

24 [REDACTED]
25 That:

1 Uh -- Sometime -- and -- and by my
2 recollection, it kind of keeps shifting and changing in
3 the State's case.

4 Sometime between 11:00 PM and 1:00
5 AM, the two young men come over, because, as in Ms.
6 Eberhardt's words:

7 The Parents would be passed out
8 by that time.

9 Once they come over, then the
10 testimony is:

11 They stayed there until -- again
12 it changes -- sometime between two o'clock and 2:30
13 before there is apparently, or allegedly, some argument.

14 And the two young men, who know
15 nothing about the area, leave and go to a hotel parking
16 lot for purposes unknown.

17 That:

18 They are there for 5 or 10
19 minutes. Then, that they supposedly come on back, which
20 would put us -- you know -- somewhere between 2:20 and
21 2:40.

22 Unfortunately, the phone records
23 tell a different story. The phone records tell that:

24 Between around 12:15 all the way
25 up to about 3:17, there is -- is -- there is conversation

1 of some form back and forth between Ms. Eberhardt and Mr.
2 Howard; okay.

3 And she says:

4 Well, as far as texting is
5 concerned -- which was the first part -- the 12:00 and
6 one o'clock part -- we were -- were texting even though
7 we were in each other's company; okay.

8 And I kind of -- I -- I'll give
9 you that one.

10 But when your testimony is that:

11 He's right here with me in this
12 little tiny yard but I'm calling him on the phone and
13 he's calling me between 2:00 and 3:00.

14 Come on now, folks.

15 And why is that of significance?

16 What's significant about it is
17 this:

18 If you are the victim of an actual
19 real crime, what do you have to hide?

20 What do you have to change?

21 Why do the facts have to be
22 massaged and manipulated?

23 See, all I can go on is what we
24 know and what can't be disputed, because everybody's got
25 their version.

1 But like the phone records, things
2 like that, can't be disputed.

3 And what do they tell us?

4 They tell us that:

5 Those two folks weren't together;
6 Mr. Howard and Ms. Eberhardt weren't together; but that
7 their regular conversation back and forth on the phone;
8 him contacting her, her contacting him.

9 And the reason that's strange to
10 me is:

11 Again, supposedly Mr. R.B. [REDACTED] and
12 Mr. Howard don't know anything about the beach area, you
13 know.

14 Had to get directions to come
15 down. Had to look on MapQuest.

16 Or, they both -- Where are they
17 driving around for that hour, hour and a half, two hours;
18 and they're calling back and talking; and back and forth,
19 and -- Is somebody looking for something?

20 You think maybe somebody's out
21 searching for something? Searching for some drugs
22 perhaps?

23 No.

24 According to them, around -- like
25 I said, around 3:15 -- 3:20 -- 3:25 -- again, it switches

1 and changes -- they come upon Mark Elliott; and there is
2 discussion and conversation.

3 Both sides would admit that; that
4 there is discussion and conversation.

5 And then, that's where the wild
6 divergence begins.

7 That:

8 After this discussion and
9 conversation, all of a sudden, Mark Elliott then hops out
10 of the car and says:

11 Everybody get on the ground.

12 Now how it is they end up
13 allegedly on the ground out in the street when everyone
14 was standing in the yard, Mr. RB Mr. Howard, and
15 Ms. Eberhardt.

16 And according to Ms. Eberhardt's
17 testimony, Mr. Elliott's driver's side door is facing the
18 house.

19 The house is here. The car's
20 facing this way. He opens the door.

21 So, he steps out in the yard with
22 them.

23 But somehow, according to them,
24 all of them get marched, I guess, around the car or
25 behind the car out into the street in this quiet

1 residential neighborhood after three o'clock in the
2 morning.

3 And one thing I know, being a
4 little bit older -- uh -- I'm -- I'm blessed to have a
5 mother who's made it to the age of 79.

6 And my mother lives in the same I
7 grew up in 40 years ago.

8 And she has neighbors that we are
9 blessed that she has who have all been her neighbors for
10 about 38 -- 39 years.

11 And they're all older like her.

12 But one thing I know is, that:

13 Older folks are up at all hours of
14 the morning and the night. They can get up at any hour.
15 They may be up for any length of time.

16 They'll get up at 5:00 AM.

17 They'll get up and go use the
18 restroom at 3:00 AM.

19 They are just -- they're up; and
20 they are alert, you know. They keep an eye on the
21 neighborhood.

22 But yet, in this quiet residential
23 area with older folks, where the houses are right beside
24 each other, one beside the other, Mark Elliott is able to
25 take these three young people and place them face down in

1 the road, and for what purpose?

2 Because, supposedly he's going to
3 rob them.

4 But then, apparently no robbery
5 ever occurs.

6 And so Mark is charged with
7 several things obviously.

8 He's charged with kidnapping.

9 He's charged with criminal sexual
10 conduct first; criminal sexual conduct second with a
11 minor; failure to stop for blue light.

12 And, as we discussed, he also has
13 three indictments for attempted armed robbery.

14 But as Detective Abercrombie told
15 you:

16 Yes; I've -- I've filled out those
17 warrants. I've served those warrants. He is charged
18 with it.

19 All right.

20 Y'all are here today. Y'all have
21 been here all week. I've been here all week. The
22 prosecutors been here all week. The witnesses have been
23 here all week. The judge and the court reporter have
24 been here all week.

25 But those charges are not brought

1 before you for your consideration, and for you to return
2 a verdict on.

3 I would submit to you:

4 That tells you what the State
5 thinks of the charges of attempted armed robbery.

6 So let's think about that for a
7 second.

8 The very first significant event
9 in the chain of events that is the State's case, they
10 don't believe in, and don't bring it before you for your
11 consideration; okay.

12 Now, where were we?

13 We were at the car. They were on
14 the ground; okay.

15 According to their testimony and
16 their truth, Mr. Elliott then tells everybody to get up;
17 and tells the two fellows to just start walking.

18 Because, of course, if you're
19 going to kidnap someone, obviously, the first thing you
20 want to do is, you want to leave two witnesses to go run
21 and tell the story; right.

22 Isn't that what you want to do?

23 And so these two young men, Mr.
24 Howard and Mr. R.B. -- uh -- according to them, just
25 walk off and leave their friend -- just walk off and

1 leave their friend.

2 And Mr. Elliott then, this most
3 interesting and curious man, while he's standing on the
4 driver's side near the back of his car -- and Ms.
5 Eberhardt testified she was standing on the passenger
6 side near the back of his car -- he then simply says:

7 Go get in the car.

8 And that is how this kidnapping is
9 accomplished.

10 Go get in the car.

11 Now, in order to make it seem like
12 a kidnapping, the story goes that he had some form of
13 what appeared to be a gun; okay -- what appeared to be a
14 gun?

15 The problem with that is this:

16 When you tell a story -- When you
17 tell a story -- the truth, everything always fits
18 together. And when you tell the truth everything always
19 fits together.

20 When you tell a story, you always
21 have those stray ends, those niggling details which do
22 not match up.

23 So, how could he do this
24 kidnapping?

25 Well, we thought he had a weapon

1 with him.

2 Okay; that's fine. That's fair
3 enough.

4 We had a little discussion
5 regarding the lighting conditions.

6 And even though there is a -- you
7 know -- power pole out there that you can see in the
8 State's picture -- you know -- apparently -- uh -- Santee
9 Cooper -- you know -- Electrical Authority isn't doing
10 their job, because the light isn't very bright according
11 to Ms. Eberhardt.

12 So they can't -- they can't really
13 tell whether it's a weapon or not according to them.

14 But I then asked:

15 Okay. Ms. Eberhardt you indicate
16 that he frisked you before he put you in the car.

17 And that's what Mr. R.B. [REDACTED] said:

18 As I was walking away, I looked
19 over my shoulder and it looked as if he was frisking her.

20 Okay. Niggling detail number
21 one:

22 Where does this weapon go?

23 Because I asked if he used two
24 hands or one.

25 Oh, he used both hands, casually

1 pat -- Where does the weapon go?

2 Oh, well, I -- I wasn't looking
3 for that.

4 See, that's the problem when you
5 put together a story.

6 And I will give them credit.

7 All of them are singing off the
8 same sheet of sheet music very, very well.

9 In fact, their story is so in
10 lockstep, it almost strikes me as if it is rehearsed.

11 And let's think for just one
12 second -- jump forward.

13 When Ms. Livesay, the prosecutor,
14 has Detective Abercrombie on the stand, she asked him --
15 and I think she got an answer she wasn't expecting.

16 She says:

17 Detective, you've investigated
18 this case; right?

19 And he says:

20 Yes.

21 And she said:

22 And in your investigation, what
23 evidence have you found that corroborates this story?

24 And what did he tell you?

25 He said:

1 Well, all three of them said the
2 same thing.

3 No physical evidence.

4 No other evidence.

5 Just:

6 All three of them said the same
7 thing.

8 And it -- it's -- it's very
9 interesting in that regard.

10 So there is the question of -- of
11 where the weapon went.

12 But yet, this is considered to be
13 a -- a kidnapping.

14 Now, what does Mr. [REDACTED] tell
15 us, if I'm going to assert that no one is telling the
16 complete truth.

17 Well, Mr. [REDACTED] says, as part of
18 the story:

19 We came down.

20 Uh -- Mr. Elliott showed up.

21 We were told to get on the ground.

22 Then, we were told to walk away.

23 And then Mr. Howard and I ran
24 around and got in his car.

25 And I asked him, I said:

1 Well, did he have a gun in the
2 car? Did he have some kind of weapon in the car?

3 I mean, what were you going to do
4 differently when you got to the car than what you were
5 doing right there when he allegedly told you to walk
6 away?

7 And he says:

8 Oh, well one thing are the cell
9 phones were in the car; and Mr. Howard was going to try
10 to hit him with his car.

11 I guess he was going to run over
12 Ms. Eberhardt as well, but -- you know -- collateral
13 damage being what it is, you've got to do what you got to
14 do.

15 Well, there again, there is one of
16 those niggling details.

17 Cell phone's in the car.

18 No. Cell phone records have the
19 two of them interacting back and forth pretty much the
20 whole time right up until about 3:17 AM; okay.

21 Now, he then says that he didn't
22 have his cell phone. He'd left -- somehow left his cell
23 phone in the car.

24 And once he gets to the car
25 though, he doesn't dial 911. He goes back to the -- the

1 house; okay.

2 And this is where one of those
3 interesting points really truly arises.

4 Because, when he gets his cell
5 phone, he doesn't call anybody.

6 Goes back to the house. Bangs on
7 the door.

8 Now, one of the -- one of the big
9 points that the State has made in this case is the issue
10 of the fact that Ms. Eberhardt wasn't planning on going
11 anywhere. And she was taken against her will; and all
12 of this.

13 Remember what they told you?

14 It was the four of us out in the
15 yard.

16 Her friend B.C. whose parents
17 were inside, the Parents Ms. Eberhardt, and Mr.
18 R.B. and Mr. Howard.

19 We were all out there talking.
20 And then, B.C. went in the house for whatever reason.

21 And Ms. Eberhardt says:

22 Yeah, we were just -- you know --
23 out there. We're not going anywhere whatsoever. We're
24 just out there spending time.

25 So when Mr. R.B. gets back to

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1 the house, what did he tell you?

2 He had to beat on the door.

3 And why do you got to beat on the
4 door?

5 Because the door is locked.

6 Now, if that's your best
7 girlfriend, and you're just going to be standing outside.
8 You ain't got no key. You ain't got no shoes on. You
9 have no intention of going anywhere.

10 Why is she locking you out of the
11 house? Why is she locking you out of the house?

12 No. They were going somewhere.

13 And this whole thing again about
14 the shoes and all like that, they're -- I don't know
15 where they came from.

16 Because, did you hear Detective
17 Abercrombie ask anybody about shoes?

18 He certainly didn't ask Mark
19 Elliott about whether or not she had on any shoes.

20 You didn't hear any testimony
21 about him asking her if she had on any shoes.

22 And you want to know what would
23 prove to you if she had on shoes?

24 I believe -- I was trying to
25 remember who it was that went up there and -- and picked

1 her up from 57th Avenue North in Cherry Grove.

2 What did that -- I think it was
3 Sergeant Downey, I think.

4 What did he tell you?

5 He says:

6 I got the call to go and retrieve
7 her from wherever she was.

8 I activated my -- uh --
9 microphone. Or he said you can activate the cameras from
10 the microphone in some fashion, and when you do that, it
11 will record from a minute prior to when it was activated.

12 That it was on the entire time
13 that he went to get her; on when he got her; on when he
14 took her to the hospital.

15 If she wasn't wearing any shoes,
16 don't you think they would have showed you that film of
17 him pulling up, and then there she is?

18 So I -- I don't really know where
19 all of that comes from.

20 But anyway, this kidnapping:

21 Now she's -- she's in the car
22 through no form of force, or coercion, or any visible
23 weapon of any sort whatsoever.

24 And then what is her testimony to
25 you?

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1 That:

2 We then take this leisurely and
3 meandering drive through North Myrtle Beach and Cherry
4 Grove.

5 Because again, when you commit a
6 major felony, the one thing you want to do is just
7 leisurely drive around the city in which the felony has
8 been committed.

9 And he then takes her to -- by
10 everyone's account -- the most wide open and well lit
11 place in North Myrtle Beach and Cherry Grove.

12 What was her testimony?

13 Parking lot.

14 Wide open.

15 Well lit.

16 Hotels around.

17 Condos around.

18 Light from the light poles.

19 Lights from the buildings around
20 there.

21 And of course that's where you take
22 someone to commit a criminal sexual conduct.

23 Now, one of the issues I've got
24 is:

25 There's -- There's this whole

1 thing -- this whole thing about where was Mark?

2 Where was Mark.

3 And where does he go?

4 And where did they go?

5 Well, remember one of the things

6 about this case is that:

7 There's no question her cell phone
8 was in the car; absolutely no question about that.

9 Because remember, she's receiving
10 calls while she's in the car, and talking to folks while
11 she's in the car; okay.

12 If they really wanted you to know
13 where Mark Elliott was between 3:30 and 4:15 when the
14 police got behind him at Second Avenue North, heading
15 north, there's this thing called triangulation -- cell
16 phone triangulation.

17 If it's got a GPS chip, they can
18 GPS it.

19 Triangulation, they can use the
20 towers to triangulate the signals.

21 And they can go back and they can
22 not only give you -- it's not even a matter of a general
23 area -- nowadays, they literally give you latitude and
24 longitude for where the phone is at any moment; okay.

25 Now, what they're probability

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1 going to tell you, is:

2 Well, we couldn't do that, because
3 remember the -- the phone was turned off.

4 Ah, but here's one of those
5 details again. Here's one of those details again.

6 What did Detective Abercrombie
7 tell you?

8 He said:

9 We were looking for **Complaining**

10 Uh -- We were at the BP.

11 We'd run Mark Elliott down.

12 He was out of the car.

13 And we won't even get to the whole
14 "car door open, car door closed," because I don't care.

15 And we called her cell phone; and
16 what?

17 It rang in his car. It rang in
18 his car.

19 Now, I don't know a ton about cell
20 phones. But I know once you turn one off, it ain't going
21 to ring when you call it; okay.

22 So now your cell phone is on.

23 So then the issue becomes:

24 If it's on, why didn't you just do
25 the triangulation?

1 Why didn't you just contact Sprint
2 and say:

3 Give us information on the cell
4 phone.

5 Because remember, it's being
6 called constantly. It's being called constantly, whether
7 it's Mr. Howard, Mr. R.B. [REDACTED] B.C. [REDACTED] whoever?

8 Supposedly, they're all calling
9 the phone.

10 So there's activity. And you can
11 find out what you need from that.

12 But no; they don't bring that to
13 you.

14 And see, for me, it's not as easy
15 to bring stuff. Because every piece of evidence that we
16 use in this case, what did I tell you?

17 I said:

18 The State has provided me with
19 this. Tell me about this.

20 Because see, I don't get to talk
21 to witnesses and all like that. Because then they'll
22 probably wanting to be -- say I'm -- you know --
23 tampering with State's witnesses, or tampering with
24 evidence.

25 So I don't get to do any of that.

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1 I -- I get basically what they
2 give me -- you know.

3 Other than what's available
4 through public records, I get what they give me, you
5 know.

6 And cell phone records aren't a
7 matter of -- they're not public -- they're not public.

8 So they don't do that. They don't
9 provide you with that.

10 Whether that exist, I do not know
11 as far as having been requested; because they don't have
12 a problem with not showing you stuff that doesn't support
13 their case.

14 We know that. We know that.

15 And how do we know that?

16 The DNA test. Their test.

17 The morning of June 29th, 2009,
18 they take Ms. Eberhardt to Sea Coast Medical Center.
19 They have a rape kit analysis performed on her.

20 Not at the defense request;
21 Detective Abercrombie, because he wants evidence.

22 And I commend them for that.
23 That's what you want.

24 If this whole process is supposed
25 to be a search for the truth, let's get some evidence.

1 My problem is:

2 When you get the evidence and it
3 shows your case is wrong, don't just -- just discard it
4 and exclude it, you know.

5 Who had to put that evidence in?

6 Me. The Defense had to call all
7 the folks from SLED; get them there from Colombia; had
8 them get on the stand; testify to the testing that was
9 done and the results.

10 And what is the result?

11 No DNA. No physical evidence from
12 Mark Elliott whatsoever.

13 Now, what did Detective
14 Abercrombie say when he was talking to Mark?

15 He said -- uh -- and it was
16 interesting, because it's almost Shakespearean as far as
17 foreshadowing as to what was to come.

18 Because, what did Mark ask him?

19 Mark said -- or Mark told him, he
20 said:

21 Well, you just -- You just believe
22 in them because they say this. Do you not believe in
23 anything I say?

24 And what does Abercrombie tell
25 him?

1 No; it's not even like that.
2 Because see, I've got -- there's the physical evidence.
3 I've got the DNA -- you know -- and that's what's going
4 to tell me what I need to know; okay.

5 But yet then, what does Detective
6 Abercrombie do with it? Throws it in the -- uh --
7 refrigerator at the office, and lets it sit there for
8 about 15 months; okay.

9 And Detective Abercrombie tried to
10 say:

11 Well, I -- Because I asked him:

12 Well, what determines, or what
13 triggers when you send the evidence to SLED?

14 And what does he say?

15 Well -- you know -- there's these
16 different things, and there's the economy, and there's
17 all this, that, and the third.

18 But, here's one of these issues
19 again.

20 What does Renee Best, the evidence
21 custodian tell you from this witness stand?

22 I asked her:

23 Well, what determines when you
24 take something to SLED?

25 She says:

1 When the investigative officer
2 asks me to take it.

3 When the investigative officer
4 asks me to take it, that's when I take it up there.

5 So, even though he tells Mark:

6 This DNA is so crucial and will be
7 dispositive and determinative of guilt or innocence, it
8 actually sits almost for 15 months, because he's already
9 made up his mind.

10 And how do we know he's made up
11 his mind?

12 Because, as I asked him:

13 With regard to Mr. Howard, Mr.

14 R.B. and Mr. Eberhardt -- Ms. Eberhardt -- did you
15 ever ask them any questions that were searching and
16 probing and indicative that you may be doubting their
17 tale?

18 And what did he say?

19 No. No. I never asked them that.

20 They all came in.

21 They all read off the same sheet
22 of sheet music. And that was good enough for me, because
23 again, that's the evidence I have, the fact that all
24 three of them said the same thing.

25 Well folks, if the Mormon

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1 Tabernacle Choir, everybody's singing the wrong note, the
2 fact that 350 of them are singing it doesn't make it
3 right, you know.

4 Numbers don't make it right.

5 Telling the same tale doesn't make
6 it right.

7 Look at the evidence.

8 What does the evidence tell us
9 actually occurred?

10 So, you get the DNA results back.

11 Mark is excluded as a contributor
12 to anything.

13 And I tried to keep it very simple
14 and talk specifically about -- you know -- the vaginal
15 and the rectal, because there was the issue of
16 penetration.

17 But trust and believe if he was
18 positive on anything they had tested, this fine
19 prosecutor would've told you about it.

20 And she didn't, because he isn't.

21 And why isn't he?

22 Because he didn't do it.

23 Now, the question maybe raised as
24 to:

25 Well, why in the world would

1 anyone -- anyone -- any young woman want go through this?

2 And I agree. I absolutely agree.

3 But there is absolutely no way to
4 crawl inside the brain of a person and figure out what
5 their determinations are as to why they do what they do?

6 You can't go down that road.

7 I'm not going down that road.

8 I stick with the road of evidence.

9 You know, just like those two
10 little schoolgirls in Florida who accused their teacher
11 of being inappropriate with them?

12 Why?

13 The judge says:

14 They didn't like the report cards
15 that was getting read to come home.

16 But did they stick to their story?

17 They stuck to it.

18 Because that's the thing:

19 Once you tell a big tale -- once
20 you tell a big tale, you're stuck with it.

21 It's like grabbing a tiger by the
22 tail. It's almost impossible to let go at that point.

23 And why would you tell the tale to
24 begin with?

25 Well, sometimes you need -- When

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1 you're doing something wrong -- When you're doing
2 something you ought not to be doing, one of the things
3 that comes with age, hopefully for all of us, is that:

4 Really, it's just easier and
5 better to just fess up when you're caught.

6 Just fess up.

7 You got me.

8 I -- I did it.

9 I was wrong.

10 I shouldn't have been out there.

11 I shouldn't have been out there
12 with them boys.

13 Shouldn't have been out running
14 around trying to find some drugs. Shouldn't have been.

15 But instead, once the jig is up
16 and the **Parents** are notified and -- you know:

17 Oh, my gosh, what's going on?

18 Well now, you got to explain why
19 you're out here with this man?

20 So now, it's got to be a
21 kidnapping; okay.

22 Well then, the issue becomes:

23 Well if he kidnapped her, well why
24 did he do that?

25 Well, according to her, she ain't

1 got no money; okay.

2 So -- you know -- it couldn't
3 happen over that.

4 So then, what's the only other
5 thing?

6 It's got to be sex.

7 So then, we got to say it's sex.

8 And see, that's the twisted and
9 insidious road that it goes. And that's where it comes
10 from. And once you grab that tiger by the tail -- and I
11 think -- and again, as the judge will tell you:

12 What I think is not the law and is
13 not the facts of the case.

14 It's all about what you find the
15 -- the facts of the case to be.

16 What I think is:

17 I really think Ms. Eberhardt did
18 try to let that tiger go, because what was the testimony
19 from Detective Abercrombie?

20 Yeah. Came in. Showed her six
21 photographs.

22 Mr. Elliott was in there. And she
23 didn't pick him.

24 And yeah, I realize that there is
25 not always -- uh -- you know -- an identification -- an

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1 eyewitness identification. I realize that.

2 But if you want to let this tiger
3 go, isn't that one of the quickest ways you might be able
4 to do it?

5 Uh -- No -- No, I don't see him
6 there.

7 And in fact, not even:

8 I don't seem there.

9 It was:

10 I think it's this other guy, here.

11 And what did Detective Abercrombie
12 say when I asked him about that?

13 He goes:

14 Well, no, no, no, no. I mean, if
15 you're not sure -- If you're not sure, let's just put
16 you're not sure.

17 Let's not say you picked guy
18 number two.

19 So maybe she was trying to let
20 that tiger go.

21 Now, the issue of whether there's
22 any DNA there?

23 You know, I don't care. You can
24 shop about presumptive tests. And you can talk fluid.
25 And you can talk about anything you want, you know.

1 I tried to keep her from getting
2 too incredibly technical with Mr. Humbert from SLED --
3 the expert from SLED.

4 Uh -- But what did Detective
5 Abercrombie say?

6 He's had training in DNA
7 investigation. And he has that basic knowledge just like
8 I do, just -- Well, The Court's' knowledge is far beyond
9 mine, but we all have some knowledge and training in that
10 regard.

11 And what did he tell Mark?

12 He said:

13 It don't take much. It does not
14 take much to leave your DNA behind when you have sexual
15 contact with someone.

16 Penetration. What happens?

17 Skin cells come off.

18 Epithelial cells come off.

19 Other fluids come off and mingle;
20 and that's where the match is made.

21 So it ain't about -- Don't let
22 them give you that red herring about:

23 Well, he didn't cum. And he
24 didn't ejaculate inside of her, so there was nothing to
25 test in that regard.

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1 No, no, no, no, no, folks.

2 Don't let them give you that.

3 Don't let them give you that.

4 Don't let them make you believe
5 that one person can put a part of their body inside
6 somebody else and leave absolutely no physical evidence,
7 no DNA evidence behind.

8 We know the deal with that.

9 Now, why would the DNA not be
10 there?

11 You know, it's strange; because
12 again, that DNA evidence, that's the State's evidence.
13 That's the State's test. That's their results.

14 You see, they didn't like the
15 results.

16 So this is what happens is:

17 They put the people up here from
18 SLED, these wonderful folks that took the time out to
19 come down here because they want to see justice done.

20 And she starts asking about:

21 Well, on -- on some cases, doesn't
22 this happen? And then, on some cases, doesn't that
23 happen?

24 No.

25 How about we talk about this case.

1 What happened in this case?

2 It ain't about other cases.

3 What about this case, you know?

4 Don't let her lead you down the
5 path. Don't ever let them lead you down the path, you
6 know.

7 Now, with regard to Mark, again:

8 He -- His -- His story is, you
9 know:

10 I took her. I dropped her off. I
11 don't know what the drug was all about.

12 Again, that's not my concern.

13 Was something going on, and
14 somebody going somewhere?

15 Yes.

16 Because again, B.C. done
17 locked the door because she ain't expecting to see her
18 girl for a while.

19 Uh -- And I'm assuming really
20 until the next morning, if you're going to lock somebody
21 out.

22 And remember, they don't have a
23 key; okay.

24 But she's going somewhere and
25 she's going to do something.

1 But Mark won't tell them -- and --
2 When -- When you look at -- Even in the very beginning
3 when he first starts talking about Detective Abercrombie,
4 he tries to stay out of the issue of the drugs at all.

5 Because what does he say?

6 I mean, this is a man who what?

7 He's been arrested. He's been in
8 jail that at this point for like 10 hours.

9 And what does he say?

10 He says:

11 Well -- you know -- to make a long
12 story short, I gave her a ride and then let her go -- let
13 her out.

14 And -- uh -- But Detective
15 Abercrombie won't let it go.

16 So that's when you get into the
17 whole issue of:

18 Okay, there was drugs involved and
19 they wanted -- But even when he says that, Detective
20 Abercrombie says:

21 So, are you trying to say that
22 this girl was out there trying to buy drugs?

23 And what does Mark say?

24 Well, I mean -- you know -- I
25 ain't trying to get in nobody's business.

1 You know, he's -- he's not trying
2 to get her in trouble. He's not trying to get her
3 trouble.

4 And when you -- when you talk
5 about what is, and -- and where you can find the truth:

6 You know, my grandmamma told me
7 when I was a little boy -- she told me a long time ago,
8 she said:

9 Son, if you want to know which way
10 the wind is blowing, don't look at the big oak tree.

11 Look at the leaves on the tree.

12 Look at the little things, you
13 know.

14 Look at the little things that
15 tell you exactly what is going on here.

16 Because, with Mark -- you know --
17 he says:

18 Uh -- Uh -- No.

19 You know, I'm not trying to -- you
20 know -- say anything or -- or put anybody under the bus
21 in that regard.

22 But then, first on the -- on the
23 roadside, or at the -- uh -- BP Station after -- you know
24 -- he's been crispy Kentucky fried -- uh -- they ask him
25 about the scenario.

1 What happened?

2 What's going on?

3 And he says:

4 Uh -- Well, they -- they -- they
5 wanted to buy -- you know -- some drugs; okay.

6 And -- uh -- what does -- uh -- I
7 think it was -- uh -- Lieutenant Baldassarre say?

8 He says:

9 Well, that's not what they're
10 saying. That's not what they're saying.

11 They're -- They're talking to the
12 police right now, telling them something else.

13 And what's Mark's immediate
14 reaction?

15 Sitting in the back of that car
16 after having 50,000 volts shot through him 3 times, what
17 does he say?

18 He goes:

19 Well, bring them over here.

20 Does that sound like a robber; a
21 kidnapper; and a rapist?

22 What's does he say immediately?

23 Bring them over here. We'll get
24 this cleared up right now.

25 That's one of those little things

1 to keep your eye on, you know.

2 Also, Mark -- One of the -- uh --
3 reasons, I guess, that -- that really wasn't -- by the
4 time he got to talking to Detective Abercrombie -- uh --
5 the drugs were not that big of an issue is:

6 Because what did Lieutenant
7 Baldasarre already say to him?

8 When he does start talking about
9 drugs, Baldasarre goes:

10 I don't want to hear nothing about
11 no drugs.

12 I'm not worried about no drugs.

13 Don't tell me about no drugs.

14 And then, you got the other guy in
15 the background going:

16 Yeah, you don't want no more of
17 this juice; do you?

18 You know, talking about the Taser.

19 You know, so -- But the one thing
20 again that Mark is always consistent on, and always clear
21 and forthright on is:

22 Did not rob anyone.

23 Did not kidnap anyone.

24 Did not rape anyone.

25 And in fact, when you watched his

1 video, I'm sure you could see the actual disbelief when
2 he was told that that's what they were saying about him;
3 okay.

4 So now, this is a matter where you
5 have to make a determination of guilt or innocence.

6 And you have to look at all of the
7 evidence that's been presented to you.

8 And quite frankly, if you believe
9 what you've been told by the State, then Mark Elliot is
10 guilty and you've convicted him.

11 But if you look at all of the
12 evidence; if you look at these tax facts, and you see
13 where they do not come together as the truth should, and
14 invariably always does -- there's a reason why they say
15 the easiest thing in the world is to tell the truth --
16 there's a reason why they say that; okay -- then, your
17 verdict will be one that's not guilty.

18 Because, as Detective Abercrombie
19 said when Mark asked:

20 Well, you just going to take their
21 word and not believe me.

22 And Abercrombie says:

23 No. I got the rape kit. And if
24 your DNA is there, then I know she's telling the truth.

25 Well folks, what does it mean when

1 the DNA in a perfectly well done test performed to South
2 Carolina Law Enforcement Division and national standards
3 is done, and there is absolutely no DNA, no evidence
4 whatsoever?

5 We know what that means.

6 That means:

7 Not guilty.

8 Thank you.

9 THE COURT:

10 Thank you, Mr. Hazzard.

11 Ms. --- uh -- Livesay?

12 MS. LIVESAY:

13 Thank Your Honor.

14 Ladies and gentlemen of the jury,

15 I'm going to try to keep this short.

16 I know y'all have been here all
17 week, and now it's Friday morning, and y'all are ready to
18 probably start deliberating.

19 So I'm going to try to keep it as
20 short as I can.

21 But I think what's telling the
22 most about this story is something that my mom always
23 tells me.

24 Just the facts.

25 Look at the facts.

1 That's what you got to look at in
2 every case, and whenever you're deciding anything.

3 And that's what I want you to look
4 at in this case, the facts.

5 What are the facts in this case?

6 The entire incident got started
7 from a 911 tape that described a red burgundy car with a
8 black male with a white tank top and shorts.

9 You know who that was?

10 That guy (pointing to Defendant
11 Elliott).

12 That's who it was.

13 Police didn't run up on him on
14 happenstance.

15 Somebody called 911.

16 And guess when they called 911?

17 Around the same time **Complaining** told
18 you that they were out there and this man rolled by and
19 told them to get on the ground.

20 They told immediately right after
21 that.

22 That young boy ran up to that
23 adult's house, banging on the door:

24 Call 911. Call 911. That girl's
25 been kidnapped.

1 Listen to the 911 tape when the
2 whole thing got started.

3 What did that boy tell you?

4 Somebody rolled up in a 4-door
5 Camry, got out, had what we thought was a gun, or a gun.

6 Told us to get down on the ground.

7 He told the two of us to walk.

8 And then he put **Complaining** in that
9 car and took off.

10 He called 911 and told that right
11 away.

12 Now, Mr. Hazzard's made this big
13 deal:

14 Well, she was -- They were out at
15 three o'clock in the morning. Those boys weren't
16 supposed to be down here. Uh -- She was down here
17 meeting her boyfriend.

18 And you know why that's telling?

19 Because they weren't supposed to
20 be down here. They weren't.

21 That's why they were sneaking out
22 at three o'clock in the morning, because they didn't want
23 to get in trouble.

24 But you know what?

25 When some crap went bad, they were

1 banging on that adult's then.

2 They didn't care about getting in
3 trouble.

4 They didn't care that they weren't
5 supposed to be down here.

6 All they cared about was finding
7 that young girl.

8 They didn't care then about those
9 guardians knowing, or **Complaining** daddy's knowing, or
10 anybody knowing.

11 They were scared.

12 And that's why they went up there
13 and banged on that adult's store. That's why they called
14 911.

15 Let me tell you something:

16 If all this was on the up and up,
17 and this:

18 Oh, she just gets in the car and
19 rolls off with this man.

20 Ain't nobody calling 911, folks.

21 You ain't going to wake up two
22 adults at three o'clock in morning who don't even know
23 you're down here -- you're not even supposed to be down
24 here -- to tell them:

25 This girl's been kidnapped. Call

1 the police.

2 That's not how it goes when
3 everything's on the up and up, and we just riding around.
4 And we're going to meet up later on; and all of this kind
5 of stuff.

6 You don't call 911.

7 And you ain't waking up adults at
8 three o'clock in the morning.

9 Now, he made a big deal:

10 Why didn't you call the police?

11 Didn't you have your phone?

12 Didn't M.H. have his phone?

13 Why didn't y'all call the police?

14 We're talking about two 17-year-
15 old boys that roll down here to meet up with one of their
16 friends that didn't even have anywhere to stay.

17 They're 17. They're not adults.

18 The first thing they did was do
19 what they thought was best: notify an adult.

20 And then that adult knew what to
21 do. And then she called 911, and put him on the phone,
22 and allowed him to give the description.

23 They're 17 folks.

24 They don't think like adults
25 think.

1 The first thing they know to do is
2 run for an adult.

3 That's what they did.

4 And then, the adult knows what to
5 do.

6 That's why they didn't call 911
7 right away.

8 But it ain't like they were down
9 there twiddling their thumbs, walking around, and just:

10 Well, I -- I don't know. I mean
11 -- mumbling around.

12 They ran up there, banged on that
13 door, got an adult, and called the police.

14 Now, something else:

15 It's all -- Everything's all up on
16 the up and up. She's just decided to get in this car
17 with a stranger she's never met before in her life.

18 And he's never met her before in
19 his life.

20 He admitted that to you.

21 I rolled up on her and two dudes.

22 And that was first time I had met them.

23 She was down here with her
24 boyfriend sneaking out of the house to meet him.

25 He's driving five hours down from

1 Kannapolis, North Carolina. just to see her; okay.

2 This is obviously some sort of
3 teenage love thing going on.

4 She's sneaking out of the house.

5 They're kind of fighting out there
6 like teenagers do.

7 And then they make up and they're
8 out there hugging.

9 Even he says that.

10 When I rolled up, this dude and
11 this girl were out there hugged up on each other and the
12 other guy was sitting in the driveway.

13 It's on the tape. Listen to it --
14 on the roadside.

15 And then, all of a sudden, she
16 says:

17 Well, even though I got my
18 boyfriend down here, he's got a car, he's got another
19 friend down here.

20 They've come down here to meet me.
21 I'm sneaking out of the house just
22 so I can meet with him.

23 But instead of doing that, I'm
24 going to roll off with this guy, who she's never seen,
25 and he's never met her.

1 Does that make any sense at all?

2 At three o'clock in the morning,
3 she don't know where she's at. And just all of a sudden
4 is going to jump in the car with this guy; okay?

5 And what else is important about
6 that is:

7 Where was she?

8 She weren't out at some party.

9 They weren't out cruising the
10 Boulevard trying to meet people.

11 They were in the front yard in a
12 residential neighborhood.

13 They were in front of this house
14 (pointing to photo). That's where they were; okay.

15 These people that are our looking
16 for drugs?

17 They're out looking for drugs?

18 That's what this is all about;
19 drugs?

20 They're out standing in the front
21 yard of the house, folks.

22 They ain't cruising the Boulevard
23 together.

24 That ain't where he found her, in
25  car.

1 They ain't walking on the
2 Boulevard. That ain't where he found her; okay.

3 I'm here to tell you in North
4 Myrtle Beach, this ain't where you're at when you're
5 looking for drugs.

6 Let's -- Let's be honest about it.
7 You're cruising the Boulevard. There are places to go to
8 look for drugs.

9 I'm telling you, it ain't this
10 housing development on Beach House; okay.

11 It's all about drugs. It's all
12 about drugs.

13 But yet, they're out there
14 standing in their front yard.

15 And she told you there was no
16 traffic out; nobody was out walking around all these
17 little houses.

18 It's a residential neighborhood.

19 They ain't out there looking for
20 drugs, folks.

21 That ain't the area to be looking.

22 They could be looking for drugs if
23 they wanted to, but they won't (sic). They were out
24 there standing in the front yard, hanging out, trying to
25 spend time together at three o'clock in the morning.

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1 And this guy rolled up.

2 Now he told you:

3 Well -- uh -- all of this
4 kidnapping stuff doesn't make any sense.

5 Sure it does.

6 This man was not afraid of those
7 three teenagers.

8 He's an adult that was riding
9 around that night at three o'clock in the morning.

10 He weren't a bit more worried
11 about **Complaining** and those two little boys out there
12 causing him any problems -- little teenagers -- no more
13 than most adults would when they walk up to a child; okay
14 folks.

15 That's not equal standing.

16 Me walking up to a 14-year-old, or
17 to a 12-year-old, or to any child is not an equal
18 balance, folks.

19 That's an adult.

20 You talking life experiences.

21 You talking about somebody that's
22 knowing what's going on, is rolling up on three
23 teenagers, that have never even been down here, standing
24 out there in the yard, who have snuck out.

25 He won't worried about them when

1 he jumped out of that car.

2 Mr. Hazzard said:

3 Well, when they were at the
4 roadside, what did he you tell the cops?

5 Bring them over here.

6 Yeah, he told them:

7 Bring them up here.

8 He won't worried about R.B.

9 R.B. and M.H. two 17-year-old boys.

10 He won't a bit more worried about
11 those boys.

12 That's why he, when he jumped out
13 of that car, he won't worried about them doing nothing.

14 He knew he had the upper hand on
15 that crowd.

16 Now, Mr. Hazzard said:

17 Well, how about this weapon? How
18 about this -- this weapon?

19 Let me tell you something, folks:

20 They took this crowbar out of the
21 car because when Complaining Witness told them:

22 He was holding something behind
23 his back. It was dark. And it was three o'clock in the
24 morning.

25 Well, when you're holding this

1 like this (indicating with the crowbar) at three o'clock
2 in the morning, yes, it kind of looks like a gun.

3 It kind of looks like a weapon to
4 three teenagers -- to a 14-year-old girl and two 17-year-
5 old boys.

6 When you hold it like this and
7 it's dark, it looks like a gun.

8 What did she tell you?

9 He was holding it by his arm like
10 that (indicating with the crowbar).

11 Yes, it does look like a gun. It
12 did look like a weapon.

13 I'm here to tell you, folks:

14 It ain't a gun. But it sure as
15 heck could be a weapon. And it was in that car.

16 It don't shoot a bullet, but I
17 promise you (knocks the crowbar on the table), when you
18 lay it against somebody, it can do some damage.

19 When he got the car, he had this
20 in his hand. And he was holding it like this with that
21 sticking out, so they would think it was the end of a
22 gun.

23 He knew what he was rolling up on.

24 That's what that conversation is
25 about, asking for directions, all that.

1 He was gauging right then who he
2 was talking to you.

3 He was getting a look and gauging
4 right then who he was talking to.

5 And it didn't take him long.

6 He was fooling around with some
7 teenagers that didn't know what was going on. And he
8 knew right then he had the upper hand.

9 He thought about it.

10 He pulled that car out.

11 He grabbed his tire iron and got
12 out.

13 She didn't get in that car
14 voluntarily.

15 That's what doesn't make any
16 sense.

17 And isn't it ironic that all three
18 of them says:

19 He was holding something that they
20 thought was a gun behind his arm like this (indicating).

21 Then, low and behold, you search
22 the car. And what's in the car?

23 Something that corroborates their
24 story.

25 Now something else:

1 It's -- It's all about these
2 drugs. She's looking for drugs. She's getting ready to
3 go out. It's -- It's all this going on.

4 Folks, look what she's wearing:

5 No shoes were ever turned in
6 because she wasn't wearing shoes.

7 Lance O'Bryant, the first guy she
8 came across that night, listen to his testimony.

9 What did he tell you?

10 She ran up to me.

11 I was kind of hesitant in the
12 beginning.

13 And in fact, my guard didn't come
14 down until I noticed she didn't have any shoes on.

15 Then I was like:

16 Whoa, this -- this is something
17 going on here. I mean, maybe it's -- I need to -- she is
18 having some problems. I to need help her. I need to get
19 her to a phone.

20 There's no shoes 'cause she won't
21 wearing any shoes that night.

22 That's why there's no shoes.

23 The first person she ran up on,
24 this is what she was wearing.

25 And she's 14.

1 Do 14-year-old girls wear this
2 when they're going to a party, or they're going to buy
3 some drugs?

4 Does this look like something that
5 she would be wearing to go do that?

6 No, folks.

7 She had changed into this and
8 these socks, thinking she was going to bed.

9 She even told you before then:

10 When I was out, I was walking
11 around. I was wearing a dress.

12 That's what 14-year-old girls wear
13 when they're going somewhere.

14 They are the atypical.

15 That makeup's going to be on.

16 The hair is going to be fixed at
17 14.

18 They going to be wearing a dress,
19 or they gone die.

20 It's going to kill them that they
21 got to go to school in something don't look quite right.

22 That's how 14-year-old girls
23 think.

24 That's how 30-year-old women
25 think.

1 If they're going to go somewhere,
2 they gone be looking good. They ain't gone be wearing
3 this.

4 But he wants you to believe she
5 decided to put this on to go out and look for drugs to go
6 to party.

7 That doesn't make any sense.

8 And when you look closer at the
9 evidence and the facts, because this is the facts; these
10 are the clothes that came off of her that night when she
11 was found.

12 I want you to take a look at the
13 bottom of these socks.

14 Dirty, with holes in the bottom.

15 They're dirty. And they got holes
16 in the bottom because she was out there wandering around
17 on Ocean Boulevard looking for help; looking for somebody
18 to help her.

19 That's why.

20 She was running around in these
21 socks looking for help.

22 She didn't have any shoes on.

23 These socks show you. These
24 facts, this evidence shows you:

25 She was walking around that night

1 in these socks looking for somebody to help her.

2 Now, what's important about that
3 -- and I know I showed you that map 50 -- probably 50
4 times.

5 The reason I showed you that map
6 is because what's so important about that map is where
7 they found her.

8 They found her here, folks; all
9 the way at the end of the beach;, miles and miles from
10 Hillside Drive where she -- where she started off at.

11 That's a long way from home for
12 somebody that don't know the area.

13 How do you think she got there,
14 folks?

15 This defendant wants to tell you:

16 I gave her ride a couple of
17 blocks. I gave her a couple of blocks.

18 Well, she won't found a couple of
19 blocks.

20 She was found by a jogger from
21 Asheville, 5 or 6 miles from Hillside Drive.

22 She got there because that's where
23 he dropped her off.

24 Folks, she didn't ride no couple
25 of blocks.

1 Her boyfriend has his car down
2 there. If she wanted to ride a couple of blocks, they
3 would have taken her a couple of blocks.

4 That's not what happened.

5 He dropped her off all the way at
6 the end of the beach, because that's where he took her.

7 Now, there's been a lot of talk
8 about this boat ramp, because that's where she said she
9 was sexually assaulted.

10 What's important about that:

11 She's only been down here two
12 times.

13 She's from Kannapolis, North
14 Carolina, five hours from here; okay.

15 And ironically, she knows that
16 there's boat ramps right along in here.

17 Actually she didn't know that
18 until she came walking back this way away from the boat
19 ramp.

20 And what did Detective Abercrombie
21 tell you?

22 I've been down here 15 years. And
23 I'm not familiar with these boat ramps.

24 All the way at the end of the
25 beach.

1 But yet, somebody who's only been
2 down here twice in their entire lives, who was staying 5
3 miles from the incident, said:

4 I was raped at a boat ramp.
5 Isn't that an ironic place to
6 pick?

7 And she told you a well-lit boat
8 ramp.

9 If she wanted to make up a lie,
10 she would have told you:

11 He took me behind somewhere in the
12 woods where it was dark. I couldn't see nothing. And he
13 raped me and left me out there.

14 But that ain't what she told you.

15 She told you:

16 I was raped at a boat ramp.

17 And ironically, 5 miles from her
18 house and blocks from where she was found walking,
19 there's a boat ramp.

20 How else would she know that,
21 unless that's where he took her?

22 That's not a place you make up
23 that you've been raped, a well-lit boat ramp.

24 We're not talking about a
25 situation where she said:

1 I was raped at a boat ramp.

2 And there ain't a boat ramp
3 nowhere nearby.

4 So what's that all about?

5 There's a boat ramp blocks from
6 where she was found walking that somebody who's lived
7 here 17 isn't even that familiar with.

8 She knew about that boat ramp
9 because he took her there.

10 That's a hard story to make up,
11 that I was raped at a boat ramp.

12 And low and behold, you go out
13 there and a block from where she's found, there's a boat
14 ramp.

15 She knew that because that's where
16 he took her.

17 What else is important about her
18 story?

19 When she told you up here, and
20 what she told Abercrombie about the details of that rape.

21 She told this jury; she told that
22 detective:

23 On June the 29th, on that
24 afternoon, that:

25 He raped me anally and vaginally.

1 And what she also -- she also told
2 him, and what she told you today is:

3 He was not erect. I do not
4 believe he was erect. I do not believe he ejaculated.

5 Now, the Defense wants to minimize
6 that.

7 And I'll tell you why.

8 Two reasons:

9 One reason:

10 Isn't that a weird fact to make up
11 about somebody that's been raped?

12 Isn't that a weird detail to come
13 up with, that he wasn't erect?

14 Why would you make that up?

15 Why would you make that up?

16 If you wanted to make up a story,
17 what would you say?

18 I've been raped.

19 It was painful.

20 All these horrible details.

21 He was holding me.

22 I think he had a gun on me.

23 I think he had a knife on me' all
24 these terrible things.

25 That's not what she said.

1 She said:

2 It lasted maybe two minutes.

3 I do not believe he was erect.

4 And afterwards, he said:

5 I cannot do this to you; and let
6 her go...

7 Now, if you wanted to make up a
8 story, is that the one that would be made up?

9 She told that on the afternoon of
10 June the 29th of 2009.

11 That:

12 He was not erect.

13 And:

14 It only lasted two minutes.

15 He appeared sorry and regretful.

16 Left her out there, and then took
17 off.

18 She told that before that guy from
19 SLED tested that evidence; okay.

20 She's not making up a story to
21 conform to the evidence. She already told us that.

22 She already told us:

23 He wasn't erect.

24 We already knew that.

25 She's not making up a story to

1 conform to the evidence.

2 And she's not making up a story
3 that seems unbelievable.

4 That's a detail that she wouldn't
5 know unless you was there.

6 Now, Mr. Hazzard wants to tell you
7 that:

8 Well, they gone lead you down that
9 road. They gone lead you down that road.

10 Folks, that ain't no road.

11 That's what we got.

12 That's the truth.

13 That's what she told you.

14 Now, you can go back and listen to
15 any testimony you want to.

16 And I suggest:

17 If there's any confusion, Jasper
18 Humbert was the SLED guy that came up here.

19 Go back and listen to his
20 testimony.

21 He'll tell you:

22 What was I looking for?

23 Semen.

24 That's what I was testing for;
25 okay. That's what I was testing for.

1 That's why I was asking him those
2 questions.

3 Well, if that's the case, wouldn't
4 it be more likely if you were erect and ejaculated to
5 find semen?

6 Wouldn't that make sense?

7 Obviously, if you aren't erect,
8 isn't it going to be hard to find semen.

9 If you don't ejaculate, isn't it
10 going to be hard to find semen?

11 Run the tape back.

12 He tells you:

13 What I'm looking for, semen.

14 That's the DNA.

15 The way you get semen is you
16 ejaculate.

17 Just because we're in this
18 courtroom doesn't change the way our bodies work -- the
19 way the physical body works.

20 Just 'cause this is a criminal
21 case doesn't mean I can make the body work any different
22 and produce those blood test.

23 Now, the thing about physical
24 evidence is:

25 She was in that car.

1 There's no doubt she was in that
2 car.

3 You know why there's no doubt that
4 she was in that car?

5 He told you that.

6 Guess what, folks?

7 Her fingerprints ain't in that
8 car.

9 Her DNA ain't in that car.

10 But does it mean she won't in
11 there?

12 No. That's not what it means.

13 He told you she was in there.

14 And -- you know -- he maybe
15 could've slipped past if he had gotten that story:

16 Instead of:

17 She ran from the car.

18 Maybe if he was thinking (begins
19 to snap fingers several times while speaking) just maybe a
20 tad bit quicker, he could have come up with:

21 I don't know nothing about no
22 girl.

23 Because honestly, she couldn't
24 pick him out of the lineup, and she was right there in
25 the car with him.

1 There was no DNA.

2 Her DNA weren't in the car.

3 Her fingerprints weren't in the
4 car.

5 We dusted. We did all that.

6 We processed the car.

7 There's no physical evidence
8 there.

9 Does it mean she wasn't in the
10 car?

11 I mean, if that's what we're
12 looking at, no, it doesn't.

13 The real world doesn't look like
14 that.

15 It doesn't work like that.

16 There's not DNA everywhere you go
17 like Mr. Hazzard wants you to believe.

18 She was in that car.

19 She told you that. And he told
20 you that.

21 There's not one ounce -- not one
22 fingerprint to prove she was in that car.

23 So maybe if he could have thought
24 (snaps fingers) just a tidbit quicker, he could've had
25 that one.

1 Because she couldn't pick him out.
2 We did have her DNA in that car.
3 So then it would've been like:
4 Oh, I don't know no girl.
5 I found that phone on the ground
6 and picked it up.

7 That would've been the story then.
8 Because, that's about how this
9 case is working on the Defense side.

10 But if he could've thought just
11 that quickly:

12 There ain't no DNA. There's no
13 proof -- no fingerprints. Her fingerprints ain't in the
14 car. Her DNA ain't in the car. She won't in that car.

15 He picked -- I picked that phone
16 up.

17 I was out looking for some drugs,
18 and that phone was on the ground, and I picked it up.

19 All he's told you is what conforms
20 to the story right there.

21 Well, okay -- Well -- I tried
22 that. Well okay, well let me tell you this much.

23 As soon as he got down on that
24 ground -- He was Tased. He was down on the ground, hands
25 behind his back.

1 Mr. Hazzard want you to believe:
2 This man was just Tased, Kentucky
3 fried, chicken fried.

4 Well, he won't that fried, folks.
5 Because he picked up on that
6 officer saying:

7 Oh, I think I saw her run from the
8 car too.

9 He's so incapacitated, he's been
10 Tased. He don't know what's going on.

11 But he -- He picked up on that.
12 As soon as they asked him, what
13 did he say?

14 She ran when I ran.

15 He picked up on what those other
16 officers were out there saying, because he knew right
17 from the get-go why they were running behind him.

18 So as soon ask he got out of that
19 car, his mind was working.

20 And as soon as that officer said:
21 I saw -- I think I saw her run
22 too.

23 There's been a big issue on it.

24 I thought I -- Listen to the tape.

25 The officer said:

1 I think -- there's 3 cars out
2 there that are running after him -- I think I saw her run
3 from the car.

4 He immediately picks up on that
5 after being Tased, handcuffed, on the ground, and tells
6 this officer:

7 She ran when I ran.

8 That's -- That's pretty good for
9 somebody who -- uh -- is so incoherent and been Tased
10 with 50,000 volts.

11 I mean, at this point, Mr. Hazzard
12 is ready to say that he was fried out there on the
13 ground.

14 But he was smart enough to pick up
15 on that.

16 Now, at that time, they were
17 asking him about the girl:

18 Yeah, I picked her up with two
19 dudes; this and that and the other.

20 We hadn't gotten into any drugs
21 yet. Because he hadn't really got it all together yet --
22 that story all together.

23 He says at this point in time:

24 I'll lead them on this chase
25 because they're still looking for the girl.

1 Then once he has some time to
2 collect himself and think about it, then he's really got
3 his story straight.

4 Then it's:

5 Yeah, I rolled up. And she ran
6 when I ran.

7 And in fact, what's telling about
8 that is:

9 He even asked -- He asked the
10 officer:

11 Well, what's she running for?

12 If she's so innocent, what's she
13 running for?

14 I mean, he's already -- for
15 somebody:

16 Oh, he don't want to throw her
17 under the bus.

18 Right from the get-go:

19 What's she running for?

20 And then, later on, when you here
21 him trying to come up with this drug story, the first
22 thing he asked -- Mr. Hazzard wants you to think:

23 Oh, well, he don't want to throw
24 her under the bus.

25 The first question he asked:

1 He -- I'm trying to -- He says:
2 I'm trying to figure out how to
3 say this right, or say this in the correct way.

4 What was she doing out at three
5 o'clock in the morning?

6 That's what he told the officers.

7 That's when he was trying to get
8 that drug story together. Because then it's like:

9 Yeah, what was she doing out?

10 She must have been up to no good.

11 She must have been out there
12 looking for some drugs.

13 Why else are young people out at
14 three o'clock in the morning? Looking for drugs.

15 That's where he got that story
16 from.

17 Never once in all these statements
18 could he ever get it right where he dropped her off.

19 First:

20 She jumped at the car.

21 Then it was:

22 Two blocks from the house at a
23 motel.

24 Detective Abercrombie says:

25 Well, right off the be able to,

1 this is a residential area.

2 Oh, okay. If that's the case,
3 then I saw all them motels, then. How about that.

4 Okay, I saw all them motels.

5 Does that work?

6 And now, is it kind of consistent
7 with what you got -- what you figured out?

8 I mean, the story is constantly
9 changing as he's listening to the facts.

10 He never tells a date where he
11 dropped that girl off.

12 From the time they picked him up,
13 all this time he's talking on the roadside, all this time
14 he's talking to Detective Abercrombie, never once did he
15 say:

16 I dropped her off right here.

17 This is where I dropped her off
18 at.

19 And -- you know -- its funny -- uh
20 -- Mr. Hazzard says:

21 On the roadside, he said:

22 Tell them boys to come on over
23 here. Tell them. I got something to say to them. Tell
24 them.

25 But you didn't hear him say:

1 Uh -- We in the car. Let me show
2 you where I dropped that girl off at.

3 He didn't say that.

4 Yeah, I dropped her off two
5 blocks.

6 You didn't hear him go:

7 Oh, we in the car. Get in the
8 car. I'm going to show you where I dropped her off.

9 You didn't hear him say that.

10 It was:

11 Bring them boys over here.

12 Because he won't worried about
13 them.

14 But it was never:

15 Well, I picked her up and I
16 dropped her off two blocks. We in the car now. I'm in
17 the car. Let me show you where I dropped her off at.
18 Let's -- Let's get this straight.

19 He never said that.

20 Because he couldn't tell you where
21 he dropped her off. Because then he would have to admit
22 that he took her 5 -- 6 miles from where she was staying,
23 at that boat ramp.

24 Now, it's hard to have broke that
25 story out.

CLOSING ARGUMENTS BY COUNSEL

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1 Two blocks up the road; that's
2 easy to work out.

3 But then, that's when all that
4 time comes into play.

5 Well, what's she doing for 30
6 minutes?

7 What's she doing for 45 minutes?

8 That's not a time-sensitive play,
9 folks; because then he has to admit he took that girl,
10 drove her around, made sure she didn't know where she was
11 at; took her 5 or 6 miles from where she was staying,
12 raped her at that boat ramp, and left her out there.

13 Because it don't make no sense to
14 be leaving her 5 or 6 miles with no shoes out there
15 wandering around.

16 That don't make any sense.

17 He just dropped off two blocks.

18 He won't jump and tell nobody
19 where them two blocks where he dropped her off at.

20 That don't make no sense, folks.

21 Listen to Lance O'Bryant's
22 testimony again. That's where he found her.

23 Now that phone thing is important.

24 Mr. Hazzard even called **Complaining**
25 to the stand to talk about that phone.

1 Now, that's something else too.
2 He's gotten up here an told you:
3 Uh -- I'm kind of -- I'm hand-
4 tied. All I got is what the State gives me. I can't
5 talk to no witnesses. I can't do nothing. I'm just over
6 here on Defense.

7 Well folks, you know that ain't
8 true.

9 Mr. Hazzard called some witnesses.
10 He called the victim.
11 I can't talk to no witnesses. I
12 might tamper with the witnesses.

13 Well folks, you got to know that
14 is -- that's not true. That's simply not true.

15 He called the victim to the stand.
16 For somebody that can't do
17 nothing, can't call no witnesses, he called witnesses
18 from Columbia, South Carolina.

19 He wants you believe:
20 I can't -- I can't do nothing. I
21 can't call no witnesses. I can't talk to anybody.

22 That's not true.

23 You know that's not true.

24 He put on a case; called my victim
25 to the stand.

1 So that's not true.

2 He called her to the stand and
3 told her:

4 Let's talk about these phone
5 records.

6 He wants to make a big deal out of
7 these phone records because he thinks:

8 That's the way I can divert the
9 fact that she was kidnapped.

10 Because if you're kidnapped, you
11 can't make no phone calls. You can't receive phone
12 calls.

13 She did pick up the phone.

14 She told you:

15 I picked up the phone because that
16 man told me to pick up the phone.

17 This man is interesting. He's
18 actually pretty smart.

19 He had her in that car.

20 He knew there was no witnesses.

21 He told her to pick up that phone;
22 tell everybody everything was on the up, hoping:

23 Ain't nobody called 911.

24 But while she was picking up that
25 phone from [REDACTED] [REDACTED] was running inside

1 calling the police.

2 He was hoping that phone
3 conversation would maybe delay that and keep that from
4 happening.

5 So then, she picks up the phone.
6 She scared to death. Talks to him. Tells him exactly
7 what that defendant said, and then put the phone down.

8 And then, where'd the phone end
9 up?

10 In his car, in the front pocket.

11 Now, you saw Mr. Hazzard had all
12 those phone records.

13 How about this case at 2:15?

14 How about this case at 2:30?

15 How about this phone conversation
16 at three o'clock?

17 Did you notice he didn't say crap
18 about what happened after 3:30.

19 Because, you know what?

20 It's text after text; phone call
21 after phone call.

22 She told you they were in constant
23 contact.

24 He's driven down here five hours
25 to see me.

1 But you didn't hear him ask one
2 question to her about those phone records after 3:30.

3 There won't nothing to ask about.
4 And the only thing to bring up
5 was:

6 She didn't have access to it.

7 There weren't one phone call made
8 out of that phone, or he would have asked about it.

9 And that phone didn't get picked
10 up again either, or he would have asked about it.

11 Everything is so on the up and up.

12 And he ain't doing nothing.

13 And she ain't kidnapped.

14 But there ain't one phone record
15 that says crap about her picking on the phone -- or
16 making a phone call after she was put in that car.

17 You didn't notice one question
18 about that.

19 2:30. 3:17.

20 All this is on the up and up.

21 There weren't nothing going on
22 then. It was on the up and up.

23 This is all good.

24 If you're kidnapped, why are you
25 using the phone?

1 Well, she won't using the phone.

2 And he didn't ask one question

3 about after 3:30 when she was put in that car.

4 Let me tell you something:

5 If she was making phone calls and
6 getting phone calls, he would have been eating her up on
7 it, but she won't, because she didn't have access to that
8 phone.

9 So, he didn't want to bring that
10 to your attention.

11 Like he told **Complaining**

12 What I think is important and what
13 you think is important is two different things.

14 And I think it's important to
15 bring out in front of this jury that everything's on the
16 up and up, and you text him at 2:30, and everything's all
17 good.

18 But let's just stay away from what
19 goes on after 3:30; because then there ain't no phone
20 calls and there ain't no texting going on.

21 And you know what that looks like?

22 It looks like everything ain't all
23 on the up and up when a 14-year-old girl ain't texting,
24 calling, and receiving calls, from 3:30 till the time she
25 gets that phone call.

1 Then it looks like a kidnapping.

2 And let's -- let's try to stay away from that detail.

3 That ain't -- That's not what I'm
4 trying to bring out up here.

5 Now, she says -- or the police say
6 that:

7 That phone rang in that car.

8 She said that he took the phone
9 and turned it off.

10 Folks, I don't know if he turned
11 that phone back on, or what happened during that phone --
12 when it got in his car.

13 But the one thing that we do know,
14 that there's no question about, is that:

15 It was found in this defendant's
16 car, miles from where she was, at the BP.

17 And ironically, this is -- this is
18 what's really so interesting, as Mr. Hazzard would say:

19 Everything all on the up and up.
20 He's cruising around. He's doing the drug game.
21 Everything is good.

22 He drops this girl off.

23 And bam, all of a sudden he knows
24 how to get out of town then.

25 All of a sudden, he's heading up

1 Sea Mountain Highway. Time to rock and roll again.

2 The fun's over then, folks.

3 He was ready to leave town then.

4 For somebody cruising around in
5 the drug game -- all this.

6 And you know what's important is:

7 That officer told you he followed
8 him from Second Avenue.

9 He didn't jump behind him on no
10 major highway.

11 He jumped behind him in the City
12 of Myrtle Beach and followed him.

13 The guy didn't look like he was
14 lost to me.

15 He took a straight path to the
16 inside of North Myrtle Beach.

17 I said:

18 Was there any signs around there?

19 Naw. You don't get a sign until
20 about Sea Mountain Highway.

21 He don't know where he's at.

22 He's so lost. He drive's slow.

23 He drops her off.

24 And all of a sudden, bam, he can
25 got to Second Avenue on his way to Tabor City.

1 He knows how to get around then.

2 That's something else too, folks.

3 He's leaving town. Everything's

4 on the up and up. He ain't done nothing wrong.

5 Police put the blue light on him.

6 He's still moving. He's -- He's

7 thinking -- At that point, he's thinking, I'm sure.

8 Uh -- Uh -- Uh -- So you're giving

9 him some time to think.

10 He pulls in that BP.

11 Now watch the videotaped.

12 That ain't just one police car
13 behind him, because at that point, he didn't stop for the
14 blue light, so they're calling for backup; because they
15 don't know what's going to happen now.

16 So now, they've got the officer
17 following him, a couple of more officers, one coming from
18 this direction; okay.

19 He pulls in that BP.

20 The first thing he does -- I mean,
21 he had already made up in his mind he was taking off.

22 He got right out of the car --
23 watch that video -- and takes off running.

24 Everything's on the up and up.

25 I ain't done nothing wrong.

1 Now I'm going back to work -- to
2 Hardees.

3 But when the police come, it's
4 like:

5 Bolt. I mean, he didn't even slow
6 down.

7 Watch that video.

8 He got out of that car and took
9 off with two or three officers behind him.

10 Now he wants you to believe:

11 Well, I thought they were stopping
12 me for drinking. And I had a open container.

13 Well, A:

14 There weren't a open container in
15 the car? So that doesn't make sense.

16 B:

17 His story about:

18 Well, I was drinking.

19 Let me tell you something:

20 That man had three police cars
21 behind him with the blue lights on. He knew they won't
22 stopping him for drinking.

23 He knew that.

24 And when he turned in that BP,
25 there was one coming from the opposite direction.

CLOSING ARGUMENTS BY COUNSEL

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1 He knew that they were not
2 stopping him for no drinking.

3 And that's why he took off
4 running.

5 He didn't take off running because
6 he thought they were stopping him for drinking.

7 And for somebody that was
8 drinking, he knew right away when he was on the ground
9 what they were talking about.

10 That girl jumped out when I jumped
11 out.

12 Every conversation after that was
13 about her jumping out; where he picked her up; where he
14 left here, which he would never come up with.

15 He knew why they were stopping
16 him.

17 He knew what was going on there.

18 And he knew her phone was in the
19 car.

20 That's why he took off.

21 He knew this didn't have nothing
22 to do with no drugs.

23 It didn't have nothing to do with
24 no drinking.

25 He knew what it was about.

1 And that's why he took off
2 running.

3 And no three cops jumped behind
4 him for drinking; and he knew it.

5 Because he knew he hadn't had that
6 much to drink. He was pretty coherent when they stopped
7 him.

8 Let me tell you something, folks:

9 When you look at the facts of this
10 case, and you look at the evidence, there's nothing
11 interesting about this case.

12 There's nothing interesting about
13 that defendant. Nothing.

14 That defendant was out that night
15 cruising around looking for trouble. Looking for
16 trouble.

17 He crossed three kids and he knew
18 he didn't have nothing to worry about. And that's when
19 he jumped out of that car and kidnapped that girl.

20 That's why they call the police.

21 And that's what got this thing
22 going.

23 Nothing else makes any sense.

24 You ain't seen nothing about no
25 drugs.

1 He didn't have no drugs on him.

2 There won't no drugs in the car.

3 None of that story came up until
4 he was locked in that car and they were questioning him
5 about that girl.

6 He picked up that girl; drove her
7 to that boat ramp with every intention to brutally rape
8 her.

9 For whatever reason, he couldn't
10 get erect.

11 He penetrated her; lasted about
12 two minutes; felt bad about it or regretted it; didn't
13 want to do it; felt like he were going to get in trouble.

14 I don't know.

15 For whatever reason, he stopped,
16 and he let her out there..

17 That's where she was found, blocks
18 from that boat ramp..

19 Then he drove off and started
20 leaving town.

21 He knew those two boys had seen
22 him. And he knew that they had probably called the
23 police.

24 And when those police were behind
25 him, it knew what it was about.

1 He knew those boys had called the
2 police.

3 And that's when he knew it was
4 over.

5 And that's why he jumped out of
6 that car and ran.

7 There won't no alcohol in that
8 car.

9 There were no drugs.

10 This case ain't got nothing to do
11 with that.

12 But they want you to believe that.
13 Because they don't want you to believe that that man
14 picked up that little girl, and kidnapped her, and raped
15 her.

16 And nothing else makes sense.

17 He wants to tell you:

18 They've gotten their story
19 together.

20 At first, their story don't match.

21 Then:

22 It's so matched, it's rehearsed.

23 Listen to that 911 tape.

24 Listen to what that boy told that
25 911 operator.

CLOSING ARGUMENTS BY COUNSEL

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1 And then listen to what **Complaining!**
2 told Lance O'Bryant, the first guy she bumped into.

3 She ain't had no access to no
4 phone; walking around there with no phone and no shoes.

5 The first thing she told him is:

6 I was kidnapped.

7 This guy rolled up; told me and my
8 friends to get on the ground; the exact story.

9 She was 5 miles away from that
10 house with no way to contact those boys.

11 The only way their stories match
12 up was because they're telling the truth.

13 They told that story 45 minutes
14 apart -- from him calling the police -- she's 5 miles up
15 the road; no access to a phone; can't talk to him.

16 The phone records would tell you
17 if she had, and so would Mr. Hazzard.

18 And the first story she told is
19 the same one he told 911.

20 I'm here to tell you the facts of
21 this case are that:

22 That little girl was kidnapped.

23 She was kidnapped and taken to
24 that boat ramp and raped and left there.

25 I'm here to tell you:

1 That defendant did it.

2 Don't get back there and get

3 caught up on:

4 There ain't no physical evidence.

5 Because there ain't no physical
6 evidence she was in that car; not a single print, not a
7 shred of DNA.

8 But it don't mean she won't in
9 that car, folks.

10 Don't get caught up on that.

11 She told you that:

12 He wasn't erect.

13 Jasper told you he was searching
14 for semen and it won't there.

15 And it shouldn't be there under
16 those facts.

17 All Jasper told you corroborated
18 what that victim had already told you, that he wasn't
19 able to finish the job.

20 Don't cut him loose because he
21 couldn't finish the job.

22 For whatever reason. he couldn't
23 do it. But he penetrated her. And he had every
24 intention of raping her.

25 And when he penetrated her, that's

1 what he did. He raped her.

2 Just because he wasn't able to get

3 satisfaction, to leave all this DNA behind that Mr.

4 Hazzard keeps telling about, don't cut him loose.

5 I'm going to ask you this:

6 To look at the facts.

7 Look at all the evidence.

8 Listen -- Listen to any of the

9 testimony that you need to hear again.

10 And I'm asking you to find that

11 defendant guilty of everything we've got him indicted

12 for.

13 We're not sending armed robbery

14 back there. That was my decision. Because I ain't

15 worried about no armed robbery.

16 I'm worried about this 14-year-old

17 girl got picked up by a stranger and raped.

18 That's what I'm worried about.

19 That's my problem.

20 Thank you for your time.

21 THE COURT:

22 Ladies and gentlemen of the jury,

23 I remind you that, during this trial, you and I have

24 certain duties to perform.

25 As the trial judge, it's my

1 MS. LIVESAY:

2 No sir.

3 THE COURT:

4 Anything further from the Defense?

5 MR. HAZZARD:

6 No exceptions or additions from
7 the Defense, Your Honor.

8 THE COURT:

9 Very well.

10 Uh -- If you would, Counsel,
11 please -- uh -- come forward.

12 I want you to -- uh -- make sure
13 that you have all of the exhibits together. Make sure
14 that everything that's going back to the jury -- uh --
15 has been marked and is introduced; okay.

16 MS. LIVESAY:

17 Yes, sir.

18 WHEREUPON: THE JUDGE'S CHARGE WAS
19 MARKED BY THE COURT REPORTER COURT'S EXHIBIT NUMBER 8.

20 (WHEREUPON: The Court's
21 instructions were followed by each counsel and the
22 exhibits were sent in and the jury told to deliberate at
23 11:24 AM, November 19, 2010.)

24 (WHEREUPON: Alternate Juror Lynn
25 was escorted back into the courtroom at 11:26 AM,

REQUEST FROM JURY

1097

1 The defendant was not yet present.)

2 DEPUTY:

3 Order in the court. All Rise.

4 THE COURT:

5 Okay.

6 Mr. Hazzard, where is everyone
7 else?

8 MR. HAZZARD:

9 I don't know, Your Honor.

10 THE COURT:

11 Ms. Jo.

12 MS. GREEN:

13 You want me to go call them?

14 THE COURT:

15 Yes, if you would go back in --
16 no, back in here and see if you can find them.

17 COURT REPORTER:

18 Does anybody know what time the
19 jury had that question, because I didn't hear about it
20 until a second ago.

21 THE COURT:

22 Uh -- The jury -- you can put this
23 on the record -- At 12:30 PM, the jury handed me a note.

24 We had just had their lunch
25 delivered. It's now one o'clock.

1 Uh -- I asked them to let me know
2 as soon as they had had an opportunity to have their
3 lunch.

4 Uh -- The -- And -- And I have it
5 now, and we're waiting on the -- uh -- Solicitor to come
6 in.

7 Does that satisfy you Mr. Buckner?

8 COURT REPORTER:

9 Yes sir, Your Honor.

10 THE COURT:

11 Okay.

12 COURT REPORTER:

13 That gives me something for the
14 record.

15 THE COURT:

16 Okay.

17 COURT REPORTER:

18 Would you like me to go ahead and
19 mark that as a Court's Exhibit while we're waiting?

20 THE COURT:

21 Yes.

22 WHEREUPON: THE JURY NOTE WAS

23 MARKED BY THE COURT REPORTER AS COURT'S EXHIBIT NUMBER 9.

24 COURT REPORTER:

25 Your Honor, this will be Court's

REQUEST FROM JURY

1099

1 Exhibit 9.

2 THE COURT:

3 See if you can call down to the
4 Solicitor's Office and get Ms. Livesay.

5 Uh -- Mr. Nobles, if you could
6 find someone who could get the -- uh -- defendant out for
7 me.

8 (WHEREUPON: Ms. Livesay came into
9 the courtroom at 1:05 PM, November 19, 2010, and
10 Defendant Elliott was escorted into the courtroom at 1:08
11 PM, November 19, 2010; and the following proceedings took
12 place.)

13 THE COURT:

14 All right.

15 Let the record reflect that the
16 defendant is now in the courtroom. So are counsel for --
17 uh -- the Defense.

18 How about Ms. Knowles? Does he
19 waive her presence, Mr. Hazzard? Does she need to be
20 here?

21 (WHEREUPON: Mr. Hazzard has a
22 brief conference with Defendant Elliott at the counsel's
23 table at 1:09 PM, November 19, 2010.)

24 MR. HAZZARD:

25 I've spoken with -- uh -- Mr.

1 Elliott. He indicates that he waived Ms. Knowles'
2 presence.

3 However, for the record, I have
4 just sent her a text message indicating --

5 THE COURT:

6 Okay.

7 MR. HAZZARD:

8 -- there's a question. And she's
9 probably on the way.

10 THE COURT:

11 All right.

12 Well, I don't think -- uh -- that
13 we have to have her here -- uh -- for this matter.

14 Uh -- I -- uh -- have before me a
15 -- a court -- uh -- question -- uh -- that was submitted
16 by the Foreman of the jury on -- at 12:30.

17 That was exactly the time that --
18 uh -- their lunch was delivered. So I spoke to the
19 Bailiff to have them go ahead and have their lunch.

20 It's now about 1:08.

21 Uh -- I didn't want them to miss
22 their lunch while it was still hot.

23 Uh -- But now we're on the record.

24 And what they have asked is that
25 -- uh -- they be allowed to listen to the 911 tape.

REQUEST FROM JURY

1101

1 Uh -- The Foreman passed out the
2 -- the tape itself. They don't have any way of playing
3 it of course in the juryroom.

4 And I have the 911 tape, which was
5 admitted into evidence as State's Exhibit Number 1.

6 Uh -- I'll hear you on that
7 request, Mr. -- uh -- uh -- Hazzard.

8 (No response.)

9 THE COURT:

10 Any objection to it? Can -- Can
11 you see of any objection?

12 MR. HAZZARD:

13 No. It's in evidence, Your Honor.

14 THE COURT:

15 State?

16 MS. LIVESAY:

17 No. I'll play it, -- uh --.

18 THE COURT:

19 All right.

20 Second part is:

21 Please -- uh -- phone records for

22 **Complaining** cell.

23 Now, my understanding is that was
24 never placed into evidence; was it?

25 MR. HAZZARD:

1 No sir.

2 THE COURT:

3 Is that right, Ms. -- uh --

4 MS. LIVESAY:

5 Yes sir. It not placed in
6 evidence.

7 THE COURT:

8 Well, I will instruct -- uh -- the
9 -- uh -- the -- the jury that we will be happy to play
10 the 911 tape for them.

11 If you would start getting that
12 ready.

13 MS. LIVESAY:

14 I will.

15 THE COURT:

16 And I will further instruct them
17 that:

18 Because the -- the records were
19 not in -- or not placed into evidence, that -- uh -- it
20 would be inappropriate to provide them now.

21 However, they --

22 MS. LIVESAY:

23 No, not for the 911 tape (trails
24 off to inaudible) --

25 THE COURT:

REQUEST FROM JURY

1103

1 Pardon?

2 COURT REPORTER:

3 What did you say? I'm sorry.

4 MS. LIVESAY:

5 He was asking about the screen.

6 We don't need it for the 911 tape.

7 THE COURT:

8 All right.

9 I -- I was going to tell them that
10 -- uh -- the phone records are not placed into evidence,
11 therefore they -- uh -- we cannot provide them with a
12 copy of the phone records; okay.

13 If you would, bring -- Any
14 objection to that, Mr. Hazzard?

15 MR. HAZZARD:

16 None from the Defense, Your Honor.

17 MS. LIVESAY:

18 No sir.

19 THE COURT:

20 Okay. All right

21 And this has been marked as
22 Court's Exhibit Number 9, the note itself.

23 MR. HAZZARD:

24 Or, out of an abundance of
25 caution, I guess I should say that I renew the objection

1 to the 911 tape --

2 THE COURT:

3 Okay.

4 MR. HAZZARD:

5 -- being published, Your Honor.

6 THE COURT:

7 Yes.

8 MR. HAZZARD:

9 Subject to previous objection.

10 THE COURT:

11 And that's preserved.

12 (WHEREUPON: The jury empanelled

13 in the case was escorted back into the courtroom at 1:12

14 PM, November 19, 2010; and was in fact present during the

15 following proceedings.)

16 THE COURT:

17 Mr. Bontya, I received your note.

18 I apologize for the delay in responding.

19 However, I understand that your

20 lunch was delivered at the same time this note was handed

21 out. And I certainly didn't want your lunch to get cold.

22 We of course are -- are here to

23 play the 911 tape for you. That's what you've requested.

24 Uh -- You also requested phone

25 records for **Complaining** cell phones.

REQUEST FROM JURY

1105

1 Let me advise you that those phone
2 records were not made an exhibit.

3 Uh -- They are not in the record.

4 Therefore, we -- it would be
5 inappropriate to provide them for you at this time; okay.

6 Uh -- Ms. Livesay, are you
7 prepared to play the tape for us?

8 MS. LIVESAY:

9 Yes, sir.

10 THE COURT:

11 Okay. Or the -- uh -- CD.

12 Uh -- Mr. Roth, if you would,
13 bring down -- uh -- the lights. And Heather, if you
14 could get the screen pulled --

15 MR. HAZZARD:

16 It's an audio --

17 MS. LIVESAY:

18 It's just audio, Your Honor.

19 THE COURT:

20 Oh, it's an audio. Okay.

21 I was thinking we had something --

22 (WHEREUPON; State's Exhibit

23 Number 1, the 911 tape, was again played for the jury in
24 open court, beginning at 1:14 PM, and concluding at 1:18
25 PM, November 19, 2010.)

1 THE COURT:

2 Is that all of it?

3 MS. LIVESAY:

4 That's the completion of the tape,
5 Your Honor.

6 THE COURT:

7 Your understanding as well, Mr.
8 Hazzard?

9 MR. HAZZARD:

10 That's my understanding, Your
11 Honor.

12 THE COURT:

13 All right.

14 Is that what you needed?

15 FOREPERSON:

16 (Nods in the affirmative.)

17 THE COURT:

18 Okay. Thank you very much.

19 (WHEREUPON: The jury empanelled
20 in the case withdrew from the courtroom at 1:19 PM,
21 November 19, 2010; to continue their deliberations.)

22 THE COURT:

23 All right. We're at ease.

24 (WHEREUPON: The court was
25 declared at ease to await the verdict in this at 1:18 PM,

VERDICT AND SENTENCING

1111

1 a verdict?

2 FOREPERSON:

3 Yes, Your Honor.

4 THE COURT:

5 And was it a unanimous verdict?

6 FOREPERSON:

7 Yes, it was.

8 THE COURT:

9 All right.

10 Madam clerk, would you please

11 received the verdict for me?

12 (WHEREUPON: The Clerk retrieved

13 the verdict form from Foreperson Bontya and handed the

14 form to The Court.)

15 THE COURT:

16 All right.

17 If you would, please publish.

18 CLERK:

19 Indictment Number 2009-GS-26-2889,

20 2890, 3471; 2010-GS-26-4327, State of South Carolina,

21 County of Horry, versus Mark Elliott.

22 As to the charge of kidnapping:

23 We the jury unanimously find the

24 defendant guilty.

25 As to the charge of criminal

1 sexual conduct:

2 We the jury unanimously find the
3 defendant not guilty.

4 As to the charge of criminal
5 sexual conduct with a minor second degree:

6 We the jury unanimously find the
7 defendant not guilty.

8 As to the charge of failure to
9 stop for blue light:

10 We the jury unanimously find the
11 defendant not guilty.

12 Signed by the Foreperson, 35,
13 George Bontya, dated 11/19/2010.

14 Ladies and gentlemen of the jury,
15 if this is your verdict, so signify by raising your right
16 hand.

17 (WHEREUPON: All jurors raised
18 their right hand to affirm this was their verdict.)

19 THE COURT:

20 Let the record reflect that each
21 juror has responded affirmatively.

22 Will there be a request for
23 individual polling -- uh -- Mr. Hazzard?

24 MR. HAZZARD:

25 Defense does request individual

VERDICT AND SENTENCING

1113

1 polling, Your Honor.

2 THE COURT:

3 All right.

4 Madame Clerk, if you would.

5 CLERK:

6 Okay.

7 When I call you names, if you

8 please stand?

9 Juror Number 300, Theron Shields,

10 Jr.

11 (WHEREUPON: The juror stood in
12 response to the Clerk.)

13 CLERK:

14 Is this your verdict?

15 JUROR SHIELDS:

16 Yes, it is.

17 CLERK:

18 Is this still your verdict?

19 JUROR SHIELDS:

20 Yes, it is.

21 CLERK:

22 Thank you.

23 92, Jennifer Dereani.

24 (WHEREUPON: The juror stood in
25 response to the Clerk.)

1 CLERK:

2 Is this your verdict?

3 JUROR DEREANI:

4 Yes ma'am, it is.

5 CLERK:

6 Is it still your verdict?

7 JUROR DEREANI:

8 Yes ma'am, it is.

9 CLERK:

10 Thank you.

11 150, Stephen Heher.

12 (WHEREUPON: The juror stood in
13 response to the Clerk.)

14 CLERK:

15 Is this your verdict?

16 JUROR HEHER:

17 Yes ma'am.

18 CLERK:

19 Is it still your verdict?

20 JUROR HEHER:

21 Yes ma'am.

22 CLERK:

23 Thank you.

24 211, Lynn Lipinski.

25 (WHEREUPON: The juror stood in

VERDICT AND SENTENCING

1115

1 response to the Clerk.)

2 CLERK:

3 Is this your verdict?

4 JUROR LIPINSKI:

5 Yes, it is.

6 THE COURT:

7 Is it still your verdict?

8 JUROR LIPINSKI:

9 Yes, it is.

10 CLERK:

11 Thank you.

12 346, Kenneth Vaught, Jr.

13 (WHEREUPON: The juror stood in

14 response to the Clerk.)

15 CLERK:

16 Is this your verdict?

17 JUROR VAUGHT:

18 Yes, it is.

19 CLERK:

20 Is it still your verdict?

21 JUROR VAUGHT:

22 Yes, it is.

23 CLERK:

24 Thank you.

25 238, Stephen Mishoe.

1 (WHEREUPON: The juror stood in
2 response to the Clerk.)
3 CLERK:
4 Is this your verdict?
5 JUROR MISHOE:
6 Yes, it is.
7 CLERK:
8 Is it still your verdict?
9 JUROR MISHOE:
10 Yes, it is.
11 CLERK:
12 Thank you.
13 204, Daniel Ku -- Ku --
14 JUROR KUKIELKA:
15 Kulkielka.
16 CLERK:
17 Thank you.
18 (WHEREUPON: The juror stood in
19 response to the Clerk.)
20 CLERK:
21 Is this is your verdict?
22 JUROR KUKIELKA:
23 Yes, it is.
24 CLERK:
25 Is this still your verdict?

VERDICT AND SENTENCING

1117

1 JUROR KUKIELKA:

2 Yes, it is.

3 CLERK:

4 Thank you.

5 350, Darryl Vick.

6 (WHEREUPON: The juror stood in
7 response to the Clerk.)

8 CLERK:

9 Is this your verdict?

10 JUROR VICK:

11 Yes, it is.

12 CLERK:

13 Is this still your verdict?

14 JUROR VICK:

15 Yes, it is.

16 CLERK:

17 Thank you.

18 35, George -- George Bontya.

19 (WHEREUPON: The juror stood in
20 response to the Clerk.)

21 CLERK:

22 Is this your verdict?

23 FOREPERSON BONTYA:

24 Yes, ma'am.

25 CLERK:

1 Is it still your verdict?

2 FOREPERSON BONTYA:

3 Yes, it is.

4 CLERK:

5 Thank you.

6 CLERK:

7 313. Charles Spain.

8 (WHEREUPON: The juror stood in
9 response to the Clerk.)

10 CLERK:

11 Is this your verdict?

12 JUROR SPAIN:

13 Yes, it is.

14 CLERK:

15 Is this still your verdict?

16 JUROR SPAIN:

17 Yes, it is.

18 CLERK:

19 Thank you.

20 22, Billy Baldwin.

21 (WHEREUPON: The juror stood in
22 response to the Clerk.)

23 JUROR BALDWIN:

24 Yes.

25 CLERK:

VERDICT AND SENTENCING

1119

1 Is this still your -- Is this your
2 verdict?

3 JUROR BALDWIN:

4 Yes ma'am.

5 CLERK:

6 Is it still your verdict?

7 JUROR BALDWIN:

8 Yes ma'am.

9 CLERK:

10 Thank you.

11 4, Christopher Alley.

12 (WHEREUPON: The juror stood in
13 response to the Clerk.)

14 CLERK:

15 Is this your verdict?

16 JUROR ALLEY:

17 Yes.

18 CLERK:

19 Is it still your verdict?

20 JUROR ALLEY:

21 Yes.

22 CLERK:

23 Thank you.

24 (WHEREUPON: The individual

25 polling of the jury was completed by 2:36 PM, November

1 19, 2010, and all members reaffirmed their verdict
2 individually in open court.)

3 THE COURT:

4 Yes sir.

5 All right, Mr. -- uh -- Hazzard, I
6 will hear you on motions.

7 MR. HAZZARD:

8 At this time, Your Honor, the
9 Defense makes a motion for a new trial with regard to the
10 indictment for kidnapping.

11 The position of the Defense is
12 that:

13 The evidence produced at trial was
14 insufficient for the jury to return a verdict of guilty
15 on that charge, Your Honor.

16 THE COURT:

17 All right.

18 And I would respectfully deny your
19 motion.

20 I think there was ample evidence
21 to support the jury's finding -- uh -- in this matter.

22 And I, as I said, will deny your motion.

23 All right.

24 Is there any -- uh -- reason why
25 we would not go directly into sentencing?

1 -- let me say that I have been handed up a -- uh -- what
2 purports to be a true certified copy from Superior -- the
3 Clerk of Superior Court of Columbus County bearing a seal
4 indicating that Mark Alan Elliott -- uh -- was charged
5 with first-degree burglary, and was convicted of first-
6 degree -- uh -- burglary in that jurisdiction.

7 He was charged with first-degree
8 sexual offense.

9 He was convicted of second-degree
10 sexual offense.

11 He was charged with a second
12 first-degree sexual offense. Convicted of second -- He
13 was charged with first-degree and convicted of second-
14 degree sexual offense.

15 And it would look like these all
16 have the same filing date.

17 Is that correct?

18 MS. LIVESAY:

19 Yes, sir, Your Honor.

20 THE COURT:

21 They all rose out of one event?

22 MS. LIVESAY:

23 Yes sir, they are.

24 THE COURT:

25 So I would only consider them as a

1 single event?

2 MS. LIVESAY:

3 Yes --

4 THE COURT:

5 Also, kidnapping in the second
6 degree was a charge; conviction of -- of second-degree
7 kidnapping.

8 Common-law robbery was another
9 charge, and conviction of common-law robbery, all
10 appearing to be out of a single event.

11 And the thing that con -- that
12 gives me -- uh -- concern that I believe would -- uh --
13 call for sentencing under the life without parole statute
14 would be the conviction for burglary in the first-degree,
15 Mr. Hazzard.

16 And that was the one that I will
17 consider.

18 I -- Here are the copies -- I
19 mean, the -- uh -- the -- uh -- certified copies.

20 I'll let you look at those.

21 MR. HAZZARD:

22 Thank Your Honor.

23 MS. LIVESAY:

24 Your Honor --

25 MR. HAZZARD:

1 her mind, but I would have certainly imagined that she
2 thought that she was probably going to be killed -- uh --
3 before she was released.

4 That's the way these things
5 usually end up.

6 Uh -- As to the matter of sexual
7 assault, perhaps you did not penetrate her. But I think
8 you had all intentions of doing it.

9 And I'm going to sentence you
10 accordingly.

11 Uh -- The sentence of The Court;
12 that:

13 You be confined to the State
14 Department of Corrections for a period of 30 years, which
15 I believe is the maximum sentence that I can give you
16 under kidnapping.

17 Thank you, sir.

18 MS. LIVESAY:

19 Thank Your Honor.

20 THE COURT:

21 Ladies and gentlemen of the jury,
22 it has been a pleasure to have you in my courtroom.

23 Uh -- I hope that this has been an
24 informative, a learning experience that you have -- you
25 have enjoyed.



Your Rights

- ✓ You have the right to remain silent
- ✓ Anything you say can and will be used against you in a court of law
- ✓ You have the right to talk to a lawyer and have him present with you while you are being questioned
- ✓ If you cannot afford to hire a lawyer, one will be appointed to represent you before any questioning, if you wish one
- ✓ If you desire to make a statement or answer questions, you have the right to stop at any time

This is to certify that the above rights have been explained to me and I understand each one of them

Signed: *P. M. L. S. D.*

Waiver of Rights

I am willing to make a statement at this time. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

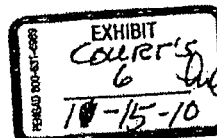
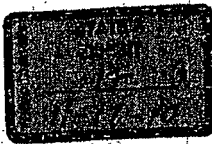
Signed: *P. M. L. S. D.*

This is to certify that I have received a copy of the above

Signed: *P.*

Witness as to defendant's signatures: *Victor P. De*

Date and time: 6-28-2009 @ 3:04



DOCKET NO. 2009-GS-26- 2889

The State of South Carolina

County of Horry

CERTIFIED COPY

Nancy Livesay

2010 NOV 24 AM 10:43

COURT OF GENERAL SESSIONS

CLERK OF COURT
HORRY COUNTY

JULY, 2009 TERM

THE STATE

vs.

Mark A Elliott

B/ M

DOB:
SSN:

ATTORNEY:

Indictment for

KIDNAPPING

J. Gregory Hembree, Solicitor

 ORIGINAL

WITNESSES

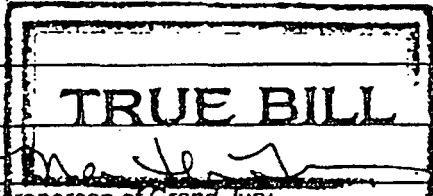
Vant Abercrombie North Myrtle Beach Police
Department

2010 NOV 24 AM 10:43
MELANIE HUGGINS-ROBERTS
CLERK OF COURT

ARREST WARRANT NUMBER

J741607
CDR: 0095 16-03-0910
DOA: 6/29/2009

ACTION OF GRAND JURY


TRUE BILL
Foreperson of Grand Jury

Date: JUL 30 2009

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

FILED
HORRY COUNTY
2010 NOV 24 AM 10:41
MELANIE HUGHES-2010
CLERK OF COURT

At a Court of General Sessions, convened on July 30, 2009, the Grand Jurors of Horry County present upon their oath:

KIDNAPPING

CDR: 0095 16-03-0910

That **Mark A Elliott**, did in Horry County, State of South Carolina, on or about June 29, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J. Gregory Hembree
J. GREGORY HEMBREE
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY
2010 NOV 24 AM 10:43
MELANIE HUGHES-2010
CLERK OF COURT
HORRY COUNTY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

August 20th, 2012

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", with a long horizontal flourish extending to the right.

Breen Richard Stevens
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT