

ORIGINAL

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL C. ANDES,

APPELLANT

APPELLATE CASE NO. 2011-204706

RECORD ON APPEAL

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1 (DEFENDANT PRESENT)

2 THE COURT: Rise for the jury.

3 (JURY IN @ 11:14 A.M.)

4 THE COURT: Call your next witness.

5 SOLICITOR SHELTON: The State
6 calls Investigator Powell.

7 (WITNESS TAKES STAND)

8 NICHOLAS POWELL, being duly sworn
9 to tell the truth, the whole truth and nothing
10 but the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR BEN SHELTON:

13 Q. Where do you work, currently?

14 A. City of Goose Creek Police Department.

15 Q. Where did you work on November 6th, 2010?

16 A. City of Goose Creek Police Department.

17 Q. What is your role now?

18 A. Currently I'm a vice investigator for the
19 City of Goose Creek Police Department.

20 Q. What is a vice investigator?

21 A. I investigate crimes such as prostitution,
22 gambling, and narcotic-related offenses.

23 Q. Does that kind of explain your appearance
24 of not looking like a typical police officer?

25 A. Yes, he does.

1 Q. What were you doing as of part of your
2 employment for the Goose Creek Police
3 Department on November 6th, 2010?

4 A. I was assigned to general investigation.

5 Q. As general investigation, what did you do?

6 A. I investigated a variety of crimes,
7 anything from burglary, property-related
8 crimes to persons-related offenses.

9 Q. Did you respond to _____ in
10 Goose Creek on November 6th, 2010?

11 A. I did.

12 Q. What time?

13 A. Approximately 11:00 o'clock at night.

14 Q. Do you know why you responded?

15 A. I was advised by our dispatch center that
16 I was responding in reference to a rape
17 incident.

18 Q. So you got there, you were -- you were
19 sent there to investigate the allegation of
20 rape?

21 A. That's correct.

22 Q. When you got there, what is the first
23 thing that you see?

24 A. When I entered the residence, I observed
25 Officer Gainey speaking with the victim in

1 this case, LeAnn Blanche.

2

3 Q. When you got to the residence, were they
4 outside or inside?

5 A. They were inside at the time.

6 Q. You went inside the residence and did you
7 -- did you speak with Officer Gainey with the
8 victim or did you let her speak? What
9 happened?

10 A. Ms. Gainey was speaking to the victim at
11 the time. Sergeant Broder, who was the
12 supervisor at the time, was also present and
13 had briefed me in reference to what had
14 occurred. After I spoke with him, Officer
15 Gainey had obtained a written statement from
16 the victim, in which case I reviewed that
17 prior to speaking to the victim.

18 Q. Did you speak with the victim?

19 A. I did.

20 Q. Did you see her demeanor, her composure?

21 A. I did. She was visible upset. She was
22 crying at times. She was shaking.

23 Q. Did you ask her what happened, as well?

24 A. I did.

25 Q. Did she tell you where and when it

1 occurred?

2 A. Yes, she advised that it occurred inside
3 the residence the morning of November 6th at
4 approximately 4:00 a.m., inside her bedroom.

5 Q. And "it", what was it?

6 A. It being in reference to the rape.

7 Q. Did she identify who it was?

8 A. He identified the suspect, Michael Andes.

9 Q. Do you see Michael Andes in the courtroom?

10 A. Yes, he is seated at the defense table, to
11 the left.

12 SOLICITOR SHELTON: Let the record
13 reflect that Investigator Powell has
14 identified the Defendant.

15 THE COURT: It will.

16 SOLICITOR BEN SHELTON: Thank
17 you, Your Honor.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR BEN SHELTON:

20 Q. Did you have any opportunity to take any
21 pictures while you were at the residence?

22 A. Yes, I did.

23 Q. What did you take pictures of?

24 A. I took photographs at the exterior of the
25 residence for identification purposes. That

1 shows the number of the residence for later
2 identification purposes. I also identified
3 the living room area and the bedroom area
4 belonging to Ms. Blanche, along with the
5 bathroom.

6 Q. Did you confirm that the residence was in
7 Berkeley County?

8 A. I did.

9 Q. It was in the city of Goose Creek, of
10 course?

11 A. That's correct.

12 Q. Why did you look in -- why did you take
13 pictures of those areas?

14 A. Those are the areas that she said was the
15 scene. Anytime that I photographed a
16 residence, I photograph the exterior of the
17 residence for identification purposes.

18 Ms. Blanche was located in the living room
19 and I photographed that and then the bedroom
20 area where the incident occurred, with
21 reference to the rape.

22 There was also evidence collected that was
23 located inside the bathroom, and also that why
24 I photographed the bathroom.

25 Q. Did you review any text messages that the

1 victim showed you?

2 A. I did.

3 Q. And what device(s) did she give you to
4 review?

5 A. She had a cell phone. It was a smart
6 phone, more specifically, which contained the
7 text messages.

8 Q. Are you somewhat familiar with smart
9 phones?

10 A. Yes.

11 Q. When you look at the text messages, what
12 did you see on the phone?

13 A. When I observed the phone, I noticed that
14 there was what is called a thread. When there
15 are specific messages between two people, Ms.
16 Blanche's phone would have -- it showed
17 "Mike", which she indicated that was Michael
18 Andes.

19 Q. How did you determine that?

20 A. I asked Ms. Blanche if she could identify
21 the specific name "Mike" and she indicated
22 that it was Mike Andes. She also stated that
23 the phone number programed into the phone
24 belong to him.

25 Q. Did you look at all the text messages on

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1 the phone?

2 A. I just observed the messages between her
3 and Mike, Michael Andes.

4 Q. When you first looked at the phone, were
5 those messages locked?

6 A. They were not locked.

7 Q. How did they get locked?

8 A. I showed Ms. Blanche how to lock the
9 messages on the phone.

10 Q. She did not know how to lock them before?

11 A. She didn't know how, I showed her how to.

12 Q. Now, you took pictures of the text
13 messages; correct?

14 A. That's correct.

15 Q. How did you decide which pictures to take
16 of what text messages?

17 A. The messages that Ms. Blanche showed me
18 between her and Mr. Andes are the ones that I
19 photographed.

20 Q. To your knowledge, do you know if those
21 were all the pictures (sic) on the phone?

22 A. Those the ones that I observed on the
23 phone that night. I could not be certain if
24 there were other ones.

25 Q. Were you satisfied with the ones that you

1 saw?

2 A. Yes.

3 Q. And those text messages that you saw, did
4 they have time stamps on them?

5 A. They did.

6 Q. And this was on the sixth, correct?

7 A. That's correct.

8 Q. And what did those time stamps indicate?

9 A. The time stamps indicate when the messages
10 were sent or received on the phone. The ones
11 for Mr. Andes would show that they were sent
12 and the ones on Ms. Blanche's phone showed
13 when they were received. Those time stamps
14 relate to the date.

15 If it is the date of, the time will still
16 be present. If it was the day following, or
17 days later, the time stamp would not show. It
18 would only show the date that it was received.

19 Q. We have seen them before, but could you
20 tell us what the substance of what those text
21 messages were?

22 A. Sure. If I could review my notes, I could

23 ---

24 Q. Certainly. We have them in evidence.

25 SOLICITOR BEN SHELTON: May I

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1 approach, Your Honor?

2 THE COURT: You may.

3 SOLICITOR BEN SHELTON: Court's
4 indulgence.

5 THE COURT: Take your time.

6 SOLICITOR BEN SHELTON: Thank
7 you.

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR BEN SHELTON:

10 Q. Investigator Powell, I am going to hand
11 you want is already in evidence and that has
12 been published to the jury as State's Exhibits
13 47, 48, 49, 50 and 51 respectively. Please
14 take the time to review that and tell the jury
15 what they are.

16 A. These are photographs of the text messages
17 that I took that night.

18 Q. How do you know?

19 A. They have the time stamps on there, which
20 would indicate that they were taken on
21 November 6, 2010.

22 Q. What about ---

23 A. The clarity of the messages, using a city
24 assigned digital camera, due to unforeseen
25 technical difficulties, they were not as clear

1 as I would like for them to be.

2 Q. But you got the best image that you could
3 get of them at the time?

4 A. Yes.

5 Q. What did they say?

6 A. Give me just a moment and I will place
7 these in order.

8 Q. Okay. Once you have them in order, please
9 tell the court and the court reporter which
10 number that you are speaking about.

11 A. The beginning one is going to be -- the
12 exhibit number -- State's Exhibit 51, and it
13 is dated -- beginning with the first message,
14 and again it is blurred but I am just going to
15 be able to read this to the best of my
16 ability. It says, (reading): "I want sex, but
17 you cannot even do that. It's not like I
18 don't love you."

19 Q. Who is that from, according to the text
20 message?

21 A. It indicates it was from Mike, which was
22 Michael Andes.

23 Q. If you could go to the next one.

24 A. (Reading): "All I wanted was one fucking
25 time."

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1 Q. I apologize to the court. He is just
2 reading what it says.

3 A. Right, I am just reading from the
4 photographs.

5 Q. And the next text message?

6 A. (Reading): "Sorry I have a beautiful
7 girlfriend in the next room and I can't have
8 her."

9 Q. And the next message?

10 A. (Reading): "Fuck that shit."

11 Q. And the next message?

12 A. (Reading): "I wouldn't even bother you.
13 anymore. One time is all I fucking ask --
14 whatever."

15 Q. And what times were those sent?

16 A. According to the messages, it appears that
17 the first message begins at 3:34 a.m., and it
18 appears that the concludes at approximately
19 3:46 a.m.

20 Q. Are there any other messages that were
21 sent early in the morning between the hours of
22 three and four o'clock?

23 A. Those are the messages that appeared on
24 the phone at the time.

25 Q. Those were the messages that appeared on

1 the phone at the time?

2 A. That's correct.

3 Q. Are those messages locked in the phone at
4 that point?

5 A. Yes, they are.

6 Q. That is after you showed Ms. Blanche how
7 to lock the messages?

8 A. That's correct.

9 Q. Why did you get her to lock the messages?

10 A. For evidentiary purposes, in case we had
11 to come back later and photograph them; which
12 happened to be the case.

13 Q. So you did come back and photograph the
14 messages later?

15 A. Yes.

16 SOLICITOR BEN SHELTON: May I
17 approach, Your Honor?

18 THE COURT: You may.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR BEN SHELTON:

21 Q. First of all, you took other pictures that
22 night; correct?

23 A. I took photographs of the residence.

24 Q. And you took pictures of other text
25 messages, but these are the ones that occurred

1 between 3:00 and 4:00 a.m.

2 A. That's correct. There are additional
3 photographs other than the ones that I read.

4 Q. Please read the next two that are in order
5 for the jury, if you don't mind.

6 A. The next one is State's Exhibit 49. You
7 want me to read that?

8 Q. Yes, please.

9 A. Okay, the first one is going to be from
10 Mr. Andes. It says, "sorry about last night."
11 It appears to be received at 8:33 a.m.

12 Mr. Blanche then responds, "You are not
13 sorry or you would have stopped."

14 Following that, Mr. Andes responds, "I
15 did."

16 Then another response, "I am sorry."

17 Ms. Blanche then responds, "You stopped
18 once you got up and pissed on my bedroom
19 floor, but you weren't drunk?"

20 Then at the bottom he responds saying,
21 "I wasn't drunk."

22 Should I proceed to the next one?

23 Q. Please do.

24 A. The next one is going to be State's
25 Exhibit 48. Mr. Andes responds, "I did not."

1 The next response from Mr. Andes, "I drank
2 but not drunk."

3 Next response from Mr. Andes, "I am very
4 sorry."

5 Ms. Blanced in response, "You did,
6 because it was on the bed and in me, so
7 please don't tell me. That was beyond
8 disrespectful. You are sick."

9 Mr. Andes then responds, "Yes it was
10 disrespectful."

11 Q. He said yes, that it was disrespectful?

12 A. "Yes, it was disrespectful." Correct.

13 Q. Sorry. Please continue.

14 A. And the following message after that says,
15 "I am sorry for it."

16 Q. The time that is on those messages, it not
17 only has the time that the message were sent
18 stamped on the phone, correct?

19 A. It is about time that they were sent,
20 according to the photographs.

21 Q. Is there anything on the phone, according
22 to the photographs, when you actually took the
23 pictures?

24 A. Not according to the photographs.

25 Q. Is there any time at the top of the

1 pictures?

2 A. No, there are not.

3 Q. There is no time on the top of the screen?

4 A. There is a time on the phone itself, which
5 according to it shows 11:33 p.m.

6 Q. So that was when you were there that night
7 on the 6th?

8 A. Correct.

9 Q. On the 6th?

10 A. Correct.

11 Q. Okay. Now, you could've taken the
12 telephone into evidence, couldn't have you?

13 A. I could have.

14 Q. Why didn't you?

15 A. I didn't feel that I needed to remove the
16 phone from the victim. The photographs of the
17 text messages would show evidence of the
18 messages.

19 SOLICITOR BEN SHELTON: May I
20 approach?

21 THE COURT: You may.

22 SOLICITOR BEN SHELTON: Thank
23 you, Your Honor.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR BEN SHELTON:

1 Q. And you ultimately said that you took more
2 pictures?

3 A. That's correct.

4 Q. Of the phone, to be specific.

5 A. Following this date?

6 Q. Yes.

7 A. For clarification. The photographs taken
8 of those messages were kinda blurry. I had
9 spoken with Ms. Blanche, who advised that she
10 had received additional text messages from Mr.
11 Andes, so I wanted to photograph those, as
12 well.

13 Q. And when she advised that she had received
14 additional text message from Mr. Andes, how
15 did she advise you of that?

16 A. She'd contacted me via telephone, advising
17 me that Mr. Andes was continuing to contact
18 her via text messages on her phone.

19 Q. Generally what did you tell her or how do
20 you respond to that?

21 A. She asked whether she should respond to
22 the text messages and I advised her just to
23 continue responding as normal.

24 She was fearful of Mr. Andes. To keep
25 things peaceful, I just advised her to

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1 continue to respond.

2 Q. At that point had you received a warrant
3 for Mr. Andes?

4 A. Not at that point.

5 Q. When was this?

6 A. I received a phone call from her on Sunday
7 and I spoke to her again on Monday.

8 Q. Why didn't you get a warrant?

9 A. I obtained a warrant Monday, which would
10 have been November 8th.

11 SOLICITOR BEN SHELTON: May I
12 approach, Your Honor?

13 THE COURT: You may.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR BEN SHELTON:

16 Q. Investigator Powell, I am not going to ask
17 you to go through every single one of these
18 photos, as before, because the jury has seen
19 them already. However, I would just like you
20 to identify them and tell us what they are
21 since you are the one who took them.

22 A. Sure.

23 Q. State's Exhibits 1, 2, 3, 4, and 5
24 sequentially to seventeen (17). Please just
25 take a moment to review those, if you will.

1 A. (Upon review), okay. These would be the
2 photographs that I took on November 9th of the
3 phone.

4 Q. Why did you take additional photographs on
5 November 9th.

6 A. I wanted to take photographs of the
7 original text messages which I didn't have the
8 night of the incident so that they would be
9 clear and visible to read. I also wanted to
10 take photographs of the additional text
11 messages that she had received from Mr. Andes.

12 Q. How did you determine which pictures to
13 take of which text messages?

14 A. From Ms. Blanche, these are the text
15 messages that she had received from Mr. Andes.
16 Those are the ones that I photographed.

17 Q. Do you know if those are all the text
18 messages on her phone?

19 A. I don't know that.

20 Q. Did you take pictures of just the ones you
21 were shown or did you query through the phone?

22 A. Again, going back to the thread, when I
23 observed the thread between Ms. Blanche and
24 Mr. Andes, those are the messages that I
25 observed on that thread. Those are the ones

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1 that I photographed.

2 SOLICITOR SHELTON: May I

3 approach?

4 THE COURT: You may.

5 SOLICITOR SHELTON: Thank you,

6 Your Honor.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR BEN SHELTON:

9 Q. Are these all the ones that you took on
10 November 9th?

11 A. Correct.

12 Q. These are all that you did take on
13 November 9th?

14 A. Correct.

15 SOLICITOR BEN SHELTON: If I
16 could just put these back in order, -- I beg
17 the Court's indulgence.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR BEN SHELTON:

20 Q. Did you take any fingerprints on the scene
21 that night?

22 A. I did not.

23 Q. Why not?

24 A. It wasn't necessary to the investigation.

25 Q. Did you try to lift any DNA from anyplace?

1 A. I did.

2 Q. Where?

3 A. I went to the bedroom along with Ms.
4 Blanche and I attempted to obtain DNA samples
5 from the mattress cover, along with the
6 bedroom floor.

7 Q. Did she show you where the Defendant had
8 peed on the floor?

9 A. Yes, she did.

10 Q. Did you check to see if there was any
11 urine on the floor?

12 A. I observed what potentially could have
13 been urine on the floor, and that's the area
14 from which I collected the potential DNA.

15 Q. Did you smell it?

16 A. It did smell of urine.

17 Q. Did you go into the Defendant's bedroom
18 that night?

19 A. No, I did not.

20 Q. Why not?

21 A. The incident occurred in the bedroom
22 belonging to Ms. Blanche, therefore that was
23 the scene that I processed.

24 Q. But couldn't you have gone into the
25 Defendant's room? Wouldn't there have been

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1 other evidence in that room?

2 A. Potentially. But I would have obtained a
3 search warrant to enter his bedroom, due to
4 the living situation.

5 Q. Did -- why did you not obtain a search
6 warrant?

7 A. I decided not to obtain a search warrant
8 for his bedroom because I thought that the
9 evidence needed for this case would be located
10 inside the bedroom belonging to Ms. Blanche.

11 Q. Is it possible that other evidence could
12 have been in there?

13 A. Sure, it's possible.

14 Q. But everything, it was indicated to you,
15 occurred in Ms. Blanche's bedroom; correct?

16 A. Correct.

17 Q. Now, let's move on. How did you -- when
18 did you obtain the warrant for Mr. Andes?

19 A. I obtained the warrant on Monday, November
20 8th, 2010.

21 Q. Did you try to find Mr. Andes on November
22 8th?

23 A. I did.

24 Q. Did you have any success?

25 A. I did not.

1 Q. Where did you go?

2 A. I proceeded to his residence.

3 MR. SEATON: May we approach the
4 bench?

5 THE COURT: You may.

6 (OFF RECORD BENCH CONFERENCE)

7 THE COURT: Investigator Powell,
8 you may answer the question. If you need Mr.
9 Shelton to repeat it, please let him know.

10 THE WITNESS: I proceeded to his
11 residence, , and I also went
12 to his parent's residence, which is located at
13 Drive.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR BEN SHELTON:

16 Q. Did you speak to anyone at his parents'
17 residence?

18 A. I made contact with a family member.

19 Q. You did not find Mr. Andes there?

20 A. No, I did not.

21 Q. Did Mr. Andes -- eventually -- were you
22 able to make contact with Mr. Andes,
23 eventually?

24 A. I was able to make an arrangement in
25 reference to Mr. Andes turning himself in.

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1 Q. What time was that supposed to have
2 occurred?

3 A. He was supposed to have turned himself in
4 the following day, which would have been
5 Tuesday, November the 9th, at 8:00 a.m. at the
6 Goose Creek Police Department.

7 Q. Tuesday at 8:00 a.m., what day would that
8 have been?

9 A. That would have been the 9th.

10 Q. Did he turn himself in at that time?

11 A. He did not arrive at the predetermined
12 time. No, he did not.

13 Q. What time did he arrive at the Goose Creek
14 Police Department?

15 A. Approximately noon.

16 Q. Around noon?

17 A. Yes.

18 Q. When he first arrived, what did you do?

19 A. He was in the lobby of the Police
20 Department. I was notified that he was there.
21 I proceeded to the lobby, where I advised Mr.
22 Andes that he was being placed under arrest.

23 Q. Was he alone?

24 A. No.

25 Q. Did you place Mr. Andes under arrest at

1 that point?

2 A. I did.

3 Q. Was Mr. Seaton there at that time?

4 A. No, he was not.

5 Q. When you placed him under arrest, what did
6 you do? What did you do?

7 A. I advised him to turn around and place his
8 hands behind his back, at which time I applied
9 handcuffs to the rear, then escorted him to
10 the booking facility.

11 Q. Did you threaten him or coerce him at any
12 way at that point?

13 A. I did not.

14 Q. You say booking facility. What is a
15 booking facility, so that the jury can
16 understand the process.

17 A. There's a secured facility within inside
18 the Police Department where we conduct our
19 booking area. There's holding cells,
20 approximately eight of them, inside there.
21 It's a secured area off the right hallway of
22 the Police Department.

23 Q. What do you do in the booking process?

24 A. As part of the booking process, we obtain
25 information -- name, address, telephone

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1 number, height, weight, date of birth, social
2 security number. We also inquire as to any
3 medical conditions that they might have. We
4 took photographs, fingerprints, serve them the
5 warrant, things of that nature.

6 Q. Is that part of your standard booking
7 procedure?

8 A. It is.

9 Q. You do that in every case?

10 A. Every case.

11 Q. You get the height and weight in every
12 case?

13 A. That's correct.

14 Q. It's a regularly conducted activity that
15 you do?

16 A. Yes.

17 Q. What did Mr. Andes -- what was Mr. Andes
18 height and weight at that time?

19 A. If I could refer to the booking report?

20 Q. Would that help refresh your memory?

21 A. Yes.

22 Q. Please do.

23 A. (Upon review), according to the booking
24 report that was taken, his height was five
25 feet, five inches. His weight was two hundred

1 forty pounds.

2 Q. Two hundred forty pounds?

3 A. That's correct.

4 Q. While you are in the booking room, that
5 one area, did Mr. Andes say anything to you?

6 A. Yes, he stated that he had contacted
7 Grover Seaton.

8 Q. What did you say back to him?

9 A. 'Okay.'

10 Q. Did you say anything back to him as you
11 were taking him out of the room?

12 A. When I had removed him from handcuffs,
13 when we were began the booking process, I
14 advised him that I wanted to speak to him
15 about this incident.

16 Q. What did he say?

17 A. He said okay.

18 Q. What did you do next?

19 A. Following that, I applied leg irons,
20 handcuffs to the front with belly chain, which
21 is part of our requirements and I escorted him
22 to the interview room.

23 Q. Please explain to the jury what leg irons
24 are. Many people may not know.

25 A. They are larger than handcuffs and what

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1 they do is they are applied to the ankles,
2 which restricts the movement of the subject.
3 Then what we do is that we place them in
4 handcuffs, to the front, and they are
5 connected to a belly chain. That prevents the
6 subject from moving their arms forward at all.
7 For safety purpose for the officers.

8 Q. So that they don't have to have their arms
9 behind their back?

10 A. No, it's in the front.

11 Q. They are able to walk?

12 A. They are able to walk fine, yes.

13 Q. Where did you walk him at that time?

14 A. I escorted him over to the interview room.

15 Q. And you knew that you were going to arrest
16 him, right?

17 A. At this time he witness under arrest, yes.

18 Q. You had a warrant for his arrest?

19 A. Yes.

20 Q. That warrant was for criminal sexual
21 conduct, first degree?

22 A. That's correct.

23 Q. When you brought him to the interview
24 room, what had you done to the interview room
25 and prior?

1 A. Prior to, I'd activated -- we have a DVR
2 system which records our interviews and I had
3 activated that prior to escorting him there.

4 Q. Did you notify Mr. Andes of this before
5 you escorted him into the room?

6 A. I didn't advise him that it was being
7 recorded.

8 Q. At some point?

9 A. During the interview he was advised that
10 he was being recorded.

11 Q. But beforehand?

12 A. But prior to, no. He wasn't.

13 Q. And when you brought him into the
14 interview room, what is the next thing that
15 happened?

16 A. Once he witness placed in the interview
17 room, he was seated in the room. I then
18 exited the room and Investigator Riccio
19 entered the room and proceeded to serve him
20 with the arrest warrant.

21 Q. Do you serve an arrest warrant in every
22 case where an arrest warrant exists?

23 A. Yes.

24 Q. That is as required, right?

25 A. That's standard practice, yes.

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1 Q. And in this interview room --
2 approximately how big is it?

3 A. Approximately eight foot by eight foot.
4 There's a table in the center and chairs
5 surrounding it.

6 Q. How many people can sit around that table?

7 A. Four people.

8 Q. How many people were in the interview room
9 at that time?

10 A. There were three people in the interview
11 room at that time. Mr. Andes, Investigator
12 Riccio and myself.

13 Q. Did you make any threats to Mr. Andes?

14 A. I did not.

15 Q. Did you say that he had to talk to you in
16 any way?

17 A. I did not.

18 Q. Did he ever ask for Mr. Seaton to be there
19 to help, to speak with him?

20 A. No, he didn't.

21 Q. You said that Mr. Riccio was going to read
22 him the warrant?

23 A. Yes. Investigator Riccio was going to
24 serve him the warrant, which consists of
25 reading the warrant, the affidavit portion

1 which contains the probable cause of the case.

2 Q. And did he do that?

3 A. He did.

4 Q. And during the reading of the warrant,
5 directly after the reading of the warrant, did
6 Mr. Andes say anything to Mr. Riccio?

7 A. If I could just refer to my notes for a
8 moment?

9 Q. If that would help refresh your memory,
10 please do so.

11 A. Yes, sir. (Upon review), during the
12 process itself, Mr. Andes requested again what
13 the incident date was. Which he was advised
14 that it was Saturday, November 6th.

15 Q. Did he say anything after that?

16 A. He indicated that he had never even saw
17 (sic) her Saturday.

18 Q. Then what is the next thing that you did?

19 A. Preceding (sic) the reading of the
20 warrant, I advised Mr. Andes of his Miranda
21 rights.

22 Q. What does your Miranda rights consist --
23 what -- you say Miranda rights. People hear
24 that on TV, but please explain to the jury
25 what Miranda are, and what you have to say to

1 a defendant.

2 A. Sure. Miranda rights are the basic rights
3 given to a defendant in a case. What it is
4 that we have a statement coversheet, which has
5 got the Miranda rights here, five lines on
6 there, and I read it directly from that form
7 to the defendant prior to speaking with them
8 about it.

9 Q. Do you have that form with you now?

10 A. I do have a copy of it.

11 Q. Could you read that to the jury?

12 A. Sure, it says Advice of Miranda (reading):
13 "You have the absolute right to remain silent.
14 Anything you say can and will be held against
15 you in a court of law. You have the right to
16 an attorney and have him or her present during
17 questioning if you wish. If you cannot afford
18 to hire an attorney, one will be appointed to
19 represent you before any questioning if you
20 wish. If you decide to answer questions
21 without an attorney present, you still have
22 the right to stop answering questions at
23 any..." ---

24 THE COURT: Investigator Powell, I
25 need you to slow down.

1 THE WITNESS: I apologize.

2 THE COURT: Thank you.

3 THE WITNESS: Should I start from
4 the beginning, Your Honor.

5 THE COURT: You don't have to start
6 from the beginning, but perhaps from the
7 beginning of that sentence. Thank you.

8 THE WITNESS: Yes, Your Honor.

9 (Reading): "If you decide to answer questions
10 without an attorney present, you still have
11 the right to stop answering questions at
12 any time during the interview."

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR BEN SHELTON:

15 Q. After you read that, what did you say to
16 Mr. Andes?

17 A. I asked Mr. Andes if he understood those
18 rights.

19 Q. And what did he do?

20 A. He nodded in the affirmative.

21 Q. Then what is the next thing that you said
22 to him?

23 A. I asked him if he had any questions.

24 Q. And what did he do?

25 A. He shook his head left to right,

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1 indicating "no."

2 Q. Then what did you do?

3 A. Uh, ---

4 Q. Do you need to refer to your notes?

5 A. Yes.

6 Q. Did you hand him the warrant?

7 A. Mr. Andes was provided a copy of the
8 warrant, along with the affidavit.

9 Q. Did he ask you anything about the warrant?

10 A. He had requested the offense date, again
11 clarifying what the date was.

12 Q. Did you show him where that was on the
13 warrant?

14 A. I did, I indicated that it was November
15 6th.

16 Q. Then what did he do?

17 A. Mr. Andes proceeded to speak in reference
18 to the incident.

19 Q. What is the first thing he said?

20 A. The first thing he said was, "That's
21 good."

22 Q. Why?

23 A. Again referencing the fact that he hadn't
24 seen her Saturday.

25 Q. Then he proceeded to talk about the

1 incident date in question?

2 A. Correct.

3 Q. Did he talk about any dates previous to
4 the incident date?

5 A. He had. He had referenced the Thursday
6 prior to and indicated the fact that they had
7 "played around." He indicated that she had
8 had surgery, Ms. Blanche, and that they
9 couldn't have sex.

10 Q. He said that they couldn't have sex?

11 A. That's correct.

12 Q. Then did he say anything further about --
13 was there some confusion about Friday night or
14 Saturday morning?

15 A. I believe that there was a little bit of
16 confusion. I think he believed that the
17 incident occurred Friday night. We had to
18 explain to him that Friday night goes into
19 Saturday morning, and clarified the incident
20 date for him.

21 Q. So you clarified that it was Saturday
22 morning at 3:30 in the morning?

23 A. Correct.

24 Q. Did he say anything that he did on
25 Saturday morning at 3:30 in the morning?

1 A. He indicated that fact that he had sent
2 her text messages in reference to wanting sex.

3 Q. Did he indicated that she said anything
4 back to him?

5 A. Said that she was aggravated.

6 Q. Did he say anything about ever notifying
7 the police about the violence that she'd
8 committed on him?

9 A. During the initial parts of the interview
10 when I spoke to him, he said that he had never
11 called the cops on her. During the middle of
12 the interview, he then indicated that he had
13 called the cops. In fact, he was questioning
14 me as to whether be a record ---

15 THE COURT: Slow down.

16 THE WITNESS: I apologize.

17 THE WITNESS: He had questioned
18 whether there would be a record at the Police
19 Department that he had called the police.
20 Then at the conclusion of the interview, he
21 stated that he had never called the cops on
22 her.

23 DIRECT EXAMINATION CONTINUED

24 BY SOLICITOR BEN SHELTON:

25 Q. Now, he mentioned text messages on

1. Saturday morning ---

2. A. Correct.

3. Q. --- to you?

4. A. (Affirmative nod).

5. Q. Did he say at that point, anytime, about
6. text messages later than Saturday morning,
7. what he personally considered being Saturday
8. morning?

9. A. If I could just refer to my notes for a
10. second.

11. Q. Please, if it helps to refresh your
12. memory.

13. A. During the course of the interview, he had
14. indicated that he had sent her messages later
15. on that morning indicating that he was sorry,
16. in reference to the fight that had occurred.

17. MR. SEATON: Your Honor, I am going
18. to object. Cumulative. We're ---

19. THE COURT: Your objection is
20. cumulative?

21. MR. SEATON: Yes, Your Honor.

22. THE COURT: I am going to overrule
23. it at this time.

24. MR. SEATON: And I would object
25. under relevance. If we're going to play the

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1 video, it's got the exact same thing. We're
2 about to ---

3 THE COURT: Counsel. Approach.

4 (OFF RECORD BENCH CONFERENCE)

5 THE COURT: I am going to sustain
6 it. Let's move on, Mr. Shelton.

7 SOLICITOR BEN SHELTON: Thank
8 you, Your Honor.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR BEN SHELTON:

11 Q. So you interviewed him?

12 A. I did.

13 Q. Approximately how long was that interview?

14 A. Thirty minutes.

15 SOLICITOR BEN SHELTON: Beg the
16 court's indulgence.

17 THE COURT: Yes, sir.

18 SOLICITOR BEN SHELTON: May I
19 approach, Your Honor?

20 THE COURT: You may.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR BEN SHELTON:

23 Q. I am handing you, Mr. Powell, what has
24 been previously marked as State's Exhibit 65.

25 Do you recognize that?

1 A. I do.

2 Q. What is it?

3 A. It's a copy of the interview.

4 Q. Is it a fair and accurate depiction of the
5 conversation that you had?

6 A. Yes.

7 SOLICITOR BEN SHELTON: At this
8 time, Your Honor, the State would move State's
9 Exhibit 65 into evidence.

10 THE COURT: Any objection?

11 MR. SEATON: Without objection, with
12 the understanding of the Jackson v. Denno.

13 THE COURT: Correct. Without
14 objection, prior to -- subject to my previous
15 rulings -- and you're going to play the video
16 now?

17 SOLICITOR SHELTON: (Affirmative
18 nod).

19 THE COURT: You may publish.

20 SOLICITOR SHELTON: We are going
21 to publish the video, Your Honor.

22 (SO ENTERED AS STATE'S EXHIBIT 65)

23 THE COURT: Ladies and Gentlemen,
24 as you heard, this is about a thirty-minute
25 video. So if you want to take this

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1 opportunity to stretch right there in the jury
2 box, go ahead.

3 SOLICITOR WILLIAMS: Your Honor,
4 may we turn the lights down in the courtroom?

5 THE COURT: I don't know. They are
6 either on or off, we don't have a dimmer.

7 MR. SEATON: Your Honor, may I be
8 excused for half a second?

9 THE COURT: You may. Ladies and
10 Gentlemen of the jury, if there is anyone who
11 has any trouble seeing or hearing the video,
12 please raise your hand and we will adjust it
13 accordingly. Thank you.

14 SOLICITOR WILLIAMS: May I be
15 excused for just a minute?

16 THE COURT: You may.

17 SOLICITOR BEN SHELTON: May we go
18 ahead and publish the video?

19 THE COURT: You may.

20 (WHEREUPON VIDEO PUBLISHED)

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR BEN SHELTON:

23 Q. Investigator Powell, just a couple of
24 points. To your recollection, after watching
25 that and refreshing your recollection, on

1 Thursday night he said that they fooled
2 around?

3 A. That's correct.

4 Q. But he said that she shouldn't have sex?

5 MR. SEATON: Objection. Asked and
6 answered. This is exactly what we just
7 watched, if he wants to play it again.

8 THE COURT: I am going to give him
9 -- rephrase your question, Counsel. I think
10 you were about to lead him, as well, so just
11 rephrase your question.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR BEN SHELTON:

14 Q. What did he tell you about Thursday night.

15 A. He advised that they have fooled around
16 Thursday night.

17 Q. Did he advise anything about her physical
18 condition on Thursday night?

19 A. He advised that she had had surgery and
20 that they couldn't have sex.

21 Q. Did he advise anything about whether they
22 had had any type of sexual relationship Friday
23 night, sexual intercourse Friday night or
24 Saturday morning?

25 A. He advised that they had not had sexual

1 intercourse Friday or Saturday.

2 Q. Did you threaten him in any way?

3 A. I did not.

4 Q. Did you try to coerce him in any way?

5 A. I did not.

6 Q. Did you make any promises?

7 A. I did not.

8 Q. Promises of leniency here in court or
9 anything like that?

10 A. I did not.

11 Q. Did he appear to be under the influence of
12 any drugs or alcohol or anything like that?

13 A. He did not.

14 Q. Do you have experience around people under
15 the influence, as a vice officer, of drugs or
16 alcohol?

17 A. I do.

18 Q. You can base it on that experience to see
19 that he was not under the influence?

20 A. That's correct.

21 Q. Did you eventually at any time run the
22 address at question and the names in question
23 to see if there have been any reports in the
24 past to the police of any type of violence of
25 anything like that?

1 A. Yes, I did.

2 Q. Did you run his name?

3 A. I did run his name.

4 Q. Did you find that he was a victim of any
5 type or violence or had reported any type of
6 violence?

7 A. Not a victim in any case, no.

8 Q. In fact, had he made any reports to the
9 police?

10 A. His name was included in reports that we
11 had.

12 Q. But he wasn't the victim?

13 A. No.

14 Q. Eventually did you get a search warrant
15 for the DNA evidence?

16 A. Yes, I did.

17 Q. What date did you do that?

18 A. If I could refer to my notes to refresh my
19 memory?

20 Q. Please.

21 A. (Upon review), On December 7th, 2010, I
22 obtained a search warrant in reference to
23 obtaining a DNA sample from Mr. Andes.

24 Q. Was that the same day that you got the
25 arrest warrant?

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1 A. No.

2 Q. That was on December 7th?

3 A. (Affirmative nod).

4 Q. That was a month later?

5 A. Correct.

6 Q. Correct. Then you went to -- and you
7 found him, correct?

8 A. I was able to find him. I made contact
9 with him on December 13th.

10 Q. And at that time did you obtain a DNA
11 sample from him?

12 A. I did.

13 Q. How did you do that?

14 A. We've got prepackaged cotton swabs, which
15 are in sealed package. What we do is we don a
16 pair of protective gloves, just gloves, that
17 we place on our hands. We remove two swabs
18 from the package itself and we swab the inside
19 left and right cheek of the subject. Those
20 are then placed into individual rectangular
21 boxes and that's placed on my person and kept
22 until it is transported back to the Police
23 Department, where it was secured in Evidence.

24 Q. What happens with it after that?

25 A. Following that, it was submitted to

1 Evidence and I believe that one of the swabs
2 was submitted to SLED for processing along
3 with the rape kit.

4 Q. To compare the two together?

5 A. That's correct.

6 Q. Do you know what's in the rape kit?

7 A. I am vaguely familiar with it.

8 Q. When they send it to SLED, they compare
9 the two together; correct?

10 A. Yes.

11 Q. Did you tamper with that DNA evidence in
12 any way?

13 A. I did not.

14 Q. That's already in evidence, is that
15 correct?

16 A. That's correct.

17 SOLICITOR BEN SHELTON: That's
18 all the questions that I have for you. Please
19 answer any questions that Mr. Seaton has.

20 THE COURT: Mr. Seaton.

21 MR. SEATON: Your Honor, may we
22 approach the bench?

23 THE COURT: You may.

24 (OFF RECORD BENCH CONFERENCE)

25 THE COURT: Mr. Foreman, we are at

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1 a time when we can break for lunch or we could
2 continue on for a brief time. Would you
3 rather break for lunch now?

4 FOREMAN: That may be a good
5 idea.

6 THE COURT: Please remember all of
7 my admonitions. Do not discuss this case
8 amongst yourself, do not do any independent
9 investigation. Please be back downstairs at
10 1:45. Thank you. You all have a nice lunch.
11 Please rise for the jury.

12 (JURY OUT @ 12:26 P.M.)

13 THE COURT: Thank you, be seated.
14 Investigator Powell, do you know what I am
15 about to tell you?

16 THE WITNESS: Yes, I do.

17 THE COURT: What is it?

18 THE WITNESS: To not discuss this
19 case with anybody.

20 THE COURT: All right. Can you
21 follow the Court's admonition?

22 THE WITNESS: I can, Your Honor.

23 THE COURT: All right. Thank you.
24 You have a nice lunch, as well. Anything
25 before we break for lunch?

1 SOLICITOR WILLIAMS: Nothing from
2 the State, Your Honor.

3 THE COURT: Mr. Seaton?

4 MR. SEATON: No, Your Honor.

5 THE COURT: All right. 1:45.

6 And just so that the record is clear, State's
7 Exhibit 13 has not been entered and it has not
8 even been identified -- the only reason it
9 becomes an issue is because you said
10 "inclusive" and I just need for you -- and you
11 agree that thirteen is not even marked.

12 SOLICITOR WILLIAMS: Thirteen is --
13 there are like duplicates of certain pictures,
14 and there's also -- I think it has been
15 marked. There's also some pajama pants that I
16 think are ---

17 THE COURT: Out of ---

18 SOLICITOR WILLIAMS: Thirteen (13)
19 and 44 have not been entered.

20 THE COURT: Whatever 13 is, do you
21 anticipate attempting to introduce it?

22 SOLICITOR WILLIAMS: No, Your
23 Honor.

24 THE COURT: Just out of an
25 abundance of caution -- if you do, we need to

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1 remark it so that's it not, because Mr.
2 Shelton said that it was inclusive.

3 SOLICITOR BEN SHELTON: I'm
4 sorry.

5 THE COURT: That's fine, it
6 happens. I just want to make sure so that the
7 record is very clear that if you attempt to
8 introduce what is marked as your thirteen that
9 we remark it. Thank you.

10 (LUNCH RECESS)

11 (DEFENDANT PRESENT)

12 THE COURT: Anything before we
13 bring in the jury?

14 SOLICITOR WILLIAMS: Nothing from
15 the State.

16 THE COURT: Mr. Seaton?

17 MR. SEATON: No, Your Honor.

18 THE COURT: Let's bring in the
19 jury. Investigator Powell, did you abide by
20 the court's admonishments?

21 THE WITNESS: I did, Your Honor.

22 THE COURT: Thank you. I remind
23 you that you're still under oath.

24 (WITNESS RESUMES STAND)

25 (JURY IN @ 1:48 P.M.)

1 THE COURT: Thank you. Please be
2 seated. Mr. SEaton, Your Honor.

3 MR. SEATON: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. SEATON:

6 Q. Detective Powell, as I understand the
7 testimony that you've given us to-date, you
8 were called out to the scene in response to --
9 you'd been told that there had been a rape?

10 A. That's correct.

11 Q. When you get there, did you discuss the
12 alleged rape with any of the officers that
13 were already there or did you go in and go
14 straight to the victim?

15 A. I have spoken with Sergeant Burger
16 (phonetic) and Officer Gainey who were on the
17 scene.

18 Q. In fact, didn't you -- by the time that
19 you got there, had they already done the
20 witness statement of LeAnn Blanche?

21 A. Officer Gainey had collected a written
22 statement from Ms. Blanche, (affirmative nod).

23 Q. Did you review that witness statement
24 before you talked to her?

25 A. Prior to speaking with Ms. Blanche, that's

1 correct.

2 Q. So you already were filled in or have been
3 told Ms. Blanche's version, that has her as
4 the victim?

5 A. I had read the statement that she'd
6 completed, correct.

7 Q. Okay. Is it fair to say that you had not
8 talked to Mr. Andes?

9 A. I had not.

10 Q. All right. Is it fair to say that you had
11 not talked to Mr. Andes at any point before
12 you arrested him on the 8th?

13 A. That's correct.

14 Q. Did you attempt to reach him before the
15 8th?

16 A. I attempted to contact Mr. Andes in
17 reference to the arrest warrant.

18 Q. Did you ever call his phone number?

19 A. I don't recall.

20 Q. Well, you got the phone records. Could
21 you -- would you recognize your phone number?

22 A. If I'd contacted him from the Police
23 Department, I -- I attempted to contact Mr.
24 Andes in reference to turning himself in. I
25 can't definitely say if I contacted his number

1 or not.

2 Q. So you don't know whether or not you
3 called his cell phone number, even though you
4 clearly had his phone number, since that's
5 where all these pictures are. Correct?

6 A. That's correct.

7 Q. And so when you're saying turn himself in,
8 what you're saying is that you're trying to
9 contact him to say 'I've got a warrant, come
10 turn yourself in.'

11 A. That's correct.

12 Q. All right. And when you -- you tell us
13 that he was supposed to -- do you know why he
14 -- how the contact finally was initiated
15 between you and Mr. Andes?

16 A. Yes.

17 Q. Wouldn't it be because the Goose Creek Police
18 Department flashed his picture on the TV,
19 saying that he's wanted.

20 A. I don't recall if there was a photograph
21 placed on the television.

22 Q. Well, you would agree with me that the
23 News was alerted and that it was put on
24 television of some type that he was a wanted
25 man.

1 A. If that was on television, I would have to
2 agree with that.

3 Q. All right. And you would agree with me
4 that your phone records -- and take all the
5 time that you need. If you want to look
6 through the phone records, at no point either
7 your personal nor the Police Department's cell
8 phone, did you call Mr. Andes and say, 'hey, I
9 need you to turn yourself in' or 'hey, I need
10 to talk to you about this allegation.'

11 A. If you refer to the phone records and they
12 don't reflect that contact was made, then no -
13 - I can't say.

14 Q. I am asking you your recollection, sir.
15 I've looked at them. I'm asking you what you
16 know.

17 A. To my best recollection, I don't recall if
18 I made contact using that phone number. No.

19 Q. Well, -- all right. You created a couple
20 of incident reports. I have three incident --
21 all of them are listed as Supplement Reports:
22 one from 11/9, one from 11/8 and one from
23 7/20/11. To the best of your recollection, is
24 that correct, that you created three?

25 A. That appears correct, yes.

1 Q. Okay. The first one, obviously, was the
2 night that you went out to the house and got
3 the statement that was done by Officer Gainey
4 -- I think you testified that you took some
5 pictures of the phone and of the scene.

6 A. That's correct.

7 Q. Did you ever have any question in your
8 mind whether or not this was a boyfriend and
9 girlfriend?

10 A. Based on the statement by Ms. Blanche, she
11 advised that they were not longer dating.

12 Q. When you say that they were no longer
13 dating, you agree with me that they still
14 lived in the same house?

15 A. That's correct.

16 Q. All right. And as an investigator, did
17 anything strike you as peculiar that they
18 lived together as boyfriend and girlfriend and
19 then at some point you're being told that she
20 was just a roommate?

21 A. That's what she advised.

22 Q. Did you look in that issue at all?

23 A. Based on the observations, it appeared
24 that she had her own bedroom in the residence.

25 Q. And I think you've told us that you did

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1 not go into the master bedroom?

2 A. That's correct.

3 Q. And your theory is that you're allowed in
4 the house but not in his bedroom?

5 A. I did not go in his bedroom that night,
6 that's correct.

7 Q. Well, I think you said that you had to
8 have a warrant to go into the bedroom?

9 A. Correct, based on the living situation.

10 Q. Let me make sure that I understand this.
11 You're saying that it is officially the Goose
12 Creek Police Department's standard operating
13 procedure that if you go into a house and
14 there are two roommates that live there,
15 you're only allowed to go into the space that
16 the roommate has, the living room, dining room
17 and their bedroom?

18 SOLICITOR SHELTON: Objection.

19 THE COURT: Basis?

20 SOLICITOR SHELTON: Relevance.

21 THE COURT: Sustained.

22 CROSS EXAMINATION CONTINUED

23 BY MR. SEATON:

24 Q. So you didn't go into the master bedroom?

25 A. Correct.

1 Q. And you heard the testimony of Ms. Blanche
2 that she had clothing in the master bedroom?

3 SOLICITOR BEN SHELTON: Objection.
4 Pitting witnesses on prior court testimony.

5 THE COURT: Rephrase your question,
6 Mr. Seaton.

7 CROSS EXAMINATION CONTINUED

8 BY MR. SEATON:

9 Q. Did you hear Ms. Blanche testify that she
10 had clothes in the master bedroom?

11 A. That's correct.

12 SOLICITOR SHELTON: Objection.

13 THE COURT: Hold on one second,
14 Investigator. Sustained.

15 THE COURT: Rephrase your question,
16 Mr. Seaton.

17 MR. SEATON: Certainly.

18 CROSS EXAMINATION CONTINUED

19 BY MR. SEATON:

20 Q. Anybody ever told you that there -- that
21 there was Ms. Blanche's clothing in the master
22 bedroom?

23 A. Not to my recollection.

24 Q. And that's because you never checked?

25 A. I didn't go in the master bedroom, sir.

1 Q. And ---

2 MR. SEATON: Your Honor, may we
3 approach?

4 THE COURT: You may.

5 (OFF RECORD BENCH CONFERENCE)

6 THE COURT:

7 CROSS EXAMINATION CONTINUED

8 BY MR. SEATON:

9 Q. Detective, you told us that you get there
10 and she tells you that she's got these text
11 messages?

12 A. Correct.

13 Q. And that they are proof that she has been
14 raped?

15 A. She provided us the text messages on the
16 phone that she had received from Mr. Andes.

17 Q. And you took the opportunity to view those
18 text messages?

19 A. Correct.

20 Q. And you felt that they were important, so
21 you not only photographed them, you locked
22 them?

23 A. Correct.

24 Q. And as you've told us, these are all on
25 what -- I think the proper terminology word is

1 that they were on "a thread."

2 A. Yes.

3 Q. A thread simply means that if you open --
4 is this a folding phone?

5 A. No.

6 Q. It's just a flat panel, like this
7 (displaying) where it's got a screen on it?

8 A. Similar. Yes.

9 Q. So if you start with the very first text
10 in that thread, it runs through as each one is
11 either written or received, the next one in
12 line, and they're all connected from the start
13 to the end of the thread?

14 A. Yes.

15 Q. And you would agree that the thread
16 itself, of all of these messages, are -- they
17 won't all fit on one screen? You can't take a
18 picture that has the start to the finish of
19 the ones that you've got?

20 A. No.

21 Q. So what you had to do was sort of -- for
22 lack of a better term, scroll up or scroll
23 down the thread to take the pictures?

24 A. Yes.

25 Q. Did you erase any of the text messages

1 that were on LeAnn Blanche's phone?

2 A. No.

3 Q. Okay. So it is fair to say that all of
4 the text messages that you got an opportunity
5 to see from November 6th were on that phone?

6 A. Yes.

7 Q. Would you also agree with me that the
8 phone records that you subpoenaed do not match
9 the thread or the count of the thread, the
10 number of text messages that you photographed
11 from November 6th?

12 A. Yes.

13 Q. Do you agree with me that after November
14 6th you -- you arrived there at approximately
15 11:30 at night, I believe.

16 A. Approximately.

17 Q. Do you know if there were any more text
18 messages after you arrived on the night of the
19 6th, or did the next set of messages come on
20 the 7th?

21 A. The only messages that I observed on the
22 6th were the ones that were photographed.

23 Q. Okay. Well, I can only assume that if
24 you're there at 11:30, taking this
25 photographs, that you were probably still

1 there at 12:00?

2 A. That could be assumed.

3 Q. And that the, uh, clock or however we
4 describe this -- the change in these -- the
5 timekeeping of these, it shows that the
6 November 6th, when you come back -- let me
7 show you, just as an example, State's Exhibits
8 47, 48 and 51. Those are the texts that you
9 took that night, on the 6th, where it still
10 shows the times.

11 A. Yes.

12 Q. So those correlate the times from all of
13 November 6th, from the time 12:00 o'clock
14 starts at 12:01 on November 6th until 11:59 on
15 November 6th?

16 A. I would agree with that.

17 Q. That after that they pick up on the 7th.
18 I want to show you --and ---

19 MR. SEATON: I am going to ask the
20 assistance here in putting up State's Exhibit
21 5.

22 THE COURT: Mr. SEaton, you have to
23 remove the ---

24 MR. SEATON: Thank you.

25 CROSS EXAMINATION CONTINUED

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1 BY MR. SEATON:

2 Q. This is a photograph that shows -- State's
3 Exhibit 5 -- let me hand it to you. That
4 shows the thread rolling over from the 6th to
5 the 7th.

6 A. Yes, it does.

7 Q. And would you agree with me that the last
8 one that we see on the 6th is on your
9 photographs of -- that you took -- let me show
10 you State's Exhibit 50. Would you agree that
11 that is the -- the State doesn't have it blown
12 up, but would you agree that what we have in
13 State's Exhibit 50 is also -- let me hand it
14 to you -- the photograph of the same text that
15 showing the rollover -- or has the same
16 language as the last text in the other State's
17 exhibit that shows it rolling over from the
18 6th to the 7th?

19 A. Correct.

20 Q. Would you agree that is the same thread,
21 the same language, saying everything about it
22 except that it doesn't have the time stamp on
23 it?

24 A. I would agree with that.

25 Q. So the earlier on the with the time stamp,

1 that's the picture that you took when you were
2 there at 11:30 on Saturday night?

3 A. November 6th, correct.

4 Q. So it's fair to say, then, that we have
5 all of the texts that were on the phone when
6 you arrived that night on the 6th?

7 A. In relation to that thread, yes.

8 Q. And you would agree that if we counted the
9 number of those texts from that night, from
10 November 6th and roll it over into the 7th,
11 you would agree with me that the phone records
12 do not match the number of texts that you have
13 a picture of?

14 A. Correct.

15 Q. And then I believe that -- were you aware
16 prior to this trial that there are text
17 messages that were erased on the 7th?

18 A. I was not aware.

19 Q. Would that perhaps explain why there isn't
20 -- why the numbers are so vastly different
21 between the pictures of the texts on the 7th
22 and the log that shows how many text messages
23 that there were?

24 A. (No verbal response).

25 Q. Do you think that might explain why there

1 is such a vast difference in those two
2 numbers? Are you aware that there is a vast
3 difference?

4 A. It's been shown that there is a
5 difference. It's a possibility.

6 Q. Did you ever look into that? Did you ever
7 do any investigation prior to the trial, to
8 determine whether or not the number of text
9 messages that you have pictures of is vastly
10 different than the number of phone records
11 that I think you got back in July of this
12 year? Have you ever had an opportunity to
13 investigate and determine whether or not there
14 is a vast different between what you got
15 pictures of and what the company says that
16 there was.

17 A. I observed the fact that the phone records
18 submitted by Sprint don't match up the
19 photographs.

20 Q. I'm sorry?

21 A. They don't match up to the number of text
22 messages, correct. I would agree with that.

23 Q. And after the message were erased on the
24 7th, is it your understanding that no more
25 messages were erased?

1 A. It was my understanding that there were no
2 messages erased.

3 Q. You didn't know of any messages being
4 erased?

5 A. Correct.

6 Q. Okay. By the way, did -- when you were
7 looking at the phone, did you look at what the
8 text messages between Jessica Thompkins and
9 Ms. Blanche?

10 A. No.

11 Q. -- Did she ask you to look at the text
12 messages between her and Ms. Blanche?

13 A. No.

14 Q. Do you think that it would have been
15 relevant if what allegedly -- what was
16 supposed to have been said?

17 A. It could have been placed in there, it
18 could have been part of the case.

19 Q. You agree that if someone says that this
20 is the time, place and manner that an assault
21 occurred to my best friend, or that I am
22 telling my best friend, that that would have
23 been pretty darn important? 'Maybe we should
24 have locked that.'

25 A. It could be important.

1 Q. And it was never shown to you?

2 A. No.

3 Q. It was never -- anything?

4 A. No.

5 Q. Did you look at Ms. -- do you believe that
6 once a warrant has been issued that you have
7 any duty to do further investigation, or do
8 you think that that is the end of your
9 investigation?

10 A. Continue the investigation.

11 Q. Sorry?

12 A. Continue the investigation.

13 Q. And as a part of continuing the
14 investigation, did you compare the statement
15 or the statements that were given by Ms.
16 Blanche to the other evidence?

17 A. Yes.

18 Q. You agree -- you've seen the photographs
19 that allegedly show bruising on her legs and
20 on her arms, and I think there is one later of
21 even a bruise on her breast.

22 A. (Affirmative nod).

23 Q. You've had an opportunity to look at
24 those?

25 A. I have.

1 Q. It appears in looking at those -- I
2 believe that's State's Exhibit 19, that's the
3 diagram that shows bruises that are alleged on
4 the wrists and on the outer thighs?

5 A. As she reported, yes.

6 Q. Did you see -- I believe you were the one
7 that actually collected the pajamas she was
8 wearing that night, weren't you?

9 A. I did.

10 Q. Do you have those with you?

11 A. There was a pajama pants collected from
12 the bed and there was another pair collected
13 from the bathroom.

14 Q. Do you have those with you?

15 A. They were in Evidence. They should have
16 been brought up here.

17 Q. Do you ---

18 A. There's a mattress cover ---

19 Q. --- need a pair of gloves, to put those
20 on?

21 A. Yes.

22 Q. I would ask that you produce for us the
23 pajama pants that she says that she was
24 wearing when she was raped.

25 THE COURT: Do we have gloves, Mr.

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1 Hutton?

2 MS. WIGGINS, BAILIFF: There are some
3 up there.

4 SOLICITOR BEN SHELTON: May I
5 approach, Your Honor?

6 THE COURT: You may.

7 SOLICITOR BEN SHELTON:
8 (Tenders).

9 THE WITNESS: Thank you --
10 (reviewing evidence with Solicitor).

11 CROSS EXAMINATION CONTINUED

12 BY MR. SEATON:

13 Q. Detective, is it your understanding that
14 we don't have those pajama pants here?

15 A. That is what I'm being advised. They were
16 collected on scene.

17 Q. This bag that you been looking at the past
18 two bags, they're not in that bag?

19 A. I collected them in Evidence.

20 Q. Are they in the bag or not, Detective?

21 A. I don't know.

22 Q. If you want to look at the bag that's been
23 sitting right here for the last few days,
24 please look and tell us whether or not ---

25 SOLICITOR SHELTON: Objection,

1 Your Honor. He's badgering. If he wants to
2 bring the bag to him, he can do that.

3 THE COURT: All right.

4 MR. SEATON: I am not touching his
5 bag. If you want ---

6 THE COURT: Counsel, we are not
7 going to argue. Mr. Shelton, is -- where is
8 the bag?

9 SOLICITOR SHELTON: It's right
10 here behind me, Your Honor.

11 THE COURT: Could you put it on the
12 evidence table for me.

13 SOLICITOR SHELTON: Certainly,
14 (complies).

15 THE COURT: Thank you. You may
16 continue.

17 CROSS EXAMINATION CONTINUED

18 BY MR. SEATON:

19 Q. Detective, I would ask that you open the
20 bag that has been sitting here and tell us
21 whether or not the pajamas that you collected
22 that night are here today.

23 A. (Removing items from paper evidence bag),
24 located inside the bag is a pair of floral
25 pajama pants, which I collected. This were

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1 located on the bed. Also located inside this
2 bag is a blue in cover mattress cover, which
3 was collected from the scene.

4 Q. Is that the pair of pajama pants that I
5 asked you about a moment ago?

6 A. I advised you that there were two
7 different pairs of pajama pants collected and
8 the -- the pair that is collected inside the
9 bag are the ones that were collected off the
10 bed.

11 Q. So the pair that she was wearing when she
12 was raped, she don't have those?

13 A. I don't observe them inside the bag at
14 this time.

15 Q. All right. We sort of got sidetracked,
16 but we were actually looking at State's
17 Exhibit 19, which is the picture or the
18 diagram that is supposed to show where she
19 received of these injuries on her wrists, on
20 the outside of her thighs and -- I don't think
21 that this one shows it, but at some point she
22 has one on her wrists?

23 A. Right.

24 Q. In her statement, she says that she was
25 held down by her wrists. Is that correct?

1 A. I can just refer to her statement.

2 Q. Or, let me ask it this way. Is that what
3 she told you?

4 A. If I could read from my report?

5 Q. Certainly.

6 A. Reading): "LeAnn Blanche further stated
7 that she was yelling for him to stop during
8 the incident and forcibly held her down onto
9 the bed."

10 Q. Did she say anything to you about him
11 covering her mouth?

12 A. Yes, she did.

13 Q. What did she say about that?

14 A. She said that he placed his hand over her
15 mouth.

16 Q. And what did he say about lifting her
17 legs?

18 SOLICITOR BEN SHELTON: Your
19 Honor.

20 THE COURT: Yes?

21 SOLICITOR BEN SHELTON: I would ask
22 that he rephrase the question. He asked what
23 did he say about lifting her legs. I think he
24 means what did she say?

25 THE COURT: Thank you, Counsel.

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1 MR. SEATON: You're right.

2 CROSS EXAMINATION CONTINUED

3 BY MR. SEATON:

4 Q. What did she -- meaning LeAnn Blanche --
5 say about him lifting her legs while he was
6 doing all of this?

7 A. She advised that he had grabbed her legs.
8 That is what she advised me.

9 Q. As an investigator, do you believe that it
10 is possible for him to hold her arms and her
11 mouth and her legs?

12 A. It's possible.

13 Q. I am assuming that you are not suggesting
14 at the same time?

15 A. Correct.

16 Q. So what you're suggesting then is that he
17 did them in some rotation order?

18 A. Some sort of sequence.

19 Q. That he held her legs and not her arms?

20 Or he held her arms and not her legs?

21 A. (No verbal response)..

22 Q. Or that he held her mouth and not her
23 arms?

24 A. (No verbal response).

25 Q. Or he held her mouth and not her legs?

1 A. (No verbal response).

2 Q. I'm assuming that's what you're
3 suggesting, is that we're -- that there seems
4 to be a big struggle going on -- because he
5 can't do all these things at once, can he?

6 SOLICITOR SHELTON: Objection,
7 Your Honor.

8 THE COURT: Basis?

9 SOLICITOR SHELTON: He's
10 testifying. I was waiting for a question to
11 come.

12 THE COURT: What is the basis?

13 SOLICITOR BEN SHELTON: 611,
14 cumulative, waste of time, he's not asking a
15 question.

16 THE COURT: Mr. Seaton, I didn't
17 hear a question either. Rephrase your
18 question. Thank you.

19 CROSS EXAMINATION CONTINUED

20 BY MR. SEATON:

21 Q. You agree that there was no way for all of
22 these things to happen at one time?

23 A. Correct.

24 Q. So there had to have been a heck of a
25 struggle if he's bruising the outside of her

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1 legs. Now, let me ask you about that. How is
2 he bruising the outside of her legs?

3 A. I couldn't comment on that. I wasn't
4 there during the altercation.

5 Q. Well, you're the investigator. You're the
6 one who said that you continued the
7 investigation. Continue investigating for us
8 and explain to us how he bruised the outside
9 of her thighs.

10 SOLICITOR SHELTON: Objection.
11 Badgering, argumentative.

12 THE COURT: I am going to allow the
13 question but, Mr. Seaton, please watch your
14 characterization.

15 THE WITNESS: That would be
16 speculation on my part.

17 CROSS EXAMINATION CONTINUED

18 BY MR. SEATON:

19 Q. Isn't that your job, sir? Aren't you
20 supposed to figure out how this evidence -- I
21 am not suggesting that this is C.S.I., I am
22 not suggesting ---

23 SOLICITOR SHELTON: Objection.
24 Again, not a question. Badgering,
25 argumentative, 611.

1 THE COURT: Please let Mr. Seaton
2 finish his question. Thank you. You may
3 continue your question, Mr. Seaton.

4 MR. SEATON: May we approach the
5 bench, Your Honor?

6 (OFF RECORD BENCH CONFERENCE)

7 THE COURT: You may continue, Mr.
8 Seaton. What I would prefer, as Investigator
9 Powell has already forgotten the question, --
10 so, if Mr. Seaton you could ask that question
11 one more time.

12 MR. SEATON: Yes, ma'am.

13 THE COURT: Thank you.

14 CROSS EXAMINATION CONTINUED

15 BY MR. SEATON:

16 Q. In your investigation of physical evidence
17 and testimony, whether it is written
18 testimony, it's spoken testimony, isn't it
19 your job to compare those two and say how they
20 either fit together and they don't fit
21 together?

22 A. Correct.

23 Q. Do you see -- do you understand how the
24 testimony through the written statement and
25 the testimony through the oral statement that

1 Ms. Blanche gave you, do you see or understand
2 how Ms. Andes bruised the outside of her
3 thighs rather than the inside of her thighs?

4 A. It's possible that his hands could have
5 reached on the outside of her legs while
6 attempting to lift them.

7 Q. That would be because he is applying
8 pressure?

9 A. Perhaps. He's grabbing the outside of the
10 thighs, that would put bruises on them.

11 Q. And if you're grabbing the outside of the
12 thighs and applying pressure, are you pulling
13 in or are you pushing out?

14 A. You're pushing out according to her
15 statement.

16 Q. Well, if you're trying to open someone's
17 thighs, would you agree that rather than
18 applying pressure to close them that you would
19 be applying pressure to open them?

20 A. If you are attempting to open them.

21 Q. And did you discuss with Ms. Blanche
22 anything about what she had done prior, either
23 that day or the day before or any other time
24 before your arrival that day?

25 A. Yes.

1 Q. How far back with her did you discuss with
2 her any injury that she might have received?

3 A. She received the fact that she'd had minor
4 surgery earlier on the year.

5 Q. How about the bruises and the scratches
6 that have been described through several
7 sources, including Detective Carver who says
8 that 'this are pictures, but they're not very
9 good pictures.' Did you take any pictures --
10 (pause) let me show you State's Exhibit 60,
11 61, 62, 63, 64. Did you take any photographs
12 of her that night?

13 A. There were photographs taken that night.

14 Q. Did you take them?

15 A. I did take photographs, not these photo-
16 graphs.

17 Q. I mean photographs of her?

18 A. Yes.

19 Q. Of her? The victim?

20 A. I took photographs of the victim the night
21 that I responded, yes.

22 Q. Have those been entered into evidence?

23 A. I would -- yes.

24 Q. I apologize for asking you a question that
25 you probably don't know.

1 A. Yes.

2 Q. I apologize. I am going to show you what
3 is now Defendant's Exhibit 30, Defendant's
4 Exhibit 31, Defendant's Exhibit 32, -- hand
5 you those three and ask you if you can
6 identify those photographs.

7 A. These are the photographs that
8 Investigator Carver took when she met with Ms.
9 Blanche.

10 Q. Maybe the best way to do it is -- can you
11 describe the photographs that you took of her
12 that night, because I can't seem to find them.

13 A. There was a general photo taken of Ms.
14 Blanche in the living room, uh, where she had
15 -- in her hand, and I believe that there was
16 another photograph taken of her wrist.

17 Q. Let me show you State's Exhibit 23. Is
18 that the one that you're referring to?

19 A. Yes, this is one of the photographs that I
20 took that night.

21 Q. I hand you this stack and ask that you
22 tell me if you recognize any of those as
23 photographs that you took of her wrist that
24 night.

25 A. Defendant's Exhibit 25, this is a

1 photograph of the bathroom of the residence.

2 Q. I am simply asking if you can identify
3 a photograph that you took of her hand.

4 A. Okay. (Upon review), I don't observe a
5 photograph in these photographs.

6 Q. Let me hand you those, and that way we
7 will have gone through the whole stack --
8 (tendering).

9 A. This photograph.

10 Q. If you would, describe the photograph.

11 A. It's a photograph taken of her wrist area
12 that night. I can't recall the specific
13 details that I observed.

14 Q. And the photograph itself is her hand --
15 is it in the air or is it sitting on
16 something?

17 A. I believe that it's in the air, to the
18 best of my recollection.

19 Q. Is that an accurate depiction of the
20 injury that you saw?

21 A. No, the photograph wouldn't be.

22 Q. So the photograph is a bad indication of
23 the wound that you're describing?

24 A. It wouldn't properly portray the injury as
25 observed.

1 Q. Did you put that anywhere in any of the
2 three reports that you completed? At any
3 point in here did you say, 'you know what,
4 these pictures are not very good pictures of
5 the injuries as I see them.'

6 A. I did not notate that in my report. No.

7 Q. Are the rest -- are all of the pictures
8 that you took bad examples of what you were
9 taking pictures of?

10 A. Based on the injuries, (affirmative nod).
11 The photographs of the residence are an
12 accurate portrayal.

13 Q. So the pictures of the house are okay.

14 A. Yes.

15 Q. It's only the pictures of the injuries
16 that are not okay?

17 A. Correct.

18 Q. And that's because the camera doesn't take
19 good pictures of people but it takes good
20 pictures of houses, or why is it that there is
21 a different between the quality of the
22 photographs whether it's an inanimate object
23 or a human?

24 A. Overexpose.

25 Q. So the exposure is different when you're

1 taking pictures of inanimate objects?

2 A. It can be.

3 Q. Okay. As you were furthering your
4 investigation, you became aware that there
5 were issues being raised by the defense that
6 they were boyfriend and girlfriend?

7 A. Sure.

8 Q. Did you do any DNA when you -- at some
9 point later on, I think you said about a month
10 later, did a warrant to get the DNA sample
11 from Mr. Andes.

12 A. I obtained a search warrant, yes.

13 Q. Okay. When you got that search warrant,
14 did you get a search warrant to see if any of
15 Ms. Blanche's DNA would be in his bedroom?

16 A. No.

17 Q. Did you ever think about 'let's see if' --
18 if both of their DNA in one bedroom, what
19 about the chance of DNA being in both
20 bedrooms?

21 A. The DNA being obtained from Mr. Andes was
22 in reference to the rape kit.

23 Q. So you don't really care whether or not
24 there is any DNA in -- any of LeAnn Blanche's
25 DNA -- the other bedroom? All we care about

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1 is whether or not his DNA is in her bedroom,
2 as she describes it?

3 A. Reference this investigation, yes.

4 Q. You don't think that would be relevant if
5 you found her DNA in his bedroom?

6 A. No.

7 Q. I'm sorry?

8 A. No, I don't.

9 Q. And her bedroom -- would you describe it
10 as a child's room or as an adult's room?

11 A. They shared the room.

12 Q. I'm sorry?

13 A. They shared the bedroom.

14 Q. Are you describing it as a shared room
15 rather than a kid's room?

16 A. Yes. They shared the bedroom together.

17 Q. Did you hear Mr. Andes say that she slept
18 in that room sometimes because he snored?

19 A. I believe so.

20 Q. I am going to show you State's Exhibits --
21 excuse me, they are now Defendant's Exhibit
22 27, 26 and 29. Looking at those pictures, do
23 you see children's stuff in those pictures?

24 A. There are.

25 Q. Do you see adult stuff in those pictures?

1 A. It depends on what you define as adult
2 stuff.

3 Q. I am asking you your opinion, sir.

4 A. There is a desk that appears to the right
5 which appears to be a work area. There is a
6 night stand that could be used for either one.
7 Across from the bed there was a dresser which
8 contained clothing that belonged to Ms.
9 Blanche.

10 Q. Did you open that and look in there?

11 A. One of the drawer was open and I observed
12 clothes inside.

13 Q. Is that what the picture shows?

14 A. Well, the pictures don't show the dresser.

15 Q. Is it in your report?

16 A. I don't believe that I indicated that.

17 Q. So how do you remember, a year later, that
18 the drawer was open and you saw that that was
19 adult clothing in the drawers in this room
20 that looks like a kid's room?

21 A. In reference to this case.

22 Q. Because you remember the detail of the
23 fact that the drawer was open and that in the
24 drawer was adult clothing?

25 A. I observed clothing in the drawer itself.

1 Q. Well, you just told us that it was adult
2 clothing.

3 A. I ---

4 Q. What size was it?

5 A. I don't know.

6 Q. What was the brand?

7 A. I don't know.

8 Q. What was the color?

9 A. Couldn't tell you.

10 Q. Sorry?

11 A. I couldn't tell you.

12 Q. Then how do you know it's adult clothing
13 that was in there, that you just testified to?

14 A. I advised that the drawer was open and
15 that there was clothing inside it.

16 Q. Is that what you just testified to, sir?

17 A. (No verbal response).

18 Q. Or did you just testify that it was her
19 clothes, that it was adult clothes in there.
20 Which did you testify to?

21 A. I indicated that the clothing inside was
22 hers, that I would presume to be hers.

23 Q. And you presume it to be hers, because --
24 why?

25 A. Because she stated that it was.

1 Q. Where?

2 A. I didn't indicate it in the report?

3 Q. When did she indicate that the clothing in
4 the drawer was hers?

5 A. When we were speaking to her in the
6 bedroom, she advised that there was a dresser
7 across from the bed which contained her
8 clothing.

9 Q. And this was when?

10 A. The night that I was there at the house.

11 Q. When you were doing this report?

12 A. During the initial supplement, yes.

13 Q. I thought that you already told us that
14 you didn't investigate the issue of whether or
15 not they were boyfriend and girlfriend?

16 A. She advised that they weren't boyfriend
17 and girlfriend.

18 Q. Then why would you investigate and discuss
19 with her whether or not the clothing that was
20 in the drawer, that you didn't see and can't
21 describe, then why did you have this
22 discussion with her about something when you
23 don't -- you told us that you weren't
24 investigating whether or not they were
25 boyfriend and girlfriend?

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1 A. She advised that they previously resided
2 together and that she was renting that
3 bedroom, and she indicated the fact that
4 the clothing that was in there was hers.

5 Q. Is that what your report says?

6 A. I can read the report.

7 Q. If you would. Please.

8 A. Sure, (reviewing report). It doesn't
9 specifically state that in the report.

10 Q. And you're already told us that you did
11 not investigate the issue of whether or not
12 they were boyfriend and girlfriend. Correct?

13 A. Other than her telling me that they were.

14 Q. In fact, you've told us that you don't
15 even care whether or not her DNA is located in
16 his room?

17 A. Correct.

18 Q. And you don't have any photographs that
19 show even the dresser, let alone the dresser
20 drawer being opened; do you?

21 A. Correct.

22 Q. And you can't describe any of these adult
23 clothes that you said that you saw, can you?

24 A. Correct.

25 Q. But you had this discussion with her about

1 her clothes in the drawer in her room?

2 A. Yes, when speaking with her. Yes.

3 Q. Okay. When you got the search warrant a
4 month later for Mr. Andes' DNA, did you get a
5 search warrant for his telephone?

6 A. Not at that time.

7 Q. When did you get a search warrant for his
8 telephone?

9 A. I believe that Investigator Mason obtained
10 a search warrant for the telephone.

11 Q. Telephone records?

12 A. Telephone records.

13 Q. I am not asking about the telephone
14 records. I am asking about the telephone.

15 A. The actual telephone?

16 Q. Yes.

17 A. No. No telephone was obtained during this
18 investigation.

19 Q. Well, you got a search warrant for the
20 phone records and you got a search warrant for
21 his DNA, why didn't you ask for a search
22 warrant to look at the phone to see what his
23 phone says?

24 A. During the interview with Mr. Andes, he
25 indicated the fact that he'd deleted text

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1 messages off there.

2 Q. Wouldn't hurt to look, would it?

3 A. That's possible. It wouldn't hurt.

4 Q. You -- it's obvious that you don't believe
5 what he told you, do you?

6 A. In reference to the interview?

7 Q. He said that he didn't rape her, so you --
8 you arrested him.

9 A. Yes.

10 Q. And you haven't unarrested him?

11 A. Correct.

12 Q. And you're here today to make sure that he
13 goes to jail, aren't you?

14 A. Yes.

15 Q. So wouldn't -- if you don't believe him
16 when he says that he erased the phone, why
17 didn't you get a search warrant and look at
18 the phone?

19 A. I didn't feel that it was necessary.

20 Q. I'm sorry?

21 A. Didn't feel that it was necessary.

22 Q. That's because you had everything that you
23 needed with this photographs, didn't you?

24 A. (No verbal response).

25 Q. The text pictures that don't match the

1 phone records. That's all that you need,
2 isn't it?

3 A. I wasn't aware at the time that they
4 didn't match up with the records.

5 Q. Do you have a theory, now that you've been
6 aware since July, that the numbers don't match
7 -- do you have a theory where they disappeared
8 to?

9 A. No.

10 SOLICITOR SHELTON: Objection.

11 THE COURT: Basis?

12 SOLICITOR BEN SHELTON: Calls for
13 speculation.

14 THE COURT: Sustained.

15 CROSS EXAMINATION CONTINUED

16 BY MR. SEATON:

17 Q. In your investigation and your continuing
18 investigation, as you've described it, as
19 being your duty to continue to investigate --
20 and you told us that you've reviewed the phone
21 records. In reviewing the phone records and
22 in reviewing the pictures of the text, you
23 told us that you became aware that they don't
24 match up?

25 A. That's correct.

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1 Q. Did you investigate why they don't match
2 up?

3 A. No.

4 Q. Tell us that Mr. Andes urinated on the
5 floor, did you do any tests for that?

6 A. I attempted to obtain DNA samples from the
7 floor.

8 Q. And were you able to?

9 A. I took swabs and I submitted them for
10 processing.

11 Q. What did they come back as?

12 A. They were submitted to the DNA analysis
13 lab.

14 Q. Did it come back as positive?

15 A. If I may refer to the report on that.

16 (Upon review), with reference to the swabs
17 submitted, it says no result obtained.

18 Q. So it didn't come back as his DNA is what
19 you're saying?

20 A. Those swabs didn't.

21 Q. Well, what other swabs, what other things
22 did you give the lab to test to determine that
23 he urinated on the floor?

24 A. The other swabs taken were from the
25 mattress cover.

1 Q. My question was about the floor, sir.

2 A. The swabs in reference to the floor, no
3 results came back on that.

4 Q. Any other testing that you did to
5 determine, first of all, that that floor --
6 the picture that we see of the floor, that you
7 took, Defendant's Exhibit 29, that's a picture
8 of the floor?

9 A. Yes.

10 Q. And you're already told us that those
11 pictures are accurate depictions, since it's
12 an inanimate object, you've already told us
13 that that is an accurate depiction of what you
14 saw; correct?

15 A. Yes.

16 Q. Do you see a urine stain in that picture?

17 A. I observed several stained areas in this
18 picture.

19 Q. Are they all urine stains or do you know
20 what kind of stains that they are?

21 A. I couldn't determine what the other stains
22 are.

23 Q. You can determine that's a urine stain?

24 A. As indicated by Ms. Blanche.

25 Q. No, sir. I am asking you your opinion,

1 what you observed and what you testify that
2 you saw and you did -- I am not asking about
3 what she told you. I'm asking you about what
4 you investigated. You told us that that's a
5 urine stain, that you've investigated it.

6 A. Yes.

7 Q. And you're told us that is an accurate
8 depiction, because it's an inanimate object
9 and that's a good picture of inanimate object.
10 So that's an accurate depiction.

11 Or are you now going to tell us that that
12 is a bad picture, that you don't really pick
13 up this urine stain?

14 A. No, it's -- the stain is on there.

15 Q. And we have determined that it is a urine
16 stain -- how?

17 A. The smell of urine was emanating from that
18 area.

19 Q. And we've determined that this is Mr.
20 Andes' urine -- how?

21 A. That's ---

22 Q. It wasn't through the DNA, so tell us how
23 we know that it wasn't a dog, Ms. Blanche, or
24 any other person or pet or any living object.
25 How do we determine, other than the fact that

1 the DNA doesn't match Mr. Andes, how do we
2 determine that he is the one that caused the
3 emanation of your urine smell?

4 A. Based on his own testimony.

5 Q. Let's talk about that for a second.

6 Because as I understand it, you put out -- for
7 lack of a better term -- an APB. He finds out
8 on TV that he is wanted.

9 A. Sure.

10 Q. The solicitor asked you about whether or
11 not he turned himself in at 9:00 o'clock. You
12 made a to-do about the fact that he didn't
13 turn himself in until 12:00.

14 A. That's correct.

15 Q. But he turned himself in?

16 A. (Affirmative nod), he turned himself in
17 that day.

18 Q. He came in and you said, 'I am going to
19 take you to the booking area to book you', and
20 that's what he was turned in for, wasn't it,
21 the booking?

22 A. Yeah, he's got to be processed and booked.

23 Q. So instead of giving him the warrant in
24 the booking area, you take him into an
25 interrogation room, didn't you?

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1 A. (Affirmative nod), and interviewed him.

2 Q. All right. An interview room?

3 A. (Affirmative nod).

4 Q. And in this interview room, you didn't
5 tell him that there was a camera hidden up in
6 the ceiling and that he was being recorded,
7 did you?

8 A. Halfway through he was advised that it was
9 being recorded.

10 Q. Halfway through, you mentioned it?

11 A. Yes.

12 Q. And was it necessary for booking purposes
13 to take him out of the booking room and take
14 him to the interview room? Was that necessary
15 when he was there to be booked?

16 A. For the purposes of my investigation, yes.

17 Q. All right. Because?

18 A. Because I hadn't previously spoken with
19 Mr. Andes.

20 Q. Well, you didn't care what he had to say,
21 did you? You've already said that he was a
22 liar. You've already had him arrested. He
23 was already under arrest at that point.

24 SOLICITOR BEN SHELTON: I want
25 to let him finish his question and then I will

1 object.

2 THE COURT: Thank you.

3 CROSS EXAMINATION CONTINUED

4 BY MR. SEATON:

5 Q. Was he already under arrest when you said
6 'I wanted to interview him'?"

7 SOLICITOR SHELTON: Objection as
8 to the previous forms of the questions,
9 misstated facts in evidence.

10 THE COURT: Sustained. Rephrase
11 your question, Mr. Seaton.

12 CROSS EXAMINATION CONTINUED

13 BY MR. SEATON:

14 Q. When you decided -- was he told to come
15 there for an interview or was he told that,
16 according to the TV station, he was wanted?

17 A. He was there to turn himself in on the
18 warrant.

19 Q. So he was there to be booked?

20 A. He was there to be arrested.

21 Q. So instead of booking him in the booking
22 area and you put him in the interview room and
23 do you did not tell him that he was being
24 videotaped; is that correct?

25 A. Not initially.

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1 Q. And after you did not tell him initially
2 that he was being interviewed, you had him
3 chatting back and forth with you?

4 A. He was asking questions when the warrant
5 was being searched.

6 Q. And would you agree that he said on more
7 than one occasion "I did not rape my
8 girlfriend".

9 A. He advised us that they had not had sex,
10 yes.

11 Q. Did he also say "I did not sexually
12 assault my girlfriend" or something to those
13 words, because ---

14 A. Something to those words, sure.

15 Q. And would you agree that you misled him
16 when you told him that you were going to be
17 able to tell the difference between fresh DNA
18 and old DNA?

19 A. I advised him that there was no way to
20 tell the difference.

21 Q. And would you agree with me that there is
22 not a way to do that?

23 A. I can't comment on that, I'm not in the
24 field of forensics.

25 Q. Well, you certainly told him.

1 A. Sure.

2 Q. You had him in the conference room, the
3 interview room, you told him that he's facing
4 thirty years in jail, you told ---

5 SOLICITOR SHELTON: Objection.

6 May we approach?

7 THE COURT: You may. Ladies and
8 Gentlemen, I have determined that the last
9 question is inappropriate. You may not
10 consider the question or its response in any
11 manner. Please approach.

12 (OFF RECORD BENCH CONFERENCE)

13 CROSS EXAMINATION CONTINUED

14 BY MR. SEATON:

15 Q. We were discussing the fact that you had
16 him in the interview room when he was there to
17 be booked; correct?

18 A. He was there to be arrested, yes.

19 Q. You took him out of the booking room, put
20 him in the interview room and I think your
21 testimony is that some point down the road you
22 finally tell him that he's being recorded?

23 A. Yes.

24 Q. Did you provide him with copies, did you
25 show him these texts that you said that you

1 had that proved that he was guilty?

2 A. I didn't show him copies of those.

3 Q. In fact, you only read to him one or two
4 selected texts out of the ones that we have,
5 didn't you?

6 A. Yes.

7 Q. And when you did that there seemed to be
8 some confusion as to what date that this
9 alleged happened?

10 A. Sure.

11 Q. When he said -- when Mr. Andes says, 'I
12 didn't even see her on Saturday, would you
13 agree that from the time that the sun came up
14 on Saturday until the sun went down on
15 Saturday that he didn't see Ms. Blanche and
16 Ms. Blanche did not see him?

17 A. To my knowledge.

18 Q. So when he confuses Saturday with Friday,
19 that's a fairly understandable mixup; isn't
20 it?

21 A. It's possible.

22 Q. At that point did you ask him, since you
23 were asking him all these other question since
24 he was there to be booked, did you ask him to
25 see his phone?

1 A. I didn't ask him for his phone.

2 Q. Once you get him to understand what date
3 you allege -- that Ms. Blanche alleges that
4 this happened, does he deny what happened?

5 A. He denied having sex.

6 Q. Did you ask him whether or not they had
7 had any sex on Friday?

8 A. I'd have to review to my notes. (Upon
9 review), I think that I asked him the general
10 question if they'd had sex and he said no.

11 Q. Did you ask him if they had had sex on
12 Thursday?

13 A. I don't recall.

14 Q. Did you ask -- let's see -- Saturday,
15 -- did you ask them if they had had sex on
16 Wednesday?

17 A. Not specifically.

18 Q. Did you ask him in general if he had sex
19 on Wednesday?

20 A. No, I didn't ask him about Wednesday.

21 Q. Did you ask him if he sex on Tuesday?

22 A. No.

23 Q. Do you know how many days DNA may show up?

24 A. Not specifically.

25 Q. Would you have any reason to doubt if I

1 told you that DNA may show up for five days
2 after 6:00?

3 A. If that's based on the opinion of an
4 expert.

5 Q. Sorry?

6 A. It's that's based on the expert of an
7 opinion, then I would have to agree with that.

8 Q. So you didn't ask him about Tuesday,
9 Wednesday, any of these other days?

10 A. Not specifically.

11 Q. All right. Not specifically. How about
12 inspecifically, did you ask him if they were
13 having sex?

14 A. I asked him about those days and he said
15 no.

16 Q. But he thought you were still talking
17 about Saturday, Friday, the whole mixup thing;
18 didn't he?

19 A. Possibly. I don't know.

20 Q. Can you tell us if you believe that there
21 were some text messages inbetween -- to your
22 knowledge, were text messages erased from the
23 7th?

24 A. Not to my knowledge.

25 Q. To your knowledge, were there other text

1 messages other than just the pictures that you
2 have on the 6th?

3 SOLICITOR SHELTON: Objection,
4 asked and answered.

5 THE COURT: Sustained.

6 CROSS EXAMINATION CONTINUED

7 BY MR. SEATON:

8 Q. How about text messages on the 8th? Were
9 the text messages on the 8th erased?

10 A. Not to my knowledge.

11 Q. Do the number of text messages versus the
12 number of pictures that you have of the text
13 messages on the 8th, do those match?

14 SOLICITOR SHELTON: Objection,
15 asked and answered.

16 THE COURT: Sustained.

17 MR. SEATON: May I approach, Your
18 Honor?

19 THE COURT: You may.

20 (OFF RECORD BENCH CONFERENCE)

21 THE COURT: Thank you, Mr. Seaton.

22 MR. SEATON: Thank you, Your Honor.

23 CROSS EXAMINATION CONTINUED

24 BY MR. SEATON:

25 Q. Have you compared 38 with any picture that

1 you have?

2 A. I have not.

3 Q. You told us in the normal course of
4 investigations, an incident report is created?

5 A. Yes.

6 Q. And is an incident report always created,
7 any time the police are called out to the
8 scene?

9 A. Not in recall.

10 Q. Is an incident report created every time
11 dispatch is called?

12 A. No.

13 Q. Is an incident report created every time
14 911 is called?

15 A. Not an incident report.

16 Q. Is there a difference between dispatch and
17 911? Are those separate records?

18 A. Our dispatch center, if they're contacted,
19 there would be a call created.

20 Q. Sorry?

21 A. There would be a call created. An
22 incident report is what an officer would
23 create in reference to something, and then
24 there would be actually a call history which
25 would be created in reference to somebody

1 contacting dispatch.

2 Q. Okay. If they contacted 911 rather than
3 contacting the police department, 911 would
4 create some type of record, I'm assuming.

5 A. Depending on what call center that the
6 call was sent to.

7 Q. Would you have any idea what 911 call
8 center a 911 call is sent to?

9 A. It depends on which area you're in. If
10 you're generally in the Goose Creek vicinity,
11 it would come to the Goose Creek
12 telecommunications center.

13 Q. When you say generally, that's ---

14 A. It just depends on the phone. Again, it
15 goes back to the cell phone towers.

16 Q. And is that the record that you said that
17 you checked when you said -- you told us that
18 he'd never called the police about having Ms.
19 Blanche removed from his house.

20 A. There was no incident report in our files.

21 Q. So all you did -- when you said that there
22 was no -- that he never did it, you checked
23 for incident reports. You didn't check 911,
24 did you?

25 A. I indicated the fact that there were no

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1 records showing Mr. Andes or Ms. Blanche on a
2 previous incident report.

3 Q. 911 would be a record, wouldn't it?

4 A. It would be a separate record, yes.

5 Q. And did you catch 911 -- when you told us
6 that there was no record of him ever calling,
7 because wasn't that the question that you were
8 asked. There was no record of him ever
9 calling 911 and trying to have her removed?

10 A. I was requested to check the records for
11 the residence, along with their names.

12 Q. So in other records you didn't check to
13 see if he called and then called back and
14 said, 'she's left.'

15 A. I didn't see any such records.

16 Q. Did you look for it?

17 A. Not specifically.

18 Q. Did you look for it nonspecifically?

19 A. I didn't query into the call history,

20 Q. So when you're questioned about whether
21 not he ever called 911 to have her removed,
22 you checked the wrong records; didn't you?

23 A. I checked the incident reports for that
24 residence, along with their names.

25 Q. Maybe you misunderstood my question.

1 A. Okay.

2 Q. Wasn't it your understanding, haven't you
3 heard that the police were called but that
4 they didn't come out?

5 A. Mr. Andes during his interview advised
6 that he had contacted 911.

7 Q. Didn't he then further say that the cops
8 never came out?

9 A. That's what he advised.

10 Q. And so wouldn't -- when you're told to
11 check the records and you sit on that stand
12 and you testify, you tell the jury, aren't you
13 looking in the wrong place?

14 A. I was advised to check the records for the
15 incident reports.

16 Q. Aren't you looking in the wrong place. I
17 didn't ask you about incident reports, sir.
18 You didn't testify about incident reports, I'm
19 asking you about if he says 'I called 911 and
20 you get on that stand and says 'no', he
21 didn't, 'there's no records of it', don't you
22 have to check the 911 records?

23 SOLICITOR SHELTON: Objection,
24 misstatement of the facts.

25 THE COURT: I am going to sustain it.

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1 CROSS EXAMINATION CONTINUED

2 BY MR. SEATON:

3 Q. Did you look at the call log that shows
4 right before LeAnn Blanche called 911 that she
5 called Mr. Andes twenty-nine times in a row.

6 A. I believe that I observed that in the
7 phone records, yes.

8 Q. You never asked her about what contact
9 that she had with him prior to calling 911?

10 A. I didn't ask her.

11 Q. You didn't find out until July of 2011
12 that she had called him twenty-nine times in a
13 row?

14 A. During an interview with Mr. Andes, he had
15 indicated that.

16 Q. He did, in fact. The videotape that you
17 played, he told you -- I think, if I remember,
18 I think that I wrote it down, I think he said
19 'she called me twenty million times to come
20 home.'

21 SOLICITOR SHELTON: Objection,
22 that's a misstatement of the video.

23 THE COURT: Sustained.

24 CROSS EXAMINATION CONTINUED

25 BY MR. SEATON:

1 Q. What is your recollection of what the
2 video said, whether she called twenty-five or
3 twenty million to come home? Did she ask --
4 did he said that she called me and told me to
5 come home? Whether it was twenty times or
6 twenty million times, what is your
7 recollection of what we saw up there right
8 before lunch?

9 A. My recollection of the video is that she
10 wanted him to come home.

11 Q. Now that you have had an opportunity in
12 July of this to, finally, look at the records,
13 don't the records reflect that she did in fact
14 call him twenty-nine times in a row and then,
15 less than thirty seconds later, called 911?

16 A. That's what the records indicate.

17 Q. Have you have an opportunity -- we've got
18 what has been marked as State's Exhibit 57 and
19 Defendant's Exhibit 1. The State's Exhibit
20 would -- State's Exhibit 37 -- excuse me, 57,
21 is LeAnn Blanche's phone records and
22 Defendant's Exhibit 1 is Mr. Andes' records.
23 Have you had an opportunity to compare them
24 and see whether his records shows that every
25 phone call and every text that she sent him,

1 he received. That every text and phone call
2 that he sent her, she received.

3 A. To the best of my recollection, that's
4 what the records reflect.

5 Q. So is it fair to say that if both of those
6 records match up, he sent it, she received it,
7 she sent it, he received it, -- it is fair to
8 say that she received and he received it?

9 A. The records indicate that.

10 Q. Did you look into the fact that he said
11 that when she arrived home at 7:00 o'clock and
12 Mr. Andes there, did you look at the phone
13 records to see whether or not there was
14 continued phone calls and/or texts between the
15 parties after 7:00 o'clock?

16 A. I believe that the records do indicate
17 that there was contact via telephone.

18 Q. And did she explain to you that he was in
19 the house while she was calling, or did you
20 ask her why -- how is it that you're calling
21 and texting and you're also saying that he's
22 at the house? Did you ask about that?

23 A. I didn't ---

24 SOLICITOR SHELTON: Objection,
25 Your Honor. Cumulative and calls for hearsay.

1 THE COURT: I am going to sustain
2 it.

3 CROSS EXAMINATION CONTINUED

4 BY MR. SEATON:

5 Q. How about when she says, 'He calls me from
6 9:00 o'clock at La Haceinda.' Did you check
7 and see whether or not he called her or did
8 you check and see whether she was the one that
9 called him?

10 A. I did not check.

11 Q. Do all of these facts that are -- as they
12 are being presented as facts, do any of those
13 things matter in determining the validity of
14 the evidence that you were presented, that you
15 obtained on your own, in making the statements
16 work? Does any of those stuff matter?

17 A. It does not.

18 Q. So if you've got problem after problem
19 after problem with making the records fit the
20 statement, does concern you?

21 A. That could be a concern.

22 Q. Did Ms. Blanch ever tell you that after
23 the rape that he said, "that's what force
24 feels like."

25 SOLICITOR SHELTON: Objection,

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1 Your Honor. Calls for hearsay.

2 THE COURT: Sustained.

3 CROSS EXAMINATION CONTINUED

4 BY MR. SEATON:

5 Q. Do you have anything in your report to
6 that effect?

7 SOLICITOR SHELTON: Objection,
8 Your Honor, it still calls for hearsay and
9 he's speaking of hearsay during the course of
10 the question.

11 THE COURT: Sustained. Rephrase
12 your question, Mr. Seaton.

13 MR. SEATON: Certainly, Your Honor.

14 CROSS EXAMINATION CONTINUED

15 BY MR. SEATON:

16 Q. In your continuing investigation in this
17 case, did you ever speak to Jessica Thompkins?

18 A. I did not.

19 Q. To your knowledge, did anyone with Goose
20 Creek Police Department or any other law
21 enforcement agency ever talk with Jessica
22 Thompkins?

23 A. Not specifically, to my knowledge.

24 Q. And seeing that she was called at the same
25 time that this rape was supposed to have

1 happened, does it concern you that no one ever
2 spoke with Jessica Thompkins?

3 A. It doesn't concern me.

4 Q. Do you think she might have had anything
5 relevant to say?

6 A. She could.

7 Q. You collected the forensic evidence there
8 at the scene?

9 A. I collected the swabs, correct.

10 Q. I think along with the swabs that you also
11 collected what's in the paper bag there?

12 A. Yeah.

13 Q. I think that there's a picture that we've
14 got, which is Defendant's Exhibit 25, of the
15 bathroom at Mr. Andes' house.

16 A. This is a photograph of a bathroom inside
17 that residence.

18 Q. Did you collect anything that had Ms.
19 Blanche's blood on it?

20 A. I didn't observe any blood.

21 Q. Did she tell you or Ms. Carver that she
22 had bled on this attack?

23 A. She indicated the fact that there was
24 bleeding.

25 Q. You don't think blood wouldn't have been

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1 important to collect?

2 A. If there was blood, it would have been.

3 Q. Did you see any blood?

4 A. I didn't see any blood.

5 Q. Did you see any blood in either of the
6 pajama pants that you collected -- and was
7 there also some underwear that you collected?

8 A. I don't believe that there was any
9 underwear collected. If I can just refer to
10 my report in reference to the underwear
11 collected, whether or not, -- there was a
12 mattress cover, a green in color floral pants,
13 and blue in color checkered pants. Those
14 three items were collected.

15 Q. Did you -- and you have two out of three
16 of them over in the courtroom? Did you see
17 any blood on any of those items?

18 A. Not that I observed.

19 Q. You told us that in the process of booking
20 Mr. Andes how tall he was and how much he
21 weighed?

22 A. Correct.

23 Q. What was how tall?

24 A. According to the booking report, five
25 feet, five inches.

1 Q. How much did he weigh at the time?

2 A. Two hundred forty pounds.

3 Q. Did you observe -- is there a place on
4 there for you to observe any scars or scrapes
5 or bruises or anything like that that might
6 indicate that he might have been in any kind
7 of altercation?

8 A. I believe that there's an area and there's
9 also a medical questionnaire that follows.

10 Q. What physical injuries did you indicate
11 that he'd observed?

12 A. There were no indications of injuries,
13 according to the booking report.

14 Q. You didn't take any pictures of any types
15 of cuts or scrapes or bruises or nicks or
16 anything of that matter, did you?

17 A. I did not.

18 Q. When you were booking him?

19 A. (Negative gesture).

20 Q. And how about Ms. Blanche, how tall is
21 she?

22 A. According to the information on the
23 coversheet, it indicates that she is five foot
24 eight inches.

25 Q. So she's three inches taller than Mr.

- 1 Andes?
- 2 A. According to this information.
- 3 Q. And according to that information, how
4 much does she weigh?
- 5 A. A hundred and sixty pounds.
- 6 Q. And you told Mr. Andes that you were going
7 to get a DNA warrant, I think it what you
8 said.
- 9 A. Search warrant.
- 10 Q. Search warrant.
- 11 A. (Affirmative nod).
- 12 Q. Before you got that, though, didn't you
13 surreptitiously collect his DNA from him?
- 14 A. DNA from the live scan machine where we
15 was fingerprinted.
- 16 Q. When you talk about the live scan machine,
17 you took him into the booking area and you
18 made him give his fingerprints, didn't you?
- 19 A. Yes.
- 20 Q. That is required by law, that he give you
21 his fingerprints when he is arrested?
- 22 A. Yes.
- 23 Q. He has to give you his fingerprints,
24 doesn't he?
- 25 A. Yes, he does.

1 Q. In fact, if he won't, you have the right
2 to hold him down and do whatever you've got to
3 do to take those fingerprints, don't you?

4 A. It can be done.

5 Q. So, again, no option as far as touching
6 your live scan or finger scan, whatever the
7 machine was.

8 A. Right.

9 Q. Then after he did that, unbeknownst to
10 him, you collected his DNA from the machine;
11 didn't you?

12 A. I did.

13 Q. Did you tell him that you were doing that?

14 A. I did not.

15 Q. Do you think that it's fair to Mr. Andes,
16 to surreptitiously take his DNA like him from
17 that?

18 A. I don't think it's an issue.

19 Q. You don't recall -- you didn't really
20 care, did you?

21 A. It wasn't an issue of caring.

22 Q. You didn't care whether or not her DNA was
23 in his bed, I think it what you've already
24 told us.

25 A. Yes. That's true.

1 Q. You didn't look for her DNA in his
2 bedroom.

3 A. I did not.

4 Q. And you didn't care whether or not what
5 was on his phone, did you? Because you didn't
6 ask him, did you?

7 A. I did ask him. He indicated the messages
8 had been deleted.

9 Q. Well, you've already us -- that, you
10 believed him on?

11 A. He stated the messages were deleted.

12 Q. So if he says 'I deleted my messages',
13 that you believe. But on all the --
14 everything else that he tells you, 'I didn't
15 rape her', 'I didn't do it', you don't believe
16 that.

17 A. That's correct.

18 Q. But you believed him when he said,
19 'I erased my messages.'

20 A. Yes.

21 Q. Did you -- okay. You told him that you
22 could verify phone texts through the phone
23 company, didn't you?

24 A. Verify, yeah, the phone records.

25 Q. Tried to make him believe that the phone

1 records were going to show what the text
2 messages say, didn't you?

3 A. It's possible. I have obtained text
4 message information from the phone companies.

5 Q. Do you agree the phone company says that
6 ain't possible?

7 A. This particular phone company, that's
8 correct.

9 Q. And you told him that you would tell
10 whether or not this was fresh DNA. 'If we find
11 DNA in the bed that she says that she was
12 sleeping in, then I'm going to tell you
13 whether it's fresh DNA or not.' You told him
14 that, too, didn't you?

15 A. I told him that ---

16 SOLICITOR SHELTON: Objection.

17 THE COURT: Basis.

18 SOLICITOR SHELTON: Asked and
19 answered.

20 THE COURT: Sustained.

21 CROSS EXAMINATION CONTINUED

22 BY MR. SEATON:

23 Q. Tell us in what ways you think that you
24 were fair to Mr. Andes.

25 A. In reference to?

1 Q. Anything.

2 A. If you're speaking in reference to the
3 interview, he was advised of his Miranda
4 rights.

5 Q. And he waived them and he spoke to you,
6 didn't he?

7 A. That's correct.

8 Q. Were you fair to him when you arrested him
9 before? Did you ask him any questions?

10 A. Yes.

11 Q. Were you fair to him when you took his DNA
12 after you told him that you'd get a warrant
13 for it?

14 A. Yes.

15 Q. Were you fair to him when you only showed
16 him one or two text messages without the
17 context of everything else?

18 SOLICITOR SHELTON: Objection.

19 Relevance to the issues.

20 THE COURT: Sustained.

21 MR. SEATON: Thank you, Detective.

22 SOLICITOR BEN SHELTON: Your

23 Honor, may we approach briefly?

24 (OFF RECORD BENCH CONFERENCE)

25 THE COURT: Mr. Shelton, your

1 witness.

2 REDIRECT EXAMINATION

3 BY SOLICITOR SHELTON:

4 Q. What did Mr. Andes tell you about peeing
5 in the room?

6 A. He said that he'd urinated when he was
7 inside the room during the altercation?

8 Q. How many times did he tell you that?

9 A. He spoke about it twice during the
10 interview.

11 Q. Did he refer to -- how did he refer to
12 each of the rooms at some point in the
13 interview?

14 A. He referred to as his room as the "master
15 bedroom" and then he referred to her room as
16 being "her bedroom."

17 Q. How long did he say that they hadn't been
18 sleeping together?

19 A. Said it's been at least a couple months.

20 Q. What about her ability to have sex?

21 A. He stated that she's previously had
22 surgery and they weren't able to have sex.

23 Q. Now, Mr. Seaton asked you about a DNA
24 analysis that you sent to an independent lab,
25 from ---

1 A. Yes.

2 Q. --- the floor. That was for pee, correct?

3 A. That was one of the items that was
4 submitted.

5 Q. I just want to clarify, did that come
6 back as not his DNA or did that come back
7 inconclusive or did that come back?

8 A. (Upon review), according to the analyses
9 from the lab it states that no result was
10 obtained from that item.

11 Q. So no DNA.

12 A. Right.

13 Q. Not his DNA.

14 A. It indicates no one, there was not one.

15 Q. How about the mattress cover that you sent
16 out?

17 A. If I may look at my report ---

18 MR. SEATON: Your Honor, I am going
19 to object. This has been asked and answered.

20 THE COURT: It's redirect. I am
21 going to allow him to clarify.

22 REDIRECT EXAMINATION

23 BY SOLICITOR BEN SHELTON:

24 Q. You haven't spoken about the mattress
25 cover specifically here. There were swabs

1 taken from a mattress cover, correct?

2 A. That's correct.

3 Q. You haven't spoken about that yet, have
4 you?

5 A. I have not.

6 Q. Will you tell us about that?

7 MR. SEATON: Your Honor, I am going
8 to object. This is improper on redirect.

9 THE COURT: I am going to allow it.

10 THE WITNESS: Those swabs were
11 taken from the mattress cover itself the night
12 of the incident, sent off to a lab, and I can
13 read the results in reference to this.

14 REDIRECT EXAMINATION CONTINUED

15 BY SOLICITOR BEN SHELTON:

16 Q. Please.

17 A. (Reading): "Conclusion: Presumptive
18 test for semen on item 2010-00092, mattress
19 cover, was positive. The DNA profile
20 developed from the semen on the mattress
21 cover, 1010-00092, matches the DNA profile of
22 Michael Andes, 2010-00094. The expected
23 frequency for this profile in the Caucasian
24 population is less than one in nine hundred
25 and ninety-nine trillion.

1 Q. One in nine hundred and ninety-nine
2 trillion?

3 A. Yes.

4 Q. Pretty accurate?

5 A. Yes.

6 Q. Where did you take that mattress cover
7 from?

8 A. That mattress cover was removed from the
9 bed belonging to LeAnn Blanche.

10 Q. And why did you not go into Mr. Andes'
11 room, why would you need a search warrant to
12 go into his room?

13 A. The bedroom was set up -- the way the
14 duplex was set up, it was a roommate
15 situation. Based on the fact that that was
16 her bedroom, that was his bedroom, we would
17 have to obtain a search warrant to go in
18 there. Otherwise, it would be a Fourth
19 Amendment violation.

20 Q. What about the purpose -- why do you not
21 care if DNA came from her (sic) room -- excuse
22 me, his room?

23 A. The incident occurred inside his (sic)
24 bedroom. She did indicate that there was a
25 verbal argument.

1 Q. Listen to what you just said and repeat
2 it.

3 A. Sure. In reference to the ---

4 Q. Where did the incident occur?

5 A. The incident occurred inside the bedroom
6 belonging to Ms. Blanche?

7 Q. Yes.

8 A. She advised that a verbal altercation had
9 previously occurred inside the master bedroom
10 but that the rape itself incurred inside her
11 bedroom.

12 Q. And did you have knowledge that at some
13 time in the past that she had lived in that
14 room?

15 A. Yes.

16 Q. So her DNA would be all over that room?

17 A. That's possible, sure.

18 Q. How many times -- he told you at some
19 point that he called the police, correct?

20 A. He indicated that he had contacted the
21 police.

22 Q. You also said that he said he never called
23 the police on her?

24 A. Yes, sir. Initially in the interview he
25 stated, 'I've never called the cops on her.'

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1 Then during the course of the interview he had
2 spoken in reference to contacting 911 in
3 reference to an incident. At the conclusion
4 of the interview, he indicated again that he
5 had not called the police on her.

6 SOLICITOR BEN SHELTON: Beg the
7 Court's indulgence.

8 THE COURT: Take your time.

9 REDIRECT EXAMINATION CONTINUED

10 BY SOLICITOR BEN SHELTON:

11 Q. And you're already said this about the
12 consensual sex, but he said that they'd fooled
13 around on Thursday; right?

14 A. Yes.

15 Q. What else did he say about that event and
16 her in general, her physical condition?

17 A. That she had had surgery and wasn't able
18 to have sex.

19 Q. And Friday night/Saturday morning, did he
20 say that he had consensual sex with her then?

21 A. He stated that they did not have
22 consensual sex.

23 Q. Did he say that he had consensual sex with
24 her at all that week?

25 A. No, he may no indications of that.

1 Q. At one point did you advise him that 'if
2 you had consensual sex, you had consensual
3 sex.'

4 A. Yes.

5 Q. What did he say?

6 A. He said no, that they didn't.

7 SOLICITOR SHELTON: That's all the
8 questions that I have.

9 RE-CROSS EXAMINATION

10 BY MR. SEATON:

11 Q. Did you ask him about earlier in the week,
12 within the five-day frame that we've been
13 talking about, did you ask him about those
14 days?

15 A. I didn't ask him specifically about those
16 days, no.

17 Q. Thank you.

18 MR. SEATON: Nothing further.

19 THE COURT: Detective Powell, you
20 may step down.

21 (WITNESS STEPS DOWN)

22 THE COURT: Call your next witness.

23 SOLICITOR WILLIAMS: Your Honor, at
24 this time the State rests.

25 THE COURT: Ladies and Gentlemen, that

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1 indicates to the court that there is a matter
2 of law that I must take up outside of your
3 presence. Do not begin your deliberations, do
4 not discuss this case amongst yourselves.
5 Please rise for the jury.

6 (JURY OUT @ 3:28 P.M.)

7 THE COURT: Thank you. Be seated.
8 Solicitor, are you fairly confident in all the
9 -- everything that you have admitted?

10 SOLICITOR WILLIAMS: Yes, Your
11 Honor.

12 THE COURT: I will give you a few
13 moments if you need them.

14 SOLICITOR WILLIAMS: No, Your
15 Honor.

16 THE COURT: You believe that
17 everything that is to be admitted has been
18 admitted?

19 SOLICITOR WILLIAMS: Yes, Your
20 Honor.

21 THE COURT: Mr. Shelton, just for
22 the record, you had indicated at the last bar
23 conference that you had made attempts to get
24 the pajama bottoms. If you will, just for the
25 record so that the record is abundantly clear

1 that you did attempt to locate those.

2 SOLICITOR BEN SHELTON: Correct,
3 Your Honor. We attempted to locate the pajama
4 bottoms. We actually called the Goose Creek
5 Police Department, their investigators are out
6 on a shooting right now, apparently, and
7 they're -- our office was able to contact
8 someone with Goose Creek and we've -- we
9 discovered that they were actually sent to
10 SLED and they were destroyed and that that is
11 the reason that they are not in that bag.

12 THE COURT: Mr. Seaton, anything
13 else that you wish to put on the record
14 concerning the pants?

15 MR. SEATON: No, Your Honor. We've
16 had that discussion. Because all of the
17 testimony appears that anyone who has seen the
18 pants has agreed that they were not torn or
19 disturbed in any manner, then there is no --
20 we have no quarrel. So we are prepared to let
21 that die.

22 THE COURT: All right.

23 SOLICITOR BEN SHELTON: Your
24 Honor, ---

25 THE COURT: Even if you weren't,

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1 Mr. Seaton, I don't know what we could really
2 have done about it.

3 SOLICITOR BEN SHELTON: The only
4 thing that the State would ask, Your Honor,
5 and I apologize, is that there be no argument
6 that we didn't have them, didn't know where
7 they are. We will stipulate that they weren't
8 torn or anything like that.

9 MR. SEATON: I'm not agreeing to
10 that, Judge. I mean, it's not my fault that
11 they lost them.

12 THE COURT: Well, I don't know that
13 they are lost, Mr. Seaton. That's not the
14 testimony. The testimony is that they were at
15 SLED and destroyed after testing. Is that
16 what I understand, Mr. Shelton?

17 SOLICITOR BEN SHELTON: Yes, Your
18 Honor.

19 THE COURT: Which is different from
20 lost or misplaced. We know where they are.
21 Correct?

22 MR. SEATON: I don't. No, Your
23 Honor. The last that I was told at the
24 sidebar was that they were at Goose Creek.
25 What I am being told now is what we were being

1 told at the -- we had two sidebars. At the
2 first I was told -- well, all week long I've
3 been told that they were in the bag. Then I
4 was told that they were not in the bag,
5 they're back in Goose Creek. Then I was told
6 that they are not at Goose Creek, there's a
7 shooting, there's nobody that can do anything,
8 and then they've been taken to SLED and
9 destroyed. So, no, I disagree with that. I
10 don't have a clue where they are. It doesn't
11 show like the Solicitor's Office has a clue
12 where they are.

13 THE COURT: It seems to me the
14 solicitor's office has an excellent - more
15 than a clue as to where they are and what
16 happened to them.

17 MR. SEATON: Maybe so, Judge. I
18 don't know, Judge. They never told me that
19 all week long. I just found that out ---

20 THE COURT: I believe that Mr.
21 Shelton just indicated to the Court on the
22 record, as an officer of the court, that he
23 just found that out, as well.

24 MR. SEATON: I'm sure he did, Judge.
25 I am not suggesting any impropriety. I'm just

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1 suggesting that the idea that I'm going to
2 agree to something that I don't have any
3 knowledge of, I'm not going to agree to that.

4 THE COURT: Any indication that Mr.
5 Shelton is being untruthful to the court?

6 MR. SEATON: Absolutely not, Judge.

7 THE COURT: There is no indication
8 to the Court that there's been any intentional
9 destruction of the evidence. Otherwise, I
10 would be inclined to give an exspoilation of
11 evidence charge. But there has been nothing
12 indicating that to the Court, so I'm not going
13 to allow you to argue that, Mr. Seaton.

14 MR. SEATON: Perhaps we are having
15 the wrong argument.

16 THE COURT: Perhaps we are.

17 MR. SEATON: I was told that I was
18 supposed to agree that they didn't do
19 something with the pajama pants. I certainly
20 feel like I have the right to point out the
21 fact that they're not here.

22 THE COURT: I ---

23 MR. SEATON: I can't imagine under
24 what theory, when it's supposed to be in this
25 bag and they're not and now we find out that

1 they are gone, I don't know why I'm not
2 allowed to point out the fact that they're not
3 in the bed.

4 SOLICITOR WILLIAMS: Perhaps I
5 could ---

6 THE COURT: All right.

7 SOLICITOR WILLIAMS: Would you care
8 to hear a few comments on the evidence, Your
9 Honor? If the detective testified they were
10 not in the bag, he testified that they weren't
11 in the bag.

12 THE COURT: My concern, Ms.
13 Williams, is that I don't want it to an
14 improper characterization of what happened
15 to the evidence. That's my concern. So if
16 there needs to be an additional witness called
17 or you can enter into some stipulation -- Mr.
18 Seaton, I will allow you, if we get to that
19 point, for you to argue that what -- that the
20 pajama bottoms were not there, but I will not
21 allow you -- I think that it is unfair, based
22 on what I have heard, that you're going to
23 indicate that somebody has done something
24 improper with this evidence.

25 MR. SEATON: Your Honor, I am not

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1 sure how or who has characterized anything as
2 being improper. I am just saying that the
3 idea that I ---

4 THE COURT: Well, Mr. Seaton, I am
5 assuming that the inference is, whether or not
6 you blatantly state it, the inference that you
7 want for the jury is that the State has done
8 something inappropriate with evidence;
9 correct?

10 MR. SEATON: No. I just don't want
11 to be told what I'm allowed -- I don't want
12 the State telling me what it is that I get to
13 say.

14 THE COURT: The State is not
15 telling you anything, Mr. Seaton. I am.

16 MR. SEATON: I understand, Your
17 Honor.

18 THE COURT: All right.

19 MR. SEATON: But I'm certainly not
20 going to agree that I can't say that ---

21 THE COURT: Mr. Seaton, now that we
22 have this information, do you want perhaps
23 Investigator Powell to take the stand in front
24 of the jury and indicate what his
25 understanding is of what happened to the

1 pajamas?

2 MR. SEATON: If he wants to just
3 stand up and tell us. I -- again, you know,
4 I'm the last to know, to be told anything in
5 this case. So if they want to tell me now
6 what it is, I -- I have nothing but respect
7 for the investigator. So if he wants to stand
8 up and tell me what happened to them, that's
9 fine. But, you know, why am I supposed to
10 take everything at face value?

11 THE COURT: I'm not asking you to
12 take it at face value. He can do it in front
13 of the jury. If he knows -- or if whomever it
14 is that's able to testify to that.

15 MR. SEATON: The only thing I'm
16 struggling with is that when he was on the
17 stand that he didn't tell us where. If he has
18 knowledge, that's fine.

19 THE COURT: I don't think he knew.
20 I don't think he knew. I don't think he knew
21 until right now!

22 SOLICITOR WILLIAMS: The issue is,
23 the evidence has been available -- one of the
24 issues is, the evidence has been available to
25 Mr. Seaton. He's known what the evidence is.

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1 We went and looked at the bag. The confusion
2 is that there are actually two pairs of
3 pajamas, so we didn't realize that they
4 weren't pajama bottoms until we asked the
5 victim to look at them and she said, 'No,
6 those are the pajama pants that I put on the
7 stain to cover it up.' We determined at that
8 point that it wasn't that important to our
9 case.

10 At some time, Mr. Seaton could have
11 figured this out -- it's been a year -- and
12 looked at this evidence. It's not our
13 obligation to bring all the evidence to him.
14 It's available to him. He could have seen it
15 at any time.

16 MR. SEATON: You just told us that
17 it was not available! It's been destroyed?

18 THE COURT: Counsel! We're getting
19 -- we are getting very -- Mr. Seaton, Ms.
20 Williams, we are getting very off track here.

21 Do you have Motions -- well, first of
22 all, here's the thing. Once I move on and ask
23 Mr. Seaton if there are any Motions matters, I
24 am not allowing you to rectify this situation.

25 SOLICITOR WILLIAMS: Then before me

1 do that, too, and after the pajama case, we
2 have another issue that we need to put on the
3 record. However the Court feels like it is
4 appropriate to resolve it.

5 THE COURT: I am not going to try
6 your case for you, Ms. Williams, ----

7 SOLICITOR WILLIAMS: No. You don't

8 ----

9 THE COURT: Here is the issue. Mr.
10 Seaton is going to make an issue, rightfully
11 so, that there is evidence -- and he is -- I
12 assume he's going to make an issue about this
13 evidence. So is there something else that you
14 need to present in front of the jury?

15 SOLICITOR WILLIAMS: Maybe what we
16 need to do is, since Investigator Powell was
17 on the stand when the information was
18 obtained, is to have him call Goose Creek and
19 find out for himself and then it would be
20 possible for him to testify. I don't think he
21 could testify to anything else right now.

22 THE COURT: What is the other
23 issue, Ms. Williams?

24 SOLICITOR WILLIAMS: The other
25 issue is that we would ask the Court to give

1 us just until tomorrow to research the issue
2 about a curative instruction. I am not asking
3 the court to do anything today. I am just
4 asking the court's indulgence to look at it.
5 The jury, after Mr. Seaton -- and I am sure
6 that he didn't do this on purpose -- screamed
7 that this guy was going to get thirty years,
8 which was completely ---

9 THE COURT: I have a curative
10 instruction.

11 SOLICITOR WILLIAMS: Would you also

12 ---

13 THE COURT: What else are you
14 asking, Ms. Williams?

15 SOLICITOR WILLIAMS: What I am
16 asking is for you to give us just until
17 tomorrow to research and present the court
18 with any law that we could find, and there
19 may be done, as far as the specific curative
20 instruction or as far as any other remedy.
21 I don't think that there is one but we would
22 just ask the court's indulgence to have the
23 overnight -- just to look at the law, because
24 I feel like that is extremely prejudicial.
-25 It can't be unrun now. Every one of them

1 wrote down "thirty years." It's not thirty
2 years, it is zero to thirty years. So it is
3 a complete mischaracterization and that can
4 affect -- that's why we have a bifurcated
5 process.

6 So I don't think that there is anything
7 else but I can't figure that out this minute.
8 I would just ask the Court's indulgence
9 overnight to research it and to report back
10 tomorrow.

11 THE COURT: Counsel, let me see you
12 in chambers. We are at-ease.

13 (BRIEF RECESS)

14 (IN CHAMBERS CONFERENCE)

15 (DEFENDANT PRESENT)

16 THE COURT: I understand that there
17 is an agreement that there isn't any necessity
18 for any discussion about the pajama bottoms;
19 is that correct, Mr. Seaton?

20 MR. SEATON: Yes, Your Honor.

21 THE COURT: Is that your
22 understanding, Ms. Williams?

23 SOLICITOR WILLIAMS: Yes, Your
24 Honor.

25 THE COURT: So with that, the State

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1 rests?

2 SOLICITOR WILLIAMS: State rests.

3 THE COURT: It is my understanding
4 that all of the exhibits that have been
5 admitted are entered into evidence. With
6 that, Mr. Seaton, I will be happy to hear
7 from you regarding any Motions or matters.

8 MR. SEATON: Thank you, Your Honor.
9 At this point I would reserve any Motion for
10 directed verdict under at the Defendant's
11 case.

12 THE COURT: All right. With that,
13 Mr. Seaton, do you intend to call any
14 witnesses?

15 MR. SEATON: I do not, Your Honor.
16 With the State having rested, I wasn't sure if
17 you wanted the Defendant to rest in front of
18 the jury or not?

19 THE COURT: I will allow the
20 Defendant to rest in front of the jury -- but
21 just for practical matters, ---

22 MR. SEATON: Yes, ma'am.

23 THE COURT: Mr. Andes, if you would
24 please rise.

25 DEFENDANT: (Complies).

1 don't think anyone anticipated the cool wave
2 over the evening hour. If someone is very
3 uncomfortable, let us know and we will try to
4 find a jacket or a sweater or something for
5 you to use. Otherwise, we will continue with
6 closing arguments.

7 Ladies and Gentlemen, please give
8 your strict attention to Mr. Shelton.

9 SOLICITOR BEN SHELTON: Thank
10 you, Your Honor. May it please the Court.

11 THE COURT: Yes, sir.

12 SOLICITOR BEN SHELTON: Good
13 morning, Ladies and Gentlemen. When a sexual
14 battery is accomplished by aggravated force,
15 that is criminal sexual conduct in the first
16 degree.

17 A sexual battery accomplished by
18 aggravated force. We call those, in the law,
19 "elements." When those two elements come
20 together, it creates criminal sexual conduct
21 in the first degree; 16-3-652, that's the law,
22 the Code of Law. The legislature makes that
23 and that says that is what the law is.

24 So what is a sexual battery, first of
25 all? Sexual battery is sexual intercourse. It

1 can also be digital penetration. Either one
2 of those things. In this case the indictment
3 alleges sexual intercourse.

4 What is aggravated force? Aggravated
5 force is physical force or physical violence
6 of a high and aggravated nature, physical
7 force or physical violence of a high and
8 aggravated nature.

9 After Mr. Seaton argues, Ms. Williams
10 is going to tell you why the facts in this
11 case rise to that, beyond a reasonable doubt.

12 So what is reasonable doubt. You're
13 going to hear a lot about reasonable doubt, so
14 let's talk about. First of reasonable doubt
15 is just that, it is a doubt that is
16 reasonable. It is not any doubt.

17 There are very few things in this
18 world which anyone can prove with absolute
19 certainty. That's not what the law requires.
20 Any inference to that is not what the law is.

21 Medical science cannot dissect
22 someone's mind, for example, and look inside
23 and see what their intent was, see what their
24 memories are, see what actually happened.

25 Twelve intelligent people can go into

1 the jury room and argue all day long about
2 facts that are pretty much generally known
3 to be true.

4 One definition of reasonable doubt
5 is a doubt that makes a reasonable person
6 hesitate to act. Notice that it does not say
7 hesitate to think.

8 Nothing should be more serious or
9 sober than what you're doing today. You must
10 think about it. And when you're finished
11 thinking about it, when you've finished
12 considering the evidence and what is reason-
13 able, if you're firmly convinced that the
14 defendant is guilty, you must find him guilty.
15 That is what the law is.

16 Another definition of a reasonable
17 doubt is a real possibility. Not any
18 possibility, a real, a reasonable possibility.
19 It's possible that a meteor is going to strike
20 this courtroom in two seconds -- (pause) -- we
21 are all still here. A real possibility.

22 If anything that comes out of this
23 mouth (indicating Judge) that conflicts with
24 your memory, if I say anything, if Ms.
25 Williams says anything, if Mr. Seaton says

1 anything about the law that is different than
2 exactly what the judge tells you the law is,
3 you must disregard it. You must disregard it
4 if it is not what the judge tells you the law
5 is. The judge will tell you what the law is.
6 You are the judge of the facts.

7 Also if you have personal belief,
8 whether that belief is true in your heart,
9 that does correspond with what the judge tells
10 you the law is, you must disregard it. Each
11 and every one of you have taken an oath to do
12 that. You must listen to what the judge says
13 that the law is and then apply the law to the
14 facts.

15 In a moment, Mr. Seaton is going to
16 tell you and argue to you from the defendant's
17 standpoint. During that argument, please
18 think what is reasonable, what is not
19 reasonable.

20 Also after that, Ms. Williams will
21 come and argue why these fact constitute and
22 rise to the criminal sexual conduct, first
23 degree beyond a reasonable doubt, and that you
24 should be firmly convinced of the defendant's
25 guilt.

1 Thank you so much for your time.
2 It's been a long week. I've watched each and
3 every one of you and you've paid close
4 attention. That is all that an attorney can
5 ask. Thank you.

6 THE COURT: Mr. Seaton.

7 MR. SEATON: Thank you, Your Honor,
8 may it please the Court -- before I begin, may
9 we approach the bench?

10 THE COURT: You may.

11 (OFF RECORD BENCH CONFERENCE)

12 THE COURT: Please give your strict
13 attention to Mr. Seaton. Mr. Seaton.

14 MR. SEATON: Her Honor will tell you
15 that you have no friends to reward, and no
16 enemies to punish. Your job is as the finder
17 of the facts.

18 She will tell you that there are
19 really two judges in this courtroom. Her
20 Honor is the one judges and tells you what the
21 law is. She instructs you on the law and she
22 asks that you apply that law to the finding of
23 the facts that you, the trier of the facts,
24 determine. By applying the law to the facts
25 as you find them, as you've heard them, as

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1 you've used your common sense and every day
2 experiences, as I've asked you to do all week
3 long, by doing that, then you can reach a just
4 and fair verdict in which you have no friends
5 to reward and no enemies to punish. If you do
6 think, I think that clearly you're going to
7 find that Michael Andes is not guilty of the
8 crime that his girlfriend alleges.

9 I agree with the solicitor in that if
10 I or the solicitor's office tells you what
11 something -- reads or quotes something that
12 you hear and you remember it differently, then
13 it is your job to remember it the way that you
14 remember it rather than the way that I'm
15 telling you or the way that the solicitor's
16 office tells you that it should be. But this
17 is to the best of my recollection, and I'm
18 assuming that it's going to be best of their
19 recollection.

20 The solicitor's office gets the
21 opportunity to get up and speak to you last,
22 because throughout this process they have the
23 burden of proof beyond a reasonable doubt.
24 At every step of this process, it is their
25 burden to meet. Her Honor will tell you that

1 they must meet that every step of the way in
2 order to prove to you, beyond a reasonable
3 doubt, the crime Mr. Andes has been charged
4 with; whether or not you can find him Guilty
5 or Not Guilty.

6 I say all of that as a precursor for
7 one simple reason. We've spent a week in this
8 courtroom. This is a courthouse that is owned
9 by all of us as a community, this is a process
10 that we as a community go through. I told you
11 at the beginning of the week -- I said that
12 this is a dispute. This is the State, through
13 the office -- the law enforcement office of
14 the City of Goose Creek, -- who says that Mr.
15 Andes has committed a crime.

16 He has the right to exercise his
17 Constitutional right to come over here and
18 tell you, the members of the community, "I
19 disagree with that is said and I'm asking you
20 to listen and be the judge of this, and decide
21 whether or not I've committed a crime."

22 I think when we think about all of
23 the things that you've heard all week that
24 you'll find that he is not guilty.

25 I ask also that if I have acted in

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1 any way that has upset anyone, that in the
2 process itself, in my asking questions that --
3 the two thousand times that we've gotten up
4 and walked to the other side of the bench, so
5 that you all didn't get a chance to hear, if
6 any of those things that were done bothered
7 you in any form, please hold them against me.
8 Please do not hold them against Mr. Andes,
9 because the only thing that he's done is ask
10 that I speak on his behalf and try to relate
11 to you "the rest of the story."

12 If you think back to the very
13 beginning of how this whole process started --
14 not Monday but really Tuesday, -- it started
15 with the State telling you that he raped her.
16 Then I got an opportunity to tell you the rest
17 of the story. It's been my job to say that we
18 need more -- you need to hear more, you need
19 to see and hear the whole story before you can
20 decide that he's guilty, the way that the
21 Goose Creek Police Department did.

22 I am going to ask -- I know that
23 everyone made notes this week, and I did some
24 myself. I'm just going to sort of work my way
25 through some of the witnesses and some of the

1 things that you've heard. We're going to talk
2 about how that fits or doesn't fit.

3 You know, there are some crimes, like
4 robbing a bank or armed robbery or even
5 driving under the influence, where you get a
6 video, you get to see what happens. This
7 isn't one of those cases.

8 In this case what you've got is a man
9 and a woman who live in the same house, that
10 may or may not be boyfriend and girlfriend. I
11 think that they certainly would agree that at
12 least at some point they were boyfriend and
13 girlfriend. Mr. Andes certainly tells you
14 that they were still boyfriend/girlfriend.

15 But the question is whether they
16 had consensual sex or whether he forced her,
17 whether he raped her. It's that simple.

18 We don't have -- we weren't there.
19 No one was there but the two of them. And
20 so what we've got to do is look at the whole
21 picture, look at all of the things that were
22 said, all of the things that were done, in
23 order to determine the credibility of the
24 witnesses and in order to see whether or not
25 these pieces fit together.

1 We look at the testimony, we look at
2 the things that are presented, but we also
3 looked at things that are not presented.
4 What I am specifically speaking about is the
5 difference between the pictures that we have
6 of the text messages and the official record
7 of the text messages. When you look at them,
8 you are going to find that there is over
9 seventy-five text messages between the two of
10 them that did not seem to make the cut. They
11 got edited.

12 We talk about common sense and
13 everyday experiences and we talk about being
14 reasonable -- I keep promising one day that I
15 am going to get me one of those (indicating
16 projector on screen) so that I can flash it up
17 on there without having to ask the solicitor
18 to help me. I am not going to ask him to help
19 me in closing argument, that would not be
20 fair.

21 But when we talk about these events,
22 surely no one can be convinced that seventy-
23 five texts got lost "in the air." I'm trying
24 to think of the other reasons that she
25 eventually came up with. One was that she was

1 at Music In Motion and could not get a good
2 signal. Another one was, I think, that there
3 was -- just because she (sic) sent them that
4 they did not necessarily get them.

5 The problem is that the experts that
6 they flew in from Kansas City. The State pays
7 to have this guy come here and all of the
8 records -- and you will have an opportunity to
9 take them with you in the back -- but the
10 problem is the expert from Kansas that comes
11 here and gets on the stand, -- shoots down that
12 theory. He says yes, that if you look at one
13 set of records, you might have some that got
14 sent and they got onto their call log or what
15 they call their records log but that if it
16 corresponds to one on the receiving end, then
17 they got it. It only makes sense. They sent,
18 it would be on there. If they received it, it
19 would be on there.

20 And I asked you that if you have any
21 doubt -- and I think even the detective agreed
22 that if you compare the two that they match
23 up. He said that he sent them and she
24 received them, that she sent them and he
25 received them.

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1 So the theory that somehow of being
2 at Music In Motion or they are being lost in
3 cyberspace just doesn't hold up.

4 We were told by the Ms. Blanche that,
5 by the detective, that nobody erased anything,
6 that these are the whole records. Especially
7 what I want to point out are the records for
8 November 6 -- when all of that stuff or the
9 main part of this stuff occurred. We got the
10 time logs and we went through all of that
11 stuff. We spent hours, and I apologize for
12 how long that it took, and I apologize -- I am
13 sure that I sounded repetitious, but it's
14 important, because it is clear that the
15 "thread", as we call it, which is the
16 conversation, -- you know, in a lot of ways
17 this is like a voice recording. It changes if
18 you remove some of the voice recordings. You
19 start one place and if you could take couple
20 recordings out in between and then you have
21 got a new voice, well, then it has been
22 edited. That is what has happened in this
23 case.

24 Ms. Blanche has edited these things.
25 She told us that she doesn't know how to edit,

1 but then the next day she knew a lot of stuff.
2 She suddenly knew that at some point things
3 get automatically erase by the company. I
4 don't know that I agree with that, but that's
5 what she told us.

6 And then she told us that 'yeah' --
7 not on the sixth, which still doesn't match up
8 - but then on the seventh, oh, yeah, after the
9 second day of testimony, "yeah, I did erase
10 some but they weren't important ones, so don't
11 worry about it." But that's not the ones on
12 the seventh don't match up, because "yeah, I
13 did erase some. I forgot to tell you. I did
14 erase some."

15 The problem with that theory is that
16 if you go and you look at the 8th. You will
17 recall that I also looked at the 8th. We've
18 got pictures of it rolling over from the 6th
19 to the 7th and we've got the pictures of it
20 rolling over to the 8th and all the
21 conversations that took place on the 8th.

22 Here is the problem. The problem
23 from the 8th match the records. Count them.
24 If you don't believe me, count them. They
25 match.

1 The only ones that don't match are
2 the critical times, the 6th and the 7th.
3 We've got seventy -- over -- excuse me --
4 seventy-six texts, twenty-six pictures, during
5 the critical time.

6 But then when you get to the non-
7 critical time, we've got pictures of
8 everything and it matches.

9 What does that tell you? When you
10 use your common sense, what does that tell
11 you? We didn't take pictures of stuff that
12 is not important, yet we clearly showed that
13 they took pictures of everything that there
14 was on the phone of Mr. Andes. Never mind the
15 other texts that were damn important, that
16 everybody has not decided wasn't important.

17 Ms. Thompkins -- but as far as Mr.
18 Andes goes on the 6th, they told us -- the
19 detective told, Ms. Blanche told us, as many
20 times as I asked, "that's all of them."

21 She told us that she didn't know how
22 to erase any of them. So how could they not
23 be in here?

24 So the only time that the records
25 don't match is on the 6th and the 7th -- then

1 in her second day of testimony, the ones on
2 the 7th 'yeah, I erased those.'

3 The testimony of the detective was,
4 on the 8th, that they had a warrant for him.
5 Why do you think that she still had her phone
6 on the 8th? Because they wanted her to keep
7 texting him. Why do you think the detective
8 never called him on that cell phone? They
9 wanted him to keep texting. That's why she
10 still had it, that's why they took pictures of
11 unimportant stuff on the 8th. They wanted him
12 to set himself up.

13 The problem is, he didn't.

14 They took pictures of it and it
15 matches their logs. All of a sudden now,
16 magically, the bill matches the pictures.

17 One of the first pictures that they
18 want you all to see is -- they flash up on
19 the screen -- are the ones where he writes her
20 in the middle of night, "Sorry I have a
21 beautiful girlfriend in the next room and I
22 can't have her." Did she say that she was
23 not his girlfriend?

24 Would it make any sense for him --
25 they're roommates, they've been roommates for,

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1 I heard four or five different stories, a
2 couple different from what she tells the
3 different officers, that Ms. Blanche tells the
4 different officers, and a different story from
5 what her best friend says, but why would it
6 make any sense in a private conversation
7 between these two for him to call her his
8 girlfriend if she knows that he knows that she
9 know that she is not his girlfriend? Or if he
10 says, 'you're my girlfriend' and she says 'no,
11 I'm not.' She doesn't respond to that. I'll
12 ask you to look at the log and see whether or
13 not she responded that night. I think you'll
14 see that there is a call that went out. I
15 don't see it on here, but there was a call
16 that went out.

17 Solicitor's Office made a really
18 pretty color chart for you - and I do want you
19 to pay close attention, and I'm sure in their
20 presentation that they're going to want you to
21 pay close attention. Even their pretty color
22 chart doesn't match these pictures.

23 And isn't it funny how Ms. Blanche
24 sat on that stand, with the little magic
25 clicker, and she pointed out every time the

1 solicitor said 'show them this', 'show them
2 that', she knew right where to go, what to do.
3 When I showed her the exact same records, the
4 exact same, it's the exact -- it is her
5 records. It just wasn't color coordinated.
6 She couldn't figure out the top from the
7 bottom.

8 Does it make any sense that Ms.
9 Blanche tells you? Back in 2005 or so, they
10 meet. She's living with a child and a second
11 husband, he's living in the same apartments.
12 She moves over to Hanahan. He buys her a
13 ring. She disputed whether or not it was an
14 engagement ring, and she says 'I ain't gonna
15 wear it, but I'll move in with you. While I
16 am living in Hanahan, you're going to beat me
17 and throw me onto a table but I'll move in
18 with you.' She moves in with him.

19 Then they keep fussing and fighting
20 with each other until she moves out. What
21 does she do once she moves out? She moves
22 back in. After she moves back in, he buys her
23 a truck -- I think it's fairly well disputed
24 whether he's paying for it, whether she's
25 paying for it, whether he's paying for the

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1: phone that's in his name, that's she is using,
2: the truck that she is using that's his.

3: But all of a sudden it's okay with
4: this buy, that they're going to tell you that
5: Mike Andes is a controller, that he's
6: dominating her is what I think what they tried
7: to get the expert to say, that somehow he is
8: dominating her. So she's just going to become
9: a renter. 'We're not going to be boyfriend
10: and girlfriend any more, I am going to move
11: into your daughter's room, me and my daughter,
12: your daughter used to could stay there but now
13: that I am renting it, even though we haven't
14: agreed on any kind of price, she can't stay in
15: there.' You remember the testimony of Ms.
16: Blanche was that, 'Well, she used to stay in
17: there with my daughter when she wanted to,
18: when I was sleeping on the couch. But, no,
19: once I moved in there she didn't stay in
20: there.' So we've now kicked Mr. Andes
21: daughter out.

22: And that's okay with Mr. Control
23: Freak? Does that make any sense?

24: Mr. Power, Mr. I-am-going-to-control-
25: you now that you've moved back in and I've

1 given you stuff, you're just going to be my
2 roommate and you pay me what you can pay me
3 when you can pay me.' Does that make any
4 sense?

5 So then she decides that 'I'm scared
6 to death, I'm scared of this man, my child is
7 scared of this man.' You heard the testimony,
8 'I'm scared of him. Even though I moved back
9 in, even though my child lives with daddy one
10 week on and one week off, I'm still bring her
11 here' even though you've heard testimony that
12 she's got family and friends that gladly would
13 have kept her, even though her best friend is
14 who she did move in with and who said from the
15 stand that she would have let her stay on her
16 couch. Why she's got to stay on the couch
17 with a guy that's scared of instead of her
18 best friend, I don't know. That was her
19 testimony.

20 Both the detectives, whether it was
21 in their report or not, told you 'everybody
22 was scared.'. Does that make any sense?

23 And if she is scared of this man, one
24 of the things that we haven't talked about --
25 the City of Goose Creek, they only subpoenaed

1 the records starting on the 4th. They don't
2 care about the 6th. That's all that they care
3 about. They're not looking to really get the
4 whole picture. But look from the very
5 beginning, before all this allegedly happened.
6 How many times are the "roommates" talking to
7 each other? How many times are the roommates
8 texting each other? You think he's asking her
9 where's the rent a hundred times a day? Is
10 that -- do the records say "roommate" when you
11 look at them? Does that really say roommate,
12 or does it say boyfriend and girlfriend?

13 Use your common sense.

14 I'll talk in a minute about the
15 twenty-nine phone calls that she made in a row
16 before she calls 911.

17 But just think about how everybody
18 get's involved. Dispatch says 'you need to go
19 to Truman Avenue in Goose Creek, a woman has
20 been raped.' So from the beginning, that's
21 been the assumption, "a woman has been raped."
22 We haven't looked into any of these other
23 issues. I think all of the officers told you
24 'we never looked in the issues of whether or
25 not they were boyfriend and girlfriend.'

1 Didn't need to.

2 The woman has been raped.

3 'We don't need to look at other
4 things that could be going on.'

5 Could this be a couple that fuss and
6 fight for years?

7 Could this be a woman who saw another
8 woman's name on his text messages?

9 Could this be some other explanation
10 -- simply other than the fact that she called
11 him twenty-nine times in a row, and then
12 called the law? She called him twenty-nine
13 times in a row because she's scared of him.

14 So "a woman has been raped", she
15 tells us that she's bleeding, having abdominal
16 pains, but that's not what the SANE nurse told
17 us when she was in the examination. She
18 didn't find any bleeding, any trauma. The
19 detectives didn't find any blood on the
20 pajamas, the mattress cover. They didn't find
21 any blood.

22 DNA. What does that tell you? The
23 officer told him, 'I'm not going to lie to
24 you, I can tell the difference between new DNA
25 and old DNA.' The problem is, and he admitted

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1 on the stand, and the SLED expert told you,
2 you can't do that. Older DNA is harder to
3 match but you can't tell the age of DNA.

4 So "a woman has been raped." What do
5 we do to look into it? We don't care whether
6 her DNA is in his bedroom, or on the couch, or
7 sofa, or loveseat, or shower. We don't care
8 whether or not they've ever had consensual sex
9 anywhere. That don't matter, because this
10 time she says, 'I'm calling 911 and that's the
11 bed that he raped me in. If there's any DNA
12 in that bed, man, is he guilty.'

13 'So, we don't care.' I think you
14 heard the detective say, 'I wasn't looking
15 into that, don't need to. We got what we
16 need, we got these text messages, ...' --
17 whether they've been doctored or not --
18 'we've got them and we've got some DNA.'

19 Officer Gainey says, 'I get there,
20 she's distraught. She's shaking, she's
21 crying. Upset because she has been raped.'
22 Did Officer Gainey know that she had been gone
23 all day long, that she had been to a birthday
24 party, driving around to the relatives'
25 houses, did Officer Gainey know that she

1 "didn't come back to that house", that she's
2 scared, she didn't come back to that house.

3 Well, when she "got raped", she got right
4 back in the same bed. Her own testimony was,
5 'I got another pair of pajamas, I put them
6 over the stain, went back to bed and cried
7 myself' either to sleep to not to sleep,
8 whatever, until she got up and went to the
9 birthday party. Does that make any sense?

10 If you use your common sense and your
11 every day experience, does that make any
12 sense?

13 And, so, she comes home. Instead of
14 calling 911 from the bedroom at 4:00 o'clock
15 in the morning, getting in her car and leaving
16 to the neighbors, or doing anything, she stays
17 there, she gets up the next day, goes to the
18 party.

19 She did text her friend, Jessica.
20 Somehow she manages to do that without --
21 opening her phone, touches her phone or
22 whatever it is that makes it start operating
23 and doesn't happen to notice that her ten-
24 year-old daughter is texting her at 4:00 or
25 5:00 o'clock in the morning. But she manages

1 to not open that, according to her testimony.
2 She didn't know what it said. She texted her
3 friend -- and of course we ain't got a copy of
4 that, because that's 'not important', -- twice;
5 text her, she texts back, text her, text back.

6 Dr. Rheingold or Rhiengold tells us
7 that "anything is possible." Anything that
8 someone does is basically consistent with
9 trauma. You can talk about whether it's a
10 delay report or if it is less than twenty-four
11 hours. Does that really mean anything,
12 whether she uses a term like "delayed
13 reporting" or that if it is within twenty-four
14 hours that it is not delayed reporting, so
15 therefore she is not delayed in reporting? I
16 don't even know what that means. But what she
17 did tell you is that whatever happened,
18 whatever a person's actions are, that's
19 consistent.

20 It's not her job to figure out
21 whether to not someone is telling the truth.
22 That's not what they do. That's not her goal.
23 That's not her expertise. That's not what
24 they are trying to do. They're just trying to
25 figure out whether someone comes in and lies

1 about whether or not they've been raped or
2 been through some trauma. That's not what
3 they are doing there. She agrees that she
4 knows nothing about this case but, really,
5 'it's all consistent.'

6 And didn't we hear the exact thing
7 from the SANE nurse? And the SANE nurse's
8 boss? 'Hey, we are not here to tell you
9 whether it happened to not. We are not here
10 to determine whether or not this person is
11 being truthful. That's not our job. Somebody
12 has been raped.'

13 Every step of the way, it doesn't
14 seem like anybody cares about the truth of
15 what happened. All we hear is that she says
16 she was raped.

17 The SANE nurse, her job as she told
18 you was to look at her head to top, document
19 anything that she finds, takes swabs of her
20 vaginal area, check for DNA, any semen,
21 anything like that. They tell us that they've
22 got about a five-day window when the DNA that
23 they collect could be there -- or that the
24 semen could be there. They've got this chart,
25 that you'all saw quite a few times. I even

1 remember the number being State's Exhibit 9.
2 It's the diagram of the person standing there,
3 the stick figure and it shows what she
4 documented, that she sees that there is
5 something on the outer thighs and that there
6 is something on the wrists. Does that say
7 anything about breasts? No bruise or anything
8 on the breast in the nurse's exam. She agreed
9 with me -- and I ask that you look at the
10 photographs -- there are other things in these
11 pictures, but it seems that she decided what
12 she was going on put on there, what's
13 important and what wasn't important. That's
14 fine. I think that there was editing going
15 on, and her box said that's not what she was
16 supposed to do -- but that's because they
17 decided that it's not important. Just like it
18 is not important that nobody asked 'where else
19 could these bruises come from?' You say
20 you're bruised (sic), you've got bruises on
21 the outside of your thighs. How does that
22 work?

23 We're all not C.S.I. people, we're
24 not experts, but even the experts -- I don't
25 know that I heard a theory that made any sense

1 about how you got bruising on the outside of
2 your thighs when someone is trying to get
3 between your legs. Never mind her statement
4 that says, 'while he is holding my legs, he's
5 holding my arms and he's got my mouth
6 covered.' The detective said, 'Well, might
7 have done those at different times.' That
8 sure sounds like a heck of a struggle, that
9 sure sounds like trauma, so where -- where's
10 all that?

11 The detective told us that when they
12 see Mr. Andes a few days later to book him, 'I
13 don't see any trauma on him' never mind that
14 she is three inches taller, never mind that
15 both of them have testified -- him through the
16 video, her through sitting up here, about all
17 these times that they'd gone at it before. It
18 had to have been a heck of a fight. If he is
19 holding her arms, then she could kick him with
20 her legs. If he was holding her legs, she
21 could sure hit him with her arms. If he
22 holding her mouth, he can't go all three.

23 Her pajamas weren't ripped, everybody
24 agreed with that -- or torn, weren't
25 stretched.

1 No trauma, according to the SANE
2 nurse, but she reports bleeding that nobody
3 else sees.

4 Where does any of this match up?

5 We look at the edited versions of the
6 text. It looks to me like he is saying that
7 he is sorry that they'd fussed and argued.
8 I think that they both told you that they had
9 argued that night.

10 When they had sex, it's hard to say
11 whether it was that night, whether it was
12 Thursday night that he talks about on the
13 video, whether it was any of the other nights
14 that they didn't talk about.

15 This is the edited version.

16 Wouldn't you like to see the unedited
17 version?

18 Because we weren't there. We didn't
19 see whether they had consensual sex or whether
20 she was raped, we have to look at everything
21 else. That's why I spent this time going
22 through all of these inconsistencies.

23 The State is going to tell you that
24 all these experts have said that inconsistency
25 is consistency. That her being scared of him

1 would cause her to not leave the house when
2 she is raped, would cause her to be able to go
3 to the party and back from the party and the
4 other places she went, then to get on the
5 phone and call 911, be upset and crying and
6 shaking as if it just took place five minutes
7 ago -- because 'that's consistent.'

8 Everything is consistent.

9 You got trauma? That's consistent.
10 According to the SANE nurse, if you've got
11 trauma, that's consistent with being raped;
12 but seven out of ten times there is no trauma,
13 so that's consistent with being raped. What
14 that means is that everything is consistent
15 with being raped. What also that means is
16 that everything is consistent with NOT being
17 raped. The very thing that is consistent with
18 one thing, then everything is consistent with
19 the other.

20 Did you notice when the other expert,
21 Dr. Rheingold, when I asked her whether or not
22 she had ever been lied to, her answer was, 'I
23 don't know. Maybe.' Does anybody doubt that
24 she has ever been lied to? She's a clinical
25 psychologist and she's talked to hundreds or

1 thousands of people that she's saying over all
2 these years and all these studies, all these
3 speeches that she's given, and she can't sit
4 up there and tell you that she's been lied to?
5 Who hasn't?

6 But everything is consistent. It
7 makes sense. They flashed up a little saying
8 about reasonable doubt, and I wrote it down,
9 "firmly convinced". Who ain't firmly
10 convinced that you haven't been lied to, or
11 that you hadn't been lied to in this trial?

12 I don't mean to disparage anyone. I
13 don't mean to disparage LeAnn Blanche. Do you
14 really think with no photographs, though he
15 said he did look in those drawers to determine
16 if those were her clothes in there, and he
17 couldn't tell us anything about them except
18 that they were hers, and he wasn't trying to
19 determine whether or not she lived in that
20 room -- there wasn't any pictures of it -- it
21 just happens that the drawer as open, even
22 though I wasn't looking to see if she lived in
23 that room, and even though I couldn't tell
24 what kind of clothes it was, what color they
25 were, or what size they were, those were hers.

1 Use your common sense and everyday experience.

2 They arrested the guy. Nobody called
3 him, they -- he'd obviously answer texts, he'd
4 answer this phone. Nobody called him. They
5 didn't even call him before they put his
6 picture on the TV. We're looking for this
7 guy. He turns himself in three hours late --
8 he turns himself in, he's supposed to be there
9 at 9:00 and he don't get there until 12:00.

10 They're booking him and instead of
11 taking him to the booking room to book him,
12 they take him to the interview room. Instead
13 of telling him 'you're being videotaped', they
14 read him this warrant and do all these things
15 and eventually they get around to reading him
16 his Miranda at some point. He says, 'I'll
17 talk to you.'

18 They don't tell him all these stuff,
19 they pick out one or two things and say, 'Are
20 you going to give us your DNA or not because
21 we can tell you whether that's fresh DNA or
22 old DNA.' How's it going to look when we go
23 to court?

24 He has to put his hands on the
25 machine because they are booking him, he has

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1 no choice about putting his hand on the
2 machine. What do they do? They took his DNA.
3 That's fine. That's fine.

4 But he was "treated fairly", because
5 the warrant was read. The 911 call went out
6 and every step of the way "this is what
7 happened, everybody is just doing their job,
8 "just doing their job." Was it that they were
9 actually doing their job when they were going
10 back to look at the records, when they were
11 talking -- not -- to people, whether they were
12 looking at whether or not it made any sense
13 that there is suddenly more to it than a
14 boyfriend/girlfriend/roommate situation?
15 Everybody was just doing their job.

16 One of the -- one of the things
17 that's required of the State is to prove
18 beyond a reasonable doubt every step of this
19 procedure, at every juncture, all of the
20 elements Michael has been charged with beyond
21 a reasonable doubt.

22 The solicitor told you and Her Honor
23 will also tell you that reasonable doubt is a
24 doubt that would make a conscientious person
25 hesitate to act. Every time I've always heard

1 that, it always confused me -- because I
2 didn't really get anything out of it. Then
3 somebody explained it to me one time and -- in
4 a lot of courtrooms, you see the scales of
5 justice, Lady Justice hold those scales. Lady
6 Justice is wearing a blindfold and that is
7 because, as I've said earlier, she has no
8 friends to reward, nor any enemies to punish.
9 That's why she is blindfolded.

10 Those scales of justice tip one way
11 or the other. If they tip one way more than
12 the other, then the side that it tips a little
13 more towards in a civil case wins. That's
14 what is called the preponderance of the
15 evidence, that by a preponderance of the
16 evidence the scale tips a little bit more one
17 way than the other. When you've taken the
18 facts and applied the law to it, if one side
19 if a little more than the other, then that
20 sides wins.

21 But when you look at beyond a
22 reasonable doubt, this is what it's got to
23 look like (demonstrating), this is the scales
24 of justice in beyond a reasonable doubt --
25 it's not this, it's this, beyond a reasonable

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1 doubt. A reasonable person would hesitate to
2 act.

3 This is their case: an edited
4 version of the texts, pictures of some of the
5 texts. Please ignore, 'by all means please
6 ignore the records. This is our case.
7 Somebody called 911.'

8 They showed us the pictures, edited
9 or not. Nobody looked into them being edited.
10 Whether it took to July -- 'here's our case.'
11 We are going to show you in some pretty colors
12 up on the stand and we are going to show you
13 some ugly words, and 'that's our case, and
14 that's beyond a reasonable doubt.'

15 Forget all the actions of all of
16 these people before this, forget all of the
17 actions after this? Forget the twenty-nine
18 phone calls in a row where she called Michael
19 to come home? Forget all of that because
20 'we've got this.'

21 That's what we've had from the get-
22 go, when 911 got called. Whether it has been
23 edited or not, "There's a 911 phone call, a
24 woman has been raped. Everybody is just doing
25 their job."

1 That is what they want you to believe
2 is beyond a reasonable doubt.

3 The State gets the last opportunity
4 to speak to you. I'm sure this has been a
5 long week for everyone. You had no friends to
6 reward, no enemies to punish. I ask merely
7 that you use your common sense, you use your
8 every day experiences. You think about all of
9 these things that you heard, you think about
10 all of the things that you didn't really hear
11 because we didn't talk about it. You compare
12 the two. When you do that, you're going to
13 find that Michael Andes is not guilty of
14 raping his girlfriend. Thank you.

15 THE COURT: Ms. Williams.

16 SOLICITOR WILLIAMS: Thank you,
17 Your Honor, may it please the court. Mr.
18 Seaton.

19 Good morning. That's not our case.
20 This helps our case, but this is not our case.

21 The best evidence that the State has
22 in this case is the statement that he gave to
23 the police. Mr. Seaton would have you believe
24 that this was a consensual act. If it was
25 consensual, it was not rape. Guess show says

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1 that it wasn't consensual? Mr. Andes -- over
2 and over and over again.

3 He is at the police station, being
4 accused of rape, and Mr. Seaton would have you
5 believe that it was just an ordinary
6 consensual act of sex between him and his
7 girlfriend. So why doesn't he tell them that?
8 You're in the police station, being accused of
9 rape, and you're not going to say 'I just had
10 sex with my girlfriend.' Then I'm asking for
11 DNA and, 'I'm not going to make it any easier
12 for y'all.' There is no explanation for that.

13 Thank the Lord for DNA. If we didn't
14 have the DNA, it would be a whole lot harder
15 to prove. We know that they had sex, because
16 his semen is in the rape kit. He says there
17 was no sexual contact whatsoever.

18 So it really doesn't matter what Mr.
19 Seaton says, because he wasn't there -- he's
20 right about that. Two people were there:
21 LeAnn Blanche and Michael Andes. They both
22 say that it wasn't consensual.

23 If you need to review that tape, you
24 review it. You can see he was asked
25 pointblank, several times, 'Look, if it was

1 consensual sex, just tell me.' Nope. No
2 sex. No sex on Thursday, no sex on Saturday,
3 no sex on Friday, no sex at all.

4 Why does he do that? I don't know.
5 He's not the smartest, maybe. Or maybe he
6 miscalculates. If you look back at the text
7 messages, in one of them he said, and it is
8 disgusting, and I apologize, "I didn't know."
9 So maybe he was so drunk that he doesn't
10 remember that he ejaculated. I don't know.
11 But who better to tell you what happened that
12 night than these two people?

13 And while we're on the topic, these
14 two people agree about an awful lot. Mr.
15 Seaton would have you believe that she really
16 wasn't living in that other room, but that's
17 not what Mr. Andes says. Several times in
18 the tape he refers to her room and her room.
19 He tells the detective that they hadn't been
20 together for a little while. So I am not
21 really sure that we keep hitting those points
22 so hard.

23 Now, the defense's version of this
24 is that these people have a bad relationship,
25 domestic violence exists because she keeps

1 moving out, moving back in. On the night in
2 question there's angry phone calls between
3 the two of them, but at some point she
4 decides she feels romantic towards him. But
5 instead of having sex in the room that they
6 supposed share she decides that it would be a
7 good idea to have sex in her daughter's room.
8 Now, why does that make any sense? If you're
9 going to use your common sense, ask yourself
10 that question. If this woman really wanted
11 to have sex with her boyfriend in the room
12 that they share, why does she want to have
13 sex in the room of her ten-year-old daughter,
14 with the Happy Birthday bags and the Hello
15 Kitty pillows. That makes no sense, at all.

16 There's a few areas of that that can
17 be cleared up by you just reviewing the
18 evidence. I'm going to hit a few of them
19 very briefly because I know that it's been a
20 long week, and I want to go through the
21 evidence very briefly.

22 Now, as far as these phone records,
23 I don't know how sick you are of these phone
24 records. If you ever want to look at them,
25 you can. But it's not that easy to figure

1 out what is a text message and what is a
2 phone call. You heard the expert says that
3 in order to determine that that you had to
4 look at the recall numbers, you have to look
5 at whether the dialed digit column is blank
6 or not blank. I don't know what LeAnn
7 Blanche was counting up here. I don't think
8 she knew by the end of it. She did her best
9 to comply with whatever confusing questions
10 she was asked, but she didn't know what she
11 was counting. She doesn't know what the
12 repole/repoll/re-call numbers mean.

13 There is a short summary of the
14 records that is color-coded, that determines
15 which were the text messages, uh, -- but to
16 do this whole record and figure that out was
17 not an easy thing to do, and that's what the
18 expert said to you.

19 But at the end of the day, does it
20 really matter? As I said, Mr. Andes says
21 that there was no consensual sex that night.
22 If there was no consensual sex that night,
23 and we know that there was sex that night,
24 then what does that tell you?

25 There is another issue that defense

1 counsel continues to bring up about the
2 bruising, where the bruises are and whatnot.
3 I think what the testimony was from Ms.
4 Blanche was that as she was struggling that
5 he was trying to restrain her. She was
6 wiggling, she was struggling. He didn't have
7 to be holding her wrists and her legs at the
8 same time. It's unpleasant to think about
9 the different possibilities, but they are
10 numerous. I mean, one of them could be that
11 he took his two hundred and forty pound body,
12 wedged it behind her legs and then held her
13 wrists down. That's just one. It is very
14 unpleasant to think about but there are
15 numerous possibilities as to why she got
16 those bruises. He doesn't have to just push
17 her legs apart, he can grab them and push
18 them up. Again, I apologize for having to
19 make you think about that.

20 But Mr. Seaton would have you think
21 that the photographs were doctored, that text
22 messages were deleted, that the nurse
23 purposely didn't put certain things in the
24 report. I think that there's been a very
25 conscientious effort by the nurses and law

1 enforcement in this case to document all of
2 the evidence in this case in the best way
3 possible.

4 It is true that sometimes when you
5 look at a photograph that it is overexposed
6 and it's difficult to see a bruise in a
7 photograph. That's obvious by looking at the
8 pictures that the SANE nurse took. Look at
9 those pictures. She takes pictures of
10 victim's wrist and there's just nothing
11 there. Why would she even bother to take a
12 picture if she didn't see anything. It just
13 really doesn't make any sense.

14 Now, when you look or when you
15 remember, review your notes or whatever you
16 would like to do, with regard to the tape of
17 the Defendant, there is one area that is most
18 disgusting and that is about him urinating in
19 her room. He really doesn't give any
20 reasonable explanation for doing that. So
21 I'm not sure where it is being proposed that
22 this consensual act took place -- the master
23 bedroom, because they didn't go in there and
24 look for DNA, or the couch -- but I am not
25 sure that there is a reasonable explanation

1 for why he would go into her bedroom -- and
2 he says her bedroom -- and urinate on the
3 floor. The reason for that is because he
4 raped her in that room, he turned around and
5 in a final act of disrespect he urinated on
6 that floor.

7 Now, both sides have talked a little
8 bit about the judge's area and our area. I
9 would just like to say that this has been a
10 contentious trial and I appreciate your
11 patience. If for any reason it appears that
12 either of us have been disrespectful to each
13 other or the Court, that's not the case. We
14 have the utmost respect for Mr. Seaton and
15 mostly for this Court. From time to time,
16 one or all of us will blurt out misstatements
17 of the law, just about anything, that really
18 is in the judge's territory and that doesn't
19 mean that it's true, it just means that maybe
20 we have misstated something. I encourage you
21 to listen to the judge if there is any
22 discrepancy between what she says and what
23 we've said.

24 Now, I would like to go very briefly
25 through -- because it seems like weeks ago

1 when we saw the beginning witnesses.

2 You are the sole judges of
3 credibility. You saw this woman testify --
4 for days, she was up here for two days.

5 Do you remember what the Police
6 Department said about the way that she was
7 acting at the time?

8 Do you remember what she told you
9 about her economic situation?

10 Quite frankly, does it really matter
11 that she was on-again, off-again, with this
12 guy, the fact that it was a horrible
13 relationship? The fact that she kept going
14 back to him, does that mean that she can't be
15 raped?

16 But keep in mind that she was in a
17 bad situation when she was living there.
18 That's why she was living there. She was on
19 food stamps, she was on unemployment. But
20 slowly but surely she was trying to put her
21 life back together. She had just gotten a
22 job in August, one that she still has. She
23 was moving her things out, trying to get out
24 of this situation. I think that it is very
25 telling that although she had planned to move

1 out, then -- because as you heard from
2 Jessica Thompkins, they were emptying a room
3 out and she was going to move like the next
4 weekend -- as soon as this rape occurred, she
5 was gone. She never lived in that home
6 again. She went back to meet with the police
7 there but she never lived in that home again.

8 A very important thing to think
9 about LeAnn Blanche is that she has told the
10 same consistent details from the beginning.
11 Now, if the goal is to humiliate her, make
12 her just lose it on the stand, mission
13 accomplished. She had to sit here and listen
14 as the details of that rape were read to her
15 over and over again, disgusting personal
16 details. I don't know how anybody holds up
17 to that, but she did consistently tell you
18 what happened. She tried over and over again
19 to please defense counsel and use by
20 answering complicating questions about these
21 records and telling you the most personal,
22 humiliating, embarrassing details of what
23 happened to her that night.

24 Marianna Flynn was the expert that
25 came in, who supervises the SANE nurse. One

1 piece of information that you need to
2 understand is that she did not say that sperm
3 -- that you can detect sperm for five days.
4 What she said was that the longest time that
5 she'd ever heard about was five days that you
6 could find it. She said that it degrades
7 with water, he degrades with time. If
8 someone takes a shower after some kind of
9 rape or sexual assault, it's going to be hard
10 to find sperm after that. It's possible but
11 certainly not for five days of showers. She
12 talked a little bit about the lack of vaginal
13 injuries and also about the fact that
14 although some facilities have this
15 microscopic equipment where they might be
16 able to see hairs or injuries that MUSC does
17 not use that. So it's really just being able
18 to see injuries with the naked eye.

19 Janet Ward was the other nurse that
20 testified. Again, she tells a very
21 consistent story to this nurse. Keep in mind
22 that when she came into the ER, when Janet
23 Ward reviewed the records, she told the ER
24 nurse that she'd had a little bit of blood
25 and that she'd had some abdominal pain. She

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1 confirmed that she did collect vaginal swabs,
2 which eventually it was determined that there
3 was semen in those swabs.

4 Investigator Powell, you saw him on
5 the interview tape. Was he intimidating.
6 Was he bullying? He sat down and had a
7 conversation with this defendant. I think if
8 you look at that tape that there is nothing
9 uncomfortable about the defendant's demeanor.

10 He just sits and tells him, tells
11 him what happened. He says, uh, they fooled
12 around or that they messed around on Thursday
13 -- this is the defendant -- but that they
14 couldn't have sex because she'd had surgery.
15 He confirms that he sent her text message
16 wanting sex that morning. Tells him over and
17 over again that they had no sexual contact on
18 Saturday. Clearly Mr. Andes has not figured
19 out yet that they had his DNA or that they
20 had what will come to be confirmed to be his
21 DNA. As I said before, he confirms that he
22 urinated in the room. Says that she was
23 "just being stupid." Then he says that he'd
24 never called the police on her. He also says
25 that she moved out of their room and into the

1 other room months ago. If you watch the tape
2 -- or some of you may remember from your
3 notes, he slips at one point and says, "I
4 want to keep her as a friend, I just want to
5 keep her around." So clearly this is a
6 relationship that has evolved out of the
7 sexual relationship and into something else.
8 He then says, "I cut off her phone." That he
9 never saw her on Saturday.

10 Now, when asked about ejaculating --
11 and I'm sorry about having to discuss this
12 again -- he says, "I wasn't drunk." He never
13 says that he didn't ejaculate. He just says
14 that he wasn't drunk.

15 One thing to think about, too, about
16 how good LeAnn Blanche is about reading
17 messages and editing messages, she hadn't had
18 a lot of messages on her phone. For those
19 people out there that need their twelve-year-
20 olds to help them understand how to use their
21 phones, like me, I can completely sympathize
22 with that. But she doesn't know how to use
23 this smart phone. Mr. Seaton would have you
24 believe that she's entered into all of these
25 complicated entries, deleting messages and

1 everything else. She doesn't even know how
2 to do that. She knew how to delete a stream
3 but she doesn't know how to delete individual
4 messages.

5 He said that he only took pictures o
6 the threads or texts -- again some of this
7 evidence you have reviewed.

8 Keep in mind again that he had gave
9 him so many opportunities to just say that it
10 was consensual sex. You heard from SLED that
11 was Mr. Andes' semen and that it was a very,
12 very strong result: one in ten quadrillion
13 chances that it was not his.

14 Jessica Thompkins, she received a
15 text from the victim right after the rape.
16 She also observed her at the birthday party
17 and said that she was just kinda trying to
18 hold it together, that she seemed upset. She
19 remembered knowing the Defendant from being a
20 bouncer at a bar.

21 Now, not to belabor the point with
22 these text messages but you have two copies
23 of the text messages from the 6th. Some of
24 them have the time. It's clear that these
25 have not been edited, because the times are

1 right after each other. He even admits that
2 he makes these -- sent her these text
3 messages. He says, (reading):

4 "I want sex, but you can't even do
5 that. It's not like I don't love you."

6 "All I wanted was one fucking time."

7 "Sorry I have a beautiful girlfriend
8 in the next room and I can't have her" --
9 because she doesn't want to be with him.

10 Then, "Fuck that shit."

11 "I wouldn't even bother you. One
12 time is all I ask for. Whatever."

13 Then the next time he communicates
14 with her is the next morning, "Sorry about
15 last night."

16 She says, "You're not sorry or you
17 would have stopped."

18 He says, "I did." So clearly he's
19 talking about the sexual encounter. He's not
20 talking about some fight. Then "I am
21 sorry." And she tell him about what he did.

22 The final text message that I want
23 you to look at is he says, "I didn't know.
24 I drank but not drunk. And I very sorry."

25 She says, "You did, because it was

1 on me and it was on the bed. It was so
2 respectful (sic). And you don't think taking
3 my pants off, holding me down and forcing
4 yourself on me is sick? If that's not rape,
5 what is? What do you call it? Fun? I don't
6 have much to say to you. This is not
7 something that I can forgive and forget."

8 So what does say, does he say,
9 'What are you talking about? We just had
10 consensual sex.' No, he says, "So what? Now
11 you're leaving me? Guess it's the end of my
12 life with you."

13 You heard the trauma expert.
14 Frankly, I thought what she had to say was
15 very interesting and very relevant to this
16 case, especially since she has never met the
17 victim. But, uh, (pause).

18 This is a common sense case. This
19 is very much a common sense case. Why
20 doesn't he say it's consensual if it was
21 consensual? His DNA is in the rape kit. He
22 says that he didn't have sex. There is
23 absolutely no explanation for that.

24 What happened that night? They
25 fought all night on the phone. They didn't

1 have a good relationship to begin with. He
2 asked her for sex over and over again. He
3 got angry, he wanted into that room. They
4 continued to fight, after she had been in his
5 room fighting. He held her down, forced
6 himself inside of her, raped her. Then he
7 turned around and peed on her. Disgusting.
8 That is what happened.

9 You know that because it wasn't
10 consensual sex. How do you know that?
11 Because that's what she told you.

12 THE COURT: Ladies and Gentlemen,
13 we have reached the stage of the trial where
14 I will instruct you on the law applicable to
15 this case. Ladies and Gentlemen, feel free
16 to stand up and stretch. My charge is about
17 twenty-five minutes, so feel free to stand up
18 and stretch if you feel that you need to.
19 I'm been attempting to adjust the temperature
20 and I think we finally have the air
21 conditioner off.

22 Ladies and Gentlemen, I remind you
23 that during this trial you and I have had
24 certain duties to perform. As the trial
25 judge, it is my responsibility to preside

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1 over the trial of this case.

2 I also have the duty to rule on the
3 admissibility of the evidence offered during
4 this trial. You are to consider only the
5 competent evidence before you. If there was
6 any testimony ordered stricken from the
7 record in this case during this trial, you
8 must disregard that testimony. Mr. Foreman,
9 that is one of your responsibilities. If
10 there is testimony that was ordered stricken,
11 that I have instructed you not to consider,
12 and it becomes a topic of discussion in the
13 jury room, you must tell your fellow jurors
14 not to discuss that matter. If they continue
15 to do so, you must let me know as soon as
16 possible.

17 Ladies and Gentlemen, you are to
18 consider only the testimony that has been
19 presented from the witness stand, the
20 exhibits made part of the record in this
21 case, as well as the stipulations of counsel.

22 I have the additional duty to charge
23 you the law applicable to his case. As the
24 presiding judge, I am the sole judge of the
25 law in this case. It is your duty as jurors

1 to accept the law and to apply the law as I
2 state it to you now. If you already have any
3 idea as to what the law is or what the law
4 should be and it does not agree with what I'm
5 about to tell you, you must abandon your own
6 ideas, because you are sworn to accept the
7 law and apply the law as I state it to you
8 now.

9 In every case tried in this court
10 before a jury, the jury becomes the sole and
11 exclusive judges of the facts. A trial judge
12 may not make any statements or comment on the
13 facts in this case. You are the sole judge
14 of the facts in this case. You are not to
15 interfere from anything that I have said or
16 done throughout this trial or during my
17 charge on the law that I have any opinion
18 about the facts in this case. The law does
19 not allow me to have opinions about the facts
20 in this case.

21 This is a matter solely for you, the
22 jury, to determine. As jurors, it is your
23 duty to determine the effect, value, weight
24 and truth of the evidence presented during
25 this trial.

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1 The indictment charges the Defendant
2 with criminal sexual conduct in the first
3 degree. I remind you that the fact that the
4 Defendant was arrested, charged and indicted
5 in this case is not evidence in this case and
6 cannot be considered by you as evidence of
7 guilt in this case, nor does it create any
8 presumption or inference of guilt. It is
9 simply the formal written instrument which
10 contains the charge made against the
11 Defendant. It is the formal document by
12 which this case is brought into this court.

13 Just as the indictment in this case
14 is not evidence, any terminology or labels
15 used to refer to the individuals involved in
16 this case cannot be considered as evidence.
17 For example, the use of words "defendant" and
18 "victim" are merely formal labels and may not
19 be considered by you as evidence in this
20 case.

21 The Defendant has pled not guilty to
22 the indictment, and that plea puts the burden
23 on the State to prove the Defendant guilty.

24 A person charged with committing a
25 criminal offense in South Carolina is never

1 required to prove himself innocent. I charge
2 you that it is an important rule of the law
3 that the defendant in a criminal trial, no
4 matter what the seriousness of the charge may
5 be, will always be presumed to be innocent of
6 the crime for which the indictment was issued
7 unless guilt has been proven by evidence
8 satisfying you of that guilt beyond a
9 reasonable doubt. This presumption of
10 innocence does not end when you begin your
11 deliberations but it accompanies the
12 defendant throughout the trial until you
13 reach a verdict of guilty based upon evidence
14 satisfying you of that guilt beyond a
15 reasonable doubt.

16 The presumption of innocence is not
17 mere legal theory. It is not just a legal
18 phrase. It is a substantial right to which
19 every defendant is entitled, unless you the
20 jury are satisfied from the evidence of the
21 defendant's guilt beyond a reasonable doubt.

22 The State has the burden of proving
23 the defendant guilty beyond a reasonable
24 doubt. Some of you may have served as jurors
25 in civil cases where you were told that it

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1 was only necessary to prove that a fact is
2 more likely true than not true, such as by
3 the greater weight or preponderance of the
4 evidence. In criminal cases the burden of
5 proof is more powerful than that. It must be
6 beyond a reasonable doubt.

7 Proof beyond a reasonable doubt is
8 proof that leaves you firmly convinced of the
9 defendant's guilt. There are very few things
10 in this world that we know with absolutely
11 certainty. In criminal cases, the law does
12 not require proof that overcomes every
13 possible doubt.

14 If based on your consideration of
15 the evidence you're firmly convinced that the
16 defendant is guilty of the crime charged, you
17 must find the defendant guilty.

18 If, on the other hand, you think
19 that there is a real possibility that the
20 defendant is not guilty, you must give the
21 defendant the benefit of the doubt and find
22 the defendant not guilty.

23 There are two types of evidence that
24 are generally presented during a criminal
25 trial, direct evidence and circumstantial

1 evidence.

2 Direct evidence is the testimony of
3 a person who claims to have actual knowledge
4 of the facts, such as an eye witness. It is
5 eyewitness which immediately establishes the
6 main fact to be proved.

7 Circumstantial evidence is proof of
8 a chain of facts and circumstances indicating
9 the existence of a fact. It is evidence
10 which immediately establishes collateral
11 facts from which the main fact may be
12 inferred. Circumstantial evidence is based
13 on inference and not on personal knowledge or
14 observation.

15 The law makes absolutely no
16 distinction between the weight or value to
17 be given either direct or circumstantial
18 evidence, nor is a greater degree of
19 certainty required of circumstantial evidence
20 than that of direct evidence. You should
21 weigh all of the evidence in this case and,
22 after weighing all of the evidence, if you're
23 not convinced of the guilt of the defendant
24 beyond a reasonable doubt, you must find the
25 defendant not guilty.

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1 Necessarily, you must determine the
2 credibility of the witnesses who have
3 testified in this case. Credibility simply
4 means believability. It becomes your duty as
5 jurors to analyze the evidence and evaluate
6 the evidence and determine what convinces you
7 of its truth. In determining the
8 believability of the witnesses who have
9 testified in this case, you may believe one
10 witness over several witnesses or several
11 witnesses over one witness.

12 You may believe a part of the
13 testimony of a witness and reject the
14 remaining part of the testimony of that same
15 witness.

16 You may believe the testimony of a
17 witness in its entirety or reject the
18 testimony of a witness in its entirety.

19 You may consider whether the witness
20 has exhibited to you any interest, bias,
21 prejudice or other motive in this case and
22 you may also consider the appearance and
23 demeanor of a witness while on the witness
24 stand.

25 The rules of evidence ordinarily do

1 not permit witnesses to testify to opinions
2 or to conclusions. The exception to this
3 rule exists for witnesses we call expert
4 witnesses, a witness who by education and
5 experience has become an expert in some art,
6 science, profession or calling may state an
7 opinion as to relevant and material matters
8 in which the witness claims to be an expert
9 and may also state the reasons for that
10 opinion.

11 You should consider any expert
12 opinion received in evidence in this case
13 and, like any other evidence, give it the
14 weight that you think that it deserves.
15 If you decide that the opinion of an expert
16 witness is not based on sufficient education
17 or experience or if you conclude that the
18 reasons given in support of the opinion are
19 not sound, or that the opinion is outweighed
20 by other evidence, you may disregard the
21 opinion entirely.

22 An expert witness' testimony is to
23 be given no greater weight than that of any
24 other witness simply because the witness is
25 an expert. Further, you are not required to

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1 accept an expert's opinion even though it is
2 not contradicted.

3 I instruct you and emphasize, the
4 fact that the defendant did not testify is
5 not a factor to be considered by you in any
6 way in your deliberation in any way and in
7 your consideration on the question of the
8 guilt or innocence of the defendant. It
9 must not be considered by you in any manner
10 whatsoever. A defendant has the
11 Constitutional right to remain silent and the
12 assertion of this right must not be
13 considered by you in your deliberations.

14 I repeat, under your oath you are to
15 draw no conclusion whatsoever from the fact
16 the defendant in this case did not testify.
17 The fact that the defendant did not testify
18 should not even be discussed in the jury
19 room.

20 The burden of proof, as I have
21 stated to you, is on the State. A defendant
22 is not required to prove his innocence. The
23 burden of proof remains on the State to prove
24 guilt beyond a reasonable doubt.

25 In order to establish criminal

1 liability, criminal intent is required. For
2 example, the mental state required to be
3 proven by the State for a particular crime
4 might be purpose, intent, knowledge,
5 recklessness, or criminal negligence.
6 Criminal intent must be proved by the State
7 beyond a reasonable doubt. Criminal intent
8 is always a matter that must be determined by
9 the jury from the circumstances surrounding
10 the situation.

11 There is no way to prove intent to a
12 mathematical certainty. The law says that
13 criminal intent may be inferred from the
14 circumstances shown to have existed. This is
15 how you make a determination on whether or
16 not the element requiring intent was present.
17 It is not necessary to establish intent by
18 direct and positive evidence, but intent may
19 be established by inference in the same way
20 as any other fact, by taking into
21 consideration the acts of the parties and all
22 the facts and circumstances of the case.

23 Criminal intent is a mental state, a
24 conscious wrongdoing. It is up to you to
25 determine whether the defendant intended to

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1 do -- based upon the circumstances shown to
2 have existed. Criminal intent can arise from
3 action or a failure to act. It may arise
4 from negligence, recklessness or an
5 indifference to duty or to consequences that
6 is considered by the law to be the equivalent
7 of criminal intent.

8 A statement alleged to have been
9 made by the Defendant has been admitted into
10 evidence in this case. While the Court has
11 determined that the statement is admissible,
12 I instruct you that you make the ultimate
13 decision of whether or not the defendant made
14 the statement. If the defendant did make the
15 statement, you must determine whether the
16 statement was made by the defendant, if it
17 was voluntary of his own free will. This
18 means that the statement was not caused by
19 pressure, force, fear, threats, coercion or
20 intimidation or by hope or a promise of
21 leniency or reward of any kind.

22 In determining the statement was
23 voluntary, you should consider both the
24 characteristics of the defendant and the
25 details of the questioning. Some of the

1 factors that you must consider are the age of
2 the defendant, the defendant's education or
3 lack of education, the defendant's mental
4 ability or capacity, the defendant's
5 intelligence, the defendant's background and
6 environment, the place and length of
7 detention, the nature of the advice or lack
8 thereof to the defendant of his
9 Constitutional rights, including but not
10 limited to the right to remain silent, that
11 any statement could be used against him in a
12 court of law, the right to have a lawyer
13 present, that he if could not afford a lawyer
14 that a lawyer would be appoint to represent
15 him without any cost and that he could stop
16 making a statement at any time. You must
17 carefully consider all of the surrounding
18 circumstances before you give any weight to
19 an alleged statement.

20 The State has the burden of proving
21 beyond a reasonable doubt that the alleged
22 statement was voluntary. If you do determine
23 that it was, you may give the statement any
24 further consideration that you deem proper.
25 You must decide what weight, if any, should

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1 be given to the alleged statement.

2 If you determine that the alleged
3 statement was not the free and voluntary
4 statement of the defendant, you should not
5 consider the statement at all.

6 Insanity caused by the use of drugs
7 or alcohol may be a defense if the insanity
8 was permanent and destroys the defendant's
9 ability to know right from wrong. However,
10 when voluntary intoxication has not produced
11 a permanent insanity, it's not a defense to a
12 crime. A person who voluntarily becomes
13 intoxicated is just as responsible for the
14 acts committed while intoxicated as when the
15 person is not intoxicated.

16 The defendant is charged with
17 criminal sexual conduct in the first degree.
18 The first element which the State must prove
19 beyond a reasonable doubt is that the
20 defendant engaged in a sexual battery with
21 the victim. A sexual battery is sexual
22 intercourse, cunnilingus, fellatio, anal
23 intercourse or any intrusion, however slight,
24 of any part of a person's body or any object
25 into the genital or anal opening of another

1 person's body except when the intrusion is
2 accomplished for medically-recognized
3 treatment or diagnostic purposes.

4 If you find that the State has not
5 shown beyond a reasonable doubt that a sexual
6 battery occurred, you would stop deliberating
7 and your verdict would have to be Not Guilty.

8 If you find that a sexual battery
9 did occur, you must then decide whether the
10 State has proven beyond a reasonable doubt
11 that the Defendant used aggravated force to
12 accomplish the sexual battery. Aggravated
13 force means to use physical force or physical
14 violence of a high and aggravated nature to
15 overcome the victim. This includes the
16 threat of using a deadly weapon.

17 Ladies and Gentlemen, you have heard
18 testimony concerning the penalty a person can
19 serve for the crime alleged in the
20 indictment. In determining the guilt or
21 innocence of the Defendant, you cannot
22 consider any possible penalty for any
23 particular crime. The punishment for the
24 crime is a matter for his court to determine
25 and should never be considered or discussed

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1 in any manner in arriving at a fair and
2 impartial verdict as to the guilt or
3 innocence of the Defendant.

4 Ladies and Gentlemen, I will now go
5 over the verdict form with you. Mr. Foreman,
6 it is your responsibility to complete the
7 verdict form. I instruct you that there is
8 no significance in the way that I read the
9 verdict form. It is simply that something
10 has to go on the paper first.

11 Ladies and Gentlemen, in the Court
12 of General Session, Docket Number 2011-GS-08-
13 725, State of South Carolina, County of
14 Berkeley, versus Michael Christopher Andes,
15 verdict on the charge of criminal sexual
16 conduct in the first degree we, the jury,
17 find the Defendant Andes Not Guilty or
18 Guilty.

19 Mr. Foreman, this must be the
20 unanimous decision of the jury, which means
21 all twelve of you must agree. After you have
22 reached your verdict, you will sign the
23 verdict form, date the verdict form and knock
24 on the door, indicating to the bailiff that
25 you have reached a verdict.

1 Ladies and Gentlemen, this is the
2 last time that I will say this to you -- do
3 not begin your deliberations, do not discuss
4 this case amongst yourselves. We will be
5 gathering the evidence to go back to you, as
6 well as the verdict form. At that time, the
7 bailiff will instruct you that you may begin
8 your deliberations. Do not begin your
9 deliberations until you are told to do so.

10 Mr. Crosby, you have completed your
11 service to this case but I ask that you
12 remain with us for just a few moments until
13 the twelve have begun their deliberations.
14 My admonition to you is the same, do not
15 discuss this case with anyone and do not
16 begin any deliberations.

17 Please rise for the jury.

18 (JURY OUT @ 11:26 A.M.)

19 THE COURT: Thank you. Please be
20 seated. Any objections, corrections,
21 additions to the charges read? From the
22 State?

23 SOLICITOR WILLIAMS: None from the
24 State, Your Honor.

25 THE COURT: With the ---

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1 MR. SEATON: From the --

2 THE COURT: --- previous
3 objections that I have marked as exhibits,
4 anything further?

5 MR. SEATON: That would be all,
6 Your Honor.

7 THE COURT: Thank you.

8 (REVIEW & APPROVAL OF EXHIBITS)

9 (JURY IN DELIBERATIONS @ 11:30 A.M.)

10 THE COURT: Let me take this
11 opportunity, Mr. Andes, I've observed you
12 throughout this trial and I wanted just to
13 take this time to comment and thank you for
14 your promptness for being to court and for
15 your courteousness to the court. I would
16 also like to take this opportunity to tell
17 you and to thank Mr. Seaton -- you've been
18 represented by a very zealous advocate.
19 You've been -- you've received a very
20 thorough and competent representation
21 throughout this trial. Mr. Andes, as I
22 indicated to you, and I know you know now
23 what's coming, this is in no way a reflection
24 upon what I perceive the verdict may be or in
25 any way your conduct, it is simply the

1 court's procedure that we will now take you
2 into custody awaiting the verdict. Mr.
3 Andes, thank you again for your consideration
4 and -- throughout this trial.

5 To the State, I wish to extend also
6 the same comments to you, to your very
7 thorough and zealous representation on behalf
8 of the State. I also wish to extend to Ms.
9 Blanche, I know that this was very long and
10 difficult and I also wish to extend to your
11 courtesy -- to your support personnel, Mr.
12 Roberts, and your family again the same thank
13 you from the court for your consideration
14 throughout this trial. I know that it's been
15 very long.

16 We will be awaiting. I have no
17 plans at this time to order lunch. So what
18 that means, Counsel, is that you're free to
19 go -- but don't go far.

20 MR. SEATON: Yes, ma'am.

21 THE COURT: Is the jury requests a
22 copy of the court's charges, any objection to
23 sending back what I have read to the jury.
24 Mr. Seaton?

25 MR. SEATON: As long as it's

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1 complete. If they are asking for some
2 portion of it, I would ask that the they be
3 provided ---

4 THE COURT: I am going to give the
5 entire charge. Any objection?

6 MR. SEATON: That's fine.

7 SOLICITOR WILLIAMS: None from the
8 State.

9 THE COURT: That typically will
10 resolve the first question that comes from
11 the jury. They typically want a copy of the
12 charge. So then I won't have to bother you.
13 But, again, please don't go far.

14 MR. SEATON: Yes, ma'am.

15 THE COURT: If I make a
16 determination that we are getting -- if I
17 make a determination that we need to order
18 lunch for the jury, I will let you now so
19 that you all can go to lunch, as well, during
20 that time. Thank you. We will be at-ease.

21 (DEFENDANT INTO CUSTODY)

22 (NOTIFIED OF JURY REQUEST @ 12:13 P.M.)

23 (DEFENDANT PRESENT)

24 THE COURT: Counsel and Defendant
25 are present. We have a request from the jury

1 that they want to rehear the videotape in
2 evidence. Let's make sure that the tape is
3 ready.

4 SOLICITOR BEN SHELTON: Yes,
5 sir, it's okay.

6 THE COURT: So it is ready?

7 SOLICITOR WILLIAMS: Yes, sir,
8 Your Honor.

9 THE COURT: Rise for the jury.

10 (JURY IN @ 12:20 P.M.)

11 THE COURT: Thank you. Be seated.

12 We received your note that you wish to view
13 the video. This is the only way that we can
14 allow you to view it. After you've viewed
15 it, if there is anything additional that you
16 need, based on this, if you would just please
17 write it down before we send you out. Please
18 play the video.

19 (VIDEO REPLAYED IN ITS ENTIRETY)

20 THE COURT: Please continue with
21 your deliberations. Thank you. Please rise
22 for the jury.

23 (JURY OUT @ 12:44 P.M.)

24 THE COURT: Thank you. Be seated.
25 Anything further from the State?

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1 SOLICITOR WILLIAMS: None from the
2 State.

3 THE COURT: From the Defendant?

4 MR. SEATON: No, Your Honor.

5 THE COURT: Thank you. We'll be in
6 recess.

7 (NOTIFIED OF VERDICT @ 3:26 P.M.)

8 (DEFENDANT PRESENT)

9 THE COURT: I understand that the
10 jury has arrived at a verdict. Is there
11 anything before we bring in the jury?

12 SOLICITOR WILLIAMS: No, Your
13 Honor.

14 MR. SEATON: No, Your Honor.

15 THE COURT: Please bring in the
16 jury. It may be just a few moments that they
17 have had to wait for us.

18 (JURY IN @ 3:30 P.M.)

19 THE COURT: Mr. Foreman, Ladies
20 and Gentlemen, of the jury, I understand that
21 you've arrived at your verdict. Mr. Foreman,
22 is the verdict unanimous?

23 FOREMAN: Yes, Your Honor.

24 THE COURT: Please tender the
25 verdict form to Ms. Wiggins (bailiff). I

1 appreciate your patience. We were handling
2 other matters unrelated to this case.

3 FOREMAN: (Complies).

4 BAILIFF WIGGINS: (Tenders to
5 Court).

6 THE COURT: Mr. Andes, if you
7 will please rise.

8 DEFENDANT: (Complies).

9 THE COURT: Madam Clerk, if you
10 would, please read the verdict.

11 CLERK: I will, (reading):

12 "The State versus Michael
13 Christopher Andes on the charge of criminal
14 sexual conduct in the first degree, "We, the
15 jury, find the Defendant Andes guilty." I
16 certify that this decision is the unanimous
17 decision of the jury."

18 Ladies and Gentlemen, if that is
19 your verdict, please raise your right hand --
20 (jurors unanimously respond by raising their
21 right hands).

22 THE COURT: Let the record reflect
23 that all twelve jurors raised their right
24 hand. Anything further required of the jury,
25 from the State?

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1 SOLICITOR WILLIAMS: Not from the
2 State, Your Honor.

3 THE COURT: From the Defendant?

4 MR. SEATON: Not at this point,
5 Your Honor.

6 THE COURT: Ladies and Gentlemen,
7 this is concludes your service to this case
8 -- it of course also concludes your service
9 for the week. If you will please go to the
10 jury room, I will be in there in just a few
11 moments to personally thank you and excuse
12 you. Thank you. Please rise for the jury.

13 (JURY OUT)

14 THE COURT: Outside the presence
15 of the jury, anything further from the State?

16 SOLICITOR WILLIAMS: Nothing from
17 the State, Your Honor.

18 THE COURT: From the Defendant?

19 MR. SEATON: No, Your Honor.

20 THE COURT: Mr. Seaton, are you
21 prepared to go forward with sentencing at
22 this time?

23 MR. SEATON: Yes, Your Honor.

24 THE COURT: Is the State ready?

25 SOLICITOR WILLIAMS: Mr. Shelton

1 just went to get a sentencing sheet, Your
2 Honor. We should be ready momentarily. I
3 would just like to check with the victim to
4 see if ---

5 THE COURT: Here is what I would
6 like to do. Mr. Seaton, I know -- I don't
7 know what your schedule is. I had not
8 anticipated -- and I've schedule some
9 matters, could we do this later this
10 afternoon?

11 MR. SEATON: Yes, ma'am.

12 THE COURT: Why don't you all be
13 at ease and I'll allow you, once the jury --
14 can put you in the jury room, so you can go
15 over some things with Mr. Andes. If Mr.
16 Andes wants, I will allow one family member
17 to go back there with you to discuss the
18 sentencing phase. If you will give us just a
19 few moments and let us just coordinate --
20 I've got just a few matters that I would like
21 to attend to before that.

22 Mr. Andes, in no way am I indicating
23 that those matters are more important than
24 you sentencing. I'm just trying to
25 coordinate and this will give you time to

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1 meet with your attorney, as well.

2 Mr. Andes, at this time we are going
3 to escort you back out. Thank you.

4 That will give you time to meet with
5 the victim -- and if there is anybody else
6 that I need to hear from -- and to get the
7 sentencing sheet. We will be at-ease.

8 (BRIEF RECESS)

9 (DEFENDANT PRESENT)

10 THE COURT: Mr. Seaton, are you
11 and Mr. Andes ready?

12 MR. SEATON: Yes, Your Honor.

13 THE COURT: I have heard the
14 facts. Is there anything else that I need to
15 hear?

16 SOLICITOR WILLIAMS: Yes, Your
17 Honor. We would ---

18 THE COURT: You may have a seat.
19 I am going to hear from the State and any --
20 anything that the victim wishes to address
21 the court and then I'm going to give you as
22 much time as you need, Mr. Seaton. So y'all
23 have a seat.

24 SOLICITOR WILLIAMS: Your Honor, I
25 just would like to give the court some

1 relevant information for sentencing and then
2 the victim would like to address Your Honor
3 at the appropriate time.

4 I think that it is important to note
5 that Mr. Andes does have a criminal history.
6 Most importantly, he has a 2003 contributing
7 to the delinquency of a minor. The original
8 charge on that was criminal sexual conduct
9 with a minor in the second degree. The court
10 is aware of those facts because they were the
11 subject of our 404(b) that we withdrew.

12 THE COURT: Ms. Williams, there's
13 been a lot of history and a lot of testimony
14 has been given. I'm going to need a brief
15 recitation of those facts, please.

16 SOLICITOR WILLIAMS: Yes, Your
17 Honor. That case was back in 2000. There
18 was a fifteen-year-old victim that was at a
19 party with Mr. Andes. Mr. Andes was going to
20 leave to go home, he was too drunk, so he was
21 allowed to stay in the residence. People at
22 the party, codefendants -- or not
23 codefendants but witnesses -- heard her
24 screaming, went back there and Mr. Andes
25 was naked and on top of her. She was so

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1 intoxicated that she had vomited on herself.
2 She was given drugs that night, she was given
3 alcohol. She woke up, was taken to the
4 hospital.

5 Mr Andes made comments to certain
6 people in the home that all he did was
7 digitally penetrate her -- though that was
8 not the term that he used. As the court
9 knows, it is uncharacteristic to have tears
10 and bruising. This girl had significant
11 tearing and injuries to her vagina, that was
12 not consistent with digital penetration.

13 In that case, Mr. Church handled it
14 in our office. I was -- I think that there
15 were some issues with the victim wanting to
16 testify because she ---

17 THE COURT: When was ---

18 MR. SEATON: At some point can we
19 talk about what he's actually been convicted
20 of rather than this recitation of facts that
21 have not been -- this is completely ---

22 THE COURT: All right, Mr. Seaton.
23 I am going to allow you ---

24 MR. SEATON: --- unfair.

25 THE COURT: --- ample opportunity

1 to address the issues.

2 SOLICITOR WILLIAMS: I'm sorry,
3 Your Honor? What was the ---

4 THE COURT: When was the
5 conviction?

6 SOLICITOR WILLIAMS: The conviction
7 was in 2003 and the incident occurred in
8 2000. The conviction was for contributing
9 to the delinquency of a minor.

10 THE COURT: What was the sentence
11 that was given?

12 SOLICITOR WILLIAMS: Mr. Andes was
13 given probation, three years probation
14 suspended to one year -- I'm sorry -- it was
15 three years probation, Your Honor. Does the
16 court want any more information on that one?

17 THE COURT: No.

18 SOLICITOR WILLIAMS: In addition
19 to that, Mr. Andes had another contributing
20 to the delinquency of a minor. In this case,
21 and this was back in -- sorry, it was in
22 1997. He was convicted of grand larceny and
23 he did that with a minor, and he was given
24 probation for that. That was three years
25 suspended to one year, followed by two years

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1 probation.

2 In addition to that, he also been
3 convicted of breaking into motor vehicles --
4 one, two, three, four, five, six counts.
5 Those began in '96, '97.

6 Your Honor, if it would assist the
7 court, I have certified copies of the
8 convictions and would be happy to pass them
9 up to the bench, if the court would like.

10 THE COURT: Six counts?

11 SOLICITOR WILLIAMS: Yes, Your
12 Honor.

13 THE COURT: 1996 through 1997,
14 right?

15 SOLICITOR WILLIAMS: (Affirmative
16 nod), he was given probation on all of these
17 charges. One of them back in '96 was a YOA.
18 It's hard for me to tell from his rap sheet
19 if he was revoked. It looks like he wasn't
20 ever revoked but maybe he just served a year
21 on the grand larceny and was followed by some
22 probation.

23 THE COURT: All right.

24 SOLICITOR WILLIAMS: That is all
25 that we have as far as his prior history.

1 Your Honor, I would just ask the
2 Court, in light of the facts of this case
3 and his criminal history, to please -- please
4 sentence Mr. Andes to the higher end of the
5 spectrum.

6 I have enormous respect for the
7 wisdom of this court. Ordinarily, I don't
8 ask for a specific number and I am not going
9 to this time, but we just feel that the facts
10 and the criminal history justify the higher
11 end of the spectrum. I think the crime is
12 zero to thirty and we would ask Your Honor to
13 take all of this into account as she
14 considers the sentence.

15 I think the victim would like to
16 address the Court.

17 THE COURT: Ms. Blanche, you may
18 come forward. I remind you that you're still
19 under oath, so I am not going to swear you
20 in. Ms. Blanche, not to diminish or shorten
21 your time at all, but I've heard your
22 testimony -- so I would just like to hear as
23 to sentencing. Thank you.

24 LEANN BLANCHE: Your Honor, I
25 have been emotionally and mentally affected

1 by this. I trusted this man at one point,
2 and this was destroyed. I have had to learn
3 how to trust again and gain my own self-
4 confidence back. I've tried to gain my
5 confidence and not be fearful of my
6 surroundings.

7 I go to gas stations and get nervous
8 and stressed out when a male is over my
9 shoulder.

10 I have to reassure my daughter that
11 he is no longer allowed to hurt us and that
12 everything will be fine.

13 I have been afraid that he will find
14 where I am living or see me in a public place
15 and follow me. I have none of my mail come
16 to my current address and my current address
17 is no on any records at doctor's offices, my
18 job or any other agency.

19 I believe that he does deserve jail
20 time so that he cannot do this to anyone
21 else.

22 Your Honor, no matter what sentence
23 you give him, it will be never be the same.
24 This is a lifetime sentence that I will have
25 to deal with. That's all.

1 THE COURT: Thank you. Ms.
2 Williams, is there anything else on behalf of
3 the State?

4 SOLICITOR WILLIAMS: Nothing
5 further from the State, Your Honor.

6 THE COURT: This is a Violent and
7 Most Serious Offense?

8 SOLICITOR WILLIAMS: It is, Your
9 Honor.

10 THE COURT: Are you aware if he
11 served any time on this charge?

12 SOLICITOR WILLIAMS: I believe
13 that he was out right away. My records show
14 twenty-four hours.

15 MR. SEATON: That's correct, Your
16 Honor.

17 THE COURT: Zero to thirty years,
18 is that correct, Ms. Williams?

19 SOLICITOR WILLIAMS: That is, Your
20 Honor.

21 THE COURT: Is it the State's
22 position -- what are you requesting as far as
23 sentencing? Active time?

24 SOLICITOR WILLIAMS: Twenty-five
25 years, Your Honor. That is our request.

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1 THE COURT: Mr. Seaton, I will be
2 happy to hear from you or anyone. I
3 understand sometimes that counsel advises
4 their client not to speak to the court for
5 appellate purposes, but -- just for
6 clarification, have you advised your client
7 of his right to appeal the conviction?

8 MR. SEATON: I have, Your Honor.

9 THE COURT: And you have advised
10 him that he must do so, either you or he must
11 do so, within ten days or today's date?

12 MR. SEATON: Yes, ma'am.

13 THE COURT: And you have advised
14 your client that this is classified as a
15 Violent and a Most Serious Offense?

16 MR. SEATON: Yes, ma'am.

17 THE COURT: And you've advised him
18 what that means to him, currently and as to
19 any future offenses that he may be charged
20 with?

21 MR. SEATON: Yes, ma'am.

22 THE COURT: You have also advised
23 him that regardless of the sentence that I
24 impose on him today, he will be placed upon
25 the Sex Offender Registry?

1 MR. SEATON: Yes, Your Honor.

2 THE COURT: Do you need any
3 additional time to meet with your client
4 concerning anything before we proceed with
5 sentencing?

6 MR. SEATON: No, Your Honor.

7 THE COURT: Mr. Andes, just
8 simply, I remind you that you're still under
9 oath. Did you understand everything that I
10 asked your attorney?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: Those are very
13 important classification, not only for --
14 depending on the sentence that I impose upon
15 you, you will serve eighty-five of any active
16 time that I sentence you to. Do you
17 understand that, sir?

18 DEFENDANT: Yes, ma'am.

19 THE COURT: This is also a Most
20 Serious Offense, which in essence is a two-
21 strike of the three-strike rule that we often
22 refer to. Do you understand that?

23 DEFENDANT: Yes, ma'am.

24 THE COURT: Do you understand what
25 that means?

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1 DEFENDANT: Well, I -- (pause).

2 THE COURT: Do you need further
3 classification (sic) of what that means?

4 DEFENDANT: Yes, ma'am.

5 THE COURT: Mr. Seaton, do you
6 want to take just a moment?

7 MR. SEATON: I would, Your Honor --
8 (sidebar with Defendant).

9 DEFENDANT: Yes, ma'am.

10 THE COURT: All right. Mr. Andes,
11 my review and Mr. Seaton can clarify this is
12 I am incorrect, my review is that you have
13 not been convicted of a Serious or Most
14 Serious Offense in the past; is that correct?

15 DEFENDANT: Yes, ma'am.

16 THE COURT: This is a Most Serious
17 Offense and what that impacts your future is
18 that if in the future you are charged with a
19 Serious or Most Serious Offense, the State
20 can seek to ask for the Court to impose a
21 life without parole sentence. Do you
22 understand that, sir?

23 MR. SEATON: Yes, ma'am. I do.

24 THE COURT: And this is, in
25 essence, two strikes here today. That's what

1 that means. Do you understand?

2 DEFENDANT: Yes, ma'am.

3 THE COURT: All right. And it is
4 important that you understand your appeal
5 rights. You have the right to appeal the
6 jury's decision and the sentence that I am
7 about to impose upon you, but you must do so
8 within ten days. Do you understand that,
9 sir?

10 DEFENDANT: Yes, ma'am. I do.

11 THE COURT: And do you also
12 understand that regardless of the sentence
13 that I impose upon you here today, you've
14 been convicted of a sentence (sic) -- of a
15 crime that will require you to register as a
16 sex offender. Do you understand that, sir?

17 DEFENDANT: Yes, ma'am. I do.

18 THE COURT: Thank you. Mr. Andes,
19 you may have a seat. Mr. Seaton, I will be
20 happy to hear from you regarding sentencing.

21 MR. SEATON: Thank you, Judge.
22 First I would want to talk about the history
23 that's been related to you. I don't know
24 that I've ever heard someone being told about
25 their prior history that we are going to

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1 discuss what they were not convicted of, what
2 they never had an opportunity to face.'
3 Instead, what we get is nothing but absolute
4 hearsay that we have absolutely no way of
5 addressing other than I could make the same
6 sort of bold or overstated claims about facts
7 that no one has put into evidence or been put
8 in front of a jury or -- or in any way been
9 looked at. I could perhaps make that same
10 sort of claim. But I am not going to do
11 that.

12 I would simply say that the only
13 thing that's fair when it comes to sentencing
14 would be to look at what he's actually been
15 found guilty of or pled guilty to.

16 I would also ask that the Court note
17 the remoteness of those prior histories. I
18 would also ask that it note that he was
19 eighteen years old when he was charged with
20 the contributing to the delinquency of a
21 minor. That's because he was with a
22 seventeen year old friend -- might have been
23 sixteen at the time. But he was eighteen.

24 So while the State, as has been the
25 case throughout this entire week, has fought

1 diligently and has asked for the maximum
2 amount that anybody could reasonably expect,
3 I would ask just the exact opposite, Your
4 Honor. If the State wants to take the
5 position that what you heard here for the
6 last week means that this man should get
7 twenty-five years, then I am going to ask
8 that he should get probation. Because if the
9 -- the statute says zero to thirty and the
10 State wants to tell us that all of these
11 things means that he should do twenty-five
12 years, then I am going to ask for zero. In
13 all candor, Your Honor, I think that's -- my
14 position would be as preposterous as the
15 State's, of asking for twenty-five.

16 I think what would be fair would be
17 a reasonable sentence and I would ask the
18 Court to impose the same. We're not here to
19 suggest that the jury system doesn't work.
20 We heard what the jury said, we accept what
21 the jury said. I am not here to argue about
22 that.

23 You certainly have spent an entire
24 week hearing the facts. There is no point in
25 me giving you another recitation of the facts

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1 of this particular case. But I do ask that
2 -- as I know the court would, that he be
3 treated fairly in looking at these priors,
4 the remoteness of the priors.

5 He's been working for quite a few
6 years with the Union as a pipefitter, was
7 doing that up until today.

8 We would simply ask that the heat of
9 this case that has spilled over from time to
10 time, from both the State and the defense,
11 that we set that aside and we simply look at
12 what's fair. I know the court has that
13 ability and I appreciate that, I would
14 certainly ask that that is the way that you
15 great Mr. Andes, Your Honor.

16 I've asked him, as much as he would
17 like to address the Court and anyone else, I
18 have asked him not to because I do wish to
19 preserve anything -- any appellate rights
20 that may or may not exist. I don't know --
21 it's been a very long week, so I simply have
22 asked him not to say anything. I am sure
23 that the Court would understand why, Your
24 Honor.

25 THE COURT: I completely

1 understand. Is there anyone else? I've
2 observed some family members -- that I am
3 assuming are family members -- that wish to
4 speak?

5 MR. SEATON: They are, Your Honor.
6 They are here in support of him but, again,
7 they do not wish to speak. They've told me
8 the same thing, that everybody has a right to
9 a jury trial. We exercised that right. They
10 heard what the jury said. We understand.

11 THE COURT: Mr. Seaton, has your
12 client ever undergone any anger management,
13 substance abuse counseling, anything of that
14 nature?

15 DEFENDANT: No.

16 MR. SEATON: No, Your Honor.

17 THE COURT: Anything further, Mr.
18 Seaton?

19 MR. SEATON: No, Your Honor.

20 THE COURT: Anything further from
21 the State?

22 SOLICITOR WILLIAMS: No, Your
23 Honor.

24 THE COURT: Does Investigator
25 Powell wish to address the court?

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1 INVESTIGATOR POWELL: No, Your
2 Honor.

3 THE COURT: Mr. Andes, I have
4 carefully listened to the facts, I have
5 observed you throughout this trial, I have
6 considered what is appropriately to be
7 considered from your prior history, I have
8 watched -- I have had the benefit of watching
9 your interview tape with Investigator Powell.
10 Mr. Andes, it is the Order of the Court on
11 Indictment 11-GS-08-0725 that you be
12 committed to the State Department of
13 Corrections for a term of twenty (20) years,
14 provided on the service of twelve (12) years
15 the balance is suspended and I place you on
16 probation for five (5) years. You're to be
17 given credit for the time that you have
18 served. You're to be placed on the Sex
19 Offender Registry. You are to completely
20 successfully sex offender counseling. There
21 is to be no contact whatsoever with the
22 victim. Substance abuse counseling, random
23 drug and alcohol testing. Mr. Andes, good
24 luck to you. Thank you.

25 Anything further from the Court

1 (sic) -- from the State?

2 SOLICITOR WILLIAMS: No, Your
3 Honor.

4 THE COURT: Mr. Seaton, anything
5 further?

6 MR. SEATON: No, Your Honor.

7 THE COURT: Thank you.

8 (TRIAL CONCLUDED)

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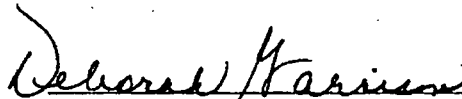
1 CERTIFICATE OF REPORTER

2

3 I, the undersigned, Deborah Garrison,
4 official court reporter for the 9th Judicial
5 Circuit of the State of South Carolina, do
6 hereby certify that the foregoing is a true,
7 accurate and complete transcript of the
8 hearing held before The Honorable Kristie L.
9 Harrington on November 28 - December 2, 2011,
10 as prepared from the audio notes of Vivian
11 Cross, Court Reporter;

12 I further certify that I am neither kin
13 nor counsel to any of the parties and have no
14 interest in the outcome of this action.

15

16 

17

Deborah Garrison

18

Circuit Court Reporter

19

9th Judicial Circuit

20

21

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23

24

Charleston, South Carolina

25

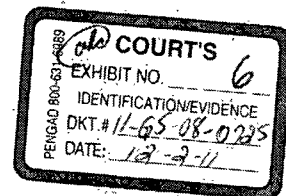
September 7, 2012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)
)
 STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 -vs-)
)
 MICHAEL ANDES,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 INDICTMENT NUMBER: 2011-GS-08-8725

State's/Defendant's Request
 to Charge Number : 4

CT
 6



(1) Consent

"Consent on the part of the female being fundamentally inconsistent with the concept of rape, and indeed with its very definition, it is ordinarily an essential of the crime that the act be committed without the consent of the female, or, as it is otherwise expressed, against her will." *State v. Whitener*, 228 S.C. 244, 273, 89 S.E.2d 701, 716 (1955). If the female did voluntarily consent, the crime of rape was not committed. Consent is not an affirmative defense to be established by a preponderance of the evidence by the defendant; rather its absence must be established beyond a reasonable doubt by the State. *State v. Taylor*, 57 S.C. 483, 488-89, 35 S.E. 729, 731 (1900).

The consent must be voluntarily given. "[I]f the consent is gained by force, although there is consent but nevertheless against her will and desire, brought about by violence, force or threats of violence, then the sexual act is without the consent of the female." *State v. Brooks*, 235 S.C. 344, 355, 111 S.E.2d 686, 692 (1959)(quoting approvingly from the trial court's instructions), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991).

AMW2010-11-02249

WITNESSES

Powell

Goose Creek Police Department

[Signature]

AGENCY CASE NUMBER

2010-4435

ARREST WARRANT NUMBER

K001687

DATE OF ARREST

November 9, 2010

ACTION OF GRAND JURY

True Bill

[Signature]
Person of Grand Jury

Sworn: 8 Dec 2011

VERDICT

[Signature]

[Signature]
Foreperson of Petit Jury

Date: 2 Dec 2011

INDICT

DOCKET NO: 2011-GS-08-00725

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

June Term 2011

THE STATE

Vs

MICHAEL CHRISTOPHER ANDES

Indictment for

Criminal Sexual Conduct, First Degree

MAIVE E. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

2011 JUN - 8 PM 2:33

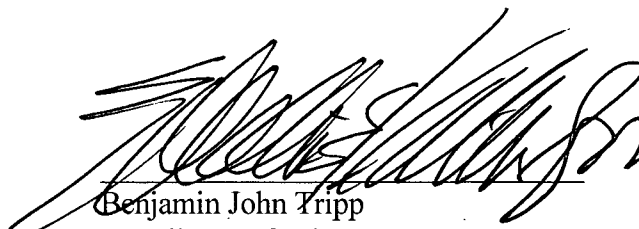
FILED
[Signature]

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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."

January 3, 2014



Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
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ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Kristi Lea Harrington, Circuit Court Judge

RECEIVED

JAN 03 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

MICHAEL C. ANDES,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 3rd day of January, 2014.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 3rd day of January, 2014.

Talal McKay (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.