

 ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM ROSS,

APPELLANT

Appellate Case No. 2011-190816

RECORD ON APPEAL

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2009-GS-10-04097

3 STATE OF SOUTH CAROLINA)

4 Plaintiff)

5 V.)

6 WILLIAM CAMERON ROSS,)

7 Defendant.)

TRANSCRIPT OF RECORD

8
9 APRIL 7 - 12, 2011
10 CHARLESTON, SOUTH CAROLINA
11

12 B E F O R E :

13 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
14
15
16

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

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19 Ms. Jennifer Shealy, Assistant Solicitor
Representing The State

20 Ms. Leigh Hunter, Esquire
21 Representing The Defendant

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23 Anne Bouley Meyer, RPR
Circuit Court Reporter
24
25

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1 THE COURT: Is the State going forward on both
2 indictments?

3 MR. FINCH: No, Your Honor just the indictment
4 for CSC third.

5 THE COURT: 2009-GS-10-4097?

6 MR. FINCH: Yes, ma'am.

7 THE COURT: Does the defendant wish to have a
8 formal arraignment?

9 MS. HUNTER: No, Your Honor.

10 THE COURT: Now it is my understanding that
11 the State was reducing their witness list. It is my
12 understanding we got an updated list and it has the
13 same amount of people on it.

14 I need to know realistically how many of these
15 witnesses you plan on calling.

16 MR. FINCH: We plan on calling six at the
17 most. We may, sort of once we get into it, we may
18 eliminate one more officer. At the present we plan
19 on calling six witnesses at most, maybe as few as
20 five depending on how it progresses with the
21 testimony. We may not need one of the officers.

22 THE COURT: One of the officers only reduces
23 it to eight not to six.

24 MR. FINCH: I'm taking off of your list number
25 six and eight. LeeAnne McGowan and Mary Phillips.

1 we do not intend on calling Jessie Spradling in our
2 case in chief.

3 THE COURT: Number four.

4 MR. FINCH: That's a rebuttal witness
5 potentially.

6 THE COURT: Now.

7 MR. FINCH: However, we'd like those names
8 called out.

9 THE COURT: It is my understanding that you
10 anticipate it will take four hours to try your case
11 in chief?

12 MR. FINCH: I think four hours or five hours.
13 Yeah, four or five hours.

14 THE COURT: Well I need you to be specific.

15 MR. FINCH: Yes, four hours. It could go
16 longer, but that would be if there is longer cross
17 than I anticipated.

18 THE COURT: I assume you have two doctors
19 listed, Ms. Hunter. Are you calling both doctors?

20 MS. HUNTER: No, Your Honor. I can eliminate
21 Dr. Rikki Lynn Halavonich. And I will be calling Dr.
22 Alexander Morton.

23 THE COURT: Tell me what the substance of his
24 testimony is going to be. What type doctor is he?

25 MS. HUNTER: He is a psychopharmacologist.

1 And I anticipate there will be a lot of testimony
2 about passed out, blacked out, semiconscious,
3 unconscious due to consumption of alcohol and drugs,
4 or in this case alcohol.

5 And he is going to explain the differences in
6 the studies that he has made. He has been traveling
7 all over states as an expert witness on this type of
8 thing.

9 THE COURT: But he is not going to be talking
10 about your client or the victim, correct?

11 MS. HUNTER: He has read the incident report.

12 THE COURT: You understand that the rules of
13 evidence prohibit him from saying what he thought
14 happened on that evening, or speculating about it or
15 having any hypothetical about it.

16 MS. HUNTER: It is my understanding that if he
17 is considered an expert witness, he can take what the
18 facts are that --

19 THE COURT: He can't say what he thinks
20 happened that evening.

21 MS. HUNTER: Okay. He can make hypotheticals.

22 THE COURT: No, not about what happened that
23 evening. He can talk in general about people, what
24 people's capacities are, what different effects
25 different substances have on people in general.

1 MR. HUNTER: Okay.

2 THE COURT: But he cannot say, on this
3 evening, based on what I read, I think this happened
4 or this didn't happen.

5 MS. HUNTER: Okay.

6 THE COURT: And actually ethically, under his
7 ethical standards, he is prohibited from doing that.
8 Because there is no -- under their ethics, as well as
9 the scientific treatises and otherwise and other
10 scientific standards, to a reasonable degree of
11 certainty there is no way to predict that.

12 MS. HUNTER: Okay. And i will advice him of
13 that.

14 THE COURT: Okay. Is there anything else we
15 need to take up? I saw a motion in limine.

16 I'm having the jurors brought up now. We are
17 waiting for all of them to arrive, to have enough to
18 arrive to select. We now have that number, and
19 they're in the process of checking them in and
20 bringing them upstairs now.

21 There is a motion in limine regarding
22 compliance with the rape shield statute. I assume
23 that that is a non-issue?

24 MS. HUNTER: Yes, Your Honor.

25 THE COURT: Is there going to be any request

1 After that experience, I did a little studying
2 more about the statute, and the statute is mandatory.
3 As uncomfortable as it is, we have to comply.

4 There is no provision -- and the bonding
5 company has no obligation to find you if you abscond
6 and their bond gets treated and it's just not a good
7 situation.

8 MS. SHEALY: Your Honor, I have one other
9 matter regarding opening statements.

10 THE COURT: Yes, ma'am.

11 MS. SHEALY: And that would be we would
12 object --

13 THE COURT: If anybody has their phone on,
14 even if it's on vibrate, you need to be turn it off.
15 It's disruptive to hear that vibrating. The Court
16 can hear it go off during the proceedings, and it is
17 distracting.

18 Yes.

19 MS. SHEALY: We would object to Ms. Hunter
20 commenting on what she believes Dr. Morton may
21 testify to. Because I think some of what he may have
22 intended on testifying to --

23 THE COURT: I think she can testify that she
24 has a doctor coming who will testify on what she
25 believes the evidence will show. Actually, that

1 isn't what the evidence will show. The evidence is
2 what the facts and circumstances of the case are as
3 alleged.

4 She can say that her doctor is going to
5 testify as to the general effects of substances on
6 people. But he will not be allowed to testify as to
7 what he believed the general effects of a particular
8 substance was on her client or the victim on this
9 particular evening.

10 Because there are many issues that deal with
11 that. One, he wasn't there to see them when it
12 happened. But the greater issue is the reliability
13 of the science. And I've had this come up recently
14 in another case and had to do a great amount of
15 research on it.

16 Ethically for all of those disciplines in
17 their ethics it says, you are not to testify about
18 that, especially if you are members of certain
19 organizations because there is no reliable science
20 for which you could base that opinion on, especially
21 when you have not seen the person and you were not
22 there.

23 And they're not supposed to give opinions on
24 those type issues because it is -- most of those
25 associations believes that the jury will unduly rely

1 A JUROR: Yes.

2 THE COURT: Thank you, sir, you may take your
3 eat.

4 Are there any additional questions from the
5 state?

6 MR. FINCH: None from the State, Your Honor.

7 THE COURT: From the defense?

8 MS. HUNTER: Your Honor, yes, I have --

9 THE COURT: Just give me the number.

10 MS. HUNTER: Number four on defendant's
11 proposed voir dire.

12 THE COURT: It is cumulative to number two.

13 MS. HUNTER: Thank you..

14 THE COURT: Strikes are ten and five.

15 Ladies and gentlemen -- who's going to
16 demonstrate for me, Mr. Brown.

17 If your name is called, please bring all of
18 your personal belongings and come forward as Mr.
19 Brown is. Stand where he is standing, turning around
20 facing back towards the panel. Again bring all of
21 your personal belongings. If you are seated as a
22 juror, we will seat you in the jury box. And if you
23 are excused, we will seat you back in the gallery.

24 We appreciate your patience during this
25 process. If you would give the clerk your attention

1 seated.

2 THE COURT: Any motions regarding the
3 selection of the jury from the State?

4 MR. FINCH: None from the State, Your Honor.

5 THE COURT: From the defense?

6 MS. HUNTER: None from the defense, Your
7 Honor.

8 THE COURT: Ladies and gentlemen, we thank you
9 for your time and your attention this morning. I
10 have good news, you are excused for the remainder of
11 the week with the Court's profound thanks. Have a
12 great day.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: Ladies and gentlemen, please stand
15 for me and raise your right hand for the clerk to
16 swear you.

17 (Whereupon, the Clerk swears in the jury
18 panel.)

19 THE COURT: Ladies and gentlemen, I'm going to
20 give you a brief restroom break. During the break,
21 please do not discuss the case, please don't
22 speculate about what you think it may or could be
23 about.

24 When you return we are going to have opening
25 instructions from the Court, and then we will have

1 verdict in this case.

2 As I have explained, it is your added duty,
3 Madam Forelady, to write out the verdict form, and to
4 write out any questions the jury may have during
5 deliberations, but I will give you further
6 instructions regarding that at the conclusion of the
7 case.

8 In order to preserve everyone's rights I'm
9 going give the attorneys the opportunity to take
10 exception to anything the Court has said by way of
11 opening instruction.

12 Any exceptions from the state?

13 MR. FINCH: None, Your Honor.

14 THE COURT: From the defense?

15 MS. HUNTER: No, Your Honor.

16 THE COURT: State may proceed.

17 Ladies and gentlemen, please give the
18 attorneys your undivided attention.

19 MS. SHEALY: May it please the Court.

20 THE COURT: Yes, ma'am.

21 MS. SHEALY: Good morning. Kaitlyn Moriarty
22 and Tuesday Philbrook are best friends. The kind of
23 friends that you have when you are eight years old,
24 women understand that. The ones that you brush each
25 other's hair, you talk about boys as you get a little

1 older.

2 They swam together, and one of the girl's
3 mother was the coach. When they were in high school
4 they played field hockey together. Many people have
5 those kind of close friendships at different stages
6 of their lives, but these two girls have remained
7 close since they were eight years old.

8 They didn't grow up here. They grew up in
9 Maine, in a small rural town called Old Town. Very
10 unlike Charleston; the houses were spread out, the
11 downtown had maybe one bar in the downtown area, few
12 restaurants. On the other side of town was another
13 bar, a couple other restaurants, but not like
14 Charleston.

15 And when the girls graduated high school they
16 both went to the University of Maine, but they went
17 to different campuses. But they still talked and
18 would see each other on the weekends, and remained
19 very close.

20 Well Kaitlyn had the opportunity to
21 participate in an exchange program where she came
22 down to the College of Charleston for a year and
23 loved it. Young girl in Charleston after living in
24 the rural area up there.

25 She took classes at the College of Charleston,

1 and she worked on Meeting Street at the seafood
2 restaurant Hyman's. And the summer was coming, and
3 those girls wanted to be back together.

4 kaitlyn had explained to Tuesday all along,
5 you aren't going to believe this place. It's got the
6 ocean, there are all kinds of young people here on
7 the campus and in the downtown area. It's a great
8 time, you need to come join me.

9 So that summer Tuesday packed up the car,
10 didn't bring any furniture, literally just packed in
11 a couple suitcases and came to stay with Kaitlyn for
12 the summer. And they were having a good time.

13 They worked at Hyman, but they didn't work the
14 same shift because Kaitlyn had been working there so
15 she got the prime shift, the evening one, where you
16 get the better tips. And Tuesday worked the lunch
17 shift. So they didn't get to go out at night like
18 college students enjoy doing sometimes together that
19 much.

20 And that's what brings us to August 2nd, 2008.
21 This was going to be a night that the two girls could
22 go out together, and they were looking forward to it.
23 They enjoyed their time at the beach and visiting
24 various places in Charleston. This night the two
25 girls were going to go out dancing because they

1 really enjoy dancing.

2 So they spent the morning doing what some
3 girls like to do together, they dyed each other's
4 hair. It wasn't very successful, they didn't like
5 the color it turned out, each were kind of mad.

6 They went to go buy themselves liquor, they
7 both were 21 years old. They bought cherry vodka, I
8 did not know there was cherry vodka, but they bought
9 cherry vodka. And they got dressed, they took a
10 shower, they decided what they were going to wear,
11 they did their hair.

12 And during the course of getting ready they
13 were drinking some shots of cherry vodka. I was
14 asking, why were you all doing all that ahead of
15 time? And what the testimony will be is they didn't
16 have a whole bunch of money.

17 They were working at Hyman, and they didn't
18 want to go out somewhere and have to buy a bunch of
19 expensive drinks. But they wanted that feeling of
20 drinking, and so over the course of the getting
21 ready, they had several shots before they went out.

22 They lived in the downtown area. They took a
23 cab, neither of them took the car. And they were let
24 out over on Market Street.

25 Well when they got out at Market Street, they

1 saw a bunch of people heading toward the Purple Tree
2 Lounge. I had to ask, what is the Purple Tree
3 Lounge. Well it's apparently a bar, and it has a
4 larger dance floor than a lot of places in downtown
5 Charleston. It's a good place to go if you want to
6 go dancing.

7 While they were waiting to go in the bar,
8 Kaitlyn, the one who had been here all during the
9 school year, ran into a guy that used to work with
10 her at Hyman named Jesse Spradling. And Jesse's a
11 cute guy, they spoke. And along with him was William
12 Cameron Ross. Both of the girls were introduced to
13 Cameron Ross, and they spoke briefly before they went
14 into the club.

15 They went into the club. They were dancing
16 and having a good time. People dance a little
17 differently then they did when I was that age,
18 everybody kind of gets out on the floor together, the
19 girls were dancing together. And at some point
20 they're buying drinks, or being bought drinks,
21 depending on who they were talking to.

22 Tuesday met an older couple when she went to
23 get a drink. And she was talking to them and getting
24 to know them and kind of dancing near the bar area.
25 And at some point later in the evening Jesse and

1 Kaitlyn started dancing together.

2 Well the lights came on at the Purple Tree
3 Lounge, which indicates time to clear out, closing
4 down. And so Kaitlyn went and rejoined with Tuesday
5 to leave the bar.

6 As they were doing that, Kaitlyn could see
7 immediately Tuesday was very intoxicated. She had
8 worn a dress with some heels, and she couldn't walk
9 in the heels so she took them off. They go out of
10 the bar and are trying to figure out how they're
11 going to get home because their original plan was, we
12 will just walk home.

13 But Tuesday couldn't walk. Kaitlyn was trying
14 to help her. They didn't get far outside the Purple
15 Tree Lounge when Tuesday just was like, I've got to
16 sit down. And she sits down and her head goes down.

17 Kaitlyn sits beside her and starts looking at
18 her phone thinking, I've got to call a cab or I've
19 got to call somebody to come pick us up. And Jesse
20 walks back up, Jesse and Cameron Ross.

21 And Jesse says, we can give you a ride home.
22 He was parked in the parking garage. So Kaitlyn props
23 up Tuesday and walks her to the car. They get in the
24 car, and Tuesday is not making conversation. She is
25 very intoxicated.

1 They drive to where Kaitlyn and Tuesday were
2 living. And when Tuesday is roused and gets out of
3 the car, kind of obnoxiously as you can imagine
4 somebody who has been having a lot of drinks, she
5 opens the door and it knocks into her own car that
6 was parked there.

7 So she gets out, Kaitlyn is helping her get
8 out, and she walks over to where her side mirror is
9 on her own car and kind of braces herself on it and
10 breaks the mirror. So it takes Kaitlyn and Jesse to
11 get Tuesday in the house and up the stairs to be put
12 in bed.

13 There is no partying by Tuesday when they get
14 home. There is no conversation with Tuesday when
15 they get home. And Kaitlyn is kind of two minds that
16 evening; she's having fun, she think Jesse is cute,
17 but she also has got her dear friend who is in bad
18 shape.

19 So she takes her upstairs. And knowing that
20 there is sort of a third wheel now, Cameron Ross, she
21 announces, upstairs is off limits.

22 Kaitlyn then feels like, well, I will offer
23 them a beer for taking us home. So she asked the two
24 guys, would you all like a beer. They go into the
25 kitchen, they each get a beer. And Cameron Ross

1 leaves the kitchen.

2 When that happens, Kaitlyn and Jesse start
3 kissing. And when they walk out of the kitchen after
4 having been kissing, at some point they realize, we
5 don't know where Cameron is. So they stop. And
6 Kaitlyn goes, where is Cameron? Kind of a red flag
7 goes off in her head.

8 They look out back and they don't see him.
9 They look out front and they don't see him. They
10 walk upstairs to where Tuesday is and they don't see
11 him.

12 Now when Kaitlyn put Tuesday down earlier, she
13 puts her on the bed and Tuesday is tummy-down on the
14 bed with her head sideways on the pillow. When
15 Kaitlyn goes back upstairs, Tuesday is tummy-down on
16 the bed, head turned sideways, doesn't appear to have
17 moved.

18 So they go back downstairs and they're
19 thinking, well maybe Cameron just felt like a third
20 wheel and left. So Kaitlyn and Jesse kind of start
21 kissing and stuff again, and Kaitlyn hears something
22 from upstairs.

23 This is sort of indelicate, but it sounds like
24 maybe somebody is heavy breathing, sex type thing.
25 Kaitlyn takes off upstairs. She walks into the

1 bedroom that she and Tuesday shared and is floored.
2 On the bed on top of Tuesday, whose belly is down and
3 whose face is to the side immobile with her dress
4 pulled up is the naked presence of Cameron Ross
5 having sex with Tuesday.

6 Tuesday is just laying there passed out.
7 Kaitlyn freaks. She immediately responds. She
8 yells, she grabs Cameron Ross and pushes him out that
9 door and down the staircase naked and tells him to
10 get out of here. At some point he grabs his clothes,
11 Jesse is following behind him and they are told to
12 get out.

13 Tuesday doesn't wake up. Tuesday doesn't say,
14 just give us our privacy. Tuesday is passed out with
15 a naked man on top of her having sex with her while
16 she lays on her belly in bed.

17 When the two guys leave, Kaitlyn is scared to
18 death. She locks the front door, she locks the back
19 door, and she calls a friend of hers and says, please
20 come over.

21 She nestles herself in an area where she can
22 keep an eye on the back door and she can keep an eye
23 on the front door, and she take a knife and puts it
24 besides her. Before her friend gets there, somebody
25 is knocking on the door again. She won't answer it.

1 She told her friend, call me before you come.

2 So she and her friend spend the rest of the
3 evening waiting to see if Tuesday wakes up. Kaitlyn
4 doesn't want to wake Tuesday up in this state that
5 she's in and tell her what happened.

6 The next morning Tuesday does wake up. She
7 puts on her bathing suit, and a little cover-up and
8 comes downstairs and says, Kaitlyn, let's go to the
9 beach. And Kaitlyn says, sit down, Tuesday, we are
10 not going to the beach, and tells her what happened.

11 These are two 21-year-olds who are away from
12 family and in Charleston right at the end of their
13 summer. And so what Kaitlyn thinks to do is she had
14 dated a guy a couple of times who worked for the city
15 police. She called him and said, what should we do.

16 MS. HUNTER: Your Honor, I have a matter of
17 law.

18 THE COURT: Approach.

19 (Whereupon, the following discussion was held
20 at the bench.)

21 MS. HUNTER: This is person that they're
22 talking about that she calls him over, I was not
23 given his name or any information about that
24 whatsoever during discovery or rule five. All I know
25 is that he was just added to the witness list this

1 morning.

2 MS. SHEALY: We found out about him yesterday,
3 or maybe the day before.

4 THE COURT: What's he going to say?

5 MS. SHEALY: All he is going to say is what he
6 told them to do. He is just the one who reports it
7 to the police and we told her that.

8 MS. HUNTER: He is an officer, isn't he?

9 MS. SHEALY: Yeah.

10 MS. HUNTER: So I think it's very important if
11 she called the police.

12 THE COURT: They're only required to tell you
13 what's exculpatory. And they have a continuing duty
14 to advise you when they become aware of information.
15 If she had some good-faith basis other than when they
16 provided it to you.

17 MS. HUNTER: It's a three-year-old case. I
18 think they would have that in their possession.

19 THE COURT: Unless you can give me something
20 objective that says they had it, then I cannot -- at
21 this point I have to take her word that they gave it
22 to you as soon as they became aware of it.

23 MS. SHEALY: And there is no report or
24 anything.

25 THE COURT: He gave them instructions, he

1 basically is in the nature of an outcry witness, so
2 to speak. They're under a continuing duty to provide
3 you with information that is exculpatory.

4 MS. HUNTER: Absolutely.

5 THE COURT: This wouldn't be in the nature of
6 exculpatory evidence. It is material, however, and
7 I'm a little concerned as to why you just got it.

8 MS. SHEALY: Because when the girls came in
9 from Maine -- we have talked to them on the
10 telephone and everything. She said -- we were
11 saying, did you call 911 because there was nothing
12 about 911.

13 THE COURT: You did not ask her about that
14 before?

15 MS. SHEALY: No, we didn't. But anyway, she
16 called this guy and he called his supervisor. He
17 tells them what the process is, that's it.

18 THE COURT: The remedy is to give you access
19 to the witness prior to cross-examining him.

20 MS. HUNTER: Judge, may I add one more thing?
21 The one thing that's very important to our defense is
22 that because we didn't know about this witness was --
23 our argument would be that they didn't call 911 and
24 they didn't call the police until the very next day
25 after 1 o'clock.

1 MS. SHEALY: That is when it happened. That's
2 when it happened. It's not before that. It's like
3 when she wakes up the next day.

4 MS. HUNTER: I thought she said he knocked on
5 the door.

6 MS. SHEALY: That's not the police.

7 MS. HUNTER: Okay. You make that clear

8 THE COURT: She did make it clear.

9 (In open court.)

10 THE COURT: Proceed.

11 MS. SHEALY: I was telling you that Kaitlyn
12 then called her friend, who is a city police officer,
13 to ask, what is the process? What are we supposed to
14 do? She had had a discussion with Tuesday, and they
15 made the decision they wanted to call the police.

16 Tuesday is there thinking, oh my God, I don't
17 even know what happened. So that puzzled Kaitlyn as
18 to what is the process when something like that
19 happens.

20 So they call Craig Hamilton, a police officer.
21 He tells them about the process, because they were
22 getting ready to move back to Maine. And he then
23 reports it to his supervisor, who sends a police
24 officer over.

25 So the police officer comes that afternoon,

1 and a second police officer comes, and they have to
2 take Tuesday to the MUSC women's clinic so that she
3 can get the rape protocol kit done so that they can
4 look to see if there is any physical evidence on her.

5 Crime scene came, they took a few items. And
6 Jesse gets interviewed. And Jesse is who gives them
7 the full name of Cameron Ross.

8 The two girls are then later shown, by
9 Detective Altine, a lineup. They're shown them
10 separately, they're not together when they do that.
11 They both identify Cameron Ross as Jesse's friend.
12 And Kaitlyn identifies him as the person that she saw
13 naked having sex on top of Tuesday. And here we are
14 today.

15 These girl returned to Maine. They returned
16 to Maine faster than they had originally planned on
17 it because of this. Tuesday had to go home to her
18 family.

19 Now this is not a criminal sexual conduct in
20 the first degree case, where someone is kidnapped or
21 there is a burglary and there is force or a gun or a
22 knife. It's not a CSC first. And it's not a CSC
23 second where there is aggravated coercion. But it is
24 a CSC in the third degree.

25 Tuesday was mentally incapacitated because of

1 the alcohol that she had to drink. She was passed
2 out. She was physically helpless, intoxicated,
3 passed out. A 21-year-old girl is not fair game.

4 Thank you.

5 THE COURT: You may proceed.

6 MS. HUNTER: Thank you, Your Honor.

7 THE COURT: You're welcome.

8 MS. HUNTER: Good morning, I think, it's
9 almost noon. My name is Leigh Hunter, I think I
10 introduced you to myself earlier, or to you earlier.
11 I am an attorney here in Charleston, and it's my
12 privilege to represent Cameron Ross in this trial.

13 He is charged with rape. It's a very serious
14 offense. If you take common knowledge, common
15 knowledge will tell you that it is a very, very
16 serious offense.

17 He is not guilty of raping Tuesday. And that
18 is why we are here. And I want to apologize to you
19 for having to come in so late on Thursday, possibly
20 go over to Friday. But it is so important that we
21 have you here to keep an open mind throughout the
22 trial, and to use your common sense.

23 This is a very simple situation. It's
24 actually going to be Tuesday, Kaitlyn and Cameron, my
25 client, and his friend Jesse, and that's it, about

1 what happened that night.

2 You are going to hear comments or terms like
3 semi-conscience state, or asleep, or passed out, or
4 blacked out, and that type of thing. You will hear
5 from my client, Cameron Ross. He does not have to
6 testify, however you will hear from him.

7 And you will hear from a psychopharmacologist
8 that's going to explain to you the effects of alcohol
9 on a person. And I want you to listen to what he has
10 to say.

11 Your job is to, as the Judge -- and I'm
12 repeating a little bit of what the Judge said -- but
13 is to listen to all the witnesses, look at the
14 evidence, and find out what is the truth. What are
15 the facts that really, really happened. And you need
16 to apply it to the law that the Judge gives you.

17 And I'm going to submit to you that after you
18 do that, there is going to be reasonable doubt. And
19 I'm going to submit to you, and I want you to listen
20 to Judge, how the Judge defines reasonable doubt, but
21 if there is a reason that hesitates you to make a
22 decision, there is doubt. And this is a very serious
23 offense.

24 I want to also go into what happened that
25 night, and what I believe the evidence will be.

1 Jesse and Kaitlyn are friends. They went out on the
2 town, downtown, almost three years ago and to drink,
3 they were 21 years old.

4 Jesse and Kaitlyn, whether or not they were
5 friends forever, whether or not they braided each
6 other's hair, they went out that night as well to the
7 same bars, or some of the same bars that Jesse and
8 Cameron were at. They ran into each other several
9 times, or at least two times.

10 After the bars had closed outside the Purple
11 Tree Lounge on Market Street, Cameron and Tuesday
12 were outside smoking a cigarette. Now this is going
13 to be after you hear testimony that Tuesday had taken
14 four shots of alcohol prior to leaving her house
15 without eating anything that day, and drinking three
16 double shots that night while she was out as well.

17 But she is able to go outside and smoke
18 cigarettes with Cameron. She is also able to recall
19 Kaitlyn asking Jesse if they could get a ride home
20 and not take a cab, knowing that Jesse and Cameron
21 had been drinking all night because they had seen
22 them.

23 So my client and Jesse are going to testify
24 that nobody had to walk Tuesday to the car, that's
25 what I'm saying. You are going to hear testimony

1 from witnesses that are going to be different. And
2 you have got to decide exactly what the truth is.

3 But Jesse and Cameron are going to say, no,
4 nobody had to walk her to the car. And when
5 Jennifer, Mr. Shealy, had testified that they had
6 gotten back to the house and Tuesday had gotten out
7 of the car, she actually ripped a rear-view mirror
8 off of her own car.

9 However, she is going to say, I don't
10 recollect anything after smoking a cigarette, which
11 she is perfectly capable to do, and she doesn't
12 remember getting home and she doesn't remember
13 getting into the bed.

14 At the apartment, they invited these boys in.
15 This is after the bar is closed 2 o'clock, 2:30,
16 3:00. You have to understand, this is three years
17 later, and these are kids, really, that we are
18 talking about. They invite these boys in.

19 And you've got Kaitlyn and Jesse kissing,
20 admittedly kissing and messing around. You've got
21 Cameron -- Tuesday is up in her room, she says she is
22 passed out, we are going to hear evidence about that.

23 But Cameron is going to testify that he heard
24 noises upstairs. And they had hardwood floors
25 upstairs. And he was afraid, well, maybe something

1 happened and she stumbled, or what -- she dropped
2 something and I will go up there and check on her
3 because he is bored because his friend and Kaitlyn
4 are messing around.

5 So he goes upstairs. He's going to testify
6 that he opens the door, cracks the door, says are you
7 okay? And that Tuesday said, yeah, come on in here,
8 and pats the bed. So he went into that room. They
9 start kissing and messing around, and one thing led
10 to another, and clothes got thrown off, and he was
11 having sex with her.

12 I don't know if there was any penetration or
13 not, you'll have to hear that from him, but it was
14 consensual. She was conscious. She knew what she
15 was doing. Because they started out not flat
16 position, you are going to hear from Cameron, but
17 really just flipping all over the place. And you can
18 see from the pictures I think that they're going to
19 submit, that that is what happened.

20 So after that I do agree with what Ms. Shealy
21 said that Kaitlyn heard some noises and ran upstairs
22 and got upset that Cameron was up there and naked and
23 it appeared that they were having sex. My witnesses
24 are going to say that she did not shove him down the
25 stairs, or grab him by the neck and shove him down

1 the stairs at all. They left.

2 After that I think the testimony is going to
3 tell you that they didn't wake up until the very next
4 day until 1 o'clock in the afternoon. Tuesday had
5 absolutely no recollection of what happened. She
6 doesn't know. Kaitlyn tells her step-by-step what
7 happened. So Tuesday does not know. Kaitlyn is the
8 only one that knows.

9 So really when it boils down to it, you've got
10 Kaitlyn and Cameron who remember what happened in
11 that room, and nobody else. And that creates
12 reasonable doubt.

13 They were both drinking vodka shots before
14 they went out. And they both were drinking, well I
15 don't know how much Kaitlyn drank but I guess we will
16 find out, but, you know, Tuesday had had all those
17 shots.

18 But I was looking up some other things Ms.
19 Shealy had said. But I want you to just keep an open
20 mind and realize that this is a rape case. And there
21 is not going to be any -- and he is not guilty. And
22 there is reasonable doubt that he is not guilty.

23 He did not go up there to rape anybody. As a
24 matter of fact, you are going to hear from him that
25 he has a daughter, a young daughter, who he sees

1 every weekend. He and his -- the mother had broken
2 up due to this. And he has got a good job. He has
3 had a great job since this happened, and before it
4 happened as well, way before it happened. Just weigh
5 what you hear. Take the testimony and figure out
6 who's telling the truth.

7 I'm not going to be dragging on and on, but I
8 want to tell you this. Let's say that four people
9 are at an intersection and there's a wreck. You have
10 got one person who says it was a green light, one
11 person says it was a red light, one person says, you
12 know, it was a yellow light. But they all saw the
13 same wreck.

14 So you can take pieces, you don't have to take
15 all of what one witness says, you can take pieces of
16 what they recall, and other pieces, and find out that
17 they're not necessarily true. Especially because
18 it's three years old.

19 Anyway, thank you for your attention. Sorry
20 you have to be here today and possibly tomorrow. I
21 really appreciate it. Thank you.

22 THE COURT: Call your first witness.

23 MR. FINCH: State calls Kaitlyn Moriarty.

24 MS. KAITLYN MORIARTY,
25 after having first been duly sworn to state the

1 truth, the whole truth and nothing but the truth,
2 testified on her oath as follows:

3 MS. HUNTER: Your Honor, may we approach one
4 quick second?

5 THE COURT: Uh-hum.

6 (Whereupon, the following discussion was held
7 at the bench.)

8 MS. HUNTER: Your Honor, I can't see the
9 witness from the table. Is it okay if I stand back
10 behind the jury.

11 THE COURT: No. I don't -- you can stand over
12 here if you like or you can stand at the podium.

13 MS. HUNTER: Okay, thank you.

14 (In open court.)

15 THE COURT: You may proceed.

16 MR. FINCH: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION

19 BY MR. FINCH:

20 Q Ms. Moriarty, if you would please tell the
21 Court how old you are?

22 A I'm 23.

23 Q And where did you grow up?

24 A I grew up in a small town, Old Town, Maine.

25 Q And tell us about Old Town, Maine just so that

1 we get to know you?

2 A Old Town is, my whole family lives there, all
3 in the same town. My best friend, Tuesday, lives
4 right around the block from me. And it's one of
5 those towns where you grow up knowing everybody.
6 Your neighbors work at the high school. Tuesday's
7 mother was my English teacher. We are all very
8 close.

9 Q And did you go to school or do you have a job?

10 A Currently I have a job.

11 Q What is that?

12 A I wait tables at the steakhouse.

13 Q Where did you go to school?

14 A I went to school at the University of Maine,
15 Farmington my first year for Special Ed. I then
16 transferred to the University of Maine in Orono with
17 elementary education. And then to the national
18 exchange program at the College of Charleston.

19 Q Did you graduate?

20 A Not yet.

21 Q Tell us again how, do you know Tuesday
22 Philbrook?

23 A Tuesday and I met when we were eight years
24 old. We were at the Y together. We also did
25 swimming together. We swam for our town swim team,

1 which my mother helped coach. And we would meet each
2 other at the sewer cap between our houses at about
3 5:00 in the morning.

4 Q Are you okay?

5 A (Affirmative head shake.)

6 Q Okay. And you came down to Charleston as part
7 of the national exchange program?

8 A Yes.

9 Q Is that for academic year 2007/2008?

10 A Yes.

11 Q What did you study at Charleston while you
12 were here?

13 A Elementary education.

14 Q What did you think of Charleston when you got
15 here?

16 A It was the most beautiful city I had ever
17 seen. Coming from pine trees and the snow to the big
18 city with palm trees and the ocean and a million
19 people our age was paradise for me.

20 Q And did you miss Tuesday?

21 A Yes. Every day.

22 Q Did you guys talk on the phone?

23 A Yes.

24 Q And then what were you doing during the school
25 year? You were studying, but were you also working?

1 A I'm studying and I also worked at Hyman
2 Seafood.

3 Q How did you like that job?

4 A I loved that job. A lot of kids that I had
5 gone to school with also worked there. It was also
6 an opportunity for me to meet people outside of the
7 classroom.

8 Q So you met people at work and socialized with
9 them?

10 A Yes.

11 Q How did Tuesday come to be in Charleston?

12 A I had gone all school year telling Tuesday how
13 much fun I was having, and all these people I was
14 meeting. And Tuesday never lived anywhere outside of
15 Maine before.

16 And she came to join me. I told her I would
17 set her up with a job, she could come live with me
18 for the summer. I just wanted her here and I wanted
19 her to experience it all with me.

20 So she came down to Charleston and started
21 working at Hyman Seafood with me. And she fit right
22 in with all of our friends. She is very charismatic
23 and very easy to get along with, so it's easy for
24 her.

25 Q Did you guys work together or the same shifts?

1 A Separate shifts. She would normally work the
2 morning shifts because she was newer, work was
3 slower. And I had been there all school year so I
4 would work weekends and nights.

5 Q What was your social life like at this time?

6 A I would always go out maybe after work. But
7 when I wasn't at work, Tuesday would be more with
8 Cassidy, who she had become great friends with. So
9 we would all meet her, she would meet us out maybe
10 after work or her and Cassidy would do her thing and
11 I would meet up with them.

12 Q Did you have a lot of opportunities to go out
13 together necessarily?

14 A Yes. Just not necessarily the two of us
15 because I would be out late and maybe she would meet
16 me after work at Hyman where I'm in my polo and go
17 out for a beer or something.

18 But we never had much of an opportunity to
19 take the whole night off together to spend time with
20 just the two of us and make a night of it.

21 Q I want to talk to you about August 2nd, 2008,
22 and August 1st, 2008?

23 A Okay.

24 Q August 1st is the day before August 2nd
25 obviously, daytime period. Do you recall that date?

1 A Yes.

2 Q What were you doing on that day?

3 A That day Tuesday and I had the day off
4 together. So we were going to spend all day
5 together. We both had pretty bad roots so we said we
6 would dye each other's hair. We walked down to the
7 store, got hair dye, walked back to our apartment.

8 And I continued to try to do Tuesday's hair,
9 and she continued to try and dye mine. So we did
10 that all day. Then we both take the caps off and
11 wash our hair and they turned out bright orange.

12 And it was pretty embarrassed what we had done
13 to each other and upset for what we had done to us
14 and kind of took our time to try to make ourselves
15 look as presentable as possible.

16 Q Did you have plans for that day or night?

17 A Yes. We wanted to spend the evening out at
18 Market Street in Charleston.

19 Q Any place in specific?

20 A We were going to go to Purple Tree.

21 Q Why was that?

22 A We -- well we had decided once we got down
23 there to go to Purple Tree. We were going to go down
24 to the market we normally would go to. We grew up
25 with two bars a few miles apart, so we wanted to go

1 try something different. so we decided once we got
2 down there to go to Purple Tree.

3 Q And prior to going out, what were your
4 preparations like, aside from the hair?

5 A We had gone to the liquor store at about just
6 closing, around 6 o'clock. We bought a bottle of
7 cherry vodka. And we, ever since we came back, took
8 our time getting ready and drank while we were
9 getting dressed, or just getting dressed and getting
10 ready for the night, the two of us.

11 Q Okay. About what time did you venture out for
12 the evening?

13 A It would be around 10:30, 10 o'clock.

14 Q And how did you get to Market Street?

15 A We called a cab.

16 Q why did you call a cab?

17 A We had been drinking, took multiple shots of
18 the vodka before we left. We weren't able to drive.

19 Q So then the cab takes you directly to Market
20 Street?

21 A Yes.

22 Q And what happens when you get out of the cab?

23 A We get out of the cab and we go to get into
24 Market Street and realize that I had left my ID and
25 wallet inside of the cab. So we called the cab and

1 are waiting outside for about an hour for the cab to
2 respond back, finish what he was doing and come back
3 to bring me my ID.

4 Q what were you doing during that hour?

5 A We were waiting outside, and this is when we
6 had bumped into Jesse, which I knew from Hyman. And
7 he was waiting in line to go into the Purple Tree
8 Cafe, or Purple Tree Lounge.

9 Q Did you have a conversation with Jesse?

10 A I said hi, briefly. I hadn't seen him in a
11 very long time. So, you know, how are you doing,
12 what are you doing here, are you going in. Just a
13 light conversation.

14 Q How would you describe your relationship with
15 Jesse prior to this day?

16 A We were coworkers. We worked together in the
17 mornings when it was really slow. So we just kind of
18 were friends. We got to know each other through
19 that.

20 Q And while you were waiting for the cab to
21 bring the ID back, what were you doing then?

22 A We were just outside together waiting. We
23 couldn't go in anywhere because I didn't have my ID
24 so we waited outside.

25 Q Eventually then you make it into some of the

1 bars?

2 A Yes.

3 Q What bars did you go to?

4 A We went to the Purple Tree Cafe, Lounge.

5 Q Tell us about your experience once you got
6 inside the Purple Tree?

7 A Tuesday and I walked upstairs, got to the
8 dance floor and danced with each other for a while,
9 kind of letting loose, finally in, having a good
10 time.

11 And we went back to grab a drink, and grabbed
12 a drink at the bar with Tuesday, and she had met an
13 older couple, which she's again very charismatic,
14 very chatty. She was making friends talking to them
15 for a while.

16 And then I continued to go out, grabbed a
17 drink, went on the dance floor and just from there.

18 Q Did you dance with anybody else at the Purple
19 Tree?

20 A Yes, I danced with Jesse.

21 Q How about Tuesday, were you able to observe
22 what she was doing?

23 A Tuesday was still at the bar with the older
24 couple.

25 Q Do you know what she was doing? Were you able

1 to see that?

2 A She was just dancing, talking, chatting with
3 them.

4 Q Did you see her dance with any males?

5 A No.

6 Q Did she -- how much of the time did she spend
7 at the bar with the older couple?

8 A The majority of the night.

9 Q Then take us later into the night, what
10 happens at the Purple Tree?

11 A I was dancing with Jesse, they got last call.
12 And I had gone back to where Tuesday was at the bar.
13 We brought her down the stairs.

14 When she started leaving, noticed that she was
15 having a hard time walking down the stairs grabbing
16 on to both sides of the wall. Once we got outside
17 she had taken her shoes off and was walking, maybe
18 not even a block until she needed to sit down and was
19 not able to walk on her own.

20 Q Where did you sit?

21 A I sat next to her.

22 Q Where was that?

23 A About a block away from Market Street towards
24 our house.

25 Q Did you sit on the curb on a step?

1 A On the curb.

2 Q What happened then?

3 A While we were sitting there waiting for a cab
4 to pull up or trying to figure out what our next move
5 was, a cop had kicked Tuesday's foot and told her
6 that she could not stay there anymore and to move
7 along, time to go home.

8 Q How were you originally planning on getting
9 home?

10 A We were going to walk home because we took our
11 cab to there, we didn't have a lot of money because
12 we were saving up to go back to Maine which is why we
13 drank so much to begin with. We would buy a \$6
14 bottle of vodka and drink at home so that we would be
15 -- we didn't have to buy drinks for ourselves at the
16 club.

17 Also or have people buy them, and Tuesday had
18 people buy her drinks and then we were going to walk
19 home.

20 Q Was that possible?

21 A No.

22 Q So what happened next?

23 A I was -- while I was sitting there just trying
24 to figure out what I should do to get home, call if a
25 cab would stop by, if we should call a friend, going

1 through -- we had met up with Jesse and Jesse said
2 that he had driven there and he was parked just a few
3 blocks away in a parking garage.

4 Q How did that make you feel?

5 A I was relieved because we had a ride home and
6 I could not bring Tuesday home by myself. It was not
7 an option for us to be walking.

8 Q How about riding with Jesse?

9 A Riding with Jesse at that point I felt
10 completely secure, that was fine.

11 Q So did all four -- how did the four of you get
12 then to the vehicle?

13 A We had walked to the vehicle. Tuesday had a
14 little trouble walking, so I held on to her, put her
15 arm over my shoulder while she was walking and
16 mumbling.

17 Q Were you able to understand anything she said?

18 A Nothing. Tuesday made no sense during the
19 walk or in the car ride.

20 Q Did she need assistance to get into the car?

21 A Tuesday needed assistance walking and getting
22 into the car.

23 Q Once you are inside the car, where was each
24 person positioned?

25 A Jesse was driving, Cameron was in the

1 passenger seat, and Tuesday and I were in the
2 backseat.

3 Q And tell us about the ride, please?

4 A During the ride I was giving Jesse directions
5 as to where we lived because they had never been
6 there before. Giving him directions, and while
7 holding Tuesday and Tuesday is nodding out up against
8 the window or nodding out against me and mumbling
9 between.

10 Q How long was the trip from Market Street area
11 to where your home was?

12 A About five minutes.

13 Q And tell us about what happened once you got
14 back to your address?

15 A Once we got back to our apartment we parked
16 out in the back lot by our back door. And Tuesday
17 had opened the back door, and in the process had hit
18 the car door against the car that was parked next to
19 ours which was hers. The car that was parked next to
20 it was Tuesday's car.

21 So she had hit her own car and then pushed the
22 door shut and she had hit the side mirror off her
23 car. So she had just hit it down and started walking
24 into the house as if she were mad at the car that the
25 car was parked that close to where she had hit the

1 mirror down.

2 And I looked at her and thought, this is going
3 to be hard for me to explain in the morning as to why
4 she would hit off her own car.

5 And I helped Tuesday up the stairs, the back
6 stairs to our apartment was --

7 MR. FINCH: Your Honor, may I approach the
8 witness?

9 THE COURT: You may.

10 MR. FINCH: Let me know if you need a break.

11 Q (By Mr. Finch) Are you okay? Just let me
12 know if you need a break, please.

13 A (Affirmative head shake.)

14 Q Tell us about how you got into the apartment
15 off the back steps, please.

16 A I had helped Tuesday up the stairs to the back
17 door with Jesse's help. And had opened the door and
18 brought her -- the door opens and goes directly
19 upstairs, the stairs go to our bedroom. And.

20 (Whereupon, State's Exhibit Nos. 1 through 6
21 are marked for identification.)

22 Q (By Mr. Finch) I'm going to show you what has
23 been marked State's Exhibit No. 1 for identification
24 purposes.

25 Are those the steps that lead to the -- can

1 you identify this photo, please?

2 A Those are the steps that lead to the bedroom
3 that Tuesday and I shared.

4 Q And is that a fair and accurate representation
5 of the condition of the steps at the time?

6 A Yes.

7 MR. FINCH: Your Honor, the State would move
8 for the admission of State's 1.

9 THE COURT: Any objection?

10 MS. HUNTER: No objection.

11 THE COURT: Marked and admitted without
12 objection.

13 MR. FINCH: Thank you, Your Honor.

14 (Whereupon, State's Exhibit No. 1 is admitted
15 into evidence.)

16 Q (By Mr. Finch) While we are waiting for that
17 to come up, can you identify this photo?

18 A This is the door leading into our bedroom.

19 Q Is that a fair and accurate representation of
20 the --

21 A Yes.

22 Q Identify this photo?

23 A This is the door with the door opened into our
24 bedroom.

25 Q For clarification, I'm showing you in order

1 what has been premarked for exhibit purposes as
2 State's 2 and State's 3?

3 A Yes.

4 Q Now I'm going to show you what has been marked
5 as State's 4 for identification purposes only, please
6 identify?

7 A This is inside of our bedroom, the bed.

8 Q And State's 5?

9 A This is the dress that Tuesday was wearing the
10 night of the incident.

11 Q Finally, State's 6?

12 A This is the entrance to our front door, the
13 stairs to the right lead to the kitchen and the
14 living room, the stairs to the left lead to our
15 basement.

16 MR. FINCH: Your Honor, the State would move
17 for the admission of State's 2 through 6.

18 THE COURT: Any objection?

19 MS. HUNTER: No objection, Your Honor.

20 THE COURT: Marked and admitted without
21 objection.

22 (Whereupon, State's Exhibit Nos. 2 through 6
23 are admitted into evidence.)

24 Q (By Mr. Finch) Now on the screen behind you,
25 is what you've identified as -- tell the jury what

1 that is, please.

2 A These are the stairs from the back door up to
3 our bedroom.

4 Q Okay. And tell us what is in this photo?

5 A This is our bedroom door.

6 Q And this photo?

7 A This is our bedroom door with our bed inside.

8 Q And this photo here?

9 A This is a photo of our bed.

10 Q Regarding the bed, that was the room that you
11 guys shared?

12 A This was a room where we were only staying in
13 Charleston for two more weeks and needed a place to
14 stay. So our friend Cassidy had let us stay with her
15 in her apartment, she had an open bedroom.

16 And I had been living at a studio in a
17 furnished dorm so I had no furniture to bring with
18 me. And Tuesday brought herself in her car. So
19 during our last few weeks in Charleston it was a
20 little rough living. Please excuse the mess.

21 Q So generally what was the condition of the
22 place where you lived, the apartment where you lived?

23 A The apartment, which we had been in and out of
24 all summer where our friend lived, was furniture, had
25 a TV, had couches, everything. But the whole --

1 everyone was moving out of the apartment and moving
2 into new ones for the school year.

3 So the condition it was when we were there was
4 every room was bare. There was little furniture in
5 the house. It was just a temporary place where we
6 could stay until we had to leave.

7 Q Okay. I'm just going to go back to when you
8 got, you were helping Tuesday up the stairs. Tell us
9 what happened once you got up to the top of the
10 stairs?

11 A Once I got up to the top of the stairs, I had
12 opened the door and brought her in with Jesse's help.
13 Brought her in, put her in bed, and Tuesday had laid
14 flat down in her stomach with her head on the pillow
15 just completely passed out.

16 There was little response to her. I said good
17 night, Tuesday, love you, stay in bed. You know, and
18 she -- there was not even a turn of her head or a
19 response. So I was worried about her, as any friend
20 would be worried in their condition.

21 So I left back down the stairs with concerns
22 for Tuesday in my mind for her safety.

23 Q What did you do with those concerns in your
24 mind?

25 A Once I had gotten downstairs, I had shown an

1 interest with Jesse earlier in the night. And I know
2 that left Cameron as almost a third wheel. If he was
3 expecting any entertainment I wanted to make sure
4 that he knew that there was nothing that would be
5 happening that night.

6 So I said, Tuesday is passed out, it's time
7 for her to go to bed. No one is to go upstairs. She
8 needs to be left alone.

9 Q After you told the two men that, what did you
10 do next?

11 A It was a little awkward because we had -- we
12 had a couch still left in the apartment but we didn't
13 have really any form of entertainment to watch TV or
14 anything, we didn't have cable.

15 So I had offered them a beer, very grateful
16 for them helping me getting my friend back, getting
17 me back to the apartment. So I offered if they
18 wanted to stay and have a beer.

19 Q And did they?

20 A Yes.

21 Q Where did you have a beer?

22 A We were -- Jesse and I went into the kitchen
23 to grab a beer, but we were in the living room.

24 Q From the living room into the kitchen?

25 A To the kitchen.

1 Q How about Cameron?

2 A Cameron had, I don't know if he grabbed a beer
3 and then went back in the living room, or if Jesse
4 and I had grabbed one and given one to him.

5 Q So who was in the kitchen when you got a beer
6 with Jesse?

7 A Me and Jesse were in the kitchen.

8 Q Alone?

9 A Right.

10 Q What did you do then?

11 A Jesse and I being alone had caught back up to
12 where we had left off dancing. We started kissing.
13 And while I am kissing him I am still thinking that
14 there is still another person in my house. I can't
15 keep doing this.

16 So I expressed concern as to, you know, where
17 is Cameron to kind of get away and see where he is,
18 what he is up to, not ignoring guests in my house.

19 Q What did you do then?

20 A Then we went into the living room to go find
21 Cameron. And he was not in the living room. We then
22 thought maybe he was smoking a cigarette outside. We
23 checked the front and the back porch to see if he was
24 outside or maybe if he had seen Jesse and I together
25 and decided to walk home, or drive home with the car.

1 The car still remained in the driveway, and I
2 -- Cameron was not outside on the porches.

3 Q Where else did you look?

4 A I had gone upstairs and looked. When you walk
5 up the stairs, I don't know if you want to show the
6 photo again too, but there is a smaller bedroom which
7 was -- no one was moved in, and you could see into it
8 when you walked up.

9 So I looked in the room when I was walking up
10 the stairs.

11 Q With the laser pointer there, you might be
12 able to point to the direction of that.

13 A Once you get upstairs here, there is a room
14 right here. And our room is facing this way.

15 Q You are indicating behind that wall there is a
16 room?

17 A Yes.

18 Q And the room where you stayed with Tuesday is
19 up to the right?

20 A Yes. So I walked into Tuesday's room first,
21 going to see her as she was still left exactly how I
22 left her without even moving her head to the side.
23 She remained just like sleeping motionless in the
24 bed.

25 So I turned the light off and left and went to

1 go check the master bedroom which our friend Cassidy
2 normally would stay in, but she was not here this
3 night, to see if she was there.

4 Q Can you, using the laser pointer, can you give
5 us an indication of where Tuesday was when you
6 observed her at that time?

7 A Tuesday was sleeping just right here. Just
8 passed out lying flat on her stomach.

9 Q Where was her head?

10 A Right on the pillows, here.

11 Q Where were her feet?

12 A Down here.

13 Q Did she say anything to you when you went in
14 there?

15 A No, no response.

16 Q Did you call out Cameron's name?

17 A Yeah. We had called Cameron's name out
18 wondering where he was. Where are you, hello,
19 Cameron, are you here? Outside especially because it
20 was dark out, if he had smoked a cigarette and gone
21 off the porch at all.

22 So there was no sign of him and I just in my
23 head thought, you know, he must have walked home.

24 Q Are there any rooms that adjoin this room?

25 A This room there is a door over here that is

1 adjoining to the next bedroom at the top of the
2 stairs. There is also, over on this side, there is a
3 bathroom for this bedroom which has a shower, sink,
4 toilet, full bathroom.

5 Q Did you check either of those areas?

6 A No.

7 Q But you called out his name?

8 A Called out his name.

9 Q What was the response?

10 A Nothing.

11 Q What did you do after that?

12 A After that I walked back downstairs with
13 Jesse. And in my mind there I thought that Jesse was
14 still here, Cameron must have gone home. And still
15 thinking of Tuesday, making sure she was going to be
16 all right, and if she got sick or anything just kind
17 of in the back of my mind.

18 So Jesse and I continued on the couch again
19 where we left off and started kissing and just a
20 heavy petting kind of thing, but not having sex.

21 Q Okay. What were you hearing at this time?

22 A I couldn't hear anything for a while, and I
23 wasn't really listening for it. Then I had heard
24 upstairs something moving around.

25 And I was distracted and thinking, is Tuesday

1 up? I'm going to go check on her. Then I could hear
2 a heavy like panting, a rhythmic breathing of -- not
3 Tuesday.

4 Q Was there any music on?

5 A There was no music on. We didn't have cable,
6 and we didn't have a radio.

7 Q So what did you do after hearing these noises?

8 A After hearing these noises I immediately went
9 upstairs to our bedroom.

10 Q Did you go up alone?

11 A No, Jesse followed me.

12 Q Tell us what you observed?

13 A I had -- I opened the bedroom door and turned
14 on the light. Once I was inside, all I could see was
15 Cameron Ross on top of Tuesday with his hands up over
16 her, fully nude and mounting her from behind.

17 And Tuesday was -- I could see once he had
18 come off of her, he was just startled by us. Once he
19 had gotten off of her I could see Tuesday and her
20 dress pulled up over her bottom half.

21 Q Was she wearing any undergarments?

22 A No.

23 Q And you said totally naked, was that referring
24 to Cameron Ross?

25 A Cameron Ross.

1 Q What did you do at that time?

2 A I just started screaming. It was so scared.
3 And I didn't know what to do. I don't remember
4 anything that Cameron had said, I just knew I wanted
5 him out of my house.

6 So I had screamed at him, what the fuck are
7 you doing. And I grabbed him on his way out by the
8 back of his neck and by his arm and I pushed him down
9 the stairs. I pushed him down the stairs, and Jesse
10 was in shock with me.

11 And pushed Jesse -- or Jesse had gone down the
12 stairs after Cameron. And I had locked the doors as
13 soon as they were out, just locked the doors and then
14 across the hallway to the front door to lock that
15 door too.

16 Q When you encountered Cameron up in the
17 bedroom, what was Tuesday doing?

18 A Tuesday didn't move. She didn't sit up. She
19 didn't react to any of it.

20 Q When you came in and saw Cameron on top of
21 her, explain the relative body positions, please?

22 A Tuesday was laying as I had left her on the
23 bed on her stomach, and her dress was pulled up over
24 her bottom half. And Cameron was on top of her
25 completely naked with his pelvis pushed up against

1 her backside as if her were having intercourse with
2 her from behind.

3 Q Did you see any movements by the defendant?

4 A I opened the door and switched on the light so
5 fast that his initially reaction was to get off of
6 her.

7 Q Okay. And when he got off of her, what did
8 Tuesday do?

9 A Nothing.

10 Q When you were screaming at the top of your
11 lungs, what did Tuesday do?

12 A Nothing.

13 Q When you removed Cameron from the room, what
14 did Tuesday do?

15 A Nothing.

16 Q After you went downstairs and locked the
17 doors, what did you do?

18 A After I went downstairs and locked the doors I
19 had grabbed a knife from the kitchen. And in between
20 our back door and our front door we had a laundry
21 closet with the doors open. I had opened them on
22 either side to block -- to block the entrance to
23 either door but I could still see through the slits
24 in the door the front and back door.

25 Q Does this photo give us an idea of where that

1 would be?

2 A This is our kitchen. This would be the --
3 right here there is a hallway from the back door with
4 stairs just like these. And the laundry room is
5 right here, or closet.

6 Q So you put yourself in the laundry area with a
7 knife; is that correct?

8 A Yes.

9 Q Did you call the police?

10 A I did not.

11 Q Why was that?

12 A I was -- while I was in the living room, I
13 mean the laundry room, I had heard Jesse and Cameron
14 come back and knock on the doors. And I was scared,
15 but after awhile they had left.

16 And I had gone upstairs to go check on
17 Tuesday. And I curled up with her in bed and just
18 told her that I loved her over and over again.

19 Q What did she say?

20 A She doesn't say anything.

21 Q Where was Tuesday when you came back up
22 stairs?

23 A She was still laying in bed.

24 Q What changed in her position, did you notice?

25 A That she had curled up as if on her side,

1 fetal position.

2 Q what did you do?

3 A I curled up behind her and I held her and I
4 cried.

5 Q Did she say anything?

6 A No.

7 Q Did she move?

8 A No.

9 Q Did you make any other phone calls that night?

10 A I had called a friend of mine, Andrew Sosebee,
11 and he lived two blocks away from us. And he has
12 always been someone who I trusted.

13 MS. HUNTER: Your Honor, may I approach the
14 bench with a matter of law?

15 THE COURT: Uh-hum.

16 (Whereupon, the following discussion was held
17 at the bench.)

18 MS. HUNTER: This is the same witness they
19 talked about earlier, and she said she called him
20 that night, not the next day.

21 MR. FINCH: No, this is a different guy. This
22 is a different guy. This is going Andrew Sosebee.
23 He was originally on the witness list, we are not
24 going to call the him. It's a different individual.

25 MS. HUNTER: I just keep getting all this

1 loose stuff.

2 THE COURT: He was on the original witness
3 list, Andrew Sosebee.

4 MS. HUNTER: But I don't have any report.

5 MR. FINCH: He didn't give a statement. All
6 he did was call -- she is not going to testify to
7 anything he would say. He didn't do anything. She
8 just called him as a friend.

9 THE COURT: What is the basis of the
10 objection?

11 MS. HUNTER: I didn't get it in discovery.

12 THE COURT: They're not required to turn over
13 to you what they don't have. If they didn't take a
14 statement, they are not required to provide you with
15 anything.

16 MS. HUNTER: Any statement, written or oral?

17 THE COURT: He is not testifying, is he?

18 MS. HUNTER: No. But she is referring to him.

19 THE COURT: She is saying she called him. He
20 is not testifying. He was on the original witness
21 list, so it shouldn't come as any -- and I have had
22 this for a couple weeks.

23 MS. HUNTER: I understand.

24 THE COURT: At the same time you sent your
25 stuff over so his name has been on there.

1 MS. HUNTER: These are going to the court
2 reporter, right?

3 THE COURT: Absolutely. I don't talk to
4 lawyers without a record, ever.

5 MS. HUNTER: All right. No problem.

6 MR. FINCH: Thank you, Your Honor.

7 (In open court.)

8 THE COURT: You may proceed.

9 Q (By Mr. Finch) Who else did you call that
10 night?

11 A I called my friend Andrew Sosebee, who lived a
12 few blocks away from us on his street, and I told him
13 I needed him to come over, and I couldn't tell him
14 why, but I needed him to come over and stay the whole
15 night.

16 Q What did he do?

17 A He came right over. I told him to call before
18 he got to the house so I knew it was him to let him
19 in. And he called and came into the house. And I
20 didn't tell him what happened.

21 Q What were you doing at this time?

22 A At this time I was in the basement, which is
23 right by our front door.

24 Q Will you show us on there?

25 A This is the basement.

1 Q What were you doing?

2 A I was waiting for Andrew to get there. And I
3 wanted to be able to be near the front and the back
4 door, this being the front door where he would come
5 in.

6 I wanted to be able to hear anything that
7 would be happening, or anyone walking in, but I would
8 still be safe and wait downstairs.

9 Q What did you do once Andrew arrived?

10 A Once Andrew arrived I was upset. He said he
11 didn't need to know why, and that he would stay up
12 the whole time.

13 I had gone upstairs and checked on Tuesday,
14 just me. And ended up staying the rest of the night
15 in the basement on the couch down there with Andrew
16 until I finally fell asleep in the morning and he had
17 stayed up all night.

18 Q What happened when you woke up?

19 A When I woke up I had asked Andrew to leave. I
20 wanted to wait for Tuesday to wake up.

21 Q What time did Tuesday wake up?

22 A Tuesday didn't wake up until 1 o'clock in the
23 afternoon.

24 Q Is that normal?

25 A No.

1 Q what time did you normally wake up?

2 A We were always up around 9:00, especially
3 Tuesday because she worked mornings.

4 Q Tell us what happened at 1 o'clock when
5 Tuesday woke up?

6 A I waited downstairs in the living room on the
7 couch for my best friend to wake up. And I thought
8 about how I could tell her what had happened to her,
9 or if she already knew.

10 I waited for her to wake up. She had come
11 downstairs in her bathing suit and dress and asked me
12 if I wanted to go to the beach.

13 Q what did you do then?

14 A I told her we couldn't go to the beach today,
15 and sat down on the couch with her and I told her
16 what had happened last night.

17 Q what did you tell her?

18 A I told her that she had been raped.

19 Q Did she have any reaction?

20 A She at first didn't even believe, or was
21 having a hard time believing that it had happened;
22 that she didn't remember getting home or what had
23 happened.

24 And she didn't know really quite how to handle
25 it, if she should tell anybody, if -- it was a lot

1 for her to take in.

2 Q What did she do after that, after you told
3 her?

4 A After I told her we had no idea what to do.
5 If we did -- were we supposed to call the cops; if we
6 were supposed to call -- what we were supposed to
7 report; and if we did, what would happen to us; if we
8 would get in trouble; if we would do anything.

9 So I called Craig Hamilton, which I had met
10 earlier in my school year at College of Charleston,
11 who also was a cop in the downtown area.

12 Q What did you tell Mr. Hamilton?

13 A I told him -- I asked him if a situation like
14 this would happen, if what would be the next steps,
15 who we should call if -- he told us about getting a
16 rape kit done and pointed us in the right direction.

17 Q What was the next thing that happened?

18 A The next thing that happened is that we
19 decided we did -- he called his friends, or people
20 that he knew in the police force and they had
21 contacted us. And we had given them our story, and
22 Tuesday and I went to go get the rape kit.

23 Q Did the police come to the house?

24 A The police came to the house.

25 Q How many officers responded?

1 A I'm not sure on the exact number. There
2 seemed to be a few; if they were police officers or
3 just collecting evidence from upstairs, I'm not sure.

4 Q But individuals, how many individuals other
5 than you and Tuesday?

6 A Maybe four.

7 Q Okay. And did you speak to any detectives?

8 A Yes.

9 Q Did you give a statement?

10 A Yes.

11 Q And then you said you went to get a rape kit.
12 where did you go?

13 A I'm not sure where we went.

14 Q Who took you there, or how did you get there?

15 A I believe it was an officer that had brought
16 us there, a female. I'm not sure of her title.

17 Q Okay. And once you got to this facility, what
18 happened then?

19 A We waited for a long time. And then Tuesday
20 went in and then I waited for her a long time.

21 Q Where did you wait?

22 A In the waiting room.

23 Q Then what happened after Tuesday came back
24 out?

25 A When Tuesday came back out, just pretty silent

1 ride. We went back home.

2 Q Did you have occasion to speak to a different
3 detective on this case?

4 A Yes.

5 Q Did she show you a photo lineup?

6 A Yes.

7 (Whereupon, State's Exhibit No. 7 is marked
8 for identification.)

9 Q (By Mr. Finch) Let me show you what has been
10 marked State's 7 for identification purposes.

11 Can you identify that document?

12 A Yes.

13 Q What is that document?

14 A It's the lineup that I signed that informed me
15 of what I was about to do.

16 Q Now the second page of that document, can you
17 identify that?

18 A This is a picture of Cameron Ross with my name
19 and signature.

20 Q You made that signature on this document?

21 A Yes.

22 MR. FINCH: Your Honor, State would move for
23 the admission of State's 7.

24 MS. HUNTER: No objection, Your Honor.

25 THE COURT: Marked and admitted without

1 objection.

2 (Whereupon, State's Exhibit No. 7 is admitted
3 into evidence.)

4 Q (By Mr. Finch) Just to backtrack just quickly,
5 Mr. Moriarty, where -- when you originally went to
6 look for Mr. Ross, did you look in every -- what
7 percentage of the house did you look through?

8 A I hadn't looked in the basement, I hadn't
9 looked in one of the bedrooms, I hadn't looked in the
10 connecting bathroom to either me and Tuesday or the
11 master suite.

12 So I would say I looked through half the
13 house.

14 Q I'm just going to ask you some questions
15 fairly quickly, okay. Just tell me -- I want to know
16 where Cameron Ross was when the following events were
17 taking place, okay?

18 A Okay.

19 Q Let me know if you don't understand any of the
20 questions.

21 Where was Cameron Ross when you were on the
22 sidewalk?

23 A He was with Jesse.

24 Q How far away from you?

25 A A block away.

1 Q And when you were helping Tuesday to the car,
2 where was Cameron Ross?

3 A He was with Jesse in front of us, a few feet
4 away.

5 Q When Tuesday broke the mirror, where was
6 Cameron Ross?

7 A He was standing directly next to Tuesday.

8 Q And when you and Jesse took her upstairs,
9 where was Cameron Ross?

10 A He was right behind us watching us help
11 Tuesday up the stairs.

12 Q And when you said don't go upstairs, where was
13 Cameron Ross?

14 A Right in front of me.

15 Q When you heard panting and went upstairs,
16 where was Cameron Ross?

17 A He was on top of my best friend.

18 MR. FINCH: No further questions, Your Honor.

19 THE COURT: Madam Forelady, ladies and
20 gentlemen, we are going to take advantage of this
21 break in testimony to take a brief recess. I have
22 several questions I have to deal with from my other
23 jury and I anticipate I'm going to have to replay
24 some testimony.

25 During this break I need to make some

1 THE COURT: You're welcome.

2 CROSS-EXAMINATION

3 BY MS. HUNTER:

4 Q It is my understanding that you have asked me
5 to call Ms. Moriarty?

6 A Yes, ma'am.

7 Q If I mispronounce that, forgive me.

8 Now on August the 2nd, almost three years ago,
9 you gave a statement to the police as to what
10 happened?

11 A Yes, ma'am.

12 Q Is that correct?

13 A Yes.

14 Q Do you remember the time that you gave that
15 statement?

16 A I'm not aware of the exact time.

17 Q Was it in the afternoon, the night?

18 A It would be in the afternoon, later afternoon
19 possibly.

20 Q Okay. And it was after Tuesday Philbrook had
21 awoken?

22 A Yes.

23 Q Do you know how long after that you had given
24 the statement or your statement?

25 A No, ma'am.

1 Q Was your statement full of details and
2 accurate, the one that you gave to the police?

3 A Yes, ma'am.

4 Q And I just want to go over a couple of things
5 that you testified to yesterday. You had gone to the
6 liquor store to buy the cherry vodka; is that right?

7 A Yes, ma'am.

8 Q Where is that located, the liquor store?

9 A I'm not sure of the one we went to that day.
10 I would assume that it was the one on Meeting Street,
11 ABC possibly.

12 Q What is cherry vodka? Is it a vodka with
13 cherry flavor or is it --

14 A It is cherry flavored vodka.

15 Q So you all were drinking -- I would just ask
16 you to explain to the jury, in case they don't know
17 what a shot is, what is that?

18 A Two ounces of vodka with no mixture, just
19 straight vodka.

20 Q And how many did you consume before you went
21 out?

22 A To my memory I think we took about four before
23 we went out.

24 Q Okay.

25 (Whereupon, the court reporter reboots the

1 computer.)

2 THE COURT: You may proceed.

3 MS. HUNTER: Thank you, Your Honor.

4 Q (By Ms. Hunter) Ms. Moriarty, did you have
5 anything to eat that day?

6 A Yes, I did.

7 Q What did you have to eat and when?

8 A I had lunch at Subway around when we got the
9 hair dye.

10 Q When you got the hair dye?

11 A Yes.

12 Q And did Tuesday Philbrook also get something
13 to eat that day?

14 A No.

15 Q And so you remember that you and Tuesday
16 Philbrook did each four shots of the straight vodka;
17 is that correct?

18 A To my memory, yes.

19 Q What time -- you went to the liquor store at
20 6:00; is that correct? And then what time did you
21 start drinking the shots?

22 A I'm not aware of the exact time. Once we got
23 home, settled in, we where getting into what we were
24 going to wear, we drank them, spaced out throughout
25 the evening.

1 Q Okay. And what time did you go out?

2 A To my memory between 10:00 and 10:30.

3 Q And you got a cab to go out; is that correct?

4 A Yes, ma'am.

5 Q Did you anticipate you were going to call a
6 cab to take you home as well?

7 A We were planning on walking back home. If we
8 had to take a cab, it was a possibility to. But we
9 would save your money on walking home.

10 Q And your apartment is about a couple miles
11 from the Purple Tree, or is it less?

12 A It's by the College of Charleston, so maybe a
13 mile.

14 Q A mile from the bar?

15 A I'm guessing.

16 Q Okay. And I wanted to ask you, you talked
17 about Tuesday Philbrook taking off her shoes. What
18 kind of shoes was she wearing?

19 A Tuesday was wearing heels.

20 Q Heels? Okay. Do you know what kind of heels
21 or how high they were?

22 A I wasn't paying attention.

23 Q Okay. But they were heels. So you left the
24 house about 10:00 or 1030, and how much did you drink
25 while you were out in the bars while you were out?

1 A I had one shot and one drink.

2 Q So you had another shot and another drink.

3 what kind of shot was that?

4 A I had a SoCo and lime shot, and the drink I do
5 not remember.

6 Q What is SoCo?

7 A SoCo is a liquor.

8 Q Is that like a vodka?

9 A It's not classified as a vodka or a rum. It's
10 more, I would say, a cordial possibly.

11 Q Was it mixed with anything, or is it straight
12 liquor?

13 A It's a shot with lime squeezed in it.

14 Q And then you said one other drink, what was
15 that?

16 A I'm not aware exactly what I drank.

17 Q Do you remember where you drank that, or those
18 two drinks that night?

19 A The first one that I drank when we had got
20 there when Tuesday and I were dancing. The second I
21 had taken when I met Tuesday and the other couple at
22 the bar.

23 Q And you had gone to the liquor store to get
24 some cherry vodka, what other kinds of alcohol do you
25 keep in your apartment?

1 A We had beer in our fridge.

2 Q Any other kinds of alcohol, lime?

3 A No, ma'am.

4 Q Okay. Now when you had met up with Jesse
5 Spalding and Cameron Ross -- let me ask you this, how
6 many times did you meet up with them?

7 A We had seen them outside when we got dropped
8 off by the cab and I was waiting for my ID which I
9 left in the cab. Then we met them upstairs. I think
10 Jesse came down one time in between to see if we had
11 gotten in the club yet.

12 Q And you had known Jesse for how long?

13 A I had known Jesse from -- I started working
14 with him in January, and I'm not sure when he quit
15 but I think it was in February, March. I'm unsure of
16 when he quit.

17 Q Okay. And you knew that the boys had also
18 been drinking that night in addition to you guys?

19 A I had not seen them drink before the club. I
20 was not with them, so I'm unaware.

21 Q Did they appear to have been drinking at all?

22 A They were waiting in line. So when I saw
23 them, no.

24 Q Are you talking about waiting in line to get
25 into the bar?

1 A Yes, ma'am.

2 Q Okay, I'm referring to after you are leaving
3 the bar and you're going to ride home with them.
4 Didn't you have actual knowledge that they had been
5 drinking?

6 A Yes. Well, yes.

7 Q Did you know if they were shots or beer?

8 A I'm completely unaware what they drank that
9 night.

10 Q But you decided to get into the car with them
11 anyway, even knowing that they had been drinking?

12 A Correct.

13 Q Okay. And you stated yesterday -- well let me
14 go back. When you got -- when you got in the car,
15 were you in the backseat?

16 A Yes, ma'am.

17 Q Who was driving?

18 A Jesse.

19 Q Okay. And Tuesday Philbrook was in the
20 backseat with you?

21 A Yes, ma'am.

22 Q And so you get home and then you testified
23 that you did see Tuesday Philbrook pull the mirror
24 off of the car?

25 A Yes, ma'am.

1 Q Okay. Then you also stated in your testimony
2 that she ran up the steps to the apartment?

3 A No, ma'am, we helped her up the steps.

4 Q Who is we?

5 A I did, and Jesse was behind helping.

6 Q You all both helped her up the steps?

7 A Yes, ma'am.

8 Q Okay. And that was to the front door?

9 A To the back door.

10 Q To the back door?

11 A Yes, ma'am.

12 Q Outside?

13 A Yes.

14 Q Okay. And then after that she went upstairs
15 with you?

16 A Yes, ma'am.

17 Q Okay. And somebody had to help her upstairs,
18 I'm assuming?

19 A Yes, ma'am. Both Jesse and I.

20 Q And Jesse helped you; is that right?

21 A Yes, ma'am.

22 Q Did Cameron Ross help you at all?

23 A No, ma'am.

24 Q When you laid down with her for a little
25 while, were the lights on or off?

1 A Are you talking about?

2 Q About your bedroom that she was in.

3 A Was this when I said goodnight to her
4 initially or after?

5 Q Yes.

6 A When I said goodnight to her, I turned off her
7 lights, so they were off. The hall light remained
8 on.

9 Q The hall light remained on?

10 A Uh-hum.

11 Q Okay. You also testified yesterday that you
12 had called somebody, a friend of yours?

13 A Yes, ma'am.

14 Q Who was that?

15 A Andrew Sosebee was a boy I met and we had
16 dated on and off during my stay at Charleston.

17 Q What time did you call him?

18 A I was unaware of what time. I can't give you
19 an exact time.

20 Q And you also testified that you were in a
21 closet?

22 A Not inside the closet. I was in the hallway
23 with the closet doors open blocking either side.

24 Q Was this before Andrew Sosebee came over?

25 A Yes, ma'am.

1 Q You said something about a knife?

2 A Yes, ma'am.

3 Q Were you at the closet doors when you had a
4 knife?

5 A Yes, ma'am.

6 Q Okay. What happened when Andrew Sosebee got
7 there?

8 A He called me and I was down in the basement by
9 this time.

10 Q Was Tuesday Philbrook still upstairs in the
11 bedroom?

12 A Yes, ma'am.

13 Q Do you know what her condition was when she
14 was up there in the bedroom?

15 A Tuesday was not up there, but when I left her
16 she was completely out.

17 Q What do you mean she wasn't up there?

18 A When I was up there.

19 Q No when you were downstairs with the knife in
20 front of the closet?

21 A Right.

22 Q She was upstairs?

23 A Yes, ma'am.

24 Q But you don't know what her condition was?

25 A I wasn't upstairs to be aware.

1 Q Okay. Now when you went into the apartment
2 and with Tuesday and Jesse and Cameron, who invited
3 them into the apartment?

4 A I did.

5 Q You did?

6 A Well it was needed help getting Tuesday out of
7 the car. We parked, everyone got out of the car,
8 there was no invitation, it was we all got out.

9 Q No invitation. Did you tell them to leave at
10 that point in time?

11 A Nope. We had opened the door. I had gone out
12 to get Tuesday, and they were walking out of the car
13 as well.

14 Q And did you offer them a beer or some sort of
15 shot?

16 A Right. They're out of the car, they're
17 helping us in so I said, you guys can come in and
18 grab a beer or two if you would like.

19 Q That was about what time?

20 A After the clubs had closed. As a rough
21 estimate I would say around 2:00, 2:15.

22 Q 2:00 or 2:15?

23 A Right.

24 Q And do you recall going into your apartment
25 and looking for marijuana to smoke with Jesse?

1 A No, ma'am.

2 Q You don't remember that?

3 A No, ma'am.

4 Q Do you smoke marijuana?

5 A Do I smoke marijuana?

6 Q Yes.

7 A Occasionally.

8 Q Did you smoke marijuana that night?

9 A No, ma'am.

10 Q So you deny that you were ever smoking pot
11 that night?

12 A Yes, ma'am.

13 Q Okay. Who was it that came over that told you
14 what you needed to do, what the steps were that you
15 needed to do after you had explained what had
16 happened?

17 A No one came over.

18 Q I thought you testified yesterday that
19 somebody?

20 A I called Craig Hamilton over the phone.

21 Q Who was that?

22 A Craig is a friend of mine that I met in the
23 school year who's also a cop down in Charleston.

24 Q And he was a cop or law enforcement officer at
25 that time?

1 A Yes, ma'am.

2 Q So from your conversation with him you went
3 through the proceedings that you went through that
4 you testified to yesterday?

5 A Yes, ma'am.

6 Q Now you testified earlier, when I first asked
7 you, that you gave a full and detailed statement to
8 the officers?

9 A Yes, ma'am.

10 Q Is that correct?

11 A Yes, ma'am.

12 Q Do you understand that you left out that you
13 had done any kind of shot that night? Do you realize
14 that you had left that out of your statement?

15 A No, ma'am.

16 Q Do you realize that you didn't tell any police
17 officer that had taken your statement or had been
18 investigating this that you had done any shots that
19 night?

20 A No, ma'am.

21 Q Do you remember that in your statement that
22 you wrote down, your sworn statement, that you had
23 only had one drink the entire evening?

24 A Okay.

25 Q In your statement, have you had time prior to

1 yesterday and today to review your statement?

2 A Yes, ma'am.

3 Q Okay. And do you want me to give it to you to
4 refresh your memory?

5 A No, I read my statement.

6 Q Okay. And do you recall that you stated that
7 you only had one drink the entire evening?

8 A I'd actually like to see a copy of that
9 statement so that I can see it rather than hear it.

10 MS. HUNTER: May I approach the witness, Your
11 Honor?

12 THE COURT: You may.

13 MS. HUNTER: Your Honor, I'm going to withdraw
14 that question and move on if that's okay.

15 MS. SHEALY: Your Honor, I ask the witness be
16 allowed to answer that question.

17 THE COURT: Approach.

18 (Whereupon, the following discussion was held at the
19 bench.)

20 MS. HUNTER: She had stated in the reports to
21 the officers that she had only had one drink the
22 entire evening.

23 THE COURT: Yes.

24 MS. HUNTER: She did not put that in her
25 statement. She didn't put in her statement that she

1 had had four shots or liquor.

2 THE COURT: What was the last question you
3 just asked her?

4 MS. HUNTER: If she remembered whether or not
5 it was in her statement.

6 THE COURT: She is reviewing her statement
7 now.

8 MS. HUNTER: Yes. But I withdraw the
9 question.

10 THE COURT: Why did you withdraw it? I'm
11 confused.

12 MS. HUNTER: Because I can just ask -- if she
13 doesn't remember, I'm not badgering her, I don't want
14 to badger her. And if I can cross-examine the
15 officers.

16 THE COURT: She can withdraw the question and
17 you can ask on redirect.

18 MS. SHEALY: Judge she's implied that this
19 witness said in her statement --

20 THE COURT: That's why you have redirect. You
21 can rehabilitate the witness.

22 MS. SHEALY: Okay.

23 (In open court.)

24 THE COURT: Overruled, you may proceed. The
25 question is withdrawn.

1 You may ask your next question.

2 Q (By Ms. Hunter) What I'm going to ask you is
3 do you recall telling any officer, any investigator
4 officer or anybody that was involved with this case
5 that you had only had one drink the entire evening?
6 Do you recall that?

7 A No.

8 Q Okay. Why did you -- well you stated in your
9 statement actually that Tuesday Philbrook was in a
10 semiconscious state, that you had laid her on the bed
11 and she was semiconscious.

12 What do you mean by semiconscious? Are you a
13 doctor?

14 A No, ma'am, I am not a doctor.

15 Q Okay. So she was somewhat conscious? She was
16 not unconscious?

17 A I can't describe that either, I'm not a
18 doctor.

19 Q Well if she was unconscious would that be
20 something that would be important to put in your
21 statement?

22 A Yes.

23 Q But you put in your statement that she was
24 semiconscious?

25 A Yes, ma'am. I put in my statement that she

1 was semiconscious.

2 Q When she woke up the next day, Tuesday
3 Philbrook woke up the next day, did you wake her up
4 or did she wake up on her own?

5 A She woke up on her own.

6 Q And that was about 1 o'clock in the afternoon?

7 A Yes.

8 Q Do you recall putting into your statement that
9 you had to tell her step-by-step what happened, that
10 she had no recollection whatsoever?

11 A Yes, ma'am.

12 Q And do you also remember stating that when you
13 testified yesterday you stated that you came into the
14 room and grabbed Cameron by the neck and threw him
15 down the stairs?

16 A Yes, ma'am.

17 Q Describe to the jury, he wasn't wearing any
18 clothes or he was wearing clothes?

19 A He was in the process of putting on his
20 clothes when we were yelling at him.

21 Q When who was yelling at him?

22 A When I was yelling at him and Jesse was
23 stating, what the fuck are you doing.

24 Q In the apartment he said that?

25 A In the bedroom, yes.

1 Q In the bedroom.

2 A What are you doing.

3 Q That's what Jesse said in the bedroom?

4 A Yes.

5 Q I just wanted to make sure I got that clear.

6 And then you put in your statement that, I know he

7 said something I think back to you but you don't

8 remember what it was, right?

9 A Right.

10 Q And you didn't remember what it was because
11 you were too mad?

12 A Yes, ma'am.

13 Q Okay. Now if you had knowledge, or did you
14 have knowledge that Tuesday Philbrook had had about
15 ten shots that night?

16 A No.

17 Q But she is in a semiconscious state, you
18 didn't call 911 to help your friend; is that correct?

19 A Tuesday -- no.

20 Q Why not?

21 A Because I have no answer to that question.

22 Q Okay. But you admitted she is in a
23 semiconscious state, she is out of it, and you did
24 not call 911?

25 A (Affirmative head shake.)

1 Q And you didn't call the police that night as
2 well?

3 A No, ma'am.

4 Q But you stated again that you were very angry;
5 is that correct?

6 A That.

7 Q You were very angry about the situation?

8 A Currently?

9 Q I'm assuming yes to currently, but that night
10 as well?

11 A I was scared.

12 Q Okay. Wouldn't it have been important, if you
13 are giving a full and detailed statement, to put in
14 there, to tell the officers that you had called
15 Andrew Sosebee who lived a few blocks away to come
16 over and stay with you all night?

17 A It didn't seem relevant to the crime that was
18 committed that I felt had happened.

19 Q It wasn't important? Did you ask Andrew
20 Sosebee to go up there and check on Tuesday Philbrook
21 with you?

22 A Not to my memory.

23 Q Why didn't you do that?

24 A I had checked on Tuesday myself.

25 Q But Andrew is coming over to your apartment

1 because of what happened, right?

2 A Because -- I did not tell Andrew Sosebee what
3 had happened. He put it together on his own. I did
4 not have him go up with Tuesday because it was
5 something that happened to Tuesday that I didn't feel
6 I should display to my friends.

7 Q All right. If the bars close at 2:00, you get
8 a ride home with the boys who had been drinking, you
9 go into the house, all of these things happen, Andrew
10 had to have been called at what time?

11 A I'm not sure.

12 Q Would you guess 3:30 or 4:00 in the morning?

13 A Yes, ma'am.

14 Q Your testimony is that he put it altogether of
15 what happened?

16 A Because I was scared. I told him people are
17 in the house.

18 Q There is nobody in the house at the time,
19 correct?

20 A When I was telling the story I told him that
21 there were people in the house, they had done
22 something to Tuesday. He put it together. I did not
23 give him the details of everything that had happened.

24 Q And Andrew did not go up and check on Tuesday
25 Philbrook and you didn't ask him to?

1 A I do not recall a time when Andrew had gone up
2 there and checked on Tuesday or if I had. He was
3 there protecting the house to see that no one came
4 in.

5 Q I am going to show you some additional
6 photographs and ask if you can identify these.

7 MS. HUNTER: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, ma'am.

10 Q (By Ms. Hunter) What is that a picture of, if
11 you know?

12 A This is our bedroom.

13 Q Did you share that with Tuesday?

14 A Yes, ma'am.

15 Q Is that an accurate depiction of what the
16 bedroom looked like after that night?

17 A Yes, ma'am.

18 Q Okay. I'd like to mark this Defendant's 1 and
19 offer it into evidence.

20 MR. FINCH: No objection.

21 THE COURT: Marked and admitted without
22 objection.

23 (Whereupon, Defense Exhibit No. 1 is admitted
24 into evidence.)

25 Q (By Ms. Hunter) Can you identify this as

1 well?

2 A This is also a picture of our bedroom, corner
3 of the bed, and stand with toiletries and beer on it.

4 Q And beer on it. Is that an accurate depiction
5 of what your room looked like right after this
6 happened?

7 A Yes.

8 MS. HUNTER: Mark this as Defendant's 2 and
9 offer it into evidence

10 THE COURT: Any objection?

11 MR. FINCH: No objection.

12 THE COURT: Marked and admitted without
13 objection.

14 (Whereupon, Defense Exhibit No. 2 is admitted
15 into evidence.)

16 Q (By Ms. Hunter) I have just given you another
17 one. Can you identify that as well?

18 A This is a picture of the corner of the bed
19 with Tuesday's underwear on it.

20 Q Is this an accurate depiction of what the
21 bedroom looked like on August 2nd?

22 A Yes, ma'am.

23 MS. HUNTER: Offer this as Defendant's Exhibit
24 3 into evidence, Your Honor.

25 THE COURT: Any objection?

1 MR. FINCH: No objection.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, Defense Exhibit No. 3 is admitted
5 into evidence.)

6 MR. FINCH: Judge, I'm not going to have any
7 objection to any of the photographs.

8 THE COURT: Mark them marked and admitted
9 without objection.

10 (Whereupon, Defense Exhibit Nos. 4, 5 and 6
11 are admitted into evidence.)

12 THE COURT: You may proceed.

13 MS. HUNTER: Thank you.

14 Q (By Ms. Hunter) Ms. Moriarty, where was Jesse
15 Spalding when you went upstairs and saw Tuesday with
16 Cameron?

17 A Behind me.

18 Q You don't have any knowledge of whether or not
19 he saw anything, do you?

20 A No, ma'am.

21 Q What did you scream to him, yelled at him, I
22 think you said yelled?

23 A I yelled at him to get off of her, to get out.

24 Q Then you testified that you grabbed him by the
25 neck and shoved him down the stairs?

1 A He was on his way out down the stairs from my
2 yelling. And on his way out I pushed him by the back
3 of the neck and he went down the stairs.

4 I did not want to listen to what he had to
5 say.

6 Q So you grabbed him by the back of his neck?

7 A I had pushed him by the back of his neck down
8 the stairs, on his way down the stairs.

9 Q Did you realize that Jesse had left any
10 clothing behind?

11 A His shirt.

12 Q And they had come back and knocked on the
13 door, you're aware of that?

14 A Yes, ma'am.

15 Q Did Tuesday Philbrook have a boyfriend at the
16 time this happened or do you know? You may not know.

17 A I'm not aware.

18 Q Not aware. So when you talked to the police
19 you stated to them that she was in a semiconscious
20 state, correct?

21 A Yes, ma'am.

22 MS. HUNTER: Beg the Court's indulgence.

23 THE COURT: Any redirect of the witness?

24 MR. FINCH: Yes, Your Honor.

25 THE COURT: You may proceed.

1 MR. FINCH: Thank you.

2 REDIRECT EXAMINATION

3 BY MR. FINCH:

4 Q Ms. Moriarty, when you said semiconscious
5 state, you had difficulty describing it because you
6 are not a doctor. Could you describe, though, what
7 Tuesday's action were, what she said, et cetera?

8 A During what time? When I put her to bed?

9 Q When you are referring to the semiconscious
10 state.

11 A I believe I was referring to her semiconscious
12 state when I had brought her upstairs initially. And
13 what I mean by that when I say is that I put her into
14 bed. She just climbed in towards the bed as if
15 exhausted, lays down and just -- she is there, she
16 just lays down and doesn't move, doesn't say
17 anything. She kind of lays down to go to bed.

18 It wasn't that I felt she was never going to
19 move again.

20 Q Did she say anything?

21 A Tuesday had just like barely mumbled maybe a
22 good night like a little, when you fall down to go to
23 sleep, like a little, hum, kind of thing. But not a
24 word or sentences.

25 Q Nothing audible?

1 A No.

2 Q Where was Cameron Ross when you were helping
3 Tuesday upstairs?

4 A I believe he was downstairs. He was not
5 upstairs with Jesse and I.

6 Q Could he see you?

7 MS. HUNTER: Your Honor, I'd like to take a
8 matter of law.

9 THE COURT: Approach.

10 (Whereupon, the following discussion was held
11 at the bench.)

12 MS. HUNTER: That question calls for
13 speculation on whether or not she thinks that
14 somebody else saw somebody go up the stairs.

15 THE COURT: Well it's based on her
16 present-sense impression. She was there and she can
17 testify as to what her vantage point was and that
18 they were all within her immediate range of viewing.

19 MS. HUNTER: She said that she didn't know
20 where he was.

21 THE COURT: She said they searched all over
22 the house for him. But there was a circumstantial
23 inference when she searched all over the house for
24 him and he wasn't downstairs, the only other place he
25 could be would be upstairs.

1 MS. HUNTER: She put in her statement that she
2 thought that they had left the house.

3 THE COURT: You asked her about that.

4 MS. HUNTER: No, I didn't.

5 THE COURT: Yeah, you did.

6 MS. HUNTER: No.

7 MR. FINCH: I'm referring to when she
8 initially came in, was walking up the stairs.

9 THE COURT: You need to lay the appropriate
10 foundation for that question.

11 MR. FINCH: Okay.

12 MS. HUNTER: She can't comment on speculation.

13 THE COURT: She can testify what her rational
14 perception was of the facts based on her personal
15 knowledge.

16 MS. HUNTER: I want to make it clear that --

17 THE COURT: He needs to lay the appropriate
18 foundation. If he does, the question is permissible.

19 (In open court.)

20 THE COURT: Proceed.

21 Q (By Mr. Finch) When you initially walked in
22 the house from the car, who was helping Tuesday?

23 A I was helping Tuesday. Eventually getting out
24 of the car?

25 Q Getting out of the car, going into the house

1 from the car when you just got home?

2 A I was helping Tuesday along with Jesse.

3 Q So you and Jesse. Where was Cameron at that
4 time?

5 A He was behind us.

6 Q Do you know how far behind you he was?

7 A Within a few feet.

8 Q Could he see Tuesday Philbrook?

9 A Yes.

10 Q Ms. Hunter asked you several questions about
11 your statement?

12 A Yes.

13 Q And that in your statement you had referred
14 that you'd only had one drink, or you had written in
15 the statement that you had only had one drink?

16 A Yes.

17 Q I want you to take a look at your statement.
18 If you would point out where in your statement it
19 refers to you only had one drink that night?

20 A That is not written in my statement.

21 Q When you were giving that statement, who were
22 you giving that statement to?

23 A An officer.

24 Q Do you remember how long you had to speak with
25 the officer?

1 A A few minutes. He told us to take as much
2 time as we needed to write our statements.

3 Q why did you call them? why did you have the
4 police come to the house?

5 A Because Tuesday was violated.

6 Q what would have been the importance of how
7 much you had to drink the night before to that
8 statement?

9 A No importance.

10 Q Is that why you didn't put it in?

11 A Exactly. It was irrelevant to what I felt the
12 crime was.

13 Q Did you think that there was a medical
14 emergency that night?

15 A No.

16 Q Did you feel like Tuesday Philbrook needed
17 EMS?

18 A No.

19 Q what was Andrew Sosebee going to help with?

20 A Making us feel safe.

21 Q what would have made you feel safe that night?

22 A A person that I trusted to be there and stay
23 up.

24 Q What was the threat in the house that night?

25 A That someone was going to come back.

1 Q Was there a threat in the house at any time
2 during the night?

3 A After they left initially they'd come back and
4 knocked on the door. And also what had happened when
5 we came home, I was scared for anyone to come in our
6 house.

7 Q So when Cameron Ross and Jesse Spradling were
8 gone, did the threat remain?

9 A Yes, of someone coming back in. But not --
10 once they left I didn't feel that anything inside the
11 house was dangerous.

12 Q When Andrew Sosebee was in the house, is that
13 the same time you felt like nothing inside the house
14 was dangerous?

15 A I'm sorry, can you say that again?

16 Q When Andrew Sosebee was inside the house, was
17 that the same time you felt as though nothing was
18 dangerous inside the house?

19 A (Affirmative head shake.)

20 Q Do you know where Andrew Sosebee is now?

21 A Yes.

22 Q Where is that?

23 A He is traveling around the U.S. A few days
24 ago he told me he was in L.A. He is working
25 promoting Fire Fly.

1 Q When you say semiconscious, how does that
2 compare to passed out?

3 MS. HUNTER: We have a matter of law.

4 THE COURT: You have to lay the appropriate
5 foundation. Rephrase.

6 Q (By Mr. Finch) Can you describe physically
7 what does passed out mean to you?

8 A Passed out, when it refers to a night of
9 drinking, I would say this to my friends, I came home
10 and I passed out. Like I came home and I made a
11 bunch of macaroni and cheese and then I passed out
12 with the TV still on. That would be how I would use
13 the word passed out.

14 Q Your description semiconscious to being passed
15 out, how do the two compare?

16 A May I read through this and see the context
17 that I used?

18 Q Certainly.

19 A When I use the phrase semiconscious was
20 referred to when I found Tuesday and Cameron. And
21 Tuesday I said, I found her in a semiconscious state
22 because when I had gone back up after I had everyone
23 out of the house, she had curled up into a fetal
24 position and I had wrapped her arms around her. So
25 for me that meant that she was still, that she was

1 moving. She was not --

2 Q Was she moving when you came back into the
3 room?

4 A No.

5 Q Was she moving when Cameron Ross was on top of
6 her?

7 A No.

8 Q Can you identify Cameron Ross right now?

9 A Yes.

10 Q Point him out?

11 A He is right there.

12 MR. FINCH: Let the record reflect the witness
13 identified the defendant.

14 No further questions.

15 THE COURT: Any objection to the witness being
16 excused from the State?

17 MR. FINCH: None from the State.

18 THE COURT: From the defense?

19 MS. HUNTER: No, Your Honor.

20 THE COURT: Ma'am, you are excused.

21 State may call its next witness.

22 MS. SHEALY: Craig Hamilton.

23 MR. CRAIG HAMILTON,

24 after having first been duly sworn to state the
25 truth, the whole truth and nothing but the truth,

1 testified on his oath as follows:

2 THE COURT: You may proceed.

3 MS. SHEALY: Thank you.

4 THE COURT: You're welcome.

5 DIRECT EXAMINATION

6 BY MS. SHEALY:

7 Q Mr. Hamilton, if you would please tell the
8 jury where you are currently employed?

9 A City of Charleston Police Department, Team Two
10 patrol.

11 Q Patrol?

12 A Yes, ma'am.

13 Q How long have you been working with the city
14 of Charleston?

15 A Four years in July.

16 Q Back on August 2nd, 2008, you were employed
17 with the city?

18 A Yes, ma'am.

19 Q What capacity were you working there at that
20 time?

21 A At that time I was on bike patrol, Team Two
22 downtown.

23 Q What does that mean?

24 A Bicycle patrol.

25 Q Did you know Kaitlyn Moriarty?

1 A Yes.

2 Q Could you describe briefly how you know her?

3 A We met through a mutual friend in a social
4 situation.

5 Q You might need to speak up louder for me.
6 Focusing your attention back to August 2nd, 2008,
7 could you tell the jury whether or not you received a
8 phone call from Kate?

9 A Yes, I did. It was out of the blue so it was
10 kind of random. We kind of stopped talking as
11 friends for a little bit and she called me.

12 Q You all had stopped talking as friends?

13 A We just went our separate ways. I just hadn't
14 heard from her in a while and I got a call.

15 Q And when she called you, was she inquiring
16 about the criminal process?

17 A Yes.

18 Q If you would please explain to the jury what
19 you advised her to do?

20 A When she called me she advised me of the
21 situation that happened. She seemed very upset about
22 it. She asked me what she needed to do.

23 I told her what she first needed to do if she
24 was going to press charges against the suspect, she
25 needed to file a police report. When she filed a

1 police report, they would contact the central
2 detective, central detective would come out and talk
3 to them. Possibly if there was still a crime scene
4 they'd have crime scene come out.

5 If it was what she was saying it was, they
6 would take the victim to probably MUSC to do a rape
7 kit. I told her -- I think she inquired was it a
8 long process and I advised her that -- because I
9 think they were leaving in the next two weeks or
10 three weeks, they were getting ready to go back to
11 Maine.

12 I told her the process would be a long, drawn
13 out process to get everything squared away.

14 MS. SHEALY: I have no further questions for
15 you. Thank you very much.

16 MS. HUNTER: I just have one question, Your
17 Honor.

18 THE COURT: You may proceed.

19 CROSS-EXAMINATION

20 BY MS. HUNTER:

21 Q Did you talk to Andrew Sosebee?

22 A No.

23 Q Who all did you talk to? Just Kaitlyn
24 Moriarty?

25 A Yes.

1 MS. HUNTER: Okay, that's it. Thank you.

2 THE COURT: Any redirect?

3 MS. SHEALY: No, Your Honor.

4 THE COURT: Any objection to the witness being
5 excused from the state?

6 MR. FINCH: None, Your Honor.

7 THE COURT: From the defense?

8 MS. HUNTER: None, Your Honor.

9 THE COURT: Sir, you are excused.
10 Call your next witness.

11 MR. FINCH: Sgt. Harry Mills.

12 SGT. HARRY MILLS, JR.,
13 after having first been duly sworn to state the
14 truth, the whole truth and nothing but the truth,
15 testified on his oath as follows:

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MR. FINCH:

19 Q Good morning, Sgt. Mills. If you would just
20 tell the jury where it is you are employed?

21 A I'm currently employed with the city of
22 Charleston Police Department.

23 Q How long have you been with the city?

24 A 21 years.

25 Q What is your position with the city?

1 A Currently I'm a patrol supervisor in West
2 Ashley.

3 Q And August 2nd, 2008, what was your position
4 with the city?

5 A I was a detective in the Central
6 Investigations Division.

7 Q I'm going to take you back to August 2nd,
8 2008. Were you dispatched to a call at [REDACTED]
9 [REDACTED]

10 A Yes, I was.

11 Q What was the nature of that call?

12 A In reference to a criminal sexual assault.

13 Q And how did you get dispatched from the
14 central?

15 A The supervisor or the officers on the scene
16 called dispatch, dispatch then calls me over the
17 radio.

18 Q What was your role in the investigation of the
19 call?

20 A I was the responding detective. I believe it
21 was a weekend, and I had weekend duty, so therefore I
22 was on duty for the weekend, that's why they called
23 me.

24 Q What would be your duties and responsibilities
25 as the on-call detective?

1 A Come in and take statements, advise the patrol
2 officer if they needed to make an arrest. Mainly to
3 take statements.

4 Q Did you take some statements?

5 A Yes, sir, I did.

6 Q Do you recall how many statements you took?

7 A I took three statements.

8 Q Did you interview people at the scene?

9 A Yes, sir, I did.

10 Q Do you recall who those people were?

11 A I interviewed the victim, Ms. Philbrook, and
12 Ms. Moriarty at the scene.

13 Q Did they give statements at the scene?

14 A Yes, sir, they did.

15 Q Do you recall how long you spent with each of
16 them?

17 A I was probably with each of them for about 10
18 minutes, 15 minutes.

19 Q Did you call any other officers to respond to
20 the scene?

21 A No, sir, I did not.

22 Q Do you recall any other officers arrive at the
23 scene?

24 A Yes, sir. The reporting officer, which I
25 believe was McGowan. And I believe their supervisor,

1 which I don't know who the supervisor was.

2 Q Do you recall if crime scene responded?

3 A Crime scene responded.

4 Q Do you know the nature of anything that crime
5 scene did at the scene?

6 A I know they took some items from the bathroom,
7 I believe some clothing, some bedding and a pillow
8 case.

9 Q Generally, although that's not your
10 responsibility, what does crime scene do with those
11 items?

12 A They take them back to their office and they
13 process them.

14 Q And did you do anything else with this
15 investigation?

16 A I did contact Mr. Spradling, which he later
17 came down to the station later that evening and gave
18 me a statement.

19 Q And that would be Jesse Spradling?

20 A Yes.

21 Q Did you have any other handlings with any MUSC
22 employees?

23 A Yes, sir. I went to the MUSC Women's Clinic
24 up in North Charleston and I spoke with the nurse and
25 she advised me what she found.

1 Q What was that?

2 A She said there was -- Ms. Pratt advised there
3 was no signs of tearing but there was bruising of the
4 victim's leg. That's all she said.

5 Q Did you transport the victim?

6 A No, sir, I did not. Officer McGowan did.

7 Q Do you know if she transported the victim and
8 Ms. Moriarty, or do you have any knowledge of that?

9 A I don't remember if Ms. Moriarty went.

10 MR. FINCH: No further questions, Your Honor.

11 THE COURT: Any questions for the witness?

12 MS. HUNTER: Very briefly, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. HUNTER:

15 Q How are you doing this morning?

16 A I'm doing well.

17 Q Sorry you had to come here. Did you take the
18 statements on August the 2nd?

19 A Yes, ma'am.

20 Q About three years ago; is that correct?

21 A Uh-hum.

22 Q You took them from Kaitlyn Moriarty and
23 Tuesday Philbrook and Jesse Spradling?

24 A Yeah.

25 Q I think it's spelled differently in some of

1 the places. Were they given a time limit to give
2 their statements?

3 A No, ma'am.

4 Q You said you were with them about 10 to 15
5 minutes?

6 A Yeah. I said take your time, write down what
7 happened.

8 Q How long have you been with the police
9 department?

10 A 21 years.

11 Q 21 years. And how many statements do you
12 think you've taken in the 21 years?

13 A I have no idea, there is a lot.

14 Q Did you tell the witnesses to make sure that
15 they give a full detailed and accurate statement?

16 A Yes, ma'am.

17 Q Did you tell them that it's important to do
18 that?

19 A Uh-hum.

20 MS. HUNTER: That's all I have, Your Honor.

21 THE COURT: Any redirect?

22 MR. FINCH: Briefly, Your Honor.

23 THE COURT: You may proceed.

24 REDIRECT EXAMINATION

25 BY MR. FINCH:

1 Q In your experience as a law enforcement
2 officer, is every detail from every case in every
3 statement?

4 A No, sir.

5 MR. FINCH: No further questions.

6 THE COURT: Any objection to the witness being
7 excused from the State?

8 MS. SHEALY: No, Your Honor.

9 THE COURT: From the defense?

10 MS. HUNTER: No, Your Honor.

11 THE COURT: Sir, you are excused.

12 MS. HUNTER: Matter of law, Your Honor.

13 THE COURT: Approach.

14 (Whereupon, a discussion was held at the bench
15 off the record.)

16 THE COURT: Madam Forelady, ladies and
17 gentlemen of the jury, we are going to take a brief
18 restroom break. During the break please do not
19 discuss the case, and please leave your notepads in
20 your seats. We will be out about 10 minutes.

21 (Whereupon, the jurors exit the courtroom.)

22 (Whereupon, a recess was taken.)

23 THE COURT: Who is the State's next witness?
24 Is she already in the courtroom?

25 MR. FINCH: She is, Your Honor.

1 THE COURT: Who's after that?

2 MR. FINCH: Carrie Pratt.

3 THE COURT: And after that?

4 MR. FINCH: Tuesday Philbrook.

5 THE COURT: Is that it?

6 MR. FINCH: That's it, Your Honor.

7 (Whereupon, the jurors enter the courtroom.)

8 THE COURT: Thank you, you may take your

9 seats.

10 State may proceed.

11 MR. FINCH: Thank you, Your Honor. Lisa

12 Altine.

13 MS. LISA ALTINE,

14 after having first been duly sworn to state the

15 truth, the whole truth and nothing but the truth,

16 testified on her oath as follows:

17 THE COURT: You may proceed.

18 MR. FINCH: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. FINCH:

21 Q Ms. Altine, please tell the court where it is
22 that you are employed?

23 A Currently I'm a patrol sergeant with the City
24 of Charleston Police Department, working Team One
25 downtown.

1 Q How long have you been with the city police?

2 A About 12 and a half years.

3 Q What are the duties and responsibilities you
4 have as a patrol sergeant?

5 A Respond to calls. Supervise the individuals
6 that work with me in my squad.

7 Q And in 2008, August of 2008, were you employed
8 as a patrol sergeant?

9 A No, I was in the central investigations at
10 that time.

11 Q What was your title in central investigations?

12 A I was detective with robbery assault
13 specializing in sexual assaults.

14 Q What would be some of the duties and
15 responsibilities you had in that position?

16 A Responded to any type of incident within the
17 city where a detective was needed. When cases were
18 assigned to me with reference to assaults, I would do
19 follow-up and see the case through some type of
20 disposition.

21 Q And did you respond to a call on August 2nd,
22 2008?

23 A No.

24 Q When did you, or how did you receive the case?

25 A I received the case on Monday following the

1 weekend. Corporal Mills, or Sgt. Mills, had
2 responded as the detective on-call for the weekend.
3 He did what he did protocol wise, he wrote up a
4 supplemental information as to what -- as to how he
5 responded and what he did. And then the case was
6 assigned to me on that Monday.

7 Q why would the case have been assigned to you?

8 A In our department we have a burglary section,
9 we have a robbery section, we have a sexual or an SVU
10 section, and a violent crime section. So the cases
11 are dispersed on a Monday for what transpired over
12 the weekend.

13 Juvenile incidents, sexual assault, criminal
14 domestic violence will come to the unit I was in.

15 Q What was your role then in the investigation
16 of this crime?

17 A The case was assigned to me so I was the
18 investigator or the detective assigned the case.

19 Q What steps did you take to investigate this
20 case or to complete the file?

21 A Upon receiving the paperwork that was
22 completed over the weekend, I reviewed the
23 information as to what transpired. The individual's
24 name that was involved was Cameron Ross.

25 And I believe -- if I can refer back to my

1 notes, I think it was August 4th I contacted SLED and
2 requested a six-pack lineup to see if the victim and
3 the witness could identify William Cameron Ross. So
4 that was one thing that I did upon receiving the
5 information.

6 I also contacted both the victim and the
7 witness and had to set up times to meet with them to
8 re-interview them.

9 Q When you re-interview them, did anything
10 change from the statements they had given Sgt. Mills?

11 A No. They were still upset about what
12 transpired. You know, the information remained the
13 same. They just went over their stories again for
14 me. And, you know, I just went forward from there.

15 Q You said that you asked SLED to develop a
16 six-pack lineup?

17 A Yes.

18 Q I'm going to show you what has been admitted
19 into evidence as State's Exhibit No. 7. Can you
20 identify that document?

21 A Yes. It is one of the lineups that I did.
22 This one was for Kaitlyn Moriarty. It's the
23 admonition form and then the lineup itself.

24 Q Was she able to identify the suspect?

25 A She was.

1 Q How did she do that?

2 A She circled number two, she put her name and
3 the date on the person she identified as the
4 individual.

5 Q Was there any complication with that?

6 A No, not at all.

7 MS. HUNTER: No objection.

8 Q (By Mr. Finch) I'm going to show you now what
9 has been marked for identification purposes only as
10 State's Exhibit 8.

11 Can you identify that document?

12 A This is the lineup that Tuesday Philbrook
13 looked up, admonition form as well.

14 Q When you showed them those lineups, were they
15 together or were they separate?

16 A No, they were separate. And as I recall they
17 were done on two separate dates. No, they were not
18 together when these were done.

19 Q Was there any complications to this
20 identification?

21 A Not at all.

22 MR. FINCH: Your Honor, State moves for
23 admission of State's 8.

24 THE COURT: Any objection?

25 MS. HUNTER: No objection.

1 THE COURT: Marked and admitted without
2 objection.

3 (Whereupon, State's Exhibit No. 8 is admitted
4 into evidence.)

5 MR. FINCH: No further questions, Your Honor.

6 THE COURT: Any questions for the witness?

7 MS. HUNTER: Yes, Your Honor.

8 THE COURT: You may proceed.

9 CROSS-EXAMINATION

10 BY MS. HUNTER:

11 Q Detective Altine, how many witness statements
12 did you take in this case?

13 A I did not take any witness statements.

14 Q In your warrant did you -- or in your incident
15 report did you put down that you had interviewed
16 witnesses in this case?

17 A I interviewed Ms. Philbrook and Ms. Moriarty.

18 Q As a result of that interview, did you put in
19 your report that Ms. Moriarty states she had one
20 drink the entire evening?

21 A I don't recall that.

22 Q If I showed you your report, would that
23 refresh your memory?

24 A Yes.

25 Q Do you want me to show you the report?

1 A Uh-hum. I'm looking at it right now, is it
2 the same one dated August 7th, the supplemental
3 report?

4 Q I have got August 2nd. No -- yes, August 2nd
5 I have got one.

6 A Which report are you referring to, the 2nd
7 or --

8 Q The 2nd. Did you put in any of your reports
9 that she stated she had only one drink the entire
10 evening?

11 A Not that I'm aware of.

12 Q Okay. And did you put in your report that
13 there were no signs -- no findings were located for
14 any sexual assault?

15 A Correct.

16 Q You also put in your warrant that Tuesday
17 Philbrook was in a semiconscious state; is that
18 correct?

19 A I'm trying to locate it. Can you show me
20 that?

21 Q I know it's kind of hard to go back and forth.
22 Did you need a copy of the warrant?

23 A The warrant or the statement?

24 Q The warrant, whether or not you put in the
25 warrant that Tuesday Philbrook was in a semiconscious

1 state?

2 A That I recall putting, yes.

3 Q You didn't put in there anything about being
4 mentally incapacitated?

5 A I don't have the warrant in front of me. If
6 you could show me a copy?

7 Q Sure.

8 I'm going to give to you -- let me show Mr.
9 Finch first.

10 MS. HUNTER: May I approach the witness, Your
11 Honor?

12 THE COURT: You may.

13 Q (By Ms. Hunter) I'm sorry I was waiting on
14 you.

15 A The question again?

16 Q Did you put in there, I'm going to rephrase
17 the question, that she was mentally incapacitated due
18 to alcohol and in a semiconscious state?

19 A Yes. That's what I have in there.

20 Q I think that clarifies, I might have been a
21 little bit confusing as well.

22 And the statement, you put in there that you
23 relied on statements taken by witnesses, correct?

24 A You are talking about the affidavit?

25 MS. HUNTER: Beg the Court's indulgence.

1 THE COURT: Yes.

2 Q (By Ms. Hunter) Yes, the third paragraph.

3 A Yes.

4 Q Where -- does it say, the above is true and
5 believable based on the statements, more than one
6 statement?

7 A Statements provided by the victim who
8 identified the defendant in a photographic lineup,
9 witness statements.

10 Q And you put in there, who observed this
11 happening, committing an assault?

12 A Who observed the defendant commit the assault.

13 Q Who would that be?

14 A That would be Ms. Moriarty.

15 Q That's the only person that you interviewed or
16 you know of that actually saw something?

17 A Yes, ma'am.

18 Q Do you have any knowledge or recollection if
19 anyone involved in this incident called 911 or any
20 kind of ER urgency number?

21 A No, I have no information on that.

22 Q Did you notice any bruises or injuries on
23 Tuesday Philbrook when you saw her?

24 A I observed no bruising on the visible part of
25 her body. The only information I had about bruising

1 was provided on August 4th by Faye LaBuff, an MUSC
2 nurse, who talked about her bruising.

3 Q You actually saw Cameron at some point in time
4 recently after this happened, correct?

5 A Yes, I did.

6 Q Do you recall what day that was?

7 A I have on here that it was arranged that he
8 would turn himself in on the 7th of August which in
9 fact he did.

10 Q Did you notice any bruises on him or any
11 injuries on him?

12 A No, I did not.

13 MS. HUNTER: That's all I have, Your Honor.

14 THE COURT: Any redirect of the witness?

15 MR. FINCH: Briefly.

16 REDIRECT EXAMINATION.

17 BY MR. FINCH:

18 Q Detective Altine -- Sgt. Altine, I apologize.
19 If you could take a quick look over your supplemental
20 that you prepared on the 7th.

21 And pursuant to Ms. Hunter's question identify
22 where in there you stated that Ms. Moriarty stated
23 she had one drink?

24 A I have no documentation of that at all.

25 Q Ms. Hunter asked you about bruising on the

1 victim, you said you didn't see any bruising?

2 A No.

3 Q Did you have occasion to look on her inner,
4 upper left thigh?

5 A No, I did not

6 MR. FINCH: No further questions, Your Honor.

7 THE COURT: Any --

8 MS. HUNTER: One other question just to
9 clarify.

10 RECROSS-EXAMINATION

11 BY MS. HUNTER:

12 Q We discussed that you put in your warrant, not
13 the incident report, that she was mentally
14 incapacitated due to a semiconscious state; is that
15 correct?

16 A Correct.

17 MS. HUNTER: Seems like there was some
18 confusion about that. That's all I have.

19 THE COURT: Any further questions from the
20 State?

21 MR. FINCH: None, Your Honor.

22 THE COURT: Any objection to the witness being
23 excused from the State?

24 MR. FINCH: No, Your Honor.

25 THE COURT: From the defense?

1 MS. HUNTER: No, Your Honor.

2 THE COURT: You are excused, ma'am.

3 You may call your next witness.

4 MR. FINCH: Thank you, Your Honor. Carrie
5 Pratt.

6 MS. CARRIE PRATT,
7 after having first been duly sworn to state the
8 truth, the whole truth and nothing but the truth,
9 testified on her oath as follows:

10 THE COURT: You may proceed.

11 MR. FINCH: Thank you, Your Honor.

12 THE COURT: You're welcome.

13 DIRECT EXAMINATION

14 BY MR. FINCH:

15 Q Ms. Pratt, what is your occupation?

16 A Right now I'm a nurse practitioner.

17 Q Do you have a specialty as a nurse
18 practitioner?

19 A I do. I'm a women's health nurse
20 practitioner.

21 Q What are your duties and responsibilities as a
22 nurse practitioner?

23 A Right now I'm with the Department of Health,
24 and I do family planning and STD services with them.

25 Q In August of 2008, was that your occupation?

1 A No, it wasn't.

2 Q What was your occupation in August of 2008?

3 A I was a registered nurse working at MUSC, and
4 on the side I did the SANE team.

5 Q Explain to us what the SANE team is?

6 A SANE stands for Sexual Assault Nurse Examiner.
7 And anytime a call comes into the police department,
8 we are notified, and we meet the victim at the MUSC
9 Women's Health Center at Northwoods and do the exam.

10 Q Before we get into the exam itself. At that
11 time, August 2008, roughly how many exams had you
12 performed up to that time?

13 A Independently I had done about ten exams
14 myself.

15 Q When you say independently, does that mean
16 without supervision?

17 A Yes.

18 Q With supervision, roughly, how many exams do
19 you think you had done?

20 A I would say around 20.

21 Q So is 30 maybe would be the answer for total
22 exams?

23 A 20 total exams.

24 Q Okay. And what is the purpose of a forensic
25 exam?

1 A To collect any DNA or evidence from the
2 victim.

3 Q Okay. And let's -- take us through the exam.
4 What are the procedures you follow and how did the
5 exam happen?

6 A Just the exam or do you want me to start -- we
7 interview the patient first.

8 Q The first step is to interview the patient?

9 A Yes.

10 Q Tell us how that happens?

11 A The victim is brought to MUSC Northwoods
12 clinic with the police. I bring just the victim into
13 my office, and we do the interview process in my
14 office.

15 Q What are the questions you ask during the
16 interview process?

17 A We do all the demographic information as far
18 as address, age, all that stuff. Then we talk about
19 any pertinent medical history, last period, was it a
20 normal period. Any surgeries or medical treatment
21 she has had in the past. If she's allergic to any
22 medications. Then we kind of get into the exam.

23 Or, I'm sorry, we get into -- what happened
24 during the assault.

25 Q Is that what you refer to as the medical

1 history?

2 A The medical history is more like, have you had
3 any surgeries, diagnostic procedures or medical
4 treatment that might affect the interpretation of
5 these findings.

6 Q Then you said you move on to what happens
7 from?

8 A Yes. I ask basic questions such as, have you
9 had consensual intercourse within seven days, was a
10 condom used, any voluntary use of alcohol or drugs,
11 what have you done since the exam, urinated, gone to
12 the bathroom, showered, changed clothing, anything
13 like that.

14 Q And the purpose of those questions is?

15 A To get an idea of what has happened, how my
16 exam needs to be -- how to focus my exam.

17 Q Then you move on to the description of the
18 assault?

19 A Yes. I ask the patient to, in her own words,
20 tell me what happened.

21 Q Did you do that with Ms. Philbrook?

22 A Yes.

23 Q Was she able to provide you with that
24 information?

25 A She was.

1 Q How was she able to provide you with that
2 information?

3 A Well it's in third person, so I mean.

4 Q What do you mean by that?

5 A It's kind of there are things that she
6 wouldn't have known happened because they were when
7 she wasn't in the room.

8 Q I'm sorry?

9 A So like it says, once we got to Kaitlyn's
10 apartment, she put me in her bed and went back
11 downstairs with the two guys. That was third person,
12 like she's telling me what she did.

13 Q Why was she unable to tell you exactly what
14 happened, or do you know?

15 A I don't know.

16 Q Did she report an independent memory of the
17 events?

18 A No, she didn't.

19 Q So all the information she had came from Ms.
20 Moriarty?

21 A I would assume.

22 Q Then did you move on to the physical portion?

23 A Yes.

24 Q What is entailed in the physical portion of
25 the SANE exam?

1 A I'm sorry?

2 Q What do you do in the physical exam in order
3 to get the findings?

4 A Okay. We do different DNA questions. Like I
5 scrape underneath the fingernails; I collect hair
6 from the head; I ask the patient if she remembers any
7 kissing or licking or biting or anything like that,
8 sometimes you can get DNA from that area.

9 I also do like a complete pelvic exam, looking
10 for any bruising, tearing, anything that I can see.

11 Q How long does the physical exam take?

12 A The physical exam usually takes roughly about
13 an hour.

14 Q And is anyone else present during this?

15 A No, just the patient and me.

16 Q Do you also take swabs?

17 A Yes.

18 Q Where did you take those from?

19 A We do oral swabs, I do outside the vagina, I
20 do inside the vagina, and then around the rectum.

21 Q What is the purpose of that?

22 A Again just -- I mean again just DNA, see if I
23 can get any DNA collection.

24 Q And that would be used for what?

25 A Any forensic evidence.

1 Q Potentially to identify someone?

2 A Yes.

3 Q So what did you do with those swabs?

4 A They're placed in a dryer and dried. Then
5 they're put in an envelope and sealed with a sticker
6 with my initials. And then put back into the box.

7 Q Did you also do an inspection of the body for
8 any injuries?

9 A We do.

10 Q And during that inspection, were there any
11 findings there?

12 A Yes. I noted a bruise on her left inner
13 thigh.

14 Q What was the size of that bruise?

15 A I have documented one by three centimeters.

16 Q Is there anything in your documentation that
17 further describes that bruise?

18 A There is not.

19 Q Was the patient ever give an explanation as to
20 how that got there?

21 A I don't think so. I didn't have that
22 documented.

23 Q Do you recall if the victim knew if that was a
24 new wound?

25 A I don't recall.

1 Q How do you document injuries such as that that
2 you find?

3 A We have a diagram in the computer system. I
4 document where the bruise was, and then it will come
5 up left inner thigh. What it is, if it's a scratch,
6 whatever, bruise, then I measured it.

7 Q Were you able to put exactly where that injury
8 is in your paperwork?

9 A Yes.

10 Q And by looking at your paperwork, can you tell
11 us in relationship to Ms. Philbrook's body where that
12 would have been?

13 A The left inner thigh.

14 Q How high up on the thigh?

15 A It looks about midway.

16 Q Did you take any photographs of that?

17 A I did take four photographs that I have
18 documented.

19 Q Do you know what happened to those
20 photographs?

21 A I don't.

22 Q Where would those normally be?

23 A Saved on to the computer.

24 Q Pursuant to my request, do you know if they
25 were able to find those photos?

1 A No.

2 Q You don't know or they weren't?

3 A I don't know.

4 Q What happens to the swabs and the items in the
5 kit after the exam, after they're stored, where do
6 they go?

7 A Once I have collected all the data, a copy of
8 my report goes into the box, the box is sealed with
9 evidence stickers and again initialed, and then
10 placed in the refrigerator.

11 Q Did you take any blood samples or urine
12 samples?

13 A I have documented that I did not take blood
14 samples.

15 Q Is that normal?

16 A If I can't -- if I don't see veins that I can
17 draw from, I mean, yes, it can be normal.

18 Q Regarding any other injuries, aside from the
19 bruise, what other injuries were noted in the file?

20 A I don't believe any other, nothing else was
21 found.

22 Q It has been testified earlier that there were
23 what was called no findings. What does that mean?

24 A No findings to me would be that there was
25 nothing found.

1 Q As in?

2 A During the exam, no injuries were found.

3 Q Aside from the bruise, a bruise was found,
4 correct?

5 A Yeah, I found a bruise.

6 Q But other items, no findings, are we talking
7 about DNA evidence?

8 A I'm not sure what you are asking.

9 Q What does no findings refer to? Obviously we
10 have an injury, would that mean DNA evidence, semen,
11 biological evidence?

12 A Yes.

13 Q Is that out of the ordinary to have no
14 findings?

15 A No.

16 Q Why is that?

17 A I mean there could be a lot of reasons. There
18 was no findings. The time, you know, if the patient
19 showered, if the patient has changed clothes, like I
20 said, that's why we ask all those questions in the
21 beginning. Have you peed, have you gone to the
22 bathroom, have you used wipes, have you removed a
23 tampon, have you brushed your teeth, have you used
24 mouthwash, those type of things.

25 Q What about injuries, is it odd to find no

1 injuries to the vagina?

2 A No.

3 Q Why is that?

4 A The vagina is designed for sex. It's
5 lubricated, it's a muscle, it stretches. Just
6 because a person has sex doesn't mean there is going
7 to be injuries.

8 Q So by looking at the patient you wouldn't
9 necessarily be able to tell -- would you be able to
10 tell one way or the other what happened earlier that
11 night?

12 A No.

13 Q Looking at the patient would you be able to
14 tell if she consented to sex?

15 A No.

16 Q Looking at the patient would you be able to
17 tell what her state of consciousness was?

18 A No.

19 MR. FINCH: No further questions, Your Honor.

20 THE COURT: Any questions for the witness?

21 MS. HUNTER: Yes, Your Honor.

22 THE COURT: You may proceed.

23 CROSS-EXAMINATION

24 BY MS. HUNTER:

25 Q Hello. When you were -- when Tuesday

1 Philbrook was brought to you, is she the only person
2 -- is she the only person that was with you during
3 this exam?

4 A Yes.

5 Q Okay. And what about her friend Kaitlyn
6 Moriarty, was she there as well?

7 A I don't remember. She was not in the exam
8 room, I know that.

9 Q Do you remember having any conversations with
10 her?

11 A With Kaitlyn?

12 Q Uh-hum.

13 A No.

14 Q But you had testified that Tuesday Philbrook's
15 recollection of the events came through a third party
16 Kaitlyn Moriarty?

17 A Yes.

18 Q It didn't come from her?

19 A It came from Tuesday.

20 Q Yeah, but through a third party; is that what
21 you were talking about?

22 A Yes. Yes.

23 Q And then but you put in your report, do you
24 have your report with you?

25 A I do.

1 Q Okay. You did put in your report that the
2 ability to recall the events it says well?

3 A Can you tell me what page you are on?

4 Q Yes. Okay. It's on page 8 of 11 is what I
5 have got, it's at the bottom section of the report.
6 It says, ability to recall event and well is checked?

7 A Page 8?

8 Q It's rights before the diagrams, at least
9 that's what I have. I'm sorry, 6 of 11 at the bottom
10 part.

11 A I'm sorry, I'm just not seeing it.

12 Q Okay.

13 MS. HUNTER: May I show her this to refresh
14 her memory? May I approach the witness?

15 THE COURT: You may.

16 A Okay. When the patient comes into my room and
17 is telling me a story, I guess I take it as ability
18 to recall events. If she tells me, I don't remember,
19 and she had a story.

20 So I guess I probably shouldn't have checked
21 well, but she didn't say, I don't know what happened,
22 I have no memory.

23 Q (By Ms. Hunter) Okay, thank you. On that
24 same page up at the top it has, describe general
25 demeanor?

1 A Yes.

2 Q You only checked quiet; is that correct?

3 A Yes.

4 Q So you did not check tearful?

5 A I did not.

6 Q Trembling?

7 A No.

8 Q Anxious?

9 A Nope.

10 Q Angry?

11 A Nope.

12 Q Sobbing?

13 A Uh-uh.

14 Q Tense?

15 A Uh-uh.

16 Q So she was just quiet?

17 A Yes.

18 Q She also, looks like from your report -- let's
19 go to page 2 of 11. And she is answering, I guess,
20 your questions that you start out with with your
21 exam; is that correct?

22 A Uh-hum.

23 Q And the ones that you were talking about
24 earlier whether or not she had urinated, defecated,
25 wiped, douched, mouthwash, that kind of thing?

1 A Yes.

2 Q She answered those specifically, did she not?

3 A Yes.

4 Q Yes or no, she did?

5 A Yes.

6 Q And then also she didn't brush her teeth?

7 A Right.

8 Q Did she say why?

9 A No.

10 Q Okay. She also indicated to you in your
11 report that she had eight shots; is that correct?

12 A Yes.

13 Q Page 4 of 11?

14 A Yes.

15 Q Eight shots. And the only injury that you
16 found on her was a tiny bruise on her left thigh,
17 inner thigh?

18 A Yes.

19 Q How big is that actually, the one that you
20 saw? Was it an M&M size or smaller?

21 A One by three centimeters.

22 Q I don't know if anybody knows how big that is
23 or small that is. Can you say layman's term?

24 A I would say one by three. (Whereupon, the
25 witness indicates.)

1 Q You didn't document what color it was. Was it
2 yellow, blue, purple?

3 A I did not document what color it was, I'm not
4 sure.

5 Q You have been doing this for how long time?

6 A I was a SANE nurse for about a
7 year-and-a-half, two years.

8 Q Did you have any training on the color of
9 bruises and how it indicates how old the bruise is?

10 A No.

11 Q And you took four pictures but we don't have
12 those?

13 A Yes.

14 Q So we have no recollection of what color the
15 bruise was?

16 A Right.

17 Q And then you have put in there that there were
18 no findings of sexual assault?

19 A Where is that?

20 Q In your report that you had -- there were no
21 findings. And the solicitor was talking about it as
22 well, that you had indicated that there were no
23 findings?

24 A Are you referring to page 7?

25 Q I might be. Hold on just a minute.

1 No. I am referring to your findings,
2 actually. But you recall when Solicitor Finch had
3 asked you had put in no findings in your report and
4 that the only injury you saw was a bruise?

5 A On page 8 of 11 I have bruise on the inner
6 thigh. On page 7 there is a different diagram and I
7 have no findings on that one.

8 Q All right. She also --

9 MS. HUNTER: Well, I don't have any further
10 questions. You've answered all my questions. Thank
11 you so much. Thank you for being here.

12 THE COURT: Anything further in redirect?

13 MR. FINCH: Yes, Your Honor.

14 THE COURT: You may proceed.

15 REDIRECT EXAMINATION

16 BY MR. FINCH:

17 Q On your report page 10, did you note at the
18 top that she had changed clothes?

19 A On the top of page 10? Yes.

20 MS. HUNTER: Your Honor, may we approach the
21 bench?

22 THE COURT: You may.

23 (Whereupon, the following discussion was held
24 at the bench.)

25 MS. HUNTER: Beyond the scope.

1 THE COURT: It's responsive to scope directly.

2 (In open court.)

3 THE COURT: Overruled, you may proceed.

4 MR. FINCH: Thank you, Your Honor.

5 Q (By Mr. Finch) Also, Ms. Hunter was just
6 asking you about the bruise and findings. And do you
7 note that in your report?

8 A Do I note the bruise?

9 Q The bruise.

10 A Yes.

11 Q I'm going to show you.

12 MR. FINCH: Your Honor, may we approach?

13 THE COURT: Uh-hum.

14 (Whereupon, the following discussion was held
15 at the bench.)

16 MR. FINCH: I'm going to ask her to identify
17 on her diagram where the bruise is since we just
18 talked about where the bruise was. I have the report
19 that she prepared. I just wanted her to identify it,
20 authenticate it, I was going to offer it into
21 evidence, that's it.

22 MS. HUNTER: This is beyond the scope, it
23 should have been done --

24 THE COURT: On cross you are given broad
25 latitude, but he is entitled to ask any questions in

1 response to your cross-examination and you asked
2 about where the bruise was.

3 MS. HUNTER: I did. But, Judge, that diagram
4 is pointing to a vagina. Not a bruise on her thigh.

5 THE COURT: Yeah, but that only marks where
6 the bruise was.

7 MS. HUNTER: No, it doesn't.

8 THE COURT: It's not shown where it is on the
9 thigh.

10 MR. HUNTER: It's very misleading.

11 THE COURT: She can describe where it is on
12 the thigh.

13 MS. HUNTER: It's very misleading.

14 THE COURT: You can have the victim describe
15 it.

16 MR. FINCH: I understand. Can I have her look
17 at this and clarify where it is. She made it sound
18 like it was the inner thigh.

19 THE COURT: You can use it to refresh her
20 memory, but it's not coming in. It really doesn't
21 show where the bruise is.

22 MR. FINCH: That's fine. Thank you.

23 (In open court.)

24 THE COURT: You may proceed.

25 Q (By Mr. Finch) I'm going to have you look at

1 your report on page 8, that top diagram that
2 identifies where the bruise is?

3 A Yes.

4 Q You testified earlier that it was sort of
5 mid-thigh. Judging from your diagram, what is the
6 proximity of that bruise to the vagina?

7 A I would say I meant upper mid-thigh, upper
8 thigh but in the middle. That's like right in the
9 middle I would think.

10 Q In the middle of the thigh but on the upper
11 portion of the thigh?

12 A Yes.

13 Q How close to the bikini line is that bruise?

14 A Very close.

15 MR. FINCH: Thank you.

16 No further questions, Your Honor.

17 THE COURT: Any objection to the witness being
18 excused from the State?

19 MR. FINCH: None from the State.

20 THE COURT: From the defense?

21 MS. HUNTER: No, Your Honor.

22 THE COURT: Ma'am, you are excused.

23 THE WITNESS: Thank you.

24 THE COURT: Could counsel approach for me,
25 please.

1 THE COURT: Okay. Go ahead and have her stand
2 there.

3 (Whereupon, the jurors enter the courtroom.)

4 THE COURT: Everyone have their notebooks?
5 Ladies and gentlemen, I hope that you had a
6 pleasant luncheon recess. We will now resume with
7 the testimony.

8 State may call its next witness.

9 MS. SHEALY: Tuesday Philbrook.

10 MS. TUESDAY PHILBROOK,
11 after having first been duly sworn to state the
12 truth, the whole truth and nothing but the truth,
13 testified on her oath as follows:

14 THE COURT: You may proceed.

15 MS. SHEALY: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 DIRECT EXAMINATION

18 BY MS. SHEALY:

19 Q If you would please tell the jury how old you
20 are?

21 A I'm 24 years old.

22 Q Where did you grow up?

23 A I grew up in Old Town, Maine.

24 Q We have already heard Kaitlyn testify, you all
25 have been good friends since you were around 8 years

1 old; is that correct?

2 A Yes.

3 Q When you finished high school, where did you
4 go to school?

5 A I went to the University of Maine, in Orono.

6 Q Orono, that's the campus that you attended?

7 A Yes.

8 Q Tell us what you are doing now. Are you still
9 in school?

10 A Yes, I am still in school.

11 Q Where are you in school now?

12 A I moved down to Portland, Maine, two hours
13 south of my hometown. I go to USM, another campus.

14 Q Another satellite?

15 A Yes.

16 Q Are you also working right now?

17 A Yes, I am.

18 Q Where do you work?

19 A My fiance and I have a small business.

20 Q What type of business is that?

21 A We recycle shells. We recycle lobster, clam
22 and muscle shell. We crush it up, and we inlay it in
23 coffee mugs and in bamboo cheese boards and in bamboo
24 tile.

25 Q I'm going to go ahead and focus your attention

1 back to the summer of 2008. Tell the jury what the
2 circumstances were for you to come to Charleston
3 during that summer?

4 A Circumstances?

5 Q Why did you come to Charleston that summer?

6 A I missed my best friend. We spent every
7 summer together. And I was board. I had nothing to
8 do. It turns into a ghost town during the summertime
9 in Old Town.

10 Q Had Kaitlyn painted a pretty picture of
11 Charleston for you?

12 A Beautiful picture. It was like every book
13 I've ever read.

14 Q When you came here that summer, do you
15 remember what month you got here?

16 A I got here at the end of May, June.

17 Q And at first you and Kaitlyn were living
18 where?

19 A We were living with her sorority sisters on
20 Rutledge.

21 Q Like on Rutledge?

22 A Yep.

23 Q Now focusing your attention then back to
24 August, August 2nd. Where were you all living at
25 that time?

1 A We were living with my friend Cassidy.

2 Q What was the address of that location?

3 A Ascot, [REDACTED]

4 Q That's in Charleston County?

5 A Yes.

6 Q Okay. Now if you could tell us about the day
7 before, August 1st, and what your plans were for that
8 day and into the evening hours?

9 A Kaitlyn and I woke up that morning and just
10 decided just to spend some quality time with each
11 other. We just like sat around and talked and
12 decided that we would do our hair.

13 And Kaitlyn loves doing hair. And she used to
14 braid my hair before we used to go to school.

15 Q Why don't you take a second to kind of take a
16 deep breath. I put some water up there for you.

17 A So we went to the store and we got hair dye.
18 And we came back and we did each other's hair. And
19 then we went to the liquor store to go get alcohol
20 because our plans were that we were going to go out
21 and go dancing.

22 Q Let me interrupt you for a second.

23 A Okay.

24 Q During that summer, where were you working?

25 A I was working at Hymans.

1 Q what shift would you typically work there?

2 A I would be working during the day. So it was
3 unusual for us both to have the day off together. So
4 we decided that we were just going to be able to
5 spend it with each other.

6 Q Okay. And the plan then was to do what later
7 in the evening?

8 A Go out.

9 Q When you say go out, you all were going to go
10 to a bar?

11 A Yeah, we were going to go out to -- we hadn't
12 decided on where we were going to go. We normally
13 just got dressed, got ready, and then decided, you
14 know, wherever the most people were going because
15 that's where we decided like everybody was having the
16 most fun.

17 Q Okay. Now when you all were getting ready to
18 go out, over the course of the evening, if you would,
19 please, tell the jury what you had to drink?

20 A I had four shots.

21 Q What type of shots were you drinking?

22 A I was drinking cherry vodka.

23 Q And again that's a small amount of straight
24 vodka?

25 A Yes.

1 Q And when you were having those four shots, did
2 you have all four right before you left to go, were
3 they spread out or what?

4 A They were spread out throughout the night. We
5 didn't leave until 10:00, and we got back from the
6 liquor store around like six o'clock. We were just
7 getting ready. We took showers. Got our dresses.
8 That took a while trying to figure out what I was
9 going to wear for the night.

10 But after that, we sat in kitchen talked, took
11 a shot, called a friend, you know, just rambled on.
12 And, you know, we'd take another shot in the next
13 hour and until we called the cab.

14 Q And earlier that day, during the day when you
15 all were running errands and doing your hair, did you
16 eat anything that day?

17 A I didn't.

18 Q Why didn't you eat?

19 A Because I wanted to look good in whatever I
20 wore out.

21 Q Okay. Now when you and Kaitlyn left the
22 apartment or the house to go down to Market Street,
23 how did you all travel there?

24 A We called a cab.

25 Q Okay. Tell the jury, if you would, when you

1 got let out on Market Street, what did you do at that
2 point?

3 A He dropped us off right near the Purple Tree
4 Lounge and we got out and went and got in line at the
5 Purple Tree.

6 Q When you got in line there, did either of you
7 see anyone that you knew?

8 A Kaitlyn did, she saw a friend of hers, said
9 someone that she worked with, Jesse.

10 Q Tell the jury whether someone was with Jesse?

11 A Cameron Ross was with Jesse.

12 Q Were you introduced to Cameron at that point?

13 A Yes.

14 Q Now while you all were waiting in line, was
15 there some time you were waiting for Kaitlyn's ID to
16 make its way back?

17 A Kaitlyn, she has like this cigarette case that
18 she keeps her -- like, metal case, that keeps her
19 money and everything in. She was just paying the cab
20 and it slipped out, like it normally slips out, and
21 fell in the crack of the cab.

22 Q While you were waiting to go into Purple Tree
23 then, did you spend much time at all with Jesse and
24 Cameron Ross?

25 A No.

1 Q Once you get inside the Purple Tree, if you
2 would please describe to the jury what do you do at
3 that point?

4 A When we got into the Purple Tree we decided to
5 grab a drink and just -- because it took us like an
6 hour to get in there -- we grabbed a drink and we
7 immediately went on the dance floor, trying to get in
8 the last few hours of the club and started dancing.

9 It's a huge dance floor, almost like this
10 courtroom. Just started dancing and having fun.

11 Q What did you do? Do you recall about how many
12 times you and Kaitlyn, how many songs you all danced
13 to, or do you not remember?

14 A No.

15 Q At some point do you leave Kaitlyn on the
16 dance floor?

17 A Yes.

18 Q What did you go and do?

19 A I decided to go to the bar to go get a drink.
20 And while I was at the bar I met this older couple,
21 sweet couple, and they were just visiting. We kind
22 of connected because they were new to the town, and I
23 was telling them all the new places and things that I
24 had seen.

25 They bought me a shot. And one shot turned

1 into another shot. And I didn't even know.

2 Q Didn't know what?

3 A I didn't even know like -- I was just like
4 continuously just having fun and they just were
5 giving me drinks.

6 Q Do you remember what type of shots you were
7 having?

8 A SoCo lime.

9 Q And did you rejoin Kaitlyn on the dance floor,
10 or did you stay at the bar with the couple?

11 A I stayed at the bar with the couple.

12 Q Now at any time while you were at the bar with
13 the couple, did you have a conversation with Cameron
14 Ross?

15 A No.

16 Q Did you have a conversation with Jesse?

17 A No.

18 Q Could you see who Kaitlyn was dancing with?

19 A Yes.

20 Q Okay. And who did you see Kaitlyn dancing
21 with?

22 A Jesse.

23 Q After you were hanging out at the bar area,
24 did you ever leave that couple or did you stay there
25 until it was time to leave?

1 A I stayed there until it was time to leave.

2 Q How does the Purple Tree let people know when
3 it's time for them to close?

4 A They flick the lights on. It goes from like
5 bright lights, different color lights, to all the
6 sudden white lights.

7 Q Okay. Did that in fact happen while you all
8 were still there?

9 A Yes.

10 Q If you would please described for the jury how
11 you were feeling and what you did at the point that
12 you needed to leave?

13 A When I was -- the lights came on, Kaitlyn had
14 found me at the bar. She told me, you know, it's
15 time for us to leave. And we tried going -- I tried
16 going down the stairs and was having difficulty.

17 Tried taking my shoes off while I was still in
18 there and ended up walking out of the Purple Tree and
19 having trouble walking.

20 Q Do you remember whether you had a cigarette
21 when you get outside of the Purple Tree?

22 A No.

23 Q You don't remember whether you did or not?

24 A I mean I normally smoke cigarettes, yes.

25 Q Okay.

1 Do you specifically remember having a
2 cigarette?

3 A Yes.

4 Q When you were leaving and you were struggling
5 with your shoes, did you leave your shoes on or take
6 them off?

7 A I took those off.

8 Q After taking the shoes off, tell the jury
9 whether or not you were able to walk at that point?

10 A After I got out of the Purple Tree, I decided
11 that -- I couldn't walk, so I decided that I would
12 take a seat on the sidewalk, took my shoes off and
13 sat on the sidewalk.

14 Q This would be the sidewalk on what street, if
15 you remember?

16 A On Market Street.

17 Q You are talking --

18 A Yeah, Market Street.

19 Q You are telling us Market Street right there,
20 literally the sidewalk where people walk?

21 A Right.

22 Q You sat down on the sidewalk?

23 A Yes.

24 Q Were you approached by a police officer?

25 A I nodded off.

1 Q You what?

2 A I put my -- I just kind of like was falling
3 asleep. And the police officer came up to me and
4 kicked me in my foot and told Kaitlyn that you need
5 to move your friend, she needs to get up and move.

6 Q okay. If you would, Tuesday, please tell the
7 jury what you remember from that point?

8 A I don't remember anything.

9 Q Do you remember getting into Jesse's car at
10 any point?

11 A (Negative had shake.)

12 Q You're going to have to answer for the record.

13 A No.

14 Q Do you remember getting out of a car on Ascot
15 Street where you live?

16 A No.

17 Q What about opening the door to the car to get
18 out, do you remember any of that?

19 A No.

20 Q What about the side-view mirror?

21 A No.

22 Q Do you remember getting some assistance to
23 walk into the house?

24 A No.

25 Q Do you remember how you got upstairs?

1 A No.

2 Q Do you remember Kaitlyn taking you into you
3 all's bedroom?

4 A No, I don't.

5 Q Well do you remember Cameron Ross coming into
6 your bedroom?

7 A No, I don't.

8 Q Do you remember Kaitlyn coming into your
9 bedroom and turning the light on?

10 A No.

11 Q Could you tell the jury what the next thing
12 you remember is?

13 A The next thing I remember, I woke up, and I
14 didn't know how I got home.

15 Q Was that something you were very proud of?

16 A No. I was confused. I was mad at myself
17 because we were supposed to spend the day together.
18 And I wanted to make it up to her.

19 Q Kaitlyn?

20 A Uh-hum. I put on my bathing suit and went
21 downstairs. And I asked her if she wanted to go to
22 the beach.

23 Q Why don't you take a sip of water.

24 When you indicate you woke up and were
25 confused and wanted to make it up to Kaitlyn, did you

1 actually change clothes in the bedroom?

2 A Yes.

3 Q Okay. And would you tell the jury whether
4 your panties were on when you changed clothes?

5 A I woke up, and I was still in the dress that I
6 had worn that night and it was unusual. Then I had
7 my underwear off.

8 Q Underwear off?

9 A I had my underwear off. Because normally
10 Kaitlyn and I shared the same bed. I normally like
11 get in PJ's.

12 Q Now I need to ask you, when you changed
13 clothes and when you put your bathing suit on you?

14 A Uh-hum.

15 Q Did you feel anything on your body that felt
16 unusual to you?

17 A Yes.

18 Q Okay. Would you describe to the jury what you
19 felt?

20 A I felt irritated in my area.

21 Q In your vaginal area?

22 A My vaginal area. It felt like, like having
23 dry sex. Like irritated, like, I don't know how to
24 describe the feeling.

25 Q Did you notice that anything on your body that

1 you didn't remember from before?

2 A Yes.

3 Q What was that?

4 A I had a bruise on my thigh, and.

5 Q Had you remembered that being there before?

6 A No.

7 Q When you went downstairs and suggested to
8 Kaitlyn that you all go to the beach, did you go to
9 the beach?

10 A No.

11 Q Describe for the jury what happened at that
12 point when you went downstairs?

13 A I went downstairs and Kaitlyn was on the
14 couch. And I looked at her and told her that I
15 wanted to go because I knew I ruined her night
16 because I got too drunk.

17 Q That you wanted to go to the beach?

18 A Yeah. And she looked at me and told me that
19 we weren't going to go to the beach today. And I sat
20 beside her and she told me that I was raped.

21 Q After Kaitlyn told you what all had happened,
22 did you all make a phone call to someone at the
23 police department?

24 A Yes. She had called one of her friends,
25 Craig, who was a police officer, to tell him what --

1 to ask him what would go on because I was not sure of
2 what to do because I didn't remember anything.

3 Q Well when Kaitlyn went through the details of .
4 what she saw, did any of that seem familiar to you?

5 A No.

6 Q The police then came over?

7 A Yes. She told -- her friend told us that we
8 needed to talk to somebody and there is something
9 that we can do to make -- to take action. And he
10 sent over somebody to help us and guide us through
11 this.

12 Q And that is when a series of officers came
13 over?

14 A Yes.

15 Q The first officer, do you remember that being
16 a female? Or do you remember?

17 A I don't remember. I know we had two officers.

18 Q Do you remember giving a statement to
19 Detective Mills?

20 A Yes.

21 Q And were you aware that you were going to have
22 to go get a rape protocol examination done?

23 A Yes.

24 Q When you spoke with the detective, was that
25 before or after you all went to have the rape

1 protocol done?

2 A Before.

3 Q So you knew that was ahead of you?

4 A Yes.

5 Q If you would, please, explain to the jury the
6 course of that afternoon. Was it a quick process
7 from the time the police got there?

8 A No, it was a really long one. I went and sat
9 in the back of a police car, felt like hours, being
10 driven to the hospital.

11 Q And when you got to the medical facility,
12 could you tell the jury whether that was a short
13 process or was that a lengthy process?

14 A It was long. I was in a cold room. I didn't
15 know how to tell -- it was the next day.

16 Q I'm sorry, you've got to slow down.

17 A It was the next day, the same day, and I just
18 didn't know how to.

19 Q How to what?

20 A How to express what had happened to me.

21 Q Did you tell her what Kaitlyn had told you?

22 A Yes, I did.

23 Q And while you were in there, they did the
24 gynecological exam on you?

25 A Yes.

1 Q Now if you would, tell the jury whether after
2 that day and after that exam you met with Detective
3 Altine to look at a lineup?

4 A Yes.

5 Q And was Kaitlyn present when you had to do
6 that?

7 A No, she was not.

8 Q I'm going to show you what has been previously
9 marked at State's Exhibit 8, and ask you if you can
10 identify this?

11 Do you recognize this?

12 A Yes, it's the lineup.

13 Q Okay. And there are several signature places
14 on the form, and then the lineup itself. Would you
15 please tell the jury whether or not those are your
16 signatures?

17 A Yes, those are my signatures.

18 Q When Detective Altine showed you the lineup,
19 please tell the jury, if you would, what number you
20 chose?

21 A I circled number two.

22 Q Okay. And number two was who?

23 A Cameron Ross.

24 Q And you remembered Cameron Ross from what?

25 A From waiting outside for the cab to bring back

1 the ID.

2 Q Okay. And he had been with whom when you
3 first met him?

4 A He was with Jesse.

5 Q Do you see Cameron Ross in the courtroom?

6 A Yes.

7 Q Can you tell us where he is seated?

8 A Right there.

9 (Whereupon, the witness indicates.)

10 MS. SHEALY: Judge, I'd like the record to
11 reflect she has identified the defendant.

12 THE COURT: The record so indicates.

13 Q (By Ms. Shealy) Now skipping ahead a little
14 bit. Do you recall when you had planned on returning
15 to Maine that summer?

16 A It was in two weeks we were going to leave.
17 It was going to be two weeks before my fall semester
18 at school. September 1st.

19 Q And did you in fact wait those two weeks to
20 return to Maine?

21 A No.

22 Q When did you leave to go back?

23 A I left like six days or so after.

24 Q Okay. And you've indicated to us that you had
25 been working at Hyman. Had that been a job that you

1 enjoyed?

2 A Yes.

3 Q When you were making plans to leave, did you
4 intend to give them appropriate notice that you would
5 be leaving?

6 A Yes. They knew when I was leaving and I was
7 going to be able to give them my two weeks.

8 Q Did you in fact return to work after this
9 incident?

10 A No.

11 Q And did you advise Hyman that you would not be
12 able to come back?

13 A Yes, I did. Kaitlyn had a really close bond
14 with the managers there. And that's how I was able
15 to bond with the managers too. And I was able to
16 take them -- one of them aside, and tell them what
17 happened to me and the reason why I couldn't come
18 back to work, and that I had to go home.

19 MS. SHEALY: Beg the Court's indulgence.

20 THE COURT: Uh-hum.

21 MS. SHEALY: Tuesday, I have no further
22 questions for you. Please answer any the defense may
23 have.

24 THE COURT: Ms. Hunter, you may proceed.

25 MS. HUNTER: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 CROSS-EXAMINATION

3 BY MS. HUNTER:

4 Q Would you like me to call you Ms. Philbrook?

5 A Yes.

6 Q Is that okay?

7 A Yes.

8 Q Or do you want me to call you Tuesday? No?

9 Okay. What is the date and the time that you
10 gave your statement to Sgt. Mills?

11 A I don't know.

12 Q You don't know if it was August 2nd or?

13 A It was August 2nd in the afternoon.

14 Q Okay. And where was that?

15 A It was [REDACTED]

16 Q You gave it to him where you were staying with
17 Ms. Moriarty?

18 A Yes.

19 Q And were you told to give a detailed, complete
20 and accurate description of what happened to you?

21 A Yes.

22 Q And you hadn't eaten that night; is that
23 correct?

24 A Yes.

25 Q And you hadn't eaten, I think you testified,

1 because you wanted to look better that night; is that
2 what it was?

3 A I had an eating dis -- I have been struggling
4 with an eating disorder since I was 16.

5 Q Okay. So that's why you didn't eat that day?

6 A Yes.

7 Q Okay. And the four shots, do you normally do
8 four or more shots before you go out at night to
9 dance?

10 A Normally, yes, we would drink beforehand so we
11 can save money and don't have to spend six, seven
12 dollar margaritas or any kind of well drink that
13 costs too much for us.

14 Q So you saved some money doing that?

15 A Uh-hum.

16 Q And I imagine you've heard the testimony of
17 Ms. Moriarty, that would be cherry vodka shots; is
18 that correct?

19 A Uh-hum.

20 Q And then when you got to the bar it was the
21 same thing that she had, I think testified to, SoCo
22 lime shots; is that right?

23 A Yes. It was the same shots that the couple
24 that I was talking with was ordering. And she came
25 over and I told them that she was my best friend and

1 they ordered more shots for us.

2 Q Okay. What other kind of alcohol was in the
3 apartment before you left?

4 A Just beer.

5 Q Why didn't you all drink just beer?

6 A What?

7 Q Why didn't you drink just beer?

8 MS. SHEALY: Your Honor, I'm going to object
9 to relevancy of these questions.

10 THE COURT: I'm going to give her some
11 latitude. Overruled.

12 A Can you rephrase?

13 Q (By Ms. Hunter) You had alcohol in the house,
14 beer in the house?

15 A I don't normally drink beer.

16 Q You drink beer, okay. You drink liquor?

17 A Yeah.

18 Q Did you have a boyfriend at the time this
19 happened?

20 A I was seeing somebody at the time that he
21 lived in New Jersey.

22 Q And is this the fiance that you have at this
23 time?

24 A No, it is not.

25 Q It's a different person?

1 A Yes.

2 Q Okay. Do you remember Kaitlyn Moriarty
3 stating that she was drinking at the apartment with
4 you?

5 MS. SHEALY: Objection, pitting, Your Honor.

6 THE COURT: I want to hear the whole question,
7 finish the question please.

8 Q (By Ms. Hunter) Do you remember if Ms.
9 Moriarty had four shots at the apartment with you
10 that night before you went out?

11 A Yes.

12 Q You stated in your statement that after a few
13 drinks you completely black out. Do you recall
14 saying that? After a few drinks that you completely
15 black out?

16 A No.

17 Q You don't remember saying that?

18 A No.

19 Q If I showed you your statement, would it maybe
20 help you recall your statement?

21 A My statement says that I drank a lot that
22 night.

23 MS. HUNTER: May I show the witness?

24 THE COURT: You may.

25 Q (By Ms. Hunter) And I will point out. Do you

1 remember saying that?

2 A It says that I had an unusual amount of
3 alcohol that night and had not eaten that day. After
4 a few drinks I was completely blacked out.

5 Q And so what is a few drinks to you?

6 A I had a course of ten drinks, that was three
7 shots at the bar.

8 Q So is that a few drinks?

9 A A few my mother used to tell me is three. And
10 a couple -- a few is three.

11 Q I'm asking you. In your statement, a few
12 drinks would make you black out. How many is a few?

13 A A few, if they're double shots, is six shots
14 of alcohol.

15 Q Okay. Does that mean that's a few?

16 A That means that -- yes.

17 Q Okay. Also do you still have your statement
18 with you?

19 A You just gave it to me.

20 Q Do you remember standing outside the bar when
21 the Purple Tree closed, right?

22 A Yes.

23 Q And you do recall that you were smoking a
24 cigarette at that time outside at the bar?

25 A Yes.

1 Q Do you recall that you were with Cameron Ross
2 at that time smoking a cigarette with him?

3 A No. That's not Kaitlyn Moriarty's friend. I
4 stated in my testimony that I was smoking a cigarette
5 with Kaitlyn Moriarty's friend.

6 A And at that point in time you also remembered
7 that Kaitlyn was talking to Jesse, her friend, about
8 specifically getting a ride home; is that correct?

9 You can look in your statement.

10 A Yes.

11 Q Okay. So you remember everything that
12 happened up to the time you were smoking a cigarette
13 on the sidewalk, correct?

14 A No.

15 Q What do you remember that happened after that?

16 A Police officer kicking me in my foot and
17 telling me that I had to get up and go home.

18 Q You remember that part. Okay. Then what do
19 you remember after that?

20 A I don't remember.

21 Q Okay. So as you stated in direct, you don't
22 remember how you got home or pulling the mirror off
23 the car door; is that correct?

24 A No, I don't.

25 Q Did you save the bar tab from that night?

1 A I did not pay.

2 Q Did you bring your shoes that you were wearing
3 that you had to take off to show us the shoes?

4 A Did I bring them where?

5 Q Did you bring them here to court because you
6 had to take off your shoes. I don't know, why did
7 you have to take off your shoes?

8 Did you hear Kaitlyn Moriarty state that you
9 had to take off your shoes?

10 A Yeah. Can you reframe the question? I don't
11 know why I would bring them to court.

12 Q I just asked you if you brought them to court
13 to show what shoes you were wearing?

14 A No, I didn't.

15 Q Okay, that's all right. That's all right.
16 Do you smoke marijuana?

17 A Occasionally.

18 Q Occasionally. What about that night?

19 A No.

20 Q Okay. You testified on direct, I believe,
21 that you do remember changing clothes or you went to
22 bed in your dress, in what you were wearing that
23 night. I am kind of confused about that?

24 A I don't know.

25 Q Okay. When you noticed the bruise on your

1 thigh, do you remember how big it was?

2 A The size of a thumb.

3 Q Do you know what color it was?

4 A No.

5 Q Okay. And it could have been caused by a
6 number of different things; is that correct?

7 A Yes.

8 Q Okay. Now when you went to MUSC and talked to
9 the nurse, I think you were present when she
10 testified, she stated that you were very quiet.
11 However, she also testified that you were not
12 tearful, you were not sobbing, you were not
13 trembling, anxious, angry or tense; is that correct?

14 A Yes.

15 Q Okay.

16 MS. HUNTER: That's all I have, thank you.

17 THE COURT: Any redirect of the witness?

18 MS. SHEALY: Nothing further, Your Honor.

19 THE COURT: Any objection to the witness being
20 excused from the State?

21 MS. SHEALY: No, Your Honor

22 THE COURT: From the defense?

23 MS. HUNTER: No, Your Honor.

24 THE COURT: Ma'am, you may step down.

25 State may proceed.

1 MS. SHEALY: Your Honor, the State would rest.

2 THE COURT: Madam Forelady, ladies and
3 gentlemen, the State has rested their case. I have
4 some matters of law I need to take up with the
5 attorneys that should be fairly brief.

6 During the break, please do not discuss the
7 case and please leave your notepads in your seats.
8 We appreciate your patients. Please go with the
9 bailiffs.

10 (Whereupon, the jurors exit the courtroom.)

11 THE COURT: State has rested, are there any
12 motions?

13 MS. HUNTER: Motion for directed verdict, Your
14 Honor. The State has failed to meet their burden of
15 proof and prove the elements that are set out in the
16 indictment.

17 THE COURT: Would the State like to respond?

18 MR. FINCH: Briefly, Your Honor. The State,
19 we believe we have offered enough evidence to meet
20 the standard for directed verdict.

21 There is testimony from numerous -- well from
22 several witnesses. One is Ms. Kaitlyn Moriarty who
23 said she saw the defendant on top of the victim
24 pelvis to pelvis unclothed. There is testimony from
25 the victim of sensation in the vaginal area, enough

1 to at least put to the jury a sexual battery did
2 occur.

3 There is also testimony to the mental
4 incapacitation and the physical helplessness of the
5 victim. So we feel on the any evidence standard the
6 State has met its burden to pass a directed verdict.

7 THE COURT: Anything further from the defense?

8 MS. HUNTER: Yes, Your Honor. MUSC stated
9 clearly that there were no findings of sexual
10 assault. The only witness that actually testified
11 that knew anything or stated anything about what
12 happened was Kaitlyn Moriarty. She is not a doctor.
13 She did not render a medical opinion.

14 She stated that she was semiconscious which
15 does not mean mentally incapacity or physically
16 helpless or any of the other issues that are set out
17 in the indictment. Therefore, there is no evidence
18 that the State has set forth and the charges need to
19 be, or the one charge I guess now, should be
20 dismissed.

21 MR. FINCH: Your Honor, may I reply?

22 THE COURT: Uh-hum.

23 MR. FINCH: The testimony of the sexual
24 assault nurse examiner was that there are no physical
25 finding of DNA or other collateral evidence.

1 However, she also noted in her testimony that there
2 are not going to be any physical findings. She can't
3 tell from the exam whether or not a sexual assault
4 has happened.

5 Again we have the testimony of Ms. Moriarty,
6 as well as the testimony of the victim and for all
7 the elements of the crime.

8 THE COURT: In considering a motion for
9 directed verdict, the Court is required to consider
10 the existence or nonexistence of the evidence and not
11 its weight. The Court is not the fact finder. The
12 evidence must rise above a mere suspicious, however,
13 the court is not required to find that the evidence
14 infers guilt to the exclusion of any other reasonable
15 hypothesis.

16 There is direct evidence of third degree
17 criminal sexual conduct as set forth in 16-36-54, as
18 well as substantial circumstance evidence tending to
19 prove the defendant's guilt.

20 The State must prove beyond a reasonable doubt
21 one or more of the following things. And they only
22 have to prove one of them, they don't have to prove
23 all the subsections of the statute. That the
24 defendant used force or coercion without any
25 aggravating circumstances to accomplish the sexual

1 battery. Using force or coercion means to make the
2 victim follow a prescribed and dictated course to
3 inflict or impose, or to force one's will on someone.

4 or that the defendant knew or had reason to
5 know that the victim was mentally defective, mentally
6 incapacitated or physically helpless, and that
7 aggravated force or aggravated coercion was not used
8 to accomplish the sexual battery. Mentally
9 incapacitated means that the victim was rendered
10 temporarily unable to evaluate or control his or her
11 conduct.

12 This condition may be caused by illness,
13 defect, the influence of a substance or some other
14 cause. Physically helpless means that the victim was
15 unconscious, asleep, or for any other reason
16 physically unable to communicate consent to the
17 sexual battery.

18 There is both direct as well as substantial
19 circumstantial evidence of each of these categories
20 of behavior. What has been argued by the defense are
21 matters of weight. It does not require expert
22 testimony to determine if someone is inebriated to
23 the extent that they're passed out, and that is what
24 the eyewitness testified to. It does not require a
25 medical expert.

1 Nor is it required, and it's rarely testified
2 to unless it is particularly aggravated situation,
3 there is rarely evidence of sexual assault. Most
4 experts, or people who exam folk, will testify that,
5 as did this witness, that it's a muscle, it yields,
6 it gives, and it's rare that you will have signs of
7 trauma unless of course the person is a virgin where
8 the hymen is not left intact or where there is
9 tearing or bruises, but it's rare that you have that
10 type evidence.

11 All of the arguments go to weight not the --
12 go to the weigh afforded the testimony, not its
13 existence or nonexistence. Therefore, the motion is
14 denied.

15 Sir, if you would stand for me, please, and
16 raise your right hand to be sworn.

17 (Whereupon, the Court places the defendant
18 under oath.)

19 THE COURT: You can put your right hand down.
20 State your full name for the record.

21 THE DEFENDANT: William Cameron Ross.

22 THE COURT: Mr. Ross, how old are you?

23 THE DEFENDANT: 24.

24 THE COURT: How far have you gone in school?

25 THE DEFENDANT: Tenth grade.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Do you need to speak with her any
3 further at this time?

4 THE DEFENDANT: No.

5 THE COURT: Is that correct?

6 MS. HUNTER: That's correct.

7 THE COURT: Sir, do you wish to testify?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay, you may take your seat.

10 All right, Ms. Hunter, which witness do you
11 want to call first?

12 MS. HUNTER: I would like to call the expert
13 witness first. We have one issue that the solicitor
14 and I would like to talk to you about beforehand.

15 THE COURT: Sure.

16 MS. HUNTER: He has prepared slides to help --

17 THE COURT: What are they?

18 MS. HUNTER: They explain psychopharmacology,
19 and they have some names, words in there that are
20 pretty difficult to understand. And what he'll do is
21 explain --

22 THE COURT: He wants to use the slides
23 demonstratively? What do they look like?

24 MS. HUNTER: I will show you.

25 THE COURT: Do you have a copy of the

1 PowerPoint?

2 MS. HUNTER: We changed a little bit. May I
3 approach?

4 THE COURT: Yes.

5 MS. HUNTER: After they asked. We took out.

6 THE COURT: What he can testify to is that if
7 you present a hypothetical for him not using the
8 victim, he can testify as to the effects alcohol
9 would have on a person consuming this amount of
10 alcohol. But he cannot say what he thinks happened
11 on that night because he was not there.

12 If blood-alcohol test had been taken, that's
13 different. But no blood-alcohol tests were taken,
14 nor any blood drawn or otherwise to confirm.

15 The uncontradicted testimony however is the
16 amount of shots or whatever they had, or the amount
17 of alcohol it was approximated that they consumed at
18 the bar.

19 But he cannot say what he thinks your client
20 did, what they did. Because there is -- would be --

21 MS. HUNTER: I understand.

22 THE COURT: If tests were taken, that would be
23 different. But no tests were taken so that would be
24 speculative. Although experts can speculate, that's
25 a little problematic.

1 okay. what are the slides he's going to use?

2 MS. HUNTER: We have kind of scaled down a lot
3 of these slides. Like we are not going to use this
4 one, it's too complicated.

5 THE COURT: That's an outline of the hospital.

6 MS. HUNTER: That's how far he went to each
7 individual place in the hospital.

8 THE COURT: Alcohol is short acting drug -- I
9 would imagine you have no problem with that, him
10 testifying about what alcohol is and how it affects
11 the system.

12 MR. FINCH: No, we don't have a problem with
13 that testimony. It's just in general the PowerPoint
14 seems to be cumulative. He can testify to all these
15 things.

16 THE COURT: He can use demonstrative aids when
17 he testifies.

18 MS. HUNTER: He wants to talk about blackouts,
19 pass out, conscious, semiconscious, unconscious,
20 mentally incapacitated.

21 THE COURT: That's just the -- why does he
22 need these to testify? These are not particularly
23 complex terms.

24 I think you can have people on that jury knows
25 the alcohol content. Everybody that went to college

1 knows about alcohol content. Everybody has tested
2 their limits with alcohol.

3 MS. HUNTER: I didn't know what drug amnesia
4 was.

5 THE COURT: One in so many people have --

6 MS. HUNTER: Judge, also.

7 THE COURT: I did not say about testifying
8 about it. I'm saying why does he need PowerPoint?

9 MS. HUNTER: He's --

10 THE COURT: That's going a little far.
11 Why is this relevant? Why is incidents of
12 blackout relevant to this case?

13 MS. HUNTER: I asked the solicitor to go
14 through them all.

15 THE COURT: What do you all object to?

16 MS. SHEALY: I think he can testify to some
17 things. I don't think it's appropriate
18 demonstratively.

19 THE COURT: Why not?

20 MS. SHEALY: Because it's not like a diagram
21 or figure or something that the jury would need to be
22 able to understand what he's saying. It's nothing
23 more than words that he can testify to.

24 MS. HUNTER: He uses that --

25 THE COURT: What do you all object to? This

1 is a presentation that you give to people.

2 MS. SHEALY: Like a speech or something.

3 THE COURT: That's not what you are doing with
4 the jury.

5 MS. HUNTER: Also, Judge, at the same time I
6 think they're going to put in pictures that speak for
7 themselves that have already been put in evidence.

8 THE COURT: Pictures are not demonstrative,
9 pictures are self-authenticating under the rules, a
10 different set of rules apply.

11 And pictures come in because they're relevant
12 because they show the scene as part of the res jesit
13 is why pictures come in. And pictures, you really
14 don't even have to prove the foundation of the
15 pictures, they're accurate, they're
16 self-authenticating. Pictures speak for themselves.

17 MS. HUNTER: If he is going to be testifying
18 about it.

19 THE COURT: I think he can testify to pretty
20 much all of this. I just don't think he needs the
21 slides to do it. This is cumulative right here.

22 MS. HUNTER: Yeah, on the first set of slides.
23 I mean they are studies that are behind there that he
24 is going --

25 THE COURT: But you have to prove that these

1 are treatises regularly accepted. He can testify to
2 this information without there being a PowerPoint of
3 it.

4 MS. HUNTER: If I didn't know what a drug
5 amnesia was, there is no way that half the jury is
6 going to know. Two of them are asleep.

7 THE COURT: You would be amazed. No they're
8 not. A lot of people listen with their eyes closed,
9 especially if they wear glasses. I'm watching them.
10 I watch them all the time. They just don't know I'm
11 watching them.

12 I do it very deliberately with my head down.
13 They watch me for my face so they can see how I react
14 to testimony. I look like I'm completely
15 disinterested, and I don't want to influence them.
16 but I'm watching them.

17 I can tell you all exactly who nods off. I
18 can tell you who sleeps. I can tell you all of it.
19 But there are some people, especially in a room with
20 no windows, who listen with their eyes closed,
21 they're not sleeping.

22 MS. HUNTER: They have something to look at,
23 they're not going to be able to follow what he says.
24 I don't see any reason -- this is going to hurt them
25 or prejudice them in any way. And they have had

1 these slides for weeks, maybe a month.

2 THE COURT: He is not going to be able to talk
3 about these reports.

4 He can talk about general concepts, but he
5 cannot talk about anything specific about them
6 because he was not there. There were no tests taken
7 to measure their alcohol level. All the cases that
8 have this type testimony there are tests available
9 that are taken contemporaneously to the behavior
10 where the expert can look at the test and then draw
11 conclusions.

12 MS. HUNTER: So what you are saying is that in
13 your experience in 10 years no expert witness can
14 have a slide show?

15 THE COURT: It's been 15 years. I did not say
16 he couldn't use the slide show, it's all
17 discretionary. And at some point it becomes
18 cumulative. Slide shows as demonstrative evidence is
19 supposed to aid the jury, it is not supposed to be --
20 it has to serve a purpose. If I have an expert
21 testifying what they have in the slide show, they're
22 simply reading the slide.

23 I will give you some latitude but --

24 MS. HUNTER: He is not going to be reading the
25 slides.

1 THE COURT: Well then why are they up there if
2 he's not going to be reading it?

3 MS. HUNTER: They are going to help them to
4 understand --

5 THE COURT: If he is reading the slides,
6 they're being used demonstratively. If he is just
7 testifying then the slide don't need to be up there
8 because they have to have some demonstrative purpose.

9 The jury doesn't get to just read what's on a
10 PowerPoint without testifying because it's not
11 evidence. Demonstrative is he is supposed to use
12 examples as part of the testimony, you don't get to
13 put them up there and the jury gets to read them.
14 They're not evidence.

15 MS. HUNTER: I think I'm confused about the
16 difference, that's exactly what he was doing. He's
17 not going to read them verbatim.

18 THE COURT: Then they don't need to be up
19 there. Demonstrative means a chart I am using, that
20 I am using to aid me in testifying. You don't get to
21 use information and put it up on a PowerPoint does
22 not mean it's demonstrative and it's not in evidence.
23 Nine-tenths of this is not in evidence.

24 If he wants use it demonstratively to help
25 explain his testimony, he can. But it can't just be

1 back up there, and he is testifying about something
2 else and then there is this extraneous information
3 that's not in evidence on a PowerPoint.

4 MS. HUNTER: I understand.

5 THE COURT: Now I put that DUI statute -- I
6 need to know what the presumptions are on impairment.

7 He cannot say specifically -- he can talk
8 about alcohol, the effects of alcohol, alcohol
9 blackouts, differences, all that stuff is fair game.

10 MS. HUNTER: All right. I appreciate that.

11 THE COURT: If he's using any of these to
12 explain his testimony, he can. But you cannot have
13 them flash up there while he's talking about
14 something else.

15 MS. HUNTER: I understand.

16 THE COURT: Okay. Let's take a quick restroom
17 break.

18 (Whereupon, a recess was taken.)

19 THE COURT: Is the State ready to proceed?

20 MR. FINCH: Yes, Your Honor.

21 THE COURT: Defense ready to proceed?

22 MS. HUNTER: Yes, Your Honor.

23 THE COURT: Please bring in the jury.

24 (Whereupon, the jurors enter the courtroom.)

25 THE COURT: Ladies and gentlemen, we

1 appreciate your patience. We will now resume with
2 the trial.

3 Ms. Hunter, you may proceed.

4 MS. HUNTER: Thank you. The defense calls Dr.
5 Alexander Morton.

6 THE COURT: Dr. Morton, if you would come to
7 the stand to be sworn.

8 DR. WILLIAM ALEXANDER MORTON JR.,
9 After having first been duly sworn to state the
10 truth, the whole truth and nothing but the truth,
11 testified on his oath as follows:

12 THE COURT: You may proceed.

13 MS. HUNTER: Thank you.

14 THE COURT: You're welcome.

15 DIRECT EXAMINATION

16 BY MS. HUNTER:

17 Q Dr. Morton, what is your profession?

18 A I'm a psychopharmacologist.

19 Q Are you also a professor anywhere?

20 A Yes, I'm a professor emeritus pharmacy
21 practice at Medical University South Carolina. And
22 also associate professor of Psychiatry and Behavioral
23 Sciences in the Department of Psychiatry.

24 Q How long have you been a professor?

25 A I started there over 35 years ago and was

1 promoted over a period of time to that position. But
2 I have been there full-time 28 years. And I am in a
3 retired position now where I recruit -- will present
4 lectures, not on a full-time basis, but will consult
5 there when they ask.

6 Q And what do you teach, psychopharmacology?

7 A Right. I teach psychopharmacology which is
8 essentially about medicines that affects the brain.
9 So that would include antidepressants such as Prozac;
10 and tranquilizers, such as Haldol; anti-anxiety
11 medicines such as Zanax, Lithium, Tegretol; but also
12 include medicines that are abused such as alcohol,
13 marijuana, those kind of things. Anything that would
14 affect the brain.

15 Q What is your educational background?

16 A I received my BS in pharmacy from the
17 University of North Carolina. I received my doctor
18 of pharmacy from the University of Tennessee in 1975.

19 I did a clinical residency at the University
20 of California in San Francisco, completing that in
21 '76. I came here where I pretty much worked
22 full-time for a long time at the Medical University.

23 Q Are you board certified in psychiatric
24 pharmacy practice?

25 A Yes, ma'am, I am board certified. I was

1 certified in 1994, then recertified. I'm coming back
2 up on being recertified this year.

3 Q And what are your duties as the present
4 physician?

5 A Present physician is mainly consulting on
6 cases that probably exceed difficulty, that they are
7 very complicated case where they might want another
8 opinion. I also give lectures to psychiatric
9 residents, the medical students, pharmacy students,
10 psychiatric pharmacy practitioners there.

11 So I lecture to mental health professionals
12 there and also consult in cases. But inpatient and
13 outpatient, that is somewhat less than what I was
14 doing while I was there full-time.

15 Q And what were your clinical experiences while
16 you were at the Medical University?

17 A While I was at the Medical University
18 full-time I worked at that inpatient psychiatric unit
19 for about 12 years, the child and adolescence
20 psychiatric units. Not so much because we didn't use
21 as many medications there, I was on the consult
22 service.

23 The consult service might be the service that
24 would see people that are in the burn unit that are
25 experiencing depression or psychosis, they would

1 consult with us. I did that for two years. I
2 consulted at the Charleston County Hospital for about
3 nine years while it was the Charleston County
4 Hospital on the psychiatric unit, probably did 425
5 consultations there.

6 I helped start our outpatient
7 psychopharmacology unit where I was the assistant
8 director, and I was there for about 16 years. I saw
9 primarily outpatients there, and I supervised our
10 third-year psychiatric residents.

11 I was involved in clinical research for about
12 16 years, mainly with medications that are currently
13 on the market, but we were studying medicines like
14 Prozac, Zoloft, Paxil to see if they would work in
15 certain states such as depression or anxiety, so I
16 would be working there. I worked there 50 percent of
17 the time for a long period of time, basically as a
18 clinician that would see patients on a regular basis.

19 what else. I worked at Fenwick Hall Hospital,
20 which was outside of the Medical University. I
21 worked there for 17 years while it existed -- 14
22 years, I'm sorry, as a clinician that saw patients,
23 consulted regarding medications. Fenwick Hall was a
24 private alcohol and drug treatment center.

25 The last 13 years at the Medical University I

1 was primarily working on the CDAP unit, which is the
2 Center for Drug and Alcohol Programs, approximately a
3 30-bed inpatient unit for alcohol and drug problems.

4 And I would basically be a consultant. I
5 would make rounds with the team every morning to see
6 patients. They might ask me questions as far as,
7 what do you think about this person's detox regimen,
8 what do you think about continuing or discontinuing a
9 certain medication. So I might make that decision in
10 context of having eight to ten other people. So I
11 would be doing service as well as teaching at the
12 same time.

13 I also did a number of lectures and
14 presentations to a lot of people.

15 Q Have you testified in court before?

16 A Yes, ma'am, I have.

17 Q Have you ever been deemed as an expert in
18 psychopharmacology? Psychiatric pharmacology?

19 A I have always been accepted as an expert in
20 the 60-some cases that I have presented.

21 Q And have you consulted with the State,
22 district attorney or the solicitor's office on cases
23 and with the defense?

24 A I have consulted with the prosecution, mostly
25 with the defense. Ms. Shealy here has called me on

1 the phone several times. We will maybe talk briefly
2 about a case. Sometimes she will ask me if I'm
3 available, and sometimes I am or sometimes I'm not.

4 Usually they don't call me because they have
5 the whole SLED, state law enforcement division that
6 they can have an expert come that's already being
7 paid. So it would be silly for them to consult with
8 me and pay me when they already have a whole division
9 that could come up here anytime they ask.

10 Q Tell me about how many states and what states
11 they are that you have testified in?

12 A Mostly the southern states, North Carolina;
13 South Carolina; Virginia; District of Columbia,
14 that's not a southern state, I guess, but it's a
15 district; Georgia; Virginia; Alabama; a few states
16 out west, Colorado, South Dakota, Oregon. But mostly
17 in the south.

18 Q And you are being paid for your time here; is
19 that correct?

20 A Yes, I am.

21 Q By the defense?

22 A By the defense, yes.

23 Q Because you are in your own practice and this
24 is what you do in order to make a living?

25 A No, I'm retired. This is what I do because

1 this is what I know. But I'm not giving my services
2 away. I never charge Ms. Shealy anything or I would
3 never charge you anything for a discussion. But if
4 you want me to sit down for 30 or 40 hours and put
5 that in, I would have to charge.

6 MS. HUNTER: So, Your Honor, at this point I
7 would offer Dr. Alexander Morton as a board certified
8 psychiatricpharmacologist and expert in the same.

9 THE COURT: Any objections or questions?

10 MR. FINCH: None from the State.

11 THE COURT: So admitted without objection.

12 MS. HUNTER: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 Q (By Ms. Hunter) What is psychopharmacology?

15 A Again it's the clinical study of any drugs
16 that affect the nervous system. And I specialize
17 mainly in humans, this also it can be studied in
18 animals. But more in clinical settings.

19 I specialize more in mood disorders and
20 anxiety disorders as well as substance abuse
21 disorders. So there are certain other areas such as
22 schizophrenia, fault disorders that I have done some
23 work in, but I wouldn't say I'm the cutting-edge
24 expert by any means right now.

25 So there are areas that I know about but I'm

1 more specialized and substance abuse and anxiety and
2 mood disorders.

3 Q Tell the jury what alcohol is?

4 A Well I think most people know what alcohol is,
5 it's ethanol or ethal-alcohol. It's a drug, although
6 people don't consider it as a drug.

7 It's a drug that affects, interestingly to me,
8 every cell in the body because it works on the cell
9 membrane. And where you have got a cell membrane,
10 it's going to disrupt flow in and out of that cell.

11 So it's not a place that it doesn't work. I
12 consider it a very fast-acting, short duration
13 anti-anxiety drug that reduces anxiety, and
14 consequently people feel relieved sometime, they have
15 a reduction of anxiety.

16 Of the people that drink it, 85 percent of the
17 people don't have any problem with it. And the other
18 15 percent go on to have difficulties controlling its
19 use and overusing.

20 I find it a fascinating drug to work with
21 because it's associated with about 140,000 deaths per
22 year in the U.S., either direct or indirect. And we
23 kind of forget about that because it's too big to
24 comprehend.

25 Q Well, doctor, is memory impairment one affect,

1 psychiatric affect from alcohol?

2 A It is. And I've addressed it one of the
3 articles I have written, I have written several
4 articles about alcohol. And memory impairment, both
5 accute and chronic, is an interesting factor.

6 Alcohol will cause something called alcohol
7 blackout. Alcohol blackout has been studied since
8 the mid '40s, 1940s. And it was mostly studied in
9 middle-aged alcoholic men.

10 And it's only been recently that people have
11 kind of noticed that it could also exist in social
12 drinkers, it could exist really in anyone that drinks
13 alcohol.

14 Alcohol blackout is not passing out, but it's
15 the inability to form memory. And so consequently
16 you can't remember something that you didn't form.
17 So one of the problems is people will have a blackout
18 and their behavior could appear normal.

19 I remember the first case I was impressed with
20 at Fenwick Hall was a CEO that bought something very
21 large and then the next day did not remember buying
22 that company.

23 And that was part of what brought him into
24 treatment; that got his attention that he had a
25 problem with alcohol. That he could conduct business

1 and buy a piece of property, and then the next day
2 have no idea.

3 so that definitely caught my attention as far
4 as the concept of alcohol blackout and it being a
5 factor.

6 Q Now you said that blackouts are not the same
7 as passing out. What is passing out?

8 A Passing out is falling asleep secondarily to
9 the sedative affects of alcohol. In general alcohol
10 is a depressant drug. And what it does is it
11 depresses parts of the nervous system, those parts
12 that say don't talk loud, don't do this, behavior
13 normally, just don't be too excited.

14 The other parts that are being controlled by
15 that kind of are bumped up so there is a little bit
16 more excitement, relaxation. Alcohol definitely
17 causes some relaxation there. But if you continue to
18 drink, it will be a central nervous system
19 depressant. And what you'll get is someone getting
20 drunk.

21 And every one is individual, is an individual,
22 and you'll see a different pattern of how people
23 experience various levels of alcohol to the point
24 that they might pass out, to the point that they
25 might pass out and not be able to breathe and that

1 would be one of the extreme affects of alcohol that
2 it would depress the back part of the nervous system
3 that unconsciously we breath every 12, 15 times a
4 minute. We will breathe without us having to think
5 about it.

6 Q What is the difference between being
7 semiconscious, conscience, and unconscious?

8 A Semiconscious is a term that is used loosely.
9 It's not so much -- it means you are not passed out.
10 It means you are conscious but you don't -- it's very
11 indefinite as far as what it means.

12 People can imply different meanings towards
13 it. There is a work to try to get more defined
14 definitions of what coma means, what stuporous means,
15 what confused means, what inebriated or what cloudy
16 means.

17 If you were to do a search for the term
18 semiconscious you wouldn't find it so much in the
19 medical literature other than it would be undefined.
20 So semiconscious means basically that someone has the
21 ability, some abilities of their consciousness but
22 not all of them.

23 Q How does alcohol affect sexual behavior?

24 A Alcohol causes a decrease in inhibitions. And
25 I don't think it's any surprise that people would see

1 that as something that people might be more flirty,
2 more forward, express their ideas of desire.

3 It would both increase desire as well as
4 decrease inhibition. So people would possibly be
5 more sexually available, more sexually active. It's
6 not unusual that you see an increase in sex in folks
7 that are drinking.

8 Q All right. I want to talk about or ask you
9 about fluctuating symptoms while someone is taking
10 alcohol. What exactly are fluctuating symptoms?

11 A Fluctuating symptoms are something that you'll
12 see in different kinds of syndromes. Certainly when
13 you are intoxicated you can see people that have the
14 ability to walk, not the ability to walk, very
15 sleepy, then suddenly awake. So the symptoms would
16 fluctuate from people being active to not being
17 active.

18 So if you were to go to sleep, it might not be
19 that you would stay asleep. You could stay asleep or
20 you could wake back up and say, hey, where is the
21 party, what is going on, and want to go back and join
22 the party or not.

23 Q If a person is experiencing fluctuating
24 behavior, could that allow that person to show
25 interest in sexual activity?

1 A Fluctuate -- sure. If a person is interested
2 in the other person, I would expect that if they were
3 intoxicated they might talk about that they're
4 interested. And if they were able, they might want
5 to kiss or hold or touch so that would be a
6 possibility.

7 MR. FINCH: Your Honor, we would object as to
8 the relevance.

9 THE COURT: Overruled.

10 MS. HUNTER: Beg the Court's indulgence.

11 I don't have any further questions. Thank you
12 so much for your time.

13 THE WITNESS: Yes, ma'am.

14 MS. HUNTER: Please answer any questions the
15 solicitors may have.

16 THE COURT: You may proceed.

17 MR. FINCH: Thank you, Your Honor.

18 THE COURT: Uh-hum.

19 MR. FINCH: No questions, Your Honor.

20 THE COURT: Any objection to the witness being
21 excused from the State?

22 MR. FINCH: None from the State.

23 THE COURT: From the defense?

24 MS. HUNTER: No, Your Honor.

25 THE COURT: Doctor, you are excused.

1 THE WITNESS: Thank you.

2 THE COURT: You're welcome.

3 The defense may proceed.

4 MS. HUNTER: Thank you. Our next witness is
5 Jesse Spradling.

6 THE COURT: Sir, if you would come to the
7 stand to be sworn.

8 MR. JESSE SPRADLING,
9 after having first been duly sworn to state the
10 truth, the whole truth and nothing but the truth,
11 testified on his oath as follows:

12 THE COURT: You made proceed.

13 DIRECT EXAMINATION

14 BY MS. HUNTER:

15 Q Jesse, how old are you?

16 A 24.

17 Q How old were you back in August of 2008?

18 A 21.

19 Q Okay. And did you know Kaitlyn Moriarty back
20 then when you were 21?

21 A Yes, ma'am.

22 Q How did you know Kaitlyn Moriarty?

23 A I got a job at Hymans Seafood Restaurant, and
24 she was working there.

25 Q How long did you all work together?

1 A I only worked there maybe two months, month
2 and a half maybe.

3 Q And then on August the 2nd or 1st or 2nd, did
4 you run into them -- into Tuesday Philbrook and
5 Kaitlyn Moriarty?

6 A Yes, ma'am.

7 Q Where was that?

8 A Downtown at the Purple Tree Lounge.

9 Q Had you been drinking before you got there?

10 A Yes, ma'am.

11 Q What were you drinking?

12 A Bourbon.

13 Q Bourbon? Straight bourbon?

14 A Yeah. And beer.

15 Q Straight bourbon. Do you know how many drinks
16 you had?

17 A No. A pretty good bit. Probably a couple
18 shots, couple beers.

19 Q How did you get with Cameron at that point in
20 time? You went and picked him up?

21 A Yeah, we left West Ashley together.

22 Q What was the first place you went?

23 A I think we went to Wasabi's.

24 Q Where did you go after that?

25 A We might have gone to another bar, and then we

1 ended up going to the Purple Tree.

2 Q Is that where you ran into Kaitlyn Moriarty
3 and Tuesday Philbrook?

4 A Yes, ma'am.

5 Q What happened at that point in time?

6 A We got to the Purple Tree and they were
7 outside. They left their ID or something, so they
8 ended up waiting to get in. We already went inside
9 by the time they got back.

10 Q Were they inside -- did they go inside the
11 Purple Tree Lounge when they got back?

12 A Yes, ma'am.

13 Q What happened while in the Purple tree Lounge?

14 A We were just in there drinking, having a good
15 time, dancing.

16 Q Was everybody drinking and having a good time?

17 A Yes, ma'am.

18 Q And that includes Kaitlyn?

19 A Yes, ma'am.

20 Q And when the bar closed at 2:00, tell the jury
21 your version of what happened?

22 A We left the bar, the bar closed. We ended up
23 going outside and they asked if we could give them a
24 ride home because they didn't feel like walking back
25 to their house. So we got in my car and I drove back

1 to her house.

2 And then whenever she got out of the car, she
3 accidentally hit my door onto her car. She got out
4 and I think she was mad and ripped the mirror off.
5 Then we started to go inside.

6 Q Can I stop you for a second. When you went to
7 your car with Cameron and Kaitlyn Moriarty and Ms.
8 Philbrook, did anyone have to carry her to the car,
9 Tuesday Philbrook to the car?

10 A No, ma'am.

11 Q Are you sure?

12 A Yes, ma'am.

13 Q So you didn't carry her?

14 A No, ma'am.

15 Q And did Kaitlyn Moriarty carry her? I don't
16 mean carry like this, I mean hold her up.

17 A No, we were all walking together to the car.

18 Q Was she able to walk?

19 A Yes, ma'am.

20 Q Do you remember if she had any shoes on?

21 A I'm not sure.

22 Q Okay. All right. So let's go back to where
23 you were. She had ripped the mirror off the car.
24 What happened after that?

25 A We ended up going inside. And I think we all

1 went upstairs and then we came back downstairs and
2 she offered us a beer.

3 Q Were you invited inside?

4 A Yes, ma'am.

5 Q By who?

6 A Kaitlyn.

7 Q Okay. So then you get inside and you all go
8 upstairs, is that what you said?

9 A Yes, ma'am.

10 Q What do you do when you are upstairs?

11 A We went up there and used the bathroom, and
12 then ended up coming back downstairs and drinking a
13 couple beers.

14 Q What did Tuesday do?

15 A She went to the room.

16 Q To the room that she shares with Kaitlyn?

17 A Yes, ma'am.

18 Q Then the three of you all went back
19 downstairs?

20 MS. SHEALY: I object to the leading.

21 MS. HUNTER: I understand. I was trying to
22 push it along.

23 THE COURT: Sustained, leading. You may
24 rephrase.

25 Q (By Ms. Hunter) Okay. So what happened when

1 you were downstairs?

2 A We drank a beer and talked for a little while.

3 Then me and Kaitlyn started kissing.

4 Q Okay. Started kissing?

5 A Yeah.

6 Q Where? Where were you?

7 A I think we were in kitchen first, then ended
8 up going into the living room.

9 Q Where is Cameron the whole time?

10 A I think he was in the kitchen at first, then
11 after we went in the living room I'm not sure.

12 Q Then what happened?

13 A We ended up -- she asked where Cameron was so
14 we went and looked on the porch, he wasn't there. We
15 went upstairs and he was upstairs.

16 Q Okay. What happened when you were upstairs?

17 A Kaitlyn started yelling at him and then kicked
18 us out of the house.

19 Q What do you mean kicked -- well first of all,
20 what was she yelling? Do you remember?

21 A You all get the F out of here.

22 Q Did you see anything when she went into the
23 room?

24 A No, ma'am.

25 Q Do you remember if the lights were on or off?

1 A I'm not sure.

2 Q At some point in time when you were downstairs
3 did you ever smoke any marijuana?

4 A Yeah, I think we smoked like resin out of the
5 pipe. We didn't have any actually marijuana.

6 Q Whose marijuana was it?

7 A I think it was Kaitlyn's bowl.

8 Q Her bowl?

9 A Yeah, it's like a marijuana pipe.

10 Q Okay. Can you explain to the jury who doesn't
11 know what a marijuana pipe is, or bowl?

12 A It's like a tobacco pipe that you put
13 marijuana in it.

14 Q So what is resin?

15 A It's the residue left over after you smoke
16 marijuana out of it.

17 Q Were you all able to find that?

18 A Yeah, I think -- yeah.

19 Q Did you smoke it?

20 A Yes, ma'am.

21 Q Did Kaitlyn smoke it?

22 A I'm pretty sure everybody did.

23 Q Everybody did, okay. All right. So let's go
24 back after that.

25 When Kaitlyn kicked you out of the room, what

1 happened? Did Cameron have his clothes on or no?

2 A I think he was putting his clothes on.

3 Q Okay. And do you remember Kaitlyn shoving him
4 down the stairs by the back of his neck and pushing
5 him?

6 A No.

7 Q So then what did you do after that?

8 A We ended up, we left and I got my car and I
9 realized I left my shirt inside so I went back and
10 knocked on the door to try to get it.

11 Q Your shirt was off?

12 A Yeah, I had a white T-shirt underneath it, but
13 my button-up shirt was off.

14 Q Now there was testimony, I think you might --
15 you were in here when Kaitlyn said that you had said
16 what the F?

17 MS. SHEALY: Object to the form of the
18 question.

19 Q (By Ms. Hunter) Did you say, what the fuck
20 are you doing, to Cameron?

21 A Yeah, not inside the house though.

22 Q Where did you say it?

23 A When we were leaving in the car.

24 Q And tell me how that came about?

25 A I asked him what the fuck he was doing, why

1 she was flipping out like that, why she kicked us
2 out.

3 Q What did you think was happening?

4 A I didn't know what was going on.

5 Q What was she acting like before she went up
6 there?

7 A Fine.

8 Q You all were still drinking?

9 A Yeah.

10 Q And smoking the pot?

11 A Yes, ma'am.

12 Q Okay. And you are good friends with Cameron;
13 is that correct?

14 A Yes, ma'am.

15 Q And as a matter of fact, do you all live
16 together at this point in time?

17 A Yes, ma'am.

18 Q All right.

19 MS. HUNTER: I have no further questions.

20 Please answer any questions that the solicitor may
21 have.

22 THE COURT: Any questions for the witness?

23 MS. SHEALY: Yes, Your Honor, thank you.

24 CROSS-EXAMINATION

25 BY MS. SHEALY:

1 Q Mr. Spradling, I think Ms. Hunter asked you,
2 you and Cameron are roommates?

3 A Yes, ma'am.

4 Q How long have you known him?

5 A Since like sixth grade, 15 years maybe.

6 Q And that night you all had gone to at least
7 one other bar before you came to Purple Tree; is that
8 correct?

9 A Yes, ma'am.

10 Q Now when you were leaving the Purple Tree, are
11 you telling this jury that Tuesday had absolutely no
12 problem walking?

13 A I mean we are all drunk.

14 Q So she was struggling with walking; is that
15 true?

16 A Just as much as all of us.

17 Q So were you struggling with walking?

18 A Yes, ma'am.

19 Q And did you come upon them when they were
20 sitting on the sidewalk?

21 A No.

22 Q You did not see that part?

23 A No.

24 Q So you didn't leave with them from the Purple
25 Tree?

1 A No. There was people I knew, some other
2 people inside that I knew so I told everybody bye,
3 that's when we left.

4 Q And you've indicated that I guess you were
5 feeling the effects of alcohol; is that correct?

6 A Yes, ma'am.

7 Q But you drove over to Kaitlyn's?

8 A Yes, ma'am.

9 Q If Tuesday had wanted to drive your car, would
10 you have let her?

11 A I'm not sure.

12 Q Because she was too messed up for you to want
13 her to drive your car, wasn't she?

14 A I was actually too messed up to be driving
15 anyways.

16 Q But you did it?

17 A Yes.

18 Q But you wouldn't have wanted Tuesday to drive
19 your car, would you?

20 A I probably wouldn't let anybody drive my car.

21 Q Now when you all were driving over there, did
22 Tuesday have any conversation with you?

23 A I don't remember.

24 Q She was quiet in the back; is that right?

25 A I'm not sure.

1 Q She sat in the back with Kaitlyn, and Kaitlyn
2 was kind of tending to her; isn't that true?

3 A I'm not sure.

4 Q You don't know that either?

5 A (Negative head shake.)

6 Q And when you got to their house, were you
7 pretty frustrated when Tuesday opened the door into
8 the other car?

9 A No, not really. I mean it didn't really do
10 nothing to my car.

11 Q That didn't bother you?

12 A (Negative head shake.)

13 Q Okay. And you are telling the jury that
14 Tuesday just ripped off the side-view mirror?

15 A Yeah. After she got out she went to the
16 mirror and grabbed it.

17 Q Was she trying to balance herself, Jesse?

18 A I'm not sure.

19 Q When you all were walking up those back
20 stairs, Tuesday didn't go up by herself, did she?

21 A I'm not sure. We all went up there together.

22 Q Okay. Jesse, Tuesday was wasted, was she not?

23 A We all were wasted.

24 Q I'm asking you about Tuesday. Was Tuesday
25 wasted?

1 A Yes, ma'am.

2 Q And Tuesday was having a problem opening the
3 door and balancing herself before you all even got to
4 the stairs; is that correct?

5 A Yes, ma'am.

6 Q And then when you all were walking up the
7 stairs, it took you and Kaitlyn to help her get up
8 the stairs; is that correct?

9 A I don't remember that.

10 Q You don't remember that? Now you do remember
11 giving a statement to Detective Mills, don't you?

12 A Uh-hum.

13 Q And he had asked you, had he not, could you
14 tell us what happened that night, and he wanted you
15 to write it out; is that correct?

16 A Yes, ma'am.

17 Q And have you had an opportunity to look at
18 your statement?

19 A Yeah.

20 Q Would you like a copy of it so that you can
21 glance at it?

22 A That's fine.

23 MS. SHEALY: May I approach, Your Honor?

24 THE COURT: You may.

25 Q (By Ms. Shealy) If you are looking at the

1 third line of your statement, could you indicate to
2 the jury whether you put in your statement that she,
3 meaning Kaitlyn, or we took Tuesday upstairs?

4 A What was the question?

5 Q Do you remember that?

6 A What was the question again?

7 Q On the third line of the statement, do you
8 recall telling Detective Mills that either she,
9 meaning Kaitlyn, or we took Tuesday upstairs?

10 A No, not really. But I wrote it in here.

11 Q Okay. You wrote it in here on August 2nd,
12 2008; is that correct?

13 A Yeah.

14 Q Excuse me?

15 A Yes, ma'am.

16 Q And you wrote it very close at the time that
17 everything had happened; is that correct? Far closer
18 than now?

19 A Yeah. It was the next day I think.

20 Q So on that day you remembered Tuesday needed
21 some help to get up the stairs, it was either Kaitlyn
22 or it was you and Kaitlyn, right?

23 A Or all three of us.

24 Q Or all three of you. What do you mean all
25 three of you?

1 A There was me, Cameron, and Kaitlyn.

2 Q You think Cameron may have had to help too?

3 A I think we all went upstairs whenever we first
4 got there.

5 Q When you say upstairs, are you talking about
6 the bedroom?

7 A Just upstairs.

8 Q Just upstairs to the where the living room and
9 the kitchen were?

10 A No, up the stairs where the bedrooms are and
11 everything.

12 Q So are you telling this jury that you went
13 upstairs, all of you all went upstairs to the
14 bedroom?

15 A Not in the bedroom. We all went upstairs
16 though.

17 Q Okay. Well again what you write in your
18 statement is, she or we took Tuesday up the stairs;
19 is that correct?

20 A Yes, ma'am.

21 Q Not all of you all went up the steps, but you
22 all had to take Tuesday up the steps; isn't that
23 correct?

24 A Yeah, that's what it says.

25 Q Then later in your statement on that second

1 page, if you'll turn to the second page, when the
2 detective asked you whether Tuesday was coherent when
3 Kaitlyn took her upstairs, what was your answer?

4 A She was drunk.

5 Q Read your full answer.

6 A She was real drunk.

7 Q Okay. So you are not denying, are you, Mr.
8 Spradling, that Tuesday needed some taking care of
9 that night; is that correct?

10 A No, I didn't say that.

11 Q You don't think she needed any taking care of?

12 A I mean we were all drinking. I was drunk too.

13 Q Okay. Well when you get --

14 A Everybody probably could have used a little
15 bit of help.

16 Q Do what?

17 A I said everybody probably could have needed a
18 little bit of help.

19 Q But nobody else got helped except Tuesday; is
20 that right?

21 A Yes, ma'am.

22 Q When you got into the house and you all took
23 Tuesday up to her room, Tuesday didn't come back
24 down, did she?

25 A No, ma'am.

1 Q Tuesday didn't go into the kitchen and get a
2 beer, did she?

3 A Uh-uh.

4 Q And according to you this pot smoking, Tuesday
5 wasn't smoking pot, was she?

6 A No, ma'am.

7 Q In fact when Kaitlyn put Tuesday down upstairs
8 she said upstairs is off limits, didn't she?

9 A I don't recall that.

10 Q You don't recall. But no question Tuesday
11 wasn't yelling for you all to come upstairs, Tuesday
12 wasn't trying to come downstairs; is that right?

13 A Yes, ma'am.

14 Q And Cameron and you and Kaitlyn were
15 downstairs in the living room and you all start
16 kissing, you and Kaitlyn, right?

17 A Yes, ma'am.

18 Q And at some point Kaitlyn gets concerned,
19 where is Cameron, right?

20 A Uh-hum.

21 Q Is that correct?

22 A Yes, ma'am.

23 Q She seemed worried about where was he. Did
24 you know she was being protective of Tuesday?

25 A I'm not sure.

1 Q But there is no question that she was
2 concerned about where was Cameron, right?

3 A Yes.

4 Q And you went out the back door and looked to
5 see if you saw him, correct?

6 A Yes, ma'am.

7 Q And you went out the front door and looked to
8 see if you could see him; is that correct?

9 A Yes, ma'am.

10 Q And then did Kaitlyn go upstairs looking for
11 him?

12 A Yeah, I think so.

13 Q So as far as you knew, at that point Cameron
14 wasn't outside in the front, Cameron wasn't outside
15 in the back, and Kaitlyn had not seen Cameron
16 upstairs; is that correct?

17 A When she went upstairs, that's after -- right
18 before she kicked us all out.

19 Q You don't remember her going up when you all
20 were still looking for Cameron a little earlier?

21 A No.

22 Q So you are saying that only happened one time?

23 A Yeah, we only went upstairs once.

24 Q When you all were looking out front and
25 looking out back, were you all calling his name?

1 A I'm not sure.

2 Q If you were looking for him?

3 A We probably were then.

4 Q So when you were calling his name out front
5 and the back?

6 A I'm not sure if I was calling his name or not.

7 Q Maybe it was Kaitlyn?

8 A I'm not sure if either one of us were.

9 Q I thought you just said you all were?

10 A I said we might have.

11 Q Let me just ask you this, did Cameron at any
12 point call from upstairs and say, I'm good, or I'm up
13 here?

14 A I didn't hear him.

15 Q Not a peep from Cameron; is that right?

16 A Not that I heard.

17 Q Okay. Well when you walked upstairs, Kaitlyn
18 was walking upstairs before you; is that right?

19 A Uh-hum.

20 Q You still didn't see Cameron anywhere; is that
21 correct?

22 A No, ma'am.

23 Q And when Kaitlyn steps foot in that room she
24 freaks, does she not?

25 A Uh-hum.

1 Q The light goes on. And you see your guy
2 naked; is that correct?

3 A Yes, ma'am.

4 Q There was Cameron in that bedroom naked; is
5 that correct?

6 A Yes, ma'am.

7 Q And Kaitlyn flipped out and tells you all to
8 get the heck out of that house; is that correct?

9 A Yes, ma'am.

10 Q Was Cameron struggling to put his clothes back
11 on?

12 A He looked confused.

13 Q Do what?

14 A He just looked confused. I mean if anybody is
15 naked you are going to put your clothes on in a hurry
16 if somebody walks in.

17 Q Did he grab for his clothes and try to put
18 them back on?

19 A Yes, ma'am.

20 Q And you all do leave at that point; is that
21 correct?

22 A Yes, ma'am.

23 Q Ms. Hunter asked you about what you asked
24 Cameron. And what you asked him was what?

25 A I asked him what the fuck was going on.

1 Q What the fuck were you doing; is that correct?

2 A Yes, ma'am.

3 Q In fact in your statement on page two you
4 indicate that you got in the car, and di you stated,
5 I was like, what the fuck were you doing; is that
6 correct?

7 A Yes, ma'am.

8 Q And the reason that you asked Cameron that was
9 you couldn't believe he was upstairs with a girl that
10 was passed out; is that correct?

11 A No, ma'am.

12 Q That's not why you asked that?

13 A No, ma'am.

14 Q You are just like, what the fuck are you
15 doing?

16 A I was asking basically why she was flipping
17 out and kicking us out.

18 Q Did you see Tuesday on the bed or could you
19 not see her?

20 A No, ma'am.

21 Q Tell the jury, when Kaitlyn freaks out does
22 Tuesday say, Kaitlyn, get out, we are having fun?

23 A I didn't hear anything.

24 Q Does Kaitlyn say -- does Tuesday say, give us
25 our privacy?

1 A No. It happened real quick. We were out of
2 the house in not even probably a minute.

3 Q Does Tuesday come running out saying, no, no,
4 no you saw it wrong?

5 A No, ma'am.

6 Q Tuesday is flat on the bed, isn't she, Jesse?

7 A I didn't see her.

8 Q The police officer asked you that when you
9 asked Cameron the question about what the F were you
10 doing, did you all talk about it at all anymore on
11 that trip home?

12 A No, ma'am.

13 Q So you are telling this jury that when you all
14 get kicked out of the house, and your friend is naked
15 in a room with a girl who was so drunk, that you all
16 don't talk about it at all anymore that night?

17 A No, we didn't talk about it.

18 Q When if Tuesday were just as drunk as you all
19 were, why did she have to go upstairs to the bed?

20 A I'm not sure.

21 Q She was drunker than all of you, wasn't she?

22 A We were all drunk. I'm not saying who was
23 drunker, who can pull their alcohol more, whatever.

24 Q She was even a littler girl then, wasn't she,
25 even smaller?

1 A I'm not sure.

2 Q But of all four of you, she's the one who gets
3 put down to bed when you get home; is that correct?

4 A Uh-hum.

5 Q That's after not saying one word in the
6 vehicle to you on the way over; is that correct?

7 A I'm not sure if she said anything in the
8 vehicle or not.

9 Q That's after opening the door into her own
10 car; is that correct?

11 A Yeah.

12 Q That's after she stumbled, and pulled down the
13 rear-view mirror on her own car; is that correct?

14 A (Affirmative head shake.)

15 Q That's after you and Kaitlyn had to help her
16 up to that bedroom; is that correct?

17 A I'm not sure about that.

18 Q Why would Cameron Ross go upstairs that night?
19 Did Tuesday ever call for him?

20 A I'm not sure.

21 Q You didn't hear Tuesday call for him, did you?

22 A I was occupied.

23 Q Was Cameron there while you were kissing and
24 getting familiar with Kaitlyn?

25 A At first, yeah.

1 Q So Cameron Ross saw you kissing and having fun
2 with Kaitlyn, and the next thing you all know he is
3 nowhere to be found; is that correct?

4 A (Affirmative head shake.)

5 Q But not a peep from Tuesday?

6 A I didn't hear her.

7 MS. SHEALY: I have no further questions.

8 THE COURT: Any redirect?

9 MS. HUNTER: No, Your Honor.

10 THE COURT: Any objection to the witness being
11 excused from the State?

12 MR. FINCH: None from the State.

13 THE COURT: From the defense?

14 MS. HUNTER: No, Your Honor.

15 THE COURT: Sir, you are excused.

16 You may call your next witness.

17 MS. HUNTER: Thank you. The defense calls
18 Cameron Ross.

19 THE COURT: Sir, if you would come to the
20 witness stand to be sworn.

21 MR. WILLIAM CAMERON ROSS,
22 after having first been duly sworn to state the
23 truth, the whole truth and nothing but the truth,
24 testified on his oath as follows:

25 THE COURT: You may proceed.

DIRECT EXAMINATION

BY MS. HUNTER:

Q Cameron, how old are you?

A 24.

Q How far did you go in school?

A Tenth grade.

Q Tenth grade. Why did you stop at the tenth grade?

A I had to go to work. I had to work helping out money around the house, helping out the family.

Q What happened at that point in time?

A When I was younger, about 12, my father had a stroke which caused paralysis to his left side, caused a lot of mental -- he went from being a 49-year-old man to like a 6-year-old boy who would cry if he couldn't tie his shoes or button his shirt or whatever, couldn't play sports with me anymore. So he kind of, you know.

Q So did that have anything to do with you leaving school in the tenth grade?

A Pretty much just needed to work to help out around the house, you know.

Q Okay. And what kind of work are you in?

A I'm in construction. Same thing my father did.

1 Q You enjoy it?

2 A Yeah, I love it.

3 Q Now in August of 2008, did you have a
4 girlfriend?

5 A Actually I did. Noel, the mother of my child.

6 Q How old is your child?

7 A She is four.

8 Q A daughter?

9 A Yeah, little girl.

10 Q What is her name?

11 A Child

12 Q Child

13 A Child

14 Q How often do you see Child

15 A I get her every weekend.

16 Q Do you help support Child

17 A Yeah, I pay child support. Prior to that --

18 MS. SHEALY: Your Honor, I'm going to object
19 to the relevancy.

20 THE COURT: I'm going to give him a little
21 latitude subject to connection.

22 A Prior to that -- prior to paying child support
23 I was paying for all of her daycare, anything she
24 needed.

25 Q (By Ms. Hunter) And then after this charge

1 happened, after you got charged with this offense,
2 what happened with your relationship?

3 A It drove a major wedge. That's why I only get
4 to see my child on the weekends because of this.

5 Q And how long have you been dating Noel before
6 August of 2008?

7 A Roughly two and a half, three years.

8 Q Had you ever cheated on her?

9 A No, never, not once.

10 Q Then what happened on August the 2nd, 2008?

11 A I guess just me and her had been together so
12 long I guess. Guys tend to stray away after a while
13 too, you know, I couldn't tell you.

14 Q What do you remember about that day, I guess.
15 We can start with that day. I know it's almost three
16 years old. If you could tell the jury what you
17 remember?

18 A Like you mean starting at the beginning?

19 Q You can.

20 A Basically Jesse picking me up and saying, hey
21 man, you want to go downtown and have a good evening.
22 We used to go to Wasabi's a lot, a bunch of friends
23 go up there all the time. So we went up there, had a
24 few drinks.

25 Like he said, I don't remember if we went to

1 another bar in between, but we did wind up at Purple
2 Tree Lounge. When we got there we were smoking a
3 cigarette out front, getting ready to go in. And he
4 happened to see Kaitlyn and Tuesday.

5 So we talked to them for a little while. The
6 line progressed and we wind up going inside. They
7 were saying something about an ID was missing or they
8 had lost it or something. They were kind of upset
9 they had to go back and get their ID.

10 So anyway we went in. It was a couple friends
11 of mine there that I hung out with. I didn't hang
12 out with Jesse much in Purple Tree that I remember.

13 Towards the ends of the night, you know,
14 lights cut on like they said, bar closed, went
15 outside and smoked a cigarette. As we were standing
16 out there --

17 Q Who was with you at that point in time?

18 A Jesse, Jesse and I were outside the Purple
19 Tree Lounge. As everyone is piling out, everyone is
20 coming out, we're saying bye to our friends, stuff
21 like that.

22 I believe it was Kaitlyn that came up and
23 asked Jesse if they could have a ride. I'm not sure
24 if they were together or what. Jesse said, yeah, no
25 problem, we will take you home, it's cool. So all

1 four of us proceeded to walk to Jesse's vehicle.

2 Q Let me stop you for a second. Were you
3 smoking a cigarette with Tuesday?

4 MS. SHEALY: Object to the leading nature.

5 THE COURT: Sustained, leading. Rephrase.

6 Q (By Ms. Hunter) Were you smoking a cigarette
7 with anybody out on the sidewalk in front of Purple
8 Tree before you left?

9 A Yeah, it was all four of us and maybe a couple
10 of friends that, you know, were passing by, might
11 have been saying hey to them. Yeah, all four of us.

12 Q So then you go to Jesse's car?

13 A Uh-hum, yeah.

14 Q What happened after that?

15 A We got in car. I'm pretty sure Kaitlyn
16 couldn't -- we got lost, turned around or something,
17 on the ride back to Kaitlyn's house. I don't know if
18 we past it or Jesse just couldn't find it or what.
19 Like he said, he was pretty intoxicated, so it took
20 us awhile to get back to the house.

21 We got back to the house, like I said, like
22 she -- the mirror got broke off on the side, I didn't
23 know if she hit it with the door or how it broke.
24 But I do remember I think she set it on the hood of
25 her car or on the trunk of her car and we went

1 inside.

2 Kaitlyn invited us inside for a beer, me and
3 Jesse. As far as I remember it was a pretty steep
4 stairwell and pretty narrow in the back. And I don't
5 remember anyone helping anyone out going up the
6 stairs. I think it's a metal stairway going up the
7 back, I'm not sure. I am pretty sure it is.

8 Anyways, we go inside. All four of us go
9 upstairs. I go use the bathroom, Jesse uses the
10 bathroom, I kind of wait on him. Kaitlyn and Tuesday
11 are in the bedroom. Kaitlyn comes out and by then
12 Jesse comes out of the bathroom so we all three go
13 downstairs.

14 We crack a beer. Start talking about, you
15 know, this and that, I don't even remember what we
16 were talking about, but we did pull a bowl out. Like
17 Jesse was saying it was a glass marijuana pipe, weed
18 residue, resin, collects at the bottom of it. You
19 smoke it, just like you would a regular pipe, it
20 heats up, it creates a smoke and you get THC through
21 that and you get high.

22 Q Who's marijuana was it?

23 A It was Tuesday's. We didn't have any pipe
24 with us or any weed with us or anything. Me or Jesse
25 didn't, I know that. So it had to be one of theirs

1 or at the house.

2 Q Okay.

3 A We smoked that. We were hanging out in
4 kitchen for a little while. I went into the living
5 room. I believe all three of us went in there, then
6 two kind of snuck off.

7 I noticed them making out in the kitchen, so I
8 just left them be for a little while. I heard a
9 noise, I didn't know if it was somebody calling, or
10 you know somebody on the phone talking upstairs or
11 somebody was calling a name or what was going on.

12 So me being me curious, I kind of went
13 upstairs. The door was ajar, I guess about a foot,
14 it was open about a foot. There was a light on in
15 the closet. The bedroom light wasn't on, but there
16 was like I said there is a bathroom and a closet in
17 that room. The closet light was on and shining, you
18 know, on the bed and into the room, as well as the
19 hall light was on shining into the room as well.

20 So when I opened the door I observed Tuesday
21 laying on the -- like sitting up, laying on the bed
22 but sitting up.

23 I told her, hey, you know, are you all right,
24 everything cool, said something to her. And she
25 said, yeah, come on in, pulled the cover back, patted

1 on the bed and said, come on in, sit down.

2 Q Who patted the bed?

3 A Tuesday. So I walked in and I sat on the bed,
4 both feet off the bed looking at her like this.

5 I don't remember what we talked about, but I
6 remember we sat there and talked for a little while.
7 One thing led to another, started making out, and
8 then one thing led to another.

9 Q And then did you all's -- your clothes came
10 off at that time?

11 A Uh-hum, yep.

12 Q And so can you tell the jury a little bit more
13 detail about messing around or what you were doing?

14 A Making out, then it led into sex. I was
15 probably laying next to her, took off my clothes, she
16 probably took off -- I don't remember what she was
17 wearing.

18 But it -- to me it seemed like it was a shirt
19 and maybe panties. I don't know if she had on shorts
20 or not. It wasn't much clothes at all, though. I
21 cannot remember what it looked like or anything like
22 that, color of it or anything.

23 Q When you were kissing her, was she kissing you
24 back?

25 A Oh, yeah.

1 Q And when you were touching her, was she
2 touching you as well?

3 A Oh, yeah.

4 Q Did she appear to be unconscious?

5 A No, she did not appear to be unconscious at
6 all. She spoke with me, we talked.

7 Q How long do you think you had a conversation
8 before all this happened?

9 A A few minutes.

10 Q Did she appear to be physically helpless?

11 A No, not at all.

12 Q Did she appear to be mentally incapacitated?

13 A No, not at all.

14 MS. SHEALY: Your Honor, I would ask that she
15 ask description --

16 THE COURT: Is there a basis for the
17 objection? No speaking objections.

18 MS. SHEALY: Conclusory.

19 THE COURT: It's actually leading. Sustained,
20 leading. Rephrase the question. Don't ask leading
21 questions.

22 MS. HUNTER: I won't. I won't at all.

23 THE COURT: Proceed.

24 Q (By Ms. Hunter) All right, so tell us what
25 happened after that?

1 At some point in time were you ever, where you
2 ever, yes or no answer, face-down having sexual
3 relations with her?

4 A We rolled around the bed. I would say I have
5 a pretty active sexual life so, you know, you have
6 fun in the bed, different positions.

7 Yeah, we moved around. I can't remember if I
8 -- I don't know why I would lay face-first on the bed
9 or anything like that. I don't remember anyone
10 laying face-first on the bed.

11 Q What happened after that?

12 I will wait until you are finished pouring
13 your water.

14 A I just remember there was a hardwood floors on
15 the stairs. So I do remember hearing like echoes of
16 voices and people coming up the stairs. At that
17 point in time I was like, well, I'm pretty
18 intoxicated, I don't know if I'm at her father's
19 house, if she lives with her boyfriend, her brother,
20 I don't know where the heck I'm at really.

21 So by that time I'd started to gather my
22 thoughts and get my clothes together. And I don't
23 remember ever seeing the lights flick on. I just
24 remember the door opening up and seeing Kaitlyn at
25 the door. I don't ever remember it being bright

1 lights or anything like that.

2 As soon as I stood up, Kaitlyn saw me, started
3 yelling at me. Basically me and Jesse -- I didn't
4 know if she was upset at him, if he had did something
5 to upset her, or we were in her bedroom or, you know,
6 I didn't know what was going on literally.

7 So me and Jesse just kind of got out of there.
8 We got down to the bottom of the stairs.

9 Q Excuse me for a second. Did you get shoved
10 down the stairs by anybody?

11 A Oh, no, not at all.

12 Q You walked down the stairs?

13 A Yeah, I walked down the stairs of my own free
14 will.

15 Q All right, then what happened after that?

16 A We got down to the car, to Jesse's car. I
17 don't remember if I got in or if I was just leaning
18 up against it, but he realized he forgot his shirt.

19 So he then ran back up the stairs and knocked
20 on the door, came back and said no answer, I will
21 just get it some other time, something like that, and
22 we left.

23 Q You heard the testimony earlier where Jesse
24 had asked you, what the F are you doing?

25 A Uh-hum.

1 Q What did you say to him?

2 A I probably was like, well, what was going on
3 with you all? I really don't remember how I
4 responded to that.

5 And me and him have been buddies since we was
6 16, so we talk to each other in a different way than
7 anyone else would. People can take what we say and
8 interpret it many different ways to each other.

9 Just like they're good friends, we are good
10 friends. And, you know, when you are good friends
11 with somebody, it's easy to talk to them. And it's
12 understood things. Like I don't know how to describe
13 it, but I don't remember exactly what I said to him.

14 Q On that night did you rape Tuesday Philbrook?

15 A No, I did not.

16 MS. HUNTER: That's all I have, Your Honor.

17 THE COURT: Any questions for the witness?

18 MS. SHEALY: May it please the Court.

19 THE COURT: You may proceed.

20 CROSS-EXAMINATION

21 BY MS. SHEALY:

22 Q Mr. Ross?

23 A Yes, ma'am.

24 Q You say you have an active sexual life?

25 A Yes, ma'am.

1 Q You have fun in different positions?

2 A Yes, ma'am.

3 Q And you are telling this jury that you and
4 Tuesday were just going at it; is that right?

5 A Yes, ma'am.

6 Q Isn't it true that the position you enjoyed
7 that night was on top of someone that was lifeless?

8 A No, ma'am.

9 Q No. When you told us at the beginning about
10 this relationship you have with Noel, and that things
11 soured?

12 A Uh-hum.

13 Q You explained that, well, at a certain point
14 guys just tend to stray away?

15 A Uh-hum.

16 Q And are you telling this jury that August 2nd,
17 2008 was Cameron Ross straying away?

18 A Yes, ma'am, that was the first night I had
19 ever cheated on Noel.

20 Q And you are telling this jury that you cheated
21 with your wife with a girl that you hadn't had a
22 conversation with yet; is that correct?

23 A I don't have a wife.

24 Q I'm sorry, your girlfriend.

25 A I have had conversations with her.

1 Q With Tuesday?

2 A Yes.

3 Q You all talking in the car?

4 A I remember talking out front the Purple Tree
5 Lounge, found out where she was from, where she
6 worked, stuff like that.

7 Q Okay. Well did you make the decision when you
8 all were outside the Purple Tree Lounge that she
9 would be yours that night?

10 A I don't see how I could make that decision.

11 Q But you make that decision when you go
12 creeping up the stairs and see her laying in the bed
13 passed out?

14 A I tend to walk up stairs. I didn't creep up
15 the stairs.

16 Q You didn't creep. So you made the decision
17 that you are going to have sex with her, according to
18 you, not based on conversation but based on
19 opportunity?

20 A No, we did have conversation, we did sit there
21 and talk.

22 Q So the flirty conversation that you say led to
23 sex was when you were sitting on the bed; is that
24 right?

25 A Yes, ma'am.

1 Q You were comfortable sitting on that bed?

2 A Yes, ma'am.

3 Q While you all chatted?

4 A Yes, ma'am.

5 Q While you wooed her?

6 A If that's how you want to put it.

7 Q And that was an air mattress, wasn't it?

8 A Yes, ma'am.

9 Q And you all had no problems sitting on it and
10 having that conversation?

11 A No, I have an air mattress at the house.

12 Q You do?

13 A Uh-hum.

14 Q Now you are telling the jury then that Tuesday
15 had absolutely no problem walking to the car?

16 A I don't remember her having any other -- any
17 problem walking to the car at all. Like Jesse said
18 we were all drinking.

19 It's not something I tend to do like to watch
20 somebody else's actions and write it down and jot it
21 down and record it.

22 We were all out to have a good night. And we
23 were all out to drink and have a fun night.

24 Q When you saw it's not really you to really pay
25 attention to other people's actions, you would agree

1 it would have been wiser when someone was passed out
2 not to have sex with them, would you not?

3 A I don't understand the question.

4 Q You've told us that you don't really care
5 about other people's actions, right?

6 You don't tend to notice them?

7 A When I'm out drinking with my friends and they
8 are willing to come with us and they're hanging out
9 with us on their own free will, I'm not really, no, I
10 wasn't.

11 Q You weren't what?

12 A I still don't understand the question.

13 Q Let me ask you this. Do you feel like since
14 you gave them a ride there was a ticket to sex?

15 A No. No, ma'am, not at all.

16 Q Well you told us that there is no question, is
17 there, that Tuesday goes straight up to the bedroom?

18 A No, no, we all went upstairs. You're right.

19 Q And Tuesday goes to the bedroom; is that
20 correct?

21 A Tuesday and --

22 Q Kaitlyn?

23 A Kaitlyn.

24 Q And you saw Kaitlyn trying to help Tuesday
25 into the bedroom.

1 A I didn't see them helping, I just saw us all
2 go upstairs.

3 Q Well you would agree, would you not, that when
4 Tuesday gets put down in the bed she doesn't come
5 back out of the room that night; is that correct?

6 A Yes, ma'am, you are right.

7 Q She is not downstairs drinking?

8 A No, ma'am.

9 Q See is not downstairs with this pipe?

10 A No, ma'am.

11 Q She is not calling for, hey, Jesse's friend
12 come on up, right?

13 A I did hear voices, I did hear. I didn't know
14 if she was on the phone or hollering at us or what
15 was going on. I did hear something from up there.

16 Q Okay. Did it concern you?

17 A At first, and then just kind of -- yeah, yes,
18 ma'am.

19 Q So when you were concerned about poor Tuesday
20 who was upstairs, why didn't you call for Kaitlyn to
21 go check?

22 A It wasn't that type of concern.

23 Q What type of concern was it?

24 A It was like what is she bored hanging out, she
25 hears talking, like we are being too loud type of

1 concern.

2 Q Well I think the way you described it was, me
3 being me, curious, you go upstairs. Is that right?

4 A Yes, ma'am.

5 Q Did you hear Kaitlyn, when you first go up the
6 stairs, looking for you?

7 A No, ma'am.

8 Q You didn't hear Kaitlyn or Jesse calling for
9 Cameron out the front door?

10 A No, ma'am.

11 Q Not calling for Cameron out the back door?

12 A No, ma'am.

13 Q But you were able to hear some noise up in
14 Tuesday's room earlier, right?

15 A Yes, ma'am.

16 Q And when Kaitlyn came upstairs looking to see
17 if you were up there, you were hiding somewhere,
18 weren't you?

19 A No, ma'am.

20 Q You weren't hiding from Kaitlyn?

21 A No, ma'am. I was never hiding from anyone in
22 that house. I had no reason to hide from anyone.

23 Q You've told us that you saw Jesse and Kaitlyn
24 making out, right?

25 A Uh-hum.

1 Q Right?

2 A Yes, ma'am.

3 Q You went look for something, didn't you?

4 Well you told us you have an active sexual
5 life?

6 A Yes, ma'am.

7 Q And they appeared to be getting pretty
8 intimate; is that correct?

9 A Yes, ma'am.

10 Q And you know there is another girl in the
11 house; is that correct?

12 A (Affirmative head shake.)

13 MS. HUNTER: Your Honor, may we approach,
14 please, I have a matter of law to take up with the
15 court.

16 (Whereupon, the following discussion was held
17 at the bench.)

18 MS. HUNTER: These question have been asked
19 and answer way too many times and I have not
20 objected.

21 MS. SHEALY: I don't think they have.

22 MS. HUNTER: Same questions.

23 THE COURT: Not really, in a different form
24 but make it the last time. Keep it moving.

25 (In open court.)

1 THE COURT: Proceed.

2 Sir, do you need the question repeated?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Please repeat the question.

5 MS. SHEALY: Well, I'm not overly confident
6 what the last question was.

7 THE COURT: Anne, could you read the question
8 back, please.

9 (Whereupon, the court reporter reads back the
10 previous question.)

11 A Yes, ma'am.

12 Q (By Ms. Shealy) And you knew that she was a
13 pretty easy target; isn't that true?

14 A I don't understand how you mean pretty easy
15 target.

16 Q Well she was upstairs in the bedroom when the
17 rest of you were still having a good time; is that
18 correct?

19 A Yes, she was up in the bedroom.

20 Q And you've told us you don't remember her
21 saying anything in the car, so she didn't say she was
22 especially sleepy, did she?

23 A I didn't say I didn't remember her saying
24 anything in the car.

25 Q So you are saying she did have a conversation

1 in the car?

2 A I don't remember if she did or what she said
3 if she did.

4 Q Let me ask it this way, you didn't hear
5 Tuesday say, guys, you all go have fun, I'm going to
6 go ahead and go up to bed?

7 A No, ma'am, I don't recall her saying that.

8 Q But when the other guys start making out, you
9 head on up the stairs?

10 A It was probably about 5, 10 minutes or so went
11 by and I heard a noise. Yes, ma'am.

12 Q And again when you hear that noise, you don't
13 bring it to anybody's attention?

14 A No, ma'am.

15 Q You are going to go in a house where you don't
16 even know if it's the mama's house or the daddy's
17 house, and go upstairs to a bedroom; is that correct?

18 A Yes, ma'am, I did that.

19 Q Then you are going to take your clothes off
20 and mount her while she's passed out in the bed; is
21 that correct?

22 A No, ma'am.

23 Q You tell us you all were chatting?

24 A Yes, ma'am.

25 Q You and Tuesday were getting to know each

1 other?

2 A We talked for a little while yes, ma'am.

3 Q Then you all went at it?

4 A It wouldn't have been like that, but.

5 Q It wouldn't have been like that?

6 A It wouldn't have been like we just went at it.

7 Q Then you tell the jury that when Kaitlyn comes
8 upstairs and she sees you naked, and she sees you on
9 top of Tuesday, who's face-down, she freaks; is that
10 correct?

11 A I didn't say she saw me on top of Tuesday. I
12 don't know where she saw me. I do remember about the
13 time the door got opened, I was already getting my
14 clothes ready and getting dressed.

15 Q You heard her tell you all earlier that
16 evening, upstairs is off limits, did you not?

17 A No, ma'am.

18 Q You are saying Kaitlyn didn't say that?

19 A No, ma'am, I don't remember her saying that.

20 Q And Ms. Hunter asked you that when you were
21 leaving the house you're saying you weren't pushed
22 down the stairs, right?

23 A Yes, ma'am, I was not.

24 Q You were just finishing getting your clothing
25 on and just decided that you were going to go ahead

1 and exit the house; is that correct?

2 A No, ma'am, like Jesse said it happened so
3 fast. And I didn't know if he had upset Kaitlyn, I
4 didn't know what was going on, if somebody was on the
5 way home. I didn't know what was going on.

6 Like I said, stuff like that -- we have been
7 at friend's houses before and their parents on the
8 way home, or their boyfriend is on the way home, or
9 something like that and you have to leave in a rush.

10 Q So you are used to rushing out of somebody's
11 house after sex?

12 A No, I said it's happened before.

13 Q Okay. So you are saying that when Kaitlyn
14 freaked, you thought that might mean she was upset
15 with Jesse?

16 A I did not know what was going on, yes, ma'am.

17 Q You know you got caught red-handed, don't you?

18 A No, ma'am.

19 Q You don't believe you got caught red-handed?

20 A No, ma'am.

21 Q But you didn't share with Jesse, this close
22 friend of yours, anything more when he said, what in
23 the F were you doing?

24 A Like I said, we just -- I've never -- I don't
25 ask him about his sex life, he doesn't ask me.

1 Q You all are tight?

2 A Yes, ma'am.

3 Q He is your man?

4 A He is my friend.

5 Q And you are saying one simple question by
6 Jesse was enough?

7 A What?

8 Q One simple question by Jesse and no other
9 questions by him?

10 A Yes, ma'am.

11 Q He knew what you had been doing, you all
12 didn't have to --

13 MS. HUNTER: Objection, Your Honor.

14 THE COURT: Basis of the objection?

15 MS. HUNTER: Speculation.

16 THE COURT: Sustained, lay the appropriate
17 foundation. Speculation.

18 Q (By Ms. Shealy) I thought, Mr. Ross, you
19 indicated that there were things that you and Jesse
20 didn't have to say to each other because you all were
21 so tight; is that correct?

22 A Yes, ma'am.

23 Q And on that evening after what happened you
24 didn't have to explain it all to Jesse, he knew?

25 A I mean it's just like I said, we don't talk

1 about -- we are two guys, we don't talk about sex
2 with each other, just something we don't do.

3 Q Two guys who don't talk about sex with each
4 other?

5 A Me and Jesse don't.

6 MS. SHEALY: Beg the Court's indulgence.

7 Q (By Ms. Shealy) When Kaitlyn walks into that
8 room and freaks out, does Tuesday pop up and say,
9 leave him alone?

10 A Not that I recall.

11 Q Does she grab for you and say, don't be mean
12 to him?

13 A No, ma'am.

14 Q Does she try to get out of the bed to catch
15 you?

16 A Like I said, it all happened so fast. So I
17 don't know what she did when we left.

18 Q But you didn't hear one peep from Tuesday, did
19 you?

20 A No, ma'am.

21 Q Not a word?

22 A No, ma'am.

23 MS. SHEALY: I have nothing further, thank
24 you.

25 THE COURT: Any redirect?

1 MS. HUNTER: No, Your Honor.

2 THE COURT: Sir, you may step down.

3 Defense may proceed.

4 MS. HUNTER: Defense rests, Your Honor.

5 THE COURT: Does the State have any -- motions
6 will be reserved -- does the State have any rebuttal
7 witnesses?

8 MR. FINCH: None from the State, Your Honor.

9 THE COURT: Does the State -- could counsel
10 approach for me, please.

11 (Whereupon, the following discussion was held
12 at the bench.)

13 THE COURT: How long -- is the State going to
14 open and close?

15 MR. FINCH: No, just second closing.

16 THE COURT: How long is your argument?

17 MR. FINCH: I think 15 minutes.

18 MS. HUNTER: Me too, it's going to be short.

19 THE COURT: Okay, you can stand back.

20 (In open court.)

21 THE COURT: Madam Forelady, ladies and
22 gentlemen, both the State and the defense have rested
23 their cases. There are some very brief matters of
24 law that I need to take up with them.

25 During this break, I will give you the option.

1 rested its case?

2 MS. HUNTER: No, Your Honor.

3 Let me clarify, this would be on the jury
4 charges at this time?

5 THE COURT: I'm about to have charge
6 conference.

7 MS. HUNTER: Okay, thank you.

8 THE COURT: I will give the jury a general
9 instruction regarding their responsibility and my
10 responsibility; how they are to judge witness
11 credibility and believability.

12 I will give them a general instruction
13 regarding expert witness testimony. I will give them
14 a general instruction from State versus Grippon
15 regarding direct and circumstantial evidence, as well
16 as a general instruction that the charge, the arrest
17 and the indictment are not evidence. And a general
18 instruction on the presumption of innocence.

19 I will instruct Victor versus Nebraska on
20 reasonable doubt. I will instruct third degree
21 criminal sexual conduct from 16-3-654. And all of
22 the subsections apply in this case. So I will
23 instruct that the State has prove one of these
24 circumstances, so or will be used as I separate each
25 subsection of that statute.

1 I will instruct 16-3-657 which is the
2 testimony of the victim need not be corroborated in
3 persecutions for criminal sexual conduct in the third
4 degree. I will then instruct consent as a defense.

5 I then will instruct voluntary intoxication
6 because there has been a great deal of discussion
7 about the -- that these parties were extremely
8 intoxicated, more so that the defendant was extremely
9 intoxicated as well. But that someone who's
10 voluntarily intoxicated, unless it causes insanity,
11 is just as responsible for acts committed while
12 intoxicated as when a person is not intoxicated.

13 I will then instruct on the form of the
14 verdict, which is guilty or not guilty.

15 Are there any requests -- I'll instruct on the
16 form of the verdict.

17 Are there any exceptions to the charge from
18 the State?

19 MR. FINCH: Just a clarification on the
20 voluntary intoxication, just to make sure that the
21 jury is aware that that applies to the defendant,
22 just because there is so much talk about
23 intoxication.

24 THE COURT: Well it talks in terms of the
25 defendant. I don't know how they could interpret it

1 as applying to the victim.

2 MR. FINCH: I'm just trying to make that
3 clear.

4 THE COURT: It talks about it being a defense
5 to actions by the defendant, and the defendant's
6 ability to know right from wrong. So I don't know
7 how they could interpret it as applying to --

8 MS. HUNTER: Your Honor, that's not a defense.

9 THE COURT: It is not a defense, and it is not
10 being claimed as a defense. However, there has been
11 a great deal of talk about alcohol and its impairment
12 of the ability to make decisions.

13 I need the jury to be clear that no matter how
14 impaired you are, if you voluntarily became
15 intoxicated, unless it creates a level of insanity
16 that impairs your ability to know right from wrong,
17 you are just as responsible whether you were
18 intoxicated or not intoxicated.

19 MS. HUNTER: I completely understand. I just
20 want to make sure it doesn't target one person.
21 Because the testimony is that --

22 THE COURT: The case law says that whenever
23 that is introduced into evidence as to a defendant,
24 the jury has to be clear that if you are impaired
25 because you are drunk, that doesn't excuse your

1 behavior.

2 MS. HUNTER: Okay.

3 THE COURT: Whether it is advanced as a
4 defense or not. And there is a case on point
5 actually that deals with it.

6 Because whenever an issue is raised, I cannot
7 -- you know, the Court is the gatekeeper, so to
8 speak. I am supposed to make sure that there is a
9 level playing field.

10 If any issue is introduced before the jury, it
11 is my job to make sure that they have clarity as to
12 how they are to apply it as the fact finder. And I
13 cannot leave them with the misapprehension that if he
14 was drunk that he is not responsible.

15 Because if he was drunk he is responsible, if
16 he was sober he is responsible. That's the law in
17 South Carolina. If you become voluntarily
18 intoxicated, unless it creates insanity where you
19 don't know right from wrong, you're just as
20 responsible.

21 MS. HUNTER: Isn't that with only DUI
22 offenses?

23 THE COURT: No, that's with everything.
24 That's black letter precedent for every offense in
25 this state.

1 And it's a very short instruction. It just
2 says, insanity caused by the use of drugs or alcohol
3 may be a defense if the insanity is permanent and
4 destroys the defendant's ability to know right from
5 wrong. However, when voluntary intoxication has not
6 produced permanent insanity, it's not a defense to a
7 crime.

8 A person who voluntarily becomes intoxicated
9 is just as responsible for the acts committed while
10 intoxicated as when the person is not intoxicated.
11 That's the extent of it.

12 THE COURT: Any further exceptions to the
13 instruction from the State?

14 MR. FINCH: None from the State.

15 THE COURT: Any from the defense?

16 MS. HUNTER: No, Your Honor.

17 THE COURT: Okay. Can you bring me the
18 foreperson so I can see what they have decided to do.

19 You all can look at the verdict forms.

20 Any exception to the form of the verdict from
21 the State?

22 MR. FINCH: No, Your Honor.

23 THE COURT: From the defense?

24 MS. HUNTER: No, Your Honor.

25 THE COURT: We'll see what the jury wants to

1 THE COURT: Is the State ready to proceed?

2 MR. FINCH: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MS. HUNTER: Yes, Your Honor.

5 THE COURT: And the State is going to waive
6 opening, correct?

7 MR. FINCH: Correct.

8 THE COURT: Do you have everything in place
9 you need, Ms. Hunter, for closing arguments?

10 MS. HUNTER: Yes, ma'am.

11 THE COURT: Please bring in the jury.

12 (Whereupon, the jurors enter the courtroom.)

13 THE COURT: Madam Forelady, ladies and
14 gentlemen, we appreciate your patience as I dealt
15 with those status conferences. Again, as I've
16 indicated, we do not take your time for granted.

17 As I told you on Friday, we have now reached
18 the stage of the trial where you will hear closing
19 arguments and the Court's instruction on the law. I
20 would ask that you give the attorneys your undivided
21 attention.

22 Ms. Hunter, you may proceed.

23 MS. HUNTER: Thank you, Your Honor.

24 Good morning. Sorry this has been a little
25 bit dragged out, we didn't expect this.

1 First of all, I want to let you know that I
2 apologize if I appeared frustrated or if I frustrated
3 you. I don't want you to take it against my client.
4 There has been a couple of times that I have had to
5 look up things in some people's reports that I didn't
6 think that I would have to do because there were
7 reports. But anyway, I apologize for that.

8 I am going to first talk about -- I'm just
9 going to tell you a story that I heard from another
10 lawyer. There are two kids and they're walking along
11 the stream. And one of the kids is looking down and
12 he goes, hey, look there is a rainbow trout. It's
13 beautiful, it has all of these beautiful colors on
14 it, you've got to come see it.

15 And the other kid comes up and he has got a
16 stick. And he is punching into the stream and he
17 says, I don't see the stick -- I mean, I don't see
18 the rainbow trout. Where did it go? What happened
19 to it?

20 Well the water was muddy. He couldn't see it
21 because of water was muddy. And what I am going to
22 submit to you is that the State has given all of us
23 muddy water, and has not gotten to the point of why
24 we are actually here today.

25 I want to first of all take one of these

1 exhibits that you are going to have back in the jury
2 room, and I want you to remember that this was
3 testified that this picture came from the South
4 Carolina Department of Motor Vehicles.

5 I submit to you that this is not evidence that
6 he has actually been arrested for anything ever in
7 his life. So please take that into consideration.
8 Also take into consideration that he really is a good
9 guy. In the tenth grade he had drop out of his
10 school because his father had a stroke and he needed
11 to take care of his family and he did.

12 And he has also got a little girl that he
13 supports and he sees every single weekend. Cameron
14 is a good kid. When I say kid he is 24, I'm 45, so I
15 still think he is a good kid.

16 I'm also going to put on this board some
17 things that the pharmacologist testified to, and none
18 of it was objected to. The pharmacologist kind of
19 was very long-winded, and at times some of you may
20 have thought it was a little boring, but it was
21 extremely important for us to have that
22 pharmacologist here for this trial.

23 So I'm just going to boil it down to a couple
24 of things. He stated that a blackout is not the same
25 thing as being passed out.

1 Excuse my handwriting, I'm not really good at
2 it. He also said that being semiconscious is not the
3 same thing as being conscious. I don't know if I am
4 spelling it right, but you get the idea. Not the
5 same.

6 One very important thing that this doctor,
7 this expert in psychopharmacology said is that he has
8 been studying the effects of alcohol on people for
9 years. And he said, he stated, and this is
10 undisputed, that a person can have a blackout, that
11 they can function normally, or function as though
12 they are not drunk, and still have the -- able to do
13 things that you are doing without being a drunk. And
14 you still just don't remember it the next day.

15 But the most important thing that he said is
16 that these things can fluctuate with a person. So
17 you can be blacked out, and sleep, and it goes back
18 and forth.

19 So what he said is that it is possible for a
20 person like Tuesday to go up and go to bed, and then
21 wake up and go where's the party, I'm up, where is
22 the party. And that was one of the most important
23 things that he said and that I want to drive home.

24 He also stated that alcohol is going to make
25 somebody lose their inhibitions. And he also told a

1 story that was interesting about a man who was drunk
2 one night and spent \$70,000 on a contract to buy
3 business and didn't remember that the following day.

4 Now none of us have any idea if that actually
5 ended up happening, but that's what that man did.
6 And that's how serious a blackout and pass out
7 occurred, and how important it is.

8 I also want to put this out here, and I am
9 kind of hesitant about it. But if someone is driving
10 under the influence and they are -- they have a
11 blackout the next day but they wake up in jail, it's
12 still the same thing.

13 It's not that I'm saying that you are
14 accountable because you are the victim of an assault
15 or anything like that, but it's not something you can
16 use, you are still accountable for what you do. So
17 please don't take that negatively.

18 I'm going to talk about Cameron a little bit,
19 talk to you about his being a good father, and he is
20 a son to a mother and father. And everything that he
21 said to you was that they all went out. They were
22 all drunk. They all came home over to Kaitlyn
23 Moriarty's house. They are were invited in.

24 Prior to that Tuesday Philbrook could sit on
25 the sidewalk or stand on the sidewalk, smoke a

1 cigarette with him, knew that Kaitlyn was trying to
2 get them a ride home, and the only time that she
3 doesn't remember is when she gets into the car to go
4 back to Kaitlyn's house.

5 They get to Kaitlyn's house. Nobody stated
6 that she had to carry herself in. She even recalled
7 pulling the mirror off of her car. That is something
8 that nobody testified on cross-examination that she
9 actually fell and knocked it off. The testimony was
10 that she took the mirror off of the car.

11 They go into the house, it's still a party.
12 The party is still going on at the house. Bar closed
13 at 2:00, they get there around 2:30, they are invited
14 in, they're given some beer.

15 Kaitlyn's and Jesse start messing around and
16 kissing. Cameron is, you know, not to be found.
17 They go out to the front porch, back porch looking
18 for him. They go upstairs looking for him and then
19 they decide he must have left and then they continued
20 to kiss and mess around.

21 Then Kaitlyn said that she heard a noise
22 upstairs. So she goes upstairs to see what is going
23 on. Jesse is behind her. He does not see one thing.
24 She is yelling and screaming. Cameron gets up, says
25 I'm sorry, didn't know if it was somebody's parents'

1 house, if it was a boyfriend's house -- which by the
2 way nobody remembers if she had a boyfriend or not at
3 that time -- and she -- so they both left right when
4 she said to leave. They didn't say, no, we are
5 staying here. No, we are going to assault you. And
6 actually they came back thinking nothing is wrong but
7 Jesse had left his shirt. And that's it.

8 what the State wants you to think is that
9 there is proof and that there is evidence, and they
10 muddled the water for us. They paraded in five or
11 six law enforcement officers who brought absolutely
12 nothing to the table in this case, nothing. One of
13 them said they took statements. One of them said
14 they seized clothes.

15 we don't have any clothes. We don't have any
16 torn clothes. We don't have the shoes that she said
17 she couldn't walk in. They could have been three
18 inches, they could have been two inches. And women,
19 I'm going to tell you it's common sense, their feet
20 hurt after they have worn heels for a long time. You
21 want to take them off. That doesn't mean that she
22 was incapacitated.

23 so if you think about what the law enforcement
24 brought to the table, in addition to no physical
25 evidence other than pictures of the inside of the

1 apartment which you are going to see, there is no
2 forensic evidence that they brought in. Law
3 enforcement took the sheets, the pillows, the
4 comforter, and all these things and there is no
5 evidence on that. Nothing.

6 So where is it? Where is the proof? There is
7 no proof.

8 The nurse was very helpful to all of us
9 because she woke up -- Tuesday woke up the next day
10 about one o'clock, I guess, in the afternoon. And
11 she came barreling down the stairs with her bathing
12 suit on ready to go the beach.

13 And Kaitlyn had to tell her, step by step,
14 what she had seen the night before. She didn't have
15 any recollection whatsoever because she had had a
16 blackout.

17 But the nurse said that there were absolutely
18 no findings of sexual assault whatsoever, none. She
19 went through this whole litany of the testing that
20 she did, and examinations that she did with Ms.
21 Philbrook and there is nothing. Nothing. Why did we
22 have to hear all of that? It doesn't prove anything.
23 Nothing.

24 So one thing that I thought was interesting
25 was that the nurse was testifying that Tuesday

1 Philbrook was quiet, but yet she wasn't tearful, she
2 wasn't sobbing, she wasn't tense, she wasn't anxious,
3 she wasn't anything but simply quiet, she wasn't even
4 angry.

5 Now if you were a victim of rape, and you have
6 been told that, and told step by step what happened,
7 I would submit to you that you would not be simply
8 quiet.

9 In addition, in the nurse's report she stated
10 that she could recall all of the events very well.
11 Well this is contradictory to what has been said over
12 and over again.

13 Another interesting thing that the nurse said
14 was that there was four pictures of the bruises on
15 her leg. Where are they? Where are those pictures?
16 This is almost three years old. These pictures
17 should be with us. We should know the color, we
18 should know the size, we should know how old it is,
19 we should know where it came from, but she said it
20 could have come from anywhere, we don't know.

21 But I do not think that anybody should just
22 assume that a bruise on someone's leg came from this.
23 And in addition the nurse said that the vaginal
24 muscles create lubrication, and that I submit to you
25 if there was some sort of injury to her vagina, as

1 she stated there was dryness or something that hurt
2 her, that there would be evidence of that but there
3 wasn't. There was no evidence of that.

4 Kaitlyn, I'm not going to go through
5 everything except for I want to point out a few
6 different things, and you need to figure out who you
7 want to believe and who you don't want to believe.

8 Kaitlyn testified that she does smoke pot
9 every now and then. And the boys testified that
10 night that they were looking for marijuana and that
11 they found it. I don't think they knew if it was
12 Tuesday's or Kaitlyn's, and they smoked resin out of
13 a bowl.

14 So apparently Kaitlyn was drinking beer, I
15 submit to you she had been drinking all night, and
16 she was also smoking marijuana. So her recollection
17 I would think, or I would submit to you, is very
18 weak.

19 She is the only person, Kaitlyn is the only
20 person who stated that Tuesday was in a semiconscious
21 state. And use your common sense. Also the doctor.
22 Semiconscious is not -- I should have put unconscious
23 there -- is not unconscious. Semiconscious is not
24 unconscious.

25 So she is the only one. That's it. She is

1 the only one. She is terrified too. She comes
2 downstairs and she is so terrified that she has to
3 hide in the closet with a knife, worried that
4 somebody is going to come back.

5 But yet her friend is apparently in a
6 semiconscious state; she doesn't take her pulse; she
7 doesn't take her heartbeat; she doesn't call 911; she
8 doesn't call the police, even though she thinks her
9 friend is in a lot of danger and she is terrified.

10 The police could have -- they're downtown,
11 could have easily been there like that. Checked the
12 whole scene out. And this could have been done right
13 when it happened.

14 But she waited until the next afternoon. I
15 submit to you again that Tuesday came barreling down
16 the stairs all happy with her bathing suit on saying,
17 let's go to the beach. Let's go to the beach.

18 But, no, she couldn't go to the beach because
19 Kaitlyn had already told two other people what had
20 happened, and I submit to you that she had to do what
21 they had instructed her to do. How would it look if
22 she didn't. You saw her demeanor and the crying and
23 the having to take breaks.

24 Does she have an ulterior motive? Does she
25 have some sort of histrionic incident or -- I don't

1 know. You just use your judgment on whether or not
2 to believe what Kaitlyn said is true.

3 If all of this, which I have just gone over,
4 is enough evidence and testimony to convict any
5 person alleged to have committed rape, then our
6 judicial system is in a whole lot of problems.
7 Because that's all you got. And that there is a lot
8 of reasonable doubt.

9 If one person can come to the police and say,
10 this is what I saw, and try to render a medical
11 opinion, and then you get a warrant, and then you
12 have to go through a jury trial, we have problems
13 with our judicial system, real bad problems. Because
14 anybody can get accused wrongfully, or truthfully, I
15 will admit that, of doing something wrong and have to
16 go through this process.

17 And I want to remind you that rape, rape is a
18 very serious. And it's a very serious accusation.

19 And then I want to go through, well you
20 already know, I'm not going to hash and rehash
21 anything that Tuesday said or that the state's other
22 witness doesn't recall anything. And, you know, yet
23 everybody else recalls that she is smoking
24 cigarettes, and pulling mirrors off the doors and
25 things like that.

1 Now I want to get to Jesse, and Jesse says the
2 same thing except, you know, with the marijuana. And
3 he doesn't see anything when he goes upstairs with
4 Kaitlyn.

5 And then Cameron. Let's get to Cameron's
6 testimony. First of all, I submit to you that he was
7 probably the most believable witness that was in here
8 last week. Every single person that wrote a report,
9 or any kind of notes, didn't even know where to find
10 them. They knew they were supposed to be here. They
11 depended on me to find them through 20 pages, 30
12 pages of their notes. That's ridiculous.

13 And Cameron knew what happened. They all got
14 drunk. He didn't make any bones about it, and
15 neither Jesse. They drove home drunk. They got
16 invited inside. They all drank beer. They all
17 started messing around, divided up into couples, no
18 findings of sexual assault from anybody.

19 And he sat up here and he told you he did not
20 rape her. He did not rape her. He did not do
21 anything wrong. Nothing.

22 He went in there, she patted the hand on the
23 mattress and said, come in here and talk to me. They
24 had a conversation in there. And then just like
25 Kaitlyn and Jesse, one thing led to another, kissing,

1 messing around. He did say that he's had, you know,
2 a lot of -- he is not lacking in the sexual
3 department I guess. He had some -- that was with his
4 girlfriend. And he testified that was the first time
5 that he had cheated on his girlfriend. So I don't
6 want you to hold that against him, but at least he
7 was honest about it.

8 And also with Kaitlyn's saying that she shoved
9 him down the stairs, there is no bruises, there is no
10 injuries. Jesse and Cameron said that it did not
11 happen. The arresting officer would have noticed if
12 there were bruising and injuries if you get thrown
13 down, shoved down a flight of hardwood floors all the
14 way. And look at the pictures when you get back to
15 the jury room.

16 And also I want to go into what the Judge is
17 going to tell you about the law. I'm not going to go
18 any further, I don't want to bore you, I'm going to
19 get out of here, and it's very, very simple.

20 The State is going to come up after me, I will
21 not have a chance to come up again. But she's going
22 to give you, the Judge, the Honorable Judge
23 Jefferson, the law in the case. There are a bunch of
24 words that are going to come up; physically helpless;
25 mentally incapacitated; unconscious; things like

1 that.

2 But one of the most important things, or the
3 most important thing is that you need to figure out
4 if he is guilty beyond any reasonable doubt.

5 Now if you have been in a civil case, which is
6 not criminal, civil cases where you have to prove
7 somebody did something, not a crime, by the
8 preponderance of the evidence.

9 I think she may say this. Here are the scales
10 of justice. In a civil case it's like this, 51
11 percent, 48 percent, most likely. In a criminal case
12 beyond a reasonable doubt. If you are hesitating to
13 find him guilty beyond a reasonable doubt, he is not
14 guilty if you are hesitating.

15 Also if you are -- if you think that there is
16 a real possibility, a real possibility that he is not
17 guilty, you must give him the benefit of the doubt
18 and find him not guilty.

19 And I submit to you that there is plenty.
20 There is nothing to show that he is guilty. Nothing.
21 Just remember this is a very serious accusation. I
22 appreciate all of your time, patience, everything. I
23 know it's rough being on jury duty, but we need you.
24 So I'm going to close there. Thank you.

25 THE COURT: State may proceed when its ready.

1 MR. FINCH: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MR. FINCH: May it please the Court.

4 THE COURT: Yes, sir.

5 MR. FINCH: Ladies and gentlemen, the water is
6 crystal clear. I just want to address briefly a
7 couple things Ms. Hunter tried to use as
8 distractions, to get you to think about things that
9 are other than the issues in this case. Because the
10 issues in this case are merely the elements of the
11 crime the defendant has been charged. That he
12 committed sexual battery on Tuesday Philbrook, while
13 she was mentally incapacitated or physically
14 helpless.

15 As it progressed, review the evidence, you'll
16 have plenty of opportunity to see there is plenty of
17 evidence clearly showing Ms. Philbrook was both of
18 those things. Not just one, but both.

19 There are a couple things you don't need to
20 concern yourself with; the age of this case.
21 Dockets, court dockets, schedules, have no bearing on
22 what happened on August 2nd, 2008. Where this case
23 has been, has no bearing on what happened, has no
24 bearing on the truth.

25 Whether or not Mr. Ross has children has no

1 bearing on this case. None of those distracters have
2 any bearing on what happened on August 2nd, 2008.
3 It doesn't take away or change the truth of what
4 happened. Doesn't change the condition that the
5 victim was in that night. Doesn't change anything.
6 Everybody comes to court is somebody's son,
7 somebody's daughter. Nobody arrives here out of thin
8 air.

9 Let's get down to the truth and facts as
10 presented by the state, as corroborated by evidence
11 and testimony. The facts are the Kaitlyn Moriarty
12 and Tuesday Philbrook went out that night. They
13 drank. Mr. Ross went out that night. His friend
14 went with him, they drank. No one is disputing that.
15 They got drunk. Everybody was drunk.

16 Except Ms. Philbrook was wasted. She could
17 barely walk. She told you that. Kaitlyn Moriarty
18 told you that. Nobody disputed she needed help
19 getting in the house, nobody disputed that she didn't
20 even know she ripped the mirror off her own car.

21 There was testimony that she normally wakes up
22 at nine o'clock in the morning, and she slept until
23 one o'clock that afternoon. Circumstantial evidence
24 of her impairment of the night before.

25 It's true, what we are left with are the

1 stories of the people who were there, the stories
2 that people can tell you. So let's review those
3 stories quickly.

4 All those stories follow the same path, the
5 path I just briefly recounted for you. The only
6 divergence comes from the defendant, the only
7 variation in any of those stories.

8 It's clear that once they're back at [REDACTED]
9 [REDACTED] although they didn't pair off, Tuesday
10 Philbrook went up and was put to bed. Upstairs was
11 off limits.

12 And then the defendant wandered off and nobody
13 could find him. Ms. Moriarty went upstairs to look
14 for him and came back downstairs. She came back
15 downstairs. And Jesse Spradling told you, we looked
16 out front, we looked out back, and when she came back
17 from upstairs, she hadn't found him.

18 Then they went back up. They didn't find him
19 because he was hiding. Because he knew what he was
20 doing, and he knew what he was doing was wrong.
21 Because it's wrong to have sex with someone who
22 cannot consent because they are mentally
23 incapacitated or physically helpless. That's what
24 our statute tells us.

25 Now we can look at this other distraction and

1 talk about expert testimony. You might remember I
2 didn't ask that expert any questions. I completely
3 agree. People get drunk. People forget things.
4 Blackout aren't passing out. It's all clear,
5 semiconscious is not unconscious.

6 The only thing to recall is Kaitlyn Moriarty
7 is not a doctor. The doctor uses semiconscious,
8 maybe they mean it in some way. She is trying to
9 relate what she saw, a barely moving human being, her
10 best friend; could barely even mutter the words, I
11 love you, before she passed out again. Because she
12 had just briefly woken by Kaitlyn Moriarty.

13 Prior to that she hadn't moved. In the
14 several times that she had been viewed by Kaitlyn
15 Moriarty, had not moved. There is nothing here that
16 is shocking. There is nothing here that's new
17 evidence. There's nothing here that's going to help
18 you better understand what happened that night
19 because it's clear.

20 Tuesday Philbrook was extremely intoxicated.
21 It was visible to everybody, to the police who woke
22 her up on the sidewalk and told her to get moving; to
23 her friend; and to herself the next day when she woke
24 up, not bounding down the stairs saying, let's go to
25 the beach, but ashamed that she had ruined her

1 friend's night, she had ruined a good time by getting
2 so drunk. She knew how drunk she was.

3 The only person who did not seem to appreciate
4 that was the defendant. Even Jesse Spradling told
5 you she was real drunk. That's what he put in his
6 statement.

7 The State's job, our job is to prove to you
8 those elements of the crime beyond a reasonable
9 doubt. Ms. Hunter spoke to you about reasonable
10 doubt. She pointed out if you hesitate, well then
11 that's reasonable doubt.

12 Well you'll hear that kind of language when
13 the Judge addresses that. But mere hesitation, a
14 simple thought, that's not reasonable doubt. Take
15 the time to consider the evidence. Take the time to
16 weigh the evidence. That's not hesitation, that's
17 contemplating.

18 The fact that you don't go out one door, and
19 turn right back around with a verdict, that's not
20 hesitation, that's doing your job, weighing the
21 evidence, weighing the credibility of the witnesses,
22 weighing that evidence that has been submitted, and
23 does that prove the State's case beyond a reasonable
24 doubt that the defendant is guilty of criminal sexual
25 conduct in the third degree.

1 Keep in mind, this isn't first degree. This
2 isn't second degree. There is no weapon. The State
3 is not alleging that anybody was threatened. That
4 anybody was held with a gun.

5 MS. HUNTER: Your Honor, I have a matter of
6 law to take up with the Court.

7 THE COURT: Please approach.

8 (Whereupon, the following discussion was held
9 at the bench.)

10 MS. HUNTER: The CSC first, CSC second, none
11 of that is in evidence --

12 THE COURT: He is only made one reference and
13 this is the first reference. He's distinguishing
14 between the three saying that they're not alleging a
15 weapon was used. And that that's not a problem.

16 MS. HUNTER: But Jennifer did that as well. I
17 think that it's confusing to the jury.

18 THE COURT: You didn't make a contemporaneous
19 objection when she did it, so I have no way or
20 remembering when that was.

21 MS. HUNTER: No, I didn't. She did it during
22 testimony.

23 THE COURT: Within the context of how he is
24 arguing it, it is proper. He is not saying -- he's
25 simply saying that these things are not required of

1 the State to prove their case beyond a reasonable
2 doubt.

3 MS. HUNTER: They have nothing to do with this
4 case.

5 THE COURT: I think that if the jury, based on
6 the way the case was argued in closing, that if they
7 want to draw that distinction, it's appropriate. In
8 other words, that they're not required to prove that
9 force, that any kind of violence was involved. It
10 only requires that she be incapacitated.

11 But I would imagine you are not going along on
12 that point very long.

13 MR. FINCH: I wasn't. I was trying to
14 distinguish from what Ms. Hunter had said about there
15 being no crime found.

16 THE COURT: Yeah, it's appropriate. It's in
17 the context of closing.

18 MS. HUNTER: But it has nothing to do with any
19 violence.

20 THE COURT: Don't talk to each other. I have
21 ruled. Stand back.

22 (In open court.)

23 THE COURT: The objection is overruled, you
24 may proceed.

25 MR. FINCH: Thank you, Your Honor.

1 The elements of criminal sexual conduct in the
2 third degree, as pointed out previously, are sexual
3 battery. Cameron Ross told you that. He told you
4 that. His version didn't deny at all that there was
5 sex going on up in that room while the victim was
6 mentally incapacitated.

7 You heard about her condition. The condition
8 has been testified to by her best friend. She tells
9 you the level of her drunkenness. Or physically
10 helpless. And physically helpless, under our law,
11 could mean something as simple as asleep. She wasn't
12 able to form and consent. She wasn't able to give
13 consent.

14 In fact, when the defendant testified he told
15 us all these different things he heard. He heard a
16 noise upstairs, maybe it was a voice, maybe somebody
17 on the phone, maybe somebody calling out to him
18 wondering where the party was.

19 He heard somebody coming up the stairs, maybe
20 her dad, maybe her brother, he didn't know. That was
21 the time to end the sex, end the good times that he
22 was sharing. What he didn't hear, never heard any
23 testimony where the victim consented. The only thing
24 we didn't hear.

25 You've seen all the witnesses. And your job

1 is to weigh the credibility of the witnesses. You
2 saw Kaitlyn Moriarty testify. The first person who
3 spoke in this trial days and days ago. You want to
4 talk about three years? It was like a minute hadn't
5 passed from the first time Kaitlyn Moriarty saw what
6 she saw in that bedroom, what she saw happening to
7 her best friend.

8 That's what I mean, happening to her, not what
9 she was doing. Because all she was doing was laying
10 there unconscious, semiconscious, clearly unable to
11 consent. It's still raw for her. You talk about
12 this case is so old this and that. It's not old. It
13 will never be old.

14 Now you are going to hear about this
15 intoxication. You might be thinking, everybody was
16 drunk, where do I draw the line, where do I judge?
17 It's not a crime to be drunk. People do it all the
18 time in Charleston. College kids do it all the time.
19 Every night it happens in Charleston.

20 It's not odd for a 21-year-old to be drunk.
21 It's not odd for a 21-year-old to be really drunk.
22 That's not a crime. It doesn't make anybody at fault
23 for being drunk. It doesn't put any blame on the
24 victim for anything.

25 In fact, as an element of this crime, because

1 a substance created her inability to consent, her
2 substance created that impairment that was known, or
3 should have been known to the defendant, that becomes
4 important.

5 You are also going to hear about intoxication
6 as it regards the defendant. It's not an excuse.
7 Just because somebody is intoxicated, voluntarily
8 intoxicated, doesn't excuse their conduct, unless it
9 somehow makes them insane. There has been no
10 testimony that Mr. Ross was rendered insane by his
11 voluntary intoxication.

12 In fact, if we excuse crimes because people
13 were voluntarily intoxicated, we would have a
14 terrorist society. That's when our court system
15 would be a disaster, not because of a conviction in
16 this case.

17 The water in this case is not muddy, not by
18 the State. You want to spend time wondering where
19 the shoes are, where the photo of the bruise is,
20 that's your prerogative as you weigh the evidence.

21 But it doesn't change the facts of what
22 happened that night. Doesn't change the fact that
23 the defendant, both witnesses, and the victim herself
24 spoke to how incredibly intoxicated she was. How
25 limited she was, and how completely out she was.

1 Those distractions, those things that have
2 been brought up to try to confuse the issue have no
3 bearing on whether or not the defendant is guilty of
4 this crime. He is guilty. And there is only one
5 reasonable verdict in this case, and that is guilty
6 of criminal sexual conduct in the third degree.
7 Because that's what happened that night through the
8 choices of the defendant. And Tuesday Philbrook
9 didn't deserve that.

10 THE COURT: Ladies and gentlemen, stand up for
11 me and get your circulation going a little bit.

12 During this trial, ladies and gentlemen, you
13 and I have certain duties to perform. As the trial
14 judge it is my responsibility to preside over the
15 trial of this case. And I also have the duty to rule
16 upon or pass upon the admissibility of the evidence
17 offered during the trial.

18 You are to consider only the competent
19 evidence that is before you. You are to consider
20 only the testimony which has been presented from the
21 witness stand, together with any exhibits which have
22 been made a part of the record in this case.

23 I have the additional duty to charge you or
24 instruct you on the law applicable to this case. As
25 the presiding judge I'm the sole judge of the law of

1 this case. And it is your duty, as jurors, to
2 accepted and apply the law as I now state it to you.

3 If you have a preconceived idea as to what the
4 law is or what the law ought to be in a case, or in
5 this case, and it should not agree with what I now
6 tell you the law is, you are obligated under your
7 oath to abandon this preconception on your part
8 because you are sworn to accept the law and apply the
9 law precisely as I now state it to you.

10 In every case tried in this court before a
11 jury, the jury becomes the sole and exclusive judges
12 of the facts. You are the judges of the facts in
13 this case. The Court is the judge of the law.

14 The constitution of our state has declared
15 that a trial judge shall not intimate, state, comment
16 upon, or make any statement to a trial jury about the
17 facts in a case.

18 Since you, the jury, are the sole judges of
19 the facts in this case, you are not to infer anything
20 from what I have said during the progress of this
21 trial in ruling upon the admissibility of evidence or
22 otherwise, or anything that I now say to you during
23 the course of this instruction, that I have any
24 opinion about the facts. The law does not permit me
25 to have an opinion about the facts.

1 This is a matter solely for you, the jury, to
2 determine. As jurors then it is your duty, as I have
3 instructed, to determine the effect, the value, the
4 weight, and the truth of the evidence which has been
5 presented during this trial.

6 Necessarily, you must assess the credibility
7 of witnesses who have testified. Credibility is
8 simply a legalistic term meaning the believability of
9 each witness who has testified. It becomes your duty
10 as jurors to analyze and to evaluate the evidence,
11 and determine that evidence which convinces you of
12 its truth.

13 I instruct you, ladies and gentlemen, that in
14 determining the question of the credibility or
15 believability of witnesses who have testified, you
16 may believe one witness as against several witnesses,
17 or several witnesses as against one witness.

18 You may believe a part of the testimony of a
19 witness and reject the remaining part of that
20 testimony of that same witness. If you have a good
21 and sound reason, you may believe the testimony of a
22 witness in its entirety, or reject the testimony of a
23 witness in its entirety.

24 You may consider whether any witness has
25 exhibited to you any interest, any bias, any

1 prejudice, or other motive in this case. You may
2 consider the demeanor of a witness, that is the
3 appearance and manner of the witness from the witness
4 stand.

5 As the fact finders, you can believe as much
6 or as little of the testimony as you deem
7 appropriate. You have but one objective, to seek the
8 truth regardless of its source.

9 Our rules of evidence ordinarily do not permit
10 witnesses to testify to opinions or conclusions. An
11 exception we have to that rule is for witnesses we
12 call expert witnesses.

13 A witness who by their education, training and
14 experience have become an expert in some art,
15 science, profession or calling, may state an opinion
16 as to the relevant and material matters in which the
17 witness claims to be an expert, and may also state
18 the reasons for that opinion.

19 You should consider any expert opinion
20 received in evidence in this case like any other
21 evidence. Give it the weight you think it deserves.
22 If you decide that the opinion of an expert is not
23 based on sufficient education or experience, or if
24 you conclude that the reasons given in support of the
25 opinion are not sound, or that the opinion is

1 outweighed by other evidence, you may disregard the
2 opinion entirely.

3 An expert witness's testimony is to be given
4 no greater weight than that of other witnesses simply
5 because the witness is an expert. Further, you are
6 not required to accept an expert's opinion, even
7 though it is not contradicted.

8 There are two types of evidence, ladies and
9 gentlemen, which are generally presented during a
10 trial; direct evidence and circumstantial evidence.
11 Direct evidence is the testimony of a person who
12 asserts or claims to have actual knowledge of a fact,
13 such as an eyewitness.

14 Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a
16 fact. The law makes absolutely no distinction
17 between the weight or value to be given to either
18 direct or circumstantial evidence. Nor is a greater
19 degree of certainty required of circumstantial
20 evidence than of direct evidence.

21 You should weigh all of the evidence in this
22 case. After weighing all of the evidence, if you are
23 not convinced of the guilt of the defendant beyond a
24 reasonable doubt, you must find the defendant not
25 guilty. Conversely, if you are convinced of the

1 guilt of the defendant beyond a reasonable doubt,
2 then you must find him guilty.

3 I instruct you, ladies and gentlemen, the fact
4 that the defendant was arrested, charged and indicted
5 is not evidence in this case, and should not be
6 considered by you as evidence of guilt in this case.
7 Nor does it create any presumption or inference of
8 guilt.

9 This documentation, ladies and gentlemen, is
10 simply the formal written instrument which contains a
11 charge or charges made against a defendant. It
12 serves as the formal document by which the case is
13 brought or processed through the court.

14 The defendant has pled not guilty to the
15 indictment. That plea casts the burden on the State
16 to prove the defendant guilty. Because a person
17 charged with a committing a criminal offense in South
18 Carolina is never required to prove himself innocent.

19 I instruct you, ladies and gentlemen, that it
20 is a cardinal and important rule of the law of
21 evidence that the defendant in a criminal trial, no
22 matter what the seriousness of the charge made
23 against him may be, will always be presumed to be
24 innocent of the crime for which he is indicted,
25 unless his guilt has been proven by evidence

1 satisfying you of that guilt beyond a reasonable
2 doubt.

3 This presumption of innocence does not cease
4 when you retire to deliberate, but it accompanies the
5 defendant from the time of his appearance, throughout
6 the trial, until you reach a verdict in this case.
7 Our Supreme Court has said that the presumption of
8 innocence is a like a robe of righteousness placed
9 about the shoulders of the defendant, and it remains
10 with him and assigns him to that class, the innocent,
11 until that presumptive robe of righteousness has been
12 stripped from his person by evidence satisfying you
13 of that guilt beyond a reasonable doubt.

14 Madam forelady, ladies and gentlemen, the
15 presumption of innocence is not mere legal theory.
16 It is not just a legal phrase. It is a substantial
17 right to which every defendant is entitled, unless
18 you, the jury, are satisfied from the evidence of his
19 guilt beyond a reasonable doubt.

20 The State has the burden of proving the
21 defendant guilty beyond a reasonable doubt. Some of
22 you may have served as jurors in civil cases where
23 you were told that it is only necessary to prove that
24 a fact is more likely true than not true, such as by
25 a greater weight or preponderance of the evidence.

1 In criminal cases the State's proof must be
2 more powerful than that, it must be beyond a
3 reasonable doubt. Proof beyond a reasonable doubt is
4 proof that leaves you firmly convinced of the
5 defendant's guilt.

6 There are very few things in this world that
7 we know with absolute certainty. And in criminal
8 cases the law does not require proof that overcomes
9 every possible doubt.

10 If based on your consideration of the
11 evidence, you are firmly convinced that the defendant
12 is guilty of the crime charged, you must find the
13 defendant guilty. If on the other hand you think
14 there is a real possibility that the defendant is not
15 guilty, you must give him the benefit of that doubt
16 and find him not guilty.

17 The defendant is charged with third degree
18 criminal sexual conduct. In order to prove third
19 degree criminal sexual conduct, the State must prove
20 beyond a reasonable doubt that the defendant engaged
21 in a sexual battery with the victim.

22 A sexual battery is sexual intercourse,
23 cunnilingus, fellatio, anal intercourse, or any
24 intrusion, however slight, of any part of a person's
25 body, or any object, into the genital or anal

1 openings of another person's body, except when the
2 intrusion is accomplished for medically recognized
3 treatment or diagnostic purposes.

4 If you find a sexual battery did occur, you
5 must then decide whether the state has proven beyond
6 a reasonable doubt that the defendant used force or
7 coercion, without any aggravating circumstances, to
8 accomplish the sexual battery.

9 Using force or coercion means to make the
10 victim follow a prescribed and dictated course; to
11 inflict or impose; or to force one's will on someone.

12 Or that the defendant knew or had reason to
13 know that the victim was mentally defective, mentally
14 incapacitated or physically helpless, and that
15 aggravated force or aggravated coercion was not used
16 to accomplish the sexual battery.

17 Mentally incapacitated means that the victim
18 was rendered temporarily unable to evaluate or
19 control his or her conduct. This condition may be
20 caused by illness, defect, the influence of a
21 substance, or some other cause.

22 Physically helpless means that victim was
23 unconscious, asleep or for any other reason
24 physically unable to communicate consent to the
25 sexual battery.

1 I further instruct you, ladies and gentlemen,
2 that the testimony of the victim need not be
3 corroborated in prosecutions regarding criminal
4 sexual conduct in the third degree.

5 The defendant has raised the defense that the
6 victim voluntarily consented to the sexual
7 intercourse. The defendant does not have to prove
8 that the victim consented; instead the State must
9 prove beyond a reasonable doubt that the victim did
10 not consent. If you find that the victim consented
11 to the sexual intercourse, you must find the
12 defendant not guilty.

13 I further instruct you, ladies and gentlemen,
14 that insanity caused by the use of drugs or alcohol
15 may be a defense if the insanity is permanent, and
16 destroys the defendant's ability to know right from
17 wrong.

18 However, when voluntary intoxication has not
19 produced permanent insanity, it is not a defense to a
20 crime. A person who voluntarily becomes intoxicated
21 is just as responsible for the acts committed while
22 intoxicated as when the person is not intoxicated.

23 Ladies and gentlemen, there are two possible
24 verdicts in this case. There is absolutely no
25 significance whatsoever to the order in which I state

1 these possible verdicts, it is simply that one must
2 stated first. And this will go into the jury room
3 with you, so you don't have to try to write this
4 down.

5 It will read as follows: As to indictment
6 2009-GS-10-4097, we, the jury, by unanimous consent,
7 find the defendant guilty of criminal sexual conduct
8 third degree, or not guilty. Again there is
9 absolutely no significance whatsoever to the order in
10 which these potential verdicts is stated. It's
11 simply that one must be stated first.

12 Ladies and gentlemen, your verdict must be a
13 unanimous one. Which means that all 12 of you must
14 agree in order to reach a verdict.

15 Madam Forelady, when the jury has reached a
16 verdict, it will be your responsibility to fill out
17 the verdict form, sign and date the form, and knock
18 on the door and advice the bailiffs that the jury has
19 reached a verdict. It will also be your
20 responsibility to write out any questions that the
21 jury may have during deliberations.

22 Ladies and gentlemen, I advise you that if you
23 have any questions during deliberations, please know
24 that there will be a delay in our response. It is
25 not because we are ignoring you, it's because there

1 is a procedure that we have to follow in answering
2 your questions. So if you have a question and there
3 is a delay, just know that we are following that
4 procedure.

5 Again, ladies and gentlemen, your verdict must
6 be a unanimous one, which means that all 12 of you
7 must agree. Madam Forelady, if the jury has any
8 questions after you write them out, you are to follow
9 the same procedure, knock on the door, advise the
10 bailiffs that the jury has a question, and give that
11 note to the bailiffs and they will bring it to the
12 Court. And again we will follow the procedure in
13 answering any questions you may have during the
14 course of the deliberations.

15 Ladies and gentlemen, I'm going to ask that
16 you return to your jury room, but do not yet begin
17 your deliberations. There are some matters of law
18 that I need to take up with the attorneys that may
19 require further instruction or clarification of an
20 instruction.

21 However, if there is no further instruction we
22 will send in your notebooks, the verdict forms, and
23 the evidence and we will excuse the alternate and at
24 that time you will be allowed to begin your
25 deliberation.

1 Also I will tell you that during your
2 deliberations I'm going to be picking another jury to
3 begin today. So if there is, again, a delay in us
4 responding it is because I might be delayed in that
5 other proceeding.

6 If you would go with the bailiff for me,
7 please, and do not yet begin your deliberations.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Are there any exceptions from the
10 State?

11 MR. FINCH: None from the State, Your Honor.

12 THE COURT: From the defense?

13 MS. HUNTER: None, Your Honor. I told you, I
14 think before, that I want to introduce the spoliation
15 of evidence charge, but I don't know.

16 THE COURT: You didn't.

17 MS. HUNTER: Too late.

18 THE COURT: Yeah.

19 MS. HUNTER: That's all right.

20 THE COURT: I did some research during the
21 break, spoliation is not applicable in criminal
22 cases, only in civil.

23 MS. HUNTER: Only in civil. I got it from the
24 bench bar book.

25 THE COURT: I had my clerk do some quick

1 research on it. When you didn't mention it again I
2 assumed you wanted to withdraw it.

3 You pretty much argued it. But there is a
4 case from 2008 from the Court of Appeals that
5 indicates it's distinguishable in criminal cases and
6 not applicable. I need to read it to look at the
7 facts of it to see exactly what it says because I was
8 sort of in a hurry when I looked at it.

9 But if you had submitted it to me prior to
10 closing arguments, or even before I'd instructed the
11 jury, I certainly would have considered it. But I
12 assumed you wanted to withdraw it since you didn't
13 mention it.

14 MS. HUNTER: Do you want me to erase the
15 board, Judge?

16 THE COURT: Do you have an eraser? Perfect,
17 that would be wonderful

18 Ms. Hunter, are there any exceptions from the
19 defense to the charge?

20 MS. HUNTER: No, Your Honor.

21 THE COURT: Make sure all the evidence is in
22 place for me. Then I can have the bailiff take the
23 notebooks back and the verdict form and then I can
24 excuse the alternate.

25 Bring me the alternate, please.

1 You are welcome to discuss this case, but I
2 would ask that you not do it until after the jury
3 comes back with a verdict. To be on the safe side
4 not before tomorrow sometime.

5 And also if someone should persist in trying
6 to speak with you and you don't desire that, please
7 contact the clerk's office and we will do what we can
8 protect your privacy.

9 Also, if you need a work excuse you can get
10 that downstairs on the circuit court side of the
11 courthouse. Any of those people at the windows can
12 give you one, otherwise we will mail them to you
13 along with your check.

14 You're excused with the Court's thanks. Have
15 a great day.

16 (Whereupon, a recess was taken.)

17 THE COURT: We have a note from the jury,
18 request Kaitlyn testimony, both sides. The written
19 definition of reasonable doubt.

20 I was going to respond to each question as
21 follows. Madam Forelady -- I'm sorry, we don't have
22 the defendant.

23 (Whereupon, the defendant enters the
24 courtroom.)

25 THE COURT: Okay, I will start from the

1 beginning. We have a note from the jury, request
2 Kaitlyn testimony, both sides. The written
3 definition of reasonable doubt. I will respond as
4 follows.

5 Madam forelady, ladies and gentlemen of the
6 jury, our technology does not allow us to immediately
7 produce a transcript of the proceeding. However, we
8 can replay the testimony for you. If you desire to
9 have the testimony replayed, please advise the
10 bailiff and we will accommodate your request.

11 As regards to the second question. Ladies and
12 gentlemen of the jury, our procedures do not allow
13 for a copy of the jury charge, slash, instructions to
14 be given to you. If there is a specific instruction
15 that you would like given again, or the entire
16 instruction, please advise us and I will accommodate
17 your request immediately.

18 Is there any exception from the State?

19 MR. FINCH: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MS. HUNTER: Yes, Your Honor.

22 THE COURT: What is the exception?

23 MS. HUNTER: The objection is an objection to
24 Kaitlyn's testimony being played or --

25 THE COURT: If the jury asks for it, we are

1 bound to comply with that request. They asked for it
2 -- what they're asking for, I think they have
3 misapprehension that we can just produce a transcript
4 in real-time and we can't.

5 MS. HUNTER: But her testimony is in dispute
6 from other witness's testimony.

7 THE COURT: The jury is the fact finder. We
8 go by whatever they ask us. If they ask for
9 testimony, I'm bound by case law to do whatever they
10 ask me to do.

11 MS. HUNTER: I just want to put on the record
12 that we object to this.

13 THE COURT: We'll note your exception for the
14 record. They may not want to rehear it, but whatever
15 they ask for we are bound to -- if the jury asks for
16 testimony to be replayed or instructions to be
17 re-given, we are bound to do it.

18 MS. HUNTER: And they will hear the tape of
19 it; is that correct?

20 THE COURT: Yes, they will hear the tape, the
21 actual recorded testimony.

22 Ms. Agastino, If you would take this to the
23 jury and advise them not to dispose of it because it
24 is part of the record.

25 Thank you, ma'am. Let's wait a few minutes

1 get set up, we appreciate your patience. I needed to
2 send my other jury home and I also needed to get the
3 tape recording set up for you to re-hear the
4 testimony.

5 We received your note which is, we would like
6 to hear the testimony of Kaitlyn Moriarty,
7 prosecution and defense. And the instruction on
8 reasonable doubt.

9 In response to your request for the
10 instruction on reasonable doubt, I instruct you as
11 follows: The State has the burden of proving the
12 defendant guilty beyond a reasonable doubt. Some of
13 you may have served as jurors in civil cases where
14 you were told that it is only necessary to prove that
15 a fact is more likely true than not true, such as by
16 the greater weight or preponderance of the evidence.

17 In criminal cases the State's proof must be
18 more powerful than that, it must be beyond a
19 reasonable doubt. Proof beyond a reasonable doubt is
20 proof that leaves you firmly convinced of the
21 defendant's guilt. There are very few things in this
22 world that we know with absolute certainty. And in
23 criminal cases the law does not require proof that
24 overcomes every possible doubt.

25 If based on your consideration of the evidence

1 you are firmly convinced that the defendant is guilty
2 of the crime charged, you must find the defendant
3 guilty. If on the other hand you think there is a
4 real possibility that the defendant is not guilty,
5 you must give him the benefit of that doubt and find
6 him not guilty.

7 Now we will replay Ms. Moriarty's testimony
8 which we estimate is about an hour and 45 minutes.
9 We are going to break at 5:00. I'm aware that there
10 is a juror that has to leave at 5:00 to pick up her
11 child. And so we will play as much of the testimony
12 as possible until 5:00, at which time I will excuse
13 you for the remainder of the afternoon.

14 And then we will bring you back in the morning
15 to rehear whatever is remaining, and for you to
16 resume your deliberation. So I just wanted her to be
17 sure that I had gotten her note, and was aware of her
18 restriction regarding needing to pick up her child.

19 Okay. Madam Court Reporter, you may proceed.

20 (Whereupon, the previously recorded testimony
21 of Ms. Kaitlyn Moriarty is commenced.)

22 THE COURT: Madam Forelady, ladies and
23 gentlemen, we are going to take advantage of this
24 break in testimony keeping in mind the scheduling
25 restrictions of your fellow juror who needs to pick

1 THE COURT: Is the State ready to proceed?

2 MR. FINCH: We are, Your Honor.

3 THE COURT: Defense ready to proceed?

4 MS. HUNTER: Yes, Your Honor.

5 THE COURT: Please bring in my jury.

6 (Whereupon, the jurors enter the courtroom.)

7 THE COURT: You may be seated. Ladies and
8 gentlemen, I hope you had a pleasant evening. I am
9 glad to see that you all survived the traffic. I
10 don't know what was going on this morning. I've
11 learned in Charleston not to ask.

12 We will resume the testimony where we left off
13 on last evening. And we appreciate your patience.

14 (Whereupon, the previously recorded testimony
15 of Ms. Kaitlyn Moriarty is resumed.)

16 THE COURT: Ladies and gentlemen, that
17 concludes the testimony. Please let us know if you
18 need anything further. If you would go with the
19 bailiffs.

20 (Whereupon, the jurors exit the courtroom.)

21 THE COURT: You may take your seats.

22 Is there anything further before we recess and
23 wait further instructions from the jury, from the
24 State?

25 MR. FINCH: Nothing from the State, Your

1 Honor.

2 THE COURT: From the defense?

3 MS. HUNTER: No, Your Honor.

4 THE COURT: Okay, we will be at ease.

5 (Whereupon, a recess was taken.)

6 THE COURT: The jury has advised that they
7 have reached a verdict. Is there anything before we
8 proceed with the verdict, from the State?

9 MR. FINCH: Nothing from the state, Your
10 Honor.

11 THE COURT: From the defense?

12 MS. HUNTER: No, Your Honor.

13 THE COURT: Please bring in the jury.

14 (Whereupon, the jurors enter the courtroom.)

15 THE COURT: You may be seated. Madam
16 Forelady, is it correct that the jury has reached a
17 verdict?

18 A JUROR: Yes, ma'am.

19 THE COURT: If you would give the verdict form
20 to the bailiff for me, please.

21 If the defendant would stand for publication
22 of the verdict.

23 You may proceed when you're ready.

24 THE CLERK: Yes, Your Honor. The verdict form
25 in the matter of the State of South Carolina versus

1 William Cameron Ross, the defendant. As to
2 indictment number 2009-GS-10-4097, we the jury, by
3 unanimous consent, find the defendant guilty of
4 criminal sexual conduct in the third degree, signed
5 by the foreperson on April 12, 2011.

6 Ladies and gentlemen of the jury, if this was
7 your verdict, please raise your right hand.

8 Thank you. Please let the record reflect that
9 all 12 jurors raised their right hand.

10 THE COURT: Is there any request to poll the
11 jury from the state?

12 MR. FINCH: None from the State, Your Honor.

13 THE COURT: From the defense?

14 MS. HUNTER: Yes, Your Honor.

15 THE COURT: Mr. Clerk, if you would proceed
16 with polling the jury.

17 THE CLERK: Ladies and gentlemen, what we are
18 going to do now is called polling the jury. When I
19 call your juror number, please raise your hand, I
20 will acknowledge you, you can put your hand down.

21 I will then ask you two questions. Please
22 respond to these questions verbally.

23 Juror Number 242.

24 Yes, ma'am. Was that your verdict.

25 A JUROR: Yes.

1 THE CLERK: Is that still your verdict?

2 A JUROR: Yes.

3 THE CLERK: Thank you.

4 Juror Number 27. Was that your verdict?

5 A JUROR: Yes.

6 THE CLERK: Is that still your verdict?

7 A JUROR: Yes.

8 THE CLERK: Thank you.

9 Juror Number 40. Was that your verdict?

10 A JUROR: Yes.

11 THE CLERK: Is that still your verdict?

12 A JUROR: Yes.

13 THE CLERK: Thank you.

14 Juror Number 55. Was that your verdict?

15 A JUROR: Yes.

16 THE CLERK: Is that still your verdict?

17 A JUROR: Yes

18 THE COURT: Thank you.

19 Juror Number 72. Is that was verdict?

20 A JUROR: Yes.

21 THE CLERK: Is that still your verdict.

22 A JUROR: Yes.

23 THE CLERK: Thank you.

24 Juror Number 85. Is that your verdict?

25 A JUROR: Yes.

1 THE CLERK: Is that still your verdict?
2 A JUROR: Yes.
3 THE CLERK: Thank you.
4 Juror Number 101. Was that your verdict?
5 A JUROR: Yes.
6 THE CLERK: Is that still your verdict?
7 A JUROR: Yes.
8 THE CLERK: Thank you.
9 Juror Number 143. Was that your verdict?
10 A JUROR: Yes.
11 THE CLERK: Is that still your verdict?
12 A JUROR: Yes.
13 THE CLERK: Thank you.
14 Juror Number 145. Was that your verdict?
15 A JUROR: Yes.
16 THE CLERK: Is that still your verdict?
17 A JUROR: Yes.
18 THE CLERK: Thank you.
19 Juror Number 186. Was that your verdict?
20 A JUROR: Yes, sir.
21 THE CLERK: Is that still your verdict?
22 A JUROR: Yes, sir.
23 THE CLERK: Thank you.
24 Juror Number 205. Was that your verdict?
25 A JUROR: Yes.

1 THE CLERK: Is that still your verdict?

2 A JUROR: Yes.

3 THE CLERK: Thank you.

4 Juror Number 245. Was that your verdict?

5 A JUROR: Yes.

6 THE CLERK: Is that still your verdict?

7 A JUROR: Yes.

8 THE CLERK: Thank you.

9 Was there any juror whose number I did not
10 call, please raise your hand?

11 Your Honor, the jury has been polled and the
12 verdict stands.

13 THE COURT: Madam Forelady, ladies and
14 gentlemen, we thank you for your time and your
15 attention to this case. You truly have gone above
16 and beyond the call of duty as your jury service was
17 supposed to have concluded on Friday. And we
18 appreciate you all remaining with us, and seeing this
19 case through to its conclusion and verdict.

20 You are excused with the Court's profound
21 thanks. If you need a work excuse before you leave
22 today, you can get that on the circuit court side of
23 the courthouse on the first floor. And any deputy
24 clerk at any of those windows can give you an excuse.
25 Otherwise we will mail those to you along with your

1 checks for your service.

2 You are welcome to discuss this case if you
3 would like. By the same token if someone persists in
4 speaking with you and it goes beyond your comfort
5 level, please advice the clerk's office so that we
6 can take the appropriate action to preserve your
7 privacy.

8 I hope your ability to participate in the
9 trial system has renewed your faith in the fact that
10 it does work. And it can only work with individuals
11 willing to donate their time to us. I'm almost
12 embarrassed at what we pay you. I think it is no
13 reflection on how much we value your service. But
14 I'm not a legislator and I don't get to set that.

15 With the current state deficit it's between a
16 rock and a hard place. But I hope that it has been
17 educational for you. I hope that you've learned that
18 it's nothing like television. And that we could not
19 do what we do every day if it were not for you all
20 being willing to sit as fact finders, and then apply
21 the law to those facts and then render verdicts.

22 So I just wanted to tell you thank you on
23 behalf of the state and behalf of the defendant and
24 defense counsel for your time and your attention to
25 this matter. I hope you all have wonderful day.

1 If any of you wishes to stay for sentencing,
2 please let us know and we will escort you back into
3 the courtroom so that you can remain for that
4 process.

5 Again thank you very much for your service.
6 If you would go with the bailiffs.

7 I will hear post-trial motions in a moment.
8 Get the sentencing sheet for me, please.

9 (Whereupon, a recess was taken.)

10 THE COURT: Are there any post-trial motions?

11 Mr. FINCH: None from the State, Your Honor.

12 THE COURT: Any from the defense?

13 MS. HUNTER: Just the JNOV motion, judgment of
14 not guilty notwithstanding the verdict of the jury,
15 Your Honor.

16 THE COURT: Does the State have any response
17 to that motion?

18 MR. FINCH: No, Your Honor, we think the
19 record is clear.

20 THE COURT: Okay, the motion is denied. This
21 came down to a credibility contest of whose version
22 of events the jury believed. When there is any
23 evidence to support the jury's verdict, that being
24 factually, the Court is bound by those findings. I
25 cannot substitute myself as the fact finder.

1 And again it came down to again a credibility
2 contest of who the jury -- which version of events
3 the jury believed, and whether they believed there
4 was consent, and also I guess to some extent the
5 level of impairment that was present on the evening
6 and the ability to consent.

7 And our case law is very clear that where
8 there is competent evidence to sustain the jury's
9 verdict, the Judge may not substitute his judgment
10 for that of the jury. While it is discretionary for
11 the Court to grant a new trial, I'm still bound by
12 the jury's decision if there is competent evidence to
13 sustain it. And there is competent evidence to
14 sustain this jury's verdict. I cannot substitute my
15 judgment for theirs, and therefore the verdict will
16 stand.

17 Is there anything else before we proceed with
18 sentencing from the State?

19 MR. FINCH: Just that the victim and Ms.
20 Moriarty and the boyfriend -- fiance of the victim
21 would like the address the Court during sentencing at
22 the appropriate time.

23 THE COURT: Do you have sentencing sheet for
24 me?

25 MR. FINCH: I do.

1 THE COURT: Anything further from the defense?

2 MS. HUNTER: Yes, Your Honor.

3 THE COURT: You may proceed. I mean in terms
4 of motions, but not sentencing.

5 MS. HUNTER: No motions.

6 THE COURT: Okay. All right. State may
7 proceed.

8 MR. FINCH: Your Honor, I would ask Ms.
9 Tuesday Philbrook to address the Court.

10 MS. PHILBROOK: It has been three years. And
11 I wanted so hard just to be a good student and try
12 hard at everything that I have done.

13 And I used to be confident in who I was. I
14 was comfortable with my sexuality. He stripped me of
15 everything. I was afraid to walk down the street. I
16 was afraid to leave my house.

17 I didn't want another man to look at me. I
18 couldn't go to school. I couldn't concentrate. I
19 lost all faith in myself.

20 MR. WITHERELL: My name is Ryan Witherell.

21 THE COURT: Sir, could you spell your last
22 name for the record.

23 MR. WITHERELL: W-I-T-H-E-R-E-L-L.

24 THE COURT: Thank you.

25 MR. WITHERELL: On the night that occurred,

1 Mr. Ross went against everything that humanity is
2 about, looking out for another person. He took
3 something into his own hands that was not his to
4 take. And for that Tuesday has suffered three years
5 thinking that she was responsible and she did
6 something wrong.

7 And I hope for as long as you are in your cell
8 and you wake up every morning, you have to realize
9 you let down the human race and every woman in this
10 world, your family, your daughter included.

11 MS. MORIARTY: My name is Kaitlyn Moriarty.
12 And for the past three years I have replayed that
13 night and every single thing I could have done to
14 stop it.

15 Every second that you were up there I wish
16 that I was, I wish I had found you. I wish I had
17 never seen you or talked to Jesse and could just
18 erase you both from my life. And I see this daily.
19 Every day I look at her and I see her struggle.

20 But I know it's not my fault. Today I know
21 it's not my fault. It is your fault. Every action
22 that you did that night you did and we did not do.
23 It was you. And I hope you get sick and tired and it
24 takes your life away.

25 THE COURT: Anything further from the State?

1 MR. FINCH: Just that, Your Honor, we think
2 obviously the victim impact, you heard that, and also
3 the position of the State is as a sexual battery that
4 this is definitely a case that is warranting some
5 prison time.

6 Nothing further from the State.

7 THE COURT: I cannot hear you, repeat that.

8 MR. FINCH: I said we definitely feel that
9 this is a case that warrants prison time.

10 Nothing further from the State.

11 THE COURT: Does the defendant have any record
12 other than -- he doesn't have any record, correct?

13 MR. FINCH: No, he does not.

14 THE COURT: Okay.

15 Anything further?

16 MR. FINCH: Nothing further.

17 THE COURT: Ms. Hunter, you may proceed.

18 MS. HUNTER: Thank you, Your Honor.

19 I know that we had talked about this before,
20 and it didn't seem to phase you at all, but I just
21 wanted to remind you that he did take a polygraph and
22 he passed it.

23 THE COURT: It's not that it didn't phase me,
24 there is a reason that polygraphs are not admissible
25 because they're inherently unreliable.

1 MS. HUNTER: I understand. And that's why I'm
2 bringing it up now, he passed it with absolutely
3 flying colors. There was not just no description or
4 it was off the charts.

5 He is 24 years old. He has never, ever been
6 in trouble in his entire life. No prior record. He
7 is the father of a little girl that you heard about
8 when he was on the stand.

9 He sees that child every single weekend. This
10 incident has not precluded him from having any
11 supervised visitation or no visitation whatsoever.

12 THE COURT: Are you saying he had supervised
13 visitation?

14 MS. HUNTER: No, he gets the little girl every
15 single --

16 THE COURT: I just wanted to be clear because
17 I didn't understand what you were saying.

18 MS. HUNTER: Okay. What I meant was this
19 incident did not even cause him to not -- for him to
20 have supervised visitation I guess is the way I
21 should have put it.

22 He has been hard working. When his father had
23 a stroke when he was in the tenth grade, he had to go
24 out and find a job and support the family, help the
25 family. He has been hard working ever since.

1 You know, you heard the testimony that it was
2 the credibility of the witnesses. And I would submit
3 to you he is not guilty. But I know that he has been
4 found guilty of a jury of his peers, but I would
5 submit to you that this is not some sort of case
6 where we would need prison time. It would be
7 definitely a probationary case, Your Honor.
8 Especially due the fact of his age, he has a little
9 girl.

10 THE COURT: How old is he?

11 MS. HUNTER: 24. And this happened when he
12 was 21.

13 THE COURT: Where is he employed?

14 MS. HUNTER: He is employed with a
15 construction company in Kiawah.

16 THE COURT: What does he do for them?

17 MS. HUNTER: Anything, everything and
18 anything. If you need a deck built, a wall built, a
19 room built, plumbing, you name it he does it.

20 THE COURT: So is this part of their
21 homeowners situation, or is he just a company that
22 works out there?

23 MS. HUNTER: I don't know.

24 THE DEFENDANT: It's called One Call Services.

25 THE COURT: How long has he been with them?

1 THE DEFENDANT: I just started working with
2 them about six months ago.

3 THE COURT: Where were you working prior to
4 that?

5 THE DEFENDANT: I had an accident at my job so
6 I was unable to work.

7 THE COURT: When you say accident, explain
8 that to me.

9 MS. HUNTER: He was severely burned.

10 THE DEFENDANT: A chemical burn on my face and
11 eyes.

12 THE COURT: Was that as a result of work.

13 THE DEFENDANT: Yes, ma'am. Related to it.

14 THE COURT: How long were you out of work as a
15 result of that?

16 THE DEFENDANT: Months. Long time.

17 THE COURT: Where were you working at the
18 time?

19 THE DEFENDANT: For a construction -- for a
20 different construction company.

21 THE COURT: How long had you been with them?

22 THE DEFENDANT: Three years, four years.

23 THE COURT: Anything further, Ms. Hunter? I'm
24 sorry, I did not mean to interrupt you.

25 MS. HUNTER: No, Your Honor. I just hope that

1 you'll take those matters into consideration.

2 THE COURT: Does the defendant wish to say
3 anything?

4 THE DEFENDANT: Just that I have never been in
5 trouble. My little girl, my family, all of them need
6 me. It's hurt me to be accused of this. It's hurt
7 me just as bad.

8 How do you look at your family and tell them
9 in the face and say that I was accused of it.

10 I have never been in trouble. I've never seen
11 the inside of a jail. Any of that. I have been
12 locked down in maximum security for the past week.

13 THE COURT: That's for your protection.

14 THE DEFENDANT: I understand.

15 THE COURT: Because of the nature of the
16 charge.

17 THE DEFENDANT: I understand, I'm just saying.

18 THE COURT: Am I correct? Is that why he is
19 probably in max because of the nature of the charge?
20 They did that for your protection.

21 Anything further, sir, for the record?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Anybody else wish to speak on his
24 behalf, Ms. Hunter?

25 MS. HUNTER: Probably his mother, Your Honor.

1 THE COURT: Absolutely. Yes, ma'am.

2 MS. HUNTER: Jean Henderson.

3 THE COURT: Ma'am, you need to state your name
4 for the record. You may proceed.

5 MS. HENDERSON: My name is Jean Henderson.

6 THE COURT: Yes, ma'am.

7 MS. HENDERSON: My son is completely innocent
8 of this false charge. He is a good kid. He grew up
9 in the church. And he has been a very responsible
10 adult.

11 When this first happened I questioned him up
12 one side and down the other. And I said, you've got
13 to tell me the truth. And He said, mom, I promise
14 you I did not rape anybody. And I believe him. He
15 doesn't lie to me. I believe him.

16 And I would ask, Judge, that you give him
17 mercy.

18 THE COURT: Thank you very much, ma'am.

19 Anything further, Ms. Hunter? Anyone else
20 wish to speak for the record?

21 MS. HUNTER: No. Thank you for your
22 attention.

23 THE COURT: Anything further from the State.

24 MR. FINCH: Nothing further.

25 THE COURT: The Court is going to take a very

1 brief recess.

2 (Whereupon, a recess was taken.)

3 THE COURT: You may be seated.

4 If the defendant would stand for sentencing.

5 Based on what has been presented to the Court,
6 sir, you are sentenced to the State Department of
7 Corrections for a period of three years. That is
8 suspended to 18 months and 3 years of probation.

9 As a condition of your probation you are to
10 obtain your GED or your diploma, you are to have
11 random drug and alcohol tests. And you'll get credit
12 for any time that you've served pursuant to 24-13-40
13 to be calculated and applied by the Department of
14 Corrections.

15 Thank you very much. Also, Ms. Hunter, if
16 you'll explain to your client his registration
17 requirements.

18 MS. HUNTER: Okay. Thank you, Your Honor.

19 MR. FINCH: Thank you, Judge.

20 (Whereupon, the proceedings in this matter
21 before the Court were adjourned.)

22 * * * * *

23
24
25

JKS20080804722

WITNESSES

LISA ALTINE

Charleston City Police Department

AGENCY CASE NUMBER

0815438

ARREST WARRANT NUMBER

K341595

DATE OF ARREST

August 7, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

MAY 11 2009

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1004097

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

May Term 2009

THE STATE

vs.

WILLIAM CAMERON ROSS

DOB: [REDACTED]

WM

Indictment for

Criminal Sexual Conduct, 3rd Degree

2009 MAY 21 AM 11:09
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

08-4435-1

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

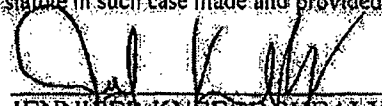
INDICTMENT

At a Court of General Sessions, convened on May 11, 2009 the Grand Jurors of Charleston County present upon their oath:

Criminal Sexual Conduct, 3rd Degree

That in Charleston County, South Carolina, on or about August 2, 2008, the Defendant, WILLIAM CAMERON ROSS, did commit a sexual battery upon the victim, Tuesday Philbrook, with knowledge or reason to have knowledge that the victim was mentally defective, mentally incapacitated or physically helpless where aggravated force or aggravated coercion was not used, to wit: sexual intercourse, all in violation of Section 16-03-654, 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.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

COUNTY OF Charleston
 STATE VS.
William Cameron Ross

AKA:

Race: W Sex: M Age: 24

DOB: [REDACTED]SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: [REDACTED]SID#: SC01836483

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: C.S.C. 3rd

INDICTMENT/CASE#: 2009GS1004097A/W#: K341595Date of Offense: 8/7/2008S.C. Code §: 16-03-0652CDR Code #: 0160

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0654 of the S.C. Code of Laws, bearing CDR Code # 0162

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

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:

Finch, Tommy

78223

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 3 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 18 days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for 3

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

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	\$ <u>100.00</u>
§ 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	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>473.90</u>

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

 days/hours Public Service Employment

Obtain GED ☒ or diplomaAttend 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.

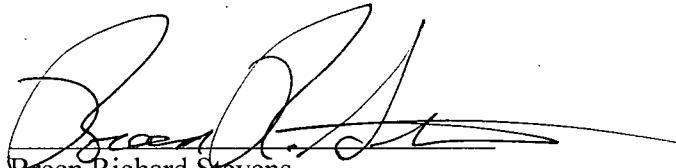
Attest: A TRUE Copying Judge
Julie J. Armstrong
 Clerk of Court
 By [Signature]
 DEPUTY CLERK

2128
4-12-2011

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."

December 7th, 2012

A handwritten signature in black ink, appearing to read "Breen Richard Stevens", with a long horizontal flourish extending to the right.

Breen Richard Stevens
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

 ORIGINAL

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

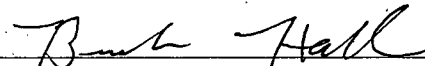
WILLIAM ROSS,

APPELLANT

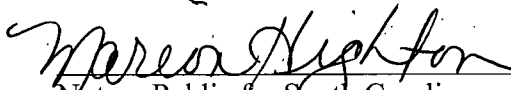
Appellate Case No. 2011-190816

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 7th day of December, 2012.


Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 7th day of December, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 30, 2022

RECEIVED

DEC 07 2012

SC Court of Appeals