

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH COBB,

APPELLANT

Appellate Case No. 2011-188247

RECORD ON APPEAL

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

CHRISTINA J. CATOE
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

BARRY BARNETTE
Solicitor, Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street, 3rd Floor
Spartanburg, SC 29306-2335
(864) 596-2575

Attorneys for Respondent

RECEIVED
AUG 28 2012
SC Court of Appeals

INDEX

INDEX	i
TRIAL TRANSCRIPT	1
JURY QUALIFICATION	9
OPENING STATEMENTS BY MS. JORDAN	11
OPENING STATEMENTS BY MR. WHELCHER	15
TESTIMONY	
COMPLAINING WITNESS	
Direct Examination by Ms. Jordan	20
Cross Examination by Mr. Whelchel	32
Redirect Examination by Ms. Jordan	43
DANIELLE SPIVEY	
Direct Examination by Ms. Jordan	45
Cross Examination by Mr. Whelchel	50
TIMOTHY LEE BISHOP	
Direct Examination by Ms. Jordan	51
Cross Examination by Mr. Whelchel	54
SUE MOBLEY	
Direct Examination by Ms. Jordan	55
PATRICIA A. RAMSEY	
Direct Examination by Ms. Jordan	60
Cross Examination by Mr. Whelchel	69
ROBERT SHAFFER	
Direct Examination by Ms. Jordan	70
MARGARET GREER	
Direct Examination by Ms. Jordan	72
Cross Examination by Mr. Whelchel	73
TAMMY CLAWSON	
Direct Examination by Ms. Jordan	74

ANITA MULLINAX	
Direct Examination by Ms. Jordan.....	75
Cross Examination by Mr. Welchel.....	78
DAVID HOGSED	
Direct Examination by Ms. Jordan.....	80
Cross Examination by Mr. Welchel.....	86
ROBERT ROSENBURG	
Direct Examination by Ms. Jordan.....	87
Cross Examination by Mr. Welchel.....	88
Redirect Examination by Ms. Jordan.....	89
Recross Examination by Mr. Welchel.....	90
LYNN McMILLAN	
Direct Examination by Ms. Jordan.....	92
Cross Examination by Mr. Welchel.....	99
JOHN WESTMORELAND	
Direct Examination by Ms. Jordan.....	100
Cross Examination by Mr. Welchel.....	101
SHERRI BROWN	
Direct Examination by Ms. Jordan.....	102
Cross Examination by Mr. Welchel.....	104
JASPER HUMBERT	
Direct Examination by Ms. Jordan.....	105
Cross Examination by Mr. Welchel.....	116
Redirect Examination by Ms. Jordan.....	120
NICKI CANTRELL	
Direct Examination by Ms. Jordan.....	121
Cross Examination by Mr. Welchel.....	146
Redirect Examination by Ms. Jordan.....	153
Recross Examination by Mr. Welchel.....	154
CLOSING ARGUMENT BY MS. JORDAN.....	165
CLOSING ARGUMENT BY MR. WELCHEL.....	181
JURY CHARGE.....	190
VERDICT.....	207

SENTENCE.....	211
INDICTMENT	215
SENTENCING SHEET	217
STATE'S EXHIBIT 10, DEFENDANT'S 1 ST WRITTEN STATEMENT	218
CERTIFICATE OF COUNSEL.....	219

**** STATE'S EXHIBIT 12, DVD OF DEFENDANT'S 2ND STATEMENT TO POLICE, HAS BEEN TRANSPORTED TO THE SOUTH CAROLINA COURT OF APPEALS.****

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Joseph Gabriel Cobb,) 2007-GS-42-3875
7 Defendant.) March 9 - 10, 2011.
8) Spartanburg, South Carolina
9
10
11 B E F O R E:
12 HONORABLE J. DERHAM COLE, JUDGE; and a jury
13
14
15 A P P E A R A N C E S:
16 JENNIFER A. J. JORDAN, ESQUIRE
17 Attorney for the State
18 RICHARD H. WHELCHER, ESQUIRE
19 Attorney for the Defendant
20
21
22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	Complaining Witness (SW)	
4	Direct examination by Ms. Jordan	48
5	Cross-examination by Mr. Whelchel	60
6	Redirect examination by Ms. Jordan	71
7	DANIELLE SPIVEY (SW)	
8	Direct examination by Ms. Jordan	73
9	Cross-examination by Mr. Whelchel	78
10	TIMOTHY LEE BISHOP (SW)	
11	Direct examination by Ms. Jordan	79
12	Cross-examination by Mr. Whelchel	82
13	SUE MOBLEY (SW)	
14	Direct examination by Ms. Jordan	83
15	PATRICIA A. RAMSEY (SW)	
16	Direct examination by Ms. Jordan	88
17	Cross-examination by Mr. Whelchel	97
18	ROBERT SHAFFER (SW)	
19	Direct examination by Ms. Jordan	98
20	MARGARET GREER (SW)	
21	Direct examination by Ms. Jordan	100
22	Cross-examination by Mr. Whelchel	101
23	TAMMY CLAWSON (SW)	
24	Direct examination by Ms. Jordan	102
25		

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	ANITA MULLINAX (SW)	
4	Direct examination by Ms. Jordan	103
5	Cross-examination by Mr. Whelchel	106
6	DAVID HOGSED (SW)	
7	Direct examination by Ms. Jordan	108
8	Cross-examination by Mr. Whelchel	114
9	ROBERT ROSENBERG (SW)	
10	Direct examination by Ms. Jordan	114
11	Cross-examination by Mr. Whelchel	116
12	Redirect examination by Ms. Jordan	117
13	Recross-examination by Mr. Whelchel	118
14	LYNN McMILLAN (SW)	
15	Direct examination by Ms. Jordan	121
16	Cross-examination by Mr. Whelchel	128
17	JOHN WESTMORELAND (SW)	
18	Direct examination by Ms. Jordan	128
19	Cross-examination by Mr. Whelchel	130
20	SHERRI BROWN (SW)	
21	Direct examination by Ms. Jordan	130
22	Cross-examination by Mr. Whelchel	133
23		
24		
25		

1	<u>INDEX</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	JASPER HUMBERT (SW)	
4	Direct examination by Ms. Jordan	134
5	Cross-examination by Mr. Whelchel	145
6	Redirect examination by Ms. Jordan	149
7	NICKI CANTRELL (SW)	
8	Direct examination by Ms. Jordan	151
9	Cross-examination by Mr. Whelchel	176
10	Redirect examination by Ms. Jordan	183
11	Recross-examination by Mr. Whelchel	184
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	Jury qualification	9
2	Jury sworn	26
3	Opening statements	31
4	Closing arguments	195
5	Jury charge	220
6	Verdict	237
7	Sentence	241
8	Certificate	244
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-1	Photograph	47	51
4	S-2	Photograph	47	53
5	S-3	Photograph	47	53
6	S-4	Photograph	47	53
7	S-5	Photograph	47	53
8	S-6	Photograph	47	53
9	S-7	Photograph	47	53
10	S-8	Photograph	47	53
11	S-9	Miranda form	47	158
12	S-10	Written statement	47	164
13	S-11	Miranda form	47	172
14	S-12	Statement on video	47	174
15	S-13	Defendant's buccal swab	47	136
16	S-14	Victim's swab of left breast	47	95
17	S-15	Victim's swab of right breast	47	95
18	S-16	Victim's swab of left neck	47	95
19	S-17	Victim's swab of mid lower abdomen	47	95
20	S-18	Victim's swab of mid center chest	47	95
21	S-19	Victim's swab of right side neck	47	95
22	S-20	Victim's swab of vagina	47	95
23	S-21	Oral swab of victim	47	96
24	S-22	Victim's standard	47	96
25	S-23	Victim's fingernail scrapings	47	96

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-24	Victim's fingernail scrapings	48	96
S-25	SLED DNA report	144	144
S-26	Underwear		97

1	<u>EXHIBITS</u>		
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u> <u>EV.</u>
3	C-1	Notice of life sentence	241
4	C-2	Affidavit	241
5	C-3	Affidavit	241
6	C-4	Affidavit of service	241
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Jury qualification

1 (Proceedings March 9, 2011)

2 THE COURT: Are there any matters we need to address
3 prior to jury selection?

4 MS. JORDAN: Nothing from the state, Your Honor.

5 MR. WHELCHER: No, sir.

6 THE COURT: All right. Bring the panel around,
7 please.

8 (The following takes place in the presence of the jury
9 venire.)

10 THE COURT: Good morning, ladies and gentlemen of the
11 jury panel.

12 We are ready to begin with jury selection in the next
13 case that's going to require some of your participation.
14 The title of this case is Joseph Gabriel Cobb.

15 Mr. Cobb has been accused by the prosecutor with
16 having committed the crime of criminal sexual conduct with
17 a minor in the second degree.

18 The state alleges by way of an indictment that the
19 defendant did here in Spartanburg County on or about
20 June -- July the 10th of 2007 commit the crime of criminal
21 sexual conduct with a minor in the second degree in that he
22 did commit a sexual battery upon Complaining Witness who was a
23 person under the age of -- or at least 16 years of age, but
24 more than 14 years of age at the time of the event, and
25 that he was older than she.

Jury qualification

1 THE COURT: Any other questions requested by the
2 state?

3 MS. JORDAN: No, sir, Your Honor.

4 THE COURT: The defendant?

5 MR. WHELCHER: None, Your Honor.

6 THE COURT: All right. Has everybody in this panel
7 participated in jury selection in a criminal case? You
8 know, Monday was a civil case. Judge Hayes picked a jury
9 next door I think this morning. That was a criminal case,
10 and this is a criminal case over here. So everybody knows
11 you got to come forward and face.

12 Okay. All right. As your name is called please come
13 forward. Each side -- the bailiff will show you where.
14 And if both agree to have you seated you will be having a
15 seat in the jury box to your right and to my left.

16 (Whereupon, a jury was impaneled.)

17 THE COURT: Those selected, please go with the bailiff
18 to the jury room, and I will bring you back in just a few
19 minutes.

20 (The following takes place outside the presence of the
21 jury.)

22 THE COURT: Are there any matters that need to be
23 addressed regarding jury selection by the state?

24 MS. JORDAN: No, sir, Your Honor.

25 THE COURT: The defendant?

1 MR. WHELCHER: None, Your Honor.

2 (Whereupon, the remaining members of the jury venire
3 were excused.)

4 THE COURT: Any matters to address prior to the jury
5 being sworn?

6 MS. JORDAN: None from the state, Your Honor.

7 MR. WHELCHER: No, sir.

8 THE COURT: All right. Bring the jury in. Ask
9 Mr. Coley to take the foreperson's seat -- Mr. Coley.

10 (The following takes place in the presence of the
11 jury.)

12 THE COURT: All right. Ladies and gentlemen, we are
13 ready to begin with the trial.

14 Mr. Coley, I'm going to ask you to serve as the
15 foreperson of the jury. As the foreperson you'll have
16 three duties none of the other jurors will have.

17 First, you're going to be asked to serve as the
18 spokesperson for the jury. And so if during this trial
19 something arises that needs to be brought to my attention,
20 you or a fellow juror has some difficulty, problem or
21 question, it'll be you who will let me know of that fact.
22 And I'll try to address it.

23 Secondly, you're going to be called upon to preside
24 over jury deliberations when the time comes. That of
25 course won't be until the end of the trial after all of the

Opening statements

1 now as they give you their opening statements.

2 Ms. Jordan.

3 MS. JORDAN: Your Honor, may I approach?

4 THE COURT: Yes.

5 (Bench conference held off the record in the presence
6 of the jury but out of the hearing of the jury.)

7 MS. JORDAN: May it please the Court.

8 THE COURT: Ms. Jordan.

9 MS. JORDAN: Ladies and gentlemen of the jury, as
10 you've heard, this is a case involving the defendant. He
11 is charged with criminal sexual conduct with a minor in the
12 second degree.

13 The victim in this case was 15 years old back on
14 July the 10th of 2007. She's seated just behind me here.

15 The defendant and the victim knew each other. The
16 defendant is related to the victim's dad. They're distant
17 cousins. They knew each other. They'd spent time
18 together. She was over at his house on several occasions,
19 vice versa. They were family.

20 On the night of or on the day of July the 9th of 2010
21 the victim, Complaining went over to the defendant's home
22 that he shared with his wife, Jeannie Cobb.

23 The judge told you that was on Country Club Road. She
24 went over there to babysit their kids. They had three
25 children at the time.

Opening statements

1 Later on that night the defendant and the victim I
2 believe went to some -- I'm sorry. The defendant and his
3 wife went to brother's house and came back. All the kids
4 were in one bedroom. And you'll hear from testimony that
5 inside of one of the bedrooms there was a regular bed or a
6 twin bed, and then on the floor was a mattress.

7 You're going to hear that everybody was watching some
8 movies, and then it was time to go to bed. After midnight
9 the victim and the defendant's five-year-old son were
10 laying in the twin bed. The defendant and his wife were
11 down on the mattress on the floor.

12 The victim got up at some point after midnight, the
13 morning of July the 10th, and went to the bathroom to take
14 a shower. She said it was nothing unusual, that she'd done
15 before. She waited until the five-year-old Son had
16 fallen asleep.

17 She got up to take a shower. The bathroom was just
18 outside the bedroom door.

19 When she got out of the bathroom the defendant walked
20 in. She said he walked in and pushed her down on the
21 ground and held her down and penetrated her with his penis
22 in her vagina.

23 You're going to hear from Complaining She's going to
24 tell you about what happened that night in the bathroom at
25 that residence when she was 15.

Opening statements

1 Ladies and gentlemen, she went the next day. The next
2 day she was taken home to her dad and his live-in
3 girlfriend. They'd been together over ten years. She was
4 taken home to them.

5 The first thing she did when she walked in she told
6 her step-mom, Danielle, what happened.

7 She was taken to the emergency room where a rape kit
8 was performed on her. She spoke to nurses there that
9 night; she spoke to law enforcement that night. She later
10 went to the Children's Advocacy Center. And you're going
11 to hear from various people that she spoke to.

12 Ladies and gentlemen, in addition to what you're going
13 to hear from Complaining you're also going to hear from the
14 nurses who treated her that night, you're going to hear
15 from law enforcement officers who spoke with Complaining and
16 who spoke to the defendant.

17 You're also going to hear from individuals from the
18 state law enforcement division, or SLED as we call them.
19 And they're going to talk to you about what they found in
20 Complaining rape kit when it was sent down and tested by
21 them.

22 Ladies and gentlemen, we do have to prove beyond a
23 reasonable doubt to prove every element of criminal sexual
24 conduct with a minor in the second degree.

25 Criminal sexual conduct with a minor in the second

Opening statements

1 degree, we have to prove that the defendant committed a
2 sexual battery on the victim and that she was, as the judge
3 told you, between 14 and 16. You're going to hear she was
4 15. You're going to hear the defendant was older than her.
5 He was in his 40's at that time.

6 Sexual battery is any intrusion, however slight, in
7 the vaginal or oral or anal area of the victim. Just
8 remember any intrusion, however slight, is a sexual
9 battery.

10 One thing that I love about the criminal justice
11 system is that no one asks the members of the jury to check
12 their common sense at the courthouse steps, because you get
13 to bring that in here and collectively as a group of 12
14 listen to the facts, listen to all the evidence that's
15 presented and make a decision.

16 This is one of the things I love, that you get to come
17 in here with your common sense. And I'm going to ask that
18 you listen to all that you hear, to the officers, to the
19 victim, to the nurses, to everything in this case. And at
20 the end I'll be back to talk to you and ask you to return a
21 verdict of guilty.

22 THE COURT: Mr. Whelchel.

23 MR. WHELCHER: Mr. Foreman and ladies and gentlemen of
24 the jury, I represent Joseph Cobb, as you've already been
25 told. But what you need to understand I think the judge

Opening statements

1 has already told you, but I need to emphasize this at this
2 point.

3 Joseph Cobb is not guilty -- Joseph Cobb is not
4 guilty. Every person who sits at that table or a table
5 like that in courtrooms across this state and country is
6 presumed innocent under the law of our land -- presumed
7 innocent under the law of our land.

8 Now, the burden of proving -- as the judge has told
9 you earlier -- the burden of proving that somebody is
10 guilty lies with the state. That's why you see the state
11 and all of these witnesses and all of these people from the
12 police department and SLED and everywhere else, because
13 they have to prove to you and you and you and all of you as
14 a collective body that what they say in this indictment
15 actually happened and that Joseph Cobb did what they say
16 that he did.

17 Now, because they have the burden of proof they are
18 required obviously to go first. And you'll hear from all
19 of their witnesses.

20 The judge has already told you this. Joseph Cobb
21 doesn't have to testify. Joseph Cobb doesn't have to put
22 up any witnesses or any kind of paperwork.

23 Joseph Cobb has no burden of proof, no burden of any
24 kind whatsoever today and as we go throughout this trial.
25 You need to understand that. There can't be questions,

Opening statements

1 well, what if, why didn't. He is not required to prove
2 anything to you.

3 The prosecutor and I have known each other for a
4 while. We don't need to talk about how long. And we do
5 agree on this. When he walked in that door and on Monday
6 when you were sworn in or selected as a jury panel, and
7 then today when you were sworn in for this one, we do not
8 want your common sense checked at that door.

9 That's why there's 12 of you. That's why we don't
10 have a bunch of lawyers decide this all of the time,
11 because you couldn't get 12 lawyers to agree that I'm fat.
12 Pretty obvious. But you couldn't get them to do it. Well,
13 maybe if I picked them you could.

14 But that's why you're here. You're here because
15 there's a dispute. Obviously, if we didn't have a dispute,
16 if there were no disagreement, we wouldn't need you.

17 And simply because the state has said that this
18 happened does not mean that it happened or that it happened
19 in the way that they say it happened or that it happened at
20 all, because the state has the burden of proving to you
21 with evidence so strong and so convincing that it removes
22 the cloak or the presumption of innocence from Joe Cobb.

23 That's their burden. They have to prove to you as a
24 collective body of 12 and individually that what they say
25 happened, how is it it happened, and when they say it

Opening statements

1 happened.

2 There are elements that they must prove to you. Those
3 are simply the requirements of a particular crime. And
4 they must prove all of those to you.

5 You'll hear a charge from the judge at the end of this
6 case. He's already told you some of the stuff that I'm
7 talking about. But what we need for you is simply this --
8 your attention, your common sense, because you are the
9 deciders of the facts.

10 Just because somebody said this happened this way
11 doesn't mean it did. You decide what you believe. And the
12 judge I think may have already told you. You can decide to
13 believe part of what a witness says and not believe another
14 part of what a witness says. But if he hasn't told you
15 that already I'm sure he will at the closing charge.

16 So that's why you're here. You listen to the facts.
17 Everybody has got a job here. The judge determines what
18 the law is. You determine what the facts are by listening
19 to testimony and whatever is put in as physical evidence
20 and then deciding does this add up, do I believe this.

21 And there's no magic formula. You decide today and in
22 the coming days on this case whether or not you believe
23 something or someone the same way you decide it every day
24 when you're talking to your husbands or wives or sisters or
25 brothers or coworkers or children. It's kind of like, you

Opening statements

1 know, when you're -- I had this happen to me recently. I
2 had my son. I was having some problems with my car, and so
3 he came and picked me up -- came and picked me up in the
4 truck, and I was in the car. And we got it jumped off.

5 When I left the parking lot the car was fine, I mean,
6 the truck was fine. But when he got it home somebody had
7 hit the back end of the truck. I didn't notice it when I
8 went out to see earlier. And he says, well, I didn't do
9 it. Kind of suspect.

10 That's what you do. That paint didn't just jump off
11 my truck. Something happened to it. It's obvious.

12 But that's your job. You decide what you believe or
13 if you believe it or if you think everything that is
14 alleged has happened the way it's presented to you or if
15 there's another reason possibly that somebody might be
16 telling you this. And ultimately it is your job to deliver
17 a verdict, a unanimous verdict. All 12 of you must agree.
18 If you listen to what's presented and then listen to what
19 the judge tells you the law is you can reach a verdict in
20 this case.

21 Verdict just means to speak the truth. It's a
22 combination of two Latin words. That's all I ask of you.
23 Listen to what's testified or what's alleged through
24 testimony. And remember while all of this is going on
25 Joseph Cobb is innocent. He's not guilty by law. Thank

Complaining Witness

Direct examination by Ms. Jordan

1 marked State's Exhibit No. 17 for Identification; victim's
2 swab of mid center chest marked State's Exhibit No. 18 for
3 Identification; victim's swab of right side neck marked
4 State's Exhibit No. 19 for Identification; victim's swab of
5 vagina marked State's Exhibit No. 20 for Identification;
6 oral swab of victim marked State's Exhibit No. 21 for
7 Identification; victim's standard marked State's Exhibit
8 No. 22 for Identification; victim's fingernail scrapings
9 from left hand marked State's Exhibit No. 23 for
10 Identification; victim's fingernail scrapings from right
11 hand marked State's Exhibit No. 24 for Identification.)

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Good afternoon, ladies and gentlemen.

15 We are ready to begin with the reception of evidence,
16 so we'll begin with the state's presentation.

17 Ms. Jordan.

18 MS. JORDAN: Thank you, Your Honor. The state's first
19 witness is Complaining Witness

20 Complaining Witness having
21 been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MS. JORDAN

23 Q Will you state your full name for the jury?

24 A Complaining Witness

25 Q What is your date of birth?

Complaining Witness

Direct examination by Ms. Jordan

- 1 A March 23rd, 1992.
- 2 Q Okay. How old are you now?
- 3 A I'm 18.
- 4 Q Okay. Back in July of 2007 how old were you?
- 5 A Fifteen.
- 6 Q Okay. In July of 2007 who did you live with?
- 7 A I lived with -- I was back and forth. I lived with my
- 8 mother and my father. They had joint custody.
- 9 Q Okay. Who else lived with your dad?
- 10 A My step-mother and my brother at the time.
- 11 Q Okay. What is your dad's name?
- 12 A Timothy Bishop.
- 13 Q What is your step-mom's name?
- 14 A Danielle Spivey.
- 15 Q Okay. Now, if I understand, your dad and step-mom are
- 16 not married, they just lived together for a while.
- 17 A Yes, ma'am.
- 18 Q Okay. Do you know the defendant, Joe Cobb?
- 19 A Yes, ma'am.
- 20 Q How do you know him?
- 21 A He is my father's first cousin, so my second.
- 22 Q Okay. So you guys are related by blood?
- 23 A Yes, ma'am.
- 24 Q Okay. Were you -- was your dad close to the
- 25 defendant?

Complaining Witness

Direct examination by Ms. Jordan

- 1 A Yes, ma'am.
- 2 Q Okay. Did you spend time with the defendant?
- 3 A Yes, ma'am.
- 4 Q Did you spend time at his home?
- 5 A Yes, ma'am.
- 6 Q Okay. Could you tell the jury, back in July of 2007,
- 7 who lived at the house with the defendant?
- 8 A Him, his wife Jeannie, their son, Son and their
- 9 daughters Daughter and Daughter2
- 10 Q Okay. Approximately how old were Son Daughter and
- 11 Daughter2
- 12 A Five.
- 13 Q Who was five?
- 14 A Son
- 15 Q Okay. Daughter was?
- 16 A I believe she was six or seven.
- 17 Q Okay. And --
- 18 A And Daughter was nine.
- 19 Q Okay. Did you see the defendant regularly?
- 20 A Yes, ma'am.
- 21 Q Okay. And you also visited his home?
- 22 A Yes, ma'am.
- 23 Q On July the 9th of 2007 did you go to the defendant's
- 24 home?
- 25 A Yes, ma'am.

Complaining Witness

Direct examination by Ms. Jordan

1 Q Okay. I'm going to show you what's previously been
2 marked as State's Exhibit No. 1 and ask if you recognize
3 this photograph.

4 A Yes, ma'am.

5 Q Okay. Could you tell me what this is a photograph of?

6 A It's a photograph of their home.

7 Q Okay. Is this the house that you went to on July the
8 9th of 2007?

9 A Yes, ma'am.

10 MS. JORDAN: Your Honor, at this time the state would
11 move to admit State's Exhibit No. 1.

12 MR. WHELCHER: No objection, Your Honor.

13 THE COURT: It's admitted.

14 (Photograph marked State's Exhibit No. 1.)

15 Q Complaining, do you know where this house was located
16 back in July of '07?

17 A Spartanburg County.

18 Q Okay. What was the purpose or why did you go to their
19 home that night?

20 A They were supposed to be going out for an anniversary
21 dinner or a date, and they ended up --

22 Q Who is they?

23 A Jeannie and Joseph.

24 Q Okay.

25 A And they ended up staying at home and went to a

Complaining Witness

Direct examination by Ms. Jordan

1 sister's house, which is pretty much the neighbor.

2 Q Okay. Did you stay at home with the children?

3 A Yes, ma'am.

4 Q What happened later in that day, in that evening?

5 A We sat around. I sat around with the kids. We
6 watched movies. And then later that night they come back
7 home.

8 Q Okay. Where did you watch movies?

9 A In Joseph and Jeannie's bedroom.

10 Q Okay. I'm going to show you a couple of more
11 photographs, State's 2 through 8, and just ask you to look
12 through those photographs. Do you recognize the items in
13 those photographs?

14 A Yes, ma'am.

15 Q Okay. Starting with State's No. 2 on top can you tell
16 me what that is a picture of?

17 A That is the hallway going into, leading into, the
18 bathroom at the bedroom.

19 Q Okay. Would you tell me what this picture of State's
20 No. -- what is pictured in State's No. 3?

21 A That is a picture of the bedroom.

22 Q Okay. State's No. 4.

23 A The bathroom.

24 Q Five.

25 A Bathroom.

Complaining Witness

Direct examination by Ms. Jordan

1 Q Six.

2 A A picture of their bed.

3 Q Okay. Seven.

4 A A picture of both the beds in their room.

5 Q Okay. And No. 8.

6 A A picture of their room.

7 Q Okay. Do those accurately depict how their residence
8 looked back in July of 2007?

9 A Yes, ma'am.

10 MS. JORDAN: Your Honor, at this time we'd move
11 State's 2 through 8 in.

12 MR. WHELCHER: No objection.

13 THE COURT: They're admitted.

14 (Photographs marked State's Exhibits Nos. 2 through
15 8.)

16 Q Complaining what happened that night once Joe and
17 Jeannie returned home?

18 A We all sat around for a little while -- me, Jeannie
19 and the kids and Joe. And shortly after they told the
20 girls to go ahead and go to bed. The five-year old Son
21 had fell asleep. Then when he fell asleep I continued to
22 get up and go take a shower.

23 Q Okay. I'm going to show you once again State's
24 Exhibit No. 8. Could you tell the jury again with them
25 looking at it what this is a photograph of?

Complaining Witness

Direct examination by Ms. Jordan

- 1 A A picture of their bedroom.
- 2 Q Okay. In State's No. 7 there are two beds. Could you
- 3 explain to the jury who was in each bed?
- 4 A The mattress on the floor is where Jeannie and Joe
- 5 slept. And the, the bed beside that is where the
- 6 five-year-old slept.
- 7 Q Okay. Which bed were you in?
- 8 A I was in the bed with the five-year-old.
- 9 Q Okay. Is that where you were watching television?
- 10 A Yes, ma'am.
- 11 Q When you went to the bathroom, do you know about what
- 12 time it was?
- 13 A It was around 1:00 or 1:30 a.m.
- 14 Q Okay. When you went to the restroom what did you do?
- 15 A I hung a towel on the outside of the door because I
- 16 was going to take a shower. Their bathroom door doesn't
- 17 lock. And I proceeded to take a shower.
- 18 Q Okay. Had you taken showers at their home before?
- 19 A Yes, ma'am.
- 20 Q Okay. What -- tell the jury what happened when you
- 21 stepped out of the shower.
- 22 A I stepped out of the shower and I had my clothes
- 23 laying on the very outside of the door where the washer and
- 24 the dryer is, and I reached around to grab my clothes. And
- 25 that's when Joseph Cobb walked in the restroom or in the

Complaining Witness

Direct examination by Ms. Jordan

- 1 bathroom.
- 2 Q Okay. Were you dressed at that time?
- 3 A I had a towel on.
- 4 Q Okay. How was the defendant dressed?
- 5 A He had on boxers and a tank top.
- 6 Q Okay. Was that unusual that he walked into the
- 7 bathroom when you were in there?
- 8 A Yes, ma'am.
- 9 Q What happened next?
- 10 A He come in and he pulled my towel off. He pushed me
- 11 down on the floor on my stomach, and then he proceeded to
- 12 rub on me. And he flipped me over. And then we had
- 13 penetration. He put his penis inside of me.
- 14 Q Complaining when you say that he touched or he rubbed
- 15 all over you, can you explain to me what you mean by that?
- 16 A He was just like rubbing his hand around my shoulders
- 17 and around the lower part of my back.
- 18 Q Okay. Could you also explain to the jury, when you
- 19 said he flipped you over and penetrated you, could you go
- 20 into a little bit more detail for them?
- 21 A He, he was -- after he was rubbing on me for a little
- 22 bit he -- then he flipped me over. And then he was sitting
- 23 there talking to me for a minute. And he told me, he said,
- 24 "We are going to fuck," is what he said. And then he said
- 25 afterwards I want you to suck my dick. And then he started

Complaining Witness

Direct examination by Ms. Jordan

1 kissing on my chest and rubbing on me. And he started the
2 penetration.

3 Q Okay. What part of his body did he put into your
4 body?

5 A His penis.

6 Q And where did he put it?

7 A Into my vagina.

8 Q Okay. Where were his arms that day?

9 A He had one around my stomach, and the other one he had
10 his left arm pressed against my throat.

11 Q Okay. What do you remember next?

12 A I remember he told me. He said, "If you tell
13 anybody," he said, "I will hunt you down." He said, "I
14 don't care where you live." He said, "This is not
15 something that's supposed to be told." And he told me that
16 he would hurt me bad if he found out I did it.

17 Q Okay. And this occurred in the bathroom.

18 A Yes, ma'am.

19 Q And is the bathroom right outside their bedroom?

20 A Yes, ma'am.

21 Q Was there any -- did you notice anything in your
22 vaginal area after this happened?

23 A Yes, ma'am. I had some slight bleeding.

24 Q What do you remember next after the bathroom?

25 A After the bathroom, it honestly just gets blurry. And

Complaining Witness

Direct examination by Ms. Jordan

1 I remember waking up the next morning in the bed.

2 Q Who was in the bed with you?

3 A Son

4 Q Who was in the bed beside you?

5 A They -- Jeannie and Joe was in the bed beside me.

6 Q What happened the next morning?

7 A The next morning they woke up around 8:00 or 8:30.

8 And he had to take Jeannie to a parenting class or some
9 kind of nursing class near downtown. And I told him I
10 wanted to go home. And he told me that I could not go home
11 until after he picked her up from school.

12 Q Okay. Did Joe and Jeannie have one, or how many cars
13 did Joe and Jeannie have?

14 A They had one.

15 Q Okay. What happened in the remainder of the morning?

16 A He took her to her class. He come back home. I had
17 rode with them. And when we got back home he told me to
18 get out of the car, and I told him no. And he come around
19 to passenger side of the car and pulled me out of the car
20 and into the house.

21 Q Tell the jury what happened.

22 A He pushed me up against the wall in the living room
23 and he started kissing on my neck and rubbing on me and
24 then stuck his hands down my pants and into my vagina.

25 Q Complaining did you tell Jeannie that anything had

Complaining Witness

Direct examination by Ms. Jordan

- 1 happened to you?
- 2 A No, ma'am.
- 3 Q Did you tell any of the three kids?
- 4 A No, ma'am.
- 5 Q Where did -- what happened next?
- 6 A After that he, he told me that we were going to have
- 7 sex again, and I told him no. He got mad and stormed off
- 8 to the bedroom. And he was in there for around 20 minutes.
- 9 He came back out. And then we went to pick her up from
- 10 class.
- 11 Q Did you -- when were you taken home?
- 12 A As soon as we picked her up from class.
- 13 Q Who was the first person you saw when you got home?
- 14 A My step-mother, Danielle Spivey.
- 15 Q And when you dropped off did anyone come inside?
- 16 A No, ma'am.
- 17 Q What happened when you were -- did Jeannie -- did
- 18 Jeannie come inside?
- 19 A No, ma'am.
- 20 Q Did Joe come inside?
- 21 A No, ma'am.
- 22 Q Okay. What, what happened when you went inside?
- 23 A I fell to the floor and started crying and told my
- 24 step-mother what happened. And she tried to get in contact
- 25 with my father. He was at work. And then she decided not

Complaining Witness

Direct examination by Ms. Jordan

1 to wait on him any longer. And we went straight to the
2 hospital.

3 Q And what happened at the hospital?

4 A I had a couple of nurses come in, and they did a rape
5 kit. They did an evaluation on me. They checked for any
6 scratches, cuts, anything like that. And then they had
7 officers come in and take a statement.

8 Q Okay. So you spoke with how many nurses that day, do
9 you recall?

10 A I know when I first got there I was speaking with two,
11 but I think there's probably around three more that come in
12 after that, just coming in to check on me and stuff like
13 that.

14 Q Okay. Did you also speak with Officer Cantrell who is
15 seated at this table?

16 A Yes, ma'am.

17 Q Did you speak with anybody -- did you also go to the
18 Children's Advocacy Center later on and speak with someone
19 there?

20 A Yes, ma'am.

21 Q And you've met with me in the past?

22 A Yes, ma'am.

23 Q You've also met with Mr. Whelchel in the past?

24 A Yes, ma'am.

25 Q Complaining did you -- did you yell for help or anything

Complaining Witness

Cross-examination by Mr. Whelchel

1 that night?

2 A I tried to, but I couldn't.

3 Q Okay. Why could you not yell?

4 A He had -- where he had his left arm over -- his
5 forearm was directly over my throat.

6 Q Please answer any questions Mr. Whelchel may have.

7 CROSS-EXAMINATION

8 BY MR. WHELCHER

9 Q Do you remember talking to me last week, Complaining

10 A Yes, sir.

11 Q Okay. Had you stayed at this particular house
12 before --

13 A Yes, sir.

14 Q -- with Joe and Jeannie? Do you remember how many
15 times?

16 A Numerous.

17 Q Okay. You had stayed at other houses prior to this,
18 is that correct, with Joe and Jeannie?

19 A No, sir.

20 Q Okay. So this is the only house you ever went to?

21 A Yes, sir.

22 Q Okay. This bathroom door you're telling us about, the
23 door had been broken?

24 A Yes, sir.

25 Q Okay. Showing you State's Exhibit No. 7. Who sleeps

Complaining Witness

Cross-examination by Mr. Whelchel

- 1 in that room?
- 2 A Jeannie and Joe and the child Son
- 3 Q The little boy Son --
- 4 A Uh-huh.
- 5 Q -- sleeps in that bed?
- 6 A No. They sleep on the mattress on the floor and he
- 7 sleeps in the bed.
- 8 Q I'm sorry. I got it backwards. They sleep on the
- 9 floor and he sleeps in that bed?
- 10 A Yes, sir.
- 11 Q Okay. Thank you, ma'am.
- 12 And the other children sleep in the other bedroom.
- 13 A Yes, sir.
- 14 Q Okay. Had y'all been anywhere -- when I say y'all I
- 15 mean you and Joe and Jeannie. Had the three of you been
- 16 anywhere earlier that day?
- 17 A Yes, sir. We went to a, a water park, like a little
- 18 river.
- 19 Q Uh-huh.
- 20 A Anderson Mill River, I think it was.
- 21 Q A swimming hole.
- 22 A Yes, sir.
- 23 Q Okay. And all of you went swimming, I assume.
- 24 A Uh-huh.
- 25 Q Okay. What did you do with the swimsuit and all the

Complaining Witness

Cross-examination by Mr. Whelchel

1 wet stuff when you got back to the house?

2 A Jeannie had thrown all of our bathing suits and stuff
3 into the dryer.

4 Q Okay. What time was it when you got back to the
5 house? Do you remember that?

6 A It was, I know it was, early in the day. The sun was
7 still out.

8 Q Still daylight.

9 A Yes, sir.

10 Q Okay. Before or after suppertime?

11 A Before.

12 Q Okay. Who cooked supper that night?

13 A We ate out.

14 Q Where did you go?

15 A Well, I had eat out. They had eat their own thing. I
16 ate before I left my father's house.

17 Q Okay. Well, what time was it when they came and
18 picked you up?

19 A It was early in the day. It was a little, a little
20 after lunchtime.

21 Q Okay. From there you went swimming.

22 A Yes, sir.

23 Q Who all went swimming?

24 A Just me, Jeannie and Joe.

25 Q Okay. And when did you get to Jeannie and Joe's house

Complaining Witness

Cross-examination by Mr. Whelchel

- 1 after you went swimming approximately?
- 2 A Approximately around 6:00 o'clock.
- 3 Q Okay. And where were the children?
- 4 A The children were there.
- 5 Q Okay. How did the children get there if you know?
- 6 A The next-door neighbor had been watching them earlier.
- 7 Q Okay. So after y'all get back to Jeannie and Joe's,
- 8 is that when everybody had supper?
- 9 A They eat, yes, sir.
- 10 Q Okay. But you had already eaten --
- 11 A Yes, sir.
- 12 Q -- earlier in the day?
- 13 A Uh-huh.
- 14 Q Wasn't hungry.
- 15 A Uh-uh.
- 16 Q Okay. Now, at some point later in the night y'all are
- 17 watching movies, is that correct?
- 18 A Yes, sir.
- 19 Q Where were you watching the movies?
- 20 A In Jeannie and Joe's bedroom.
- 21 Q Is that the only place where there's a C.D. player?
- 22 A No. That's just where all the kids wanted to lay.
- 23 Q Okay. And then later the older two children were sent
- 24 to bed.
- 25 A Yes, sir, after Jeannie and Joe had returned home.

Complaining Witness

Cross-examination by Mr. Whelchel

- 1 Q Okay. Any idea what time that was?
- 2 A It was close to midnight.
- 3 Q Okay. When were they gone from? What hours did they
- 4 leave and come back?
- 5 A Between 8:00 and midnight.
- 6 Q Okay. So you were there alone with the children
- 7 between 8:00 and midnight.
- 8 A Yes, sir.
- 9 Q Okay. And when they get, Jeannie and Joe get, back at
- 10 midnight, excuse me, is when the older two children were
- 11 sent from the movie-watching bedroom to their own room.
- 12 A Yes, sir.
- 13 Q Correct? Okay. Then was Son still awake at that
- 14 time?
- 15 A No, sir. He had already fallen asleep.
- 16 Q Okay. So you went to sleep or laid in the bed with
- 17 Son is that right?
- 18 A Yes, sir.
- 19 Q So there's Son next to the wall, and you, and
- 20 Jeannie and Joe on the floor?
- 21 A Yes, sir.
- 22 Q Okay. When did y'all get in the bed there together?
- 23 A Me and Son
- 24 Q You and Son When did y'all get in the bed?
- 25 A We were already in the bed. We were laying there when

Complaining Witness

Cross-examination by Mr. Whelchel

1 we was watching movies. And the two girls were laying on
2 Jeannie and Joe's bed.

3 Q The two girls leave. Jeannie and Joe get in the bed?

4 A Yes.

5 Q About what time was that?

6 A And that was around midnight.

7 Q Okay.

8 A So they sent them to bed about five or ten minutes
9 after they got home.

10 Q Okay. Had all of the children showered earlier --

11 A Yes, sir.

12 Q -- when they, when they got home? Okay. Do you know
13 if Jeannie and Joe showered, or do you remember if Jeannie
14 and Joe showered that night?

15 A No. I had put Daughter and Daughter, and then Son had
16 took a bath.

17 Q Okay. So all the children showered that night, but
18 you did not.

19 A I waited until after the little boy went to bed.

20 Q Okay. But by then Jeannie and Joe were home?

21 A Yes, sir.

22 Q Okay. Now, you stated a moment ago that you decided
23 to take a shower.

24 A Yes, sir.

25 Q It was about 1:00 or 1:30?

Complaining Witness

Cross-examination by Mr. Whelchel

- 1 A Yes, sir.
- 2 Q Okay. Did you wash your hair when you took a shower?
- 3 A Yes, sir.
- 4 Q Did you use two towels, one for your hair and one for
- 5 your body?
- 6 A No, sir.
- 7 Q So when you got out of the shower how many towels did
- 8 you have on?
- 9 A I had one.
- 10 Q Okay. You didn't dry your hair?
- 11 A Yes, sir.
- 12 Q I'm confused.
- 13 A I dried my hair with my towel, and then I dried my
- 14 body off and wrapped my towel around me.
- 15 Q Same towel?
- 16 A Yes, sir.
- 17 Q Okay. And your clothes were outside the door.
- 18 A Yes, sir.
- 19 Q Washer and dryer is just outside the door, is that
- 20 correct?
- 21 A Uh-huh.
- 22 Q What is penetration, ma'am?
- 23 A Meaning that he had put his penis inside of me.
- 24 Q Okay. Had you ever used the words penetration before
- 25 in talking to any of the people you talked to, or is today

Complaining Witness

Cross-examination by Mr. Whelchel

1 the first time you used the word penetration?

2 A No, sir.

3 Q You have?

4 A No, I haven't used it before. I mean, I've used it
5 before today.

6 Q You have used it before today.

7 A Yes.

8 Q When was that then?

9 A Previous statements.

10 Q To who?

11 A Between Barry, Jennifer.

12 Q When you're talking to the prosecutor.

13 A Yes.

14 Q Okay. He came into the shower -- I want you to
15 correct me if I'm wrong -- and pushed you down on your
16 stomach?

17 A Yes, sir.

18 Q And you stated earlier that he started the
19 penetration. Is that on your stomach or when you were on
20 your back?

21 A No. He pushed me down on my stomach at first, and
22 then he rolled me over onto my back. And that's when the
23 penetration happened.

24 Q When you were on your back.

25 A Yes, sir.

Complaining Witness

Cross-examination by Mr. Whelchel

1 Q Okay. And he -- you could cry for help but didn't cry
2 for help because he had his arms on your throat?

3 A Yes, sir.

4 Q One arm or both?

5 A It was one. It was his left arm.

6 Q His left arm.

7 A Yes, sir.

8 Q Show me how.

9 A He had it like this pressed against the middle of my
10 throat.

11 Q Okay. You said there was some slight bleeding. Did I
12 hear you right?

13 A Yes, sir.

14 Q Slight bleeding. Was there blood on the towel?

15 A I had wiped off with a towel, yes.

16 Q Okay. Do you recall asking him what to do with the
17 blood?

18 A Yes, sir.

19 Q Okay. Did you have a cell phone, ma'am?

20 A Excuse me?

21 Q Did you have a cell phone?

22 A I had a cell phone but it didn't work.

23 Q Okay. Do you remember telling me when I talked to you
24 earlier that you threatened to call your parents with the
25 cell phone the next day?

Complaining Witness

Cross-examination by Mr. Whelchel

- 1 A No. I threatened to call the police, not my parents.
- 2 Q You threatened to call somebody with the cell phone.
- 3 A Yes, sir.
- 4 Q Okay. Now, the next morning do you remember what time
- 5 it was when you woke up?
- 6 A It was around 8:00 a.m., 8:00 a.m.
- 7 Q I'm sorry. And you rode with Joe to take Jeannie to
- 8 her class?
- 9 A Yes, sir.
- 10 Q What time was that?
- 11 A We left the house around 8:30.
- 12 Q Okay. Did y'all stop and get some breakfast or
- 13 anything like that?
- 14 A No, sir.
- 15 Q And the class, do you remember where that was?
- 16 A I remember what it's next to. It was near the old
- 17 Pepsi plant near downtown.
- 18 Q Down on South Church Street?
- 19 A Yes, sir.
- 20 Q Okay. And after you went to the Pepsi plant, did
- 21 y'all go anywhere after that?
- 22 A Back to the house.
- 23 Q Okay. Did you go to the library?
- 24 A No, sir.
- 25 Q Okay. And about what time was it when you got back to

Complaining Witness

Cross-examination by Mr. Whelchel

- 1 the house?
- 2 A I know it was at least 20 minutes after 9:30, going
3 into 10:00.
- 4 Q Okay. And did you get out of the, out of the car and
5 walk into the house?
- 6 A No, sir.
- 7 Q What happened?
- 8 A He told me to come in the house. And he come around
9 to the side of the passenger, and he pulled me into the
10 house.
- 11 Q Okay. So when you got back to the house you stayed in
12 the car.
- 13 A Yes, sir. I told him I wanted to go home.
- 14 Q Okay. And you stayed in the car.
- 15 A Yes, sir.
- 16 Q Did you lock the door?
- 17 A It didn't have a lock.
- 18 Q So that would be no. Okay. Where were you when he
19 took Jeannie to this class? Were you in the back seat?
- 20 A Yes, sir.
- 21 Q Okay. How many doors on the car?
- 22 A Four.
- 23 Q Okay. Did they all work?
- 24 A Uh-huh.
- 25 Q Okay. Took Jeannie to -- was it a school that he took

Complaining Witness

Redirect examination by Ms. Jordan

1 her to?

2 A I'm thinking that. Either a school or a little
3 building for classes.

4 Q Okay. Were there people in the building? Did you see
5 them?

6 A Yes, sir.

7 Q People outside the building?

8 A There were people outside smoking.

9 Q Okay. Thank you, ma'am.

10 MS. JORDAN: Just a few questions, Your Honor.

11 THE COURT: Okay.

12 REDIRECT EXAMINATION

13 BY MS. JORDAN

14 Q Complaining Mr. Whelchel made a point of the fact that
15 you used the word penetrate.

16 Going back to July the 10th of 2007 did you talk to
17 nurses? The first person you talked to was your step-mom,
18 Danielle. What did you tell her he did to you?

19 A I just said that he had raped me and that he hurt me.

20 Q Did you state whether or not anything was put into
21 your body?

22 A She asked me, you know, if anything like that did
23 happen. I told her it did.

24 MR. WHELCHER: Objection, Your Honor. I don't know
25 who she's talking about -- she.

Complaining Witness

Redirect examination by Ms. Jordan

1 MS. JORDAN: The step-mama, Danielle.

2 THE COURT: I thought she said her step-mother.

3 You can clear it up.

4 BY MS. JORDAN

5 Q The "she" you're referring to is your step-mom,

6 Danielle?

7 A Danielle Spivey, yes, ma'am.

8 Q Okay. And you also spoke to your father?

9 A When he come to the hospital, yes, ma'am.

10 Q And you also spoke to the nurses.

11 A Yes, ma'am.

12 Q Did you also tell them the same thing?

13 A Yes, ma'am.

14 Q You also spoke to Officer Cantrell.

15 A Yes, ma'am.

16 Q Did you also state that he had placed his penis inside
17 your vagina?

18 MR. WHELCHER: Objection, Your Honor. It's leading.

19 Q What did you tell Officer Cantrell?

20 A I told Officer Cantrell. She asked me if there was
21 any intercourse or if I had any object entered into my
22 body, and I said yes, ma'am, that he had entered his penis
23 and his fingers into my body.

24 Q Okay. You also told that to Lynn McMillan with the
25 Children's Advocacy Center?

Danielle Spivey
Direct examination by Ms. Jordan

- 1 A Yes, ma'am.
- 2 MS. JORDAN: Nothing further, Your Honor.
- 3 May this witness step down?
- 4 THE COURT: She may. Thank you.
- 5 MS. JORDAN: State calls Danielle Spivey.
- 6 DANIELLE SPIVEY, having been
- 7 first duly sworn, testified as follows:
- 8 DIRECT EXAMINATION BY MS. JORDAN
- 9 Q Please state your name for the record.
- 10 A Danielle Spivey.
- 11 Q How do you know Complaining Witness
- 12 A Step-daughter.
- 13 Q And how long have you -- I assume you lived with her
- 14 father.
- 15 A Uh-huh.
- 16 Q How long have you lived with him?
- 17 A Twelve years.
- 18 Q Okay. Have you known Complaining all the time?
- 19 A Yes.
- 20 Q How do you know the defendant?
- 21 A That's Tim's cousin.
- 22 Q Okay. Did you, did you spend much time with him and
- 23 his family?
- 24 A A little bit.
- 25 Q Okay. Do you recall Complaining going to visit his

Danielle Spivey
Direct examination by Ms. Jordan

1 house?

2 A Yes.

3 Q Would she do that -- did she do it once or more than
4 once?

5 A More than once.

6 Q More than once. Would she do it five times or more
7 than five times?

8 A Maybe five.

9 Q Okay. Did she -- what would ^{Complaining} do over at Joe's
10 house if you have any idea?

11 A Just watch the kids mostly.

12 Q You also know Jeannie Cobb?

13 A Uh-huh.

14 Q Could you tell me what happened on the night of -- or
15 what do you recall from on the night of -- or the morning
16 of July the 10th of 2007?

17 A When she came home she was really upset, and she told
18 me. I asked her what was wrong, and she said that Joe
19 raped her.

20 MR. WHELCHER: Objection, Your Honor. I think it's
21 hearsay, and it's got to be an exception to hearsay in
22 order for them to be able to elicit this testimony.

23 THE COURT: Be sure to term it appropriately.

24 MS. JORDAN: I'm sorry, Your Honor?

25 THE COURT: Be sure to term it appropriately.

Danielle Spivey
Direct examination by Ms. Jordan

1 MS. JORDAN: Yes, sir.

2 Q When Complaining came home, how did Complaining get home?

3 A They brought her home.

4 Q Okay. Did anyone come in with Complaining

5 A No.

6 Q Okay. When she came in, can you describe her demeanor
7 to you? Could you describe how she appeared?

8 A Upset.

9 Q Okay. Was she crying?

10 A Yes.

11 Q Was -- describe -- if you could, just describe for the
12 jury how, how she appeared to you.

13 A In tears, literally shaky.

14 Q Did she ever come home like that before?

15 A No.

16 MS. JORDAN: Your Honor, at this time we would move to
17 have her state what was stated as far as it being an
18 excited utterance, or also in the alternative present sense
19 impression.

20 MR. WHELCHER: Your Honor, for it to be an excited
21 utterance it's got to be immediately.

22 THE COURT: Overruled.

23 Go ahead.

24 MS. JORDAN: May we approach?

25 THE COURT: Uh-huh.

Danielle Spivey
Direct examination by Ms. Jordan

1 (Bench conference held off the record in the presence
2 of the jury but out of the hearing of the jury.)

3 BY MS. JORDAN

4 Q Danielle, did ~~Complaining~~ state whether or not she had
5 been sexually assaulted on the morning of July the 10th of
6 2007?

7 A Yes.

8 Q Did she make that statement -- when did she make that
9 statement to you?

10 A When I asked her what was wrong when she come in the
11 door.

12 Q About what time did she come home?

13 A It was late morning.

14 Q Okay. Did she state when that sexual assault
15 occurred?

16 A Yes.

17 MR. WHELCHER: Objection, Your Honor.

18 THE COURT: Overruled.

19 Q Did she state when that sexual assault occurred?

20 A Yes.

21 Q What did she say?

22 A The night before.

23 Q Did she also -- okay. Did she also state where it
24 happened?

25 A Yes.

Danielle Spivey
Direct examination by Ms. Jordan

- 1 Q Where was that?
- 2 A In the bathroom.
- 3 Q Okay. Bathroom where?
- 4 A In his home.
- 5 Q Back on July the 10th and July the -- July the 9th and
- 6 10th of 2007, how many nights did she, Complaining stay at
- 7 Joe and Jeannie's home?
- 8 A What do you mean?
- 9 Q How many, how many nights was she there?
- 10 A One or two. I really can't remember exactly.
- 11 Q But she came home on July the 10th.
- 12 A Yes.
- 13 Q Okay. What did you do after she reported that sexual
- 14 assault to you?
- 15 A I called her dad.
- 16 Q Okay. What happened after that?
- 17 A We waited for a while, and then I took her to the
- 18 hospital.
- 19 Q Okay. Which hospital did you take her to?
- 20 A Spartanburg Regional.
- 21 Q Okay. What happened once you arrived there?
- 22 A We -- they admitted her in and did the sexual assault
- 23 kit and spoke with us. And it's all a blur really, so.
- 24 And then later her dad showed up.
- 25 Q Please answer any questions Mr. Whelchel may have.

Danielle Spivey
Cross-examination by Mr. Whelchel

- 1 CROSS-EXAMINATION
- 2 BY MR. WHELCHER
- 3 Q How much later did her dad show up?
- 4 A It was a couple of hours.
- 5 Q After y'all got to the hospital?
- 6 A Right.
- 7 Q How long did you wait before -- between the time that
- 8 Complaining got home and the time that you left for the
- 9 hospital?
- 10 A For about an hour or so.
- 11 Q Okay.
- 12 A I don't remember exactly.
- 13 Q Okay. Did you have transportation or did you have to
- 14 wait?
- 15 A I did.
- 16 Q I'm sorry?
- 17 A I did.
- 18 Q Okay. So once Complaining gets home you wait about an
- 19 hour and then you go to the hospital.
- 20 A Right.
- 21 Q And two hours later is when her dad shows up.
- 22 A About, yes.
- 23 Q Okay. And you're the one that told her dad what had
- 24 been told to you, is that correct?
- 25 A Right.

Timothy Lee Bishop
Direct examination by Ms. Jordan

1 Q Okay.

2 THE COURT: Ms. Jordan, do you have anything else?

3 MS. JORDAN: No, sir, Your Honor.

4 THE COURT: All right. You may step down.

5 MS. JORDAN: Your Honor, may this witness remain in
6 the courtroom?

7 THE COURT: She may.

8 MS. JORDAN: State calls Tim Bishop.

9 TIMOTHY LEE BISHOP, having
10 been first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MS. JORDAN

12 Q Please state your name for the record.

13 A Timothy Lee Bishop.

14 Q Who is your daughter?

15 A Complaining Renee Bishop.

16 Q How do you know the defendant?

17 A He's my cousin.

18 Q Okay. Were you close to your cousin back in 2007?

19 A Not really.

20 Q Did you see him?

21 A Yeah, on a regular basis, probably once or twice a
22 week.

23 Q Okay. Did you allow your child, Complaining to go over
24 to his home?

25 A Sometimes.

Timothy Lee Bishop
Direct examination by Ms. Jordan

1 Q Okay. On July the 9th of 2007 did Complaining go to his
2 home?

3 A I believe it was, it was either the 8th or 9th. I'm
4 not really sure. I can't remember exactly.

5 Q Okay. On July the 10th of 2007 did you receive a
6 phone call from Danielle?

7 A Yes, ma'am, while I was at work.

8 Q Okay. What did you do as a result of that phone call?

9 A I came home as soon as I could get done doing what I
10 was doing working.

11 Q Okay. Did you meet Complaining and Danielle at the
12 hospital?

13 A I went home. I thought I was going to catch them at
14 home, and they wasn't at home. And then I went to the
15 hospital where they was at. My brother had called me and
16 told me they went to the hospital.

17 Q Okay. How was Complaining when you saw her at the
18 hospital on July the 10th of 2007?

19 A Real upset. She couldn't even hardly talk to me when
20 I got there.

21 Q Okay. Did you have a chance to talk to her?

22 A Way later on in the evening. I was there for probably
23 two or three hours before I ever got to talk to her.

24 Q Okay. Did she state to you whether or not she had
25 been sexually assaulted?

Timothy Lee Bishop
Direct examination by Ms. Jordan

1 A Well, she --

2 MR. WHELCHEL: Objection, Your Honor. This is the
3 hearsay. There's been no foundation laid for it. It
4 doesn't fall under the excited utterance because he's
5 already testified it was hours later.

6 THE COURT: Overruled.

7 Go ahead.

8 BY MS. JORDAN

9 Q Did she state whether or not a sexual assault had
10 occurred?

11 A Yes, ma'am.

12 Q Did she state where it occurred?

13 A Yeah, at his house.

14 Q Did she state specifically where in his home?

15 A Well, at first she was trying to tell me, but the
16 nurse came in and said they had to do another test on her
17 or something. And we -- they brought her back. Then she
18 told me that it happened right inside the doorway in the
19 bathroom at their home.

20 Q Okay. Did she also state when this happened?

21 A It was early in the morning. It was after midnight.
22 I can't tell you exactly what time. I mean, it's been so
23 long I can't remember the exact time she told me.

24 Q Did she state it was the same night or the same day
25 that she went --

Timothy Lee Bishop
Cross-examination by Mr. Whelchel

1 A That she -- that she spent the night there, yeah.

2 Q Okay. Please answer any questions Mr. Whelchel may
3 have.

4 CROSS-EXAMINATION

5 BY MR. WHELCHER

6 Q Let me see if I understand this correctly, Mr. Bishop.
7 You and Joe are cousins?

8 A Yes, sir.

9 Q But you're not close.

10 A No, not real close. We're distant cousins. We're not
11 like first or second cousins.

12 Q What you mean, you're not close to each other --

13 A No.

14 Q -- or not good friends.

15 A No.

16 Q But he comes over twice a week.

17 A No. I see him once or twice a week, not come over to
18 my house. I see him out when I was working and stuff like
19 that.

20 Q Okay.

21 A And then every once in a while he might stop by.

22 Q Okay. You don't go to his house?

23 A I went to his house once.

24 Q Okay. But ^{Complaining} that goes to his house or went to
25 his house frequently, correct?

Sue Mobley
Direct examination by Ms. Jordan

1 A Yeah, because she was friends with his wife and she
2 loved their children a lot.

3 Q But she went to their house frequently, correct?

4 A Yes, sir.

5 Q And all you know about what allegedly happened on the
6 8th, 9th or 10th of July is what you've been told by
7 Complaining is that correct?

8 A Yes, sir.

9 Q Hours after she had been interviewed at the hospital,
10 is that correct?

11 A Yes, sir.

12 Q Okay. You don't have any independent knowledge of any
13 of this stuff, do you?

14 A No, because I wasn't present at the time it happened.

15 Q Thank you, sir.

16 THE COURT: You may step down.

17 MS. JORDAN: Your Honor, may this witness remain in
18 the courtroom?

19 THE COURT: He may.

20 MS. JORDAN: The state calls Sue Mobley.

21 SUE MOBLEY, having been first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. JORDAN

24 Q Please state your name for the record.

25 A Sue Mobley.

Sue Mobley
Direct examination by Ms. Jordan

- 1 Q Where are you currently employed?
- 2 A Spartanburg Regional E.R.
- 3 Q What is your position there?
- 4 A Staff nurse.
- 5 Q How long have you been employed there?
- 6 A 8/8/88.
- 7 Q Okay. What is your background as far as education?
- 8 A I have a master's in nursing and also have sexual
- 9 assault nurse examiner training.
- 10 Q Okay. How long have you been -- how long have you had
- 11 the training, sexual assault nurse training?
- 12 A Over ten years.
- 13 Q Okay. Over the course of those ten years or over the
- 14 course of your entire career as a nurse have you performed
- 15 sexual assault kits on rape victims?
- 16 A Yes.
- 17 Q I know you don't know a specific number, but
- 18 approximately how many have you performed?
- 19 A I'd say it would be greater than ten.
- 20 Q Okay. Have you also assisted in the preparation of
- 21 other sexual assault kits?
- 22 A Yes.
- 23 Q Okay. Were you working on the day of July the 10th of
- 24 2007?
- 25 A Yes.

Sue Mobley
Direct examination by Ms. Jordan

- 1 Q Okay: When you were working that day did you have an
2 occasion to see Complaining Witness
- 3 A Yes.
- 4 Q Okay. Was there another nurse present?
- 5 A Yes. Pat Ramsey.
- 6 Q Okay. Did you assist Ms. Ramsey?
- 7 A Yes.
- 8 Q What did you help Ms. Ramsey do that day?
- 9 A She asked me to come in and help her collect evidence.
- 10 Q Okay. I'm going to show you what's previously been
11 marked as State's Exhibit No. 22 and ask if you recognize
12 this.
- 13 A Yes.
- 14 Q Okay. Could you tell the jury what that is?
- 15 A It's a blood sample in the SLED kit for sexual assault
16 evidence collection that we collect for SLED.
- 17 Q Okay. Do you recognize your signature on there?
- 18 A Yes.
- 19 Q Okay. Did you collect a blood sample from the victim,
20 Complaining Witness
- 21 A Yes.
- 22 Q Okay. And that was done on July the 10th of 2007?
- 23 A Yes.
- 24 Q Okay. What did you do once you collected her sample?
- 25 A Labeled it and put it in the appropriate envelope and

Sue Mobley
Direct examination by Ms. Jordan

1 placed it into the kit.

2 Q Okay. Who had control or possession of the kit?

3 A Pat Ramsey.

4 Q Okay. Just briefly tell the jury if you don't mind
5 what is normally inside of a rape kit.

6 A You have collection of hair samples, blood samples and
7 any kind of collection of any kind of body fluids that we
8 collect.

9 Q Okay. Are there -- how, how are the things labeled
10 inside of the rape kit?

11 A You have separate envelopes for each one of the
12 specimens that's collected.

13 Q Okay. And in Complaining Witness case the one specimen
14 that you collected was her blood?

15 A Yes.

16 Q Can you describe what Complaining demeanor was to the
17 jury?

18 A She was tearful but cooperative.

19 Q Okay. Were you present during the entire exam?

20 A No.

21 Q Okay. Did you just assist?

22 A Just assisted Pat Ramsey.

23 Q Okay. Please answer any questions Mr. Whelchel may
24 have.

25 A Okay.

Sue Mobley
Direct examination by Ms. Jordan

1 MR. WHELCHER: I don't have any questions of this
2 witness, Your Honor.

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

4 MS. JORDAN: Your Honor, may I approach?

5 THE COURT: Yes, ma'am.

6 (Bench conference held off the record in the presence
7 of the jury but out of the hearing of the jury.)

8 THE COURT: All right. Ladies and gentlemen, we need
9 to take a short break, so I'll ask you please go to your
10 jury room.

11 Do not yet discuss the case in any fashion. It's not
12 concluded. I'll bring you back after that break.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Court's in recess for ten minutes.

16 (Whereupon, a recess was taken.)

17 THE COURT: All right. Are we ready for the jury?

18 MS. JORDAN: Yes, sir, Your Honor.

19 THE COURT: Okay. Bring them in.

20 (The following takes place in the presence of the
21 jury.)

22 THE COURT: All right. Next witness.

23 MS. JORDAN: The state calls Pat Ramsey.

24

25

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 PATRICIA A. RAMSEY, having
2 been first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MS. JORDAN
4 Q Please state your name for the record.
5 A Patricia A. Ramsey.
6 Q Where are you currently employed?
7 A Village Hospital, the Village of Pelham.
8 Q Okay. Is that connected with a hospital around here?
9 A Excuse me?
10 Q Is that connected to a hospital around here?
11 A Yes, ma'am, Spartanburg Regional.
12 Q Okay. Were you employed by Spartanburg Regional back
13 on July the 10th of 2007?
14 A Yes, ma'am.
15 Q What is your position at Spartanburg Regional or
16 Village at Pelham?
17 A Registered nurse in the emergency room, often doing
18 charge position.
19 Q Okay. How long have you been a nurse?
20 A This May will be 18 years, so about 17, almost 18
21 years.
22 Q Okay. What is your educational background?
23 A I have an associate's degree in nursing. I've done
24 trauma nursing, I.C.U., critical care and even flight
25 nursing.

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 Q On July the 10th of 2007 did you have an occasion to
2 meet Complaining Witness

3 A Yes, ma'am.

4 Q Okay. Were you working that day?

5 A Yes, ma'am.

6 Q Could you tell the jury how you came into contact with
7 Ms. Bishop?

8 A I was working in the Women's Center at Spartanburg
9 Regional, and they brought in a -- the patient for a
10 forensic exam.

11 Q Okay. Did you complete a sexual assault kit on the
12 victim --

13 A Yes, ma'am.

14 Q -- Complaining Witness Were you assisted by any other
15 nurses?

16 A Sue Mobley.

17 Q Could you describe for the jury what Complaining
18 demeanor was like when she came to the E.R.?

19 A Emotional, distraught and kind of scared and kind of
20 had all the fear in her.

21 Q Okay. Did you have a chance to speak with Complaining
22 that day?

23 A Yes, I did.

24 Q Did Complaining state to you whether or not a sexual
25 assault occurred?

Patricia A. Ramsey
Direct examination by Ms. Jordan

- 1 A Yes, ma'am.
- 2 Q Okay. Did she state where it occurred?
- 3 A I cannot remember or recall like a physical address.
- 4 Q Okay.
- 5 A But it was in a facility or a residence where there
- 6 was involvement with a child watching a child.
- 7 Q Okay. Did she state when it happened?
- 8 A I would have to reflect on the notes to say exactly
- 9 like time span.
- 10 Q Okay.
- 11 A But over a period of, if I recall right like over a
- 12 period of, 24 hours or like part of a day.
- 13 Q Okay. Did you perform a sexual assault kit on
- 14 Complaining Witness
- 15 A Yes, ma'am.
- 16 Q Okay. I'm going to show you brief -- or I am going to
- 17 show you several items. Can you identify State's Exhibit
- 18 No. 14 for me?
- 19 A Yes, I can.
- 20 Q Can you tell me what that is?
- 21 A It is miscellaneous body fluid stating -- there's
- 22 different areas of the body that may have been in contact
- 23 with the suspect or something. We will isolate that area
- 24 and try to target that area to obtain any kind of evidence.
- 25 Q Okay. So did you speak with Complaining about different

Patricia A. Ramsey
Direct examination by Ms. Jordan

- 1 parts of her body?
- 2 A Yes, ma'am.
- 3 Q And based upon your conversation with her did you swab
- 4 certain parts of her body?
- 5 A Yes, ma'am.
- 6 Q Okay. Do you recognize your handwriting on that
- 7 envelope?
- 8 A Yes, ma'am.
- 9 Q Okay. Has -- inside of that, is there anything
- 10 additional inside of that envelope or inside of the
- 11 sandwich baggie?
- 12 A Right. You have a sample in here, yes, ma'am. There
- 13 was different swabs placed in this miscellaneous envelope.
- 14 Q Okay. What did you write on State's No. 14 as far as
- 15 the location of Complaining body that you took a swab from?
- 16 A Left breast, slash, nipple, saliva indicated. That's
- 17 what she indicated to me that it was possibly there on the
- 18 July 10th '07 at 1601 with my signature.
- 19 Q Okay. I'm going to show you also State's 15, 16, 17,
- 20 18 and 19 and ask you to identify those for the jury.
- 21 A Okay. On No. 15 it says right breast nipple, at 1600,
- 22 with my signature and, again, saliva with the date,
- 23 7/10/07.
- 24 Q Okay. I know it's tedious, but can you go through
- 25 each item and state what it is?

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 A Each case is kind of individualizing. If a patient or
2 a, you know, victim tells me what they recollect or a
3 portion of their body that was touched, we will in a very
4 sterile fashion, gloves, we will swab areas and concentrate
5 on specific areas that they recall that may have been
6 touched.

7 And we will obtain the swab. We will air dry it so
8 that it's not contaminated when it's put in a sterile cover
9 like this. Then we go ahead and seal it into the sexual
10 assault kit and keep it in there so that no further
11 touching or anybody can come in contact unless it goes to
12 SLED.

13 Q Okay. Can you state to the jury the location of
14 Complaining body you took for the remainder of the swabs?

15 A Yes, ma'am. This was done at 1558 on 7/10/07 on the
16 left side of her neck.

17 Q Could you state which number is on the red sticker?

18 A Sixteen.

19 Q Okay. Moving on to No. 17, where was that taken from?

20 A This was taken from the mid-lower abdomen. And,
21 again, you know, indicating that I was trying to -- she
22 said that -- indicated there may be some saliva.

23 Q Okay. Moving on to 18.

24 A This is the mid-center chest taken at 1602.

25 Q Okay. I believe you also have 19.

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 A Yes, ma'am. This was on the right side of her neck
2 at -- it was obtained at 1556 time-wise.

3 MR. WHELCHER: Excuse me. Was that 19?

4 THE WITNESS: Fifteen. I was quoting the time.

5 MR. WHELCHER: No, ma'am. The number.

6 MS. JORDAN: The number, 19, State's Exhibit 19.

7 MR. WHELCHER: Okay.

8 BY MS. JORDAN

9 A I'm sorry.

10 Q I'm also going to show you what's been previously
11 marked as State's Exhibits No. 20 and 21 and ask you if you
12 can identify those items.

13 A Okay. On No. 20 it says that these were vaginal swabs
14 that were obtained, and they were obtained through a public
15 (sic) examination.

16 Q Okay. Could you also state what is on No. 21, I
17 believe?

18 A These are oral swabs that were obtained from ^{Complaining} ~~VAGINA~~

19 Q Okay. When you take -- well, I'm going to show you
20 State's Exhibit No. 24 and ask if you can identify that
21 also.

22 A These are both vaginal smears and oral smears.

23 Q How are those created?

24 A We will take a sterile Q-tip and we will swab and then
25 we'll put it on a little glass slide, allow it to air dry.

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 And then it goes into this container which is sealed. And,
2 you know, it's labeled. On the inside it's labeled vaginal
3 and oral so we know which ones are which.

4 Q Okay. Further I'm going to show you what's been
5 marked as State's No. 23 and ask if you can describe for
6 the jury what is contained in that envelope.

7 A Twenty-three is fingernail scrapings, and that's No.
8 23. And it's saying that was obtained at 1612.

9 Q Okay. In addition to those items that are in front of
10 you were additional items taken as part of your traditional
11 sexual assault protocol?

12 A I would have to look at the kit. There may have been
13 some debris collection or clothing collection. You know,
14 and, again, each case is very individualized. But if it
15 definitely warrants, I'd have to see the kit and the list
16 to see that I actually, you know, obtained anything from
17 her at that time.

18 Q Okay. Once you obtained all of those items, what did
19 you do with them?

20 A When they are completely dried and ready to go into
21 these envelopes to be sealed, we close it up into a
22 complete kit. And they have seals along on the outside
23 that we have to sign, and those seals cannot be broken.
24 And then we call law enforcement. And we'll sign them over
25 to them on a chain of custody.

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 Q Okay. So you placed it -- if I'm correct, you placed
2 all of these items into a box and then seal the box.

3 A Yes, ma'am.

4 Q And the box is handed over to law enforcement.

5 A Yes, ma'am.

6 MS. JORDAN: Your Honor, at this time we would move
7 these items into evidence.

8 THE COURT: Tell me what the numbers are again.

9 MS. JORDAN: Fourteen -- State's 14, 15, 16, 17, 18,
10 19, 20, 21, 22, 23 and 24.

11 THE COURT: All right. Mr. Whelchel, any objections?

12 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

13 (Pause.)

14 MR. WHELCHER: No objection to those items, Your
15 Honor.

16 THE COURT: All right. Fourteen through 24 are
17 admitted.

18 (Victim's swab of left breast marked State's Exhibit
19 No. 14; victim's swab of right breast marked State's
20 Exhibit No. 15; victim's swab of left side neck marked
21 State's Exhibit No. 16; victim's swab of mid lower abdomen
22 marked State's Exhibit No. 17; victim's swab of mid center
23 chest marked State's Exhibit No. 18; victim's swab of right
24 side neck marked State's Exhibit No. 19; victim's swab of
25 vagina marked State's Exhibit No. 20; oral swab of victim

Patricia A. Ramsey
Direct examination by Ms. Jordan

1 marked State's Exhibit No. 21; victim's standard marked
2 State's Exhibit No. 22; victim's fingernail scrapings from
3 left hand marked State's Exhibit No. 23; victim's
4 fingernail scrapings from right hand marked State's Exhibit
5 No. 24; underwear marked State's Exhibit No. 25 for
6 Identification.)

7 Q Ms. Ramsey, I'm also going to show you what's just
8 been marked as State's No. 25 and ask if you can identify
9 that. You can manipulate the bag if you need to to read
10 the label on the inside.

11 A It is labeled underwear from Complaining Witness that she
12 was wearing when she came into the department.

13 Q Okay. Is that also part of your -- of a standard
14 sexual assault kit?

15 A Yes, ma'am.

16 MS. JORDAN: Your Honor, at this time we move State's
17 Exhibit No. 25 into evidence.

18 THE COURT: Well, let me see y'all just a minute.

19 (Bench conference held off the record in the presence
20 of the jury but out of the hearing of the jury.)

21 MS. JORDAN: Your Honor, we're going to correct the
22 number and marked that State's No. 26 since we already have
23 labeled something No. 25.

24 THE COURT: Any objection, Mr. Whelchel?

25 MR. WHELCHEL: No, sir.

Patricia A. Ramsey
Cross-examination by Mr. Whelchel

1 THE COURT: All right. It is admitted.

2 (Underwear previously marked State's Exhibit No. 25
3 for Identification marked State's Exhibit No. 26.)

4 Q Please answer any questions Mr. Whelchel may have.

5 MR. WHELCHER: Beg the Court's indulgence, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. WHELCHER

8 Q Other than talk to her and take these scrapings and
9 swabs, that's all you did, is that correct? And then take
10 it and then give it to the evidence technician or whoever
11 from law enforcement.

12 A The kit. But I also take a statement, or not a
13 statement, but I will take down some history of the
14 situation that occurred.

15 Q Well, I understand that. But the physical things,
16 these are the things that you actually take.

17 A Yes, sir.

18 Q And let me make sure I understand. The difference
19 between a swab and a smear is that a smear is a swab that's
20 been smeared onto a --

21 A A little glass.

22 Q Okay. Kind of like you look at with a --

23 A Microscope.

24 Q Okay. Thank you, ma'am.

25 MS. JORDAN: Your Honor, may Ms. Ramsey be excused?

Robert Shaffer
Direct examination by Ms. Jordan

1 THE COURT: You may step down. You may also be
2 excused.

3 THE WITNESS: Thank you.

4 (Whereupon, the witness was excused.)

5 MS. JORDAN: The state calls Robert Shaffer.

6 ROBERT SHAFFER, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MS. JORDAN

9 Q Please state your name for the record.

10 A Robert Shaffer.

11 Q Where are you currently employed?

12 A With the Spartanburg County Sheriff's Office.

13 Q Where were you employed --

14 THE COURT: Excuse me just a minute.

15 I don't think you need to lean into that microphone.

16 Just speak out and it'll pick it up.

17 Q Where are you employed, or how long have you been
18 employed at the sheriff's office?

19 A It will be 12 years this May.

20 Q Okay. What is your job title there?

21 A Forensics officer.

22 Q What was your job title in July of 2007?

23 A Forensics officer.

24 Q Okay. Did you have an occasion to work a case
25 involving the victim, Complaining Witness

71
Robert Shaffer
Direct examination by Ms. Jordan

1 A Yes, I did.

2 Q Did you respond to the Spartanburg Emergency Room --
3 Spartanburg Reginal Medical Center E.R.?

4 A Yes, I did.

5 Q Once there, what did you do?

6 A I collected a C.S.C. kit.

7 Q Okay. Was that -- what condition was the kit in when
8 you received it?

9 A It was sealed.

10 Q Okay. Who did you receive the kit from?

11 A I believe a Patrick -- my notes -- a Nurse Ramsey,
12 R.N.

13 Q Okay. Did you alter or change that kit once you
14 received it in any way?

15 A No, I did not.

16 Q What did you do with that kit once you received it?

17 A I put the outer clothing bag in the property and
18 evidence room. I put the other kit in the refrigerator and
19 secured it.

20 Q In which refrigerator?

21 A The one located in our lab with the lock on the door.

22 Q That lab, where is the lab located?

23 A In the sheriff's office.

24 Q Please answer any questions Mr. Whelchel may have.

25 MR. WHELCHER: I don't have any questions, Your Honor.

Margaret Greer
Direct examination by Ms. Jordan

1 THE COURT: You may step down.

2 MS. JORDAN: State calls Margaret Greer.

3 MARGARET GREER, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MS. JORDAN

6 Q Please state your name for the record.

7 A Margaret Greer.

8 Q Where are you currently employed?

9 A I work for Spartanburg County Sheriff's Office.

10 Q How long have you been employed there?

11 A I have worked for the sheriff's office for a little
12 over six years. I've been in law enforcement 19.

13 Q What is your current position?

14 A My current position is master deputy on uniform
15 patrol. At the time of this case I worked in evidence.

16 Q Okay. Did you, did you receive a sexual assault kit
17 in this case?

18 A I did.

19 Q Okay. And what did you do with that kit?

20 A I took the kit into evidence and assigned it a space.
21 I -- do you have the evidence sheet and I can --

22 Q Yes, ma'am.

23 A Thank you.

24 Okay. I received a sexual assault evidence kit on
25 looks like July 11th of 2007, and picked it up at

Margaret Greer
Cross-examination by Mr. Whelchel

1 7:00 o'clock and then assigned it a box.

2 Q Okay. Who did you receive the kit from?

3 A It looks like since I received it at 7:00 o'clock, it
4 looks like I received it from the evidence locker.

5 Q Okay. Who -- does your form indicate who placed it in
6 the locker?

7 A Robert Shaffer.

8 Q Please answer any questions that Mr. -- I actually
9 apologize.

10 While you had the kit did you tamper with the kit in
11 any way?

12 A No, ma'am.

13 Q Please answer any questions Mr. Whelchel may have.

14 CROSS-EXAMINATION

15 BY MR. WHELCHER

16 Q When you place it in the evidence locker do you take
17 it out when you get in from being off? Is that correct?

18 A Yes, sir.

19 Q That's 7:00 o'clock in 0700 or --

20 A 0700, yes, sir.

21 Q Thank you, ma'am.

22 THE COURT: You may step down.

23 MS. JORDAN: The state calls Tammy Clawson.

24

25

Tammy Clawson
Direct examination by Ms. Jordan

- 1 TAMMY CLAWSON, having been
2 first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MS. JORDAN
4 Q Please state your name for the record.
5 A Tammy Clawson.
6 Q Ms. Clawson, do you know the defendant, Joseph Cobb?
7 A I do.
8 Q How do you know him?
9 A He was married to my sister.
10 Q Okay. Who is your sister?
11 A Jeannie.
12 Q Do you know when they were married?
13 A I'm not exactly sure when.
14 Q Okay. I'm going to take you back to the day of July
15 the 10th of 2007. Did you speak with Joe Cobb that day?
16 A I did.
17 Q Okay. Where did you see Joe that day?
18 A They were at my house.
19 Q Okay. Do you know Complaining Witness
20 A I've seen her, but I don't know her.
21 Q Okay. Did any of your conversations with -- back on
22 July the 10th of 2007 -- did Joe Cobb make any comments to
23 you about Complaining Witness
24 A Him and my sister were arguing in my front yard and
25 she came in crying. And then we all went outside and was

Anita Mullinax
Direct examination by Ms. Jordan

1 talking. And he said that he tried to have sex with her
2 but he couldn't get it up to get it in her.

3 Q Okay. Did he state, did he state what he did with
4 Complaining

5 A He said he tried to have sex with her.

6 Q Okay. And you do not know Complaining Witness

7 A I've seen her a few times. But as far as know-know, I
8 don't really know-know her.

9 Q Okay. Did you also -- well, I tell you what. Please
10 answer any questions Mr. Whelchel may have.

11 MR. WHELCHER: No questions.

12 THE COURT: You may step down.

13 MS. JORDAN: The state calls Anita Mullinax.

14 ANITA MULLINAX, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MS. JORDAN

17 Q Please state your name for the record.

18 A Anita Mullinax.

19 Q Where are you currently employed?

20 A Spartanburg County Sheriff's Office.

21 Q How long have you been employed by the sheriff's
22 office?

23 A Since 1983.

24 Q Okay. What is your current position there?

25 A I'm an evidence custodian.

Anita Mullinax
Direct examination by Ms. Jordan

1 Q Okay. What, what was your position back in July of
2 2007?

3 A I was a warrant officer.

4 Q Okay. Did you also work or did you eventually work in
5 the evidence room?

6 A I got transferred to evidence back in about the end of
7 February of 2008.

8 Q Okay. Just briefly, can you describe to the jury how
9 the evidence room at the sheriff's office is kept? Who has
10 control of the room?

11 A We currently have three evidence custodians.
12 Everything is locked. We're the only ones that have a key
13 to the office. The only way that you can enter the office
14 is not only with a key but a personal code and also a
15 fingerprint. So you have to do all of those in order to
16 get in.

17 Q Okay. How are -- did you happen to -- did you come
18 into contact with a sexual assault kit that was performed
19 on Complaining Witness

20 A I did.

21 Q Okay. What did you do with that item?

22 A I got a request to send it to SLED, and so I
23 transported it to SLED.

24 Q Okay. Where was the item when you transported it?

25 A Sexual assault kits we keep in our refrigerator until

Anita Mullinax
Direct examination by Ms. Jordan

1 they're transported. So I would've gotten it out of our
2 refrigerator and transported it at that time.

3 Q Okay. Once the item is taken to SLED can you tell the
4 jury what happens to it down there?

5 A When we take any item, not just a sexual assault item,
6 but when we take an item to SLED what they do is on a
7 sexual assault kit, they actually all of the small
8 envelopes that are in the box. They take them out. They
9 give us the box back. And then they put it in a larger
10 clear envelope, and they seal it in our presence. And then
11 we initial our name and the date that we took it. So it's
12 actually sealed.

13 Q So just for clarification, it was opened in your
14 presence?

15 A Correct.

16 Q And then sealed in your presence.

17 A Correct.

18 Q Okay. Did you -- do you recall what date you took
19 that item down to SLED?

20 A It would had to have been in 2008 or after.

21 Q Will you tell the jury what date you took that item to
22 SLED?

23 A I transported it on October 15th of 2008.

24 Q Okay. Did you have an occasion to come back into
25 contact with that kit again?

Anita Mullinax
Cross-examination by Mr. Whelchel

1 A I returned it from SLED on July 9th of 2009.

2 Q Okay. Did you have any other occasion?

3 A Yes. I also returned the underwear associated with
4 that kit. I returned it from SLED on December 18th of '09.

5 Q Okay.

6 A And then I also returned the kit after it had been
7 taken again on January 5th of 2011.

8 Q Please answer any questions Mr. Whelchel may have.

9 CROSS-EXAMINATION

10 BY MR. WHELCHER

11 Q Anita, I didn't hear you earlier. I'm sorry --
12 Ms. Mullinax. I didn't hear you earlier. You started in
13 evidence -- was it February of '08?

14 A The end of February of 2008.

15 Q Okay. I'll let you look at this while I ask you
16 questions. It'll probably be easier that way.

17 A Okay.

18 Q This is when you say you took the sexual assault kit
19 down.

20 A Correct. In October.

21 Q Down to SLED in October of '08.

22 A Correct.

23 Q You returned it from SLED in July of '09.

24 A That's correct.

25 Q Okay. And you returned the underwear from SLED in

Anita Mullinax
Cross-examination by Mr. Whelchel

- 1 December of '09.
- 2 A Correct.
- 3 Q Any idea why the underwear was separated from the
4 remainder of the kit?
- 5 A It was more than likely in the clothing section.
- 6 Q Okay. And then --
- 7 A Because there are only two submissions that you --
8 when you have a sexual assault. SLED will only accept the
9 sexual assault kit and the underwear under the first
10 submission.
- 11 Q Okay.
- 12 A They won't take the other clothing.
- 13 Q And then you took something, or you returned something
14 again from SLED.
- 15 A I -- on, on December 18th of '09 I returned just the
16 underwear only. Another officer had taken the kit again
17 prior to me.
- 18 Q Uh-huh.
- 19 A So then in January of this year I returned the kit.
- 20 Q The underwear only.
- 21 A No, no.
- 22 Q Okay.
- 23 A The rest of the kit.
- 24 Q Okay. All right. Now I understand.
- 25 A Because it had gone again.

David Hogsed
Direct examination by Ms. Jordan

- 1 Q Thank you.
- 2 MR. WHELCHEL: That's all I have, Your Honor.
- 3 MS. JORDAN: May this witness be excused?
- 4 THE COURT: You may step down.
- 5 (Whereupon, the witness was excused.)
- 6 MS. JORDAN: Your Honor, the state calls David Hogsed.
- 7 DAVID HOGSED, having been
- 8 first duly sworn, testified as follows:
- 9 DIRECT EXAMINATION BY MS. JORDAN
- 10 Q Please state your name for the record.
- 11 A David Hogsed.
- 12 Q Where are you currently employed?
- 13 A Spartanburg County Sheriff's Office.
- 14 Q How long have you been employed there?
- 15 A Right at six years with the sheriff's office.
- 16 Q Okay. Do you have any prior law enforcement
- 17 experience?
- 18 A Yes. I was with the city of Spartanburg for about 15
- 19 and a half years. I'm in my 22nd year in law enforcement.
- 20 Q What is your current position there?
- 21 A Sergeant with the crime scene unit.
- 22 Q Okay. What position were you in in October, I'm
- 23 sorry, July of 2007?
- 24 A Master deputy with the crime scene unit.
- 25 Q Okay. Did you have an occasion to work with Detective

David Hogsed
Direct examination by Ms. Jordan

1 Cantrell on a case involving the defendant, Joseph Cobb?

2 A Yes, I did.

3 Q Okay. Could you tell this jury what you did on July
4 the 11th of 2010, I'm sorry, 2007?

5 A I received a phone call. Sergeant Bobo asked if I
6 could meet Investigator Cantrell at the hospital with a
7 video recorder to record an interview between her and
8 Mr. Cobb.

9 I met Investigator Cantrell at the hospital and sat up
10 the video recorder and as she talked to him recorded the
11 conversation.

12 Q Okay. Who was in the room when this conversation was
13 recorded?

14 A Myself, Investigator Cantrell and Mr. Cobb.

15 Q Okay. What, what were you wearing that day?

16 A It would have been my issued uniform.

17 Q Okay. In your years in law enforcement have you had
18 the opportunity to see defendants who may be under the
19 influence of drugs or alcohol?

20 A Yes.

21 Q Okay. And did you see the defendant that day?

22 A I did.

23 Q Did he appear based upon your experience and knowledge
24 to be under the influence of drugs or alcohol?

25 A Not in my opinion, no.

David Hogsed
Direct examination by Ms. Jordan

1 Q Were you present when Officer Cantrell read him his
2 rights?

3 A On video, yes.

4 Q Did he appear to understand those rights?

5 A Yes.

6 Q Okay. Did you see Officer Cantrell go through each
7 right with him?

8 A Yes. I basically set the video camera up behind them
9 and just stood there beside the camera as it recorded and
10 just stayed quiet while she conducted the interview.

11 Q Did she read him his rights?

12 A Yes.

13 Q Did he sign stating that he understood his rights?

14 A Yes.

15 Q Did he waive those rights?

16 A Yes.

17 Q Okay. Could you describe to the jury what the
18 defendant's physical appearance was that day?

19 A He really -- when we went in Investigator Cantrell
20 introduced me and told him why, told him why I was there.
21 He seemed fine to me, didn't -- wasn't agitated, wasn't
22 upset, seemed willing to talk.

23 And so we sat the video recorder up. And, like I
24 said, I stood back behind Nicki. And while she spoke with
25 him I recorded the conversation.

David Hogsed
Direct examination by Ms. Jordan

1 Q Okay. Did -- was his speech coherent or incoherent?

2 A It was fine, a little low in volume at times. But, I
3 mean, there was no, nothing slurred that indicated to me
4 that he was -- had been drinking alcohol or taking
5 anything, narcotics or anything like that.

6 Q Okay. Did either you or Investigator Nikki Cantrell
7 promise the defendant anything in exchange for making a
8 statement?

9 A No. I, I don't even know if I ever spoke to him.

10 Q Was he ever threatened or coerced in any way in your
11 presence?

12 A No, ma'am.

13 Q Did he make a statement in response to Officer
14 Cantrell's statement or request?

15 A Yes.

16 Q Okay. Did you record that conversation?

17 A I did.

18 Q What did you do with the recording once you made it?

19 A The recording was actually done on 8mm video tape. I
20 took that 8mm video tape, transferred it to a VHS tape and
21 then turned it into the evidence at the Spartanburg County
22 Sheriff's Office.

23 Q Throughout the course of the time that you were in the
24 room with the defendant did he, did he appear to be in
25 any -- under any duress?

David Hogsed
Direct examination by Ms. Jordan

1 A No.

2 Q Did he appear to be under -- or did he appear to be
3 under the influence of any -- anything?

4 A Not in my opinion, no.

5 Q Going away from that day, did you have another
6 occasion to work on this case?

7 A Actually, yes, in August of 2009.

8 Q What happened in August of 2009?

9 A I received a court order actually from the circuit
10 court, which is a court order to collect nontestimonial
11 evidence which was -- the Court order was for a D.N.A.
12 standard or buccal swab for Mr. Cobb.

13 I went to the county jail and executed that court
14 order collecting that D.N.A. standard for Mr. Cobb.

15 Q I'm going to show you what's now been marked as
16 State's Exhibit No. 13 and ask if you can identify that.

17 A Yes, ma'am.

18 Q What is that?

19 A This is, it's the evidence envelope, D.N.A. standard,
20 with the D.N.A. standard after buccal swabs have been
21 placed in after I collected them from Mr. Cobb.

22 Q Can you describe the process of collecting a buccal
23 swab to the jury?

24 A A buccal swab is basically taking two sterile
25 cotton-tipped applicators, cotton swabs, and swab the

David Hogsed
Direct examination by Ms. Jordan

1 inside of the mouth in order to collect saliva and skin
2 cells and so forth. And, and basically once it's done
3 that's put into a sterile box, and then the box is sealed.

4 Q Okay. What did you do with the box once it is sealed?

5 A Once it's sealed it goes into an evidence envelope.
6 After we mark it it goes into an evidence envelope. And
7 then it is then turned into the evidence at the sheriff's
8 office.

9 Q How do you mark the envelope?

10 A Case number and item number, and then tells the
11 description of what. It's basically here a D.N.A.
12 standard. In parenthesis put buccal. Then I put the
13 defendant's name, Joseph G. Cobb. Date and time of
14 recovery, where it was recovered from, recovered by. I
15 always print and sign my name. And then suspect, under
16 suspect block, I put Cobb, Joseph G. I did not put the
17 victim's name at the time, because at that time I did not
18 know it. And type of offense, I wrote C.S.C.

19 Q Did you seal that item?

20 A I did.

21 Q Okay. And what did you do with the item once you
22 sealed it?

23 A It's -- a property sheet is filled out and it's turned
24 into evidence at the sheriff's office.

25 MS. JORDAN: Your Honor, if I may have one moment.

David Hogsed
Cross-examination by Mr. Whelchel

1 (Pause.)

2 Q Please answer any questions Mr. Whelchel may have.

3 CROSS-EXAMINATION

4 BY MR. WHELCHER

5 Q Thank you. This date and time -- excuse me -- this
6 date and time of recovery, that's the actual time, the date
7 and time, that you took the swab?

8 A That the swabs were actually taken from the mouth,
9 yes, sir.

10 Q That would be August of 2009?

11 A Yes, sir. It was August the 19th of 2009 at 1431
12 hours, which is actually 2:31 in the afternoon.

13 Q Thank you, sir.

14 THE COURT: You may step down.

15 MS. JORDAN: Your Honor, may this witness be excused?

16 THE COURT: He may be.

17 (Whereupon, the witness was excused.)

18 MS. JORDAN: The state calls Robert Rosenberg.

19 ROBERT ROSENBERG, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. JORDAN

22 Q Please state your name for the record.

23 A Robert Rosenberg.

24 Q Where are you currently employed?

25 A Spartanburg County Sheriff's Department.

Robert Rosenberg
Direct examination by Ms. Jordan

- 1 Q How long have you been employed there?
- 2 A Approximately 26 years.
- 3 Q What is your current position there?
- 4 A I am currently an evidence custodian.
- 5 Q What was your position in July of 2007?
- 6 A An evidence custodian.
- 7 Q Okay. I'm going to take you back to September the
- 8 9th of 2009 and ask you if you had an occasion to work on a
- 9 case involving Joseph Cobb.
- 10 A September of 2009?
- 11 Q Yes, sir, right, yes, sir.
- 12 A Yes, ma'am.
- 13 Q Could you tell the jury what your -- what you did on
- 14 this case?
- 15 A I took evidence in that had been turned in by David
- 16 Hogsed and placed it into evidence.
- 17 Q Okay. I'm going to direct you to what's directly in
- 18 front of you as State's Exhibit No. 13 and ask if you can
- 19 identify that.
- 20 A It is a -- it's item No. 3, a D.N.A. standard buccal
- 21 swab of Joseph Cobb.
- 22 Q Okay. Is that the item that you took from Officer
- 23 Hogsed on the -- on September the 9th of 2009?
- 24 A I took it in on the 19th.
- 25 Q I apologize.

Robert Rosenberg
Cross-examination by Mr. Whelchel

1 A Apparently he took it the day before, and it's
2 probably in our evidence locker.

3 Q Okay. Once that was taken in what -- did you alter or
4 amend it in any way?

5 A No, ma'am. The only thing I would have done, the
6 only -- I'd have put a little sticker on it after we enter
7 it into the computer to show where it's located.

8 Q Please answer any questions Mr. Whelchel may have.

9 A Okay.

10 CROSS-EXAMINATION

11 BY MR. WHELCHER

12 Q Is that the sticker you're talking about --

13 A Yes, sir.

14 Q -- for the computer?

15 A Yes, sir.

16 Q Okay. Is this the only piece of, item of, evidence
17 that you received on this case?

18 A No, sir.

19 Q Okay. There are the --

20 A The originals, yes, sir.

21 Q Did you receive these items too in this case?

22 A Yes, sir.

23 Q Okay. And when did you receive these items?

24 A On July 11th of 2007.

25 Q Okay. Do you know where they are now?

Robert Rosenberg
Redirect examination by Ms. Jordan

1 A No, sir, I do not.

2 Q Okay. They've been lost, is that right?

3 A I can't say they've been lost.

4 Q Misplaced.

5 A That, or probably, yes.

6 Q You can't find them in the evidence room.

7 A No, sir.

8 Q Okay. Thank you, sir.

9 MS. JORDAN: A couple of questions, Your Honor.

10 REDIRECT EXAMINATION

11 BY MS. JORDAN

12 Q Officer Rosenberg, what were the items that were lost
13 by the sheriff's office?

14 A The items that are discussed, it was one of the --
15 green toothbrush from back bathroom medicine cabinet. And
16 the other I think was a kitchen trash bags -- trash pull.
17 Do you want me to read each item?

18 Q Yes, sir.

19 A Okay. Dr. Pepper, a 2-liter bottle from trash bag No.
20 1, broken clear glass from trash bag No. 1, brown washcloth
21 from trash bag No. 1, torn prescription info from trash bag
22 No. 1, Dr. Pepper 20-ounce bottle from trash bag No. 2, a
23 sterile X-R medication guide from trash bag No. 2, and one
24 light blue -- I don't understand -- I can't read his
25 writing -- boxers from clothes basket No. 2. I wonder if

Robert Rosenberg
Recross-examination by Mr. Whelchel

1 it's in reference to clothing basket No. 2. One light blue
2 something boxers from clothes basket No. 2, white men's
3 boxers from washing machine.

4 MS. JORDAN: If I may approach, Your Honor.

5 THE COURT: Yes.

6 A That is another sheet.

7 Q In line with what Mr. Whelchel was asking you, I've
8 shown you another evidence log. Could you state to the
9 Court what that is?

10 A It's also a buccal swab from Joseph Cobb.

11 Q When was that turned into evidence?

12 A July 7th. No. July 11th of 2007.

13 Q Okay. What happened to that item?

14 A I do not know, ma'am.

15 Q Okay. Was it -- is it no longer available, or has it
16 been misplaced along with the other items?

17 A I believe so.

18 MS. JORDAN: Nothing further, Your Honor.

19 RECROSS-EXAMINATION

20 BY MR. WHELCHER

21 Q The buccal swab from July the 11th was lost, correct,
22 or misplaced or whatever?

23 A Yes, sir.

24 Q And that's why we have the buccal swab from August, a
25 year later, is that right?

Robert Rosenberg
Recross-examination by Mr. Whelchel

1 A Yes, sir.

2 Q Excuse me. Two years later, is that right?

3 A Yes, sir.

4 Q Okay. Thank you, sir.

5 MS. JORDAN: Your Honor, may this witness be excused?

6 THE COURT: He may be.

7 (Whereupon, the witness was excused.)

8 MS. JORDAN: Your Honor, may Mr. Whelchel and I
9 approach?

10 THE COURT: Yes, ma'am.

11 (Bench conference held off the record in the presence
12 of the jury but out of the hearing of the jury.)

13 THE COURT: All right, sir. Ladies and gentlemen,
14 we're going to have to recess for the afternoon based upon
15 witness scheduling, so we'll do so.

16 Keep in mind as you leave you're still to obey the
17 caution I've given you previously, and that is you're to
18 have no discussions about this case with any person
19 whatsoever in any fashion whatsoever.

20 You're not to conduct any research or do your own
21 investigation into any issue that relates to the case in
22 any fashion. And you're not to permit yourselves to be
23 exposed to any type of media coverage that might relate to
24 the trial.

25 With that, have a good evening. Please report to your

Lynn McMillan
Direct examination by Ms. Jordan

1 (Proceedings March 10, 2011)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: Are we ready for the jury?

5 MS. JORDAN: Yes, Your Honor.

6 THE COURT: Bring them in.

7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Good morning, ladies and gentlemen.

10 When we recessed yesterday the state was in this midst
11 of their presentation of evidence. So we will continue
12 with that this morning.

13 Ms. Jordan.

14 MS. JORDAN: Thank you, Your Honor. The state calls
15 Lynn McMillan.

16 LYNN McMILLAN, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MS. JORDAN

19 Q Please state your full name for the record.

20 A Lynn McMillan.

21 Q Okay. Ms. McMillan, where do you work?

22 A I work at the Children's Advocacy Center and the
23 University of South Carolina.

24 Q What is your occupation?

25 A I'm a social worker. At the Children's Advocacy

Lynn McMillan
Direct examination by Ms. Jordan

1 Center I'm a forensic evaluator. I conduct forensic
2 assessments of children who've been referred to the
3 advocacy center. And through the University of South
4 Carolina I'm adjunct faculty in the college of social work.

5 Q As part of your work have you had the opportunity to
6 conduct forensic assessments?

7 A Yes.

8 Q Okay. Did you have an opportunity to conduct a
9 forensic assessment on Complaining Witness

10 A Yes, I did.

11 Q Okay. Before we get to the forensic assessment that
12 you conducted on Complaining I'm going to ask you a couple of
13 questions about your background.

14 Are you licensed by the state of South Carolina?

15 A Yes, I am. I'm licensed, I'm licensed by the state of
16 South Carolina as what we call an L.I.S.W.C.P. That's a
17 licensed independent social worker for clinical practice.

18 Q Okay. Tell the jury a little bit about your
19 educational background.

20 A I am currently a Ph. D. candidate at the University of
21 South Carolina in the College of Social Work. I have my
22 master's degree in social work as well from U.S.C. That
23 was in 1986. And I have an undergraduate degree in social
24 work from East Carolina University in Greenville, North
25 Carolina. And that was in 1979. So I've been a social

Lynn McMillan
Direct examination by Ms. Jordan

1 worker for over 30 years.

2 Q Okay. Please give the jury if you don't mind a brief
3 history of your work experience.

4 A Well, I've been a social worker for over 30 years, and
5 I have worked as a social worker both in medical settings
6 and in psychiatric settings, both in-patient setting where
7 people were admitted to the hospital, but also in community
8 mental health.

9 Most of my clinical work has been in up-front
10 assessments of people for various reasons. I've been at
11 Children's Advocacy Center since 2001 where I primarily
12 conduct forensic evaluations on children who are referred
13 to us. And I also have some administrative
14 responsibilities there.

15 Q Have you received any special training for the
16 forensic interviewing of children in the area of physical
17 or sexual abuse?

18 A Yes, I have.

19 Q Will you tell the jury about when and where your
20 training was?

21 A Under my licensure we're required to have continuing
22 education, and-but also as part of my work --

23 THE COURT: Let me ask you to pull that microphone up,
24 please, ma'am.

25 THE WITNESS: Yes, sir.

Lynn McMillan
Direct examination by Ms. Jordan

1 THE COURT: And if you'll look towards the
2 prosecutor --

3 THE WITNESS: Okay.

4 THE COURT: -- that way the court reporter can see at
5 least your profile, because she has a difficult time if she
6 can't see your face. When you turn away from her, she
7 can't see you.

8 THE WITNESS: Thank you. Is that better?

9 BY MS. JORDAN

10 A Okay. I forgot the question.

11 Q Okay. When and where have you received training in
12 forensic science?

13 A Thank you.

14 Throughout, through the Children's Advocacy Center
15 since 2001, specifically to forensic evaluations and issues
16 around maltreatment in children.

17 We -- I attend on a regular basis international,
18 national, state and local conferences where there are
19 specialized trainings regarding all aspects of forensic
20 evaluations.

21 Q Okay. Approximately how many forensic evaluations or
22 interviews have you conducted during your career?

23 A I have done, specific to forensic evaluations I've
24 done, over 800.

25 Q Have you ever been called upon to testify in court

Lynn McMillan
Direct examination by Ms. Jordan

1 regarding child sexual abuse and forensic interviewing?

2 A Yes, I have.

3 Q Could you tell the jury about how many times and
4 where?

5 A I would estimate around 25 to 30 times, both in family
6 court and in general sessions court in Spartanburg County,
7 Cherokee County, Greenville County and Laurens County.

8 Q Okay. I'm going to turn back to the forensic
9 assessment that you completed on Complaining Witness How did
10 you come into contact with Complaining

11 A She was referred to us by the Spartanburg County
12 Sheriff's Office.

13 Q Okay. On how many occasions did you meet with
14 Complaining

15 A I met with Complaining twice.

16 Q When did you meet with her?

17 A The two times that I met with her, on November 7th of
18 2007 and again on November 15th of 2007.

19 Q Okay. When you interviewed her who was -- where did
20 you interview her?

21 A I interviewed her in one of our interview rooms that
22 we have at the Advocacy Center. Our Advocacy Center is a
23 2-story house, and our interview rooms are located on the
24 second floor. And they are -- we had two interview rooms
25 at the time, and I interviewed her in one of those.

Lynn McMillan
Direct examination by Ms. Jordan

1 Q Okay. Who was present in the room when you
2 interviewed Complaining

3 A Only me and Complaining

4 Q Okay. Was that during both interviews?

5 A Yes. Correct.

6 Q Okay. How old was Complaining at the time that you spoke
7 with her?

8 A At the time of the interviews she was 15.

9 Q Okay. What, if any, rules or guidelines do you set
10 forth in interviews, and did you set those forth in your
11 interview with Complaining

12 A Yes, we do have rules about talking in the interview
13 room, and I did set those with her.

14 The rules that we have with the children who come to
15 us are that it's really important that we only talk about
16 the truth when we're in there, and also to let the children
17 know that if I ask a question and they don't know the
18 answer to that or they don't remember the answer, they can
19 say I don't know or I don't remember. I don't want them
20 making things up for me.

21 The other rule that I have is that if they get a sense
22 that I'm getting mixed up about something, I give them
23 permission to correct me on it.

24 Q Okay. When you spoke with Complaining did she state
25 whether or not a sexual assault had occurred?

Lynn McMillan
Direct examination by Ms. Jordan

1 A Yes, she did.

2 Q Did she state where the assault occurred?

3 A Yes, she did.

4 Q Could you tell the jury where that was?

5 A She said that it occurred at a residence where she was
6 spending the night.

7 Q Did she state when that happened?

8 A Yes.

9 Q Could you tell the jury when she stated it happened?

10 A It happened in July of 2007.

11 Q Ms. McMillan, do you also in the course of your --
12 course of your job counsel children in sexual -- who have
13 been sexually abused?

14 A I do not specifically provide the therapy. We provide
15 therapy at the Advocacy Center, and that's part of my
16 training, but that's not part of my actual job.

17 Q Let me ask you. Do you -- can you describe to the
18 jury what some of the demeanors are that you would normally
19 see in a child that has been sexually abused?

20 A Well, it really depends on that particular child.
21 Some children are very serious and very straight forward in
22 their demeanor for me. Others may be very tearful during
23 the abuse part of the interview, whereas they may be, say,
24 friendlier and more open and talkative about things that
25 don't relate specifically to the abuse. And so sometimes I

Lynn McMillan
Cross-examination by Mr. Whelchel

1 can see that transition just during the interview process.

2 Q Please answer any questions Mr. Whelchel may have.

3 CROSS-EXAMINATION

4 BY MR. WHELCHER

5 Q Did she tell you that she had -- that she threatened
6 to call the police? You can look at your notes, ma'am.

7 A Yes, sir, she did.

8 Q With her cell phone?

9 A She didn't say specifically with her cell phone. She
10 said she had her cell phone with her. She just said she
11 threatened to call the police.

12 Q She had her cell phone with her, but it was not turned
13 on, is that right?

14 A That is correct.

15 Q Thank you, ma'am.

16 MS. JORDAN: Your Honor, may this witness be excused?

17 THE COURT: You may step down. You may also be
18 excused.

19 (Whereupon, the witness was excused.)

20 MS. JORDAN: The state calls Jack Westmoreland.

21 JOHN WESTMORELAND, having been
22 first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MS. JORDAN

24 Q Please state your name for the record.

25 A John Westmoreland.

John Westmoreland
Direct examination by Ms. Jordan

- 1 Q Where are you currently employed?
- 2 A Spartanburg County Sheriff's Office.
- 3 Q How long have you been employed there?
- 4 A Over 27 years.
- 5 Q What is your current position there?
- 6 A Court division.
- 7 Q Where did you -- at what time did you work in evidence
8 at the sheriff's office?
- 9 A From 10/07 to 10/10.
- 10 Q Did you have an occasion to work on a case involving
11 the defendant, Joseph Cobb?
- 12 A I carried some items to SLED.
- 13 Q Okay. Could you tell the jury what you carried to
14 SLED and when you carried it so SLED?
- 15 A I carried a sexual assault evidence collection kit on
16 a Bishop. I can't read the first name. S.A.M. That was
17 on 9/9 of '09.
- 18 Q Where did you carry it to?
- 19 A To SLED.
- 20 Q Okay. Did you carry anything else to SLED?
- 21 A I did.
- 22 Q Would you tell the jury what that was?
- 23 A A D.N.A. standard buccal from Joseph C. Cobb -- G.
24 Cobb.
- 25 Q Okay. When you received both of those items were

John Westmoreland
Cross-examination by Mr. Whelchel

1 either of those items open?

2 A No, they were not.

3 Q Okay. Were they ever opened in your presence?

4 A No, they were not.

5 Q Okay. Did you tamper or damage those items in any way
6 when you had control of them?

7 A No, I did not.

8 Q Please answer any questions Mr. Whelchel may have.

9 CROSS-EXAMINATION

10 BY MR. WHELCHER

11 Q When did you take the buccal swab to SLED, Jack?

12 A On 9/9 of '09.

13 Q So you took them both at the same time.

14 A The same time, yes, sir.

15 Q Okay. Thank you, sir.

16 THE COURT: Step down.

17 THE WITNESS: Thank you, sir.

18 MS. JORDAN: The state calls Sherri Brown.

19 SHERRI BROWN, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MS. JORDAN

22 Q Please state your name for the record.

23 A Sherri Brown, B-R-O-W-N.

24 Q Ms. Brown, where are you currently employed?

25 A South Carolina Law Enforcement Division, also known as

Sherri Brown
Direct examination by Ms. Jordan

1 SLED.

2 Q How long have you worked at SLED?

3 A A little over 16 and a half years.

4 Q Okay. What are your duties at SLED?

5 A One of my -- I'm a forensic technician within the
6 D.N.A. departments. And one of the duties within the
7 D.N.A. department is when any evidence that comes into
8 SLED, if it has a liquid blood tube in it, I stabilize it
9 and go through our process and take the liquid and make it
10 into a dry form by pouring it onto filter paper.

11 Q Okay. Did you have an occasion to receive a sexual
12 assault kit on a Complaining Witness from the sheriff's office,
13 Spartanburg County Sheriff's Department?

14 A Yes.

15 Q Okay. When you received that item what kind of
16 condition was it in?

17 A It was in a heat-sealed pouch. The paper envelope
18 with all the evidence -- the pieces from the sexual assault
19 kit was in a heat-sealed pouch, but it's sealed and dated
20 by the submitting person.

21 Q Okay. Did you break the seal on that pouch?

22 A Yes.

23 Q What was the purpose of that?

24 A So I can get in and retrieve the liquid blood that was
25 taken at the time the kit was collected.

Sherri Brown
Direct examination by Ms. Jordan

- 1 Q Okay. And did you do that in this case?
- 2 A Yes.
- 3 Q Okay. What day did you do that?
- 4 A I took it into my custody on October the 16th of 2008,
5 and it was sealed. And sometime between the 16th of
6 October and the 20th of October I stabilized it because it
7 was in my custody. And the, the next step was it was
8 transferred until -- to a storage bin on October the
9 20th of 2008.
- 10 Q Okay. After you stabilized it did you seal the
11 package again?
- 12 A Yes. Once it's air dried, according to our policy and
13 procedure, it was repackaged up into the sexual assault kit
14 and heat sealed. The heat-sealed pouch was sealed with my
15 initials and date on it.
- 16 Q Okay. Do you know what happened to the sexual assault
17 kit once you sealed it again?
- 18 A It was put -- according to our policies at the time,
19 it was stayed to six months or more, and then if it would
20 not have been assigned, the case, it was returned to the
21 submitting agency.
- 22 Q Okay. Do you show from your documentation whether or
23 not that kit was returned to the submitting agency?
- 24 A Yes, it was.
- 25 Q Do you also show in your documentation whether or not

Sherri Brown
Cross-examination by Mr. Whelchel

1 SLED came back into contact with that sexual assault kit?

2 A Yes. On September the 10th of 2009 I took custody of
3 it again. And on, on that same date I transferred it into
4 a secure location within the D.N.A. department so that it
5 could be analyzed.

6 Q Okay. Please answer any questions that Mr. Whelchel
7 may have.

8 CROSS-EXAMINATION

9 BY MR. WHELCHER

10 Q Let me make sure I understand what you said,
11 Ms. Brown.

12 A Uh-huh.

13 Q You originally received or personally received this,
14 these particular items, on October the 16th of '08.

15 A Yes.

16 Q Okay. And nothing was done.

17 A At that time it was -- case could not be assigned to
18 be anal --

19 Q Within SLED.

20 A Within SLED, sir.

21 Q Okay. And at some point subsequent to that it was
22 shipped back to the sheriff's department here --

23 A Yes.

24 Q -- in Spartanburg. You received it again in
25 September 10th of '09.

Jasper Humbert
Direct examination by Ms. Jordan

1 A Yes.

2 Q Okay. And I'm assuming it was assigned at that point.

3 A It, it was not assigned to -- right then and there.

4 But a few months later it was assigned to D.N.A. analyst
5 Jasper Humbert.

6 Q Oh, okay. And other than -- you didn't do any testing
7 or analysis or anything like that.

8 A No. I did not.

9 Q Thank you.

10 MS. JORDAN: May this witness be excused?

11 THE COURT: Yes.

12 Step down. Thank you.

13 (Whereupon, the witness was excused.)

14 MS. JORDAN: The state calls Jasper Humbert.

15 JASPER HUMBERT, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MS. JORDAN

18 Q Please state your name for the record.

19 A Jasper Humbert.

20 Q Mr. Humbert, where were you employed prior to January
21 of this year?

22 A At the South Carolina Law Enforcement Division.

23 Q How long did you work there?

24 A Approximately four and a half years.

25 Q Are you -- have you since left SLED?

Jasper Humbert
Direct examination by Ms. Jordan

1 A Yes, I have.

2 Q Okay. While you were at the South Carolina -- while
3 you were at SLED did you have a chance to analyze a sexual
4 assault kit that was completed on Complaining Witness

5 A Yes, I did.

6 Q I'm going to first start out by showing you what's
7 already been marked as State's Exhibit No. 13 and ask if
8 you recognize that item.

9 A Yes, I do.

10 Q Could you tell the jury what that is?

11 A It's listed as my item four because I have the SLED
12 case number and my initials on it. And this is a -- buccal
13 swabs from a Joseph Cobb.

14 Q Okay. When you received that item was it sealed?

15 A Yes, it was.

16 Q Okay. Were you the first person to break the seal on
17 that item?

18 A I was the one to break the seal on this pouch, this
19 evidence pouch.

20 Q Okay.

21 A And when I got done with it I sealed it back and
22 initialed it when I returned it.

23 Q Okay. Did you also initial the inside envelope?

24 A Yes, I did.

25 Q The one that's --

Jasper Humbert
Direct examination by Ms. Jordan

1 A Yes.

2 MS. JORDAN: Your Honor, at this time the state would
3 move State's Exhibit No. 13 into evidence.

4 MR. WHELCHER: I need to see it.

5 MS. JORDAN: I'm sorry.

6 (Pause.)

7 MR. WHELCHER: No objection.

8 THE COURT: It's admitted.

9 MS. JORDAN: Thank you.

10 (Defendant's buccal swab marked State's Exhibit No.
11 13.)

12 Q I'm also going to go through a process real quick of
13 just showing you some other items and asking you if you can
14 identify those.

15 Let me show you State's No. 22. These items have
16 already been marked and entered into evidence.

17 A Okay. This is a blood standard from the case, this
18 case.

19 Q Who is the blood -- who is the blood standard of?

20 A Complaining Witness

21 Q Okay. What SLED item number is that for you?

22 A Item 1.1.

23 Q I'm also going to show you -- just in front of you is
24 item or State's Exhibit No. 23 -- and ask if you can
25 identify that.

Jasper Humbert
Direct examination by Ms. Jordan

1 A This is Item 1.6 from my item, and it's some
2 fingernail scrapings from the, the sexual assault kit.

3 Q And did you analyze those fingernail scrapings?

4 A Yes, I did.

5 Q And it's my understanding those are the fingernail
6 scrapings of Complaining Witness

7 A That's correct.

8 Q Were you able to make any identifications as to D.N.A.
9 on either of the scrapings that you have?

10 A Yes, I was. I did the left hand and right hand
11 because of the scrapings from both hands. And Item
12 1.6.1 -- the partial D.N.A. profile developed from that
13 item was consistent with Complaining Witness

14 Q Okay. What about Item 1.6.2, which I believe is the
15 fingernail scrapings from her right hand?

16 A Okay. The D.N.A. obtained from Item 1.6.2, which was
17 the right hand, is a mixture of at least two individuals.
18 Complaining Witness cannot be excluded as a possible
19 contributor to this mixture. And then Joseph Cobb is
20 excluded as a contributor to that mixture.

21 Q So if I'm understanding correctly, the one D.N.A. item
22 from that fingernail scraping that you could identify was
23 Complaining Witness

24 A That's the only one I could not exclude.

25 Q Not exclude.

Jasper Humbert
Direct examination by Ms. Jordan

1 A Yeah.

2 Q Okay. I'm going to now show you what's been
3 previously marked as State's Exhibit No. -- actually we'll
4 start with 24 and ask if you can identify this.

5 A These are the smears from the sexual assault kit.

6 Q Okay. And I am going to show you what's also been
7 marked previously and admitted as State's 20 and 21 and ask
8 if you can identify those for the jury.

9 A Item 21 would be my Item 1.4, which is oral swabs from
10 the sexual assault kit. And this item, Item 1.3 on my
11 paperwork, are the vaginal swabs from the sexual assault
12 kit.

13 Q Were you able to identify any D.N.A. off of either one
14 of those swabs?

15 A Well, I did testing for semen on those items, and I
16 got negative tests for semen. And because of that I didn't
17 do any D.N.A., further D.N.A., analysis on it, because
18 after I did the test for semen it's SLED policy not to go
19 forward if it's negative.

20 Q Okay. Is that uncommon to sometimes have a negative
21 presumptive test on any swabs that are taken?

22 A That's not uncommon at all. I would say half of all
23 of the sexual assault kits I ever did didn't have positive,
24 or were negative basically.

25 Q I'm going to flip now and show you beginning with --

Jasper Humbert
Direct examination by Ms. Jordan

1 I'm going to show you State's No. 17, which is already
2 marked and admitted, and ask if you can identify this.

3 A Okay. All right. This is a swab labeled mid lower
4 abdomen which corresponds with some items that I
5 subitemized in this case. 1.5.4 would be the SLED item,
6 mid lower abdomen, so.

7 Q Were you able to extract any D.N.A. from that item?

8 A Let's see. No, I was not. I didn't get any human
9 D.N.A. from the item when I extracted from it, so.

10 Q I'm now going to show you what's previously marked and
11 admitted as State's No. 16. Can you identify that?

12 A This is a swab, left-side neck, which would be Item
13 1.5.3 from my kit or from my analysis.

14 And the results that I got for it, the D.N.A. obtained
15 from Item 1.5.3 is a mixture of at least two individuals.
16 The D.N.A. profile developed from the major contributor of
17 this mixture is consistent with the D.N.A. profile of
18 Complaining Witness Joseph Cobb cannot be excluded as a minor
19 contributor to this mixture.

20 Q Okay. And what area of the body was that swab from,
21 again?

22 A Left-side neck.

23 Q I'm now going to show you what's been marked as
24 State's Exhibit No. 19 -- I believe it's SLED 1.5.6 -- and
25 ask if you can identify that. It's already been marked and

Jasper Humbert
Direct examination by Ms. Jordan

1 admitted.

2 A Item 1.5.6, which is right side of neck, the result
3 that I got for it was the D.N.A. profile obtained from Item
4 1.5.6 is a mixture of at least two D.N.A. or at least two
5 individuals. The D.N.A. profile, the major contributor to
6 Item 1.5.6, matches the D.N.A. profile of Joseph Cobb.

7 Q And where on Complaining Witness body was that swab
8 identified as having been taken from?

9 A Right side of neck.

10 Q Now I'm going to show you State's No. 15, which I
11 believe corresponds with SLED's 1.5.2, and ask if you can
12 identify this.

13 A It's Item 1.5.2 on my paperwork. It's right -- swab
14 from right breast nipple.

15 The result that I got was that the D.N.A. profile
16 obtained from Item 1.5.2 is a mixture of at least two
17 individuals.

18 The D.N.A. profile -- the major contributor to this
19 item matches the D.N.A. profile of Joseph Cobb. The D.N.A.
20 profile, the minor contributor, is consistent with the
21 D.N.A. profile of Complaining Witness

22 There is D.N.A. present on Item 1.5.6, which is the
23 last item, because these two items had similar results that
24 couldn't be contributed to either people, meaning there was
25 a number. A D.N.A. profile is a series of numbers, and

Jasper Humbert
Direct examination by Ms. Jordan

1 there was one or two extra numbers that wasn't from those
2 two.

3 Q But if I'm correct what you testified to is that as to
4 the right breast and as the right side of her neck a major
5 contributor to the D.N.A. that was there was that of Joseph
6 Cobb.

7 A That is correct.

8 Q What type of D.N.A. were you able to -- I apologize.
9 I'm going to show you now what's been marked -- and I
10 believe this is our last one -- as State's Exhibit No. 14,
11 which corresponds to SLED No. 1.5.1 and if ask if you can
12 identify this.

13 A Thank you. Left-breast nipple, which is SLED Item
14 1.5.1. And the result that I got for it was the D.N.A.
15 profile developed from Item 1.5.1 matches the D.N.A.
16 profile of Joseph Cobb.

17 The probability of randomly selecting an unrelated
18 individual having a D.N.A. profile matching this item --

19 MR. WHELCHER: Objection. He's not been sworn -- he's
20 not been qualified as any kind of expert witness or any
21 kind of mathematician or anything like that. He's here as
22 a SLED chemist. I would object to any testimony about
23 probability at this point.

24 MS. JORDAN: Your Honor, could I lay a foundation?

25 THE COURT: You may.

Jasper Humbert
Direct examination by Ms. Jordan

1 Q What is your educational background, Mr. Humbert?

2 A I have a bachelor's of science degree in biology from
3 Armstrong Atlantic State University in Savannah, Georgia.

4 I have a master's degree in biological sciences from
5 the University of Iowa.

6 I have a further three years of graduate education in
7 a genetics Ph. D. program from the Penn State Medical
8 College in Hershey, Pennsylvania.

9 I also was trained as a forensic D.N.A. analyst at the
10 South Carolina Law Enforcement Division in the D.N.A.
11 department under a court-qualified analyst where under her
12 direction I basically did hundreds of D.N.A. samples under
13 her supervision until such time that I had gone through all
14 of my training. And then I started my own cases and was
15 basically -- had done my own cases for approximately three
16 years while I was at SLED.

17 Q Have you received training in the area of D.N.A.
18 analysis?

19 A Yes, I have.

20 Q Okay. And approximately how many of these kits have
21 you worked on over the years?

22 A Probably well over a hundred sexual assault kits.

23 Q Have you ever testified before in the state of South
24 Carolina as an expert?

25 A Yes, I have.

Jasper Humbert
Direct examination by Ms. Jordan

1 Q How many times?

2 A Approximately 15.

3 Q Okay. And which courts, or courts and counties?

4 A Charleston, Berkeley County, Lexington County,
5 basically all over the state.

6 Q Have you ever...

7 MS. JORDAN: And, Your Honor, at this time we would
8 move to have him admitted as an expert in the field of
9 D.N.A. analysis.

10 MR. WHELCHER: Subject to my earlier objections, Your
11 Honor.

12 THE COURT: All right. He is so qualified.

13 BY MS. JORDAN

14 Q Going back to the swab from ^{Complaining} left breast,
15 could you continue telling the jury about the D.N.A. that
16 you were able to retrieve from that swab?

17 A Yes, I can. The D.N.A. profile developed from Item
18 1.5.1, which was a swab from the left-breast nipple,
19 matches the D.N.A. profile of Joseph Cobb. The probability
20 of randomly selecting an unrelated individual having a
21 D.N.A. profile matching this item is approximately one in
22 12 quadrillion.

23 Q So it's my understanding that the one in 12
24 quadrillion with it being anybody other than him -- or I
25 apologize.

Jasper Humbert
Direct examination by Ms. Jordan

1 A That's the probability of like a random person putting
2 their D.N.A. profile on the item.

3 Q Okay. Is that a relatively high probability?

4 A Yes, very, extremely so.

5 (SLED D.N.A. report marked State's Exhibit No. 25 for
6 Identification.)

7 Q Mr. Humbert, I'm going to show you what's been marked
8 now as State's Exhibit No. 25 and ask you if that's the
9 four pages of your report in this case or if that's a copy
10 of the first four pages of your report in this case.

11 A It appears to be, yes.

12 Q Is the page that's missing, in fact, just the table
13 with a lot of numbers in it?

14 A Yeah. That's basically my table with all of the
15 D.N.A. profiles from the case.

16 Q And it's a lot of numbers?

17 A Yes. It's a good number of numbers, yes.

18 MS. JORDAN: Your Honor, at this time the state would
19 move to admit State's No. 25 into evidence.

20 MR. WHELCHER: No objection.

21 THE COURT: It's admitted.

22 (SLED D.N.A. report marked State's Exhibit No. 25.)

23 Q Please answer any questions Mr. Whelchel may have.
24
25

Jasper Humbert
Cross-examination by Mr. Whelchel

1 CROSS-EXAMINATION

2 BY MR. WHELCHER

3 Q Humbert?

4 A That's correct.

5 Q Thank you, sir.

6 Mr. Humbert, using item or State's Evidence Exhibit
7 No. 25, the one that was just admitted, your analysis, I
8 need to ask you some questions, specifically Item 1.5.4.

9 A Okay.

10 THE COURT: Please be careful of the microphone.
11 Don't rub up against it.

12 THE WITNESS: Oh, okay. Sorry.

13 A Okay.

14 Q That, sir, is the swab from the mid lower abdomen
15 that's suspected saliva. These swabs are from Complaining
16 Bishop that were obtained and forwarded to you, correct,
17 sir?

18 A That's correct.

19 Q Okay. And the result of your analysis is that no
20 human D.N.A. can be found or identified?

21 A No human D.N.A. was obtained from the item.

22 Q Okay. Even though we know it came from the abdomen of
23 Complaining Witness no human D.N.A. can be obtained from that
24 swab.

25 A No human D.N.A. was obtained from it when I did my

Jasper Humbert
Cross-examination by Mr. Whelchel

1 analysis.

2 Q All right. Now, Items 1.1 and 4 are known items, is
3 that correct, so that you'll have the D.N.A. of the two
4 individuals, correct?

5 A That is correct. Those are D.N.A. standards.

6 Q Okay. So you can compare the standards to what you
7 get from the swabs.

8 A That's correct.

9 Q Okay. And even though you have those you can't find
10 those at 1.5.4 or any human D.N.A. at 1.5.4, is that right?

11 A That's correct.

12 Q Okay. I just want to make sure I'm understanding
13 correctly.

14 And, again, you testified earlier on the fingernail
15 scrapings, those are known scrapings from Complaining Witness
16 correct?

17 A That's correct.

18 Q Okay. And Item 1.6.1 is consistent with Complaining
19 Bishop.

20 A That's correct.

21 Q That's the same thing as a match?

22 A Because the numbers in that are matching to hers. But
23 it's a very low D.N.A. profile meaning some of the numbers
24 are missing. So it is consistent with her. So all the
25 numbers present in that partial D.N.A. profile that I have

Jasper Humbert
Cross-examination by Mr. Whelchel

1 here are also in Complaining Witness D.N.A. profile.

2 Q Okay. So the swabs from the left and right breast
3 that were suspected saliva, particularly 1.5.1, you say
4 it's consistent with Mr. Cobb.

5 A I said that the profile matches the D.N.A. profile of
6 Joseph Cobb.

7 Q Okay. And 1.5.2 and 1.5.6, which is your next items
8 that you tested --

9 A Yes.

10 Q -- are mixtures of at least two individuals. That
11 would be Complaining Cobb, excuse me, Joseph Cobb and Complaining
12 Bishop, correct?

13 A That's correct. They are both in those D.N.A.
14 profiles.

15 Q Okay. And there's D.N.A. on 1.5.6 that cannot be
16 attributed to Complaining Witness or Joseph Cobb.

17 A That is correct. I have numbers that aren't in their
18 profiles, is basically what that means.

19 Q Okay. And Item 1.5.3 also is a mixture of at least
20 two other individuals, is that correct?

21 A That's correct.

22 Q That would be Mr. Cobb and Ms. Bishop.

23 A That is correct. Joseph Cobb could not be excluded as
24 a minor contributor, meaning that the numbers in the minor
25 contributor match or are in his profile.

Jasper Humbert
Cross-examination by Mr. Whelchel

1 Q So the numbers are consistent with some of his
2 numbers, correct?

3 A Yes, that's correct.

4 Q Those are the only items that you analyzed, is that
5 correct, page -- I'm looking at page three. Excuse me.

6 A Three. I'm sorry.

7 Q Of this one, your report.

8 A All right. Those are the only ones that I did D.N.A.
9 analysis on.

10 Q Okay.

11 A The ones listed under D.N.A. analysis. I analyzed the
12 other items for serology when I tested them as negative for
13 semen in the rape kit, but these are the only items that
14 D.N.A. had been -- an analysis or an extraction had been
15 carried.

16 Q So the D.N.A. is a further step. After you've done
17 the original analysis and you've determined that there was
18 on the smears vaginal and oral, no analysis was performed,
19 no further analysis was performed, is that correct? I'm
20 talking about Item 1.2.

21 A That is -- I didn't do any analysis on those smears,
22 that's correct.

23 Q Okay. And Item 1.3 you analyzed and no semen's
24 identified.

25 A That is correct.

Jasper Humbert
Redirect examination by Ms. Jordan

1 Q Those were the vaginal swabs.

2 A That's correct.

3 Q And the oral swabs were the same way.

4 A That's correct. I didn't detect any semen on those.

5 Q Thank you, sir.

6 MS. JORDAN: A few questions on followup, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. JORDAN

9 Q Is it unusual to not be able to obtain D.N.A. from
10 swabs that are submitted?

11 A It depends on the type of swab. With blood you
12 usually expect it. I mean, if it's a touch or a contact
13 swab it's not rare, I mean, it's not -- it's very common to
14 not get anything. That's basically it, so.

15 Q But you were able to find the defendant's D.N.A. on
16 samples, on some of the samples, as far as the right
17 breast, right side of the neck and the left breast that
18 belonged to the defendant, Joseph Cobb.

19 But I will go one by one. 1.5.2, which was the right
20 breast, along with 1.5.6, which is I believe the second
21 paragraph --

22 A I was able to find D.N.A. that matched his profile.

23 Q The same thing with 1.5.1, which was the left breast.

24 A That is correct.

25 MS. JORDAN: Nothing further, Your Honor.

Nicki Cantrell
Direct examination by Ms. Jordan

1 MS. JORDAN: The state calls Officer Nicki Cantrell.

2 NICKI CANTRELL, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MS. JORDAN

5 Q Please state your name for the record.

6 A Nicki Cantrell.

7 Q Where are you currently employed?

8 A Spartanburg County sheriff's office.

9 Q How long have you been employed there?

10 A Almost ten years.

11 Q What is your current position?

12 A I'm a detective. I investigate all crimes that are
13 sexually motivated and all crimes against children.

14 Q How long have you been in that position?

15 A Seven years.

16 Q On -- I'm sorry. On July the 10th of 2007 did you
17 have an occasion or were you on call that day or working
18 that day?

19 A I was.

20 Q Did you receive a call in reference to Joseph Cobb?

21 A I received a call in reference to Complaining Witness
22 being at Spartanburg Regional.

23 Q Okay. Based upon that phone call, what did you do?

24 A I responded to Spartanburg Regional and met with the
25 officer that was there.

Nicki Cantrell

Direct examination by Ms. Jordan

1 Complaining Witness was in an exam room, and they had
2 already started the rape kit. The officer had not received
3 much information other than the victim's name at that
4 point. By the time he got there they were already getting
5 ready to start a sexual assault kit on her. So I told him
6 he could go ahead and leave and I would, I would take the
7 case from there.

8 Q Okay. Who did you speak with at the hospital?

9 A I spoke with a nurse that was doing the sexual assault
10 kit. I also spoke with Complaining Witness and I spoke with
11 her step-mother, Danielle.

12 Q Okay. When you spoke with Complaining did she state
13 whether or not a sexual assault had occurred?

14 A She did.

15 Q Did she say where it occurred?

16 A Yes. She stated that it happened at Home

 in Roebuck at Joseph Cobb and Jeannie
18 Cobb's residence.

19 Q What county is that residence in?

20 A Spartanburg County.

21 Q Okay. Did she state when it happened?

22 A Yes. She stated it happened around 1:00 a.m. on that
23 day, July the 10th of 2007.

24 Q Okay. How did -- can you describe Complaining demeanor
25 and how she looked when you were interviewing her that day?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A Yes. She was very, very tearful. She was crying.
2 She seemed exhausted. She had already talked to the nurses
3 about it. She, she didn't really want to have to keep
4 going through what had happened. She would get so upset --
5 she was sobbing -- that she couldn't hardly speak.

6 Q Okay. What did you do next in your investigation?

7 A I did have to interview her to obtain some
8 information. And I explained that to her that I just
9 needed to ask her a few questions.

10 So I did. I interviewed her briefly. And then after
11 that in speaking to the nurse -- and she had told me what
12 she had been told by Complaining which was consistent with
13 what Complaining had told me -- then at that point I decided
14 to do a search warrant at the incident location.

15 So I had somebody, another officer, drive by the
16 incident location and get me a description of the house
17 while I went back to the office and wrote a search warrant
18 which I presented to a judge. And the judge did sign the
19 search warrant.

20 Q Okay. Were you present when the search warrant was
21 executed?

22 A I was.

23 Q And were items taken from that search warrant?

24 A Yes, ma'am.

25 Q You've been in here in court. Were those the items

Nicki Cantrell
Direct examination by Ms. Jordan

1 that we now know have been either lost or misplaced?

2 A Yes, ma'am.

3 Q And what were those items again?

4 A Do you have the property sheet?

5 MS. JORDAN: Your Honor, if I may approach the
6 witness.

7 A The items that were collected were two Dr. Pepper
8 two-liters that were taken from a trash can, broken glass
9 from a trash can, torn prescription information from a
10 trash can, a medication guide from the trash, light blue
11 men's boxer shorts from a basket beside the washer, and two
12 pairs of white men's boxer shorts from the washing machine,
13 one green in color toothbrush from the medicine cabinet in
14 the master bathroom.

15 Q Okay. While you were there -- or who was at the
16 residence when you arrived?

17 A Jeannie Cobb, her three children and Joseph Cobb.

18 Q Okay. Did you have a chance to speak to Joseph Cobb
19 at the residence?

20 A Very briefly.

21 Q Okay. What did you decide to do with the defendant?

22 A I asked, I asked him if he would come to the sheriff's
23 office to speak with us, because out there on the scene it
24 was kind of difficult to talk to him with the children and
25 his wife.

Nicki Cantrell
Direct examination by Ms. Jordan

- 1 Q Did he agree to talk to you?
- 2 A He did.
- 3 Q How did, how did he get to the sheriff's office?
- 4 A He was transported by a police officer -- took him to
- 5 the sheriff's office, because they only had one vehicle.
- 6 And he said that he wanted to leave that vehicle with his
- 7 wife and her children so that they would have a vehicle.
- 8 So he asked for, he asked for a ride, which we provided for
- 9 him.
- 10 Q Okay. Detective Cantrell, I'm going to show you
- 11 what's previously been marked as State's Exhibit No. 9 and
- 12 ask if you can identify that.
- 13 A This is one of our forms. It's called a
- 14 preinterrogation waiver form. Before we question any
- 15 suspects in the case we go over their rights with them.
- 16 Q Okay. Where did you -- when at the sheriff's
- 17 department where did you speak to the defendant?
- 18 A I spoke to him at my desk.
- 19 Q Could you describe to the jury where your desk is
- 20 located at the sheriff's office?
- 21 A The sheriff's office has two -- it's two stories. The
- 22 second story is the detectives' division. And it's a giant
- 23 room bigger than probably this courtroom. And it has
- 24 cubicles that are, I would say, maybe not, maybe five foot
- 25 tall. When you stand up you can see over them all. So all

Nicki Cantrell
Direct examination by Ms. Jordan

1 of our desks are broken up with cubicles.

2 Q Okay. And that's where you spoke with the defendant?

3 A Yes, ma'am.

4 Q Was anyone else present when you spoke with him?

5 A Nobody was in my cubicle with him. I believe my
6 sergeant was upstairs in the office, and that was about it.
7 That's why we spoke in my cubicle because there was really
8 nobody upstairs at that time of the night.

9 Q Okay. What's your sergeant's name?

10 A Sergeant Kevin Bobo.

11 Q Okay. When you -- will you go through the jury and
12 tell them how you spoke to the defendant using State's
13 Exhibit No. 9?

14 A Yes. I wrote down his information, his name, address,
15 age, the date that day, which was July 10th of 2007, the
16 time, which was 9:56 p.m. when we sat down at my desk, and
17 that we were at the sheriff's office.

18 And then I, I show him the form, and it's laying out
19 facing him. And I asked him to read along with me while I
20 read it. And you just want me to go through it as if he
21 was sitting right here?

22 Q If I could stop you one moment, did you go back and
23 state -- did you ask the defendant what his age was?

24 A Yes.

25 Q Did you record that on the sheet?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A Yes.

2 Q What was his age?

3 A Forty-two at the time.

4 Q Yes, ma'am. If you could, just let the jury know how
5 you read to the defendant.

6 A On the form it says I, but when I'm reading it to them
7 so that they understand, I say, "You have the right to
8 remain silent. Anything you say can and will be used
9 against you in a court of law. You have the right to talk
10 to a lawyer and have him present with you while you're
11 being questioned. If you cannot afford to hire a lawyer
12 one will be appointed to represent you before any
13 questioning if you wish. And you have the right to stop
14 answering questions at any point during the questioning.
15 The above rights have been read to you by me, Detective
16 Cantrell. You have read the same and understand your
17 rights fully."

18 And I ask him if he understands all of those rights or
19 if he has any questions. He said no. When I would say
20 each, each line, I would draw a line next to it and he
21 would initial that, meaning that he read it and he
22 understood it and didn't have any questions. And then he
23 signed that top section.

24 And then we went on to the second section which says,
25 "You have the right to waive or give up your rights as

Nicki Cantrell
Direct examination by Ms. Jordan

1 explained above and you agree to talk to," me, "Officer
2 Cantrell, in reference to Complaining Witness And any
3 statement you make is of your own free will without fear,
4 threat, promise, favor or reward of any kind. You're able
5 to read and write the English language and finished eight
6 years in school."

7 And he also obtained a G.E.D., because I asked him
8 that information so I can fill in those blanks.

9 And I asked him if he agreed with that and if he was
10 willing to speak with me and waive his rights. He said
11 yes. And he signed right here to indicate that, and
12 Sergeant Bobo notarized the form.

13 MS. JORDAN: Your Honor, at this time...

14 Q Had that form been altered or amended in any way since
15 you completed it that night on July the 11th?

16 A No, ma'am.

17 Q July the 10th?

18 A No, ma'am.

19 MS. JORDAN: Your Honor, at this time we move State's
20 Exhibit No. 9 into evidence.

21 MR. WHELCHER: No objection.

22 THE COURT: It's admitted.

23 (Defendant's Miranda form marked State's Exhibit No.
24 9.)

25 Q Just to go back, what time is located -- what time is

Nicki Cantrell
Direct examination by Ms. Jordan

1 indicated on that?

2 A 9:56 p.m.

3 Q Okay. And what date?

4 A July 10th of 2007.

5 Q Okay. When you read him those rights did he appear to
6 understand them?

7 A He did.

8 Q Did he appear to -- did he -- did he appear to be
9 under the -- have you ever dealt with people who have been
10 under the influence of drugs or alcohol in the course of
11 your career?

12 A Yes, ma'am.

13 Q Did he appear to be under either drugs or alcohol that
14 night?

15 A No, ma'am.

16 Q How was his speech?

17 A It was normal. It was not slurred, broken or
18 anything.

19 Q Did he appear to understand the rights?

20 A He did.

21 Q Did he appear to -- or did you -- did you promise him
22 anything in return to making this statement?

23 A No, ma'am.

24 Q Did you threaten or coerce him in any way?

25 A No, ma'am.

Nicki Cantrell
Direct examination by Ms. Jordan

1 Q In your opinion did he -- or to the best of your
2 knowledge was the defendant's statement freely and
3 voluntarily give?

4 A Yes, ma'am.

5 Q Did the defendant make a statement in response to your
6 questions?

7 A He did.

8 Q Did you at some point in time reduce his statement to
9 writing?

10 A I did.

11 Q Okay. Before you reduced the statement to writing did
12 he speak with you orally, or did he speak to you?

13 A He did.

14 Q Okay. Could you tell the jury what the contents of
15 that conversation were?

16 A Basically, I went over with him that Complaining had
17 stated that he had raped her. And he insisted that he did
18 not.

19 I explained to him that if he had had sexual
20 intercourse with her more than likely his D.N.A. could be
21 found in her rape kit. And I explained that she was at the
22 hospital having a rape kit.

23 He indicated to me that more than likely his D.N.A.
24 would be in her rape kit. And I asked him if he didn't
25 have sex with her why would his D.N.A. be inside of her

Nicki Cantrell
Direct examination by Ms. Jordan

1 rape kit. And he explained that away by telling me that he
2 was trying to arouse his wife that evening and his wife
3 turned him down but he did -- the words he used were he
4 precame in his boxers and he went in the bathroom to change
5 his boxers.

6 He said he went back to bed. And immediately after
7 that he said is when Complaining went in the bathroom. He
8 stated she must have gotten his D.N.A. off of his boxers.

9 I explained to him that that kind of seemed very
10 unlikely, and I asked him why he thought Complaining would
11 make these allegations against him. And he did not have
12 an -- he did not go into that much.

13 He explained to me that Complaining was there that night
14 to watch the children. He said he would never rape
15 Complaining because she was too young and that he had a
16 daughter that would have been a little bit older than
17 Complaining but she had passed away.

18 Q Did he say to you how he looked at Complaining

19 A Yes. He told me that Complaining was only 15 years old.

20 Q Okay. Did you then return the conversation back to
21 the sexual assault kit that Complaining had done at the
22 hospital that day?

23 A I did.

24 Q Okay. What was the discussion that you continued to
25 have with him in regard to that?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A He then -- I asked him again about the D.N.A. He had
2 explained to me that he sleeps very hard and he thought
3 maybe that ^{Complaining} had gotten on top of him while he was
4 sleeping and had sex with him, he said because he felt at
5 some point that night like he was suffocating like somebody
6 was on top of him, so that must have been how his D.N.A.
7 would get in her sexual assault kit.

8 Q Did you ask him a question in response to that
9 scenario that he gave you?

10 A I did. I asked him if he thought his wife would have
11 sex with him while he slept at night, if he had felt that
12 before. He said no, why would I think that.

13 Q Did you continue to talk to him about the sexual
14 assault kit?

15 A I did.

16 Q Would you tell the jury what that conversation
17 consisted of?

18 A He continued to talk about it, and he was very
19 insistent that his D.N.A. was in her sexual assault kit.
20 And I asked him why he was so certain, because I had never
21 told him his D.N.A. was. And I explained to him that SLED
22 would have to analyze the rape kit and we don't have that
23 information at that time. And he explained that that would
24 just be his luck that his D.N.A. would be found.

25 I asked him if he would consent to us, for us to get

Nicki Cantrell
Direct examination by Ms. Jordan

1 his D.N.A. to compare through a buccal swab by just
2 swabbing the inside of his cheek. And he agreed, and he
3 signed a permission-to-search form allowing us to swab his
4 cheek.

5 Q Officer Cantrell, you've been in the courtroom today
6 and yesterday. Is that the same swab that we now
7 understand was either missing or destroyed?

8 A Yes, ma'am.

9 Q Okay. Did you -- after speaking with the defendant
10 did you ask if he would like to put his statement in
11 writing?

12 A I did.

13 Q Okay. What did he say?

14 A He agreed. He said he could not write it himself
15 because he had arthritis in his hands and asked that I
16 would type his statement.

17 Q Did you, in fact, type a statement for the defendant
18 that night?

19 A I did.

20 Q Detective Cantrell, I'm going to show you what's been
21 marked previously as State's Exhibit No. 10 and ask if you
22 recognize that.

23 A I do. This is a statement that I typed at his
24 direction.

25 Q Okay. Did you allow him to review the statement?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A I did. He would tell me what to type and I would type
2 it. And then when we were completely finished I printed it
3 out. I read it out loud. And he also read it as we were
4 going through it.

5 Q Okay. Did he even, in fact, ask you to change
6 something in it?

7 A He did.

8 Q And did you make that change for him?

9 A I did.

10 Q Okay. Did he, did he then sign the statement?

11 A He did.

12 Q Did you also witness the statement?

13 A I did. I witnessed it and Sergeant Kevin Bobo
14 notarized it. And he completed the statement at 10:59 p.m.
15 on July 10th of 2007.

16 MS. JORDAN: Your Honor, at this point we would move
17 State's Exhibit No. 10 into evidence.

18 MR. WHELCHEL: No objection.

19 THE COURT: It's admitted.

20 (Defendant's written statement marked State's Exhibit
21 No. 10.)

22 Q Please read to the jury what the defendant told you in
23 his written statement that night at first.

24 A "This statement is typed by Detective Ann (sic)
25 Cantrell at Joe Cobb's direction and request. I understand

Nicki Cantrell
Direct examination by Ms. Jordan

1 that Complaining has said I had sex with her. I did not
2 consent to sex with her. Complaining is my third cousin's
3 daughter and she is too young to mess with. We picked
4 Complaining up to spend the night. We picked her up from her
5 grandmother's house. We went swimming at the
6 Clifton-Glendale River. My wife and Complaining took me home
7 and I took a bath. They left and picked the kids up from
8 daycare. They came back with the kids. When I got home I
9 ate. We watched some movies on T.V. We watched movies in
10 our bedroom. I was in bed with my wife, and Complaining was
11 in the bed with our son in a twin bed beside us. My girls
12 went to bed around 8:00 p.m. We talked about getting up
13 early in the morning. My son slept in the bed with
14 Complaining My wife and I were in our bed. We went to bed
15 somewhere around 11:00 p.m. to midnight, or sooner. I
16 tried to get my wife aroused. She was tired. I precame in
17 my boxers. We went to the bathroom to change them. I was
18 wearing a pair that snap in the front and were plain. They
19 were either white or blue. I wiped myself off with a piece
20 of toilet paper and put on some other boxers. I went to
21 bed and was going to sleep. Complaining got up and went into
22 the bathroom after me. A few minutes later she came back
23 in and went to bed. During the night I felt suffocated and
24 laid down. I am a deep sleeper and my wife is a deep
25 sleeper too. The next morning I got up before everyone

Nicki Cantrell
Direct examination by Ms. Jordan

1 else. I got the kids up for daycare and woke my wife up.
2 Then I woke Complaining up. We took the kids to daycare and
3 took my wife to a class at 10:30 a.m. Complaining asked me
4 where I was going from there. I told her I was going to
5 drop some movies off and look at the internet at the
6 library. Complaining told me that I could not take her home
7 because her dad would be upset that she showed up with only
8 me and not my wife. She said that the best thing would be
9 for me -- would be for her to go with me to the library and
10 when we pick up my wife we take her home then. Me and
11 Complaining went to the library on the east side and got up --
12 got on the internet. We stayed there for about 30 minutes.
13 She asked, asked that when I pick Jeannie up we take her
14 home. We went back and got my wife. We took Complaining home
15 to her father's house."

16 Q Officer Cantrell, once, once that statement was
17 completed, what, what did you do with Joseph Cobb?

18 A After he was finished with his statement I asked him
19 if he would come back in the next day to speak with me and
20 possibly another detective some more, because it was
21 getting kind of late. So I just asked that he would come
22 back in the next morning.

23 Q Did he agree?

24 A He did.

25 Q Okay. Was he allowed to leave that night?

Nicki Cantrell
Direct examination by Ms. Jordan

1 A He was.

2 Q Okay. How did -- I'll ask you this. When is the next
3 time you came into contact with Joseph Cobb?

4 A On July 11th, 2007, around at 12:15.

5 Q How did you come into contact with him again?

6 A I had -- he had called our captain at the sheriff's
7 office and left him a message that he was -- Joseph left a
8 message stating that he was at Spartanburg Regional and
9 would not be able to come in to talk to me that day and he
10 would contact me later.

11 Q Okay. What did you do in reference to that message?

12 A I also spoke to Jeannie Cobb, his wife at the time.
13 And she stated that he was at the hospital.

14 MR. WHELCHER: Objection, Your Honor, to anything
15 Jeannie Cobb said.

16 THE COURT: Sustained.

17 MS. JORDAN: I'll withdraw that, Your Honor.

18 Q What did, what did you do next?

19 A I went to Spartanburg Regional.

20 Q Okay. Once you were at Spartanburg Regional did you
21 find Joseph Cobb?

22 A I did.

23 Q Before you got there did you make any other phone
24 calls? Did you ask another officer to meet you there?

25 A When I got there I had made a phone call to Officer

Nicki Cantrell
Direct examination by Ms. Jordan

1 Hogsed and asked him to come with the camcorder.

2 Q Okay. Was he the officer who was present here in the
3 courtroom yesterday and testified?

4 A He was.

5 Q Okay. Tell us how you came into contact with Joseph
6 Cobb once you were at the hospital.

7 A I had asked where his location was in the hospital,
8 and I was directed to that area of the emergency room. And
9 as I was walking through that area to go find the nurse to
10 talk to her I passed by where Joseph Cobb was at, and he,
11 he hollered at me and asked me to stop. And he stated that
12 he still wanted to come to the sheriff's office and talk.

13 And I asked him what was going on with him, because he
14 was there at the hospital. And that's when he informed me
15 that he needed help. I asked him what had happened, and he
16 stated that he had tried to kill himself and that he was
17 walking down South Church Street in front of traffic trying
18 to get run over. And that was in the early morning of
19 July 11th of 2007.

20 He stated it would just be easier on everyone if he
21 were gone and that he was going to lose everything
22 including his wife and children.

23 He told me that he wanted to tell me the truth because
24 he hadn't before. He stated that he did not rape ^{Complaining}
25 but he did have sex with her. He stated that she had

Nicki Cantrell
Direct examination by Ms. Jordan

1 initiated it.

2 I stopped him there and told him that I would have to
3 come back and talk with him in a minute.

4 Q Okay. Did you speak with someone? And you can't tell
5 me what they said, but did you speak with someone at the
6 hospital?

7 A I did.

8 Q Who did you speak with?

9 A I smoke with Jean Boutin.

10 Q Who is she?

11 A She's a psychiatric liaison.

12 Q Okay. Did you, did you at that point in time meet up
13 with Officer or Detective Hogsed?

14 A I did.

15 Q I'm going to show you. I am going to show you what's
16 been previously marked as State's No. No. 11 and ask if you
17 recognize that.

18 A I do.

19 Q What is that?

20 A It's another preinterrogation waiver form.

21 Q Okay. I'm going to step back one moment.

22 When you went back into his room and began speaking
23 with him was Officer Hogsed present?

24 A When I first went back into his room, no, Officer
25 Hogsed was not present. We were waiting on him to get

Nicki Cantrell
Direct examination by Ms. Jordan

1 there.

2 Q Okay. And when Officer Hogsed got there what
3 happened?

4 A I had asked Joseph if he minded if we could video tape
5 the conversation, and he had agreed. So that's when he
6 turned on the video tape.

7 Q By he, are you referring to Detective Hogsed?

8 A Yes.

9 Q Okay.

10 A And before asking Joseph any questions and going into
11 the interview we went over the preinterrogation waiver form
12 again.

13 Q Okay. Did -- who was the room when this occurred?

14 A When we went over this form I believe Officer Hogsed
15 was in the room. He may not have been yet. I would have
16 to see what time I started the video tape and what time --
17 he signed this at 1:20 p.m.

18 Q Would you -- you've already gone through the procedure
19 with how you fill out a form, one of the statement forms,
20 with a defendant.

21 Did you go through that same process with Mr. -- with
22 Joseph Cobb, the defendant, on the 11th?

23 A I did.

24 Q Okay. What was, what was the information that he gave
25 you at the top on that day?

Nicki Cantrell

Direct examination by Ms. Jordan

- 1 A That his name's Joseph Cobb and that he lived at Home
and that he was 42 years old.
- 3 The date was July 11th of 2007, and the time was 1:20 p.m.
- 4 And we were at Spartanburg Regional.
- 5 Q Okay.
- 6 A Could I get some more water? I'm so sorry.
- 7 Q Yes, ma'am.
- 8 (Pause.)
- 9 Q Did you go over each right with him?
- 10 A I did.
- 11 Q Did he initial beside each right stating that he
12 understood them?
- 13 A He did.
- 14 Q Did he sign the form stating that he understood them?
- 15 A He did.
- 16 Q Did you witness it?
- 17 A I did.
- 18 Q Okay. Did he also sign on the second portion stating
19 that he wished to waive those rights?
- 20 A He did.
- 21 Q Okay. When you were talking with him that day,
22 describe his demeanor to the jury.
- 23 A He was very calm. He was sitting. He was sitting on
24 like a, the bed, the hospital bed, and I was sitting in the
25 chair. He was speaking clearly. He wasn't -- his speech

Nicki Cantrell
Direct examination by Ms. Jordan

1 was not slurred. He was very humble.

2 Q Did he appear to be under the influence of any drugs
3 or alcohol?

4 A No.

5 Q Did you even ask him if he was under the influence of
6 any or if he had taken any medication that day?

7 A I did.

8 Q What did he say?

9 A He had had a blood sugar pill that day, and that was
10 all. And his blood sugar wasn't even that high.

11 Q Did he appear to understand everything that you had
12 talked about?

13 A He did.

14 Q Did -- was this -- and this video tape or this
15 conversation was recorded by Officer Hogsd?

16 A It was.

17 Q Can you tell the jury once you began speaking with him
18 after...

19 MS. JORDAN: I am sorry, Your Honor. At this time the
20 state would move State's Exhibit No. 11 into evidence.

21 MR. WHELCHER: Is that the one you just showed me?

22 MS. JORDAN: Yes, sir.

23 MR. WHELCHER: No objection, Your Honor.

24 THE COURT: It's admitted.

25 (Defendant's Miranda form from July 11, 2007, marked

Nicki Cantrell
Direct examination by Ms. Jordan

1 State's Exhibit No. 11.)

2 Q Would you tell the jury what he told you on the
3 11th of July of 2007?

4 A He said that he did not force Complaining to have sex.

5 He stated that she came onto him. He said that he tried to
6 have sex with her but he had difficulty getting an erection
7 and that he had lied before to me because he was scared.

8 He said that -- he had also said that he was not
9 forced or coerced or threatened yesterday or that day.
10 His, his fear was not based on that.

11 He said that he thought Complaining was 16 years old. I
12 questioned him about why he was telling me now that he
13 thought she was 16 years old, because the day before he had
14 told me she was 15 years old when we had talked. And he
15 told me that she was 15 and a half and she was going to be
16 16 soon, so that's why he was saying 16.

17 Q Did he also go into specifics with you as far as his
18 position on Complaining that day?

19 A I don't understand what you're asking.

20 Q Did he give you details as far as how he was -- how he
21 tried to have sex with her?

22 A Yes.

23 Q Okay. I'm going to show you what's previously been
24 marked as State's Exhibit No. 12 and ask if you recognize
25 this. Or have you had an opportunity to view what's on

Nicki Cantrell
Direct examination by Ms. Jordan

1 this disc?

2 A I have. It's my interview with Joseph Cobb at
3 Spartanburg Regional.

4 Q Okay. And your conversation with him is recorded on
5 that?

6 A Yes, ma'am.

7 Q Okay.

8 MS. JORDAN: Your Honor, at this time we ask -- we
9 move to admit State's Exhibit No. 12 into evidence.

10 MR. WHELCHER: No objection.

11 THE COURT: It's admitted.

12 (Defendant's statement on video marked State's Exhibit
13 No. 12.)

14 Q Did he make any comments to you at the end of the
15 video as far as anything that he needed?

16 A He had told me that he needed help.

17 Q Okay. Did he state anything about this investigation
18 or about what happened to ~~Complaining~~ on the 10th to you?

19 A Yes.

20 Q What did he say?

21 A I'm -- what we just went over?

22 MS. JORDAN: Your Honor, I'll withdraw that question.

23 Q Officer Cantrell, do you see the defendant in court
24 today?

25 A I do.

Nicki Cantrell
Direct examination by Ms. Jordan

1 Q Okay. Has his appearance changed in any way from July
2 of 2007 until today?

3 A Yes, ma'am.

4 Q How has it changed?

5 A He looks like he's lost about 50 pounds probably.

6 Q Okay. So he was 50 pounds heavier back then?

7 A Yes, ma'am.

8 Q Okay. And that video tape is the contents of the oral
9 statement he gave you on July the 11th of 2007?

10 A Yes, ma'am.

11 Q Are you aware in this case that the -- Complainant
12 sexual assault kit went to SLED twice?

13 A Yes, ma'am.

14 Q Could you explain to the jury why it went to SLED
15 twice?

16 A When, when we do a sexual assault kit sometimes we
17 send the -- like the detectives will send the kits down to
18 SLED. And sometimes the I.D. officer will fill out the
19 paperwork and have the kit sent down to SLED. And we also
20 kind of wait to see what's going to happen with the case,
21 if they need that information for the case, if they're
22 going to need that or not.

23 So when Complainant kit was sent down to SLED they just
24 sent her kit to SLED. And SLED will keep, will analyze
25 that and keep that information, but they will only keep it

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 for six months unless they have a comparison as far as a
2 suspect sample to compare to the D.N.A. kit.

3 So when they sent her kit to SLED they did not send
4 the suspect sample to compare. So they sent ^{Complaining} kit
5 back. And then when they went to send the suspect kit they
6 realized they didn't have the suspect swabs because we had
7 changed over our whole evidence system during that time
8 period and that had gotten thrown away, misplaced or
9 something. So we obtained his D.N.A. sample again and sent
10 her kit along with the D.N.A., his D.N.A., back down for
11 analysis.

12 Q Please answer any questions that Mr. Whelchel may
13 have.

14 CROSS-EXAMINATION

15 BY MR. WHELCHER

16 Q Let's back up to the search warrant. What time did
17 you get it?

18 A What time did I get it signed or what time did we
19 execute it?

20 Q What time did you get it?

21 A I would guess I probably -- let's see. I went to the
22 hospital at 4:00 o'clock that afternoon. I probably spent
23 around an hour or so at the hospital. And then I had to
24 type it up and then go get it signed. So I would say
25 guessing around 5:30, 6:00.

Nicki Cantrell

Cross-examination by Mr. Whelchel

1 Q Do you have a copy with you?

2 A I probably do.

3 MS. JORDAN: Your Honor, if it would save time, I have
4 a certified copy I can provide to Detective Cantrell.

5 THE COURT: Okay.

6 A Okay. All it says on here is when it was executed.
7 It doesn't say what time the judge signed it.

8 Q Okay. When did you go to the house?

9 A We executed it at -- on July 10th of 2007 at 7:10 p.m.

10 Q Okay. So at approximately 7:00 o'clock you arrived at
11 Joseph Cobb's house?

12 A Correct.

13 Q When did you leave the house?

14 A We arrived back at the sheriff's office -- I arrived
15 back at the sheriff's office at 9:56 p.m.

16 Q So was Mr. Cobb with you or with another officer?

17 A He was with another officer.

18 Q So he was taken out of the house so you, y'all, could
19 perform the search, is that correct?

20 A Yes.

21 Q Okay. So from approximately 7:10 he's outside the
22 house, is that correct?

23 A He was outside the house, probably not that long. I
24 believe he left the house probably closer to 9:00 p.m. The
25 officer transported him to the sheriff's office, and I

Nicki Cantrell
Cross-examination by Mr. Whelchel

- 1 stayed on the scene for a little while longer talking to
2 Jeannie.
- 3 Q Okay. He's outside the house from 7:00 to 9:00 while
4 the search warrant's being executed. In the custody of
5 another officer or just sitting on a picnic table or what?
- 6 A Yeah. There was another officer -- there actual --
7 there was another officer, a uniformed officer, probably
8 sitting out there.
- 9 Q He was not free to leave.
- 10 A He was free to leave. He was not under arrest. And
11 he was explained that when I asked him to come to the
12 sheriff's office to speak with us, that he was not under
13 arrest and he, he didn't have to come. And that's why we
14 offered to let him drive himself.
- 15 Q But they had only one car, correct?
- 16 A Correct.
- 17 Q And he opted for sheriff's office transportation.
- 18 A Correct.
- 19 Q Okay. And the items you mentioned earlier were the
20 items that were taken at the search warrant?
- 21 A Yes, sir.
- 22 Q Okay. And those are the items that have been forever
23 lost.
- 24 A Yes, sir.
- 25 Q Okay. You've been a detective for, I believe, seven

Nicki Cantrell
Cross-examination by Mr. Whelchel

- 1 to ten. I want to make sure.
- 2 A I've been a detective seven years and a police officer
3 for ten.
- 4 Q With the, with the sheriff's department?
- 5 A Yes, sir.
- 6 Q Okay. This residence is a mobile home, is it not?
- 7 A Correct.
- 8 Q Okay. And it's located very close to the intersection
9 of Country Club Road and McAbee Road, is that correct?
- 10 A Correct. It's almost right on the corner.
- 11 Q If I'm at the mobile home, the house, out on the porch
12 or in the yard or whatever, diagonally across the street is
13 the Quick Shop there at the corner of McAbee Road and
14 Country Club Road, correct?
- 15 A Correct.
- 16 Q And up behind it is Lee's Lawnmower Repair.
- 17 A Correct.
- 18 Q I don't know if you know about them or not. Correct?
- 19 A Yes.
- 20 Q That's where this mobile home was located when y'all
21 made the search warrant, correct?
- 22 A Correct.
- 23 Q Okay. What time did you start this statement that you
24 say you took from my client at the sheriff's office?
- 25 A I don't know what time I started typing it.

Nicki Cantrell
Cross-examination by Mr. Whelchel

- 1 Q What time did you start the process, did you start
2 your interview?
- 3 A At 9:56 p.m.
- 4 Q 9:56.
- 5 A Uh-huh.
- 6 Q Okay. And when did you start typing? Do you know
7 when you started typing the statement?
- 8 A I don't know what time I started typing the statement.
9 I know I finished typing it at 10:59 p.m.
- 10 Q Uh-huh. And he signed it approximately that same
11 time?
- 12 A Right.
- 13 Q So from 7:00 to 11:00 he was outside, and then at the
14 sheriff's office being interviewed, is that correct?
- 15 A Correct.
- 16 Q Okay. Now, the next day you interviewed him at the
17 hospital.
- 18 A Correct.
- 19 Q Okay. And the interview was conducted at the hospital
20 because he contacted the sheriff's office and left a
21 message with someone at your office that he was at the
22 hospital --
- 23 A Correct.
- 24 Q -- and couldn't make it back in.
- 25 A Correct.

Nicki Cantrell
Cross-examination by Mr. Whelchel

1 Q Okay. Do you have your investigative report with you,
2 ma'am?

3 A I do.

4 Q Page four of seven, do you see that one?

5 A I do.

6 Q Okay. Back up to page three. You explained to him
7 when you first started this process that a sexual assault
8 kit had been done?

9 A Correct.

10 Q And you told him that if he had had sexual intercourse
11 with Complaining more than likely his D.N.A. would be found in
12 her rape kit, is that correct?

13 A Correct.

14 Q Okay. Now, on page four you told him during the
15 interview that if he had had sex with Complaining but did not
16 violently rape her he needed to tell you that because that
17 could make a difference.

18 A Correct. And that's when he indicated to me that it
19 didn't matter, he would get in trouble no matter what
20 because she was only 15.

21 Q And you told him that he could be charged with having
22 consensual sex with her because of her age, but he could be
23 charged with violently raping her as well.

24 A Right.

25 Q Is that right?

Nicki Cantrell
Cross-examination by Mr. Whelchel

- 1 A If there's a difference, yes. Those are two separate
2 charges.
- 3 Q And at that time you knew she was 15?
- 4 A Yes. I knew she was 15 when I got to the hospital.
- 5 Q And at that time you knew that she couldn't consent to
6 sexual intercourse.
- 7 A Correct. And he knew that as well.
- 8 Q Did you tell him that?
- 9 A No. He told me that. He said that he would get in
10 trouble no matter what because she was only 15 years old,
11 that she was too young, that she -- he could not have sex
12 with her.
- 13 Q Said she was too young to mess with.
- 14 A Uh-huh.
- 15 Q You assumed by that that he meant have sexual
16 intercourse, correct?
- 17 A Correct. Because that's what we were talking about.
- 18 Q Well, I understand that. Did you ever explain to him
19 what a sexual battery was?
- 20 A I asked him if he had had sex with her. I did not go
21 into the definition of sexual battery.
- 22 Q Okay. Thank you, ma'am.
- 23 MS. JORDAN: Followup questions, Your Honor.
- 24 THE COURT: Okay.
- 25

Nicki Cantrell
Redirect examination by Ms. Jordan

1 REDIRECT EXAMINATION

2 BY MS. JORDAN

3 Q Officer Cantrell, when he, when the defendant, came to
4 the sheriff's office on the night of July the 10th when
5 y'all were executing the search warrant did he come of his
6 own will?

7 A Yes, ma'am.

8 Q Was he given the option to come or not to come?

9 A Yes, ma'am.

10 Q And he did go.

11 A Yes, ma'am.

12 Q Mr. Whelchel talked about a 7:00 to 11:00 timeframe.
13 But when did you actually speak to him?

14 A I did not start my interview until 9:56 p.m.

15 Q Okay. When do your notes indicate that he left?

16 A He left -- he finished his statement and left a few
17 minutes afterwards at 10:59 p.m.

18 Q Okay. And he was free to go.

19 A Yes, ma'am.

20 Q And you allowed him to leave.

21 A Yes, ma'am.

22 Q Okay. And the defendant stated -- what did the
23 defendant state to you in regards to Complaining age on the
24 night of July the 10th?

25 A That she was 15 years old and she was too young.

Nicki Cantrell

Recross-examination by Mr. Whelchel

1 Q Okay. When you were talking to the defendant about
2 the sexual assault kit did you know what the results were
3 from the kit?

4 A No, ma'am.

5 Q How long was it before you found out the results of
6 that kit?

7 A I didn't find out the results until SLED got those
8 back in I believe '09.

9 Q Would it have been longer than that?

10 A Yes.

11 Q Okay. So you didn't know on the night of July the
12 10th or the 11th what was in the kit..

13 A No, ma'am.

14 Q Okay.

15 MS. JORDAN: Nothing further, Your Honor.

16 RECROSS-EXAMINATION

17 BY MR. WHELCHER

18 Q Those results do, in fact, show D.N.A. from Joseph
19 Cobb, correct?

20 A Correct.

21 Q On the neck, on swabs taken from the neck of the
22 alleged victim.

23 A Yes, ma'am.

24 Q And the breasts.

25 A Yes.

1 Q Nothing from the vagina.

2 A No, sir.

3 Q Thank you, ma'am.

4 THE COURT: You may step down.

5 MS. JORDAN: Your Honor, at this time the state rests.

6 THE COURT: Ladies and gentlemen, that is all of the
7 testimony or other evidence to be offered by the state, at
8 least in their case in chief.

9 Before we go any further I've got some matters to
10 address with the lawyers. So again I'll ask you to please
11 go to your jury room. Do not yet discuss the case. I'll
12 bring you back in just a few minutes to continue.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Motions or other matters?

16 MR. WHELCHER: Your Honor, at this time I would be
17 required to make a motion for a directed verdict on behalf
18 of Mr. Cobb based on the insufficiency of the evidence that
19 was presented by the state.

20 THE COURT: All right. Well, it appears the evidence
21 is sufficient if found to be credible by the jury, so your
22 motion is denied.

23 Anything else? Have you talked to Mr. Cobb about
24 testifying or not?

25 MR. WHELCHER: I have in the past several days. I

1 have not today, Your Honor.

2 Your Honor, at this point I would like to inquire of
3 the Court or request of the Court a charge in this case of
4 aggravated assault and battery as a lesser included. I
5 would inquire of the Court if the Court plans on charging
6 aggravated assault and battery.

7 THE COURT: Well, we haven't gotten to the point of
8 charges yet. Right now we're dealing with whether he's
9 going to testify or not.

10 MR. WHELCHER: That has bearing on whether or not that
11 decision --

12 THE COURT: Well, I won't know that until all the
13 testimony is in.

14 MR. WHELCHER: Well, at this time, Your Honor, can we
15 take a break so I can talk to him?

16 THE COURT: We will take ten minutes.

17 (Whereupon, a recess was taken.)

18 THE COURT: All right. Mr. Whelchel, what does
19 Mr. Cobb say he wants to do about testifying?

20 MR. WHELCHER: Mr. Cobb is not going to testify, Your
21 Honor.

22 THE COURT: All right. Mr. Cobb, you heard what your
23 lawyer just told me.

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: Do you understand when you're charged with

1 a crime you have an absolute right to remain silent if you
2 wish to? Nobody can make you take the witness stand and
3 testify or answer any questions about it.

4 At the same time, if you wish to provide this jury
5 with any additional information now is the only opportunity
6 that you're going to have to do so. In other words, you
7 can't wait until after the decision has been reached and
8 change your mind about whether or not you would testify.
9 So if you want to testify now is the time to do that. But
10 it's your choice. It's your decision. Only you can make
11 it.

12 Have you and Mr. Whelchel discussed the advantages of
13 your testifying, as well as not testifying?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: And have y'all discussed the disadvantages
16 of testifying as well as not -- of testifying as well as
17 not testifying?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: And do you appreciate what those
20 advantages and disadvantages are?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: And have you had time to reflect upon your
23 decision about whether or not you'll testify?

24 THE DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: And have you reached a decision?

1 THE DEFENDANT: Yes, sir, Your Honor.
2 THE COURT: What is it?
3 THE DEFENDANT: I will not.
4 THE COURT: And is that a decision that you reached of
5 your own free will and accord?
6 THE DEFENDANT: Yes, sir, Your Honor.
7 THE COURT: Anybody force you into it?
8 THE DEFENDANT: No, sir, Your Honor.
9 THE COURT: Pressure you into it?
10 THE DEFENDANT: No, sir.
11 THE COURT: It is your decision?
12 THE DEFENDANT: Yes, sir.
13 THE COURT: You're satisfied with it?
14 THE DEFENDANT: Yes, sir, Your Honor.
15 THE COURT: Okay. Do you have any other witnesses you
16 want Mr. Whelchel to call on your behalf?
17 THE DEFENDANT: Not at this time.
18 THE COURT: Well, do you understand this is the only
19 time you've got?
20 THE DEFENDANT: No, sir, Your Honor.
21 THE COURT: You don't understand it?
22 THE DEFENDANT: I do understand, sir.
23 THE COURT: Do you have any other witnesses you want
24 him to call?
25 THE DEFENDANT: No, sir, Your Honor.

1 THE COURT: Okay. All right. Thank you. Be seated.
2 Any other matters we want to address?

3 MS. JORDAN: Your Honor, I submitted two requests to
4 charge this morning to the Court, and I would ask that both
5 of those be charged to the jury.

6 THE COURT: Okay.

7 MS. JORDAN: I provided copies to Mr. Whelchel also.

8 THE COURT: All right. Mr. Whelchel, any objection?

9 MR. WHELCHER: No, sir.

10 THE COURT: All right. Do you have any requests?

11 MR. WHELCHER: I would renew any earlier request that
12 the Court charge aggravated assault and battery in this
13 case. There is testimony from --

14 THE COURT: What's the state's position?

15 MS. JORDAN: Your Honor, the state would oppose that.
16 It's --

17 THE COURT: All right. Well, let me hear Mr. Whelchel
18 then.

19 MR. WHELCHER: There was testimony early on, Your
20 Honor, from a Tammy Clawson who said that she heard my
21 client talking with his sister and that he said that he
22 tried to have sex with her -- but I am using her words,
23 Your Honor -- but that he couldn't get it up.

24 Based on that testimony, Your Honor, and the testimony
25 of SLED where -- from the evidence from SLED that all of

1 the swabs are from the breasts and neck and that there is
2 no semen found, I would request a charge of aggravated
3 assault and battery as a lesser included offense at this
4 time.

5 THE COURT: All right. Ms. Jordan.

6 MS. JORDAN: Your Honor, I think there's ample
7 evidence in there that there was penetration in this case.

8 As to the sexual assault and battery or sexual -- or
9 sexual battery as required by the law, on the video tape
10 that's now in evidence but has not been played for the jury
11 but is a part of the record the defendant states to Officer
12 Cantrell that he had consensual sex with the victim. He
13 also described to Officer Cantrell how he was on top of the
14 victim, how he was balancing his weight.

15 I don't think this is a case of indecent liberties
16 with a female or an assault and battery just based upon the
17 fact that there's differences in sex or the size or the age
18 of the individuals in this matter. I think there's ample
19 evidence, including the defendant's own statement to
20 Officer Cantrell, that he had consensual sex with her.

21 THE COURT: All right. Let me see y'all just a
22 minute.

23 (Bench conference held off the record in the presence
24 of the jury but out of the hearing of the jury.)

25 THE COURT: All right. Mr. Whelchel, I'm going to

1 decline your request to instruct the jury on the lesser
2 included offense because it does appear in this case the
3 only evidence is that there was a sexual battery committed
4 by the defendant, and therefore the lesser included offense
5 is not appropriate.

6 MR. WHELCHER: If I may, Your Honor, for the record it
7 is the defense's position that there is evidence in the
8 case that could be construed by the jury that there was not
9 a sexual battery in this matter, and that based on that
10 fact or that testimony that aggravated assault and battery
11 should be charged in this particular instance, specifically
12 the testimony of Tammy Clawson that he tried to have sex
13 with her but couldn't get it up.

14 But there was testimony I think from his own statement
15 with the investigator that he attempted to have sex or
16 tried to have sex but could not do that, Your Honor. I
17 think that -- it doesn't matter whether or not there's
18 testimony or evidence of a sexual battery or allegation,
19 because once she testifies that evidence is in --

20 THE COURT: I understand that.

21 MR. WHELCHER: -- of the sexual battery.

22 THE COURT: I understand that, but there's testimony,
23 there's also testimony, that he admitted to having
24 committed the sexual battery.

25 MR. WHELCHER: He admitted to having sex, Your Honor.

1 And I specifically asked her if she told him about what a
2 sexual battery was and what that entailed, and she said she
3 did not.

4 We submit that him having -- saying that he had sex is
5 not saying that he had intercourse with her, that there's
6 many things that could be -- that you could do that are
7 under the umbrella of having sex and because of that that
8 it should be charged as an aggravated assault and battery
9 as a lesser included offense to this criminal sexual
10 conduct second degree.

11 THE COURT: All right. Anything else?

12 MS. JORDAN: No, sir, Your Honor.

13 MR. WHELCHEL: Your Honor, I have something else.

14 THE COURT: All right.

15 MR. WHELCHEL: Your Honor is denying my motion --

16 THE COURT: Yes.

17 MR. WHELCHEL: -- to charge aggravated assault and
18 battery.

19 At this time, Your Honor, I would request that the
20 Court charge attempted criminal sexual conduct second
21 degree.

22 The testimony is specific from Ms. Clawson that he
23 attempted, he tried, to have sex with her but he couldn't
24 get it up. That same testimony is echoed in the statement
25 he made to the investigator. And I would ask that the

1 Court charge attempted criminal sexual conduct second
2 degree because of the testimony.

3 THE COURT: All right. Ms. Jordan.

4 MS. JORDAN: Your Honor, I think it goes back in line
5 of the reasoning of the Court as far as the ABHAN in that
6 there was a sexual battery and that there was not a sexual
7 battery.

8 THE COURT: All right. I'm going to decline your
9 request.

10 MR. WHELCHER: Your Honor, it's our position that
11 there is evidence of both the attempted sexual battery or
12 attempt to commit criminal sexual conduct and the
13 aggravated assault and battery. But I want it -- the
14 Court's denying both of those, is that correct?

15 THE COURT: Yes, sir.

16 All right. Anything else?

17 MS. JORDAN: Nothing from the state, Your Honor.

18 THE COURT: All right. How long do y'all think you're
19 going to need to argue to the jury?

20 MS. JORDAN: I'd say probably 25 or 30 minutes.

21 MR. WHELCHER: Same timeframe, Your Honor, at least.

22 THE COURT: All right. I'm going to excuse the jury
23 for lunch, and we'll start back after lunch.

24 Bring the jury in.

25 (The following takes place in the presence of the

1 jury.)

2 THE COURT: All right. Ladies and gentlemen, as you
3 know, the state has concluded in their presentation.

4 Mr.. Whelchel, does the defense wish to present any
5 additional evidence?

6 MR. WHELCHER: The defense rests, Your Honor. We
7 present no evidence.

8 THE COURT: That's all the evidence to be presented in
9 the trial of the case.

10 What remains to be done are the lawyers' final
11 summations, after which I'll instruct you on the law, and
12 then you can begin deliberations.

13 Now, because of the hour we'll recess for lunch now.
14 We'll resume with the conclusion of the trial at 1:15, at
15 1:15 this afternoon.

16 So you're excused for lunch now. Please report to
17 your jury room at 1:15. Have a good lunch.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Court's in recess until 1:15.

21 (Whereupon, a recess was taken.)

22 THE COURT: All right. Any matters we need to address
23 before the jury is brought in?

24 MS. JORDAN: Your Honor, on behalf of the state I
25 withdraw my objection to the charge of attempted C.S.C.

Closing arguments

1 with a minor in the second degree.

2 THE COURT: Okay. Mr. Whelchel, do you still wish for
3 the Court to instruct the jury on attempted?

4 MR. WHELCHER: Yes, sir. It was my understanding the
5 Court could do that, yes, sir.

6 THE COURT: Okay. I'll do it.

7 All right. Bring the jury in, please, sir.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: Good afternoon, ladies and gentlemen.

11 All the evidence is in. The lawyers are going to give
12 you their final summations. Then I'll instruct you on the
13 law. Then you can begin your deliberations.

14 So please give the lawyers your attention now as they
15 give you their final summations.

16 Ms. Jordan.

17 MS. JORDAN: Thank you, Your Honor.

18 Ladies and gentlemen, as I told you on yesterday
19 afternoon, I was going to be back here today and talk to
20 you, at the end of the trial to talk to you, about this
21 case.

22 Joseph Cobb is guilty of criminal sexual conduct with
23 a minor in the second degree. And why do we know that?
24 From all the evidence that you have heard from the witness
25 stand.

Closing arguments

1 Criminal sexual conduct with a minor in the second
2 degree, as I told you yesterday and as the judge will
3 instruct you on later on, is that the defendant committed a
4 sexual battery upon a child between the ages of -- who was
5 at least 14 but less than 16 and that he's older than the
6 victim. That's what criminal sexual conduct with a minor
7 second degree is.

8 Sexually battery is defined as any intrusion, however
9 slight, into the vaginal, oral, anal openings of another
10 that's not done for medical purposes. Any intrusion
11 however slight.

12 You heard from Complaining on the stand. She was 15 on
13 July the 10th of 2007. You heard Detective Cantrell -- and
14 it's on the records over there -- that the defendant was 42
15 back then -- 15 -- 42.

16 You're also going to hear if you listen to the judge's
17 instruction, he's going tell you that in the state of South
18 Carolina the general assembly has determined a minor under
19 the age of 16 is not capable of voluntarily consenting to a
20 sexual battery committed by an older person.

21 He's also going to tell you that the testimony of the
22 victim need not be corroborated. Luckily, in this case it
23 is.

24 Let's go back over -- well, I will also tell you this.
25 The judge is also going to instruct you that if you find

Closing arguments

1 that the state did not prove beyond a reasonable doubt the
2 defendant is guilty of the criminal sexual conduct with a
3 minor second degree you can consider attempt, attempted
4 criminal sexual conduct with a minor in the second degree,
5 that he attempted but that there wasn't a sexual battery.
6 Our contention is there was a sexual battery, any intrusion
7 however slight.

8 I'll do beyond a reasonable doubt real quick. It's a
9 high standard, the highest one you can have in the court
10 systems of the United States -- beyond a reasonable doubt.
11 The one thing that it is is not, beyond any and all doubt.
12 It's a reasonable doubt, would a reasonable person hesitate
13 to act upon what they have learned. That is what a
14 reasonable doubt is. Not any and all doubt, but beyond a
15 reasonable doubt, would a reasonable person listening to
16 what you heard in this courtroom have any doubt. Ladies
17 and gentlemen, there's no doubt in this case.

18 Let's look at the evidence. You heard from ^{Complaining}
19 Bishop. She told you how she was -- she's cousins. Her
20 dad is a cousin to the defendant. She knew him, went over
21 there a lot, babysat their kids. He's got three kids,
22 lived at that trailer with his wife and his kids.

23 She went over there and she would babysit just like
24 she did on July the 9th of 2007. She watched the kids.
25 They were all laying in the bedroom watching television.

Closing arguments

1 And I'll admit this. It's an odd sleeping arrangement.
2 There's a twin bed where apparently the five-year-old is
3 sleeping with a fifteen-year-old babysitter, slash, cousin,
4 Complaining is. And then the defendant and his wife are on
5 the mattress on the floor.

6 She tells you about how they watched television,
7 Son fell asleep, everyone fell asleep. She got up and
8 went into the bathroom just around, outside the door. The
9 door didn't lock. She put a towel on the door and she took
10 a shower. Said she had done that in the past. She gets
11 out. And who meets her in the bathroom? Him.

12 Remember what Detective Cantrell stated. He met her
13 in the bathroom. He was about 50 pounds heavier back then.
14 She was 15. He pushed her to the ground. She's on her
15 stomach at first. He kisses and touches her on the back
16 and then flips her over, hands on her neck, penetrates her.

17 Mr. Whelchel made a point of saying, well, you've
18 never used the word penetrate before until today. Ladies
19 and gentlemen, she's talked to numerous people. Numerous
20 people stated she reported a sexual assault. We're going
21 to go and talk about what each one of those people said
22 later.

23 She clearly stated he placed his penis in my vagina,
24 sexual battery, any intrusion, however slight. His hand
25 was on her neck. This man, 50 pounds heavier, on her.

Closing arguments

1 She's not a big person -- 50 pounds heavier over here is.

2 Had her down on the bathroom floor, penetrated her.

3 She talked about how he kissed and touched her all over,
4 all over her chest.

5 She states next thing she remembers she was in the
6 bedroom, back in the bedroom where she's in bed with
7 Son

8 She gets up the next day. He's still there. The man
9 that she says threatened her not to tell anybody is still
10 there. They want to make a big deal about the fact that
11 she didn't tell anybody. Who was she going to tell, his
12 wife, his three kids? Who was she going to tell? She's
13 going to tell the first person she sees without him by her
14 side. And she does that. She said he threatened me, told
15 me he would hunt me down.

16 She's finally able to leave his side at a certain
17 point. And she tells you that he takes her home. He
18 doesn't come inside the house with her. He just drops her
19 off with his wife and they go. He doesn't come inside.
20 Nothing. Leaves her there.

21 She says she gets down on her knees crying to her
22 step-mom. Is that the normal reaction of somebody who had
23 nothing happen to them when they went over to babysit a
24 cousin's kids that was just a regular old night? No.
25 That's the reaction of someone who's been sexually

Closing arguments

1 assaulted.

2 Her step-mom talked about the fact that when she came
3 home immediately she could tell something was wrong. She
4 was crying, she's upset. And she tells her. She discloses
5 a sexual assault happened at his house during the night.

6 I believe she states it was after 1:00 o'clock in the
7 morning, sometime around then. Sounds like that watched a
8 few movies, stayed up a little late and everybody fell
9 asleep.

10 Her step-mom calls her dad. They wait on the dad. He
11 doesn't get there quick enough in the step-mom's
12 determination, and she goes ahead and she takes her to the
13 hospital. She does what any parent would do. She takes
14 her to the hospital.

15 At the hospital, what does she get to do there? A
16 sexual assault kit. Gets to speak to a couple of people
17 she doesn't know. It's hard to imagine telling your
18 step-mom who you've known for many years that you've been
19 sexually assaulted. But can you imagine telling relatives
20 -- telling people you've never met before, telling two
21 nurses at a hospital during a sexual assault kit what
22 happened to you at 15?

23 The next person that she gets to talk -- or later on
24 that day she gets to talk to other people who come in.
25 Detective Cantrell shows up at some point, described her as

Closing arguments

1 crying, upset, but she still talks to her. She reports a
2 sexual assault. Her dad gets to see her at some point.
3 She reports a sexual assault. We know that sometime later
4 she went to the Children's Advocacy Center and reports a
5 sexual assault.

6 Ladies and gentlemen, yesterday she came into this
7 courtroom, sat on that stand in front of 13 people she
8 doesn't know and did the same thing. Most of the kids in
9 my family, I'd have trouble getting them to take the stand
10 and tell you what they had for breakfast one day, telling
11 you what they did at their last basketball game. She took
12 the stand in front of 13 people and described one of the
13 most horrific nights of her life to you. You don't do that
14 for any other reason than it's the truth.

15 Let's look at that. Why would she lie? Why would she
16 make this up? What did she have to gain? Well, she got to
17 gain the trip to the E.R., the sexual assault kit. You
18 heard Pat Ramsey and Sue Mobley, and you've seen the
19 evidence over here as to what they did to her. We checked
20 areas that she reported -- that she reported that she was
21 touched or where the assault, assault occurred.

22 There's a vaginal swab over there. There's an oral
23 swab. There's swabs over different parts of her body. Why
24 would you make it up to go through that? Why would you
25 make it up to sit in the E.R. with people you don't know

Closing arguments

1 and talk to them about it, to talk to an officer, to talk
2 to a lady from the Advocacy Center months later, people
3 that you don't know to describe one of the most intimate
4 things that can happen to you. You don't make it up. It's
5 the truth.

6 Unfortunately, we live in a television world where all
7 you hear about is C.S.I. and different television shows
8 like that. And you would hope that you can come in and
9 always have something on everything in every case.
10 Unfortunately, we don't have that. It's not as easy as
11 somebody drops a fingerprint or somebody drops a hair and
12 the cops are able to go in and go and find it.

13 In this case the nurses did a thorough job, all the
14 swabs that they took. We have D.N.A. on some things and we
15 don't have D.N.A. on the other. But just because we don't
16 have the D.N.A. doesn't mean it didn't happen.

17 There's nothing on her vaginal swab. You heard
18 Mr. Humbert who used to work with SLED who's testified in
19 many cases before state that's not unusual. I think his
20 percentage was 50 percent of the cases there's no D.N.A. on
21 those vaginal swabs.

22 What do you have? You do have a one in 12 quadrillion
23 chance that there somebody else's D.N.A. on her left breast
24 that's his. She told you he kissed me, he licked me all
25 over my chest area. And guess what they find? His D.N.A.

Closing arguments

1 there, along with his D.N.A. in other places on her body.
2 But I'll tell you there was no D.N.A. in her vaginal area.
3 Around 50 percent of the cases they don't find it there.

4 A lot of witnesses that you heard from yesterday may
5 even get a little tedious at points. They were just
6 officers who testified as what they did with the evidence
7 once they received it just so that you know while those
8 items that have been introduced into evidence were in their
9 case they weren't altered or amended in any way.

10 I will say this. You have heard that there was a
11 mistake made at the sheriff's office. There was some
12 evidence taken as part of a search warrant and as part of
13 consent by the defendant for his D.N.A. that was missing.
14 There's no excuse for where it is, no excuse for what
15 happened to it. But it's all gone.

16 But I want to focus on what we do have. And you've
17 got it here with you today. And what you do have proves
18 beyond a reasonable doubt that he is guilty of the crimes.

19 Tammy Clawson came up here and testified. She was in
20 the middle of all of those witnesses yesterday. If you'll
21 recall, she's the sister of the defendant's then wife,
22 Jeannie.

23 She says I saw him on the night of July the 10th. He
24 said he tried to have sexual -- he tried to have sex with
25 her but he couldn't get it up. I don't remember if those

Closing arguments

1 were his exact words or not -- her exact words or not, and
2 I apologize for being so crude, but that's what she said he
3 told her.

4 One thing that I thought was remarkable about her
5 testimony, she was like I've seen Complaining Witness before
6 but I don't know her. Why would she make any of this up?
7 Tammy Clawson was related by blood to the defendant. She
8 didn't know her.

9 Let's take some time and focus on what the defendant
10 told you in his statements. I remember growing up I used
11 to stay -- this lady kept me and my brothers and my sister.
12 And during the day we'd watch those television game shows.
13 And I always remember we'd watch "Let's Make A Deal" where
14 they'd give you all the different doors with the different
15 boxes to choose from, and that's kinda what he's done in
16 this case.

17 He wants to divert you from the truth, which is that
18 he committed a sexual battery on Complaining because he wants
19 to explain away certain things by giving you other options.
20 His first option that he tells Officer Cantrell is that --
21 Officer Cantrell tells him, you know, Complaining gone to
22 the hospital, she's had a rape kit or a sexual assault kit
23 completed on her.

24 She doesn't know what the results are. None of us
25 knew what the results were until the SLED analysis sent,

Closing arguments

1 was sent. And you'll see on the record he completed this
2 analysis back on September the 10th of 2010. No one knew
3 what the results of this were until then, until we received
4 it.

5 But what did the defendant say when he found out that
6 Complaining had undergone a sexual assault kit? He says,
7 well, my D.N.A. might be found inside her kit, but he
8 denied having sex with her. He says that he didn't rape
9 her but his D.N.A. might be found inside the kit.

10 He even further stated to Officer Cantrell, "I tried
11 to arouse my wife earlier that night." So in his story
12 he's in the bedroom with his five-year-old child,
13 fifteen-year-old cousin in a bed right beside him trying to
14 arouse his wife. And he precame in his boxers. And then
15 he goes into the bathroom and changes boxers.

16 That's the funny part of this story. He told you he
17 come back into the bedroom and then Complaining goes to the
18 bathroom. Just like she said, she went to the bathroom.

19 So his explanation is Complaining went to the bathroom,
20 she must have gotten my D.N.A. off the boxers. You know,
21 that doesn't make any sense. He's trying to explain away
22 why his D.N.A. might be found inside of her by saying that
23 he left his boxers in the floor and Complaining must have gone
24 in there and gotten his D.N.A. off of those. So the
25 fifteen-year-old walked in there and for entertainment

Closing arguments

1 value apparently picked up his used boxers and rubs them on
2 her.

3 Look at the D.N.A. report. It talks about his saliva
4 up in this area. He didn't know any of that back then. He
5 didn't know back then that that vagina swab was going to
6 come back with nothing on it. But he sure made excuses for
7 why his stuff might be there. Why do you do that but for
8 the fact that you're guilty and you committed a sexual
9 battery?

10 Nicki says she asked him again. He said, he said that
11 might be why his D.N.A. is in her. I asked him why he was
12 certain his D.N.A. would be inside of her because she never
13 told him it was. She didn't know. None of us knew until
14 September the whatever the date is on there from 2010. He
15 stated that that was just his luck that his D.N.A. would be
16 in there, just his luck.

17 I'm not, I'm not, I'm not one of those people who
18 believes in luck. Things happen because they happen. He
19 thought his D.N.A. was going to be in there because he
20 penetrated her. That's why it's there, not because of
21 luck.

22 So let's see. We've got -- my boxers are on the
23 floor, that's how the D.N.A. made it in the kit. We've got
24 just random luck. Apparently he was just having an unlucky
25 day. His D.N.A. may be in there.

Closing arguments

1 The next thing you've got, door No. 3 shows that he
2 says, well, I'm a heavy sleeper and I kind of felt like I
3 was suffocating at certain points that night so maybe
4 Complaining while my wife and my five-year-old are in the room
5 got up, got on top of me and had sex with me. Maybe that's
6 how it happened. If it wasn't the boxers in the bathroom
7 floor or luck maybe it's just that. I woke up or I just
8 felt her on me and maybe she was having sex with me.
9 That's ridiculous. I don't think there's any other word to
10 describe that story that he gave, which is that. It's
11 ridiculous.

12 He gives a written statement to Officer Cantrell that
13 day, puts it down in writing. He reiterates some of the
14 stuff that he stated in his written statement. "I didn't
15 consent to sex with her. I precame in my boxers and went
16 to the bathroom and changed them. Complaining got up and went
17 to the bathroom after me." Perfect timing. I added that
18 part in.

19 "A few minutes later she came back in and went to bed.
20 During the night I felt suffocated and weighed down. I'm a
21 deep sleeper and my wife is a deep sleeper too. The next
22 morning I got up before everybody else," and he talks about
23 how the rest of the day went.

24 There's three different ways in there that he could
25 have committed a sexual battery and his D.N.A. could have

Closing arguments

1 been in there on that statement..

2 What happens next time Officer Cantrell sees him? She
3 gets a phone call. He's at the emergency room the next
4 day. He leaves the sheriff's office around 11 o'clock on
5 the 10th, 11:00 p.m. at night. I believe it's about 12:15
6 or 1:00 he shows up at the emergency room threatening to
7 himself by walking in front of cars on Church Street, I
8 believe us what the testimony was.

9 Officer Cantrell -- seven years of doing this job as
10 an investigator, ten years as a cop -- calls another
11 officer to bring a video tape out. Why don't you meet me
12 at the hospital and let's videotape this guy, he agrees to
13 talk to me. He does and they video taped it. You've got
14 that video tape.

15 You're going to have a computer back in the back that
16 you can watch it and see what he says. Watch his demeanor
17 when you pull it up. Watch the occasional smile that he
18 gives you when he's talking about the consensual sex.
19 Watch how he's just there just talking in a nice quiet
20 voice about what he did.

21 Tells Detective Cantrell on there that this is bigger
22 than me, I need help. I think I might have found something
23 I finally agreed with him on. I'm going to play just a
24 portion of it for you real quick. But, as I said, you're
25 going to have it in the back and you're going to have a

Closing arguments

1 chance to watch it. You're going to have the chance to
2 hear him say I had consensual sex with her.

3 She's attractive. You're also going to hear where he
4 talks in there -- and I guess you would term this I don't
5 know door No. 4 or door No. 5 or 6, whichever number we're
6 at now, when he goes into this detail about how Complaining
7 came onto him that night. And he's going to give you
8 details about how he tried to have sex with her but he just
9 wasn't able. He tries to have sex with her in the room yet
10 again with his wife and his five-year-old. Complaining says
11 all of this happened in the bathroom next door, which is
12 more plausible.

13 He's going to tell you a story on the video about how
14 she come onto him. She pulled her panties aside and
15 touched herself and touched him. It's all on video that
16 you can watch back in the back. It's kind of hard to hear.
17 I just want to play a piece of it for you and give you a
18 chance to see what he looks like then.

19 (Whereupon, the video was played for the jury.)

20 MS. JORDAN: It's hard to hear. That's why I say
21 you'll have it in the back if you want to listen to it --
22 the computer -- listen to it there. But you heard what he
23 said -- it wasn't rape, it was consensual. The judge is
24 going to tell you, as I told you earlier,
25 sixteen-years-olds can't consent.

Closing arguments

1 Ladies and gentlemen, this isn't a case about consent
2 even if that could be the law. She said he pushed her down
3 in the bathroom floor and penetrated her.

4 Mr. Whelchel is going to argue we didn't prove this
5 beyond a reasonable doubt, but we did, ladies and
6 gentlemen. All that you've heard, all that you've seen,
7 all that you'll get to see even in the back that's in
8 evidence, you can look at all of this. Look at the swabs,
9 listen to the video, take it all in.

10 He's going to say, well, maybe, maybe he attempted,
11 maybe he just attempted to have sex with her, it was just
12 an attempt at criminal sexual conduct. But listen to all
13 of it. And remember a sexual battery is any intrusion,
14 however slight. How do you know if he attempted if he
15 didn't make any intrusion, however slight?

16 He talks in the video about how he was on top of
17 Complaining he was carrying his own weight when he tried to
18 have sex with her. Any intrusion, however slight.

19 This case has been proved beyond a reasonable doubt
20 that Joseph Cobb committed a sexual battery against
21 Complaining Witness

22 I'm asking that when you go into the jury room that
23 you consider everything that you've heard today, you apply
24 your common sense to it and you return a verdict of guilty
25 as to criminal sexual conduct with a minor in the second

Closing arguments

1 degree. Thank you.

2 THE COURT: Mr. Whelchel.

3 MR. WHELCHER: Thank you, Your Honor.

4 July of 2007. Joseph Cobb in July of 2007 is accused
5 of raping this young woman. Today and yesterday he gets to
6 go to trial. And he gets to go to trial without everything
7 that they took from the house in the search warrant -- the
8 underwear, the boxers. Everything that was taken is gone.
9 The buccal swab that he gave them voluntarily, it's gone.
10 And what are we hearing? Well, that shouldn't have
11 happened. Mistakes shouldn't happen. Sitting by me three
12 and a half years later, sitting here.

13 Is that reasonable? Ask yourself that question. Is
14 that reasonable? Because you must remember what I talked
15 to you about yesterday and what the judge has already
16 talked to you about in his initial charge to you, and will
17 talk to you about again.

18 The state has the burden of proving to you beyond a
19 reasonable doubt that this happened the way they say it
20 happened, when they say it happened, with evidence so
21 strong and so convincing as to remove the cloak of
22 innocence that Joseph Cobb still wears, yes, still wears.

23 You will listen to the judge's charge in a minute, and
24 he will tell you in that charge that Joseph Cobb is
25 presumed innocent, is innocent now and is innocent in that

Closing arguments

1 delivery -- in that deliberating room, the jury room,
2 unless and until you find evidence so strong and so
3 convincing as to remove that cloak of innocence, evidence
4 so strong and so convincing, evidence beyond a reasonable
5 doubt.

6 Now, the prosecutor just told you a moment ago, and
7 I'm going to talk about reasonable doubt. Yeah, they're
8 going to talk about reasonable doubt all right. That long.

9 I used to be a prosecutor a long time ago.
10 Prosecutors don't like to talk about reasonable doubt.
11 Why? She's right. It is the highest standard in the legal
12 system. And there's a reason for that, a very simple
13 reason.

14 Joseph Cobb is being accused of rape. The burden of
15 proof of that rape lies with this table, with the
16 prosecutors and the state officers. And now we hear, well,
17 you don't have to have anything other than her saying that
18 he raped her. And you'll hear from the judge about that.
19 But then why do we do the protocols? And when we do the
20 protocols, the assault kit, what do we find?

21 Well, there's no semen on the swabs. There's no semen
22 anywhere remotely connected with the vagina after this
23 brutal rape.

24 Remember I asked her about some blood, said she
25 cleaned it up. We don't have that either. Why don't we

Closing arguments

1 have that? It got -- we lost that stuff, but we've got
2 plenty of other stuff.

3 Let me show you what we've got. We've got saliva
4 here, here and here. We've got saliva from everywhere, and
5 we got semen from nowhere. We don't have anything other
6 than the bare allegation, we don't have anything to tell
7 you, yeah, in addition to her allegation and this.

8 You don't have that. And you don't have any way to
9 try to get it from the stuff that was taken in the search
10 warrant, and must have been important because look how fast
11 they're there with that search warrant that day. Must have
12 been important, but it's not important now. Think it might
13 be important to Joe Cobb? It's difficult for me to know
14 that I'm getting you to understand how very important what
15 we don't have is.

16 You listen to the judge's charge. He will tell you
17 that you can base your decision on what you don't have as
18 well as what you allegedly do have. He will tell you that
19 in his charge.

20 What else don't we have? Well, we don't have any
21 evidence of any trauma whatsoever. Two very professional
22 nurses on the stand interviewed her, talked to her.

23 She's supposed to have been held down with an arm
24 across her throat. She's supposed to have been raped. And
25 you don't hear any testimony about trauma here or

Closing arguments

1 elsewhere. Why? That is a very good prosecutor. And if
2 it was there and available as evidence, it would be in
3 evidence, but it's not. I guess we just chalk it up with
4 the we-lost-that-stuff-sorry.

5 This isn't a baseball game. This ain't somebody
6 claiming that you juiced up the bats or something like
7 that. Carolina-Clemson. We don't want to talk about it.

8 This is a trial to determine a man's future, and there
9 just seems to be a collective shrug of the shoulders. It
10 happened, it shouldn't happen, but it happens. You need to
11 understand how very important what you don't have is.

12 And let's talk about reasonable for a moment. A young
13 woman who has allegedly been violated that way who has a
14 cell phone chooses not to use it. Doesn't call parents.
15 Says she threatened to call the police but didn't.

16 Do you find that odd? Speaking of odd, her choice of
17 words, he had penetration. Who talks like that -- who
18 talks like that? Never heard anybody testify that she had
19 talked to that morning or that next day saying she said we
20 had penetration. And there's a reason for that. Without
21 penetration and proof of penetration you have no criminal
22 sexual conduct, or attempt.

23 That's why when I was asking questions of the
24 investigator, the lead investigator on this thing, did you
25 talk to Joe about a sexual battery, did you tell him what

Closing arguments

1 sexual battery means, no. She said I just assumed he knew,
2 I just assumed that's what he meant.

3 Now, you can mean a lot of things when you start
4 talking about having sex. It doesn't have to mean the
5 ultimate act.

6 But here's the problem. The very people who are
7 required to prove this to you and you and you and you and
8 the rest of you beyond a reasonable doubt, they dropped the
9 ball. I just assumed he knew what we were talking about.
10 I don't know what happened to all of that missing stuff
11 that was taken.

12 You decide today what is a reasonable doubt. You
13 decide today whether it's reasonable after three and a half
14 years to give the state a pass.

15 Well, yeah, it's your job to collect this evidence and
16 to keep it and to bring it to court and to carry the burden
17 of proving someone guilty beyond a reasonable doubt.
18 That's their job.

19 That's your job, but we're going to give you a pass.
20 That's what they're asking you to do. I mean, they
21 apologize nicely for it. But think about it. They
22 apologize nicely for it.

23 If I get rear-ended at a red light, and say, oh, I'm
24 so very sorry, that doesn't fix what he tore up and what he
25 lost. Can't get it back.

Closing arguments

1 I understand how very important that is. As I said
2 earlier, what you don't have is. What you don't have in
3 these cases is just as important as what you do have. And
4 simply because somebody says that something happened
5 doesn't make it so.

6 You heard testimony from Complaining that the next
7 morning I think she's supposed to be home by 8:00. They
8 get up and go running -- says he leaves by going.

9 They go to take Joe's wife to a class. And do you
10 remember what I asked her about going to that class? Were
11 there people outside? Yeah. Could you see people inside
12 the school? Yeah. Two-door or four-door car? Four-door.
13 You in the back? Yeah.

14 Is it reasonable? Do you believe that a young woman
15 who's been assaulted in the way and degraded in the way
16 that you've been told today having that opportunity to step
17 out of the car and go tell these people help me, he raped
18 me, passes it up?

19 Remember when I was talking to or questioning the
20 investigator, the store across the street opens. They get
21 up in the morning and go there. Not until she gets home do
22 you see the emotion of that. She's already way past time
23 to be home. And you'll hear in her statement -- Joe's
24 statement -- what she told him. You need to take me home
25 with Jeannie. I'll get in trouble.

Closing arguments

1 Ladies and gentlemen, you decide today what is
2 acceptable in this state and in this particular case and in
3 this county.

4 And you need to understand something. Simply because
5 he's charged with this offense means absolutely nothing.
6 There's an indictment that the judge will give to you
7 later, but that's the charging paper. There's got to be
8 some kind of paper to tell you what you're charged with.

9 That's of no value whatsoever. The value that you
10 have is what you determine the truth to be. You decide who
11 you believe and what you believe and if you believe it.

12 Everything that seems to be in this infamous case is
13 not of any evidentiary value connected with the vaginal
14 region. It's not there. It's not unusual for it not to be
15 there.

16 And as I told you earlier, there's no evidence of
17 trauma introduced into this case whatsoever. You go on
18 what evidence that you have. If we had anything you could
19 look at it.

20 We will never know, none of us. Can you convict?
21 That's what they're asking you to do based on the statement
22 this happened, I went to the hospital and cried and told
23 them this happened. This happened.

24 Now, I understand that they're claiming that they've
25 got proof, evidence of some item, things like that. You've

Closing arguments

1 never seen them. They've got to prove to you penetration
2 in order to convict. That's the key element. That's why
3 that it is so important that you hear early on in the
4 testimony penetration is made. And I thought they allowed
5 to question everybody. That's the result from being talked
6 to, being told.

7 There is nothing wrong with talking to witnesses. I'm
8 not saying that there is. Nobody put the witnesses on the
9 stand and hadn't talk to them before. But let's talk about
10 where there is witnesses on the stand.

11 I think we're done now. Up and down real quick.
12 Heard Joe talking to his wife, the aftermath. And
13 basically says I couldn't get an erection. That's long
14 before anybody's talking to the police or to the
15 investigators who are trained for seven years to do this
16 but don't bother to make sure that the person they're
17 talking to understands that we're talking about a sexual
18 battery, and this is what a sexual battery is. That is
19 said long before anybody's ever read any rights. Now, they
20 say it happened. You've got Complaining No question.

21 Ask yourself this question. Has the state proven to
22 you beyond a reasonable doubt that this happened the way
23 they say it happened, how they say it happened with
24 evidence so strong and so convincing, evidence beyond a
25 reasonable doubt?

Closing arguments

1 The judge will define reasonable doubt to you. It is
2 simply defined and best defined as a doubt which would
3 cause a reasonable person to hesitate to act, to hesitate
4 to believe. Losing all of the evidence taken, is that
5 reasonable? There is a reasonable doubt.

6 Nothing other than a bare assertion that this
7 happened, and there is a reasonable doubt. Evidence from
8 the protocol, sexual assault, that there was no semen. And
9 you'll see in State's Exhibit No. 25 that vaginal smears,
10 they didn't bother to analyze it. Vaginal swabs, no semen.
11 Oral swabs, no semen. Pubic hair combs, known head hairs,
12 no analysis performed. Look at all of this stuff where
13 there's no analysis performed by the very people with which
14 the burden of proof rests.

15 Your decision, your verdict, must be unanimous.
16 Simply speaking, all 12 of you have to agree that the
17 evidence submitted during this trial is so good, it is so
18 strong as to remove the cloak of innocence that Joseph Cobb
19 enjoys throughout this trial and even as you begin your
20 deliberations and until you are convinced. And unless you
21 are convinced otherwise he is not guilty. That's the law
22 of the land.

23 So I told you yesterday it's very important for you to
24 understand he's not guilty. They must prove to you with
25 evidence so strong and so convincing beyond a reasonable

Jury charge

1 doubt. Yeah, I keep talking to you about that. They don't
2 want to talk to you about it, because, like she said, it's
3 the highest standard in the law.

4 So you must ask yourself this question. Have I been
5 convinced with the evidence that's presented and
6 considering the evidence that's not been presented and the
7 evidence that is lost and never will be found, have I been
8 convinced that this happened the way they say it happened,
9 have I been convinced that Joseph Cobb is guilty beyond a
10 reasonable doubt. As this evidence, what it is, so strong
11 as to remove the presumption of innocence that the law of
12 this state affords him and everybody else, regardless of
13 how minor or serious the offense is, the law of this state
14 affords those persons.

15 I submit to you on behalf of Joseph Cobb that the
16 verdict that is proper, the verdict that speaks the truth
17 when you consider what's alleged, what you don't have and
18 what you hear identified, you consider it all, that the
19 proper verdict is not guilty. Thank you.

20 THE COURT: Ladies and gentlemen, it is your exclusive
21 duty to determine what the facts are. You do that through
22 your own common sense examination and evaluation of all of
23 the testimony and the other evidence received during the
24 trial of this case.

25 You 12 jurors alone will decide what weight, value and

Jury charge

1 effect to give to any particular witness' testimony, or
2 portions of testimony. Your sole objective is to simply
3 reach the truth in the matter. And by doing that you will
4 have fulfilled your obligations as jurors, and that is to
5 simply give both the state and this defendant a fair and
6 impartial trial.

7 Now, in this case, as you know, the state through the
8 prosecutor has accused the defendant of having committed
9 the crime of criminal sexual conduct with a minor in the
10 second degree. The allegations setting forth that charge
11 are contained in that document which I referred to prior to
12 and after your selection.

13 The indictment will be in the jury room because it's
14 on the back of that indictment, Mr. Foreman, that you're
15 going to be asked to indicate the jury's unanimous
16 decision. But other than serving as the verdict form the
17 indictment serves no purpose so far as you jurors are
18 concerned.

19 The indictment does not prove anything. It does not
20 establish anything. It is simply the means by which any
21 person who is accused of a crime is brought into this court
22 to stand trial on that charge. And of course it serves to
23 put a defendant on notice as to what crime the state claims
24 they have committed. And in the trial of a case it serves
25 as the verdict form. But other than serving as the verdict

Jury charge

1 form it serves no purpose so far as you jurors are
2 concerned.

3 Now, as to the allegations contained in the indictment
4 and the charge set forth the defendant has entered a plea
5 of not guilty. And that plea of not guilty has therefore
6 placed upon the state the burden of proving the allegations
7 that they have set forth, the burden of proving each of the
8 essential elements that constitutes the crime alleged in
9 the indictment; and therefore the burden is upon the state
10 to establish the defendant's guilt to the satisfaction of
11 you 12 jurors beyond a reasonable doubt before any verdict
12 of guilty could be returned.

13 The burden is never upon a defendant or a person
14 accused of a crime to prove that they are not guilty or to
15 prove that they are innocent, because in some cases that
16 might not be possible. The burden is always upon the state
17 because they have brought the charge against another to
18 establish that person's guilt beyond a reasonable doubt.

19 It is a vital, important and cardinal rule of law that
20 every defendant in a criminal trial, no matter how serious
21 the offense might be for which that person stands charged,
22 that person shall always be presumed innocent of the
23 charge.

24 That presumption of innocence remains with any
25 defendant, as it does with this defendant, from the time

Jury charge

1 that he is placed under arrest and throughout the course of
2 the criminal process and even throughout the course of the
3 trial.

4 As I told you, that presumption of innocence will be
5 with this defendant even as you go back to begin with your
6 deliberations in the case. And that presumption of
7 innocence will be with him in the jury room, and it'll be
8 with him forever unless you 12 jurors determine that he's
9 no longer entitled to that presumption of innocence.

10 In other words, after you've carefully considered all
11 of the evidence in the case and from that evidence you have
12 determined what you believe to be the true facts as they
13 relate to these allegations, and upon deciding those facts
14 you apply the law that I will have provided you, if you 12
15 jurors unanimously determine that his guilt has been proven
16 beyond a reasonable doubt, then he would no longer be
17 entitled to the presumption of innocence. But it's only
18 if, unless and until you are satisfied of his guilt beyond
19 a reasonable doubt that the presumption of innocence would
20 no longer be applicable.

21 Now, while the state does have the burden of proving
22 the defendant's guilt to your satisfaction beyond a
23 reasonable doubt, that doesn't mean that the state has to
24 prove his guilt beyond all doubt or beyond any possible
25 doubt. But it does require the state to prove his guilt to

Jury charge

1 your satisfaction beyond a reasonable doubt.

2 The term reasonable doubt should be given its plain
3 and ordinary meaning. A reasonable doubt is the kind of
4 doubt that would cause a reasonable person to hesitate to
5 act upon the information provided.

6 A defendant is entitled to any reasonable doubt that
7 arises from the evidence or lack of evidence in a case.
8 And if upon any factual issue essential to a finding of a
9 verdict of guilty you have some reasonable doubt as how
10 that issue should be resolved, it would be your duty to
11 resolve that reasonable doubt in favor of the defendant.

12 And therefore if upon your consideration of the whole
13 case you have a reasonable doubt as to his guilt, you must
14 resolve that reasonable doubt in his favor and return a
15 verdict of not guilty.

16 And, at the same time, after you've carefully
17 considered all the evidence, and from that evidence you
18 have decided the facts, and after deciding those facts you
19 apply the law that I will have provided you, if you have no
20 reasonable doubt as to his guilt it would be your
21 corresponding duty to find him guilty of any crime that you
22 are satisfied has been proven beyond a reasonable doubt.

23 Now, the same law that provides that you are the
24 judges of the facts also provides that I am the judge of
25 the law. And that simply means that nobody's going to tell

Jury charge

1 you how to arrive at your determination of fact in this
2 case.

3 You do that, as I've stated, through the exercise of
4 good judgment and common sense conscientiously applied to
5 the testimony and evidence received during the trial of the
6 case.

7 You must however under your oath as a juror accept the
8 law as I provide it to you as being the law that is
9 applicable in this particular case. In other words, you're
10 never to concern yourself with what you thought the law was
11 before you came to serve as a juror this week or what you
12 think the law ought to be.

13 You must simply under your oath accept the law as I
14 provide it to you as being the law that is applicable in
15 this case. Then you take that law and you apply it to the
16 facts as you 12 jurors determine those facts to be based
17 upon your common sense examination and evaluation of the
18 evidence in the case.

19 Now, because you are the sole judge of the facts in
20 this case you are therefore necessarily the sole judges of
21 the credibility or the believability of each witness that
22 has testified during the course of the trial. You 12
23 jurors alone will decide what weight, value and effect to
24 give to any particular witness' testimony, or even a
25 portion of that testimony.

Jury charge

1 There are several factors which you should consider in
2 arriving at your assessment as it relates to a particular
3 witness' credibility, and I'm going to list those factors
4 for you.

5 But you are to consider the demeanor of the witness,
6 that is how the witness appeared to you as the witness
7 testified from the witness stand. Was the witness
8 straightforward in responding to questions, or was the
9 witness hesitant or evasive in responding to questions that
10 were asked of the witness.

11 Simply put, did the witness appear to you to be
12 telling the truth and to have knowledge of the facts to
13 which that witness has testified.

14 You should also consider whether or not the testimony
15 of a witness is consistent, or is it inconsistent with that
16 own witness' testimony provided in court, as well as any
17 statements that might have been made by that witness
18 outside of court. And you should also consider whether or
19 not the testimony of a witness is consistent or
20 inconsistent with other witnesses' testimony or other
21 evidence received during the trial of the case.

22 You are also to consider how the witness came to know
23 the facts to which a witness has testified. In other
24 words, what was a particular witness' opportunity and
25 ability to perceive the existence of those facts to which

Jury charge

1 that witness has testified by having previously used his or
2 her senses, and then what is that witness' ability to be
3 able to come into court and to accurately recollect to you
4 as to what they have previously perceived.

5 You may also consider any bias or prejudice or
6 interest that the witness might have with regard to a case.
7 In other words, do you find some reason that a particular
8 witness would testify one way or another to help or to hurt
9 one side or the other. And you may consider any interest
10 that the witness might have in the outcome of the case if
11 you determine that a witness does have such an interest and
12 you find that that interest would bear upon that particular
13 witness' credibility.

14 You are also to consider whether or not the testimony
15 of a witness is strengthened, or is it weakened by other
16 testimony or other evidence received during the course of
17 the trial.

18 You as the finders of the fact and you as the judges
19 of the credibility of each witness are permitted to believe
20 as much or as little of what a witness has testified to as
21 you deem is appropriate. And therefore you may believe
22 everything that a witness testified to; you may choose to
23 believe none of it. You may believe some portion of a
24 witness' testimony and reject some other portion of that
25 same witness' testimony.

Jury charge

1 In a given case you could believe one witness as
2 opposed to several, or several as opposed to one. But
3 whatever your good judgment and common sense tells you is
4 the most credible and believable testimony is the testimony
5 you should accept. And you should reject any testimony or
6 other evidence that you find not to be credible and
7 believable. Again, your sole objective is to simply reach
8 the truth in the matter. And by doing that you will have
9 fulfilled your obligations as jurors, and that is to give
10 both sides a fair and impartial trial.

11 Now, while there are various forms of evidence such as
12 testimony, photographs, documents, charts or other types of
13 physical exhibits, there are really only two types of
14 evidence. Either or both of those types of evidence may be
15 used to prove any fact in issue. But the two types of
16 evidence are direct evidence and circumstantial evidence.

17 Now, direct evidence is the testimony of a person who
18 testifies from actual knowledge of the fact. It is
19 testimony by a person who has perceived the existence of a
20 fact by means of his or her senses. And then that persons
21 comes into court and they testify as to what they have
22 previously perceived.

23 Circumstantial evidence, on the other hand, is the
24 proof of some other fact or set of facts which taken either
25 singly or collectively may prove the existence of a fact in

Jury charge

1 consequence -- excuse me, may prove the existence of a fact
2 in question as a necessary consequence. That is by an
3 inference.

4 An inference is simply a deduction of fact that may
5 logically and reasonably be drawn from the proof of some
6 other fact or set of facts. In other words, it's not a
7 fact which is proven by the direct testimony of a person
8 based upon their personal perception, but it is a
9 conclusion which might reasonably be drawn from the proof
10 of other facts.

11 In other words, you may infer that a particular event
12 occurred or that a particular fact exists based upon the
13 proof of sufficient factual circumstances which would
14 reasonably warrant your arriving at a particular
15 conclusion.

16 The law however does not make any distinction between
17 the weight or value to be given to direct evidence as
18 opposed to circumstantial evidence, nor is a greater degree
19 of certainty required of circumstantial evidence as opposed
20 to direct evidence.

21 Whatever the type of evidence used to prove any fact
22 in issue, you should consider all of the evidence presented
23 during the trial of the case. And after carefully
24 considering all of that evidence and weighing it in your
25 minds if you are not convinced of the guilt of the

Jury charge

1 defendant beyond a reasonable doubt, then you must resolve
2 that doubt in his favor and return a verdict of not guilty.

3 Now, in this case, as you know, the defendant is
4 charged with the crime of criminal sexual conduct with a
5 minor in the second degree.

6 That's a statutory offense. And that just means it's
7 defined by the legislature in a code section. And that
8 code section is 16-3-655. And that code section provides
9 in its relevant part, parts as follows: A person is guilty
10 of criminal sexual conduct with a minor in the second
11 degree if the actor engages in sexual battery with a victim
12 who is at least 14 years of age but who is less than 16
13 years of age and the actor is older than the victim.

14 So, again, the crime is defined as a person is guilty
15 of criminal sexual conduct with a minor in the second
16 degree if the actor engages in sexual battery with a victim
17 who is at least 14 years of age but who is less than 16
18 years of age and the actor is older than the victim.

19 Now, there is another code section which sets forth
20 certain definitions which are applicable to these statutes.
21 In that section it defines actor as a person accused of
22 criminal sexual conduct. In this case that would be Joseph
23 Gabriel Cobb.

24 That section defines a victim as being a person who is
25 alleged to have been subjected to criminal sexual conduct.

Jury charge

1 In this case that would be Complaining Witness

2 A sexual battery is defined as sexual intercourse or
3 any intrusion, however slight, of any part of a person's
4 body or of any object into the genital or anal openings of
5 another person's body.

6 And therefore based upon the language of the statute
7 there are three essential elements which must be
8 established beyond a reasonable doubt before the defendant
9 could be found guilty of criminal sexual conduct with a
10 minor in the second degree.

11 First, it must be proven that the defendant, Joseph
12 Gabriel Cobb, did engage in a sexual battery as I have
13 defined that term for you, and that that was engaged in
14 with Complaining Witness

15 Secondly, it must be proven that at the time of the
16 commission of any sexual battery the victim, Complaining
17 Bishop, was at least 14 years of age but less than 16 years
18 of age.

19 And, thirdly, it must be proven that the defendant,
20 Joseph Gabriel Cobb, was older than the victim, Complaining
21 Bishop.

22 You are further instructed that consent is not an
23 issue in the trial of this case or in any case of criminal
24 sexual conduct involving a minor under the age of 16 years.
25 Under the law of this state a child under the age of 16

Jury charge

1 years is not legally capable of voluntarily consenting to a
2 sexual battery committed by an adult.

3 You are further instructed that while the law does not
4 require that the testimony of a minor claiming to have been
5 the victim of criminal sexual conduct be corroborated, the
6 law does require that the three elements I have just
7 explained to you be proven beyond a reasonable doubt.

8 If after considering all of the testimony and all of
9 the evidence in this case any one or more of the three
10 elements required to be proven is not proven to your
11 satisfaction beyond a reasonable doubt, then your verdict
12 must be for the defendant, and he would be found not
13 guilty.

14 Now, if after your consideration of the evidence in
15 this case you find that the state has failed to prove
16 beyond a reasonable doubt the defendant's commission of the
17 crime of criminal sexual conduct with a minor in the second
18 degree, you may consider the included offense of attempted
19 criminal sexual conduct with a minor in the second degree.

20 An attempt is defined as the commission of an overt
21 act done in furtherance of an intent to do a specific thing
22 which tends towards the accomplishment of the intended goal
23 but which falls short of completion.

24 An attempt to commit a specific crime means the making
25 of an effort or the doing of an act towards the commission

Jury charge

1 of the crime intending to be committed. In order to be
2 found guilty of attempted criminal sexual conduct with a
3 minor in the second degree it must be proven beyond a
4 reasonable doubt that the defendant had a specific intent
5 to commit the crime accompanied by some overt act towards
6 the commission of the crime which would become part and
7 parcel of the criminal offense if completed and which,
8 except for some intervening cause preventing the completion
9 of the intent, would have resulted in the complete
10 commission of the crime of criminal sexual conduct with a
11 minor in the second degree.

12 Ladies and gentlemen of the jury, I am not in any way
13 concerned with what your decision is, but I do tell you
14 that your verdict has to be unanimous. All 12 of you must
15 be in agreement before any decision may be rendered.

16 Mr. Foreman, you're going to have the indictment in
17 the jury room. It's going to be on the back of the
18 indictment -- you'll see in the lower left-hand corner of
19 the back of the indictment the word verdict. There's a
20 clock stamp there which is not supposed to be there. So
21 just ignore that and just write through it. But beneath
22 the word verdict write the unanimous decision of the jury.

23 In this case you're going to have three potential
24 verdict forms. Those three potential verdict forms are
25 guilty, guilty of attempted criminal sexual conduct with a

Jury charge

1 minor in the second degree and not guilty.

2 Now, as you complete the verdict form if you simply
3 write the one word guilty that means guilty of the crime
4 charged in the indictment. If you find the defendant to
5 have been proven only guilty of attempted criminal sexual
6 conduct with a minor in the second degree you've got to
7 write that out. And that would be guilty of attempted
8 criminal sexual conduct with a minor in the second degree.

9 And the third potential form is not guilty if neither
10 of those crimes have been proven beyond a reasonable doubt.

11 Then sign your name as the foreperson, place the
12 appropriate date on it, notify the bailiff you've reached a
13 decision. We'll bring you back to receive the verdict.

14 Now, when you complete the verdict form after you've
15 made a decision when you notify the bailiff that you've
16 reached that decision, you will maintain possession of the
17 verdict form. Don't give it to the bailiff. You hold on
18 to it. And I'll get it from you when you come back into
19 the courtroom.

20 Now, during your deliberations there may come a time
21 where you have some question about the facts of the case.
22 Please understand that I am never permitted to comment upon
23 the facts or to answer any questions that relate to the
24 facts of the case.

25 Also, if you are wondering if there's some other piece

Jury charge

1 of evidence, does it exist, or if it does can you have it,
2 no additional evidence can be received now that you're
3 going back to deliberate. So don't ask for any additional
4 evidence that you don't have, because even if it exists you
5 couldn't have it because the evidence has been closed.

6 If you have a question about a witness' testimony and
7 you think that question can be answered by having a --
8 having the witness' testimony replayed in whole or in part,
9 we can bring you back into the courtroom for that purpose.

10 I do not have transcripts of the witnesses' testimony,
11 so I can't send you a transcript. But if you do need to
12 have a witness' testimony reheard I can bring you back into
13 the courtroom and have it relayed for your benefit, either
14 all of it, or just some portion of it if that's all you
15 need.

16 If you ever have a question about the law that is
17 applicable, I am permitted to answer those questions. So
18 if you need for me to give you a reinstruction on the law
19 or to give you an explanation of something already provided
20 or to clarify something that I have provided, you let me
21 know. And I can always bring you back to give you
22 additional assistance and clarification on any point of law
23 that is applicable in the case.

24 So, Mr. Foreman, if at any time you need to direct
25 some question or comment to me if you'll write it on a

Jury charge

1 piece of paper, give it to the bailiff, he'll provide it to
2 me and I'll respond as necessary.

3 I don't know if we have any smokers on the jury. If
4 you want to smoke, you can. But you can't smoke in the
5 jury room. You have to go outside for that purpose. But
6 you are instructed that deliberations can only take place
7 when all 12 jurors are present in the room so that all can
8 participate.

9 So if at any time any juror is absent for an
10 authorized purpose the deliberations have to stop. They
11 may only resume when all 12 jurors are present so that all
12 can participate in those deliberations.

13 I think that covers everything. If not, I'll bring
14 you back.

15 But right now I'll ask the 12 primary jurors.

16 Ms. Smith, you just stay with me.

17 The 12 primary jurors please go with the bailiff to
18 your jury room and await my instruction as to when to begin
19 your deliberations.

20 (Whereupon, the jury retired to deliberate at
21 2:42 p.m.)

22 (Whereupon, the alternate juror was excused.)

23 THE COURT: Are there any exceptions taken to the
24 instruction or requests for additions to the instruction by
25 the state?

Verdict

1 MS. JORDAN: None by the state, Your Honor.

2 THE COURT: By the defendant?

3 MR. WHELCHER: Nothing other than my earlier request
4 to charge aggravated assault and battery, Your Honor.

5 THE COURT: Okay. Let me ask y'all to verify the
6 exhibits, please, before they go back.

7 (Pause.)

8 MS. JORDAN: They are all there, Your Honor.

9 THE COURT: They are all accounted for.
10 Send them back and tell the jury to begin
11 deliberations and notify us when they've concluded.

12 We will be at ease for ten minutes.

13 (Whereupon, the exhibits were submitted to the jury at
14 2:46 p.m.)

15 (Whereupon, a recess was taken.)

16 THE COURT: I am told the jury has reached a decision.
17 Are we ready to receive it?

18 MS. JORDAN: Yes, sir.

19 MR. WHELCHER: Yes, sir.

20 THE COURT: Okay. Bring them in.

21 (Whereupon, the jury returned to the courtroom at
22 4:35 p.m. to report its verdict.)

23 THE COURT: Mr. Foreman, have you and your fellow
24 jurors reached a unanimous decision?

25 THE FOREMAN: Yes, sir, we have.

Verdict

1 THE COURT: Have you indicated that decision on the
2 back of the indictment as requested?

3 THE FOREMAN: Yes, sir.

4 THE COURT: And did you sign your name as the
5 foreperson?

6 THE FOREMAN: What, sir?

7 THE COURT: Did you sign your name?

8 THE FOREMAN: Yes, sir.

9 THE COURT: If you will, please hand that form up by
10 way of the bailiff.

11 You may publish the verdict.

12 THE CLERK: State of South Carolina, County of
13 Spartanburg, in the Court of General Sessions, the State
14 vs. Joseph Gabriel Cobb, Indictment No. 2007-GS-42-3875,
15 indictment for criminal sexual conduct with a minor second
16 degree, we, the jury, find the defendant guilty. Signed by
17 the foreperson, Robert Cooley, Coley, today's date,
18 3/10/2011.

19 Ladies and gentlemen of the jury, is this your verdict
20 and still your verdict? If so, please raise your right
21 hand.

22 (Whereupon, all jurors responded in the affirmative.)

23 THE CLERK: So say you all.

24 THE COURT: Does the defendant wish to have the jury
25 polled?

1 MR. WHELCHER: Yes, sir, Your Honor.

2 THE COURT: All right. Poll the jury, please, ma'am.

3 THE CLERK: Ladies and gentlemen of the jury, I'll be
4 asking you a question, and that question is is this your
5 verdict and still your verdict. When I call your name and
6 your jury number, if you would, just answer yes or no.

7 Juror No. 228, Felicia Rogers.

8 THE JUROR: Yes.

9 THE CLERK: Juror No. 51, Harold Cleveland.

10 THE JUROR: Yes.

11 THE CLERK: Juror No. 45, Maria Castillo.

12 THE JUROR: Yes.

13 THE CLERK: Juror No. 242, Deborah Smith.

14 THE JUROR: Yes.

15 THE CLERK: Juror No. 53, Robert Coley.

16 THE JUROR: Yes.

17 THE CLERK: Juror No. 296, Jason Wyatt.

18 THE JUROR: Yes.

19 THE CLERK: Juror No. 202, Thong Pathoummahong.

20 THE JUROR: Yes.

21 THE CLERK: Juror No. 201, Elizabeth Passmore.

22 THE JUROR: Yes.

23 THE CLERK: Juror No. 41, Garnet Carbon.

24 THE JUROR: Yes.

25 THE CLERK: Juror No. 108, Mark Haulbrook.

1 THE JUROR: Yes.

2 THE CLERK: Juror No. 33, Wanona Burgett.

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 143, Karen Knon.

5 THE JUROR: Yes.

6 THE CLERK: The jury has been polled.

7 THE COURT: All right. Any other matters that need to
8 be addressed with the jury present?

9 MS. JORDAN: None from the state, Your Honor.

10 MR. WHELCHER: No, sir, Your Honor.

11 (Whereupon, the trial jury was excused.)

12 THE COURT: All right. Any matters to address before
13 the imposition of sentence?

14 MR. WHELCHER: Your Honor, at this time I would ask
15 for a -- make a motion for a judgment, notwithstanding the
16 verdict, or in the alternate a new trial based on
17 previously mentioned lack of evidence, insufficiency of the
18 evidence, and, specifically, Your Honor, my request to have
19 Your Honor charge the jury aggravated assault and battery
20 in this matter.

21 Based on that I would make the motion for a new trial
22 or a judgment notwithstanding the verdict.

23 THE COURT: Well, I'll treat that as a motion for a
24 new trial, and that's denied.

25 MS. JORDAN: Your Honor, if I may for the record, and

Sentence

1 I can mark these as either court exhibits or state
2 exhibits. I have -- let me get the court numbers. Would
3 the Court prefer that these be marked? It's some
4 affidavits of service.

5 THE COURT: It doesn't matter how you mark them.

6 (Notice of life sentence marked Court's Exhibit No. 1;
7 affidavit marked Court's Exhibit No. 2; affidavit marked
8 Court's Exhibit No. 3; affidavit of service marked Court's
9 Exhibit No. 4.)

10 MS. JORDAN: Your Honor, if I may, I am going to hand
11 up to the Court Court's Exhibit No. 1, which is a notice of
12 a life sentence pursuant to 17-25-45 where it states in
13 there that the Court -- that the state is going to seek a
14 life sentence based upon the defendant's 1992 convictions
15 for two counts of voluntary manslaughter.

16 Attached to the notice of -- notice of motion to seek
17 a life sentence is the defendant's rap sheet, along with
18 copies of the sentencing -- the indictment. And I believe
19 back then they used a 1-page sentencing sheet also attached
20 to the notice that's Court's Exhibit No. 1.

21 As to Court's Exhibit No. 2, it's a copy of an
22 affidavit signed by Alisha Pickens. She's a paralegal in
23 our office. She delivered the notice of intent to seek
24 life on Joseph Cobb here at the courthouse on the 10th day
25 of August of 2007.

Sentence

1 Your Honor, at that time the defendant was represented
2 by Josh Schultz who was with the public defender's office.
3 She also served a notice of life on him on the same date,
4 the 10th of August of 2007.

5 Just to make sure that there were no issues since he's
6 no longer represented by Josh Schultz, Crystal Szar with
7 our office served Dick Whelchel personally here at the
8 courthouse on February the 22nd of 2011 with the same
9 notice of intent to seek a life sentence.

10 Mr. Whelchel was well aware of it, however we served
11 it just out of an abundance of caution since he was a
12 different attorney on the case at the time, although he was
13 still with the public defender's office.

14 Your Honor, in addition to the two counts of voluntary
15 manslaughter from 1992 the defendant also has a record for
16 criminal domestic violence of a high and aggravated with a
17 conviction date of 2004. That's the extent of his record.

18 May I approach?

19 MR. WHELCHER: Your Honor, I don't know what address
20 to put on here because he's been in the jail for the last
21 three and a half years -- on this sentencing sheet. I
22 guess we can put the address.

23 THE COURT: Just put his last known address.

24 Mr. Whelchel, are you and Mr. Cobb in agreement with
25 the state that all of the requirements for sentencing

Sentence

1 pursuant to 17-25-45 have been met in this case?

2 MR. WHELCHER: Yes, we are, Your Honor.

3 THE COURT: Okay. Do you have anything you'd like to
4 tell me prior to the imposition of the sentence?

5 MR. WHELCHER: No, sir.

6 THE COURT: Mr. Cobb, do you have anything you'd like
7 to tell me?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. On Indictment 2007-3875,
10 that's an indictment for criminal sexual conduct with a
11 minor in the second degree, a most serious offense under
12 the law of this state, and wherein you have been previously
13 found guilty of a most serious offense, the Sentence of the
14 Court is that you, Joseph Gabriel Cobb, be confined to the
15 South Carolina Department of Corrections for the period of
16 your natural life pursuant to 17-25-45.

17 Mr. Cobb, you have a right to appeal the decisions of
18 the jury and the Sentence of the Court. You must file any
19 notice of your intent to appeal those decisions within ten
20 days of today's date. Mr. Whelcher will advise you on
21 that.

22 END OF REQUESTED TRANSCRIPT OF RECORD

23

24

25

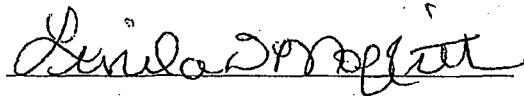
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th and 10th days of March 2011.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

August 10, 2011



Linda D. Moffitt
Circuit Court Reporter

215

WITNESSES

Spartanburg County Sheriff's Office

2. REPORT ENDED

3. CARD FILED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURES

7. ASSIGNMENT AND

FILE CARD MADE

8. TRAFFIC VIOLATIONS CORN

ARREST WARRANT NUMBER

4262523

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: 8-23-07

VERDICT

Guilty

MARC KITCHENS

2007 AUG 29 PM 8:07

SPARTANBURG COUNTY

Foreperson of Grand Jury

Date: 3-10-2011

DOCKET NO.

07-GS-42-3875

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 27 2007

TERM

THE STATE

vs.

Joseph Gabriel Cobb

Indictment for

CRIMINAL SEXUAL CONDUCT
W/MINOR, SECOND DEGREE

SC Code: 16-03-655 (3)

CDR Code: 0397

Class FEL/C

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

AUG 23 2007

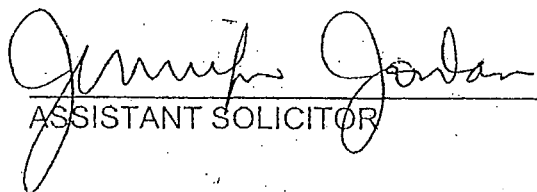
At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR, SECOND DEGREE

That Joseph Gabriel Cobb, did in Spartanburg County, on or about July 10, 2007, commit the crime of Criminal Sexual Conduct with a Minor in the Second Degree, in that the Defendant did commit a sexual battery upon the minor, Complaining Witness who was less than sixteen (16) years of age, but who was at least fourteen (14) years of age at the time of the incident and Joseph Gabriel Cobb was older than the victim, in violation of §16-03-655 (3), *CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

217

COUNTY OF SPARTANBURG
 STATE VS.
 Joseph Gabriel Cobb

MA:
 Race: [REDACTED] Sex: [REDACTED] Age: [REDACTED]
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: [REDACTED]
 DL#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 16 yrs. of age - Second degree

in violation of § 16-03-0655(3) of the S.C. Code of Laws, bearing CDR Code # 0397

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Jordan, Jennifer A 69423 SC Bar# 69423 Defendant Attorney for Defendant 6957 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk KG McInney

Court Reporter: Linda Moffitt

SCCA/217 (06/2010)

INDICTMENT/CASE#: 2007G84203875

A/W#: K262523

Date of Offense: 7/11/2007

S.C. Code § 16-03-0655(3)

CDR Code #: 0397

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Attorney for Defendant 6957 SC Bar#

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel, § 47-12 requires \$500 be paid to Clerk during probation

Presiding Judge William C. ...

Judge Code: 2053

Sentence Date: March 10, 2011

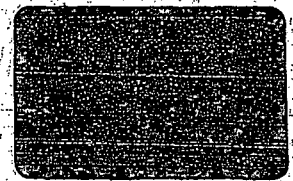
STATEMENT OF: <u>Joseph Gabriel Cobb</u>	AGE: <u>2</u>	DATE: <u>07/10/07</u>
ADDRESS: <u>3195 Carolina Country Club Rd. Roebuck, SC</u>		
PHONE #: <u>529-6618</u>	DOB: <u>10/04/1964</u>	SSN: <u>249-45-6867</u>

This statement is typed by Detective N. Cantrell at Joseph Cobb's direction and request.

I understand that Samantha has said I had sex with her. I did not consent to sex with her. Samantha is my 3rd cousin's daughter and she is too young to mess with. We picked Complainin up to spend the night. We picked her up from her grandmother's house. We went swimming at Clifton Glendale River. My wife and Samantha took me home and I took a bath. They left and picked the kids up from day care. They came back with the kids.

When I got home, I ate. We watched some movies on TV. We watched movies in our bedroom. I was in my bed with my wife and Samantha was in the bed with our son in a twin bed beside us. My girls went to bed around 8:00pm. We talked about getting up early in the morning. My son slept in the bed with Samantha. My wife and I were in our bed. We went to bed somewhere around 11:00pm to midnight or sooner. I tried to get my wife aroused. She was tired. I precame in my boxers. I went to the bathroom to change them. I was wearing a pair that snap in the front and were plain. They were either white or blue. I wiped myself off with a piece of toilet paper and put on some other boxers.

I went to bed and was going to sleep. Complaini got up and went to the bathroom after me. A few minutes later she came back in and went to bed. During the night I felt suffocated and weighed down. I am a deep sleeper and my wife is a deep sleeper too. The next morning I got up before everyone else. I got the kids up for daycare and woke my wife up. Then I woke Complaini up. We took the kids to day care and took my wife to a class at 10:30am. Samantha asked me where I was going from there. I told her that I was going to drop some movies off and look at the internet at the library. Complaini told me that I could not take her home because her dad would be upset that she showed up with only me and not my wife. She said that the best thing would be for her to go with me to the library and when we pick up my wife, we take her home then. Me and Complaini went to the library on the east side and got on the internet. We stayed there for about 30 minutes. She asked that when I pick Jeanie up, we take her home. We went back and got my wife. We took Complaini home to her father's house.



I have read this statement consisting of 1 page(s) and I swear that the statement that I have just given is the truth, the whole truth, and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily and I have received a copy of my statement.

This statement was completed at 10:59 PM on the 10th day of July, 2007.

WITNESS: [Signature] Signature of person giving statement

SWORN to before me this 10th

of July, 2007

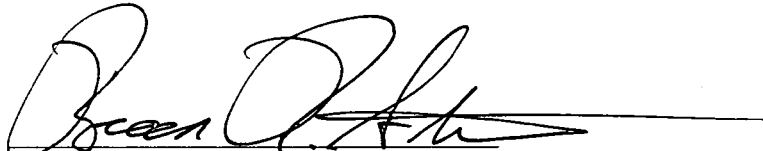
[Signature] (Seal)
Notary Public of South Carolina

My Commission expires: 12/06/2013

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 28th, 2012

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", with a long horizontal line 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