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ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EDWARD M. DUNN,

APPELLANT

APPELLATE CASE NO 2012-212242

RECORD ON APPEAL

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	)	
County of Richland	)	2011-GS-40-3518 2011-GS-40-3525 2011-GS-40-3526 2011-GS-40-3527
	)	
THE STATE,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
EDWARD DUNN,	)	
	)	
DEFENDANT,	)	

May 21-24, 2012
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE; and a jury.

APPEARANCES:

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KAREN AMBROZIAK
Official Court Reporter

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THE COURT: All right. Counsel, the clerk tells me that there is another judge that is drawing a jury for a murder case. Then -- and then we'll have to wait until that process is complete. So it would be my suggestion that we go forward with any pretrial, utilize this time.

Any objection?

MS. FENT: No, sir.

MR. O'NEIL: No.

THE COURT: All right. Solicitor, call your case.

MS. FENT: The State calls State vs. Edward Dunn, Edward Maurice Dunn.

THE COURT: Do you have the indictments?

THE CLERK: I'm going to get it for you. They're coming.

THE COURT: Just hold on.

MS. FENT: Okay.

THE COURT: Go ahead.

MS. FENT: 2011-GS-40-3518 for assault with intent to commit CSC in the first degree; 3525 for an armed robbery; 3526 for kidnapping, and 3527 for a burglary in the first degree.

THE COURT: All right. Is the State ready to proceed?

MS. FENT: We are, Your Honor.

THE COURT: On all four indictments?

only description we would get out, that she was able to -- we are not going to have her identify anybody.

THE COURT: All right.

MS. FENT: But just to be able to testify to what she does remember about the person.

THE COURT: That's fine.

All right. Mr. O'Neil, continue.

MR. O'NEIL: Thank you, Your Honor.

Our next one would be a motion to exclude any sort of prior bad acts. I think there's -- there are essentially, I think, four kind of potential bad acts that we would like to have a hearing on if the State intends to introduce those evidence.

There was a burglary on September 20th, 2010, a year before this incident that we're here for today, Your Honor, where Mr. Dunn was a suspect on.

They obtained his DNA in that case, allegedly by containing the DNA profile that they obtained. If Your Honor rules that DNA profile is admissible, I would like to limit the testimony as it relates to the fact that Mr. Dunn was a suspect in the burglary. That's how the DNA profile was obtained from that, any testimony concerning that he was a suspect in a burglary, that would be prior bad acts that would not be admissible.

The second thing that I would like to --

THE COURT: Well, let me just address that.

MR. O'NEIL: Okay.

THE COURT: You disagree with that, Ms. Bodman?

MS. FENT: No. We have no intention of admitting why it was we got his standard, and the investigator --

THE COURT: Where was it? For the record, where was it?

MS. FENT: Richland County Sheriff's Officer John Carwell that was the lead investigator on that.

THE COURT: That's where it was maintained?

MS. FENT: It -- yes, and it was gotten by a Richland County Sheriff's Department officer. It was submitted to our DNA lab, the sheriff's department lab.

It was analyzed by a Richland County Sheriff's Department employee, and that profile was maintained within their own department.

THE COURT: In a database?

MS. FENT: In a database so that when we get this piece of evidence from the sexual assault, the profile is developed from a washrag in our case. A profile is developed, and it's compared and it hits on the profile that was --

THE COURT: So you basically have your own CODIS lab?

MS. FENT: Correct. The sheriff's department keeps its own database.

THE COURT: All right. Well --

MS. FENT: We would not even offer --

THE COURT: I assume that there were -- if he wants a hearing on the consent issue, I think he does, assuming that the DNA was taken legally, you could offer it without identifying the source in terms of why it was taken the first time.

MS. FENT: Correct. That's our plan. We're not even going to offer the date that it was taken unless they challenge something about the chain and then we have to, you know, establish the date, but we would be even willing to not even say what day it was that that was taken from his mouth so that they don't know.

THE COURT: Do you stipulate to the chain?

MR. O'NEIL: No.

THE COURT: No, will not stipulate to chain.

MS. FENT: Okay. Well...

THE COURT: It shouldn't be too tough if it's all within your office.

MS. FENT: Within the sheriff's department. It's all within the sheriff's department.

THE COURT: All right. All right. That's number one. What was number two?

MR. O'NEIL: There was a burglary of the victim's home approximately seven days prior to the incident that

burglaries.

THE COURT: That's three and four.

MR. O'NEIL: Yes, Your Honor. It's only three and four.

THE COURT: All right. I think we're clear on prior bad acts.

Number eight?

MR. O'NEIL: Number eight, Your Honor, I would move to suppress the DNA profile that was used for comparison in this case, Your Honor.

One is -- on a couple of grounds. One is that it was not consensual. The consent -- it was not gained by any sort of -- any sort of warrant or court order, any sort of alleged consent by -- Mr. Dunn would not -- would not be voluntary.

Even if you were to say the consent was voluntary, the contention of Mr. Dunn's DNA profile was outside the scope of any sort of consent that he may have given.

Therefore, all the other evidence obtained as a result of the probable cause of the DNA match would be fruit of the poisonous tree, and we would ask that it also be suppressed. I do have a written motion on that, Your Honor. I would make it a Court's record.

THE COURT: From the State?

MR. O'NEIL: I will pass a copy to Your Honor, as

well.

THE COURT: And the State.

MR. O'NEIL: Yes, Your Honor.

(Pause).

This is my motion and the actual consent in that particular case.

THE COURT: I assume we'll -- are you prepared to call a witness to this statement, to this consent?

MS. FENT: Yes, Your Honor, Investigator Carwell. As soon as we knew about their motion in chambers, we called him. He was running home to change his clothes to -- to get down here.

THE COURT: That's all right. We'll do it.

MS. FENT: But we also -- I need to make a copy of the case, but I do have a case for Your Honor to read. It's State v. McCord, M-C-C-O-R-D. It's 349 --

MR. O'NEIL: I have a copy if used like it, too.

MS. FENT: -- SC 477, if you could put it on top.

THE COURT: Are you doing your own work?

MR. O'NEIL: I have to, Your Honor.

THE COURT: You've got to call a witness, and we can move on.

How about the number nine?

MR. O'NEIL: Your Honor, our motion on number nine is really contingent on motion number five, kind of companion

motions.

THE COURT: Okay.

MR. O'NEIL: So depending on the ruling on number five, it depends on whether we can go forward with number nine.

THE COURT: Okay.

MR. O'NEIL: I'll give you the written motion so Your Honor has it, and if we decide to go forward on it, you just want to go forward on that.

Basically what happened, Your Honor, was Mr. Dunn was at headquarters after giving a statement. He asked to use the phone to call his mother. That phone call at the Richland County headquarters, was reported between him and his mother on that sheriff's phone.

So we would -- depending on Your Honor's ruling of number five here, we can decide whether --

THE COURT: Do you have any knowledge whether that was -- whether he was advised that any calls were made on that phone would be recorded?

MR. O'NEIL: I spoke with him, and in speaking with him, I went forward with this motion hearing. There was nothing in discovery, Judge, that they advise me -- speaking with Mr. Dunn, led me to be advised that he was going to be recorded.

THE COURT: There was not a big sign on the wall?

MR. O'NEIL: Not according to -- I really don't know, because I didn't see the sign.

THE COURT: Sort of like --

MR. O'NEIL: No.

THE COURT: -- no telephones, no cell phones allowed in the courtroom?

All right.

All right. Ms. Bodman, let's move forward with the Denno hearing.

MS. FENT: Okay. The State calls Investigator Josh Mauldin.

JOSHUA MAULDIN, after being duly sworn, testified as follows:

THE DEFENDANT: Have a seat in the witness box. State your full name for the record, please.

THE WITNESS: Joshua Mauldin, Richland County Sheriff's Department.

DIRECT EXAMINATION:

BY MS. FENT:

Q Investigator Mauldin, how long have you been with the Richland County Sheriff's Department?

A Approximately ten years now.

Q And in what capacity do you work there now?

A Major crimes and homicide investigator.

Q Okay. You may need to move the microphone over here.

And did you have occasion to be involved in the investigation of the burglary, armed robbery, kidnapping and attempted sexual assault that occurred at 7117 Patterson Road involving Ms. Indira Lonsdale?

A I did. Yes, that case was assigned to me.

Q Okay. At some stage, did you have enough evidence to have probable cause to get warrants on those four charges?

A I did, yes.

Q And who did you get those warrants on?

A Mr. Edward Maurice Dunn, Jr.

Q And did you have contact with him on the day that he was arrested on those warrants?

A Yes, I did.

Q And where did you have contact with him?

A It was at the home of Lavonne Arrington on

I cannot recall the numerics on Gayley.

Q How was it, I guess, that he was taken into custody or you were called down there?

A That's where -- our fugitive team was trying to locate Mr. Dunn in that general vicinity. We had a few addresses. Some, myself and Investigator John Baker were down there attempting to assist them.

Apparently, they discovered him at the residence, called us. We were right around the corner. We responded within a few moments.

Q Okay. And what contact did you have with Edward Dunn, then, at that location?

A Mr. Dunn was immediately turned over to me, I believe by one of our fugitive apprehension people, Ray Aherst.

At that time, I advised Mr. Dunn that he was under arrest, what he was being charged with. I brought him to my vehicle to await transport.

At that time, Investigator Baker was assisting me by, I believe, taking a consent to search that residence, and I would speak to Mr. Dunn in my vehicle at that time.

Q Okay. Do you --

THE COURT: Get the time of day.

BY MS. FENT:

Q You said that you advised him of the charges. What specifically did you tell him, those four charges that I already mentioned?

A Yes.

Q All right. What day was this?

Let me show you --

(WHEREUPON, State's Exhibits Nos. 1, 2 were marked for identification only.)

THE WITNESS: June 2nd, 2011.

BY MS. FENT:

Q Did you also prepare notes or a report regarding your involvement in this case?

A I did, an investigative follow up, yes.
Q Is that what this is I just handed you?
A This does appear to be my follow up.
Q Okay. Do you know what time it was that you made contact at that house at Lavonne Arrington's home?
A I would say that morning somewhere around maybe 9:00, nine a.m.
Q Okay. And you said you took custody of him. How, physically, was he restrained or not restrained? Describe that.
A I believe he was handcuffed at that time. I would switch out our handcuffs and placed him in my vehicle.
Q Okay.
A As to how he was cuffed, I cannot remember. As much as I hate to say it, for safety's sake, you know, we usually cuff from the back, but for comfort reasons, typically in those situations and when I have another investigator with me, I'll switch them around to the front so it's a more comfortable ride.
Q Okay. So at this point, other than telling him what he's charged with, what else do you tell him?
A I did apprize him of the DNA evidence that we had. I had expressed to him that I wished to talk to him about this case, but before I did so, that I had to provide him with his Miranda warning.

Q Okay. And you said you apprized him of the DNA. Specifically, what did you tell him about DNA?

A That seminal fluid had been located at the crime scene, and that the DNA profile obtained from that was a match to his own, which was taken in a previous case.

Q Okay. So then what do you do next?

A I read his Miranda warning from a card that I keep on my person.

Q Okay. And can you tell us specifically what those warnings were that you read to him?

A I can. "You have the right to remain silent. Anything you say can and will be used against you in court, in a court of law. You have the right to talk to an attorney, have him or her present with you while you are being questioned.

"If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you want.

"You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand these rights as I have explained them to you?"

I waited for Mr. Dunn's response, which was yes, and, "Having these rights in mind, do you wish to talk to us now?"

Q And what was his indication to that?
A He said that he would like to explain and talk to us and tell us his side of the story.
Q Okay. And all of this is done just orally. You don't have a written form at this point?
A At this point, no written form. It's done orally.
Q Okay. So what happens then? After you read him his rights, he says he understands and he wants to talk to you, what happens next?
A Mr. Dunn immediately begins talking and telling us his version of events involving Mr. -- well, a person he called only Shorty at that time.
Q Okay. So tell us, what was that version?
A Mr. Dunn informed us that he had been approached by a guy named Shorty, and that this individual asked him if he would help participate in a burglary; that there was a woman who had -- and I shouldn't say a woman, a house that had some money in it at that time; that he went to the house where this Shorty individual, who I believe brandished a gun, showed him physically the gun before going inside the house.

He remained outside. After a while, Shorty called him to come inside the house. He went inside the house where he saw Shorty with a woman bent over the bed.

He stood outside of a room while this Shorty

individual had intercourse or ostensibly had intercourse with this woman and that he became excited by that act and that he masturbated, ejaculated and then used a rag that was on the floor to wipe himself.

He threw that rag down and went back outside the house to continue to act as lookout, and then he -- I believe he and Shorty split the money. Shorty gave him maybe $300, something to that effect, and they parted company.

Q This conversation that you had with the defendant, is this all still while sitting at Lavonne Arrington's home or is it -- are you driving to the station? What's happening?

A Some of it occurred while we were sitting there waiting for Investigator Baker, and it continued on the way back to headquarters.

Q Prior to -- after you read him Miranda or I guess at any point, really, do you make any promises to him about to give him the motivation to give you a statement?

A No, no.

Q Do you coerce him in any way?

A No.

Q Do you --

A Our conversation was very friendly, and he was a fountain of information.

Q Did you ever threaten him?
A No.
Q Did he appear to be under the influence of any alcohol or drugs to the extent that he couldn't understand you or you couldn't understand him?
A No.
Q Did he appear to understand everything that you were asking of him, telling him, advising him?
A Yes.
Q What else do you remember about any conversation you had then from your first contact at Lavonne Arrington's house until you get down to the sheriff's department?
A He -- he persisted with that story or that version of events and that -- that more or less got us to the Richland County Sheriff's Department, at which time I, you know, asked him if he would accompany us inside and provide me with a written statement to that effect.
Q Okay. So then what happens once you get inside the sheriff's department? Where do you take him?
A Mr. Dunn and I sat down in my cube at the back corner of the sheriff's department in our criminal investigations division office where I presented whim a written advice of rights.

Prior to taking a statement, a written statement, I would read that statement to him orally and ask him to

read it himself, to initial each of the points on it indicating that those have been read to him and he at least read them and understood them, and then he would sign that statement.

Q Do you have that?

A That waiver, rather.

Q Do you have that advice of rights with you?

A I do.

Q And this is marked State's Exhibit No. 1. Is that the actual one that you used with the defendant?

A It is.

Q Okay. And walk us through, then, the specific procedure you went in documenting this advice of rights.

A Again, I would explain to Mr. Dunn that before I took a written statement, I wished to advise him of his rights again.

I was providing him with a written waiver of rights that I would read it to him, and at that time I read it. It says, "Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court.

"You have a right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during any questioning.

"If you cannot afford a lawyer, one will be appointed to you before any questioning if you wish. If you decide to answer these questions now without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to a lawyer."

I would stop right there and let Mr. Dunn know that this was the advice of rights, asked him to read each of those, and if he understood the meaning of each of those, to initial beside each and to sign, which he did.

Q So there were basically two stages. You read it out loud once to him --

A Yes.

Q -- and then you had him read it himself?

A Yes.

Q And whose initials are those next to each of the rights?

A Those are Mr. Dunn's initials.

Q And who put those initials there?

A He placed them there himself.

Q Then how did you next memorialize or document this advice of rights?

A After he signed indicating he understood those rights, I would then read the waiver of rights, explained to him this is the most important part of the sheet, and I

read it to him.

"I have read this statement of my rights. I understand what my rights are. I am willing to talk and answer questions. I understand and know what I am doing. No promises have been made to me, and no pressure or coercion of any kind has been used against me."

I did, as I always do, ask him if he understands what the words pressure and coercion mean, and I explained that he is not obligated to speak to me.

I am not forcing him. I am making him no promises; that if he speaks to me, he does so of his own volition. I asked him to read that himself, to initial beside that waiver and to sign if he agrees to speak to me.

Q And whose initials are next to that waiver?

A Mr. Dunn's.

Q And who put those initials there?

A He placed it there.

Q And whose signature there, then, is underneath the waiver?

A That would be Mr. Dunn's signature, as well.

Q Okay. Did you sign this advice of rights, as well?

A I did sign the advice of rights as a witness, yes.

Q Okay. At any point, did you threaten him?

A No.

Q Did you coerce him?

A No.
Q Did you make any promises to him in exchange for giving a statement to you?
A No.
Q Did he appear to understand everything you were saying, and you understood what he were saying?
A Yes.
Q Then did he proceed to give you a statement?
A He did.
Q And walk us through that statement, then.
A (There was no response.)
THE COURT: Just...
MS. FENT: I guess just more specifically, sorry.
THE COURT: It's not necessary.
MS. FENT: Okay.
THE COURT: It's not necessary to go through the whole statement.
MS. FENT: I know. I -- that was a poor request.
THE COURT: The jury is not here.
BY MS. FENT:
Q Yeah, a poor request.
Just, essentially, can you give us the process? Did you talk to him, first, and then memorialize it in a statement, or did you just write down question and answer as it happened?

A The statement is in a Q and A format. I would ask Mr. Dunn questions, and I would type his response.

You know, I'm a fairly proficient typist, but even though sometimes folks get ahead of me, I might have to slow them down, stop them or go back and try to accurately reflect what Mr. Dunn would tell me during the course of that in a Q and A format.

Q Okay. And once that statement was completed, all the questions and answers have been given, then how is this documented or formalized, this statement?

A Mr. Dunn is asked to read over the statement and make sure that it accurately reflects what he, in fact, told me. If he sees anything he would like to change, omit, add, he is given that opportunity.

Once he has done that, he was asked to sign the statement if those were, in fact, his words, at which time he did sign each and every page.

Q And how many -- it's three pages?

A I believe it is, yes. The statement is a three-page statement.

Q Okay. And he signed in your presence each and every page?

A Yes.

Q The person that you're describing as waiving those rights, acknowledging those rights, giving you a

statement, do you see him in the courtroom today?
A I do.
Q And can you point to him, describe where he is sitting, so we know what you're talking about?
A Yes. Mr. Dunn is the young man in the red button down shirt between Mr. Li and Mr. O'Neil.
MS. FENT: Thank you.
THE COURT: What time was the statement?
THE WITNESS: The statement was approximately 11:34 hours.
THE COURT: The same day?
THE WITNESS: 11:34 p.m., the same day, yes.
BY MS. FENT:
Q Now, while you were talking to him or I guess while he's at the sheriff's department, did he make any requests to talk to anybody?
A I believe he did ask to speak to his mother at some point.
Q Okay. And what did you do about that request?
A He was ultimately -- I cannot recall when he asked to speak to his mother. Honestly, he was allowed to talk to her on the phone.
Q Okay. So talk to us about that. You said he wanted to talk to his mom, and you obliged by doing what?
A Allowing him to speak to her on the phone.

Q Where?
A That would be in Major Stan Smith's office.
Q Okay. And the phones in the sheriff's department or anywhere around the sheriff's department, are there notices about whether or not the phones are recorded?
A Each phone, unless it's been removed by the investigator, has a bright orange sticker on it that says all calls placed on this phone are recorded.
Q So what happened then? You let him use Major Stan Smith's telephone in his office?
A Yes.
Q And was he left alone, or was somebody left with him?
A He was not. He was there in the presence of Major Smith, as well as Sergeant Kevin Isenhoward. I was there for a large portion of the conversation, as well.
Q Okay. And so there are two law enforcement officers standing. How big is this office?
A It's a fairly good size office. It is not a small office.
Q As big as this courtroom?
A No.
Q Is there a place to stand in the office so you cannot hear the phone conversation?
A No. There is no way you cannot overhear a conversation in the office.

Q Anyone standing in that office is going to hear at least what the caller sitting in the office says?

A Yes.

Q And you said Major Stan Smith was in there, Kevin Isenhoward, and yourself at certain times?

A Yes, that's correct.

Q And when you were in the office, could you hear what Edward Dunn was saying to his mother?

A I could.

MS. FENT: At this time, Your Honor, I have no further questions.

THE COURT: You don't have a copy of that orange sticker, do you?

MS. FENT: I do not.

THE COURT: It might be helpful for the record.

Mr. O'Neil.

MR. O'NEIL: Thank you, Your Honor.

CROSS-EXAMINATION:

BY MR. O'NEIL:

Q Investigator Mauldin, back in 2011, May of 2011, how long had you been an investigator at that point?

A May of 2011, maybe eight years, nine years, in that timeframe.

Q And do you know about how many, like, advice of rights forms you probably filled out during your time

period as investigator?
A Hundreds.
Q And you understand that these advice of rights forms and these statements essentially can be used later on in court?
A Yes.
Q You're careful to make sure that the information that is put on these forms is adequate, one of the reasons why they can be utilized in court later on?
A The information on the advice of rights form?
Q Yeah, the advice of rights form.
A Yes.
Q Okay. Now, before you came in contact with Mr. Dunn that day, you already had sworn arrest warrants; is that correct?
A I did.
Q And those arrest warrants were for the four charges that he's on trial for today?
A Yes.
Q Okay. Now, you say you located him although Lavonne Arrington's residence?
A Yes.
Q Okay. And was members of the fugitive team already in contact with Mr. Dunn by the time you got there?
A They were.

Q Did they already have him in handcuffs at the time you got there?
A Yes.
Q Okay. You said your first contact with Mr. Dunn was that you notified him that he was under arrest for these four warrants?
A Yes.
Q And at that point, was he already cuffed at that points?
A He was.
Q Did you switch the fugitive team handcuffs with your cuffs or you got those cuffs?
A I'm about 100 percent certain I did switch them out.
Q Okay. So you switched out, put your own cuffs on him?
A Yes.
Q Okay. At that point, I think it's fair to say once you had those cuffs on Mr. Dunn, he was not free to leave at that point?
A He was not.
Q He was under arrest.
A Yes.
Q If he would have attempted to leave, you would have stopped him from leaving?
A Yes.

Q And you also say you advised him about the DNA evidence at that point, correct?
A Yes.
Q Now, you said that you actually read Mr. Dunn his Miranda warnings orally?
A Yes.
Q Okay. You said you read that from a card?
A That's correct.
Q Do you normally, you know, carry that card with you?
A I always have that card.
Q You have it with you today?
A Yes.
Q Is that the same card you had last year?
A Yes.
Q Okay. Were there any witnesses that overheard you reading Mr. Dunn his Miranda warnings?
A Investigator Baker was with me, but I do not believe he was in the vehicle at the time the Miranda warnings was read to Mr. Dunn.
Q So the Miranda warnings would have taken place inside your vehicle?
A That's correct.
Q Is your vehicle equipped with any video surveillance?
A There is not.
Q So there is no footage of you reading Mr. Dunn his

Miranda warnings?

A There is no video.

Q Are there any audio recordings of Mr. -- of you reading Mr. Dunn his Miranda warnings?

A No.

Q Okay. Did you -- at that point, did you -- when you read Mr. Dunn his Miranda warnings, do you know how old he was at that point?

A Yes.

Q How old was he at that point?

A Seventeen.

Q Seventeen years old. Did you know how far he went in school when you -- at that point?

A No.

Q At this that point, did you ask him could he at least -- did you ask him at that point could he read and write?

A No.

Q Okay. At any point, did Mr. Dunn in that car ask -- or any point from the car until you got to headquarters did Mr. Dunn ask for his parents to be involved in any sort of interview?

A He never made that mention in the car, no.

Q Did he make that mention at any time?

A No, aside from asking to speak to his mother later

on.

Q Okay. Now, you say you got to Mr. Arrington's residence to get to Mr. Dunn around nine o'clock?

A That's a guess, somewhere around that neighborhood.

Q Do you know how long you stayed at Mr. Arrington's residence?

A It was a very short period of time.

Q Okay. Less than 15 or...

A Maybe waiting for Investigator Baker to take care of what he was taking care of, maybe 10, 15 minutes.

Q Okay. Do you know how far or how long it took you to get to headquarters from Mr. Arrington's residence?

A That's maybe a 15-minute, 20-minute ride.

Q Okay. So you got about 15 minutes waiting and about 15 minutes on the --

A That's correct.

Q -- on the ride? You said Mr. Dunn was -- started talking to you while you were on -- somewhere during this 30-minute period, Mr. Dunn was discussing with you his version of what happened.

A Yes.

Q Now, you said -- I'm looking at Mr. Dunn's statement here. You said that statement -- it's -- it's being typed contemporaneous as Mr. Dunn was speaking?

A Yes.

Q How long were you at headquarters before you and Mr. Dunn started going through this statement process?
A It would not have been a very long time at all.
Q Okay, less than 15?
A I couldn't say. Anywhere between 15 minutes, half an hour.
Q Okay. So no more than 30 minutes --
A Yes.
Q -- but as short as 15 minutes?
A Yes.
Q Okay. And is this statement contemporaneous, meaning as Mr. Dunn is talking, you're typing?
A Yes.
Q Okay.
A And listening, as well.
Q Okay. So you didn't -- you didn't -- Mr. Dunn didn't give you the whole story and then you started typing. You're typing?
A No, go question by question.
Q Now, I see that the statement is timed at 11:34, that's 11:34 a.m.?
A Yes.
Q Okay. And I just want to make sure this timeline is right. It appears you got to the Dunn's residence -- I'm sorry, Mr. Arrington's residence around 9:00 a.m.,

stayed --

A That's an estimate, at best. I -- it could have been later.

Q Okay.

A It could be 9:30. It could have been ten.

Q Okay.

A I'm just not certain, and I don't think it's reflected in my notes.

Q But what you told Mr. Lavonne Arrington --

A I believe that's -- I believe I said approximately, somewhere in that neighborhood.

Q So around nine o'clock, you had about 15 minutes there. That's what you told me?

A Yes.

Q And another 15 minutes on the ride from the Arrington residence to headquarters?

A Yes.

Q And then when you got to headquarters, no more than 30 minutes before you started talking?

A That's right.

Q Okay. So that's, at best, one hour, correct?

A Yes.

Q Okay. And you said this statement started at 11:34?

A The statement did, yes.

Q Okay. The statement started -- you're sure that

statement started at 11:34?
A If I placed 11:34 there, that's when it started.
Q That's what time it started, fair enough. And your testimony is that before you took the statement from Mr. Dunn, you written, in written form, gave him an advice of rights?
A Correct.
Q Correct, all right. And the statement says it began at 11:34 a.m., correct?
A That's correct.
Q But the -- help me out, Mr. Mauldin, Investigator Mauldin. Then the advice of rights is timed at 11:38 a.m.; is that correct?
A It does say that.
Q Okay. So you say you were saying you were sure that the statement was at 11:34, and you placed the time on this advise of rights.
A I placed it on both.
Q Okay. And the advice of rights, according to your own documentation, was at 11:38?
A Those are the times that are on there, yes.
Q Okay. And you put those times on there.
A I did put the times on there.
Q Okay. At any time during your -- you -- during your talk with Mr. Dunn, did you ascertain his ability to

understand the words you was saying?

A How do you mean ascertain his ability?

Q You said you explained to him what the words pressure and coercion, things of that nature. How did you ensure that he understood what you were saying when he gave a definition of those words?

A Well, I was a high school teacher for three years before I became a law enforcement officer. I have a pretty good understanding, I like to think, of picking up on people's cognitive abilities.

I mean, he is very verbal, no blank stare, nodding in the affirmative. He did not -- nothing in his mannerisms would have indicated that he didn't understand what I said.

Q So you said these are the words, pressure and coercion, this is what you mean, do you understand? He nodded his head up and down. Would that be a fair characterization of what happened?

A He would have said yes or indicated yes, I understand what that means.

Q So he either said yes, I understand or he nodded his head up and down?

A Yes.

Q Okay. And not as it relates to these statements, let's talk about this recorded conversation. You said, to

the best of your knowledge, all the phones at the headquarters have this bright orange sticker on it?

A Yes.

Q Do you have any specific independent recollection of Investigator Smith's phone having the sticker on it?

A I couldn't say.

Q Okay. So you couldn't say on June 2nd of 2011 whether or not this sticker was on Investigator Smith's phone or not?

A I can't say.

Q Okay. Did you independently warn Mr. Dunn that this conversation would be recorded?

A I did not. I was not present when he began the conversation.

Q Okay. Do you know if there is any sort of prompting on the sheriff, on the sheriff's department phone, that says these recalls are going to be recorded?

A There is not.

Q There is not, okay.

Beg the Court's indulgence, Your Honor.

(Pause.)

MR. O'NEIL: I have nothing further at this time, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION:

BY MS. FENT:

Q When you were talking to the defendant in the car --

A Yes.

Q -- having a conversation in the car, describe that again to me, kind of the tone and how that conversation is going.

A Oh, it was very friendly. There was no -- there was interrogation.

Q Okay.

A It was not confrontational. He seemed to have a willingness to explain his side of events.

Q As an investigator, do you start kind of trying to get a sense of, "Oh, will this person give me a statement when we get down to the station," or "Do I think this guy may clam up on me and not talk?"

Do you kind of try to think ahead of what's going to happen as the investigation is unfolding?

A I do. I mean, that's -- I believe all of us do, and that's we try to get -- you know, get someone talking about it as quickly as we possibly can.

Q The indications that you were getting from the defendant in the car, were they indications that he was probably going to give you a written statement or that you were, "Hey, this guy is probably not going to write this down for me?"

A I have no doubt in my mind he was going to be, you know, forthcoming when he got to headquarters. There was no indication that he was having any second thoughts about speaking with me.

Q Okay. The statement form that you typed up, I guess at your cubical --

A Yes.

Q -- when you get a statement, is that just a blank form, or how do you pull that up?

A There is a template, and what I'll typically do is go to -- in fact, that's what I'll do in a case I will bring up a statement that I've already typed and just modify date, time and that individual's name, any personal information associated with that individual and start over the Q and A.

Q Okay. Between the time of, I guess, driving up to the headquarters to when you sit down to take a written statement from a suspect -- and I guess specifically, if you remember, did you remain with him the whole time or did someone else take him to your cubical?

A No. We were together the entire time.

MS. FENT: The entire time, okay. I have no further questions at this time, Your Honor.

THE COURT: Anything else you want to ask?

MR. O'NEIL: Just briefly, Your Honor.

RECROSS-EXAMINATION:

BY MR. O'NEIL:

Q Investigator Mauldin, is there any sort of prohibition about getting these advice of rights forms filled out in the field, I guess what I consider the field, out there on the scene?

A You mean any policies saying that we should not do that?

Q Yes, yes.

A No, there is not.

Q So if you wanted to, you could have gotten Mr. Dunn to sign one on these advice of rights forms before you actually got him to the headquarters?

A I could have, yes.

MR. O'NEIL: That's all I have.

THE COURT: Next witness?

MS. FENT: Investigator -- well, with regard to the -- excuse me, the Jackson v. Denno and the recorded phone conversation, I have no further witnesses.

THE COURT: All right. You may come down.

THE WITNESS: Thank you, sir.

THE BAILIFF: Watch your step.

THE COURT: Let me see the advice of rights and the statement.

All right. Ms. Bodman?

MS. FENT: Your Honor, with regard to -- we have no further witnesses with regard to this motion.

THE COURT: Well, what's your position with regard to --

MS. FENT: That he freely and voluntarily gave the statement. He was given the rights orally. He understood them. He --

MR. O'NEIL: I was going to say, Your Honor, I anticipate calling my client before arguing.

THE COURT: Oh, I'm sorry. Mr. O'Neil.

MR. O'NEIL: Thank you, Your Honor.

THE COURT: You may proceed.

MR. O'NEIL: The defense calls Edward Dunn.

THE COURT: He's cuffed behind his back?

EDWARD DUNN, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your full name for the record, please.

THE WITNESS: My name is Edward Dunn, Edward Maurice Dunn, Jr.

DIRECT EXAMINATION:

BY MR. O'NEIL:

Q Edward, I have a few questions for you. Back on June 2nd of last year, 2011, how old were you at that time?

A I was 17 years old.
Q Seventeen back in June of 2011?
A Yes, sir.
Q Okay. How far had you gone in school at that point?
A The 10th grade.
Q The 10th grade. Do you remember coming into contact with Investigator Mauldin back on June 2nd?
A I do.
Q Okay. Tell us -- do you remember about what time of day it was when you came in contact with him?
A I want to say ten o'clock in the morning.
Q Okay. What -- when you came into contact with Investigator Mauldin, what was the first thing that happened? Let's just start there.
A All right. I was on -- I was at Lavonne Arrington's residence and someone knocked on the door, and Lavonne's mother answered the door. It was the police.

I guess they explained to her that they had a warrant for me and came in, guns drawn. They -- they arrested me. They handcuffed me in the bedroom. They escorted me out. I was outside. Then Mr. Mauldin, he pulled up in the truck, and he came -- they came to me. You know, they was telling me like we know you did it.

Q When you say "they", who are you referring to?
A The officers.

Q Okay. Was Mr. Mauldin included in that group of officers you were talking about?
A No, sir. They were saying, "We know you did it. We already have your DNA." You know, just I might as well tell the truth now.
Q Okay. So what happened when you came in contact with Investigator Mauldin? What did he say to you?
A He told me the same. He was like he already had my DNA; that for me just to tell the truth. I was telling him that I don't know what you're talking about. I want to talk to my mom.
Q Okay. Then what did he say in response to that?
A He just -- he told -- he escorted me to the car.
Q Okay. Now, what happened when you got in the car?
A When we got in the car, it was him and another officer in the car. They just kept asking me, you know, what happened. I was like, "I don't know what you're talking about. I want to talk to my mother."
Q Okay.
A So I never talked to him --
Q Okay.
A -- the whole ride there.
Q How long was the ride from Mr. Arrington's home to the headquarters? Do you remember?
A The headquarters was on Two Notch, am I correct?

Q Yeah, Two Notch.
A I want to say at least 20 minutes.
Q Okay.
A At least 20 minutes.
Q Okay. At any time did Investigator Mauldin read you your Miranda warnings?
A No, sir.
Q Okay. Any time in that car ride from -- either from -- from any time when Investigator Mauldin came in contact with you up until the time you actually got to headquarters, did he ever read you your Miranda rights?
A No, sir.
Q Did he ever take out a card and read you those Miranda rights?
A No, sir.
Q What happened when you got inside to headquarters?
A They -- they took me -- he escorted me to his cubby, his little office. We sat down. You know, they started -- they started -- they was talking to one another.
Q When you say "they", who are you referring to?
A Him and the officer that rode with us.
Q Okay.
A They were talking to one another, and I believe he offered me a Coke, soda.
Q Okay.

A So then that's -- that's when he told me like -- he pulled out the sheet, and he read my rights. I understood and I signed them.

Q Okay.

A Then he asked me do I want to write a statement. I said, "Yeah, I understand and I want to write a statement." I wrote my statement.

Q Okay.

A Then after that, the Sarg or whatever, they asked me -- they asked me -- I asked again, I said I want to make a call to my mother. That's what I was saying the whole time. So then they escorted me to the Sarg's office. When I went in there, I called my mother.

Q Now, so who was in that office with you?

A It was the Sarg guy, Mauldin and the officer that rode with Mauldin when they brought me to the investigator.

Q Were you talking loud enough where they could hear you in the office?

A I was talking regularly to my mother.

Q Okay.

A They could have heard, yes.

Q Were you expecting -- were you expecting your conversation with your mother to be private, just only between you and your mother?

A Yes.
Q Okay.
A Yes, sir.
Q Did you see any sort of sticker up there that said these calls are going to be recorded?
A No, sir.
Q What happened after you got off the phone with your mother?
A After I got off?
Q Yeah.
A I believe they escorted me into a holding.
Q Okay. Did they ever come back and talk to you more about the case after that?
A When they took me to the room, I think he said that he's going to -- he's going to have a DNA test, and that he's going to come back with it to tell me the results. I was in there about 15 minutes. Then he came back, and he said it's a match with mine.
Q Okay. Did you -- did you say anything else after they told you it was a match?
A No, sir.
MR. O'NEIL: Beg the court's indulgence, Your Honor.
(Pause.)
Nothing further, Your Honor.
THE COURT: Cross?

CROSS-EXAMINATION:

BY MS. FENT:

Q This is not the first time you have been given your Miranda rights, correct?

A In this case?

Q Ever in your life.

A No.

Q Okay. In fact, back in September of 2010, with Investigator John Carwell, you were given an identical advice of rights form, and you signed it, correct?

A Yes.

Q And those are all the same rights that are on the one that you signed in this case?

A Yes, ma'am.

Q Okay. So you're aware of all of your rights, your right to remain silent.

A Yes, ma'am.

Q Anything you say can be used against you. You had a right to talk to a lawyer. You didn't say you asked to talk to a lawyer, right? You asked to talk to your mom --

A My mom.

Q -- is what you asked?

A Yes, ma'am.

Q And that you would be appointed a lawyer if you couldn't afford one, right?

A Yes, ma'am.
Q Okay. And not only that case but back in 2010, you acknowledged that you understood all of your rights and that you waived your rights?
A Come again.
Q You, in fact, even back in this case in 2010, you understood the rights that were given to you?
A Yeah; yes, ma'am.
Q And you waived them.
A Yes, ma'am.
Q You gave them up.
A Uh-huh, yes, ma'am.
Q Okay. Just like you understood all the rights that Mauldin read to you?
A Yes, ma'am.
Q Correct? Both out at Lavonne Arrington's house, you understood them when he read them to you.
A Not there, at the investigation house.
Q Okay. You understood them?
A Yes, ma'am.
Q Okay.
A In fact, I read it.
Q And -- Your Honor, may I have the...
(Pause).
On State's Exhibit No. 1, those are your initials and

that is your signature, correct --
A Yes, ma'am.
Q -- acknowledging that you understood all your rights and acknowledging that you wanted to give them up --
A Yes, ma'am.
Q -- and talk?
A Yes, ma'am.
Q And then this statement, State's Exhibit No. 2, that's your signature at the bottom of page one?
A Yes, ma'am.
Q That's your signature at the bottom of page two?
A Yes, ma'am.
Q And that is your signature at the bottom of page three?
A Yes, ma'am.
Q And in this statement, it doesn't look like you made any changes. You didn't mark anything out or add anything with your handwriting --
A No, ma'am.
Q -- on all three of those pages.
A No, ma'am.
Q You said at one point Investigator Mauldin even offered you a Coke or a soda.
A Yes, ma'am.
Q And this is while the you're at the cubical?

A Yes, ma'am.
Q At the cubical. You said he did tell you at Lavonne Arrington's house that we know you did it because we have the DNA?
A Yes, ma'am.
Q We have a DNA match?
A Yeah.
Q Did he specifically tell you about we got your semen on the washrag?
A Yes, ma'am.
Q Okay. So you knew that at Lavonne Arrington's house?
A Yes, ma'am.
Q When you asked to talk to your mom, they did escort you to an a office to be able to do that?
A Yes, ma'am.
Q And that was Major Stan Smith's office?
A Yes, ma'am.
MR. O'NEIL: Your Honor, can I see that?
MS. FENT: I just got it.
(WHEREUPON, State's Exhibit No. 3 was marked for identification only.)
BY MS. FENT:
Q I'm going to show you State's Exhibit No. 3. It's a picture of a telephone?
A Yes, ma'am.

Q Is that the phone that you used in Stan Smith's office?
A That's the type of phone, yes, ma'am.
Q Okay. So the phone looks exactly the same. Was there the label on the top that said "all calls recorded"?
A I did not see it, no, ma'am.
Q You don't remember it?
A Not seeing it there, no, ma'am.
Q Okay. But that was at Stan Smith's office that you used the phone, and you said it was a phone that looks exactly like this?
A Yes, ma'am.
Q And you did the call your mom, right?
A Yes, ma'am.
Q And you had a phone conversation with your mom, right?
A Yes, ma'am.
Q And you told her about the DNA?
A Yes, ma'am.
Q And at one point, your mom said to you, "I don't want to discuss this no more because you know these phones are taped, and they're standing right there listening." Didn't she say that?
A Yes, ma'am.
Q And you answered, "Yeah, they're right here." So you

acknowledged to your mom that these law enforcement officers were standing right there listening to your phone conversation?

A Yeah, they were around; yes, ma'am.

Q And she even mentioned to you -- your mom who is not even the room mentioned to you that these phone calls were being taped, right?

A She said; yes, ma'am.

Q When you talked to Investigator Mauldin, were your under the influence of any drugs or alcohol?

A No, ma'am.

Q Did you understand everything that he was saying to you?

A Yes, ma'am.

Q He didn't make any threats to you, did he?

A No, ma'am.

Q The only thing you're saying he said was, "We know that you did it. We've got your DNA"?

A Yes, ma'am.

Q So you need to just go ahead and tell the truth.

A Yes, ma'am.

Q He was asking you to please just tell the truth.

A Yes, ma'am.

Q And when you said that Mauldin came back and said, "We're just going to run your DNA," and then he came back

15 minutes later and said it was yours, was that before or after you gave your written statement?

A That was after.

Q After. No further questions.

REDIRECT EXAMINATION:

BY MR. O'NEIL:

Q Just briefly.

Edward, just so we're clear on this, on State's Exhibit 3, it's your testimony that you never saw this sticker that says "all calls are recorded"?

A No.

Q Okay. You never saw that?

A No.

MR. O'NEIL: Okay. No further questions, Your Honor.

THE COURT: All right, sir. You may come down.

MR. O'NEIL: That's all the witnesses I have.

THE BAILIFF: Watch your step.

THE COURT: Any further witnesses from the State?

(There was no response).

Let me see that. Does it say that that's Stan Smith's phone?

MS. FENT: We do have a witness that will say that's Stan Smith's.

THE COURT: When?

MS. FENT: Well, Your Honor, I believe for the

purposes of this hearing, I've established enough that, you know, he knew that these were -- these were recorded. He says that on the phone. He has a conversation with his mom.

The privacy issue, even if there was no sign is there are people standing in the room. There's three people, by his own admission, standing in the room listening to him. There is no privacy.

THE COURT: Well, he certainly can testify to what he said.

MS. FENT: Correct.

THE COURT: The question is whether you're seeking to introduce the tape.

MS. FENT: She doesn't have a right to privacy. She has no standing in this case. It's his right to privacy --

THE COURT: I understand that.

MS. FENT: -- there are -- that are at issue, and he knows that three people are standing in the room listening to everything that he says.

THE COURT: So you think that's a waiver?

MS. FENT: Yes. Their challenge to this phone call is that it was an invasion of his privacy. That's their challenge. This invaded his privacy. It doesn't when there are three people in the room listening to everything

that he says. What she says on --

THE COURT: You're saying that's a waiver?

MS. FENT: Yes. Now, this label on this phone call is just icing on the cake.

THE COURT: If that's Stan Smith's phone.

MS. FENT: Correct. If we have a witness which takes it be stand and says this is, in fact, his phone and that label was there on the day that we made the call. That's icing on the cake.

THE COURT: I agree. I'm just wondering if we had that icing.

MS. FENT: We do.

THE COURT: That's why I asked if you had any other witnesses, but they're not here right now.

MS. FENT: They are not here right now.

MR. O'NEIL: Your Honor, my only position would be that even if there are other people in the room, that does not in and of itself alleviate Mr. Dunn's right to privacy.

It could be people that only if you made any attempt to keep his conversation private, regardless of whether or not there's other people in there.

It's not -- it's not impervious. That's destroyed by the other people even in the room, even if he is making an additional -- there are other attempts.

THE COURT: But he says they were close by.

MR. O'NEIL: I don't think his testimony was that they were close by. I think he testified that they were in the room. On direct, he testified that he did not intend them to hear what he was saying.

THE COURT: Well, it's not -- it's not like --

MS. FENT: Here, Your Honor, I'll pass this up.

THE COURT: As the old song goes across a crowded room. There is a police station, officers, a private office with three people in it. I would at leasts assume they were within ear shoot.

MR. O'NEIL: The State --

THE COURT: And I'll ask if they take the position his waiver was a right to privacy.

MR. O'NEIL: Your Honor, yes, even if they overhear what he was saying, testify as to what they overheard him say. They actually recorded --

THE COURT: Clearly, they can overhear what he said.

MR. O'NEIL: I think the actual recording is still protected by the fourth amendment and federal law wire tapping. He was not aware it was actually being recorded. Since it's wiretapping, neither party is consenting to the recording of the phone conversation.

THE COURT: What about his admission that the mother knew or suspected?

MR. O'NEIL: Your Honor, you have to hear from the mother. I actually heard the conversation already. That discussion from the mother does not come at the very beginning of the conversation. It comes at the very, very end of the conversation.

THE COURT: I think you're right. I probably want to hear it.

MR. O'NEIL: They may be listening to this, yes. Your Honor may need hear the conversation to ascertain when that was said.

THE COURT: How long is that?

MR. O'NEIL: About three minutes.

MS. FENT: Eight minutes.

THE COURT: All right.

MS. FENT: And I can have a witness here first thing in the morning regarding that, that label on the phone since we just were handed this motion, trying to get it as fast as we can.

THE COURT: Well, I understand.

MS. FENT: But I can have that witness available. The other way, I can -- do you want to -- it's on a .wav file. Do you want me to email you, or would you like to just -- I can play it on the laptop, the phone call itself?

THE COURT: As long as I can hear it. What, on a

wave?

MS. FENT: Well, A file. I can e-mail it to Brett, and you can open it up then on your --

THE COURT: Is that sort of like the cloud?

MS. FENT: It's going to come to you on a .wav.

MR. O'NEIL: .wav is just a title, a type of music file.

THE COURT: So you're saying I can listen to it here?

MS. FENT: Correct. I can e-mail it if you wanted to --

THE COURT: Huh?

MS. FENT: -- listen to it, or I bring my laptop up to you right have.

THE COURT: Well, if we play it here. Now, I don't know about her. Huh?

MS. FENT: Okay.

THE COURT: She said it's best.

MS. FENT: Our e-mail apparently is not working in the courtroom. I'll just bring my laptop up there.

THE COURT: What do you need it to be?

THE COURT REPORTER: I need it to be on a CD so I can mark it as a Court's Exhibit.

MS. FENT: I did that.

(WHEREUPON, Court's Exhibit No. 3 was marked for identification only.)

(Whereupon, the phone call was played for His Honor.)

THE COURT: Your client is in custody? He is in custody?

MR. O'NEIL: Yes, Your Honor.

MS. FENT: Your Honor, if I may, addressing some of the things that opposing counsel brought up was Investigator Mauldin testified you can hear. There's no place you can go in this office and not hear the conversation.

In listening to the phone call, he is talking in a very loud voice, and at certain parts, he stops to ask the law enforcement officers in the room a question and then to go back. So he's not trying to whisper or hide what he's saying.

In fact, what it seems like he's trying to do is further, you know, tell this story and try to get the story more -- some type of credibility that he is sticking with it, like I tried to tell them this, mom. You know, I tried to say this.

Then she says, you know, "Why didn't you call me earlier?" He never said, "I tried to. I told them I wanted to. They wouldn't let me."

He said, "I wanted to call you just now to tell you what was going on." So I think --

THE COURT: You're saying there is nothing more

inculpatory than his statement contained on this recording?

MS. FENT: Nothing more inculpatory meaning...

THE COURT: Nothing more revealing about the case other than what he's already told you.

MS. FENT: Right. It's pretty much consistent. Everything that he says on this phone call is pretty much consistent with what he said already in the car to the police station in the written statement.

Essentially, he's trying to kind of feel out his story to his mom --

THE COURT: Oh, okay.

MS. FENT: -- to see if she, you know, buys it, but it's consistent with what she already said in the car and in the written statement.

THE COURT: Well, how about that Mr. O'Neil? I mean, what on this recording is new evidence that the State could use to convict your client if they -- the statement is allowed to go into evidence, I mean, the recording?

What does it say on there that he doesn't say to the police officer, allegedly to the police officer in the car or that he says in the written statement?

MR. O'NEIL: I'm not aware of anything new that he says on the recording that's not already a part of his witness statement.

THE COURT: Okay. Well, I think -- go ahead.

MR. O'NEIL: I guess my argument mainly would be a witness statement, whether or not that was -- whether or not a voluntary waiver of rights remains true to his written statement.

I think the State alleges essentially two, two instances, where they gave Mr. Dunn his Miranda warnings. One orally in the car.

THE COURT: Which he disputes.

MR. O'NEIL: Which he disputes. There's no other witnesses, no independent statute. That's just a credibility, Your Honor, to judge between the defendant and Investigator Mauldin.

As it relates to the written waiver, I think the only independent evidence of when the written waiver was given was the date and time on the waiver except in comparison to the statement.

The waiver -- his time, although 11:38 by Investigator Mauldin, the statement is timed at 11:34, about four minutes earlier. By their own time indications given on the statement by the investigator, the waiver is -- the timed waiver is later than the actual statement from the officer's own testimony starts.

I would ask that the witness statement be suppressed because the waiver of the written statement, according to

them, that all the time after the statement was given, after the statement started.

THE COURT: How about that, Ms. Bodman?

MS. FENT: Well, I don't think there is an issue with -- as Investigator Mauldin described, as he pulls up a template for this statement form on his computer, and he pulls up the template. And for us to believe that Mauldin is lying about taking --

THE COURT: Oh, I thought he admitted it.

MS. FENT: Well, I'm -- I'm not done with my -- for us to believe that Mauldin is lying; that he took the entire statement and then went back and gave the advice of rights, you'd have to believe that he took that entire statement in less than four minutes.

So he takes the whole statement and then says oh, yeah, I need to give you your advice of rights. What he probably does is pulls up the template form, puts in the time, and sits -- before he actually starts taking a statement, will you give me a statement, question and answer, gives him his advice of rights.

You know, so in that four minutes of pulling up the template, talking to him, he then starts giving him the advice of rights, has him acknowledge the advice of rights, waive it. Then he turns and starts giving a statement.

He said emphatically that he did not take his statement, meaning question answer, until after the advice of rights. So it's just merely a clerical...

THE COURT: Scribner's error?

MS. FENT: Rights. It's not -- I mean, he doesn't put -- it's not like at the conclusion of the written statement, he says this statement was concluded at 11:34, and then you have an advice of rights starting at 11:38.

It's that the process is starting 11:34. You know, that template is pulled up. He puts in the time. 11:38 he starts the advice of rights, gives him the advice of rights, then turns back and starts taking the question answer statement.

THE COURT: All right.

MR. O'NEIL: Your Honor, Investigator Mauldin is free to testify on the stand that there was a scrivener's error. There's been no testimony in the record that it's a scrivener's error.

The only testimony that's in the record is the statement unequivocally from Investigator Mauldin's testimony started at 11:34, and the advice of rights is clearly timed at 11:38.

THE COURT: Well, that's what he said is on the advice of rights form.

MR. O'NEIL: Yes, sir.

THE COURT: That's not when he said he did it.

MR. O'NEIL: Yes, Your Honor.

THE COURT: At least according to my recollection.

MS. FENT: Right. He testified he, in fact, gave the rights before taking the statements. The defendant himself doesn't say that he gave some statement before being given his rights.

He says, "No. I was given those rights. I waived my rights, and I gave that statement." The only thing he says is, "I was asking to call my mama," and Investigator Mauldin says that did not happen until after the statement was given, and then he asked and we gave him a telephone with three law enforcement officers in the room to call his mama.

THE COURT: All right. Anything further?

MR. O'NEIL: No, Your Honor.

THE COURT: All right. With regard to the first statement that was given at the scene of the arrest, sometime in the morning of June 2nd, 2011, the officer says nine a.m. The defendant says ten a.m. -- we're not going to quibble about time -- I find by a preponderance of the evidence that before the alleged statement was obtained from the defendant, the defendant was fully advised of his rights under the 5th and 6th amendment of the constitution of the United States.

The defendant was advised of the constitutional elements required by Miranda v. Arizona follows, and the defendant was advised prior to the interrogation that he had the right to remain silent.

The defendant was advised prior to the interrogation, even though this is a voluntary statement, not an interrogation, but he voluntarily gave a statement.

After being advised of his rights, he waived his right to remain silent and made a statement that such statement could and would be used against him in a court of law and the defendant was advised he had the right to employ or select an attorney of his choice, but if he did not have the money, funds or resources, the court would appoint and provide an attorney for him if he so desired without cost or expense to him, and that he had the right to have his attorney present with him at all times during all interviews.

The defendant was advised that he had the right to consult with his attorney before the interrogation, before any interrogation, and he was advised that he had the right to interrupt and terminate the interrogation at any time or that he could stop making the statement at any time.

He had the further right to stop answering questions at any time, and that if he desired an attorney, the --

any interrogation or any questioning would cease until an attorney was provided for him, and he would be given the opportunity to consult with his attorney prior to any further investigation.

The defendant knowingly and intelligently waived his rights under the 5th and 6th amendment of the constitution of the United States and the constitutional safeguards required by Miranda v. Arizona and the statement obtained or overheard by Investigator Mauldin was freely and voluntarily given without duress, without coercion, without undue influence, without reward, without promise or hope of reward, without promise of leniency, without threat of injury or without compulsion or inducement of any kind and that such alleged statement was the voluntary product of the free and unconstrained will of the defendant. I find that with regard to the voluntary statement given at the scene of the arrest to Investigator Mauldin.

I further find that with regard to the written statement, prior to any investigation or interrogation, the defendant was given his advice of rights for which -- at which time he signed acknowledging his rights to remain silent and all constitutional guarantees provided by Miranda v. Arizona, that following that advice of rights, the interrogation took place and that the statement given

by the defendant at 1:14 a.m. by -- in front of Investigator Mauldin at the Richland County Sheriff's Department was the free and voluntary statement of the defendant and will be submitted to the jury.

Now, this is -- I find this by a preponderance of the evidence. Of course, you understand that the -- ultimately, it's up to the jury to decide whether or not this statement was free and voluntary, but I find so by a preponderance of the evidence.

With regard to the telephone conversation, I would rather, for the record, wait until you can verify this. I mean, this could be my phone as the phone from which the defendant made the -- made at this Exhibit 3 conversation.

I don't feel that the acknowledgment by the mother some several minutes into the conversation was sufficient to advise the defendant that the calls would be required -- I mean, will be recorded, which would, in effect, constitute a waiver to continue with the call.

I don't find that there was very much of an inculpatory nature deduced or produced on this tape recording.

I'm not sure, other than some offensive language, that it does anything to further the State's case. It's certainly not exculpatory either, since he had already given a statement to the facts that he relates to his

mother.

His mother certainly was aware that the phone call was being recorded. That in and of itself may waive his -- the expectation of privacy, plus the fact that there were officers in the room.

The room is not particularly well described at this point, but I don't know the size of the room. There are three officers who were present in the room while the defendant was talking to his mother.

It does appear that he was speaking in somewhat of a loud voice; that that in itself may constitute a waiver of his right to privacy and certainly points in that direction.

All calls recorded to his mother telling him to continue to talk in front of all the witnesses appears more to be a -- an explanation to his mother while this was all taking place, why he felt that he needed to explain it to his mother before someone else explained it for him.

So I'll reverse a ruling on that until I hear from what the State has indicated will be a further witness to confirm that this is, indeed, the phone shown in Exhibit 3 from which the defendant made his phone call to his mother.

All right. That concludes the hearing, the Denno

hearing, and the hearing on the defendant's motion to suppress a recorded conversation. The main motion for the defendants -- I understand is his motion to suppress the DNA evidence and derivative evidence from a prior seizure of that DNA; is that correct Mr. O'Neil?

MR. O'NEIL: Yes, Your Honor.

THE COURT: All right. So we're done on that issue.

MS. FENT: The State --

THE COURT: By the way, we're not going to get a jury this afternoon.

THE CLERK: Just what time do you want them back in the morning?

THE COURT: Nine o'clock.

THE CLERK: Nine o'clock, yes, sir.

MS. FENT: The State calls --

THE COURT: The murder jury hadn't been selected yet.

MS. FENT: John Carwell.

THE COURT: Your witness.

JOHN CARWELL, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your full name for the record, please.

THE WITNESS: John Lewis Carwell, Jr.

DIRECT EXAMINATION:

BY MS. FENT:

Q With whom are you employed?

A Richland County Sheriff's Department.

Q And in what capacity?

A I'm assigned to the narcotics division at this time.

Q Okay. In September of 2010, what division were you working?

A I was with the burglary unit.

Q Okay. And I'm going to draw your attention to case number 1009205220 regarding a burglary or burglaries. Were you in charge of that investigation?

A The following day I was.

Q Okay.

A I was not in the office the actual day of the incident.

Q In relation to that burglary, did you come in contact with the defendant, Edward Dunn?

A I did.

Q And can you briefly, briefly, tell us why you came in contact with him?

A I was advised of the situation, a burglary. Deputies were dispatched to an address where a witness observed two males taking stuff to a vacant house, stolen property, just TVs, stuff that would be taken from a burglary.

Deputies were able to arrive, found the property

behind the house. At the time, the burglary had not been reported. Investigator Johnson actually went out to the scene and spoke with Mr. Dunn. He didn't have any charges at the time, so he released him to a parent because he was a juvenile at the time.

The following day I did petitions, and he was brought to headquarters on September 21st is where I spoke to him in my office.

Q So essentially, there was a burglary not reported. An officer made contact with the defendant and someone else with some of that property?

A Yes.

Q Okay. And then later you find out there was a burglary, and so Edward Dunn is a suspect, then, in that burglary?

A That's correct.

Q Okay. How did you make physical contact with Edward Dunn?

A Deputies addressed him and they brought him to me at headquarters.

Q And did you have a conversation Edward Dunn?

A That's correct.

Q Did you get, I guess, a statement or anything from him?

A I advised him of his rights, and he did not want to

provide a statement.

Q Okay. Did you get any other evidence from him or her making a request of him at that time?

A Yes. I also read him a DNA consent form, and he did sign that. He did provide a DNA swab.

(WHEREUPON, State's Exhibit No. 4 was marked for identification only.)

BY MS. FENT:

Q I'm going to show you what's being marked as State's Exhibit No. 3. Do you recognize that?

A I do.

Q What is that?

A A DNA consent form.

Q A particular DNA consent form?

A The Richland County Sheriff's Department.

Q And tell us how or when are this was filled out.

A It was filled out on September 21st, 2010 at headquarters, 5623 Two Notch Road. I printed Edward Dunn's name, read it asking for a consent for a swab from his mouth, and he signed it and I witnessed it.

Q On that same day, is that -- or same time, did you give him his advice of rights?

A Yes, I did.

Q And he acknowledged all of his rights?

A He did.

Q And he waived them?
A Yes, he did.
Q Okay. Were you in here when the defendant testified?
A Yes.
Q And he acknowledged this advice of rights on 9/21/10?
A That's correct.
Q In relation to the DNA consent did you make any promises to him about if he provided a DNA sample something would happen?
A No, I did not.
Q Did you threaten him in any way?
A No, I did not.
Q Coerce him in any way to give consent?
A No, I did not.
Q Did you give him any type of qualifications about how this DNA sample would be used, kept, maintained, what it would be compared against?
A No.
Q And did you then actually get a sample from the defendant's mouth?
A Yes, I did.
Q In the form of -- you said, "I swabbed it," a Q-tip swab?
A Yes.
Q Do you see that person you got that swab from in the

courtroom today?
A Yes, I did.
Q The person that consented to provide you that sample?
A Yes, I did.
Q Can you point to him and describe where it is, what he's wearing?
A He has got a red shirt on sitting in the middle of the two attorneys at that desk over there.
THE COURT: For the record, he indicated the witness identified the defendant.
BY MS. FENT:
Q Did he understand what you were asking of him in terms of providing the DNA sample of the buccal swab?
A Yes, I did.
Q Did he appear to be under the influence of any drugs or alcohol?
A No.
Q No further questions at this time.
THE COURT: Is there a waiver?
MS. FENT: I'm sorry, statements?
THE COURT: Cross-examination?
MR. O'NEIL: Yes, Your Honor.
THE COURT: No. I thought there was a separate waiver. This is a consent to --
MS. FENT: There was an advice of rights.

THE COURT: You didn't offer that?

MS. FENT: I did not. The defendant acknowledged it when he took the stand.

THE COURT: All right.

CROSS-EXAMINATION:

BY MR. O'NEIL:

Q Investigator Carwell, you said that Mr. Dunn executed that advice of rights on September 21st, 2010?

A Yes, sir.

Q Did that advice of rights mention anything about DNA samples?

A It's two separate forms.

Q So the advice of rights had nothing to do with giving DNA samples?

A That's correct.

Q Totally separate from --

A That's correct.

Q -- giving a DNA sample, giving the DNA sample?

A Right.

Q And when you give them that advice of rights, that was asking whether or not you wanted to speak with law enforcement in the case?

A Right.

Q He waived his right, declined, and made a statement?

A That's correct.

Q You were investigating a burglary, I think, at the Elmtree address?
A Yes.
Q ?
A That's correct.
Q Okay. And there was some DNA samples taken from that incident location?
A Correct.
Q Correct? And you asked Mr. Dunn to give you a sample of his DNA, correct?
A Right.
Q You asked him to give you a sample of his DNA to compare it against the DNA samples you had from the address?
A Correct.
Q Okay. And you never mentioned from Mr. Dunn that you were going to put this DNA sample in this Richland County DNA database?
A No.
Q You never told him that at all?
A No, I did not.
Q You are aware that later on, Mr. -- the sample Mr. Dunn gave you did not match any of the items that were ascertained on -- that were located at .
A Correct.

Q If I could -- permission to approach, Your Honor?
If I can get this mark as a Court's Exhibit here. This is the DNA analysis. I just want to make sure you're familiar with it.
(WHEREUPON, Court's Exhibit No. 4 was marked for identification only.)
BY MR. O'NEIL:
Q Investigator Carwell, I'm going to show you what's Court's Exhibit 4. Essentially, that's the DNA report from the burglary at that states that the buccal Mr. Dunn gave was compared against the items that were involved in the burglary at , and those two did not match?
A That's correct.
Q So and after you -- you realized after Mr. Dunn gave you that DNA sample, that DNA sample right there, the profile, is put on the record at the Richland County forensics lab?
A Yes.
Q That -- the same sample he gave in this case was kept on file in Richland County's in-house lab?
A Correct.
Q And you never mentioned to Mr. Dunn that was going to happen before he gave you that sample?
A No.

Q How old was Mr. Dunn when you gave that consent?
A He was 16.
Q He was 16 at that time. What's your common policy when it comes to minors at age 16 when it comes to giving a statement when it relates to consent and Miranda waivers?
A Advise them of their rights.
Q Do you have any cut off in those situations where you have to have --
A It's two hours.
Q I apologize. You have to have a minor -- you have to have a parent involved in any one of those situations?
A No.
Q No matter what the age of the person?
A You don't have to have a parent there.
Q I'm asking do you have an internal policy as to when you get parents involved when it comes to a suspect?
A No.
Q If the suspect was, you say ten years old, would you have the parents involved before you have a consent form?
A Yes.
Q So is there a sliding scale, or is there no kind of precise form to get the parents involved?
A I don't recall.
Q Okay. Do -- when victims -- when you obtained

samples from victims in cases, do you use the same consent form?

A Yes.

Q Are those victims' DNA profiles stored in Richland County's database?

A Actually, a victim doesn't have to sign a consent form.

Q But if the victim does sign a consent form, is their profile stored in the Richland County DNA lab?

A No.

Q No. Okay.

Beg the Court's indulgence, Your Honor.

(Pause).

At the time Mr. Dunn gave this consent, was he under arrest at that point?

A Yes.

Q What was he under arrest for?

A For the burglary.

Q For the burglary at Elm Tree Road?

A Yes.

Q He was at headquarters?

A Yes.

Q And he was not free to go at that point?

A That's correct.

Q Beg the court's indulgence.

(Pause).

That's all I have, Your Honor.

REDIRECT EXAMINATION:

BY MS. FENT:

Q He was asking you questions about did you tell the defendant, you know, what was going to happen to the swab? Did you say anything at all about what would happen to his swab after it was compared against evidence?

A Just told him it would possibly help him in this case or hurt him. It could implicate him or clear him.

Q With regard to your investigation?

A That's correct.

Q Was there any promise about what we would do with his DNA swab --

A No.

Q -- his profile after the conclusion of this investigation?

A No.

Q That we will make sure we destroy it if it doesn't match to anything or otherwise?

A No, no promises.

Q No promises.

No further questions.

MR. O'NEIL: Your Honor, just briefly.

RECROSS-EXAMINATION:

BY MR. O'NEIL:

Q So I'm clear, the point of you taking his DNA September 20th, 2010 was compared against the items that you had at the burglary.

A And to enter into any database.

Q Did you tell him that?

A No.

Q Okay. You told him it would be compared against the address?

A Correct.

Q That was going to use to compare this to ?

A Yes.

Q There was never any mention of this DNA evidence?

A No.

Q Okay.

THE COURT: Anything further?

MS. FENT: No.

THE COURT: All right, sir. You may come down. Next witness?

MS. FENT: No further witnesses.

MR. O'NEIL: One more question on this issue.

THE COURT: Okay.

MR. O'NEIL: Defense calls Edward Dunn.

EDWARD DUNN, having been previously

duly sworn, testified as follows:

DIRECT EXAMINATION:

BY MR. O'NEIL:

Q Edward, I still have a few questions for you.

A Yes, sir.

Q Did Investigator Carwell, back in September 2010, ever tell you that they were going to put your DNA profile on -- inside the DNA lab here in Richland County?

A That, no.

Q Did they ever tell you they were going to store your DNA?

A No, sir.

Q Had they told you they were going to store your DNA, would you have given them your DNA?

A No, sir.

Q Okay. Let's fast forward here. You -- in the investigation of this case, with you arrested at Lavonne Arrington's home?

A Uh-huh.

Q Did the police tell you that they had a match in the DNA?

A Yes.

Q Okay. Had they not told you they had a match in your DNA, would you have given the statement you gave to Investigator Mauldin?

A No, sir.

MR. O'NEIL: Okay.

No further questions, Your Honor.

THE COURT: Cross?

CROSS-EXAMINATION:

BY MS. FENT:

Q Had they not told you that there was a DNA match to the buccal swab, could you have possibly told them, "I wasn't there, and I don't know what you're talking about"?

A Excuse me.

Q You would have said that you weren't even at the house, right?

A Yes.

Q They didn't tell you that they had DNA on the washcloth.

A Yeah.

Q You would have just said, "I was never there"?

A Yeah.

Q Okay. The advice of rights -- or excuse me, the waiver, State's Exhibit No. 4, the consent to search for DNA evidence, is that your signature at the bottom?

A Yes, ma'am.

Q Okay. Giving Investigator Carwell consent to put a Q-tip swab in your mouth --

A Uh-huh.

Q -- and to take your DNA sample?
A Yes, ma'am.
Q Okay. Is there anything in this that says that it's only going to be for this particular case?
A (Pause).
Now, what's the question again?
Q Does it say that this sample is being taken just for Investigator Carwell's comparison, just for the case back in September of 2010, not this case here today?
A No, ma'am.
Q Okay. Does it say anywhere in this consent to search that they're going to destroy it after they do their comparison?
A No, ma'am.
Q And that is your signature?
A Yes, ma'am.
No further questions.
MR. O'NEIL: Briefly, Your Honor.

REDIRECT EXAMINATION:

BY MR. O'NEIL:
Q Just so we're clear here, Investigator Carwell told you that he was going to use the swab you gave him to compare to the burglary on Elm Tree Road, correct?
A Yes, sir.
Q Did he tell you he was going to use it to compare it

to anything else?

A No, sir.

Q I want to make sure I'm clear on this. It was Investigator Carwell who told you that the reason that they wanted your DNA to compare to the burglary on ?

A Yes; yes, sir.

Q And that's specifically the reason he gave you as to why he was asking for your consent for the DNA?

A To compare it to that case.

Q Compare it to that case?

A Yes, sir.

Q And that case alone?

A Yes, sir.

Q Okay. Now, I want to make sure I'm also clear on this point, too. When it comes to the investigation of this case, had the police not told you that they had your DNA match at the scene, would you have given them a statement?

A No, sir.

Q So I want to make sure I understand this correctly. The only reason you gave them this statement is because they told you they had a DNA match?

A Match, yes, sir.

MR. O'NEIL: Okay. No further questions, Your Honor.

THE COURT: All right. You may come down. Thank you very much.

MR. O'NEIL: Your Honor, that's all the witnesses I have.

THE COURT: Anything further?

MS. FENT: No, Your Honor, not on this issue.

THE COURT: All right. I'm going to review Mr. O'Neil's motion and brief this evening. I need to look that over.

MR. O'NEIL: Your Honor, I just have one additional point in addition to my brief.

THE COURT: Yes.

MR. O'NEIL: I passed up the McCord case, the case that the State relies upon. I think it's important in this case, and I need to point that out here.

THE COURT: Go ahead.

MR. O'NEIL: The McCord case in footnote one, they cite the consent form that the federal government used.

THE COURT: Yes.

MR. O'NEIL: And the important distinction about that cite is that form had the language that the federal government was free to use that DNA evidence in any -- Your Honor has the case in front of you. You can see the language. I can't remember the --

THE COURT: "I understand this evidence may be used

against me in court and that I have the right to refuse to provide this sample. No threats or promises have been made to induce me to give this," right?

MR. O'NEIL: Okay.

THE COURT: And then back on --

MR. O'NEIL: If you look at the footnote at the very end of the case here --

THE COURT: All right. I'm looking at it. "I hereby consent to provide the violent crime task force officers blood samples for whatever purpose the violent crime task force may see fit."

MR. O'NEIL: And, Your Honor, that's what I wanted to point out. That form had that additional language that said that they were free to use it for any purpose they see fit.

The Richland County form does not have that language on there. It's very important as to the scope of Mr. Dunn's consent.

The case law clearly -- he has the ability to limit the scope. I think only to limit the scope, the State of South Carolina limits their scope when they told them the reason why they wanted it for this particular reason and this particular reason alone.

THE COURT: It will be on there tomorrow.

MR. O'NEIL: Your Honor, I'm sorry?

THE COURT: It will be on there tomorrow.

MR. O'NEIL: Yes, Your Honor.

THE COURT: All right. Anything further on this issue? I mean, what's the State's position?

MS. FENT: That McCord controls and that essentially once we get it for a legitimate purpose, and that there is no restriction in that purpose, that we are try to compare it.

THE COURT: Well, does the -- you take the position that a 16 year old is capable of giving a restricted use of his DNA and that he should anticipate it will be used in subsequent investigations? Do you have any case law that says that?

MS. FENT: I don't think that there is any difference between him and any adult that gives consent.

THE COURT: You don't?

(There was no response).

You don't?

MS. FENT: I think that his age is a factor just like any other factor goes to advice of rights and waiving their rights and whether or not they understood what was going on, and they made a voluntary -- that his age can be taken into consideration, but he is essentially saying, you know, well, because it didn't end up matching --

THE COURT: Well --

MS. FENT: -- the evidence that --

THE COURT: Wouldn't that be an incentive to give it if he knew he did not participate in the crime; that he knew that the DNA could not match; that he would give it for exculpatory reasons?

MS. FENT: In some cases it may. Who knows what was going on in his mind, but people give it all the time and it ends up matching. You know, it's people that --

THE COURT: I understand. I might be more inclined to give it if I knew there was no way they could have my DNA at the crime scene.

MS. FENT: Right, or that I was there at the crime scene. I know what I touched and I didn't touch, and although I committed the crime, I know they're not going to be able to get any DNA from it.

But you give the consent, you get legitimate legal reasons and you give consent, he could have hit on burglaries that had profiles sitting in the Richland County database that had already happened, and we hit on those.

So you do -- there was no specific thing in this that says we are only going to be comparing it to the evidence in this case and that was it, so we promise that we will only compare to this. Because once he gives this sample and that sample went in, it could have hit to crimes that

already happened.

THE COURT: Notice to the world, here is my DNA.

MS. FENT: Yeah. There is no reasonable expectation of privacy in this profile, once we have it legally and for a legitimate purpose.

THE COURT: And McCord is your only source?

MS. FENT: McCord and all the case law that's cited in McCord.

THE COURT: All right.

MR. O'NEIL: Your Honor, only --

THE COURT: Yes, sir.

MR. O'NEIL: They limit the scope -- when they told him this is why we want -- his understanding was the scope of his consent was for this case and this case only.

The form is in, I grant you that, but Investigator Carwell's own testimony was that we told him we wanted his DNA consent to compare to this particular case. Nothing else.

Mr. Dunn was not even aware of the DNA labs. How can he consent to have his DNA placed in the lab that he didn't even know, first that it existed, and secondly, he was told that this is -- this is going to be the usage of the actual DNA.

If they had -- if the State hadn't narrowed the scope themselves, then the burden would have been on Mr. Dunn to

narrow the scope of his consent to this particular case, and that particular case only, but the State alleges that the scope of their -- of what they were asking for was only for this case and this case alone.

Once they got that, they -- they concede to the scope, and they kept it to compare this case, and on the probable cause that linked Mr. Dunn to a crime in this case was that DNA match.

So his statement, his phone calls to his mother, all those we would ask be suppressed based on this illegal demonetization of his DNA profile.

THE COURT: All right.

MS. FENT: I did mention in chambers that if -- and I believe McCord is strong and is our controlling authority, but if the court was inclined to suppress it, we would then move to have a Schmerber motion, and I have arguments in regard to that.

I can -- we can wait until in the morning, or I can address that if you'd like me to.

THE COURT: Well, in order to -- in this discussion, in order to get a Schmerber order, you have to show the defendant was the most -- most probably committed this crime.

You have to have a showing without the DNA and the witness identification. You might have a hard time doing

that. I don't know.

MS. FENT: Well, actually --

THE COURT: I don't know. There may be other evidence.

MS. FENT: That is actually what I was going to address is Edward Dunn is arrested at the home of Lavonne Arrington.

Lavonne Arrington has his own separate warrants out for him, I think for probation violations or bench warrants. So he is arrested and he is brought down to the Richland County Sheriff's Department, and he is taken to a separate location to the investigator -- to be interrogated by Sergeant Don Robinson.

They don't know -- at that point, Lavonne Arrington has no clue why Edward Dunn has been arrested. He just knows they were all arrested at his house. They are separated, no discussion.

They talk to Lavonne Arrington about his pending burglaries or some cases that are out there. Subsequently, over the next few days Lavonne gets a public defender, is charged.

He agreed to go on a driver around with Sergeant Don Robinson to point out other places that he's burglarized in order for the sheriff's department to close their cases and to help himself out in his own pending charges, still

does not know anything about Ms. Lonsdale being sexually assaulted on May 28th, 2011, doesn't know about Edward Dunn and that situation.

So Lavonne Arrington is driving around with Sergeant Don Robinson. They drive by Ms. Lonsdale's house, and Lavonne Arrington points to it and says, "I burglarized that house on May 21st," which is a week before our sexual assault, "and I did it with Edward Dunn."

So right there putting together -- now, we have another identity of Edward Dunn. We have, you know, the curly hair. We have that he went directly to that drawer saying, "Where is the cash?" That right there would give us -- so it's not just his own statement that leads us to charge.

Separately, what is happening inevitably is Lavonne Arrington was on his direction to giving us Edward Dunn as the suspect.

Now, yeah, we probably would have run Lavonne Arrington's DNA and Edward Dunn's just to make sure that Lavonne wasn't just trying to throw Edward Dunn under the bus to make sure that Lavonne isn't the one that went back the second time and sexually assaulted her, but that whole separate fact pattern gets us to Edward Dunn.

MR. O'NEIL: Your Honor, it's just not getting probable cause on that. Under the State's scenario, all

they would have is that a codefendant in Edward Dunn's current burglaries says that they went there and burglarized this same house a week before then.

Without the DNA profile that they -- that they illegally obtained, there is no DNA to compare it. No DNA to compare to anything, no matter if they -- if they developed him as a suspect.

There is no DNA profile to compare it to other than illegally retaining the one that they have. Even if they get his name, then he doesn't have -- he doesn't -- they don't have anything to run it in the current investigation against other than their illegally obtained DNA. So without that --

THE COURT: No. He -- she is saying that if they swabbed him now, that he had have a comparison with the washrag.

MR. O'NEIL: I agree with that, but the probable cause swab now, the only thing they have, which was just said, is that Lavonne Arrington said he burglarized this the week before, and the individual said --

THE COURT: She said, he said, she said Arrington said your client did it with him.

MR. O'NEIL: A week before.

THE COURT: Yeah.

MR. O'NEIL: But that --

THE COURT: Not for the date of the event.

MR. O'NEIL: Yes, sir.

THE COURT: That he was your point.

MR. O'NEIL: The fact he burglarized this home a week before, allegedly, from Mr. Arrington is not probable cause that he burglarized it a week later.

THE COURT: All right. Well, that's another issue. That's a Schmerber issue. Let me look at this one first.

MR. O'NEIL: Yes, Your Honor.

THE COURT: All right. Anything further?

MR. O'NEIL: No, Your Honor.

THE COURT: Mr. O'Neil, does that complete your --

MR. O'NEIL: It does, Your Honor.

THE COURT: -- pretrial motions?

MR. O'NEIL: Yes, sir.

THE COURT: All right. I'll let you know in the morning.

MR. O'NEIL: Yes, Your Honor.

THE COURT: Be prepared to move forward at nine o'clock. Stand at ease until nine o'clock.

(Whereupon, There was an overnight recess).

THE COURT: All right. State ready to proceed?

MS. FENT: We are, Your Honor.

THE COURT: Is the defense ready to proceed?

MR. O'NEIL: Yes, Your Honor.

THE COURT: Let's revisit the issue of the phone call from the -- made by the defendant from Richland County Sheriff's Office headquarters.

MR. MATTHEWS: Yes, Your Honor. We're prepared to call a witness to identify the phone.

THE COURT: All right. Call your witness.

MR. MATTHEWS: The State calls Kevin Isenhoward.

THE BAILIFF: We don't have a clerk.

KEVIN ISENHOWARD, after being duly sworn, testified as follows:

THE COURT: Have a seat. State your full name for the record.

THE WITNESS: Kevin Scott Isenhoward.

DIRECT EXAMINATION:

BY MR. MATTHEWS:

Q Good morning, Sergeant Isenhoward. Can you please tell me where you're employed?

A The Richland County Sheriff's Department.

Q And in what capacity?

A I'm a sergeant in the major crimes unit, in CID.

Q And what are your duties?

A I supervise the robbery unit, and we have some additional duties, death scene, death investigation, homicide investigation, various major crimes.

Q In June of 2011, what were you at the sheriff's

department?
A In June of 2011, I was a sergeant of the Major Crimes Unit.
Q And did you have a chance to participate in the investigation of Edward Dunn during June 2011?
A Yes, briefly.
Q And what was your involvement on specifically June 2nd, 2011?
A I was present during a phone call he made, I believe, to his mother. It was Investigator Mauldin's case. I was simply present to hear some of the conversation.
Q And you were able to overhear the defendant's portion of this conversation?
A Yes. You could hear what he was saying, yes.
Q I'm showing you what's been marked as State's Exhibit 3. Do you recognize that?
A This is obviously in our CID unit. With all have the same phones. They are Cisco phones. This particular phone is extension 3037. I recognize that as belonging to my supervisor, Major Stan Smith, and I can see his office in the background.
Q And what's the significance of that phone with regards to Edward Dunn?
A It's the phone that he was -- he made the call on.
Q And is there anything specific on that phone noting

anything about recording of calls?

A Yes. All of our phones have a sticker that says, "All calls recorded" just to notify the person using the phone that the calls are recorded.

Q And is that the same way in which the phone looked on June 2nd, 2011?

A Yes.

MR. MATTHEWS: Thank you. I have no further questions.

THE COURT: Cross-examination?

MR. O'NEIL: Thank you, Your Honor.

CROSS-EXAMINATION:

BY MR. O'NEIL:

Q Investigator, at what time did you get in the room as relates to when Mr. Dunn was using the phone?

A I don't remember specifically what time. I remember bits and pieces of it. He was speaking rather loudly, and I remember some comments he made about masturbating.

Q I guess what I'm concerned about was were you in the room before or after Mr. Dunn had started using the phone?

A I can't -- I can't say.

Q So you can't say you were in the room before he picked up the phone?

A No.

Q Do you know who dialed the number?

A No.
Q Okay. Do you know at the time Mr. Dunn picked up the phone, this sticker that says "All calls are recorded," you don't know whether or not that was visible at the time Mr. Dunn picked up the phone?
A Oh, it's visible. I mean, you have to stand in front of the phone to use it.
Q But you don't know whether anything was obstructing this sticker at the time Mr. Dunn picked up the phone, do you?
A I couldn't tell you. You don't typically lay anything over the phone. Sometimes, you know, somebody will ask, "Give us a number." We'll dial it because we have to dial a nine to get out to an external line.
Q But that phone is on the desk in Stan Smith's office?
A Yes.
Q So you don't know whether -- at the time Mr. Dunn -- you can't testify whether or not this sticker was visible to him at the time you picked up the phone.
A I can't say. I can say that the sticker has been on there the entire time.
Q But you can't say that it was visible for Mr. Dunn when he picked the phone up?
A I can only say that the sticker has been on there since we started with the phone. I recognize the phone. I

used it quite frequently. I recognize that extension. That's it. That's what I know.

Q So I guess the answer to my question would be no, you cannot say that this sticker was visible to Mr. Dunn.

A I can't say that it was covered, not covered. I can't say that.

Q You can't say that one way or the other.

A No.

Q You don't know. No knowledge about whether or not that sticker was visible to Mr. Dunn when he used the phone?

A I can't say what he saw.

Q Yeah.

A I can only say the sticker is on there.

MR. O'NEIL: Okay. No further questions.

THE COURT: Redirect?

MR. MATTHEWS: No, Your Honor.

THE COURT: All right. You may come down, sir.

THE WITNESS: Thank you.

THE COURT: All right. Based on that testimony and the reason given yesterday when I felt the phone conversation should be admitted, I will admit the evidence, the tape recorded phone conversation or CD phone conversation between the defendant and his mother.

I believe that the testimony is pretty clear that the

warning was on the phone. It was in the police headquarters.

There's no factually accurate indication that it was obstructed in any way, and the fact that -- as I said yesterday, in addition to the fact that the defendant was taking loudly and obviously didn't have any expectation of privacy, if he had, he would have asked for it.

The fact that his mother reminded him, although late in the conversation, that the police, law enforcement may be listening to what he had to say to her and what she said to him, all of which, taking the totality of the circumstances, indicates to me that he waived his -- whatever right to privacy he had, and he probably had -- had he elected to do so would have made it a private conversation his mother, but it wasn't done. I will allow the contents of the recording to be introduced into evidence.

Now, with regard -- any further evidence or discussion about the admission of the DNA evidence and the defendant's position that he gave the DNA sample only for a specific purpose and the use of the sample in this prosecution exceeded the scope of his consent when he gave the sample on September 21st, 2010?

MS. FENT: Yes, Your Honor. We have a couple of additional things to bring to the Court's attention. I

mean, one is, as I said yesterday, we are standing by McCord and believe that is solid ground for its admissibility.

The defendant himself said that no one told him that it would be destroyed. No one specifically said what would happen to this sample after it was just compared to this particular evidence, and the consent to search form itself doesn't make any qualifications about what's going to happen to that sample.

In any investigation, any investigator, when asking for consent for consent for a swab, is asking about a particular case and the need to compare it against particular items.

Law enforcement doesn't just go out into the public and randomly ask people to consent to provide a sample so maybe someday we can build up our database and have more people to compare it to. There was never any discussion about a case. There was never ever any promise that it could be used just for that purpose.

In thinking about this last night, another solid theory, Your Honor, is inevitable discovery and for two reasons: One is on April 24th of 2007, he was adjudicated as a juvenile for an assault of a high and aggravated nature.

As a result of that adjudication on May 10th, 2007, a

swab was taken from his mouth and placed into CODIS, the national database. So that's sitting there, so if Gray Amick -- in our Richland County Sheriff's Department, we get a case, we don't have any suspects, that washrag goes to Gray Amick. He analyzes that washrag, and he gets a profile from that washrag.

If we didn't have his sample, if we didn't already have it in the Richland County database because of the prior burglary in 2010, what Gray Amick would have done was put that profile into CODIS --

THE COURT: Was that ever done?

MS. FENT: I'm sorry?

THE COURT: Was that ever done?

MS. FENT: No, it was never done because he got hit on our own database. So inevitably, Gray Amick would have hit -- because if we didn't have a suspect, we didn't have his profile on our own, he would have entered that into CODIS, and that that would have hit on that profile. That profile has been sitting there since 2007 prior to the consent in 2010.

So pursuant to, I think one of the most recent cases that came out about inevitable discovery is State vs. Duane Herring. So we're solid on inevitable discovery there.

The other way of inevitable discovery is that if John

Carwell, Investigator John Carwell in that 2010 case, if the defendant had not consented and said he would consent to provide a sample, he would have went and gotten a search warrant based on probable cause.

You have got him around the corner from the house with the stolen property. We're always going to go the easier route and say, "Hey, will you consent to provide the sample?" If the defendant would have said no, Carwell would have gotten a search warrant, and that sample would have gotten in that direction.

In McCord, they even talk in McCord about that if the sample is gotten from, you know, for example, a search warrant or a Schmerber. So when you're talking about search warrants and Schmerbers, you're talking about a judge who is only providing -- you know, they're saying you have P.C. in this case. You have P.C. in this case. You were allowed to go take his swab to compare it in the evidence that you have in this particular case, but under McCord, as long as it's legitimately gotten, even if Your Honor only had that case in mind, we can use that swab. We can share it with other law enforcement agencies around the country because that was legitimately gotten.

So McCord in and of itself, the consent on the 2010 and inevitable discovery on the fact that he is in CODIS from 2007 prior to this, and then also that if he had not

consented in the 2010 case, John Carwell would have gone and gotten a search warrant.

Then, additionally, as I said, is the Lavonne Arrington's inevitable discovery is separate not knowing that we had him as a suspect in the sexual assault.

Lavonne Arrington said, "Hey, I burglarized this house, Indira Lonsdale's house on May 21st, a week before the rape." So that would have evidently gotten to Investigator Mauldin.

He would have said, "Hey, at least I've gotten some kind of suspect. Let me go get -- you know, we have Lavonne Arrington saying he previously burglarized this house with this guy."

The person, obviously, knew what was in the home, went directly to the dresser, and at least we have got the fact that the victim could say that the suspect that sexually assaulted her had curls.

It's circumstantial but it's P.C. P.C. is not beyond a reasonable doubt. P.C. is P.C., and he could have gotten a search warrant or a consent, gone to Edward Dunn right there just on that information and gotten a swab because P.C., you know, some cases don't develop out to beyond a reasonable doubt. At least he would have had P.C. to go get that swab and see is this our rapist or not.

THE COURT: All right.

MS. FENT: So there are multiple theories that we're on solid ground letting that swab in.

THE COURT: Mr. O'Neil?

MR. O'NEIL: Your Honor, I guess I'll address Ms. Bodman's three assertions of inevitable discovery. The first problem with her theory of inevitable discovery as it relates to Mr. Dunn being in CODIS is that there is no competent testimony in front of this court at this time that he is in CODIS.

I mean, Ms. Bodman can speculate as to what she thinks is in CODIS, but as it relates to this motion and this hearing, there is no witness to testify that he has been convicted by -- that his DNA was taken in 2007.

There is no testimony from Gray Amick that he -- that he would have had searched CODIS even, checked on it had there not been a sample in the Richland County database, the lab, that independent lab.

That testimony is absent from the record at this point. There is nobody. There is no witness who is going to testify that Mr. Dunn's DNA profile was in CODIS and/or had Gray Amick, the Richland County lab investigator, not found any matching profiles.

He would have then turned to CODIS to search for a profile. I think that testimony is not impervious. It

cannot be considered.

Secondly, as it relates that it's inevitable discovery because if Mr. Dunn had not consented to a DNA sample, then they could have gotten a search warrant for the DNA sample in 2010 case.

That's irrelevant to this inevitable discovery because what we're concerned about is whether or not they illegally retained this DNA, not -- not how they -- how they procured the DNA in the first place.

It's irrelevant that they could have gotten a -- gotten a sample from him by a court order. That's irrelevant about discussing whether or not that's inevitable discovery.

As it relates to the third prong of inevitable discovery as it relates to Mr. Arrington, I did not put this in my motion because I was unsure about how the police initially got in contact with Mr. Lavonne Arrington, but I don't think his -- the statement of Mr. Lavonne is essentially that he was involved in this incident location the week before this victim, that victim, the person who was involved had curly facial hair would rise to the level of probable cause.

I think State vs. Blassingame kind of gives you the definition of probable cause here. In that case, I think whether the court said a definition for probable cause is

probable cause is defined as a good-faith belief that a person is guilty of a crime when its belief rests on such grounds as would induce an ordinary prudent and cautious person under the circumstances to believe likewise.

I just don't think -- and that's State vs. Blassingame. Our cite is 525 SC 2nd 535. I don't think Mr. Arrington's statement coupled with the description of the assistant having curly facial hair would be enough to provide the probable cause.

I believe not only that Mr. Dunn implicity limited his consent to the 2010 case and the 2010 case only. I think when you looked at the case I cited before in the case, when it talks about limiting the scope of your consent here, I think what they kind of said is what would a reasonable person under that situation to understand and hope the consent to be.

THE COURT: You know, but those cases are search warrant cases.

MR. O'NEIL: Yes, Your Honor, but they still deal with consent, though.

THE COURT: Well, they do deal with consent, but I think that is a much broader issue. This is really a focus on the DNA sample as opposed to the search of the body or the search of the purse as in one of those cases and the limitation on search warrants are limited.

They are limited in order to get a search warrant. You can't get a search warrant from a judge unless you limit and find specifically what you're seeking as a result of the search warrant.

So anything that goes beyond that certainly exceeds the scope, but it's hard for me to fathom when you just have a single DNA sample that the use of that exceeds the scope of the permission.

You know, his permission, his consent, says, "I am aware that any evidence obtained as a result of the search can be used against me in a court of law." That doesn't say this week or only with regard to a burglary. It just is pretty open ended, I'm aware.

MR. O'NEIL: And I don't contest what the consent says, but I think it's also important that you take what Investigator Carwell said to the defendant and contest with the consent.

Investigator Carwell limited the scope of the consent to that burglary case when he -- when he told him the reason why he wanted it was for that case and that case alone.

If he didn't have the testimony from Investigator Carwell that said that the scope of what he was asking for was for that particular case, then the blanket consent form may be more wide open.

Once he leaves -- once Investigator Carwell, through his contacts with Mr. Dunn limits their request of the consent to that case and he -- and he consents to that request, based on their -- their -- their language to him about what they wanted it before.

I think at that point, the scope is limited by the State and not by Mr. Dunn.

THE COURT: All right.

MR. O'NEIL: So what I'm asking the court is for it to ultimately be suppressed would be the sample, the DNA profile stored in the Richland County lab, the comparison between that DNA sample and the sample in this particular case here, the results of that comparison. Then, I would -- I would ask for Mr. Dunn's oral statement and his written statement and his reported testimony to be suppressed as fruits of the poisonous tree.

THE COURT: I think you're absolutely right. If the -- if the test fails, so does everything else that falls with it.

MR. O'NEIL: And one thing I didn't tell you in my motion, Your Honor, is I also think Lavonne Arrington's statement as it relates to him and Mr. Dunn while at this incident location a week before is also fruit of the poisonous tree.

What I also didn't understand is that police found

Mr. Dunn at Lavonne Arrington's residence. They arrested both him, Mr. Dunn, and Lavonne Arrington.

When Investigator Mauldin took the stand, he testified that the reason why they were there was to search for Mr. Dunn for the outstanding warrants they had for Mr. Dunn.

So the reason why they arrested Mr. Dunn at Mr. Arrington's home is that they had the warrants from that case that came as fruit of the DNA match here. That's why they're at Mr. Arrington's house. We didn't hear from Mr. Dunn that they also arresting Mr. Arrington.

Therefore, then if they take Mr. Arrington down to headquarters and get a statement from Mr. Arrington, the next day or a couple days after that, he, Mr. Arrington, does a ride along with the Richland County Sheriff's Department where he states to the officers during the ride along that him and Mr. Dunn had, while at this incident location, a week before the incident date you're talking about today.

So I think that conversation to law enforcement is also the fruit of the poisonous tree, because the only reason why they arrested Mr. Arrington is because Mr. Dunn was at Mr. Arrington's home based on the search warrant they had in this case.

THE COURT: All right. Well, I'm not -- I can't make

the inevitable discovery decision based on what's in the record at this point.

Although, I appreciate the argument that inevitably his DNA would have been available to the police, but I do think that the McCord case goes a long way to establishing the fact that the -- and I'm going to quote -- the defendant had no possessory or ownership interest in the DNA profile, nor does society recognize an expectation of privacy in records made for public purposes from legitimately obtained samples.

So I'm going to note for the record that when the DNA sample was given, the defendant's parents were present. At least that's what defendant's memorandum indicates.

I don't recall the testimony to do the effect, but the fact that he was 16 years old, and he was accompanied by his parents seems to me to give more legitimacy to the consent to search given by the defendant whether the -- Officer Carwell limited by his conversation with the defendant -- limited the scope of the search. I'm going to leave that for another court to decide. I'm going to admit the DNA results.

MR. O'NEIL: And, Your Honor, I understand your ruling. The only factual thing, I don't think Mr. Dunn's parents were there at the time that he consented to the DNA swab.

THE COURT: I was just reading your memorandum which says Mr. Dunn was arrested's by sheriff's officers and taken to headquarters with his parents.

MR. O'NEIL: I'm sorry. That's not --

THE COURT: Without the assistance of counsel and interrogated.

MR. O'NEIL: That's -- I didn't fully explain that. He was arrested twice on the same. He was taken to headquarters, then released and then picked up the next day --

THE COURT: All right.

MR. O'NEIL: By himself.

THE COURT: The facts may be wrong about that, but that's just the way I read your memorandum.

MR. O'NEIL: And I apologize, Your Honor.

THE COURT: No problem.

All right. Anything further?

MS. FENT: No, sir.

THE COURT: State ready for the jury?

MS. FENT: We are, Your Honor.

THE COURT: Defense ready?

MR. O'NEIL: Yes, Your Honor.

THE COURT: All right. Bring the jury, please.

Ten and five?

MS. FENT: Yes.

law.

Now, if you cannot hear a particular witness, myself or one of the attorneys, let us know so we can speak up more clearly. If your view is obstructed, please let us know so we can correct that.

If you need to bring something to my attention during the course of the trial, please notify one of the bailiffs with the maroon jackets on.

If you do need to contact me, it may be necessary for the bailiff to require you to put a question or concern in writing so that we can have a record of it. I'll respond to you as quickly as I can to the extent the law permits me to do so.

All right. Ladies and gentlemen, I want to thank you for your kind attention. I trust you will give the same kind attention to the attorneys and the parties in this case, and we'll now begin with the opening statements.

Solicitor.

OPENING STATEMENT:

MR. MATTHEWS: Thank you, Your Honor. May it please the Court.

"Do what I tell you and don't make me kill you." Probably have to be some of the most frightening words you can hear when you're home alone in the middle of the night by yourself.

"Do what I tell you, and don't make me kill you." That's exactly what Edward Dunn said to Ms. Indira Lonsdale, 74 years old, when he came up behind her and grabbed her shoulders at three o'clock in the morning in her own house where she was home alone.

Moments before he took her into her bedroom, attempted to sexual assault her, burglarized her home, robbed her and kidnapped her.

This happened on the night of May 28th, 2011. About two o'clock in the morning Ms. Lonsdale, who lives by herself, was home alone. She woke up early. She was a light sleeper.

She got up and decided to make a pot of coffee. She was sitting up drinking that coffee in her living room when she heard a noise. She was the only one home alone there with her animals, so she walked into her bedroom to see what the noise was.

She opened -- or walked into the doorway of her bedroom. Edward Dunn comes up from behind her and says those words again. He grabbed her shoulders, "Do what I say. Don't make me kill you."

He takes the belt off from her bathrobe, a bathrobe which she was completely nude underneath, walks her into her bedroom, bends her over her bed and takes off that bathrobe.

At that point, he attempts to sexual assault her. I say attempts because he was so excited at the thought of sexually assaulting this 74-year-old woman that as soon as his penis touches in between her thighs, he ejaculates, unable to penetrate.

At that the point in time he moves on to whatever else he's going to do in the home. He picks up Ms. Lonsdale, still behind her the whole time, so he can't see her -- she can't see his face, walks her to the dresser drawer, opens the dresser drawer, the top right dresser drawer and says, "Where is the money?"

That's important because that's the exact same dresser drawer where $3,000 had been taken in a burglary just a week before, $3,000 in cash from that same drawer in Ms. Lonsdale's home.

Edward Dunn knew where that money was, but there wasn't any cash this time. At this point he doesn't know what to do. He takes Ms. Lonsdale with her hands still tied behind her back, puts her face down in her own walk-in closet.

Still confused as to what to do, her picks her up, makes her put a pair of her own black underwear over her headed, walks her down the hall to her bathroom. At this points, he takes a washcloth out of the sink -- this is a very important washcloth. I'll get back to that in a few

minutes -- hands to it her and tells her to wipe herself off, wipe herself off from where he had ejaculated on her only a few minutes earlier, takes the washcloth, rinses it offer in the sink, hands it back to her and says wipe herself off again.

She wipes herself off and leaves that washcloth in the sink. That important washcloth, I told you. He walks away, Ms. Lonsdale, with her head still covered, he takes her back into her bedroom, lays her face down on the floor, continues to go through the dresser and everything trying to find any money or something he can take.

At this point, Ms. Lonsdale knows he won't leave until he has something, so she tells him, "Hand me my wallet." He gives her the wallet. She takes out $120 in cash from a back compartment that wouldn't be easily accessible.

At this point, she lays back down on the ground. He takes the money, takes some jewelry and takes Ms. Lonsdale's car keys and leaves. He tries to steal her car, but he can't drive a stick shift; so he leaves it in the driveway.

At this point, Ms. Lonsdale realizes he is gone. She is able to get up and call the police, and that's why we're here today.

Edward Dunn is charged with those four crimes that

you heard Judge Cooper describe earlier: Assault with intent commit to commit sexual in the first degree; armed robbery; kidnapping; and burglary in the first degree.

Now, police arrived on the scene, and I told you there was that important washcloth. That washcloth was recovered by crime scene investigator Shawn Schroeder, who you'll hear from on the stand today.

That washcloth was taken to headquarters and rushed through DNA analysis, DNA that would come back to match the semen of Edward Dunn. His semen on the washcloth which was used to wipe Ms. Lonsdale off. As I said, that's why he's charged with those crimes.

My name is Foster Matthews. This is my co-counsel, Margaret Bodman. We're assistant solicitors for the 5th judicial circuit. We prosecute crimes that happen in Richland County.

We're here to prove beyond a reasonable doubt that Edward Dunn did, in fact, commit these crimes for which he is charged.

Now, to prove this, we're going to present evidence and elicit testimony from a number of witnesses over the next few days.

You're going to hear from Ms. Lonsdale herself. She is going to tell you what she saw that night, what she heard and what happened, what Edward Dunn did to her that

You're going to hear from John Barron and Gray Amick, two DNA analysts who actually worked with this DNA so it came with a quick match. So Edward Dunn was found within a matter of days.

You're also going to hear from Investigate Josh Mauldin. He is the led investigator on this case who provided most of the leg work on this and ultimately arrested Edward Dunn on these charges.

Now, as I said earlier, the burden is on the State to prove beyond a reasonable doubt that Edward Dunn is, in fact, guilty. It's a very high standard. It's a high standard that the State welcomes, and Judge Cooper will better explain that to you at the end of the testimony and everything what beyond a reasonable doubt means.

But I want you to keep in mind that a reasonable doubt does not mean beyond all doubt or beyond any doubt. It's merely beyond a reasonable doubt, and also at the end of the case, Judge Cooper will much more eloquently than I'm about to, I'm sure, explain to you what each of these crimes actually -- and elements of each of these crimes.

I just kind of want to tell you basically what's involved with each of these crimes that Edward Dunn is charged with so you can know what to look for and what to listen for throughout the next few days of testimony.

The first crime with which he is charged is assault

with intent to commit criminal sexual conduct in the first degree. That involves an assault upon a victim by the defendant who intended to commit a sexual battery against the victim, just intended to commit a sexual battery against the victim.

Now, criminal sexual in the first degree, which is a part of this assault, occurs when there is a sexual battery with use of aggravated force or more importantly if it occurs during the kidnapping or a burglary, both of which happened here when Edward Dunn went in that house.

He is charged with kidnapping, which is not the kind of kidnapping you think of normally has somebody grabs you and throws you in a trunk.

It's basically just any unlawful seizure or confining of a person by any means without the authority of law. Here you have physically tying her hands behind her back with her bathrobe and not allowing her to leave the house.

Thirdly, he is charged with armed robbery. Armed robbery is the taking and carrying away of the personal property of another person with the intent to deprive her of possession by use of force, threats or intimidation while armed with a deadly weapon.

Here you'll hear testimony from Ms. Lonsdale herself that Edward Dunn had a gun, and she saw it in his hand. He also took the cash, the jewelry, and the car keys.

Finally, he is charged with burglary in the first degree, and that is entering into a dwelling, a person's home, without their consent with the intent to commit a crime inside.

Here the crime that he was intending to commit was the attempted sexual assault, the armed robbery, and the kidnapping.

This also has to occur while a person is either armed robbery with a deadly weapon, as Ms. Lonsdale will testify that he had that gun or at night. It happened at two o'clock, three o'clock in the morning. You, as the jurors in this case, as the judge said, are the fact finders in this case.

That's a very, very important job. It's a very, very important task, and that is one that you have to make sure you get right to make sure that justice prevails here.

In using your ability as a fact finder, I want you to pay special attention to each and every witness who gets up on the stand. You can individually judge a witness' credibility. You can determine whether or not you want to believe every word out of someone's mouth, nothing of what they say or bits and pieces.

Essentially, you want to determine whether or not somebody who gets up on this witness stand has a reason to lie, whether or not they have a stake in the outcome of

the case or essentially just when you're talking to a person every day on the street and whether or not you choose to believe them or not.

Now, after you've seen all of the evidence and heard assault testimony that's going to be presented, you will find Edward Dunn guilty of all four crimes for which he is charged.

I ask that you hold him responsible for what he did to Indira Lonsdale that night and find him guilty of assault with intent to commit criminal sexual conduct in the first degree, kidnapping, armed robbery, and burglary in the first degree.

Thank you.

THE COURT: Mr. Li.

MR. LI: Thank you, Your Honor. May it please the Court.

OPENING STATEMENT:

MR. LI: Good morning, ladies and gentlemen.

THE JUROR: Good morning.

MR. LI: My name is Victor Li, along with my co-counsel Mr. Deon O'Neil. We represent Edward Dunn on these four charges that you heard Mr. -- Judge Cooper tell you about.

Ladies and gentlemen, this is going to be kind of an unusual opening for me to give because Edward Dunn was

there, okay. Edward Dunn was there. He takes his responsibility and has done something from the beginning for his role in the burglary first and armed robbery, okay.

Now, I want you to pay attention to the evidence that the State is going to put up, okay. The evidence that they're going to use to prove their rendition of the story, okay.

Now, Mr. Edward Dunn has spoken to law enforcement. His story has been consistent from day one. He was there. He takes responsibility for it, but this is what you're going to hear from the State themselves, okay.

From the evidence they put up, no matter how they try to twist it or how they try to justify it to you, this is the evidence they're going to put up. You're going to hear from the evidence they put up that Edward Dunn and a guy who he calls Shorty, okay, named Donald Moore, he and Donald Moore go to this house.

They go to this house and try to burglarize it because Donald Moore had somehow heard on the streets that there was a lot of cash there. There was some valuable goods there, so they went there together, okay, so boom.

Edward Dunn knows that they're going to commit a burglary. He is there. He acts as a look out. He hears Donald Moore. Donald Moore says, "Her car is here. The

car is parked in the garage. There might be somebody in there. I'm going to bring a gun, okay."

Edward Dunn knows that he is going to be armed. The purpose there is to go take stuff, so armed robbery. Burglary, armed robbery, the State has a pretty good case.

Okay. Now, what happens inside the apartment, you're going to hear from the evidence they put up, Edward Dunn hears a dog bark. He goes inside to check on what's happened with Donald Moore.

While he goes inside, he sees Donald Moore with Ms. Lonsdale in the bedroom. Now, Donald Moore is attempting to do -- attempting to sexually assault Ms. Lonsdale.

Edward Dunn, a 17-year-old kid at the time -- and I'm not sure what he was thinking -- but gets excited. He takes a towel out. He sees his friend or his compadre doing unspeakable things to Ms. Lonsdale.

He gets excited. He masturbates into the towel and drops the towel in the sink, leaves and goes back outside and acts as the look out. He is there.

He has taken responsibility for it. His story has been consistent from day one. That's going to be the evidence that you hear from the State themselves. If they put up something different, ask yourself, just ask yourself. Pay attention to the details of what they try

to do and how they try to use it to show, to prove to you their rendition of the story.

Ladies and gentlemen, Edward Dunn did not sexually assault Ms. Lonsdale. He didn't know that Donald Moore was going to go in and sexually assault Ms. Lonsdale.

He did not know that Donald Moore was going to go in and hold her against her will and kidnap her and tie her up and put her in a closet. He went there to go take some jewelry and take some money.

Now, ladies and gentlemen, the State knows this. The State knows that they have a strong case for burglary and armed robbery, okay.

It's just a matter of dotting the i's and crossing the t's. They know they have two out of four convictions. Ladies and gentlemen, they're here to swing the fences.

They are here to roll the dice on the judicial system because they can get four out of four. That's what they want to show you. Why gamble? Why go to trial? Why gamble? Because they know they got two in the bag. Okay.

They just have to show you the hand of one is the hand of all. They're going to have a poster board at the end of the day during closing to put the statements on there, and they get two out of four. So they can roll the dice. They can swing for the home run.

They want to get this criminal sexual conduct, and

they want to get kidnapping. They're going to do it with the same evidence --

MR. MATTHEWS: Objection, Your Honor. It's argumentative.

THE COURT: Overruled. Go ahead.

MR. LI: They're going to do it with the evidence that they purport to show you to convict him on the other one, on the burglary and armed robbery. Just pay attention to the methodology and the means in which they try to prove their case.

Now, I don't want you to think that Mr. O'Neil or myself are trivializing or lessening what happened to Ms. Lonsdale, okay. What she says happened happened to her inside, okay.

You're going to hear that she will not be able to identify whoever did it, okay, and it's a terrible thing. It's terrible that it happened. I wouldn't wish it on anybody, but the bottom line is the person who tried to sexually assault Ms. Lonsdale was Donald Moore and not Edward Dunn.

Now, that being said, you know, be cognizant of when you hear evidence and when you hear testimony from the officers and you hear testimony from Ms. Lonsdale, the adjectives and the words that are being used by the State.

Be cognizant that they are going to be tugging on

your passions and your prejudices and is your emotions. It's a pretty gross thing what happened to Ms. Lonsdale, and they're going to ask you to use your common sense at the end of the day.

They're going to ask you to, you know, you come into this courtroom. You haven't abandoned your common sense. Let me tell you what that means.

Common sense is a code word for using your gut feeling, trust your gut, to not use your reason, to not use your logic. To look at it, say, "Oh, this is gross. This is terrible. Let's find him guilty of all four. What's it going to matter?"

They want you to use your common sense. What's your gut feeling, your gut reaction, your gut instinct? "Oh, this is gross." That's what they want you to do. Just be cognizant. Be cognizant of the words they use and the adjectives they choose.

Now, we're going to ask you to use more than your common sense. Pay attention to the evidence they're putting up. Pay attention to the statements they're putting in, okay. Pay attention to who can identify who, if they can identify anything. Pay attention to all the details.

Ladies and gentlemen, the State, in attempt to get four out of four convictions, they're going to pick and

choose what they want you to believe.

They're going to pick who they want you -- not only what they want you to believe but who they want you to believe. Pay attention to the credibility for the people they're going to vouch for and who they're not going to vouch for.

It's all a matter of convenience. You pay attention to -- pay attention to the manner and the investigative due diligence when Donald Moore -- when law enforcement approached Donald Moore.

They find Donald Moore, and they talk to him. Pay attention to the details. Pay attention to what they do to him versus what they did with Mr. Dunn.

ladies and gentlemen, Mr. Dunn has told him his involvement in the burglary and armed robbery. He told you about the semen. He told law enforcement how the semen got on the towel. He told them from the start.

His story has been the same, and it's been consistent. Pay attention to how the State wants to sell you one thing with the statements. On one hand, they want to sell you something. They want to sell you on the guilty of -- on the burglary and armed robbery, all right.

They don't want you to believe him on the other one. They want to pick and choose parts of the same statement made by the same person to get a conviction.

They're going to get four out of four, ladies and gentlemen. Pay attention to the rationale they use to justify that convenient activity. That's how they justify it.

Ask yourself, do they have any proof of that, or is this something that the attorney is just making up. Okay. Ask yourself how they go about justifying that at the end.

Now, Mr. Dunn accepting his role in the burglary and the armed robbery -- this is not like someone accepting trespassing and disorderly conduct.

This is not like how Manuel Escobar saying, "Oh, I'll take the marijuana. I'll take the simple possession of marijuana, but these seven kilograms of cocaine, that's not mine," you know.

He has taken his role from day one to armed robbery and the burglary. He was there. They got to cross their i's, dot their t's. It is what it is.

They got my guy by the ropes. Ladies and gentlemen, they're looking for you. They're looking for you to give him four out of four, get that knock-out punch, but ladies and gentlemen, hold them accountable. Hold them. Accountable.

Make them prove to you beyond a reasonable doubt. Pay attention to the --

MR. MATTHEWS: Objection, Your Honor. This is

argumentive. This is opening, not closing.

THE COURT: Sustained. Move on, please.

MR. LI: Make them prove to you beyond a reasonable doubt.

Now, you heard Mr. Matthews say beyond a reasonable doubt. What is it? I don't know. On the one hand, it's the highest burden. On the other hand, it's not beyond all doubt.

Ladies and gentlemen, what I do know is that they cannot prove to you their rendition of the story beyond a reasonable doubt at the end of the day, come back with not guilty on criminal sexual conduct, criminal sexual conduct and kidnapping, thank you.

All right. Solicitor, call your first witness.

MS. FENT: The State calls Indira Lonsdale.

INDIRA LONSDALE, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your full name for the record, please.

THE BAILIFF: Watch your step. State your name.

(There was no response.)

DIRECT EXAMINATION:

BY MS. FENT:

Q Can you introduce yourself to the jury, tell them your name?

A My name is Indira Lonsdale.
Q And I'm going to move the microphone. It's --
A Can you hear me?
Q Yeah. The acoustics in this courtroom are not great, so we just want to speak up so that everybody can hear you, okay.
A Okay.
Q Ms. Lonsdale, can you tell the jury a little bit about yourself? Where are you originally from?
A I am originally from England. I've been here since 1967 in the United States and in South Carolina.
Q Okay. And in 1967, who did you come to the United States with?
A With my husband and three children.
Q How old were your children at the time?
A The eldest was 11, six, and four-and-a-half.
Q Okay. And where all did you live in the United States with them?
A In Boston.
Q Okay. Anywhere else with the family?
A We later moved to Akron, Ohio.
Q Okay. And what kind of work did your husband do?
A He was a research chemist.
Q So what does that mean, a research chemist?
A Well, he -- how shall I say it? He was in an

industry -- industry, research and development in order to produce new things. He researched things and developed them before, pretty much like new drugs are made, not in the world until they're tested and used, be able to use them.

Q And what kind of work did he get here in the United States?

A Well, when he first came to the United States, he worked for a company calmed Carters, Inc. developing felt tip pens.

Q You said Carters, Inc.?

A Carters, yes.

Q Okay. And developing felt tip pens?

A Uh-huh.

Q Okay. What else?

A He -- shortly after we came to Boston, we didn't really like Boston, so he got a job in Akron, Ohio. In Akron, Ohio, he was working on something called Colcrom (phonetic), which was synthetic leather.

Q Okay. And then when did you say that you came to South Carolina?

A I came here in '86.

Q 1986, and where do you live now? What's your address now?

A

Q And how long have you lived at that Patterson Road home?
A About 17 years.
Q Did you move here by yourself or with your children?
A No. I came with a companion.
Q Okay. And what are your children doing now? Where are they and what kind of jobs do they have?
A I have one in New York, one in Kansas City, and one still in Akron, Ohio.
Q And what kinds of things do they do?
A The one in New York is a designer. The one in Kansas City is a manager for a car dealership, and my eldest one, my daughter, is retired.
Q Okay. So the house at Patterson Road, 7117, do you live there by yourself?
A I do.
Q In May of 2011, I guess up until May of 2011, had your house ever been burglarized until that month?
A About two years before that.
Q Okay. Other than that, any other --
A No.
Q So then in May of 2011, when was your house first burglarized?
A May 21st.
Q Okay. And were you home when that happened?

A No.

Q What time of day did you come home and discover that that had happened?

A Probably around eight o'clock.

Q P.m. or a.m.?

A P.m.

Q P.m. And what signs? How did you know that your house had been burglarized?

A I walked into the bedroom, and the side door to the outside was open. And I -- I couldn't understand why it would be opened like that. There was a machete on the doorstep with the handle pointing outside, which puzzled me.

So I closed the door and turned around and then I realized why it was opened, because my drawer was opened on the dresser, the right-hand drawer, top right, and there were envelopes all over the floor.

Q You said of your dresser drawer?

A Yeah.

Q So this is in what room in your house?

A In the bedroom.

Q Okay. And that drawer was open, and you said bank envelopes were all over the place?

A Yeah.

Q What, if anything, did you discover had been missing?

A I discovered the money was missing, over 3,000. There may have been more but a rough guess was over $3,000 because I was saving that money.

Q Okay. What were your saving that money for?

A For dental work. I was facing a big dental bill.

Q Did you report that burglary to the police?

A I did.

Q Okay. And did they show up and...

A Yes.

Q I guess try to do whatever they could?

A Yes.

Q Then the following week I want to take you to May 28th of 2011. I guess do you remember anything particular about that day?

A No.

Q Or the previous day, I guess the May 27th?

A No. It was just a normal day like any other day.

Q Okay. So in the early morning hours of May 28th, then, what do you remember happening?

A The early morning hours, I woke up. I went to put my light on. It didn't come on, so I went back to the kitchen to get a flashlight.

Q Okay.

A And I saw it was early. I was -- I thought I'm not going to get up, so I went back to bed.

Q And when we're talking early hours, what time are we --

A Between two and three.

Q In the morning?

A In the morning.

Q Okay.

A Yes.

Q So you said you went to get a flashlight. You realized what time it was, and then what happened?

A So I went back to bed, and then I realized I was wise awake. So I thought I would get up, make some coffee and play some music.

Q Okay. So what did you do then?

A I get up.

Q Okay.

A So I sat down, listening to music with my two dogs beside me.

Q What kind of dogs do you have?

A I have a Pomeranian and a Yorkshire terrier.

Q In what room in the house were you sitting in?

A I was in the middle room between the hallway and the furniture, in the sitting room.

Q Okay. And how long do you sit there? What happens?

A Not very long. Possibly at the most, half an hour.

Q Okay. And what happens next then?

A I heard a bang, sounded like a car door, and one of my dogs just lifted up and said "woof". That was all.

I sat there for a few minutes. I thought, "That's too loud to be a car door." So I got up to investigate, and I went through the living room towards the front of the house. Then in my eye, I caught the outdoor to my bedroom. All I could see, it was open.

Q Okay.

A And then someone came from behind me, but they put their hands on my shoulders and told me to do what he told me and don't make me have to kill you.

Q Okay. You said the person is behind you?

A Uh-huh.

Q Can you see that person's face then? Do you turn and look at that person's face?

A No. I could look down and see shoes.

Q Okay. What do you remember about the shoes?

A The shoes were white. They looked very new, white tennis shoes with red zigzags on the top of them.

Q Could you tell, male or a female voice?

A It was a male.

Q Okay. Then what happens next after he says this to you?

A He leads me to the bed, and I realized he was going to try to rape me.

Q Okay. Why did you realize that?
A Well, because he told me to bend over the bed.
Q Okay.
A And as I bent over the bed, he put his hand on the bed. I could see he had a gun.
Q What, if anything, were your dogs doing at this point?
A One of my dogs, the Pomeranian, jumped on the bed and started to bark. The reason he could jump on the bed is because I have little foot stools so they could do that.
Q Okay.
A The dog start to bark. He told me to make it shut up, and I told him, "I can't." He said put it in the closet.
Q So what did you do?
A I took the dog. I guess I must have been able to put him under my arm because my hands were tied behind my back. I asked him could we close the door to the outside because I was afraid of my other animals getting out.
Q Okay.
A I can't recall whether I closed door or he closed it, but the door got closed. I put the Pomeranian in the closet.
Q Now, you said that your hands were tied behind your back. Describe for us what you're wearing and how and

when does that happen.
A I was wearing a bathrobe. That was all --
Q Okay.
A -- which was tied at the waist with a sash.
Q Okay.
A And then Mr. Dunn took the sash out from behind my back.
Q And when did this happen? Did it happen once you were over the bed?
A It happened -- the tying of my hands behind my back happened immediately when he reached over my shoulders and told me to do what he told me to do.
Q Okay. So you after the door gets closed and the dogs get out, he also said that -- he said to put the dogs in the closet. What happens next?
A Then he took me to the side of the bed, the outside.
Q Okay.
A Puts his hands down on the bed again and fumbled with his pants trying to unzip them.
Q You said at one point that you saw a gun?
A Uh-huh.
Q Describe when that is and how you see that gun?
A I saw the gun on the bed in his hand, saw the handgun. I thought it was a toy at first, but it was something like you would feel.

Q So a smaller gun?
A A real small gun, yeah.
Q And where -- you said it's in his hand that's on the bed. Where is your face in relation to that gun and that hand?
A The gun is in his hand. It's around -- the gun on the bed like that and then here looking down bent over the bed.
Q What happens then?
A Then he proceeds to rape me.
Q I know this is uncomfortable, but we need to tell you the details of what happens. What do you mean by he proceeds to rape you?
A He puts his penis between my legs. He doesn't penetrate me.
Q Okay.
A And within -- I'm feeling really nervous about this because I'm an older person. I haven't had sex in a long time. I'm thinking this young man is going to be really rough with me. I was very relieved to find out he had already ejaculated.
Q Okay. You said that he put his penis between your legs. What did he do?
A He just thrust his penis, you know, several times until he did ejaculated. It seemed like he was so

excited.

Q You said until he ejaculated. How did you know that that happened?

A I have could feel the wet on my legs.

Q Okay. What happens next then?

A Then he gets me up, and he says he's going to put me into the closet with the dog, tells me to spread my legs, and then he changed his mind.

Q Okay. So did you -- did you actually get into the closet?

A I actually got into the closet and got down.

Q Okay.

A Still had my hands tied behind my back because I found it difficult to get back up again.

Q Okay.

A Then he led me out of the closet, and he must have seen that I had underwear sitting on the chair waiting to be put away. He said, "Here," and he put this over my head.

Then he led me -- I couldn't see anything. I didn't know where he was going to lead me to until we got to the bathroom. Then he said to wash yourself down, and he said, "Wash yourself good" and he went back to the faucet, put the washcloth under the faucet, put himself on -- washed the washcloths out again.

Q Okay. When you said he had you put underwear over your head, describe how much of your head is being covered.

A The whole head.

Q Okay.

A The whole head.

Q So is it blocking your eyes?

A I couldn't see anything. He had to carry me about the shoulders to the bathroom.

Q Describe how much light is in your house? Do you remember how many lamps or anything you had?

A Only one, only one.

Q Okay. And where was that --

A And I think the bathroom light is on also.

Q Okay.

A Because when I get up in the morning, I put the bathroom light on.

Q The only lamp that you remember being on, where is --

A In the living room where I'd been sitting.

Q Okay. Okay. So do you wash yourself off with that washrag?

A Yes. Just my face and hands usually.

Q Okay. And you said that he rinsed it out in the sink?

A Uh-huh.

Q And then had you wash yourself again?
A Uh-huh.
Q Wipe yourself off?
A Right.
Q And where do you leave that washrag then?
A In the bathroom sink.
Q What happens next then?
A Then he leads me back to the bedroom and asked me to put the light on. I try to with my shoulder and he said, "No. Put the little light on," which was a little bedside light.
Q Okay.
A And that goes on, and then he told me to lay down on the floor face down.
Q Where in the bedroom did he tell you to lay down?
A By the side of the bed.
Q Okay. Did you do that?
A Yes.
Q And then what happens next?
A Then I hear all kinds of noise. I hear drawers being turned out. He is looking frantically for money. He asked about the top drawer. He opened it and said, "Where is the money?"
Q Okay.
A I said, "They got it all last week." So he's going

frantic through the drawers, and this was going on for a long, long time. The whole time I'm getting more and more nervous.

Q Okay.

A I felt that if he didn't find anything, he was going to shoot me.

Q From -- can you see anything at this point?

A No.

Q Okay. So your lying -- you're still lying down?

A Head covered up.

Q Head covered up with the underwear.

A Uh-huh.

Q From the time that he tells you to lie down and then to when he makes the comment about the dresser --

A Uh-huh.

Q -- tell us in relation to that -- you said he's rummaging around the room?

A Yeah.

Q Does that happen first or after he rummages for a while?

A Just first.

Q That he goes to the dresser and says, "Where is the money?"

A It's -- I'm lying down, and he goes to the dresser and says, "Where is the money?"

Q Okay. And then that's when you said, "They got it last week"?
A Uh-huh.
Q Okay. And so what can you hear then happening next?
A Well, in those dresser drawers, top drawers especially, I have perfume, different momentos I've collected over the years, just a lot of junk in my drawers, actually, but I could hear all these things rattling around, drawers being pulled out. I assumed he was tossing everything on top of the bed.
Q So then what happens next?
A Then he says to me, "Where is your ATM card?"
I said, "I don't have one."
He said, "Well, what do you do when you want money?"
I said, "I go to the bank."
Q Okay.
A So he is frantically -- he must have gone back to my little living room. That's where my purse was.
Q Okay.
A Then he says to me, "Well, where is your money? Do you have any money? Do you have any jewelry?"
Q Okay.
A And I knew that without getting something, he wasn't going to leave.
Q Okay.

A And he asked me how much I had in the bank, and I got the feeling that possibly he was going to wait until morning when the banks opened but he didn't. So he said, "Where is your money?"

I said, "I don't have any."

Q Okay.

A Then I remembered I had about $120 tucked away in my wallet.

Q Okay.

A And I told him to go in there to look again, and I assume he got it. Then he said, "I need your car keys."

Q Okay.

A Then I have it in my purse with house keys, et cetera.

Q Okay.

A And I said yes. So then I heard more and more banging. I knew what was going on. I knew he was out on my front porch, but I couldn't see what the banging was on the front porch.

Q You could hear it coming from that direction?

A Uh-huh. Then I heard the car start up, and I assumed he had stolen my car. I didn't hear any more, so I thought he got away with the car. So then I got up and ran to the phone and called 9-1-1.

Q Called 9-1-1. Do you recall about how long it took

for a law enforcement officer to show up?
A Very quickly, very quickly.
Q What were your emotions and feelings while you were talking to that 9-1-1 operator waiting?
A I was very stern because I didn't mention that when I looked out, I saw the car was still there.
Q Okay.
A And I thought possibly he was still in the area and would come back. So I was almost asking the officer to get here as soon as you can. I'm still scared -- the 9-1-1 operator I'm talking about.
Q Okay. So do you remember the law enforcement officer showing up at your house?
A Yes.
Q Okay. And essentially, what do you remember happening next with that officer?
A He was very calm, and he took my statement and asked me how old of a person did I think he was. I said he was a young boy, probably early 20s, small, small build.
Q Okay.
A Gave him some description of him, as much as I could.
Q Okay.
A And what I had seen from the corner of my eye.
Q Okay.
A And then the officer asked me did I need to go to the

hospital. I said no. I thought I was all right.

Q Okay. Do you remember an investigator, someone showing up and then taking photographs or collecting evidence?

A Oh, yes. There were a lot of investigators. They asked me to stay in that little room and not come out of there because they were taking photographs and doing things.

Q Over the next couple days, where did you go?

A Well, I want to say I ran away.

(Pause).

The next day was -- friends came by on Saturday to console me. One took me out for breakfast. They stayed with me as long as they could.

All my keys were gone. I had no way of securing my house, so I had to get somebody to come by, put a new lock on the door. The police stayed outside the door until the locksmith came because when I left, the house was open.

Friends took me out Saturday night, then on Sunday. I left because I had a small place up in the mountains, and I just thought, "This is where I'm going, because I'm not going to be robbed and scared another weekend." I didn't feel safe to stay in my own home.

Q Okay. Did you eventually meet with Investigator Josh Mauldin and give your statement about what happened?

A I did.
Q And the -- from what you were -- you said you got kind of a side view of the person in your house. What all could you remember then about -- or what could you tell about the description of this person?
A I knew from the accent he was a young, small built black male.
Q Okay.
A I thought possibly he had a Jerry curl because I could see a curl coming over the side of his face, but I didn't want him to see me looking too much at him because I thought he might kill me if he thought I could identify him.
Q Okay. And other than that, you did not get a direct view of this person's face?
A No, but I knew he had a northern accent.
Q Okay. It sounded like a northern accent?
A Yes. It wasn't a South Carolina accent, and I think I gave that to the police in the statement.
Q Okay. I'm going to show you what is marked as State's Exhibit No. 6. Have you had a chance to review this?
A Yes.
Q Okay. And do you recognize what this is?
A Yes, my house.

Q Okay. Speak up.
A It's a plan of the house.
Q Okay. And is this a fair and accurate description or sketch of the layout of your home?
A Yes.
Q Would it help you to use this to be able to tell the jury where everything happened?
A Yes.
Q All right. I previously showed it to defense counsel, but I'd offer State's Exhibit No. 6.
MR. O'NEIL: No objection.
THE COURT: Thank you.
(WHEREUPON, State's Exhibit No. 6 was admitted into evidence.)
BY MS. FENT:
Q Ms. Lonsdale, can I have you step down over to this diagram?
THE BAILIFF: Watch your step. One more time.
BY MS. FENT:
Q And I need you -- let's switch sides -- to keep your voice up very loud since we don't have a microphone so that she can hear you and everybody in the jury can hear you, okay.
A All right.
Q Tell us then basically what we're looking at. Where

is the front of your house?

A This is the street. This is where my car is parked on the side here.

Q A little louder.

A This is where my car is parked, the side of the house here.

Q Okay.

A About here is the fence, and this is the bedroom door. This is where you come into the house. This is French windows and the entrance to the living room.

Q Okay.

A Passageway through to my little sitting room where I was sitting that night.

Q Okay.

A Out here the bathroom.

Q Okay.

A Laundry room and into the kitchen here.

Q Okay.

A You come back here. This is my sewing room, which you come into the bedroom that way or you can come to my bedroom this way. So there's two entrances to the bedroom.

Q Okay. Through this sewing room --

A Yes.

Q -- or through the living room?

A Exactly.
Q Okay.
A This is an outside door to the outside of my house.
Q This right down here is that --
A Yeah.
Q -- door to the outside?
A Yeah, outside.
Q Okay. And is this where your car was parked on this day?
A Yes.
Q So talk to us again about where you were sitting listening to music with your dogs when you heard the noise?
A I was sitting here.
Q In your sitting room?
A Uh-huh.
Q And where do you go when you decide to investigate this noise?
A I come through here.
Q Speak up.
A I come through here. Sorry.
Q That's okay.
A Through here, come around to the house, around through the living room. There's a little bookcase there, so it makes it kind of like a passage.

Q Okay.
A Come through here. Here is the door to my bedroom. I look out through the window over here. I can't see anything over there, and I turned this way. I see this door open.
Q So do you keep going in?
A No.
Q Or --
A I stood there. I stood there kind of looking at this door perplexed. Why is the door open? That's when I was -- he came from behind.
Q Okay.
A And put his hands on my shoulders, so he was over here. I had my back to there facing the door to my bedroom.
Q Okay. Were you standing inside the bedroom?
A No.
Q Or just outside?
A Just outside the door to the bedroom, just outside.
Q Just outside. Okay. When you're sitting here on the sofa, you described there is a bookcase right there --
A Uh-huh.
Q -- and this fireplace kind of juts out?
A It does.
Q When you're sitting here on the sofa, can you see if

someone is walking around in this area?
A No.
Q What, if anything -- after this is all over with, do you notice anything unusual or moved around different in your living room?
A I noticed the blinds that are usually open were closed.
Q Okay. There are blinds over here where the sofa is is where you are pointing?
A Uh-huh.
Q And you said they're usually closed. Tell us about that.
A No. They're usually open.
Q I'm sorry. You keep them open all the time?
A Yes.
Q Do you ever close them?
A No.
Q And you noticed that they had been closed?
A Yes.
Q Then when you described him taking you into the bedroom and putting you over the bed, where did that happen? Which side of the bed?
A It happened on this side of the bed (indicating).
Q Okay. And the closet that you described that he made you get inside of?

A Was over here (indicating).
Q When -- I notice you only have one bathroom.
A Yes.
Q Okay. So this is the bathroom?
A Bathroom.
Q Okay. When he takes you back into the bedroom and you described how he made you lay down on the floor face down while he -- you could hear noises moving around, where was that on the bedroom?
A On the floor here (indicating).
Q And the dresser that he went to and said, "Where is the money," where is that?
A That's right here (indicating).
Q Were there any other entrances or exits to your home that you noticed were -- when this is all over with, were opened or had been?
A The back door was open.
Q Okay. Meaning -- where is that?
A Right over here (indicating).
Q Okay. I'm going to show you State's Exhibit No. 9.
A Okay.
Q Take a look at those photos. Do you recognize what's in those photographs?
A I do.
Q Okay. And what are these photographs? What location

are all of these photographs?
A My living room and my bedroom.
Q Okay. And is this what it looked like on the date that this happened?
A Yes.
MS. FENT: Your Honor, I'd offer into evidence State's Exhibit 9.
MR. O'NEIL: No objection.
THE COURT: Without objection.
(WHEREUPON, State's Exhibit No. 9 was admitted into evidence.)
BY MS. FENT:
Q The location here where you said you're standing --
A Yes.
Q -- looking into your bedroom?
A Right.
Q And he comes up behind you, do we see that in any of the photos?
A Where he came up behind me?
Q Correct, where you were --
A Right -- right here.
Q Okay. And what are these two photos here that we're looking at?
A That is my living room. That is the door into my little sitting room. That's the door to my bedroom.

Q Okay. So where are you standing then? In this photo, where would you be standing when he came up behind you?

A I would be standing there.

Q Okay. And these blinds?

A They are the ones that were closed afterwards that we usually have.

Q Okay. Speak up.

A They are the ones that I found closed afterwards, and they're usually opened up.

Q Okay. And those are --

A There in the living room.

Q Okay. And the two photos over on the --

A These two?

Q Uh-huh.

A That's my closet and that's the door of the closet.

Q The closet door, and is that this closet or another closet?

A It's that closet.

Q Okay. This -- where you were describing, you pointed out, this is where he had you to lay down?

A Uh-huh.

Q Tell us in relation to, I guess, these photographs where that is.

A Well, that's the door to the other bedroom.

Q Okay. Meaning?

A Meaning there (indicating).

Q Okay. That's this door, and what is that in that doorway right there?

A That looks like underwear. That looks like the underwear that was on my head.

Q A black pair of underwear?

A Uh-huh.

Q I'm going to show you what's marked on State's Exhibit No. 5, if you'll look at it.

A Uh-huh.

Q Do you recognize all of the photos in State's Exhibit No. 5?

A I do.

Q Okay. And what location are -- are these photographs?

A They're in my bedroom. Yeah, they're all in my bedroom.

Q Okay. And is this how your bedroom looked the day that this happened?

A It did.

MS. FENT: I'd offer State's Exhibit No. 5.

MR. O'NEIL: No objection, Your Honor.

THE COURT: Without objection.

(WHEREUPON, State's Exhibit No. 5 was admitted into evidence.)

BY MS. FENT:

Q Okay. Okay. So we come into your bedroom. Can you tell us then what we're looking at?

A This is the bedroom where the bed light is on.

Q Okay.

A Which he tried to have me put on, which he tried to have me do, because my hands were tied.

Q Speak up.

A Because my hands were tied, I couldn't do it. So he would have to do it himself.

Q Okay.

A I didn't want the big light because -- obvious reasons.

This then is my bed. That's a door to the closet. That's the outside door.

Q Okay.

A My bed again, the outside door, and the French doors.

Q Okay. And so where are we in your bedroom, the views that we're looking at?

A Closet, bed, outside door, French windows.

Q Okay.

A These are the chairs right beside the French windows. The underwear was sitting here (indicating).

Q Okay.
A These are all the drawers in my dresser, and drawers in my dresser again, the bed with everything turned down to it.
Q Okay.
A That was my first one. My keys were out.
Q Okay.
A Again, my bed with some of the stuff still on it that he emptied out of the drawers.
Q Okay. Now, the door that you said -- the door to your --
A Bedroom.
Q Bedroom, and you said that initially when you looked, you stood here and you looked, that it was opened?
A Yes.
Q What door is that?
A It was this door to the outside.
Q Okay. Now, I'm going to show you what's marked as State's Exhibit No. 7 and ask you if you recognize the photographs.
A I do.
Q Okay. And essentially, what are you -- what are we looking at, or what are those photographs of?
A The car, the outside of my house, part of my porch, and a stockade fence door that leads to a passageway down

the side of my house.
Q Okay. And is this how your house looked?
A Afterwards, yes.
Q That night.
A Yes.
Q Or that early morning.
A Correct.
MS. FENT: I'd offer into evidence State's Exhibit 7.
MR. O'NEIL: No objection.
THE COURT: Without objection.
(WHEREUPON, State's Exhibit No. 7 was admitted into evidence.)
BY MS. FENT:
Q So just to put in relation with the sketch of where these --
A This is the side window of the porch which is there, which was broken down when he tried to get out.
Q Okay.
A This is my -- the car that is usually kept here beside the house. There was a stockade fence here, the door, which is this one, which is bolted from the inside. The door to outside is here behind the fence.
Q So it's -- that door is going to be on the other side?
A Yeah. You see this jutting out, the door is behind

there.

Q Okay. And do you recognize what this item is in this bottom picture?

A That is a hatchet that had been leaning against a pole in my backyard because I have a lot of bamboo. I have been attacking some of the bamboo trying to get rid of it.

Q So that is yours?

A That is mine.

Q That is yours.

A That is mine.

Q And where was it sitting, do you remember?

A It was sitting outside on the step of the outside door in the bedroom.

Q Okay. So on the other side of the fence, so in your backyard --

A Uh-huh.

Q -- to the door of your bedroom?

A The fence is here.

Q Uh-huh.

A It's on the fence, on this step of that door into the bedroom.

Q Okay. I'm going to show you State's Exhibit No. 8 and ask you if you recognize those photographs.

A I do.

Q And, essentially, what are we looking at in these photographs?
A The back, the porch, the side of my house.
Q And do these accurately reflect your house --
A They do.
Q -- on the night?
A They do.
MS. FENT: I'd offer into evidence State's Exhibit 8?
MR. O'NEIL: No objection.
(WHEREUPON, State's Exhibit No. 8 was admitted into evidence.)
BY MS. FENT:
Q Okay. So then if you can walk us through these photographs in relation to the scene.
A This is the porch way which runs in front of the French window. It runs all across the house. Obviously, he didn't know there was a door here or couldn't get out, but after the French windows, he broke those doors down. I had actually locked them on the inside, the door inside.
Q So this front door would be where in this photograph?
A This front door is not in that. It's over, further over.
Q Over this?
A Actually, you can tell more in this one. It would be over here (indicating).

Q Okay. So this door is what door?
A This door leads into my living room here.
Q Okay. And then these?
A This is the back of the house, the side, back of the house. This is in my hallway leading to the amateur room that I have built on the back of my house.
Q And the sketch, where would this room be?
A Over here.
Q Okay.
A That is the -- that's the side of my house. This is the side of the house which would be over here.
Q Okay. And this door, was it in this condition when you went to bed that night?
A No.
Q Finally, I'm going to show you State's Exhibit 10. I want to just focus on the two photographs that are on -- I guess if you're looking at State's Exhibit 10, it may on the left-hand side, just those two photographs. Do you recognize those two photographs?
A I do.
Q And, essentially, what is -- what are we looking at there?
A The bathroom.
Q And is that -- what can you tell us about the top picture?

A Well, the washcloth is in the sink.
Q Okay. Is that where you left the washcloth?
A Yeah. That's where I always keep it.
Q Okay. You can take a seat.
Did you ever determine what items may have been missing from your home after this happened?
A As much as I could tell at that time. I was still in a nervous stage, and I found certain items of jewelry were missing.
Q Do you remember in particular what items of jewelry you were missing?
A Well, especially there like was a satchel; earrings and a necklace that I bought in Honduras, which was sort of a silver wire with, I think, sapphire in them. There was a chain missing, a gold chain with a diamond pendant; and diamond earrings; emerald earrings; a watch was missing.
Q The money that you said was in a -- some kind of hidden compartment in your --
A Yes.
Q -- wallet or your billfold?
A Yes.
Q Was that still there?
A No, that was gone.
Q That was taken. Did you keep your jewelry in one

particular place?
A No, kind of several places in the house, actually.
Q Within your --
A In the bedroom, I should say, on that dresser.
Q Okay. So just several places on the dresser. Like did you have one particular jewelry box that you kept all of your jewelry in that box?
A No, huh-uh.
Q Ms. Lonsdale, when he had you on that bed and he was rubbing his penis between your legs, what did you believe was about to happen to you?
A I believed we were going to have sexual intercourse.
Q Did you ever feel that you were able to get up and leave and run away from this situation?
A Not at any time.
Q And why is that?
A Because he the a gun on me.
Q The washcloth that he had you wash yourself off on, you said that you typically used that washcloth to wash what?
A My face and hands.
Q Okay. What did you specifically wash yourself when he told you to wash yourself off with that washcloth, what did you wipe?
A My vaginal area.

(WHEREUPON, State's Exhibit No. 11 was marked for identification only.)

BY MS. FENT:

Q Ms. Lonsdale, you said that you called 9-1-1.

A Yes.

Q And how long from the time that you believed he had left until you picked up that phone to call 9-1-1, do you know about how much time passed?

A Possibly two minutes at the most.

Q Okay. Did you have a chance to review that phone call that was made to 9-1-1?

A Yes.

Q Okay. And was your entire conversation recorded with that 9-1-1 operator?

A I would think so, yes.

MS. FENT: Your Honor, at this time we'd offer State's Exhibit 11.

MR. O'NEIL: I don't think the proper foundation has been laid at this point for them to use the actual call.

THE COURT: That what?

MR. O'NEIL: I don't think the proper foundation has been laid at this point to play that. Is someone going to come from 9-1-1 to indicate it's a business record at this point?

THE COURT: I understand.

MS. FENT: If I may respond?

THE COURT: Yeah.

MS. FENT: There are other ways to get in the call. She actually can authenticate that she made this call, which she just did.

MR. O'NEIL: Your Honor, it's irrelevant. It's technically hearsay if it's --

THE COURT: Correct.

MR. O'NEIL: -- not testified sufficiently.

MS. FENT: She also indicated that she was -- it was immediately thereafter, and she was extremely frightened that they were coming back so it is an excited --

THE COURT: It is an exception.

MS. FENT: Excited utterance, yes.

THE COURT: All right. Overruled.

(WHEREUPON, State's Exhibit No. 11 was admitted into evidence.)

(Whereupon, the 9-1-1 phone call was played for the jury.

BY MS. FENT:

Q Ms. Lonsdale, the washcloth you used to wipe yourself off, where did you keep that washcloth?

A In the sink in the bathroom.

Q Was it ever -- was it ever on the floor in your bedroom?

A No.
Q Did you ever see another person in your hours?
A No, not at all.
Q Did you ever hear another person in your house?
A No, not at all.
Q Did you ever hear a conversation between the person that was assaulting you and somebody else?
A No, there was only him and I.
MS. FENT: No further questions at this time. If you'll just answer any questions that defense counsel will have for you. Just stay seated.
THE COURT: Cross-examination?
MR. O'NEIL: May I approach?
THE COURT: Yes.
(Whereupon, there was a bench conference.)

CROSS-EXAMINATION:

BY MR. O'NEIL:
Q Ms. Lonsdale, you woke up, it was early Saturday morning and you woke up?
A That's correct.
Q And when you woke up, it was dark in your home?
A Yes.
Q Okay. And it was dark in your home because, I think at that time, the power was out?
A It seems so, yes.

Q And not only was it dark in your home. It was dark on the outside of your home, as well.
A Yes.
Q Because at that time the street lights were out on the outside of the building.
A It could have been. It's not very we feel lit early.
Q So regardless of the power being out, it's also not a well lit area in general?
A No.
Q Okay. And I guess at some point, the power came back on while you were in your sitting room?
A It was off when I got up to check the time to see what was happening. I went back to bed and within ten minutes, it was back on again.
Q So you wound up getting back up and listening to the radio?
A Made some coffee and listened to the radio.
Q So you are sitting in the sitting room listening to the radio. Is it still dark in your house at that time?
A I'm sorry?
Q Is it still dark in your house at that time?
A Not the back part of the house. The back part of the house, the lights were on.
Q Did your bedroom have the lights on in your home?
A No, no.

Q So I'm going to show you what's marked as State's Exhibit No. 6 here. You're sitting in the sitting room here?
A Yes.
Q Is it still dark in the living room and your bedroom area?
A Yes.
Q The only lit part is what areas?
A There was a light on in the bathroom.
Q Right here?
A Probably in the kitchen. I almost think the kitchen was on.
Q Okay.
A And there was a little table lamp in the sitting room.
Q So there was a light in the sitting room, the bathroom and the kitchen maybe?
A Yeah.
Q But there's no light in the living room on your back bedroom?
A Right.
Q Okay. That area is still dark?
A Yes.
Q And it's still dark outside?
A Right.

Q Is that correct? It's still dark outside at that point?
A Yes.
Q And you got the radio on. At that point, you hear a bang, correct?
A I did.
Q Okay. And you go to -- at that point, you're home by yourself?
A Yes.
Q And I would assume you're a little bit nervous, but you hear this loud noise?
A Uh-huh.
Q Would that be fair? You go check out what this loud noise is?
A Uh-huh.
Q That's your -- so at that point, you still have got the radio on. It's still dark in the back area of your house, and you go and check out this noise, correct?
A Correct.
Q All right. And you said you had two dogs?
A Yes.
Q And your dog was barking at this time?
A No, he wasn't barking.
Q The dog wasn't barking once he heard the loud noise?
A He made one little bark, sat up on the sofa, made one

bark and no more.
Q And at that -- when you went to see what was going on, somebody came up behind you, correct?
A Yes.
Q At that point, I would assume you're a little bit more than nervous. You're essentially scared at this point?
A I was scared stiff.
Q Scared at this point?
A Uh-huh.
Q The dog was barking. He's not barking right now. It was dark in this back area of the house?
A Yeah.
Q Is all that fair?
A The front area of the house.
Q The area you were in. It's still dark at this point?
A Right.
Q It was dark. The radio was on. The dog hadn't barked, and there's no lights on at this point?
A Right.
Q And you're scared at this point. Now, you said you had two dogs. Do you know where your other dog was?
A Well, I assume he was still on the sofa.
Q Okay. So at some point, you wind up in your bedroom here?

A Right.
Q Okay. And there's no light on in the bedroom?
A There was a faint filter coming through on the sitting room.
Q From the sitting room?
A Uh-huh.
Q From this area right here, the only light that's coming in your bedroom is from the sitting room right here?
A Yeah.
Q Okay. And in between your bedroom and the sitting room is the sewing room, fireplace and the hall. That's fair?
A Not really a hallway. It was just one room after another.
Q Okay. So there's a door separating your bedroom and the sitting room. Would that be fair to say?
A Yes.
Q Okay. So you're in there, the radio was still on. It's dark in there. At some point, one of your dogs comes in there?
A Yeah.
Q Okay. And that dog is barking in there?
A Yes.
Q So you're in your bedroom. It's dark in the bedroom.

The dog is barking. The radio was still on, and at that point, is anything over your face at that point?

A I'm sorry, I didn't hear you.

Q Is there anything over your face at that point?

A No.

Q Okay. At some point, you wind up face down on the bed; is that correct?

A Not face down on the bed, no.

Q But you wind up bent over on the bed at some point?

A I did.

Q Okay. I think you said at that point, you saw the intruder with a gun in his hand?

A I did.

Q Okay. And did you say you know specifically what hand was the gun in, do you remember?

A In the right hand.

Q The gun was in the right hand. You know some specific things about that gun, correct?

A Yes.

Q Do you remember what color it was?

A In the hall light, it looked like a dark brown or a medium black. I wasn't sure.

Q So it was either dark brown or black and smallish?

A Very small.

Q Was it a revolver or --

A I don't know one gun from another.
Q Don't know, but you said it looked as though it was a lady's gun?
A Yes.
Q And you saw that specifically there?
A I did.
Q Okay. At the time, it was still relatively dark in the room. Is the dog still barking in the closet at this point?
A No.
Q Is the radio still on in the sitting room?
A Very faint, very faint.
Q Okay. But you can't tell where the other dog is, correct, at this point?
A Actually, I don't know whether the radio was still on. I couldn't really say for sure whether it was or not.
Q Do you remember turning the radio off?
A No.
Q Do you remember anybody turning the radio off?
A There was no nobody else to turn it off.
Q Okay. Do you remember whether or not your dog was still on the -- the other dog was still on the sofa?
A Uh-huh.
Q And you know -- do you know whether or not when you were in the bedroom, was that other dog still on the sofa?

A I assume so. I don't know.
Q But you -- the reason why you don't know whether or not he was still on the sofa because you can't tell what was going on outside of your bedroom at this point?
A Right.
Q Okay. So you don't know what's going on in your house other than what's going on in the bedroom?
A Right.
Q Okay. At some point, you are walked to the bathroom, correct?
A Right.
Q And at that point, there's something covering your head.
A Uh-huh.
Q You never see the face of the intruder at this point?
A No.
Q Because when he first came in, he was behind you?
A Correct.
Q And now you have something over your head, and you're walking from your back bedroom to the bathroom at this point?
A Yes.
Q Is that correct? And you -- to the best of your knowledge, nobody shut the radio off, correct?
A I wasn't seeing a radio. I can't really tell you.

Q Okay. So you don't -- you don't know what -- to your knowledge, nobody turned it off?

A No.

Q Okay. Is the -- is the dogs still barking?

A No.

Q Is it still dark in the room?

A In the bedroom?

Q In your house at that point, the back part of your house.

A The part that -- in the bathroom, it was not dark.

Q Okay. But the back part of the house was still dark at this point. There was no light turned on in your bedroom at this point.

A I'm sorry. You've got me confused. Can you repeat that?

Q When you're walking to the bathroom, the light in your bedroom had not been turned on at this point, correct?

A I'm not sure.

Q Okay. I think -- and do you remember giving your statement? I think when you gave your statement, you said once you came back into the bedroom from the bathroom the light got turned on?

A Right.

Q Okay. So that would be fair?

A Yeah.
Q Okay. And when you came back in from the bathroom to your bedroom, you were made to lay face down on the floor?
A Correct.
Q Okay. At what time were you made to lay down in the closet, do you remember?
A Prior to going to the bathroom.
Q Prior to going to the bathroom. You were in the closet at that point?
A Right.
Q The dogs were in the closet with you at that point, as well?
A No. Actually, they escaped and ran under the bed.
Q Okay. So when you're lying down on the floor, are you able to see any details about the intruder? Are you able to see his face at that point?
A Am I able to see what?
Q Are you able to be see the intruder's face when you're laying down on the floor?
A No.
Q Okay. You gave a description of the clothing that the person had on.
A Correct.
Q Do you remember saying -- were you able to -- let's back up a second. You gave a general description of the

person who came to your house that night, correct?
A Yes.
Q You said that he was a black male that you can tell?
A Yes.
Q You said he was -- he appeared to be in his early 20s. Would that be fair?
A That's what I said, yes.
Q Okay. And you also said he has either a Jerry curl or some sort of hair hanging down in his face that you could see?
A Sort of on the side of his face.
Q But it was hanging down over his face?
A No.
Q How was it -- how was it hanging down?
A Just like a curl that I could see just loose on his head.
Q Okay.
A It wasn't the typical bottom on the top of his head.
Q Okay. It was a loose curl hanging down on his face?
A Yeah.
Q And you said he had on black clothes?
A I think they were black, yes.
Q Did he have on a long sleeved shirt or a short sleeved?
A I don't know.

Q This was summertime? Do you remember? This was like in May.
A Yes.
Q At some point, did you give a written statement to the officer who came there that night?
A He wrote it down. He just asked me questions. He wrote it down.
Q So he asked you questions. He didn't -- he didn't allow you to write down --
A No.
Q -- kind of in your own words what happened?
A Well, he asked me in my own words what happened.
Q But he wrote it down?
A Uh-huh.
Q Did you have to sign anything that night?
A I'm not sure.
Q Would you -- you don't remember signing anything that night?
A I'm not sure.
Q Okay. Do you remember if the officer who came there that night asked you about the location of the washcloth?
A No.
Q Okay. Did -- and let me rephrase it. Did he ask you or you don't remember whether or not he asked you or not?
A Well, the officer that took the original statement

checked the bathroom and found the location of the washcloth. It wasn't integrated into the statement.

Q And that's what I'm asking. The initial officer you talked to never mentioned anything about the location of the washcloth?

A No.

Q Did he ever ask you at that -- on the night this happened about whether or not you heard any of the voices in the hall? Did he ever ask you that?

A No.

Q Was you -- at some point, you were shown at least two photo lineups; is that correct?

A I'm sorry, could you repeat that?

Q At some point, you were shown at least two photo lineups. When I say photo lineups, groups of six pictures of individuals. Do you remember that?

A Later after I came back to town, yes.

Q You came back to Columbia, and they showed you two sets of six people, pictures, correct?

A I'm not really sure. I was still in a state of nervousness.

Q But were you able to pick out anybody from those set of pictures you were shown?

A I picked out somebody I thought was similar to the hairstyle.

Q Okay. You --
A But I hadn't seen the face, so I couldn't pick out anybody.
Q So you picked out -- you picked out somebody in a that lineup, in that picture lineup you were shown.
A I said that was the type of hair that I saw.
Q Do you remember who that -- what number that was?
A No, no.
Q Okay. You said several items were missing, jewelry wise, from the home?
A Yes.
Q Do you remember what exactly those items were?
A There was a gold chain with a diamond on it, diamond stud earrings, emerald rings, a watch, and the silver wire sapphire earrings and necklace.
Q And your keys were also taken, as well?
A That's correct.
Q Did you ever get those keys returned back to you?
A No, I didn't.
Q Was any of that jewelry ever recovered, to your knowledge?
A No.
Q Okay. Now, the person who came in your house that night, mentioned something about that you had done something to one of their friends?

A That's correct.
Q That's what they told you? That's what that person told you that you had done something to his friend?
A Yes, yes.
Q Had you done anything to anybody that you remember at that particular time?
A No.
Q Or in that time period?
A No.
Q Beg the Court's indulgence, Your Honor.
(Pause).
Now, do you remember Investigator Mauldin?
A I do.
Q Giving you a call a couple of days later?
A Yes.
Q Okay. At that point, did Investigator Mauldin tell you that they had a suspect in custody?
A Yes.
Q Okay. And did Investigator Mauldin tell you what that suspect's version of what happened was that night?
A Did he give me his version?
Q Yeah.
A Yeah.
Q Did he -- did Investigator Mauldin ask you some other questions about the washrag and hearing voices?

A Not at that point, no.
Q Okay. When you actually got back in to Columbia, did Investigator Mauldin ask you those questions?
A Yes.
Q And that was the first time that you heard those questions being asked to you, when you got back to Columbia and Investigator Mauldin asked you those questions.
A Yes.
Q Beg the Court's indulgence, Your Honor.
(Pause.)
Just a couple more questions. I'm almost done. Do you remember how long it was after the incident date that you spoke to Investigator Mauldin back in Columbia about the washcloth and anybody else being --
A The incident happened on the 28th of May, and I believe I came back into Columbia -- well, they spoke to me the night before, which would have been the Thursday night. I came back into Columbia on Friday morning.
Q And if I told you that Friday morning was June 3rd, would that sound about right?
A Yes.
MR. O'NEIL: Okay. That's all I have, Your Honor.
THE COURT: Any redirect?

REDIRECT EXAMINATION:

BY MS. FENT:

Q Ms. Lonsdale, in looking at this sketch, which side of the bed -- when he was assaulting you, which side of the bed were you on?

A Well, he tried to assault me on both sides of the bed.

Q Okay.

A But he actually assaulted me on this far side near the closet.

Q Okay. So when you say he tried on both sides of the bed, describe that. What do you mean?

A Well, the first time he was going to assault me when the dog was barking on the bed.

Q Okay.

A He told me to get rid of the dog.

Q Okay. And that was on -- sorry. I tell you what.

A That was the first time it was on this side.

Q Okay. And so when you're on this side of the bed --

A The dog has jumped up and is barking there.

Q Okay. Can you see your outside door from that side --

A Yes.

Q -- from that side of the bed?

A Yes.

Q And is this before or after you then get up or he

gets up, somebody closes that door?
A When we get up, that's when the door got closed.
Q Okay. And then he takes you to which side of the bed?
A To this side. We come by here, the door got closed, the door in the closet, and then he tries to rape me over here on this side.
Q Okay. And when he puts you across that bed, describe, I guess, your body on that bed. Are you stomach down, or are you back down?
A Stomach down.
Q Stomach down, and is your -- describe your actual face, your eyes, your head. Is it down in the covers? Are you up? How is that?
A I think that was down in the covers.
Q When you're facing the door the first time, do you see anybody come through that door?
A No.
Q Anybody on that side of the bedroom?
A No, nobody.
Q When you're on the opposite side and he is attempting to sexually assault you, do you see anybody come into your bedroom?
A No.
Q Do you hear anybody come into your bedroom?

A No.
Q Do you hear anybody say anything to the person who is attempting to sexually assault you?
A No.
Q Do you hear anybody? When you are being sexually assaulted, do you hear anybody in any other part of your house trying to come in?
A No, not at all.
Q Do you hear any doors being opened or closed?
A No.
Q Did you at any point hear what could have caused this door to open?
A That door to the porch?
Q Uh-huh.
A Only after when he was leaving. I heard a loud noise on the porch.
Q Okay. Coming from that direction?
A Yes.
Q And is this after the sexual assault?
A Uh-huh.
Q After going through the dresser drawer?
A Right.

MS. FENT: Okay. No further questions.

RECROSS-EXAMINATION:

Q And who took these photographs?
A I did.
Q Do they accurately reflect what you saw at the house and what you subsequently did with one of the items?
A Yes.
MS. FENT: Offer into evidence State's Exhibit 10.
MR. O'NEIL: No objection, Your Honor.
THE COURT: Without objection.
(WHEREUPON, State's Exhibit No. 10 was admitted into evidence.)
BY MS. FENT:
Q What is in Exhibit 10?
A Starting on the left-hand side, this was the bathroom. There was a washrag or a washcloth in the bathroom sink that I collected, so this was before it was disturbed in any way before I collected that. That was in its original location.
Right below it is a picture of the bathroom. If you notice with the coloration in the photo differences, you can tell a flash went off. In the bottom one, this was more natural light in the top there.
On the far right-hand side, these are photographs of the washcloth that I collected, the one in the sink. I took that back to our laboratory, and I photographed that with and without the scale.

BY MR. O'NEIL:

Q Ms. Lonsdale, just so I'm clear on this, when you were bent over on the bed, he was attempting to sexually assault you. Your face was down in the pillows?

A I think so.

MR. O'NEIL: Okay. That's all I have, Your Honor.

THE COURT: All right. You may come down, ma'am. Thank you very much.

All right. Ladies and gentlemen of the jury, we're going to take our lunch break at this time. I'll ask you to be back in the jury room at two o'clock at which time we'll continue with the trial.

Again, I'm going to ask you not to discuss this case with anyone else over the lunch hour or amongst yourselves when you return to the jury room. We'll see you at two o'clock. Have a pleasant lunch.

(WHEREUPON, the jury left open court at approximately 12:50 p.m.)

THE COURT: All right. Stand at ease until two o'clock.

(WHEREUPON, a lunch break was taken.)

(WHEREUPON, State's Exhibits Nos. 12-18 were marked for identification only.)

THE COURT: Is the State ready to proceed?

MS. FENT: One matter I wanted to address is on his

Q State's Exhibit 14, take a look at that and tell me if you recognize State's Exhibit 14.
A I do. It's the wash cloth that I collected.
Q Okay. And who packaged it in that envelope?
A I did.
Q Is that your handwriting on the outside of the envelope?
A It is.
Q Can you tell us then -- when you took the photograph in State's Exhibit 10, is that where you found the washcloth is in that sink?
A Yes, that's correct.
Q Tell us how was that pointed out to you? How did you come to find out about it?
A Ms. Lonsdale stated that -- I had asked her if during the incident, if anything was used to possibly wipe off with or used during the incident. She stated that there was a washcloth in the sink, so I went and photographed that and collected that.
Q When did that happen? When did you find that out from Ms. Lonsdale?
A It was -- it was actually later after I had already processed the front room.
Q Okay. Inside of State's Exhibit 14, I just took out a brown paper bag. Who put this in a brown paper bag?

A I did.
Q So after you collected it from that sink, what did you do with it?
A I put it -- there was a smaller envelope that I put inside the brown paper bag.
Q And then what did you do with it?
A After that, I brought it back to the laboratory, photographed it with and without the scale, did stuff in the laboratory, and I put it in this envelope.
Q And what condition was it when you got it out of that sink?
A It was actually very wet, saturated. So before -- I should take the step back. Before I -- initially, when I brought this back, it was early in the morning on that day, say it was around eight o'clock or so in the morning.

So we have in our forensic garage, we have some drying cabinets where we dry, you know, bio -- it could be bloody clothes, whether it's wet or saturated in any type of way that would bring it back to dry it. So I put this in one of those.
Q Okay. And then after it was in the drying rack, what did you do with it?
A When I came back on shift that night, then I came back, retrieved that item from the forensic garage, the drying cabinet. I brought it, put it -- photographed it.

That's why you'll see a -- it looks like it was hung on the photograph. We have individual hangers that we basically throw away. They're one-use hangers so there's no potential cross-contamination.

Q And who all has access to these drying racks?

A Only the crime scene investigators.

Q And it's more than one case put in a drying rack?

A Never. We have three separate drying racks.

Q So they came back. You took it out of the drying cabinet. You said you took photographs of it?

A Yes.

Q The black marks on the rag, who put those on there?

A I did.

Q And what did they indicate?

A Well, when I brought this back, it was late. It was nine or so in the evening that night, and we have an alternate light source. With that, what we can do is we can enhance certain fluids or chemicals that will enhance under certain wave length. So I enhanced the washcloth and it fluoresced. So I circled the areas that fluoresced.

Q This item in the paper bag that we took out of State's Exhibit 14, do you recognize that?

A Yes, that's a washcloth.

Q Okay. And then what did you do with the washcloth

after you took the photos?
A After I took the photos, I circled with a black mark, with the areas that the black mark fluoresced, and then I submitted that to DNA, as well, for a follow up for potential DNA evidence.
Q And how is it packaged -- well, actually, you said you submitted it to DNA. Where did you physically take this item in State's Exhibit 14?
A To evidence.
Q Okay. And how did you?
A I put --
Q Who did you give it to? Where did you put it physically?
A I put it in locker number 28 in the evidence room.
Q Okay.
A It was approximately 1:12 in the morning.
(WHEREUPON, State's Exhibits Nos. 19, 20 were marked for identification only.)
BY MS. FENT:
Q I'm going to show you what's been marked as State's Exhibit 19 and 20 and ask you if you recognize that?
A Yes. That's the quilt that I collected from the scene, as well, in the bedroom.
Q Okay. You took those photographs?
A I did.

A Yes, sir. It was placed in there on May 29th at 1:12 p.m.

Q By whom?

A By Investigator Schroeder.

Q And that's your only part of this investigation, getting it out of the locker. What did -- what did you do with it after you got it out of the locker?

A I said I placed it in the system, which automatically assigned it a number, and I placed it on a shelf in the evidence room. That was my total, I guess, dealings with this evidence.

MR. O'NEIL: No further questions.

THE COURT: Anything further?

MS. FENT: No.

THE COURT: All right, sir. You may come down. May this witness be excused?

MR. O'NEIL: No objection.

THE COURT: Without objection. You're free to go, sir. Thank you very much.

THE WITNESS: Thank you.

MS. FENT: State calls John Carwell.

JOHN CARWELL, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your full name for the record, please.

THE WITNESS: John Carwell.

DIRECT EXAMINATION:

BY MS. FENT:

Q With whom are you employed?

A Richland County Sheriff's Department.

Q And in what capacity?

A I am assigned to the narcotics division at this time.

Q Okay. I'm going to show you what is marked as State's Exhibit No. 4 and ask you if you recognize that?

A I do.

Q And just generally speaking, what is that form?

A This is a form that the Richland County Sheriff's Department uses. It's a consent to search for an individual's DNA.

Q In the form of -- does it speak about the specific form, like are you going to take blood or how you're going to get the DNA?

A It's going to say that -- it says that to take a buccal swab, which was an oral swab, cotton swab, inside of your mouth.

Q And, essentially, what is a buccal swab?

A It is a cotton swab with a Q-tip.

Q And just do you just do it yourself, or do you have the person that you're asking --

A I opened the package and the individual that's

consented takes it from the package and swabs inside the mouth and places it into the box, and then it goes into an evidence bag.

Q I'm going to show you what is marked as State's Exhibit 16 and ask if you recognize that:

A I do.

Q And, specifically, what is that?

A This is an evidence bag that has the buccal swab of Edward Dunn.

Q And who took that swab?

A I did.

Q Do you see the person that you took that swab from in the courtroom today?

A Yes. He is sitting at that table over there.

Q Can you describe what he's wearing so that we know who you're talking about?

A He has a red shirt on with white stripes.

MS. FENT: May the record reflect this witness has identified the defendant?

THE COURT: The record so reflects the witness has identified the defendant.

BY MS. FENT:

Q And tell us then how it was, did you get a court order or consent? How is it that you took this swab from the defendant's mouth?

A It was a consent, voluntary consent, from Edward Dunn.
Q And did he sign this consent form?
A He did sign it.
Q And he allowed you to take that swab from his mouth?
A Yes, he did.
Q And physically, what did you do with that swab then?
A I placed it in the cardboard box. His name is on it, case number for my case. I placed it in this evidence bag. I filled out the appropriate lines. I submitted it to the evidence room. It was actually person to person. I handed it to the evidence technician.
Q And the date and time that you submitted that hand to hand to the property room?
A September 21st, 2010 at 4:12 in the afternoon.
MS. FENT: Your Honor, at this time I offer into evidence State's Exhibit No. 4.
MR. O'NEIL: I renew my previous objection.
THE COURT: Subject to the defendant's objection, it's admitted.
(WHEREUPON, State's Exhibit No. 4 was admitted into evidence.)
MS. FENT: No further questions at this time.
MR. O'NEIL: Nothing further.
THE COURT: You may come down. Thank you.

MR. MATTHEWS: The State calls Patricia Weed.

PATRICIA WEED, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your full name for the record, please.

THE WITNESS: Patricia Weed.

DIRECT EXAMINATION:

BY MR. MATTHEWS:

Q Ms. Weed, where are you currently employed?

A Richland County Sheriff's Department.

Q And what is your occupation there?

A I'm up in investigations now.

Q Okay. And in September of 2010, where were you working in the sheriff's department?

A In the evidence room.

Q In the evidence room, and what were your duties in the evidence room?

A To bring in evidence that the officers or others investigators bring in from off the street and log it in to the system.

Q I'm looking at property report here 1009205220. Is that the one you have in front of you?

A No, I don't have that one.

Q Okay. I'm handing you up that property report. If you'll just review that briefly, please. If you'll look

at line five, did you have a chance to handle any items in this case?

A I did, sir.

Q I'm showing you what's been marked as State's Exhibit 15. Is that reflected on that property report?

A Yes, sir.

Q And what was your involvement in the handling of this item?

A I brought it in from the officer.

Q From which officer?

A John Carwell.

Q And what was the date of that?

A That was 9/21/2010 at 4:12 p.m.

Q And once you took it from Investigator Carwell, what did you do with it?

A I take it from the officer, log it back into the system, and put it back on the shelf where we got it originally from.

Q Was it sealed when it was given to you?

A Yes, sir. The items that we take are always sealed or we don't accept it.

Q Did you open it, open the seal or tamper with it in any way?

A No, sir.

Q You entered it in the exact same condition that it

was given to you?

A Yes.

Q All right. Can I get that property report back, please?

Thank you.

If I can refer you to line four on the property report. What was the next thing you did with that item?

A I got -- removed the item from the shelf and gave it to Christine Barrickman who works in the DNA lab.

Q And what was the date and time of that?

A That was 10/25/2010 at 9:08:55 in the morning.

Q Would it still have been sealed at that point?

A Yes, sir.

MR. MATTHEWS: Thank you. I have no further questions.

THE COURT: Any questions?

MR. O'NEIL: No questions, Your Honor.

THE COURT: All right. You may come down.

May this witness be excused?

MR. O'NEIL: No objection, Your Honor.

THE COURT: Without objection.

MS. FENT: The State calls Christine Barrickman.

CHRISTINE BARRICKMAN, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your full name for the record, please.

THE WITNESS: Christine Barrickman, B-A-R-R-I-C-K-M-A-N.

DIRECT EXAMINATION:

BY MS. FENT:

Q With whom are you employed?

A Richland County Sheriff's Department.

Q In what capacity?

A I work in the DNA laboratory.

Q And what are your duties and responsibilities in the DNA laboratory?

A My main job is to assist the analyst with casework.

Q And how do you do that?

A Generally, I retrieve evidence from the evidence room, open it up, inventory it and process it and turn it over to the analyst for casework.

Q The first thing I want to do is bring your attention to State's Exhibit 16, and ask you if you had any contact with this item.

A I did.

Q Okay. And what was the nature of your contact with State's Exhibit 16?

A I received it from the evidence room, brought it upstairs. I opened it, inventoried it, processed it and

turned it over to the analyst.
Q And what does it mean by process it?
A It's a buccal swab, so it's just -- I put -- I drop the buccal swab off. It's put into a tube, and it's put on a rack and turned over to an analyst to run on an instrument.
Q Do you know who you retrieved that item from the property room?
A Patricia Weed.
Q Okay. And then does it remain in your custody and control until you turn it over to the analyst?
A Correct.
Q And what analyst did you turn that item over to?
A John Barron.
Q Okay. And that item was identified to you as what, whose buccal swab?
A It's a buccal swab from Edward Dunn.
Q Then regarding case number 1105009928, did you process items of evidence regarding that case number?
A I did.
Q Did any of the items -- or was one of the items that you had contact with, was it item 11, the washcloth?
A No.
Q Okay. So there were other items that you helped process?

A Correct.

Q Okay. What were the items that you helped, I guess, process?

A It was items seven, eight, nine, ten, and 16, which were swabs from a vehicle and a buccal swab from Donald Moore.

Q So you would not have opened State's Exhibit -- well, I guess item 11, which we've marked as State's Exhibit 14?

A I did not.

MS. FENT: Okay. I have no further questions.

THE COURT: Any cross?

MR. O'NEIL: No questions.

THE COURT: Is this witness free to go?

MR. O'NEIL: Yes.

THE COURT: You may come down. All right.

Ladies and gentlemen of the jury, let's take a short afternoon break. At this time, I'll ask you to -- we'll take a break for about 15 minutes. Just relax in the jury room. We'll call you when we're ready. Don't discuss the case amongst yourselves while you're in the jury room. Thank you very much.

(WHEREUPON, the jury left open court at approximately 3:39 p.m.)

THE COURT: All right. Stand at ease for about ten minutes. All right.

(WHEREUPON, a short break was taken.)

THE COURT: State ready to proceed?

MS. FENT: We are, Your Honor. Can we approach just about scheduling?

THE COURT: Approach.

(Whereupon, there was a bench conference.)

THE COURT: Who is your next witness, Solicitor?

MS. FENT: We are calling Deputy Ben Lasher, who is the reporting officer regarding the burglary that occurred at the victim's home on May 21st, 2011, a week before this sexual assault.

MR. O'NEIL: And, Your Honor, I would object to any testimony by Deputy Lasher. I think any sort of testimony from Deputy Lasher as it relates to the details of the burglary that occurred seven days before the burglary that we're here for today, Your Honor.

I think that would be double to the whammy of improper bad act, which is, I think -- it may not -- Deputy Lasher may not have any direct knowledge as to who perpetrated that burglary or not.

I think the only inference that can be drawn from the testimony of Deputy Lasher concerning the burglary on May 21st would be that Mr. Dunn committed that burglary, because if Mr. Dunn didn't commit that burglary on May 21st, 2011, then that testimony has no relevance to

this case.

THE COURT: Well, hadn't -- hasn't the victim, or Ms. Lonsdale, already testified to that?

MR. O'NEIL: She testified that her house was burglarized earlier, yes, Your Honor.

THE COURT: And the money was in a drawer.

MR. O'NEIL: I don't think she testified -- I don't know if she --

THE COURT: I don't remember which.

MR. O'NEIL: I don't remember her testifying to the exact location of where the money was or anything of that nature. She may have said something. I don't recall it.

THE COURT: All right. It's in the record that she was robbed a week before that. What's the purpose of this witness testify?

MS. FENT: It corroborates her that she, indeed, did call the police, make a report reporting that cash had been taken from that dresser drawer. It corroborates her. There is -- this officer is going to have no clue who submitted it, doesn't have an opinion as to who committed it.

THE COURT: But he said -- he says the implication is that his client was somehow responsible for it or otherwise, you wouldn't be submitting the officer.

MS. FENT: No. It just corroborates the victim's

account of what happened, that it, indeed, was burglarized.

THE COURT: You stipulate it?

MR. O'NEIL: No, Your Honor. It don't -- it's not relevant. If Mr. Dunn didn't commit it, there is no relevance to that testimony. If the evidence is not -- Mr. Dunn committed -- it's not relevant at all if somebody other than Mr. Dunn -- Mr. Dunn actually made it relevant in his own statement when he said -- I meet up with Shorty and Shorty said he hit this house earlier and got 10 stacks or 15 stacks, whatever it was, $50,000, and did I want to go back with him to hit the house again.

But at this point, that testimony is not in evidence. That testimony is not in evidence at the point, and therefore, it's still not evidence.

THE COURT: All right. I think until it becomes relevant. I sustain its objection. Now, if the statement comes in, then it becomes --

MS. FENT: Okay.

THE COURT: Is the State ready for the jury?

MR. MATTHEWS: Yes, Your Honor.

THE COURT: Is the defense ready for the jury?

MR. O'NEIL: One question as it relates to the testimony of the DNA experts. I don't know what extent they intend to go into in relates to this September 2010

incident. That day they were -- I don't know if they want to go into what the DNA experts -- there was actually a comparison in that case or just that the DNA experts retained that DNA and put it in the evidence locker.

MS. FENT: We are just planning on calling John Barron to say he received this swab from Christian Barrickman.

She did the initial processing. He then received it from her. He proceeds to develop a profile from that swab, and then essentially, we'll be calling Gray Amick to say he processed evidence in this case, and he compared the profile that he developed to the profile that John Barron developed.

MR. O'NEIL: As long as Barron essentially testifies -- part of the chain, I don't have any objection.

MS. FENT: Unless another issue arises, that's what we're...

THE COURT: So Barron be will not identify the source of the DNA in his testimony?

MS. FENT: No. John Barron will say, yes, he received a swab that's labeled -- you know, pertaining to custody purposes, he has to say it's a swab labeled for Edward Dunn.

THE COURT: Okay. But he didn't compare it to 207?

MS. FENT: He did not compare it to any evidence in our case.

THE COURT: Any --

MS. FENT: He just --

THE COURT: -- or the case in 2007.

MS. FENT: He -- no, not the case in 2007. It's a 2010.

THE COURT: I know that.

MS. FENT: This is not John Carwell. He does do whatever he does to the evidence in the 2010 case, but we're not making any reference to the other evidence that was collected; that there was something to compare it against.

THE COURT: Right.

Bring the jury.

(WHEREUPON, the jury came into open court at approximately 4:01 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right. Solicitor, call your next witness.

MR. MATTHEWS: Your Honor, the State calls John Barron.

JOHN BARRON, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your name for the record.

THE WITNESS: My name is John Barron, B-A-R-R-O-N.

DIRECT EXAMINATION:

BY MR. MATTHEWS:

Q Where are you currently employed?

A Richland County Sheriff's Department.

Q And what is your occupation through the sheriff's department?

A I'm a forensic scientist in the DNA laboratory.

Q And what are some of your duties as a forensic scientist?

A I am specifically in a DNA laboratory. My duties are to receive potential evidence that is brought in to the lab, to take the sample that is already processed by our technician and develop DNA profiles from them and compare them to possible --

Q And how long have you worked in the lab in Richland County?

A Eight years.

Q Can you go through your education for the jurors, please.

A Yes. I have a bachelor of science degree in microbiology from Clemson University. My initial venture into forensics science was in South Carolina Law

Enforcement Division, otherwise known as SLED.

There, I performed various types of forensic analysis. Ultimately in 1999, I was transferred to the DNA laboratory where I was trained to become a DNA analyst.

I successfully completed my training and my competency and proficiency tests. In 2004, myself along with Dr. Gray Amick, also from SLED, came to Richland County and set up a DNA laboratory there.

Q All right. Do you have any certifications specifically related to DNA?

A Well, I -- I've been court qualified as a DNA analyst since about 19--- since about 2000. I testified about 50 times.

Q And do you undergo any continuing education in the field of forensic sciences?

A Yes, I do.

Q How regularly would you say?

A At least once-a-year I have some type of continuing education. I also attend the classes that if possible, that -- if funds allow, the University of South Carolina.

I attended a molecular biology course. I successfully completed it, along with several population statistics courses related to forensic DNA analysis.

I attended various professional training classes at

least once a year. I receive, you know, certification that I passed the initial part of being involved in a class as far as the continuing education of DNA analysis.

MR. MATTHEWS: Okay. Your Honor, at this time I would offer Mr. Barron as an expert in forensics DNA analysis.

THE COURT: Any objection, any voir dire?

MR. O'NEIL: No voir dire, no objection.

BY MR. MATTHEWS:

Q Briefly, just for my enlightenment, as well as the jury's, can you explain what DNA is, kind of in a nutshell?

A Yes. DNA's molecule is in every enucleated cell in your body. Most of the cells in your body have a nucleus. Inside that nucleus is a molecule called DNA or deoxyribonucleic acid.

It's a molecule that basically defines who you are as a human being. 99.5 percent of it basically does that, defines you as a human being, versus some other living creature on the planet earth.

The other small percentage of it basically defines you as an individual. As you can tell, all of us have pretty much different, but DNA is specific to you. Unless you have an identical twin, it will be unique to you in the whole human population of the planet earth.

Therefore, it becomes an important forensic science tool because it can be used for identity. So we -- in the laboratory, we extract the DNA from various pieces of evidence, and we target specific areas on the DNA molecule that would be unique to you to help us identify you as an individual.

By doing so, we compare it to known samples submitted from people to determine whether or not that DNA belongs to them or not.

Q So would each individual person have their own unique profile?

A Yes. Unless you're an identical twin.

Q Okay. What would you need to actually recover DNA or to find DNA present?

A You just need a few cells that have a nucleus in them. So, for instance, a small drop of blood that has white blood cells, which have a nucleus in them to identify you from that drop of blood, the very small, minute drop of blood, by the way, about the size of a point of a pin, from any type of cell that you may excrete from your saliva. Like you put your mouth on a drink can or piece of pizza or cigarette or anything like that.

It would contain, generally speaking, not always -- but most of the time, it will contain skin cells from inside of your mouth to identify you.

It would also be important in say a sexual assault case where someone may ejaculate the semen or sperm cells, which contain DNA as well.

Any type of cell, skin cell, has a lot of -- they are all enucleated, so anything you're wearing, like your shirt or your pants or your shoes or your socks would probably contain enough DNA, as well.

We test it so it doesn't require very many cells at all. So there are cases where people have just touched something and left enough DNA cells or skin cells to identify their DNA from that. So, you see, it becomes a very important tool for the police to use in identifying potential suspects in criminal cases.

Q And I think you said it earlier, but I just want you to reiterate it. Does it take a large amount of cells or fluid in order to be able to extract DNA?

A No. It just takes a few cells.

Q And if someone were to, say, attempt to wash an article of clothing or something like that, could there still be DNA left behind?

A There could. A lot of times there are tests that we could use to identify, like blood tests. There are screening tests we can use to say yes, there was blood there, which would give us an idea that there was also DNA there.

In the case of skin cells, we can't see it. So it's kind of like hit and miss. It's tested to see if there's DNA there or not, so like the mouth of a drink can, we can't really see DNA there. We can swab it and put it in a tube to extract it to see if there is DNA there.

Q And so if a person's semen was left behind and a sample was obtained, you could identify them from a specific genetic -- or DNA profile?

A Yes. Semen is material that was ejaculated from a male. The semen itself is a fluid, but inside the fluid are sperm cells. Each of those sperm cells carries a DNA molecule in the nucleus of that sperm cell that is typically the person who ejaculated that semen.

Q And, generally, how is an individual's known profile provided to you?

A It used to be from a blood sample where it's actually taken to a doctor in a medical facility and draw his blood out, but that can be, you know, tedious and maybe even traumatic to some people. I've actually seen people faint from having blood drawn.

So since there are plenty of cells inside of your mouth, it's common now. It's very noninvasive and very pain free just to give a clean sterile swab and swab inside of your mouth. We have got plenty of DNA present on the swab to identify it.

Q And once provided with a buccal swab, what are you able to create?

A From a buccal swab, we extract the DNA, like I'm saying. Since it is known from an individual, that person's DNA profile will be developed from that buccal swab.

Q Do you know -- were you able, then, to obtain a known sample from this defendant, Edward Dunn, at some point in time?

A Yes. I received a cutting from Christine Barrickman that was labeled as a buccal swab of Mr. Dunn.

Q Do you know when you received this?

A Yes, I do; then on October 26th, 2010.

Q At that point in time, was this provided directly you by Ms. Barrickman?

A Yes.

Q And at that point in time, what did you do with that sample?

A At that point in time, I extracted the DNA. I have several chemicals on the swab itself and for a period of time, this DNA was -- it is removed from the nucleus of the cell. It's isolated. It's purified.

At that point, I copied the appropriate areas of the DNA molecule and developed a profile.

Q I'm showing you what's been marked as State's Exhibit

No. 15. If you'll take a moment to look at that.

(Pause.)

Do you recognize that object?

A Yes. This is the -- no. I don't recognize this object. This is a buccal swab of Donald Moore.

Q Excuse me. I handed you the wrong one.

A I did not test Donald Moore. It might be this one.

Q This one, and I apologize. This is State's Exhibit 16.

A Oh yes, I'm looking at mine. This is the buccal swab of Edward Dunn that I tested.

Q And is that what you received from Christine Barrickman on that day?

A Yes. I actually received this along with the cutting in the tube that she gave to me.

MR. MATTHEWS: At this point, Your Honor, I'd introduce State's Exhibit 16.

MR. O'NEIL: Your Honor, I'll renew my previous objection.

THE COURT: Overruled.

MR. MATTHEWS: Thank you.

THE COURT: It's admitted into evidence.

(WHEREUPON, State's Exhibit No. 16 was admitted into evidence.)

BY MR. MATTHEWS:

Q And were you able to develop a profile for Edward Dunn at that point in time?

A Yes, it was.

Q And was that profile documented in some sort of way?

A Yes, it is.

MR. MATTHEWS: Beg the Court's indulgence.

(Pause.)

Thank you. I have no further questions.

MR. O'NEIL: I have no questions of this witness.

THE COURT: All right, sir. You may come down.

May this witness be excused?

MR. O'NEIL: No objection.

THE COURT: Without objection.

MS. FENT: The state calls Gray Amick.

GRAY AMICK, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your name for the record, please.

THE WITNESS: My name is Gray Amick.

DIRECT EXAMINATION:

BY MS. FENT:

Q And with whom are you employed?

A I work for the Richland County Sheriff's Department.

Q In what capacity?

A I work as a forensic scientist in the DNA laboratory.
Q Can you tell the jury about your education and your training, background, that brings you to be a DNA scientist?
A Sure. I got a B.S. in biology in 1989 and a PhD in biochemistry in 1993 from the University of South Carolina. From there, I was employed at the State Law Enforcement Division, commonly known as SLED, for 11 years.

Most of that in the DNA laboratory where I was trained by court-qualified experts in the field of forensic DNA and serology.

In 2004, as John said, I was hired by the Richland County Sheriff's Department to help start up a DNA lab there, and I did that, including validating all the methods and authoring the protocols, along with John Barron, to establish that DNA laboratory.
Q Do you have an estimate as to how many items of evidence you have processed over your career?
A It would be thousands.
Q And have you testified in courts of South Carolina as a DNA expert before?
A I have.
Q And have you been qualified as an expert in our courts?

A I have.
Q Approximately how many times have you been qualified as an expert?
A Approximately 75 times.
MS. FENT: Your Honor, at this time, we offer Dr. Amick as an expert in the area of DNA analysis.
THE COURT: Any voir dire or objection?
MR. O'NEIL: No voir dire or objection, Your Honor.
THE COURT: You may proceed.
BY MS. FENT:
Q Did you have occasion to process some evidence regarding case number 1105009928 regarding an Indira Lonsdale?
A I did.
Q How did you first come in contact with the items of evidence?
A I began the processing of these items, it looks like on May 31st of 2011.
Q This occurred on May 28th, 2011. Is that a typical timeframe for you to be starting processing items of evidence?
A Sometimes but looking at the case notes, this was a -- this was requested as a rush case. So it was quicker than probably a normal case would.
Q Okay. And who actually physically went and got the

items of evidence on the 31st?
A That would have been me.
Q Okay. And where did you get those items of evidence?
A From the evidence room.
Q What items of evidence, what numbers did you initially pick up from the property room on that day?
A I picked up a buccal swab from Indira Lonsdale, a swab from black wallet, a swab from a TV stand, a swab from a dresser drawer, a swab from a back door handle, a swab from a French door handle, a swab from outdoor driver door handle, a swab from the gear shifter, a swab from a steering wheel, a swab from an emergency brake, a white washcloth, and then subsequently a buccal swab from Donald Moore.
Q Okay. That buccal swab from Donald Moore, was that something you picked up on that day or you said subsequently?
A That was a later date.
Q Okay. So items two through 11, you started on May 31st?
A Items one through 11.
Q One through 11, okay. And I'm going to show you what's marked as State's Exhibit No. 13 and ask if you recognize that and its contents?
A I do. This is items two through ten, it looks like,

the packaging for those items bearing my initials and date and are sealed.

Q And I ask you if you recognize State's Exhibit 12?

A Yeah. This is item one, which is a buccal swab from Indira Lonsdale, again my initials and date on the seal.

Q Okay. And then in front of you here is the envelope and the contents of State's Exhibit 14. I ask if you recognize that.

A Yeah. This is the packaging for item 11, which was the white washcloth, again with my initials and date on this.

Q Okay. From the time that you pick it up in the property room to when you, I guess, start your analysis of it, does anybody else have contact with that -- with these items of -- property items?

A No.

Q Can you generally tell us how you go about processing these items?

A Sure. Basically, if there's swabs, I will fill out kind of an inventory sheet and then take small cuttings from those swabs. When I say swabs, it's like a Q-tip swab, a sterile Q-tip and put these in labeled tubes for extraction of the DNA.

In the case of the white washcloth, I would lay it out and do some preliminary serology testing to try to

identify some stains or body fluids, and upon finding stains, I will cut those out and put those in for extraction of DNA.

Q And did you complete your processing of items one through 11?

A I did. Some of those items were not requested to be processed, but they were in the packaging. So initially, they are listed, an inventory, but I would notate no analysis was performed. So the ones that were requested to be analyzed, they were analyzed. Some of them were not at the time in the request of this, so it's in this inventory.

Q And this initial analysis, you processed items one through seven.

A Well, the ones that were actually requested?

Q And then -- I'm sorry, yeah, requested was one through seven and then item 11.

A Actually, it was one, two, four, five, six that was requested, according to my notes.

Q Okay.

A And 11, I'm sorry.

Q Okay. And, first of all, no known swab that was taken from the victim's mouth, do you develop a profile, a DNA profile?

A I did.

Q Okay. Items two through seven, what, if anything, was your -- or I guess six, what is your result with regard to those swabs?

MR. O'NEIL: Objection, Your Honor; my previous objection.

THE COURT: Overruled.

THE WITNESS: What was the question again?

BY MS. FENT:

Q Two -- the results of your analysis on two through six, so the black wallet, the TV stand, the dresser drawer.

A All right. Item two, there was no DNA extracted from item two.

Q And that's the black wallet?

A That's correct.

Q And what do you mean by no DNA extracted?

A That means I took a swab from that item and tried to extract DNA or attempted to extract DNA and just didn't get any DNA from it.

Q And does that mean that no one has touched that wallet?

A Not necessarily.

Q Okay. Have you seen the show CSI?

A No.

Q Is there a reason you don't watch it?

A I...

Is there a reason I don't? Not that I can think of, but I just don't watch it.

Q The -- I guess item three, what was your result of that from the TV stand?

A Item three, there was no analysis performed on item three.

Q Okay. The -- item four, the dresser drawer.

A Item four, there was a partial DNA profile developed from item four that was too weak to reliably interpret.

Q What does that mean, too weak?

A That means I got something from there, but there wasn't enough there to make an interpretation. It was too weak of a profile to say okay, it matched somebody or it didn't match somebody.

Q So are there standards in terms of how much of a profile you develop before you can try to match it to someone?

A Standards? No. It's up to the analysts to interpret what, you know, profile they develop and whether or not they -- whether or not there's enough data there to say this person is included or excluded.

Q Okay.

A That probably would be the best answer for that.

Q Okay. And item five, swab from the back door handle?

A Item five is the same as item four. The partial DNA profile developed was too weak to interpret.

Q Okay. Item six, swab from a French door handle?

A Item six, no DNA was extracted from item six.

Q Item seven, you said that you get at a subsequent time. So what -- do you repackage these swabs, take it back to the property room and then get it again later?

A Yes. What generally happens is it seems a little confusing. The investigator will look at the evidence they're submitting in the case and decide what they want a DNA run on. So that's submitted to me, and I would go pick up those items.

Well, in this case, there's several items in one package. So I got all of those, but only a few were requested. So I would do those analysis and then either consult with an investigator, and in his subsequent investigation, he may decide, "Oh, I want analysis on these items, too. Initially, I didn't want that," or whatever the case may be.

So I may already have these still in my custody. I can just open it back up and do those requested analysis or I may have returned it to the evidence room. I would just go back down there and get them and do the analysis.

Q Okay. Because two through ten you said are all packaged together?

A Uh-huh.
Q And did you personally again go back down and get those items?
A The -- on the second request -- let me look at my notes. I'm pretty sure Christine Barrickman, the technician, she went back down on June 20th and reprocessed seven, eight, nine, ten, and 16.
Q Okay. And reprocessed it doing, I guess, some initial processing she testified about?
A I'm sorry. I shouldn't have said reprocessed. Those were initially at that point.
Q Okay.
A So the exact way I described it, she would have done the same thing, opened them, inventoried them on a cutting, too.
Q And then did you get those cuttings and the swabs from Christine?
A I did.
Q Okay. What were the results, then, of your analysis on seven, the outside driver door handle?
A The item seven was the partial DNA profile developed. Item seven was too weak to reliably interpret.
Q Okay.
A And these items, like swabs from door handles and wallets, stuff where this is touch DNA, it's not common to

not get anything, not get enough of DNA to get a profile or get nothing at all. So a lot of times you'll see that result on the touch DNA on an item.

Q And that's -- I mean, we're talking about the -- it says outside driver door handle. Someone obviously -- assuming the car is being used on a daily basis, someone is opening and closing that door.

A Right.

Q So someone is touching it. Even though someone touched it, you were -- there was still not enough DNA for you to develop a profile?

A That's correct.

Q Okay. And eight, nine, and ten, those are also from the gearshift, the steering wheel, and the emergency brake. What were the results of eight, nine, and ten, as well?

A For eight, nine, and ten, there was no DNA extracted from those items.

Q I show you what is marked as State's Exhibit 15 and ask if you recognize that.

A This looks like the buccal swab of Donald Moore, which is item 16.

Q Okay.

A With my initials and date.

Q And did you subsequently develop a DNA profile from

that buccal swab?
A I did.
Q Item 11 then, the washcloth, State's Exhibit 14, I believe you've already testified that you picked up this item yourself from the property room, correct?
A Correct.
Q And did anyone else touch it from the time that you got it from the property room to the time you started this analysis on this washrag?
A No.
Q Okay. Can you tell us about how you processed that washrag, specifically?
A Yes. That item was processed for body fluids, basically. In this case, from investigative information, I was looking for semen specifically, so I would have laid that item out, done a chemical test that changes color in the presence of semen, identified where the stain was on the washcloth and then do an additional chemical test to specifically confirm human semen, and then make a cutting from that area where the stain is to extract the DNA from that semen on that washcloth.
Q Let's see if I can do this one handed since I'm down to one glove.

Okay. Who made the cuttings from this time?
A Can you turn it around?

Q Oh, sorry.
A I did.
Q And how do you -- how do you know that?
A Because my initials are on the corner.
Q Okay. Sorry I'm waving it around. And what did you do then with those cuttings?
A What were my results? Is that the question?
Q I guess you're looking first.
A For semen.
Q For semen. You make those cuttings, and then you process those cuttings?
A Correct.
Q To see if you can extract DNA?
A That's correct.
Q Okay.
A So the serology results are that seminal fluid was identified on the two cuttings.
Q Okay.
MR. O'NEIL: Your Honor, I renew my previous objections to this testimony, as well.
THE COURT: Yes, overruled.
THE WITNESS: In addition to serology, there was no blood indicated on item 11.
BY MS. FENT:
Q Okay. Semen is indicated; blood is not indicated.

A That's correct.
Q Okay.
A Seminal fluid is identified. A little bit of semantic difference there in that the actual sperm cells I didn't visualize, but the chemical test was positive for the fluid that contains those sperm cells. So we say seminal fluid identified.
Q Okay. After you identify seminal fluid, what happens next?
A I would have been made the cuttings and extracted the DNA.
Q Were you able to develop a DNA profile from DNA extracted from the seminal fluid?
A Yes, I was.
Q Did you have occasion then to compare the profile that you developed from that washrag, from the cuttings from that washrag, to the profile that was developed by John Barron from Edward Dunn's buccal swab?
A Yes, I did.
Q And do you have an opinion as to a reasonable degree of scientific certainty as to whose seminal fluid was on that washrag?
A Yes, I do.
Q And whose seminal fluid is on that washrag?
A I will read it from my report, is probably the best

way to answer that.
Q Okay.
A The DNA result developed from item 11.2 is a mixture, and the major profile developed matches Edward Dunn, Jr.
Q And you said there's a mixture. Are you able to identify the minor profile?
A No. The minor profile is too weak to reliably interpret.
Q And the cutting 11 -- you said that was 11.2?
A Yes.
Q The cutting 11.1 taken from the washrag?
A 11.1 is also a mixture, and a major profile developed from 11.1 also matched Edward Dunn, Jr., and the minor profile was too weak to reliably interpret.
Q Did you have occasion in preparation for your testimony today to take a look at the minor profile that you developed and the profile that you developed from Donald Moore?
A I did.
Q Okay. And do you have an opinion as to whether or not Donald Moore could be excluded as a minor contributor?
A Yes, I did have an opinion. That was that he is excluded from that minor contributor, 11.1, and .2 after conversations and relooking at that data.
Q And can you exclude the victim, Indira Lonsdale, as

being a contributor to that minor profile?
A Let me just look back at that to double check.
Q Okay.
A The statement is too weak too reliably interpret, and basically you're asking me to interpret that now. So -- but I can give you my opinion based on a very small amount of DNA that's in that minor contributor. We're talking extremely small amount compared to the major contributor.
Q Okay.
A And her -- here DNA is consistent with those -- that little bit of DNA that I do see in those two -- those two cuttings from that washcloth.
Q Okay.
A So -- and the reason that doesn't show up on my report is because we have to meet certain thresholds, so to speak, in reporting inclusions and exclusions, but if you just flat out hand me two profiles and say are these -- is somebody included or excluded, I can give you an opinion on that. I just have restrictions as far as reporting goes.
Q Okay.
A So that's the explanation of kind of what I'm doing here.
MS. FENT: Okay.
Your Honor, at this time I'd offer into evidence

State's Exhibit Exhibits 13, 14, and 15.

MR. O'NEIL: Your Honor, I have no objection to these.

THE COURT: All right.

(WHEREUPON, State's Exhibits Nos. 13, 14, 15 were admitted into evidence.)

MS. FENT: I have no further questions at this time.

THE COURT: Cross-examination?

CROSS-EXAMINATION:

BY MR. O'NEIL:

Q Dr. Amick, help me out a little bit on some of your reports here, all right.

You analyzed items four -- there are started at 11. You analyzed 11.1 and 11.2, correct?

A I analyzed item 11, and from that I made two cuttings labeled 11.1 and 11.2.

Q 11.1 and 11.2. You -- in your initial report, dated June 1st, 2011, you indicated that the DNA profile from items 11.1 and 11.2 were a mixture, correct?

A If I could see that report, I can confirm that. I only have the most recent one in front of me. I don't have the date on here.

Q I'm sorry. I'll give you the first page.

A Yeah. The initial report was 11.1, 11.2 are mixtures, the same as it says in this report.

Q Let me see the report you have here.
A (Complies).
Q And 11.1 and 11.2 was the washcloth?
A The cuttings from the washcloth, yes.
Q Cuttings from the washcloth, which would be State's Exhibit No. 14. You probably don't have that in front of you but State's Exhibit No. 14.

Now, initially you said that Mr. Edward Dunn was the major contributor to that mixture on items 11.1 and 11.2.
A Initially?
Q Yes. On your report you made on June 1st, 2011, you indicated the profile was a mixture, and that Edward Dunn was the major contributor to that mixture on 11.1 and 11.2.
A It says the same thing on the report I have, as well.
Q Yeah. And also, it said on your June 1st, 2011 report that the minor profile was too weak to reliably interpret, correct?
A Correct.
Q So help me out a little bit. Are you now saying that the minor profile is not too weak to reliably interpret, or are you unreliably interpreting it today for your testimony today?
A I'm not saying anything different than what's on the report. What I was doing is offering my opinion as to the

minor profile compared to the victim.
Q Okay. The minor profile on 11.1 and 11.2?
A That's correct.
Q Okay. So is it your opinion that the minor profile on 11.1 and 11.2 is consistent with Ms. Lonsdale's known sample that you got?
A I don't like -- I don't use the word -- consistent is semantics. I would say that her DNA profile, some of the alleles, some of the pieces of her DNA profile are showing up, are the same as that minor contributor. So I would use the term cannot excluded versus consistent.
Q So you can't excluded Ms. Lonsdale as being the minor contributor to the DNA mixture on 11.1 and 11.2.
A It's my opinion looking at those profiles here, yes.
Q What percentage of the general population can you not exclude as being the minor contributor to 11.1 and 11.2?
A I don't know that, because I did not run the statistic.
Q Okay. Is there a small group of people that you can exclude from 11.1 and 11.2, or would it be a large group?
A That's a good question. It would be a -- it would be very -- there would be a lot of people that could potentially be included with a small amount of data that I have on that minor profile.
Q So --

A Does that answering your question?
Q I want to summarize to make sure I understand what you're saying. So what you're saying is there is a large group of people that could be the minor contributor to 11.1 and 11.2?
A It's a possibility. It would be safer to give me a profile and let me say include it or exclude it than just straight out look at it, but in my opinion, because it's such a weak profile, it's going to include more people.
Okay. So the less information you have -- say, for example, if you told me, okay, let's say blue eyes is the DNA, I mean, I can only -- I can include a lot of people who have blue eyes, but if you continue to add, you continue to add more traits, blue eyes, 6-foot tall, blond hair, then the people that we can include shrinks.
Q Okay.
A So the analogy is the less DNA information you have from that weak minor contributor, the more people are going to be included, naturally.
Q I guess what I'm trying to say is that back on June 1st, 2011, your opinion was that the minor profile was -- in general, was too weak to interpret?
A No. That's not my opinion. That's what's on the report, and that's what's on the report, the most current report. That didn't change.

Q Okay.
A I was answering a question as to my opinion for Ms. Fent. That was my opinion I was giving here, but the wording on the report hasn't changed at all.
Q Okay. Did you ever compare the known sample of Donald Moore to -- did you ever compare the known sample of Donald Moore to item 11.1 and 11.2?
A I did in review in this case, just like I did with the victim.
Q Okay. Could you give a determination that was reliable in that comparison, that initial -- the threshold that you spoke of earlier?
A I gave an opinion in the same way, to say that I didn't think his alleles or his DNA was included in that minor contributor.
Q But was that opinion to the level that -- that would have met the threshold that you spoke of earlier. Did you have enough information to make a comparison to the threshold that you spoke of earlier?
A I'm not sure what you're asking. It's not on the report that way. That hasn't changed. The reporting syntax is that it's too weak to interpret.
Q What does that mean? What does --
A That means that I looked at it initially, just like I look at it today, and I'm not going to make a call

including or excluding authored on a report based on that little bit of information.

Q And that's what I'm asking. You didn't make an opinion on your report, but yet you're coming in today in court and giving an opinion.

A I was asked my opinion, so yeah. I looked at it, and I would give you my opinion. Just like you could hand me a profile from anybody and ask my opinion whether or not they're included or excluded, and that would do the same. That might not rise to the level of it being authored on the report.

Q And what's the importance of that opinion not rising to the level of to build it on the report? Why is that important? Why is it? Why is it important that your opinion has to rise to a certain level in order for it to be on your report?

A Why is it important?

Q Yes, sir.

A I'm -- I'm not sure how to answer that. Can you rephrase it?

Q I guess what I'm asking you is you're giving an opinion today in court, but on your report that produced, you didn't give an opinion. Why didn't you feel as though you couldn't give an opinion on your report?

A Because it was too weak to reliably interpret.

Q Okay. So what you're saying today in court is that you have an opinion, but it's not an opinion that would be strong enough to rely upon or put in your report?

A I -- I got lost there. Let me put it this way: On the report, I'm going to analyze the evidence, analyze the standards, and in an unsolicited fashion author a report and say, "Here is my findings."

When that gets published to whoever, the solicitor, the defense, the investigators then may come to me and say, "Well, what about this? Do you think this matches or do you think it's included?"

That's kind of what happened in preparation for this case, so when Ms. Fent asked me is -- "Do you think the victim is included?" I can look at that and say, "Yeah. In my opinion, it looks like she is included," but I'm not going to put that on the report.

Q And why not?

A Okay.

Q That's what I meant to say.

A Okay. Because there are certain, I guess, thresholds or a certain amount of data you need before you can author that on a report.

Q Okay.

A And that was -- I didn't have that here.

Q So you don't -- you don't have enough data to make

the opinion. You just make it in court. You don't have enough data to put that opinion on a report.

A That's accurate.

Q Okay. Why is there a higher threshold on your report than the testimony you give in court?

A Basically, I'll try to answer that saying it has to do with accreditation. It has to do with the technical working group that controls standards, quality standards, and how they specify what can go on a report and what can't go on a report, and then the level of, I guess experience that the analyst would have and the technical reviewer reviewing that data, because all of the reporting is -- would be by a second qualified analyst.

So there has to be somewhat of a consensus there, quality and control standards that exist in this field that say okay, you can put this kind of stuff on the report. You can't put this kind of stuff in the report. This boils down to the discretion of the analyst, as well. That's probably the best way to answer that.

Q Okay. Fair enough, and there was also a profile developed from items four and five, which would have been a dresser drawer and a back door handle, correct?

A Partial DNA profiles, yes.

Q And you characterized those in your report as too weak to be -- reliably interpret?

A That's correct.
Q Did you ever try to include or exclude either Edward Dunn or Donald Moore from the DNA profile that was extracted from items four and five?
A I think in preparation, Ms. Fent asked me to do that, as well.
Q Okay. But what was your conclusion as it relates to those, those items?
A If you'll give me a second, I'll look at that and give you my opinion on that since you're asking.
(Pause).
You said four and five?
Q Yes, sir.
A All right. So the question again was?
Q Were you able to exclude or either include either Edward Dunn or Donald Moore from the DNA profile that you obtained from items four and five?
A All right. Item four is an extremely partial profile, but the one place that the DNA shows up does not -- or I'll use your term is not consistent with Donald Moore.
So you couldn't say that my opinion would be to exclude him based on that. I'm trying to find out. Oh, here it is. And the Donald Moore -- who is the other one?
Q Edward Dunn.

A Edward Dunn would be the same statement would -- as with Edward Dunn. That is the one location that shows up for item 14, which means it's an extremely weak profile. They don't -- he doesn't share DNA like that, Edward Dunn doesn't. So I would probably exclude him based on that.

Q Okay.

A So that's item four.

Q Okay. And that would be the swab from the dresser drawer?

A Yes, I think so.

Q Okay.

A And then item five, again, extremely weak profile. Again, for Donald Moore, the DNA that does show up on this extremely weak profile, didn't match Moore, and for Dunn, it could potentially match, but it's just not -- it's just not enough.

Q Okay. Not for you to give an opinion to the standard?

A I mean, the ones that show up looks like him, but I would have reported it the same way that I did back then.

Q And that would be too weak to reliably interpret?

A Right.

Q Right, okay. When you initially did not test items three and seven through ten, whose decision was that? Item three would have been the swab from the TV stand;

seven through ten would have been the items from the car.
A Let me -- I have things all messed up here, so hang on a second.
Q Okay.
A Like I described before, they usually both have an investigator. The investigator will submit an initial request or an initial request was for items one, two, three, four, five and six, it looks like.
Then to answer your question, it would have been -- either have been me discussing it with the investigator or just straight out investigator gaining more information and requesting that.
Q Okay. So initially, the investigator said don't worry about the TV stand and the swabs from the car.
A Right.
Q And then later on, they came back and told you to compare items seven, eight, nine, and ten to both Edward Dunn and Donald Moore later on?
A Initially, and this was a rush case. This was -- looking at the request, this was a case where -- just work on this case and get the results as fast as we can.
So what we asked the investigators to do, to limit, you know, try to indicate the most probative items to help their investigation. Then once that takes place, they can go back and say, "Well, okay. Knowing that information,

what's on these items, as well?" That's the chronology of what happened.

Q Okay. When you went back and tested seven, eight, nine and ten, the only item you were able to get a DNA profile from was seven, which would have been outside the driver's door handle, but that profile was also too weak to reliably interpret?

A That's right.

Q Okay. Now, you have no way of testing or determining how DNA actually got on any one of these items?

A That's correct.

Q Now, you took a known sample from Ms. Lonsdale. What did you do with that sample? Did you store that somewhere in your lab there in Richland County?

A Took a what sample?

Q The buccal swab you got from Ms. Lonsdale. Did you actually store that buccal -- that profile in your DNA lab there in Richland County?

A Store the actual --

Q Profile. Did you develop a profile and store it in your in-house lab there at Richland County?

A We developed a profile. We didn't -- we don't store it per se. We develop it for elimination purposes.

Q Did you keep that? Did you keep that profile on file there in Richland County?

A I'm not quite sure what you're asking. It's in my file, and I could look it up on our instrument, but I have her profile, yes.

MR. O'NEIL: Beg the Court's indulgence, Your Honor.

(Pause.)

Nothing further, Your Honor.

THE COURT: Redirect?

REDIRECT EXAMINATION:

BY MS. FENT:

Q These items four and five that he asked about that you said are extremely weak but you could -- you could exclude Donald Moore from item four and five, the dresser drawer and the back door handle, correct?

A Correct.

Q And -- but the item five, back door handle, you could not exclude Edward Dunn?

A Looking at that weak profile, that's my opinion, yes.

Q Okay. On the dresser drawer handle, could you exclude the victim herself?

A Which item was that?

Q The dresser -- item -- I'm sorry, four, dresser drawer, swab from dresser drawer.

A No. I don't think I could really exclude her from that.

Q That's her dresser drawer. She is opening that and

closing that presumably on a regular basis to get her items in and out of that drawer?

A That's correct.

Q Okay. Item five, the back door handle. Do you know -- could you exclude her from that?

A I don't think I did.

(Pause).

I would not have been able to.

Q Again, her own house, her door to her own house.

A That's correct.

Q There is a statistic that you produce or come up with in relation to your DNA profile, correct?

A That's correct.

Q And not specifically what statistic you came up with but generally, what -- what is that statistic?

A That statistic is an estimation of the frequency of that profile that I developed in the population, so each one of those locations we test, and each one of those traits that we develop exists with a specific frequency in the population.

When you put all of those together, all of these 15 different locations, to get a combined statistic. So it's kind of going back to the eye color example. Say, for example, blue eyes exists at a one-in-four frequency in the population. That is every one out of four people have

blue eyes.

Well, that's the frequency of that trait. So when you look at multiple traits across the human genome, you could multiply those together and have a combined frequency of that genetic profile, and that's what the statistic is.

Q So the statistic, is that related to how strong of a profile you are able to develop?

A It gives weight to the match. The profile has already been developed, and it's different I guess, but that statistic kind of gives weight to a match statement and what it's saying.

Q And your match statement in this case is what?

A The match statement is that for items 11.2 and 11.1, they match Edward Dunn as the match statement.

Q Okay. And what then is your statistic, I guess the frequency of seeing this profile that you developed in the Caucasian population?

A Based on the genetic results obtained and the frequency of seeing this population in a Caucasian -- seeing this profile in a Caucasian population is approximately one in 12 sextillion.

Q And what is the frequency of seeing this profile in the African American population?

A In the African American population, approximately one

in 140 quintillion.

Q Quintillion. What is the population of the earth?

A Recently just raised to about 7 billion.

Q I may be asking you to do this. Do you know approximately how many times then -- how many populations of the earth? How many earths would we have to have in order to have 140 quintillion?

A Let me answer it this way: Billion is nine zeros, and a quintillion, and a quintillion -- a quintillion has 18 zeros. So you can do the math from there, I guess.

Q Okay.

A Basically, that's describing a unique DNA profile. That's what that means to put that on there. It's such a large number. So, so, so much rarer than the earth's population. Nobody else on earth is going to have that same profile. That's basically what we're saying.

MS. FENT: No further questions.

THE COURT: All right, sir. You may come down.

May this witness be excused?

MR. O'NEIL: No objection, Your Honor.

THE COURT: Without objection.

All right. Ladies and gentlemen of the jury, that will conclude the testimony for today. I'm going to ask you to be back in the jury room in the morning at nine o'clock, at which time we'll continue with the trial of

No further questions.

MR. O'NEIL: No questions.

THE COURT: All right, sir.

You may come down.

May this witness be excused?

MR. O'NEIL: No objection, Your Honor.

THE COURT: You're free to go. Thank you.

MS. FENT: State calls Investigator Josh Mauldin.

JOSH MAULDIN, after being duly sworn, testified as follows:

THE CLERK: Have a seat in the witness box. State your name for the record, please.

THE WITNESS: Investigator Joshua Mauldin, Richland County Sheriff's Department.

DIRECT EXAMINATION:

BY MS. FENT:

Q How long have you been with the Richland County Sheriff's Department?

A I've been with the Richland County Sheriff's Department approximately ten years now.

Q Okay. Can you tell the jury a little bit about your background then, before coming to the sheriff's department, about your education, your training, your career history?

A I attended the University of South Carolina where I

received a bachelors and a masters in geology, specifically, metals, petrology, rock and metal history. I was then a high school chemistry teacher for about three years at Sumter High School before joining the Richland County Sheriff's Department.

I served as a uniformed patrol officer for several years before progressing to the criminal investigative division where I have been for the last -- oh, maybe six years. During that stint, I've served as both a special victim's unit investigator, a sex crimes investigator, and a major crimes investigator.

Q Back in June of -- excuse me, May of 2011, where were you assigned?

A I was a major crimes investigator, robbery, homicide, during that time.

Q And how did you come to be involved in the investigation of the home invasion and the sexual assault at Indira Lonsdale's home?

A I believe the assault itself, if I'm not mistaken, occurred on maybe a Friday evening, early Saturday morning. I received the incident report the following Monday. It was assigned to me, and I began working it at that time.

Q Okay. Tell us what -- you know, what did you do at that time. You know, what information do you have?

What's the first step you need to take?

A I reviewed the report and tried to get in contact with the victim. At that time, I had some difficulty with that. Ms. Lonsdale had ostensively left South Carolina.

I believe she testified earlier, she was afraid; had some property in -- I believe outside of Asheville, North Carolina and went there to stay. It was difficult to get in touch with her.

I reviewed the report, and I believe talked to crime scene investigator Schroeder in reference to the items he had collected. I felt it was important at that time to get some of those items in immediately for DNA analysis and put a rush on that.

Following that, I went back to the crime scene where I canvassed the area, talked to some neighbors, left my card for Ms. Lonsdale.

Q In talking to the neighbors, I mean, what information are your trying to get? If anyone heard anything, saw anything?

A That's correct, heard anything, saw anything, even if they didn't realize they heard or saw something, it may be important to us. That's the kind of information we try to gather when we canvass a neighborhood there.

Q I want to step back a little bit when you're talking about talking to Investigator Schroder and the physical

evidence and putting a rush on that. In sexual assault cases, do you generally have a rape kit?

A Generally you do, yes.

Q Okay. And what does that mean, a rape kit?

A A sexual assault -- I guess a sexual assault nurse examiner's kit or protocol kit is one in which a medical examiner, a SANE, a Sexual Assault Nurse Examiner, will process the victim in an effort to locate any evidence on that victim's person that may assist us in our investigation.

Q And when you have a rape kit, what is your primary piece of evidence then in a sexual assault case?

A That rape kit. That's going to be the thing we focus on at that point in time.

Q In this case, did you come to find out she did not go to the hospital and get a rape kit done?

A That's correct. We did not have a protocol kit of any sort.

Q So then in looking at your physical evidence and talking to Investigator Schroeder, what did you determine to be kind of your primary piece of evidence?

A The most important thing we would have -- out of all the evidence that we have, we're going to select certain things that we think are most likely to yield something that is of probative value, of evidentiary value,

something that is going to lead us in the right direction.

In this particular case, the washrag, according to the victim, her statements to Schroder, she used it to clean after the victim had apparently ejaculated -- or I'm sorry, the suspect had apparently ejaculated on her. That would have been our primary focus at that time. That would have been our most important piece of evidence at the moment.

Q So do you know what day it was that you then requested the rush on that evidence?

A It looks like May 31st.

Q Okay. And also in determining what items you're asking them to process, are you just throwing everyone single thing that was collected and asking DNA to process everything or how are you kind of going through that decision of what needs to be processed?

A No. Usually we're going to pick the items and only a few items, even if we have -- you know, a lot of cases there's lots of evidence. Some there's not so much. Some there's lots that we could potentially process.

For the sake of time and getting -- expediting the processing of that, those items, we'll just select a few that we initially believe will yield or that are most likely to yield important evidence that will help us out.

We can always go back, and often do later on, if

those items do not yield something that we're looking for or something that can help us out. We'll request the remaining items be processed, as well.

Q And is there actually, I guess, a form or documents you have to fill out to request that processing?

A There is, a forensic sciences request form.

Q So what other items did you -- other than the washcloth to be processed initially and immediately?

A The first one was the swab from Ms. Lonsdale herself, which is necessary for elimination purposes. We like to get victim's DNA, get it in the system, so that it can be separated if that is an issue.

Items that she -- the other items on here, a black wallet, dresser drawer, French door handle, back door handle. I focused on items that were inside the house, because that's where Ms. Lonsdale actually saw the suspect inside.

So the items that were within the house and that clearly -- that person would have touched, the dresser drawer that was emptied and the wallet, those would have been important items, possibly touch DNA.

Q I'm sure that there's a lot of investigators that believe their case is the most important that needs to be rushed, so do you have to get approval to get a rush on the DNA analysis?

A We do. If our chief, the chief of investigations, if he is available, he will be the person that expedites that. If not, a designee, usually Major Stan Smith and on down the chain, whoever is available will sign something saying we need to get on this immediately.

Q And did you get that approval then for this case to be rushed?

A I did.

Q What then basically happens next? This is May 31st. You've requested this. You've not been able to talk to the victim, so what, if anything, are you able to do at this point?

A Honestly, we're in a holding pattern at this point, but the up side is it was a very short time later that I was contacted by our forensic scientist Gray Amick, our DNA analyst who apprized me of the DNA match.

Q So what do you do now that you know that the semen on that washcloth belongs to Edward Dunn?

A Well, at that time I have a -- at least the victim's statements to the officers and forensic investigator, crime scene investigator, that the suspect ejaculated on her and then purportedly used a rag, a washrag to clean her.

Having a suspect's or an individual's DNA who doesn't have any reason to be there is a strong indication that

that person is responsible for that assault. At that time, we obtained warrants, the appropriate warrants for the crimes that were committed therein.

Q Specifically, what warrants do you then get for Edward Dunn?

A It would have been warrants for -- I can tell you, assault with intent to commit criminal sexual conduct in the first degree; burglary first degree; kidnapping, and armed robbery.

Q And I want to go back to something that you said about, "I have the victim's statement about what happened." In what form do you have this statement from the victim?

A The initial incident report given to or documented by Deputy Jamie Lucas, as well as her oral statements which were described to me by crime scene investigator Schroder.

Q And if you can talk a little bit about the statement that a deputy gets from a victim versus a statement that an investigator is going to get from a victim.

A We clearly have two distinctly different sets of things we're responsible for. A deputy's, you know, primary responsibility when they show up on the scene is to gather a synopsis, a summary of the information that the victim gives them, witnesses, whoever that they can relate to us to help us begin our investigation and have

some understanding of what transpired during that particular incident.

They also want to gather as much suspect information as they possibly can in an effort to try and apprehend that person, especially in a freshly committed crime where you have an individual at large who may or may not be nearby.

They want to relay that. They are not -- because of, obviously, time restraints and their own responsibilities, they are not responsible for taking a detailed written statement from a victim.

Q So the incident report summarizing what the victim said to the -- to Jamie Lucas, did you did a get of that?

A I did.

Q And approximately how many lines or -- it's not even one page of information that he got from the victim.

A That's correct, not even a full page. I don't believe there is an investigative follow up.

Q Basically just kind of a paragraph summary of what the victim told Deputy Jamie Lucas.

A Correct.

Q Okay. So you get the warrants based upon the match, the DNA match to the washcloth. What happens now? What are you doing about trying to find Edward Dunn?

A At that time, those warrants were transmitted to our

fugitive apprehension team for service, and they assisted us in attempting to locate Mr. Dunn.

Q Do they locate Mr. Dunn?

A They do.

Q And when do you hear about his apprehension?

A I was actually assisting them. I was in the area where Mr. Dunn was believed to be at that time, and I believe this was on the 28th of May. I'm sorry, maybe the 2nd of May, excuse me.

Q Hold on. This happened May 28th.

A June 2nd, I'm sorry, I apologize. I was down in an area nearby and received a call that a residence on y -- or that Mr. Dunn had been located at a residence on It appears, , a short distance away. I was present within a few minutes.

Q And what area of town is ?

A It is in the Region I area of Richland County, lower Richland County in the Leesburg Road, close to Leesburg Road and Garners Ferry, right in that area. The lower part of Leesburg Road.

Q How far away from Road where Ms. Lonsdale lives?

A Not very far. They're both within very close proximity.

Q Okay. Is anybody with you when you find out that he

has been located and apprehended at

A Yes. Investigator John Baker, also with the Richland County Sheriff's Department, was with me at that time.

Q Okay. So what did you do?

A Well, immediately proceeded to . One of the reasons I took Baker is he worked there as a uniform patrolman. He was very familiar with that area, so he was able to direct me there quickly. At that time, I took custody of Mr. Dunn while Investigator Baker dealt with other individuals at the residence.

Q When you say you took custody, did you actually physically go in the house and find him and arrest him or was he already being detained?

A I did not. He was already being detained by our fugitive team. Ray Aherst with our fugitive team was the one that I spoke to and transferred Mr. Dunn over to me.

Q Okay. And what do you tell, if anything -- what do you tell to Mr. Dunn?

A At that time, I do apprize Mr. Dunn that he is under arrest, what the warrants that -- what the charges are and --

Q Did you have the warrants with you at that time?

A I believe the fugitive team had the warrants.

Q Okay.

A I was -- I was very familiar with them. They were my

warrants, but the fugitive team, I believe, did have -- they did serve -- I don't believe I served those warrants myself.

Q So do you remember -- did you just tell them, "Hey you're under arrest for a burglary first, an armed robbery, kidnapping," or do you tell him the substance of, "This is at Road"?

A Just the general charges --

Q Okay.

A -- that he's being charged with. I would seat him in my vehicle at that time, and I did apprize him before, asking him any questions or questioning him that we did have DNA evidence at that scene.

Q Okay.

A And that, you know, I was going to offer him an opportunity to explain. Immediately following that, I read his Miranda warning from a card that I keep on my person at all times.

Q When you say that, "We told him we have DNA," is that how you say it, or are you more specific or just that general?

A I believe I was very general, yes.

Q Okay.

A We have a DNA sample that matches.

Q So you said you read him his Miranda warnings.

Specifically, how did you do that, and what did you say to him?

A I keep a card, as I said, on my person at all times so that I don't get the Miranda warning wrong. Believe it or not as many times as I've done it, I can't remember it word for word necessarily.

I explained to Mr. Dunn, as I explained to everyone, that before I talk to you, I've got read you this Miranda warning and apprize you of your rights.

I read the card which says, "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to talk to an attorney and have him or her present with you while you are being questioned.

"If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning, if you want. You can decide at any time to exercise these rights and not answer any questions or make any statements. Do you understand these rights as I have explained them to you?"

I would wait for an acknowledgment, as I did. Mr. Dunn indicated he did understand his rights, and then, "Having these rights in mind, do you wish to talk to us now?"

He indicated that he did want to talk to me about

this incident and immediately began to explain the presence of DNA.

Q At any point then, do you get more specific and say, you know, "I said we have DNA. We specifically have your DNA on a washrag"?

A Well, we discussed it, yes.

Q Okay. And so what did he then tell you?

MR. O'NEIL: Objection, Your Honor. I'm going to renew my previous objection to this testimony.

THE COURT: All right. Overruled.

You may proceed.

THE WITNESS: Mr. Dunn informed me at that time that he was approached by an individual that he only could identify at that time as Shorty.

He stated that this Shorty person approached him at some point and told him there was a house where a woman lived who had lots of money; that he decide to accompany Shorty to that house for the purpose of breaking into the house and stealing money.

He claimed that he served as a lookout during this home invasion, and that he did see Shorty with a gun. He claimed that while outside the residence at some point, he heard, I believe, Shorty call him into the house.

He walked into the house where he saw Shorty having sex with the victim and that while Shorty was having sex

with the victim, they have some sort of exchange back and forth. Like he asked Shorty, "Well, hey man, what are you doing?"

Shorty said, "Don't worry about it."

Mr. Dunn said that while watching this go on, that he became excited and that he masturbated and ejaculated and that he picked a towel up that was on the floor just outside the room and used it to clean himself; that he threw the towel down and went back outside of the residence and that shorty would come out a short while later, give him some money and they part ways.

BY MS. FENT:

Q Did he say how much money he got from that burglary?

A I belief he told me $300. I want to look back in my follow up and make sure that's accurate.

Q If you want to refresh your memory, it's on the second page, the first paragraph towards the end.

A Okay. I apologize.

Mr. Dunn told me that he and Shorty parted ways immediately that evening and that they met up at gas station later on where he received $300.

Q If you want to refresh your memory from looking it up on that paragraph is does the defendant say he walks out of the house -- after seeing the sexual assault, that he walks out of the house, and he immediately leaves or does

he wait then for Donald and then once Donald comes out, they leave and then part ways?

A He remained until Shorty came out and didn't leave right away until the act -- by that, I mean the ongoing crime as a whole came to a conclusion.

Q Did he tell you anything about the vehicle, the car that was parked there.

A (There was no response).

Q Did he say --

A He told me that he didn't know anything about anyone attempting to take a vehicle at all.

Q Did he acknowledge seeing the car there?

A He did acknowledge seeing the car there. He didn't know anything about anyone -- I knew the car was a manual transmission. I then asked him if he was able to drive a manual transmission. At that time, he told me that he was not.

Q And all of this discussion that you just talked about, where does all of this discussion take place?

A This takes place in my vehicle on the way to the Richland County Sheriff's Department.

Q And I guess from the beginning when you first get to Gayley street, you said that John Baker was in the car with you?

A Yes.

Q Tell me then about his -- is he with you the whole time or what's John Baker doing?

A He was not with me the whole time. He -- he was with me the whole time on the ride away from Gayley Street but in the initial -- when I initially took possession of Mr. Dunn -- because he was the only investigator with me -- he took charge of getting consent from the individuals who lived in the residence where Mr. Dunn was housed to search in that residence.

He completed that search himself with assistance of members of the fugitive team while I began, while I Mirandized and did began to speak to Mr. Dunn.

Q Okay. So then what happens once you get to the sheriff's department?

A We get to the Richland County Sheriff's Department, and I take Mr. Dunn inside, seat him in my cube or office. It's not an office. It's a cube.

I ask if he'll provide me with a written statement and he agrees to do so, readily agrees to do so. I proceeded to take a written statement from Mr. Dunn at that time.

Q So talk to us about that process of how do you go about taking his -- taking his statement?

A When we take the statement, as I took the statement from Mr. Dunn, I will -- you know, if they do so, we will

do a second Miranda warning, a written Miranda warning at that time, a waiver of rights.

Mr. Dunn was provided with that written waiver of rights. I read the rights -- the waiver to him, first the top section, which explains the individual rights and cover -- make sure they understand those rights, at after reading them themselves will initial beside each of those rights and then sign stating that they understand the rights.

The bottom section of the form is a waiver of rights, which I will also read aloud, ask them to read themselves and initial and then sign and get them to agree with that waiver which they waive those rights.

Q First I'm going to show you what is marked as State's Exhibit No. 1 and ask if you recognize that.

A Yes. This is waiver of rights that I presented to Mr. Dunn.

Q And that was completed and filled out in your presence with Mr. Dunn?

A Yes.

MS. FENT: The State offers into evidence State's Exhibit No. 1.

MR. O'NEIL: Your Honor, I would renew my previous objection.

THE COURT: Overruled.

(WHEREUPON, State's Exhibit No. 1 was admitted into evidence.)

BY MS. FENT:

Q And I'm going to show you what's marked as State's 21. Is that an exact copy of State's Exhibit 1?

A It appears to be, yes.

Q Walk us through then, as you just did, how did you go through this -- or how did you go through this advice of rights form with the defendant?

A I reminded Mr. Dunn or informed him that before we do take this written statement that I want to go back over his rights.

I would then read the top section of the form aloud, which reads, "Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in court.

"You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during any questioning. If you cannot afford a lawyer, one will be appointed for you before any questioning, if you wish.

"If you decide to answer questions now without a lawyer present, you still have the right to stop answering at any time. You also have the right to stop answering at

any time until you talk to a lawyer."

Q And how do you -- I guess this is just for him to acknowledge his rights?

A That's -- that's correct.

Q Okay. And how do you have him then document that he acknowledged each of these rights?

A I asked Mr. Dunn to read these aloud -- not aloud, I'm sorry, read these to himself and to initial beside each of these points, at which time he initialed each individual section. Then I asked him to sign if he understands those rights.

Q And he signed in your presence?

A He did sign.

Q Okay. And then you move on to the waiver of rights?

A That's correct. The waiver of rights states the following: "I have read the statement of my rights, and I understand what my rights are. I am willing to talk and answer questions.

"I understand and know what I am doing. No promises have been made to me, and no pressure or coercion of any kind has been used against me."

I then asked Mr. Dunn if he understands the meaning of pressure or coercion. He did indicate yes. However, I still explained those words, typically anyway. I told him, I'm not forcing you to talk to me. You can tell me

to, for lack of a better term, to pounce in at any time.

I'm not -- I can't make you any promises that things are going to be better or worse if you talk to me. If you talk to me, you do so of your own volition.

Mr. Dunn then initialed that that subsection and signing understanding or stating that he did wish to waive his rights and talk to me and provide a statement.

Q So then how do you proceed in taking his statement?

A Our statements are taken in a Q and A format where I memorialize a statement by typing my questions, and the person who is giving the statement their responses.

I think I should add one of the reasons we do that is it seems to be the most effective way of taking a statement because everyone does not have the same level of cognitive and intellectual ability.

Also, people don't want to write. They don't want to write. They don't want to sit and write what happened. They would much rather talk, and I -- as I said, I memorialized that the best possible way that I can by typing the words that they say and tell me.

Following that, I make sure they read over the statement and allow them to make any changes, omit anything or add anything that they wish to before signing the statement.

Q I'm going to show you what is marked as State's

Exhibit 2 and ask if you recognize that.

A Yes. This appears to be the statement that I took from Mr. Dunn.

Q The original?

A The original statement.

Q Did he sign -- actually, first of all, how many pages is that?

A It's a three-page statement.

Q And did he sign all three pages?

A He did sign all three pages.

Q And at the top of that statement, it's also his rights again, correct?

A There is an additional advice of rights at the top of the statement, as well, yes.

Q Okay. And after you typed everything out, did you give it to him to make any changes, additions, deletions?

A Yes. He was allowed to read his statement and given that opportunity.

Q And did he change anything, cross out anything, add anything?

A To be honest, I cannot recall whether or not he corrected anything or not.

Q Okay.

A He was satisfied with what the statement said at the point he signed the written statement.

Q So if he wanted to correct something, you would have done it, I guess, on the computer and printed out the corrected version?

A Yes, that's correct.

Q Okay. So this is the ultimate version that he signed his name to?

A Yes.

Q I'm going to show you what's marked as State's Exhibit 22. Is that a blown up copy of page one?

A It appears to be, yes.

Q State's Exhibit 23, is that a copy of page two?

A Yes.

Q And State's Exhibit 24, is that just a copy of page three?

A That also appears to be a copy of his statement.

MS. FENT: At this time, Your Honor, we offer State's Exhibit 2 into evidence.

MR. O'NEIL: Your Honor, I renew my previous objection.

THE COURT: Subject to the defendant's objection, which is overruled, the statement is admitted.

(WHEREUPON, State's Exhibit No. 2 was admitted into evidence.)

BY MS. FENT:

Q Walk us through, then, the taking of the defendant's

statement?

A The first question I asked Mr. Dunn during the statement is, "Did you participate in a home invasion and robbery at Road on Saturday May 28th, 2011?"

His response was, "Yeah."

I asked him to describe to me what happened during that incident.

The response, "As we were walking up to the house, we saw a car at the house. He was thinking that she wouldn't be there and that we could just go in.

"When he saw the car there, he said, 'Damn, she is home, so I'm just going to have to pull a gun out.' That's when he pulled it out walking toward the house.

"He told me to jump the fence and watch out while he did it. I jumped the fence and was down behind it where I could see the street. I could hear the door go boom. Then I heard some dogs barking, so I pretty much knew he was in there.

"He was in there about 15 to 20 minutes. Out of nowhere, he was like, 'E.J.'.

"I didn't know what was up, so I ran in there. That's when I saw him. He was fucking her from the back. He was on the bed when he was -- he was on the bed when he was doing it.

"I shrugged my shoulders like, 'What are you doing?' He just looked back cheezin' and waiving me off like just chill."

Q Hold on one second. Let me get the second page up.

(Pause).

Okay.

A "I got a little excited, so I started to jack off. I used the towel to clean up. I saw it on the ground. I went back outside by the gate and kept watching.

"I would say that he came outside about a good ten minutes later. I asked him if he got the money. He said yes. He ran off another way.

"He told me to meet him on the hill. I didn't even see him until the next day. I was pissed because he didn't give me the money.

"When I have saw him the next day, he was up at the McDonald's beside the Sonoco on Garners Ferry Road. I was up there with one of my homeboys when I heard someone say 'E.J.'

"He was in the car with some of his homeboys. That's when he gave me some money."

"Who are you talking about when you refer to as he?"

The response, "This guy that goes by Shorty and Q-tip."

Question: "Do you know Shorty's real name?"

The response: "No, sir. If I did, I would tell you."

Question: "How do you know Shorty?"

Response: "I've seen him around a couple of times. When my friend Randy lived up on the hill, Shorty used to come by his house. I've seen him around a few times. That's how I met up with him this time. He came up to the hill looking for Randy and some weed."

Question: "How did you and Shorty decide to go to the woman's house on Patterson Road?"

Response: "Shorty was telling me about it on the hill after I got him some weed. We were chilling and smoking a blunt. He told me that he had hit this lady's house a little while ago, and he got about ten to 12 stacks.

"He said he was back up here -- or back up here to hit it again. He said that she didn't have a gun or anything.

"He told me that he was looking for Randy to hit the house. He asked me if I was in since Randy wasn't around. He said all I had to do was watch out. I told him that I would do it.

"We had finished the blunt, and we were just hanging out. After about 20 minutes, he said let's go. That's when we walked to the house and saw her car there. I

didn't even know that he had a strap that whole time until he pulled it out."

Question: "Where is the hill?"

The response: "It's those brick apartments on Patricia Drive. There's like two of them."

Question: "What is Randy's last name?"

Response: "I don't know."

Question: "Who would know Shorty's last name?"

Response: "This guy Jock might know his name."

Question: "Can you describe Shorty?"

"He is about my height with a low haircut. He is dark brown. He has kind of slanted eyes and a peanut head. He is from New Orleans and kind of talks like that. As a matter of fact, he was in the NEC with me. He was locked up on Pearl Unit. That was awhile ago."

Question: "Can you describe the gun that Shorty had on the night of the incident?"

Response: "I think it was a .45. It looked kind of like your gun. It might have been a little bigger. It was all black."

Question: "When you saw Shorty at McDonald's the next day, what kind of car was he in?"

Response: "I think it was a dark colored Crown victoria."

Question: "What was Shorty wearing the night of the

incident?"

Response: "I think he had a black shirt with a collar and maybe some blue jeans and black shoes. He was wearing a black Doo-rag."

Question: "Did you or Shorty take car keys from the house on Patterson Road?"

Response: "I didn't. He may have, though."

Question: What kind of car was in the driveway of the victim's home?"

Response: "It was a small car. I think it was a two door. I couldn't tell what kind of car it was, the color it was."

Question: "Did you enter the car or try to take the car?"

Response: "No, sir."

Question: "Is there anything else you can tell me about this incident?"

The response: "I don't know anything else to say."

Question: "Do you promise that the statement you have just given me has been true and correct?"

Response: "Yes."

Q What happens after you take the formal written statement?

A As I complete the statement, at this point, I have not had the luxury of speaking to Ms. Lonsdale herself.

As luck would have and it and due to the diligent work of Investigator John Baker, he was able to locate some family members of Ms. Lonsdale's in Ohio somehow, and they were able to get in touch with her.

So almost as soon as I conclude this statement and while he is at my desk, she calls me at the phone. I believe it was at this time that I asked Investigator Isenhoward or Sergeant Isenhoward, rather, to take Mr. Dunn and allow him to use this phone while I spoke to Ms. Lonsdale on the phone.

Q Are you going to sit there with a suspect while you talk to a victim on the phone?

A Absolutely not.

Q Okay. So about how long do you think this took? The document says that you started at around 11:30 in the morning. How long do you think this whole process of actually taking his formal statement took?

A I would say at a minimum, an hour, if -- if not longer.

Q When you talked to Ms. Lonsdale, do you tell her specifically what the defendant is saying happened?

A No. I wouldn't typically do that.

Q So what kind of information did you want to talk to her about?

A I wanted to ask her specifics about what happened.

As I said, at this point, I have nothing that would contradict anything Mr. Dunn has told me in terms of the facts of the case because I have not myself spoken to Ms. Lonsdale.

I'm relying solely on the incident report and my conversation with Mr. Schroeder. She did relay some details that were contrary to what Mr. Dunn had told me in his statement.

Q So while you're talking to the victim, where is the defendant?

A He is -- I'm not sure where he is at this point. He have may or may not be in Major Smith's office. When I walked back, finished that conversation, that's where he was, but he was thereabouts.

Q Okay. So when you made contact with him again, he is in Major Smith's office?

A That's correct.

Q When you made contact with him, was it at any point during this phone call to his mom?

A It was.

Q Okay. So did you hear portions of that phone call --

A I did.

Q -- to his mother?

A Yes.

Q And in what tone of voice was he speaking?

A It was just loud. I mean, I was standing -- I was probably the furthest away from Mr. Dunn, and I could clearly hear at least what he was saying.

Q And physically, where do you remember him being in terms of the telephone?

A If I were in Major Smith's -- it's -- his office is no longer configured the same it was at the time this happened, but if I were seated at Major Smith's table, the phone would be on this side of the desk, and Mr. Dunn would be standing on that side of the phone.

Q Okay.

A With investigator -- or I'm sorry, Sergeant Isenhoward on one side and Major Smith at his desk on the other side.

Q From where the defendant is standing and using that phone, can you see the front of that phone that says, "All calls are recorded"?

A The phone would have been right in front of him at that location.

Q I'm going to show you what is marked as State's Exhibit 18 and ask just if you recognize it, not what it is, but do you recognize that exhibit?

A I do, yes.

Q And who took custody of these items?

A I did.

Q Okay. Did you, I guess, package it in that, in that envelope?

A Yes, I did.

Q Okay. Is your signature or anything on that envelope indicating you're the one that packaged it?

A It is.

Q I'm going to open it.

What did I just remove from State's Exhibit 18?

A A bunch of US currency.

Q Where did you get that money?

A This was on Mr. Dunn's person at the time of his arrest.

Q Let me put it in this envelope.

How much cash is in there?

A $355 and there's also a dime, ten cents.

Q Did I get the dime out of the envelope?

A No.

Q Okay.

(WHEREUPON, State's Exhibit No. 28 was marked for identification only.)

BY MS. FENT:

Q What I've done is taken that cash and placed it in an envelope that I have marked as State's Exhibit 28.

Do you subsequently have other evidence, request other evidence also to be processed by the DNA department?

A Following, yes. Following Mr. Dunn's arrest, I did go back and ask for additional items to be tested.
Q Did you ever make contact with Donald, Shorty, Moore?
A I did.
Q Yes. And how did that contact take place?
A After speaking to Mr. Dunn, I felt that at a minimum, I needed to -- I needed to speak Mr. Moore.
Q Okay.
A I called his -- I had a contact for his mother and called her, and she had him in my office within -- within a few hours. It was immediate.
Q So you physically actually laid eyes on Donald, Shorty, Moore?
A Yes, I spoke to him at length.
Q I'm going to show you what's being marked as State's Exhibit -- I guess State's Exhibit 26 and just yes or no, do you recognize that?
A Yes.
Q Okay. And does this photo accurately depict what Donald, Shorty, Moore looked like when you made contact with him?
A Yes.
Q Do you recall the exact day that you made contact with Donald Moore?
A It would have been on June 15th, 2011.

Q And State's Exhibit 25, just yes or no, do you recognize that photo?

A Yes.

Q And does it accurately depict what the defendant looked like on June 2nd, 2011?

A Yes.

MS. FENT: Your Honor, at this time I'd offer into evidence State's Exhibit 25 and 26.

MR. O'NEIL: Your Honor, I have an objection to 25 that I think needs to be taken up outside the presence of the jury. I also have an objection to 26.

THE COURT: All right.

All right. Ladies and gentlemen of the jury, let me try to work this out with the attorneys. I'll ask you to just retire to the jury room for a few minutes.

I told you at the beginning of the trial that this might happen from time to time, so just relax for a few minutes. Don't discuss the case among yourselves while you're in the jury room.

(WHEREUPON, the jury left open court at approximately 10:15 a.m.)

THE COURT: Mr. O'Neil?

MR. O'NEIL: Yes, Your Honor. I pass up State's Exhibit 25. Pass it up so Your Honor can see it.

State's Exhibit 25 is clearly a booking photo of my

client. I don't have the case law in front of me on that point, but I know there's cases law that stands for the proposition of the prohibition against allowing booking photos into evidence for the obvious type of connations and inferences that can be drawn from booking photos or what have you.

I have objections based on that's a booking photo as it relates to Mr. Dunn and also a relevance issue as that holding -- any photo of Mr. Dunn on June 2nd, I think is not relevant to that --

THE COURT: These are both on June 2nd?

MS. FENT: This was on June 2nd, 2011 as I showed Mr. O'Neil from the website.

THE COURT: I said are they both on the same day?

MS. FENT: No. Donald Moore's photo is from August 2011, but it clearly is, you know, Investigator Mauldin. It doesn't have to be that day.

THE COURT: I'm just asking.

MS. FENT: Yeah. That was his hair that was a match.

THE COURT: August?

MS. FENT: August 2011.

We have another -- there is another booking photo from December of 2010, so it's six months previously. His hair is the same, so I mean, we could go print that one out, too, because he has six months before this happened

his hair is that way. Three months later, his hair is that way.

THE COURT: All right. Let me just check something. Generally, Mr. O'Neil, you're correct. It's not admissible, but under certain circumstances they generally are not admissible because there's been an obvious implication that the defendant has been arrested before and has a criminal history.

These are booking photos at the time. These are not, as I understand -- well, they are. They're after -- certainly after the arrest of the defendant, that's number one, and two, as to number 26, if that's Mr. Moore, he's not on trial. His criminal history is not relevant to this case so...

MR. O'NEIL: I just --

THE COURT: I'm trying -- I'm trying to pull some booking photo cases.

MR. O'NEIL: I guess if --

THE COURT: -- from my clerk.

MR. O'NEIL: My argument is to Mr. Moore would be not so much that it's booking photo but it's that -- that picture illustrates what Mr. Moore looked like on June 15th, 18 days after the incident. I don't think she --

THE COURT: She said August 11th, August 2011.

MR. O'NEIL: Well, I think that's when it was taken, I guess. What -- what she is using it for is Investigator Mauldin, say this is what it looked like when I saw him on June 15th of 2011.

I just -- my -- kind of my precise objection would be what he looked like on June 15th, 2011 some 18 days after this incident occurred is not relevant to this case because the issue we had in this case is whether or not the assailant on May 28th had hair, curly hair hanging out his face.

MS. FENT: Well, then that gives weight that it is relevant because that's what he looks like within a couple of days of this.

Also, if I could just respond to the mugshot or booking photos that are not admissible, the state of law is that you can't call it that in front of the jury. It's improper to call it a mugshot or a booking photo in front of the jury, but they are completely admissible.

They are oftentimes admitted because the defendant -- the victim says they punched the defendant. It shows an injury. It shows a tattoo. It shows the hairdo that the victim described.

They are routinely admissible. They were used in the photo lineups themselves and putting together photo lineups that are admitted to the jury. Sometimes we don't

have DMV photos so we use Alvin S. Glenn mugshots, booking photos. We just cannot call them that in front of the jury.

THE COURT: Well, that's not the only restriction. Let me call your attention to the Supreme Court case State vs. Traylor, 2004 case, which I think is -- is the law.

The introduction of a mugshot of a defendant is reversible unless: One, the State has a demonstrable need to introduce the photograph; two, the photograph shown to the jury does not suggest the defendant has a criminal record; and three, the photograph is not introduced in such a way to draw attention to its origin or implications.

So that's basically what I explained in my laymen's terms a few minutes ago. The State has to show a demonstrable need to introduce the photograph. I think you've shown that, okay.

The photograph shown to the jury does not suggest that the defendant has a criminal record. If you identify these photographs as being taken postarrest for the defendant and --

MS. FENT: I actually --

THE COURT: Whatever this witness saw Mr. Moore, I think that would meet that prong, and three, the photograph is not introduced in such a way to draw

attention to its origin or implication.

So as I said earlier, the mugshot and booking photos generally are not admissible because they tend to imply to the jury that the defendant had a criminal record. If you cross that hurdle, I think they're admissible.

All right.

MS. FENT: I believe by what you just said that I have established all those things. I don't think there's any further questions for me to ask him of him.

THE COURT: When did he first see Mr. Moore this way?

MS. FENT: June 15th. He says he met with Donald Moore on June 15th, 2011.

THE COURT: And this photograph -- he looks in this photograph exactly as he looked on June 15th.

MS. FENT: On June 15th.

THE COURT: That's what he testified?

MS. FENT: Yes. And he said the same thing about the defendant, that essentially is this what he looked like when he was in -- when you met with him on June 2nd, 2011?

THE COURT: He was under arrest at that time?

MS. FENT: Yes.

THE COURT: Overrule the objection.

Let's just take five minutes. The jury is out.

You which step down. Don't discuss the case at all with anybody.

(WHEREUPON, a short break was taken.)

THE COURT: State ready to proceed?

MS. FENT: Yes, Your Honor.

THE COURT: Defense ready to proceed?

MR. O'NEIL: Yes, Your Honor.

THE COURT: Bring the jury, please.

(WHEREUPON, the jury came into open court at approximately 10:29 a.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right. Thank you. You may proceed, solicitor.

MS. FENT: I failed to previously offer State's Exhibit 28 into evidence, the cash.

MR. O'NEIL: No objection.

THE COURT: Without objection.

(WHEREUPON, State's Exhibit No. 28 was admitted into evidence.)

MS. FENT: I offer State's Exhibit 25 and 26 into evidence.

MR. O'NEIL: Subject to my previous objection.

THE COURT: Yes, overruled.

(WHEREUPON, State's Exhibits Nos. 25, 26 were admitted into evidence.)

BY MS. FENT:

Q A photo of State's Exhibit 25, who is that a photo

of?
A That is Mr. Edward, Edward Maurice Dunn, Jr.
Q Okay. And is this how he looked on June 2nd, 2011 when you made contact with him on that day?
A Yes. That was how he appeared on that day.
Q And State's Exhibit 26, who is that a photo of?
A That is Donald Moore.
Q And is that what he looked like then on June 15th, 2011 when you made contact with him?
A Yes.
Q You said that you -- the phone conversation that the defendant had with his mother in Stan Smith's office, did you hear portions of that conversation?
A I did hear portions of that conversation.
Q Okay. Did you have occasion to review that phone call and listen to that phone call prior to your testimony today?
A Yes, I did.
Q And the phone call that you listened to, was that the phone call the defendant made to his mom?
A Yes.
Q In Stan Smith's office?
A Yes.
MS. FENT: Your Honor, at this time I offer into evidence State's Exhibit 27. That's also listed as

Court's 3?

MR. O'NEIL: Your Honor, I just renew my previous objection.

THE COURT: Overruled. It's admitted.

(WHEREUPON, State's Exhibit No. 27 was admitted into evidence.)

THE COURT: Ms. Fent, Mr. O'Neil. You can come.

(Whereupon, there was a bench conference.)

(Whereupon, the telephone call was played to the jury.)

BY MS. FENT:

Q When you talked to Donald Moore, did you get a swab from his mouth?

A Yes, I did.

Q Donald, Shorty, Moore?

A Yes.

Q And is that State's Exhibit 15?

A It is.

Q He consented to give you his swab?

A He did.

Q And did you later meet with the -- actually physically sit down and meet with the victim, Indira Lonsdale?

A I did. I took a statement from her, as well.

Q And that statement as opposed to the paragraph,

incident report, how long is that statement that you took from her?

A That was a four-page statement.

MS. FENT: No further questions at this time.

THE COURT: Cross-examination?

CROSS-EXAMINATION:

BY MR. O'NEIL:

Q Investigator Mauldin, before you ever spoke with Edward, you already had arrest warrants for him; is that correct?

A That's correct.

Q Before you even got his side of what happened, you already had arrest warrants for the four charges here?

A That's correct.

Q And before you got there when he was apprehended, the old arrest warrants were already served on him.

A I can't state whether the fugitive guys had served him officially or not.

Q Okay. Did you serve him?

A I don't believe I did.

Q At some time the warrants were served?

A I don't believe they were.

Q Presumably before you got to the fugitive team.

A Presumed.

Q And those warrants would have had specific details as

to the probable cause that he was under arrest for.
A Yes. The affidavits in those warrants, if they were read, would have that, yes.
Q And part of the service of process is to read the warrant to the -- to the individual that the warrants are being served on?
A It is.
Q Now, you said that Edward voluntarily spoke to you in the car?
A He did.
Q Essentially, you took him from the address down to headquarters on Two Notch?
A Yes.
Q And while y'all were riding from that address on to Two Notch, you say he voluntarily spoke to you.
A Yes.
Q I mean, would you classify him as being eager to talk to you during that ride?
A Yes.
Q He immediately began being able to -- he immediately began telling you what he -- what he said happened?
A Yes.
Q And that's consistent with the written version that he gave you and the phone call with his mother?

A It is consistent with the written version. There were things at the end of the phone call that were never -- that were a little different.

Q He made a couple of additions --

A Yes.

Q -- when he spoke to his mother.

He told you essentially that he was the look out for this guy, Shorty, as he referred to him at that point?

A Yes.

Q Now, how long -- if you know, how long had Edward been at the -- well, I take that back. How long had Edward been apprehended by the fugitive team before you got there?

A I would say less than ten minutes.

Q Okay. So -- and after you -- after you got there, how long was it before you started talking with him?

A A couple of minutes.

Q Okay. And how long after you started talking with him did he begin to tell you his side of what happened?

A Again, a couple of minutes, almost -- after I apprized him of the nature of the charges and our DNA evidence, it was almost immediately after that.

Q So almost immediately after you told him the DNA evidence of what he had been charged with, he told you his version of what happened?

A Yes.
Q Not a long time to think about his story, immediately after you apprized him what he had been charged with, he told you his version of what happened?
A Yes.
Q And it wasn't until June 2nd that you saw Edward, correct?
A Correct.
Q And this incident happened on May -- the early morning hours of May 28th?
A Yes.
Q So you can always -- Ms. Bodman showed you what's been marked as State's Exhibit 25, a picture of Mr. Dunn.
A Yes.
Q You don't have -- you can't personally attest to what Edward looked like on May -- the early morning hours of May 28th, can you?
A No.
Q You only know what he looked like four days -- four days later?
A That's correct.
Q And she also showed you what's been marked as State's Exhibit 26.
A Yes.
Q Okay. And you thought this winds up being Donald

Moore.

A Yes.

Q You said that's what Donald Moore looked like when you talked to him?

A Yes.

Q And you talked to Donald Moore on June 15th of 2011, correct?

A That's correct.

Q That he was 18 days after the incident on May 28th.

A Yes.

Q Okay. And you said that Edward was located at, I think, 2121 Gayley Street when the fugitive team -- that's where they apprehended him at?

A That was the address.

Q And that -- you said that was near the Patterson Road address of this?

A Yes.

Q Okay. Now, K-9s came up the night of this incidental, correct, a K-9 unit was called?

A As far as I know.

Q Investigator Richburg, does that name sound familiar with the K-9s there?

A Yes.

Q Okay.

A That's what's in the record.

Q Okay.
A I believe.
Q And the K-9 unit didn't track back to did it?
A I'm not sure where the K-9 unit tracked.
Q If it had tracked back to where Mr. Dunn was later located, you would have been made aware of that?
A Hopefully, yes.
Q But that didn't happen?
A It did not.
Q Okay. Let's talk a little bit about Donald Moore here. He was the person that you later identified as being Shorty in Mr. Dunn's statement.
A He is the person Mr. Dunn identified as Shorty, yes.
Q Okay. And Edward told you that Mr. Moore was from New Orleans?
A He did say that, yes.
Q Okay. And at some point, those 18 days later, you talked to Mr. Moore on June 15th?
A Yes.
Q And he told you -- Mr. Moore told you that he was with his girlfriend on that night on May 28th when this happened.
MS. FENT: Objection to hearsay to anything Donald

Moore said.

MR. O'NEIL: Your Honor, he is the investigator. I can ask him what the investigator --

THE COURT: Overruled.

BY MR. O'NEIL:

Q Donald Moore told you he was with his girlfriend, correct?

A If you'll just let me refer to his statement.

Q Okay.

(Pause.)

A Yes.

Q So Donald Moore says, "I'm not involved. I was with my girlfriend at that morning"?

A That's correct.

Q What's Donald Moore's girlfriend's name?

A I have written Majority Thomas.

Q Did you talk with Ms. Thomas?

A I did not.

Q Did you verify in any way that Mr. Moore was actually with Ms. Thomas on that morning?

A I did not.

Q Did you talk to anybody that saw Mr. Moore with Ms. Thomas that night?

A No.

Q Did you attempt to get Mr. Moore's cell phone

records?
A No.
Q Did you --
A I don't know that Mr. Moore had a cell phone, necessarily.
Q Any phone records from Mr. Moore?
A No.
Q Okay. What else did Mr. Moore tell you he did that early morning hours of May 28th and the late night of May 27th?
A (There was no response).
Q Did he tell you he went anywhere?
A Nope, not in the report or not in his statement.
Q You know --
A I don't see that in the statement.
Q Do you know where he was the night of May 27th?
A I don't know where he was the night of May 27th.
Q Took any -- any other steps to verify where he was the early morning hours of May 28th?
A No.
Q You did get a DNA sample from Mr. Moore?
A I did.
Q Okay. Did you have that DNA sample tested against what items?
A It was asked to be run specifically -- not

necessarily tested against the swab from the car door handle, the swab from the gearshift of the vehicle, a swab from the steering wheel, a swab from the emergency brake, those items, because the other items had been tested and a profile had been established, so there would have been a link to those regardless.

Q So the other items that had profiles already established were the dresser drawer, the back door, and the washrag, correct?

A The washrag, the wallet, the dresser drawer, the French door handle, the back door handle.

Q Okay. Those all had -- those all had some -- either one person's profile on them or a mixture of profiles on them, correct?

A As I understand.

Q As you understood it. And the washrag in particular had a mixture. The cutting from the washrag in particular had a mixture on it, correct?

A Yes.

Q The major contributor was Edward Dunn, correct?

A Yes.

Q And at the time you got the report back from Dr. Amick, the minor contributor, it was too weak to reliably interpret who the minor contributor was?

A Correct.

Q Someone else's DNA was there, but it was too weak to reliably interpret?

A Let me say this: I didn't receive the report on the DNA until sometime later. All I was initially told was there was a DNA profile matched to Mr. Dunn.

Q So let me make sure I'm clear on that. You weren't -- you wasn't told that there were two, two DNA profiles, on the washrag initially?

A I'm only going to be told about a match.

Q Okay.

A When I was notified by Mr. Amick. We are notified and those results are confirmed many times before the actual written report is generated that someone is a match.

Q So you didn't know there was a mixture on the rag --

A No, I did not.

Q -- when you got -- I apologize. I cut you off.

You didn't know there was a mixture on the rag when you got the warrants for Edward Dunn?

A No.

Q But you later found out not only was Mr. Dunn's DNA on the rag, there was another profile identified on the rag?

A That's correct.

Q And that profile that was identified was too weak to

reliably interpret, from your understanding?
A Yes.
Q Mr. Moore told you he knew Edward Dunn, correct?
A He did.
Q Okay. He told you that at some point he pulled a gun on Mr. Dunn, correct?
A He told me -- if I could get into what Mr. Moore told me, I would be more than happy to do so.
Q I'm just asking you a specific question. Mr. Moore told you at some point he pulled a gun on Edward Dunn, correct?
A He said he pulled a gun and robbed Mr. Dunn.
Q Okay. So he pulled a gun and robbed Mr. Dunn, and that's what he told you?
A Yes.
Q So he didn't deny knowing Mr. Dunn?
A No. He didn't deny knowing him.
Q Did anything ever come up where you needed to follow up on whether or not Mr. Moore was involved in this burglary?
A No. In fact, the contrary.
Q There never was a reason to follow up to see whether or not Mr. Moore was involved with this burglary?
A Well, we did follow up with Mr. Moore.
Q After --

A I didn't feel the need to follow up any further.
Q Okay. So the fact that he was arrested, Mr. Moore was arrested for burglaries, two burglaries in October of 2011, that didn't give you a reason to follow up to see whether or not he was involved in this burglary?
A No, because this was more than a burglary. This is a sexual assault, robbery, kidnapping.
Q Well --
A There's a big difference.
Q There is, but you already had evidence that Mr. Moore was involved in a previous robbery, correct? He told you he was involved in the previous robbery.
A Yes.
Q Okay. So you -- you had evidence that he was involved not previous robbery, okay. Correct?
A Yes.
Q You have Edward Dunn saying he was involved in the burglary that we're here for today, correct?
A Correct.
Q You have no evidence verifying Mr. Moore's alibi, correct?
A No.
Q And subsequently, after this case, he is arrested, convicted of the two other burglaries.
A I believe he was arrested for burglary. I don't

know --
Q Okay.
A -- what happened, what the disposition of that is.
Q And despite all of that, you didn't think you needed to follow up on Donald Moore, did you?
A No.
Q Okay. Ms. Lonsdale says the keys to her car were taken, correct?
A That's correct.
Q Were those keys ever found on Edward Dunn?
A They were not.
Q Okay. Ms. Lonsdale said the intruder took some of her personal effects, some of her jewelry, correct?
A That's correct.
Q Were those personal effects, that jewelry, ever recovered?
A They never were recovered.
Q Were they found on Edward Dunn?
A No.
Q Okay. None of Edward Dunn's fingerprints were located inside the bedroom or in Ms. Lonsdale's car?
A From my understanding, no fingerprints were recovered; that's correct.
Q And I understand from that, but I guess I'm a little more concerned about -- I may be a little biased, but I'm

more concerned about Edward's fingerprints. Were they located in the car or in the house?

A No. They weren't located either.

Q Okay. You showed Ms. Lonsdale some photo lineups, correct?

A That's correct.

Q In fact. You showed her, in particular, a photo lineup with Edward Dunn in it, correct?

A Yes.

Q And she was not able to pick out Edward in that photo lineup, correct?

A She was not able to pick out anyone in that photo lineup.

Q Did she indicate anybody in the photo lineup had hair similar to the person that came in that day?

A That the hair of all the people in the photo lineup would be similar.

Q So she said all of them, all the people in the photo lineup were similar?

A That particular hairstyle, at least.

Q She didn't pick just one?

A No.

Q Okay. She described the person that came into their -- into her home that night as, among other things, a black male, early 20s, correct?

A Yes.
Q And at the time you arrested Edward, he was 17 years old?
A Seventeen.
Q Ms. Lonsdale also told you she was able to describe the weapon that the intruder had, correct?
A Yes.
Q How did she describe it? How much detail did she have?
A I don't believe very much. If I could refer to her statement.
Q Go ahead.
A Yes. "Small gun, dark brown, and had like -- looked like a lady's gun."
Q Did Ms. Lonsdale ever give you any sort of information that -- when it relates to any sort of identifying marks on the intruder's hands?
A I don't believe so, no.
Q If she had told you something like that, you probably would have read that.
A Yes.
Q Didn't mention anything about the anything on the intruder's hands or anything like that?
A No.
Q All right. Were you aware of the tattoos on Edwards

hands?
A No. I'm still not aware of tattoos on Mr. Dunn's hands.
Q Okay. How much money did Edward say he got from Shorty after this robbery?
A 300.
Q And how much money did you find on Edward the day he was -- that you talked to him?
A $355.10 if I remember correctly.
Q Okay. How much money did Ms. Lonsdale say was taken from her residence that day?
A I can't recall.
Q Do you want to see that statement?
A Yes, please.
Q All right.
A If I wrote it in there.
Q Give made second. I'll let you look at her statement here, specifically on page three. See if that refreshes --
A It appears to be $120, all in 20s.
Q Okay. All in 20s. How much was it?
A $120.
Q 120, and Edward said that he got how much from Donald Moore?
A 300.

MR. O'NEIL: Beg the Court's indulgence, Your Honor.

(Pause).

That's all I have at this time, Your Honor.

THE COURT: Redirect?

(WHEREUPON, State's Exhibit No. 29 was marked for identification only.)

BY MS. FENT:

Q I show you what's being marked as State's Exhibit 29. Do you recognize that?

A Yes. This is the photo lineup.

Q Is this the photo lineup of who?

A Edward Dunn.

Q And is this the one you showed Ms. Lonsdale?

A That's correct.

Q That she was unable to or could not identify anybody in?

A That's correct.

MS. FENT: I'd offer into evidence State's Exhibit 29.

MR. O'NEIL: No objection.

THE COURT: Without objection.

(WHEREUPON, State's Exhibit No. 29 was admitted into evidence.)

BY MS. FENT:

Q And the individuals in this lineup, the six

individuals, do you they all have a similar hairstyle?
A They do.
Q Now, your conversation with Donald Moore, you said that he indicated that he had pulled a gun on Edward Dunn and robbed him?
A Yes.
Q I want to draw your attention specifically to Donald Moore's statement.
A Okay.
Q Where you were asked, "Can you describe the circumstances of this robbery?"
A Yes.
Q And --
MR. O'NEIL: Objection, Your Honor.
THE COURT: What's the objection?
MR. O'NEIL: The complications are Mr. Dunn has the inability to point who Donald Moore is.
(Unintelligible).
THE COURT REPORTER: I'm sorry. I didn't understand that.
MR. O'NEIL: Sixth.
THE COURT: Sixth amendment.
MS. FENT: Your Honor, Mr. O'Neil himself on direct examination was asking what did Donald Moore ask this investigator.

THE COURT: Ma'am, come here. No speaking.

(WHEREUPON, a bench conference was held in the Presence but not within the hearing of the jury)

THE COURT: Overruled.

BY MS. FENT:

Q What did Donald Moore tell you about the circumstances of this robbery?

A The question I asked Mr. Moore was, "Can you describe the circumstances of the robbery?"

Mr. Moore responded, "I tried to get him to sell me $30 worth of crack. I gave him $30, and he was bragging about how much money he had. When he reached into his right pocket, I pistol whipped him and stripped him. Ever since then, he's been threatening to kill me, my mama and my sister." That's why he bought that black gun.

Q And what type of gun was it that Donald Moore knew that he was carrying around?

A He describes it as a black revolver with a black handle. He said it was a snubnose .357. I have one just like it, similar, just like it on my ankle now.

Q And is it a big gun, small gun?

A Surprisingly small.

MS. FENT: No questions.

MR. O'NEIL: Just briefly, Your Honor.

RECROSS-EXAMINATION:

BY MR. O'NEIL:

Q Investigator Mauldin, I want to clear something up about Edward's statement here. When Edward gave you a statement concerning his interaction with Shorty inside the residence, was that a nonverbal or verbal communication between those two?

A When he talked to me about it in the car, it was verbal. When we put it on paper, it was nonverbal.

Q Okay. So the statement on -- the version of what happened that was indicated in the written statement is more of a nonverbal interaction between the two of them?

A Even -- can I go back to his statement?

Q Yes, sir.

A Even on his statement, I believe he said that Shorty called him into the house. Let me confirm that.

Q Yeah. You said that; that's correct.

A Okay.

Q I guess what I'm asking about is when they were -- according to Edward when they were both in the residence, his communication with Shorty would have been nonverbal?

A On his written statement, yes.

Q And you gave him that written statement before he signed it, correct? When I say him, I mean, Edward.

A That's correct.

Q And if he wanted to make any changes, he could have

made changes.

A That's correct.

Q He didn't change that part?

A No.

MR. O'NEIL: That's all I have.

THE COURT: All right. You may come down, sir. Thank you very much.

THE WITNESS: Thank you, Your Honor.

MS. FENT: State's Exhibit 12 is the last one I neglected to introduce, the buccal.

MR. O'NEIL: I have no objection that.

MS. FENT: Okay.

THE COURT: All right.

(WHEREUPON, State's Exhibit No. 12 was admitted into evidence.)

MS. FENT: Just to make sure it's...

(Conferring with the court reporter).

Your Honor, at this time the State rests its case.

THE COURT: All right. Ladies and gentlemen of the jury, that's the State's case. Now, as I told you at the beginning of the trial, this defendant has the opportunity but not any obligation under any stretch -- under any obligation to present a defense, because as I said then -- I'll say it again now -- the State has a burden of proof.

Whether they met that burden or not, it will

eventually be up to you, but I need to -- at this point in the trial, I do need to discuss several things with the attorneys about scheduling and the continuation of the trial.

So it's about 11:15. I'm just going to ask you to go to the jury room for a few minutes. Let me discuss how the trial is going to proceed from here with the attorneys, and I'll call you in just a few minutes when we're ready.

Again, don't discuss the case among yourselves while you're in the jury room. Just relax for a few minutes.

(WHEREUPON, the jury left open court at approximately 11:10 a.m.)

THE COURT: Any motions?

MR. O'NEIL: Your Honor, I guess at this time out of an abundance of caution I would like to renew all my previous motions and objections.

I would ask for a directed verdict on all four charges in general. As Your Honor knows, at this instance, what the court is concerned about is whether or not viewing the -- the evidence in the light most favorable to the State, is there any direct evidence, I think, or any substantial circumstantial evidence that would lead a jury to convict Mr. Dunn.

I think there has been a few cases that came out

recently that kind of addressed that substantially, circumstantial evidence.

I think as it relates to the four charges that Mr. Dunn has: The armed robbery, the assault with intent to committed CSC, the kidnapping and the burglary, I think the State is relying on circumstantial evidence to prove the identity of Mr. Dunn, in particular for the kidnapping, armed robbery, and assault with intent to commit CSC.

I think there has to be substantial circumstantial evidence in order for the case to go forward at this point. That standard has kind of been enforced by State vs. Arnold. That's 361-SC-386.

The point that there has not been substantial circumstantial evidence that links Mr. Dunn as to the identity of the perpetrator specifically for the armed robbery, assault with intent to commit CSC, kidnapping.

I think what the State kind of relies on, the majority of that circumstantial evidence, is the DNA match on the washcloth in this case here.

I think Mr. Dunn had provided a misstatement in his recorded phone calls, an alternative explanation for that particular piece of evidence.

As it relates, specifically, Your Honor, to the burglary charge, I don't think there has been any direct

Burg first and armed robbery. He's now armed. He says he goes in.

THE COURT: You're talking about the hand of one, hand of all.

MS. FENT: Under hand of one, hand of all. By his own admission, he is saying, "I'm guilty of burg first and armed robbery."

THE COURT: When somebody comes in.

MS. FENT: Yeah. He says that he was the look out. "He asked me to watch" are the words. "He told me to jump the fence and watch out while he did it. I jumped the fence and was down behind it where I can see the street."

So he is admitting that he's the look out in a burg first, armed robbery. Now he says he has the gun. They're going in to get the cash, the stacks, to hit more, get more from previously.

The kidnapping, obviously, is that he's going to -- there's a person in the home. I'm going to have to take this weapon so that she doesn't run out, yell, you know, get away from me. I'm going to use this weapon.

There is a person inside, so I'm going to detain them, kidnap them, in order to complete this armed robbery. So right there, the kidnapping.

Then his own admission, he's hand of one hand of all under the CSC, under the assault with intent to commit

or, really, any circumstantial evidence as it relates to the consent element of burglary.

I think there has been no direct evidence or circumstantial evidence that whoever the perpetrator was that entered the home that night entered without the consent of the lawful occupant there at the residence, Your Honor.

So based on that, I would ask for a directed verdict on all four charges.

THE COURT: State's position on each indictment?

MS. FENT: Well, on the defendant's own admission, his own statement, he admits to a burglary, an armed robbery, and a kidnapping. He admits to --

THE COURT: Now, wait a minute. Tell me specifically how he does admit to those?

MS. FENT: "Shorty told me that he hit up this lady's house a little while ago, and he got about ten to 12 stacks. He said he was back up here to hit it again. He asked me if I was in since Randy wasn't around. I told him that I would do it. That's when we walked to the house and saw her car there.

"As we were walking up to the house, he saw the car, he was thinking she wouldn't be there. When he saw the car there, he said, 'Damn, she is home, so I'm going to have to pull the gun out.'"

CSC, he says, "I hear something. I go inside. I see this person sexually assaulting the victim."

He then goes on to describe what he does, but then he says he says, "I go back out and watch again" which is the same word that he uses as being the look out. He doesn't call himself a look out. He says, "I'm supposed to watch. I'm the watch guy."

He says, "I go back out and keep watch again until he comes out." So now he is assisting and enabling the sexual assault to occur. He is the look out to make sure nobody walks up so he can help his buddy complete the sexual assault, then goes outside.

He waits for Shorty to come out. They leave and then they meet up how ever much time later, a day or so later, and he gets his cut of the $300 for participating in the burg first, the armed robbery, the kidnapping, and the sexual assault.

That's just under his own admission, and we certainly have substantial evidence from the victim that actually he is the principle. There is not another person. She never sees another person.

There is not another person there; that the person that sexually assaulted her and ejaculated on her leg, had her go to the bathroom, wipe her leg off, and we have his semen, one in 70 quintillion. So his semen on that rag

and there's -- they said they could exclude Donald Moore. Certainly, in the light most favorable to the State, we have enough to go forward for a verdict.

MR. O'NEIL: Your Honor, just to speak, and I'm not going to belabor the point, but as it relates to Mr. Dunn's statement, the only misstatement is the hand of one is the hand of all law in South Carolina means, but my understanding of it is that there has to be some sort of agreement between multiple people under the theory of the hand of one, hand of all.

The only thing that Mr. Dunn agreed to in his statement was to go there principally for a burglary. I would -- his statement pretty much says that.

The only other mentioning is that Mr. Dunn mentions that Shortly has a weapon here. There is no agreement in Mr. Dunn's statement that now he agreed to an armed robbery and is inside his home.

There is definitely no agreement in Mr. Dunn's statement to sexually assault anybody that's inside this home or kidnap anybody that's inside this home.

I don't think, especially in the sexual assault and the kidnapping, especially in the sexual assault, Your Honor, it's not a foreseeable outcome from a burglary in the first degree, so I think under the theory of hand of one hand of all, you wouldn't have enough evidence based

on his statement alone.

The other evidence, the DNA evidence, is not direct evidence. It's circumstantial. I don't think it rises to a level of substantial circumstantial evidence.

THE COURT: All right. Now, based on your arguments and the evidence I've heard and the evidence that's been introduced during the course of this trial, I feel that the evidence goes beyond that of mere conjecture or suspicion; that there is evidence, either direct or circumstantial or some combination of both which reasonably tends to prove the guilt of the defendant or from which that guilt might be logically and reasonably deduced if that evidence is taken in the light most favorable to the State. So I must respectfully deny your motion for a directed verdict, sir.

Now, does the defendant plan to present a defense?

MR. O'NEIL: Your Honor, at this time we don't intend on presenting any testimonial evidence. We would ask for Mr. Dunn to be allowed to do a non-testimonial demonstrate -- present non-testimonial demonstrative evidence in this case.

There has been testimony that the victim in this case saw the gun and presumably saw the hand, the right hand that the gun was in of the assailant.

We would ask that Mr. Dunn be allowed to roll his

sleeves up and show his hands to the jury.

THE COURT: Any objection?

MS. FENT: Can I just have a little moment to look that up, the propriety of that? I've not had that happen.

THE COURT: Well, let me go -- let me do this. Let me give your client his fifth amendment rights, and you can do your research.

Mr. Dunn, Edward Maurice Dunn, at this time, I'm going to explain to you certain of your rights, your legal rights. If you do not understand anything I say, please let me know. In you want me to explain anything in more detail, please let me know. Do you understand?

THE DEFENDANT: Yes, sir.

THE COURT: We've now reached the stage of this trial where you may present your defense. You have the right to claim the protections given to you by the fifth amendment to the constitution of the United States.

This amendment states in person no person shall be compelled in any criminal case to be a witness against himself. This means that you cannot be required to testify in this case.

You have the right to testify on your own behalf. However, no one can make you testify. This is a personal right. No one can waive this right except you.

If you decide to testify, you will be subject to the

same rules that govern other witnesses. You may be examined and cross-examined on any relevant issue in this case.

in addition, if you have any convictions involving dishonesty or false statement or for crimes punishable by imprisonment of more than one year and this court determines that the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility.

If you decide to testify, this decision on your part must be freely, voluntarily, intelligently made with the knowledge of the protections given to you by the fifth amendment and the consequences of your decision to testify.

If you decide not to testify, I will instruct the jury that they cannot give the fact that you did not testify any consideration whatsoever and that there is to be absolutely no prejudice to you because you did not testify.

It's left entirely up to you whether or not you testified. You may talk with your attorney, your family and friends or anyone else, but the final decision will be left entirely up to you. Do you understand what I've explained to you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions about what I've explained to you?

THE DEFENDANT: No, sir.

THE COURT: Have you discussed with your lawyer whether you should testify or not?

THE DEFENDANT: No, sir.

THE COURT: You have not talked to your lawyer about it?

THE DEFENDANT: No. Can I ask him now?

THE COURT: Yes, sir. Do you wish to talk to your attorney about this?

(Pause).

I'll await your decision.

(Pause.)

MR. O'NEIL: Your Honor.

THE COURT: Just a minute.

(Pause.)

Yes, sir.

MR. O'NEIL: Can he discuss with his parents right there?

THE COURT: Absolutely.

MR. O'NEIL: Come to the first row.

(Pause.)

I think we have an answer right now.

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Dunn?

THE DEFENDANT: No, sir, I do not wish to.

THE COURT: Now, you still wish to...

MR. O'NEIL: Yes, Your Honor.

THE COURT: All right. I need to understand, for both of you to understand the implications of non-testimonial viewing. You still waive your right to final argument.

MR. O'NEIL: I'm sorry, Your Honor?

THE COURT: You still waive -- by -- that is considered evidence.

MR. O'NEIL: Yes, sir, Your Honor. I read State vs. Pickert (phonetic), and it talks about -- I understand that.

THE COURT: Go ahead.

MR. O'NEIL: Even non-testimonial waiving.

THE COURT: All right. I understand that. You understand that.

Does the State have any concerns?

MS. FENT: No, Your Honor, as long as he does not say anything and merely just shows them, then that's clearly non-testimonial.

THE COURT: All right. Fine.

MR. O'NEIL: Procedurally, we need to figure out how

he's going to do it procedurally. He has shackles on. That's all.

THE COURT: I know. Mr. Barefoot.

THE DEPUTY: Yes, sir.

THE COURT: Mr. Crosby.

(The deputies approached the bench.)

THE COURT: All right. Stand at ease for just a few minutes, and then we'll continue.

MR. O'NEIL: Yes, sir.

(WHEREUPON, a short break was taken.)

(WHEREUPON, Court's Exhibit No. 6 was marked for identification only.)

THE COURT: He can be unshackled, and he'll be allowed to approach the jury, just for your information. Mr. Crosby is going to sit where Mr. Addison sat, just to be sure.

MR. O'NEIL: Yes, Your Honor.

THE COURT: We had somebody go out that door one time.

State ready to proceed?

MS. FENT: We're ready.

THE COURT: Defense ready to proceed?

MR. O'NEIL: Yes, Your Honor.

THE COURT: Bring the jury, please.

Just announce to the jury what you want to do.

MR. O'NEIL: I will.

(WHEREUPON, the jury came into open court at approximately 11:47 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: All right.

Mr. O'Neil.

MR. O'NEIL: All right. Your Honor, may it please the Court.

At this time, the defense would ask that Edward be allowed to show the jury what his hands and what his arms look like.

THE COURT: All right. Go right ahead.

(Whereupon, the jury panel saw the defendant's arms and hands.)

MR. O'NEIL: I just want to make sure everybody in the back can see it. Okay. Thank you.

Your Honor, at this time the defense rests.

THE COURT: All right. All right. Ladies and gentlemen, that's the case.

Now, the final portion of this trial will consist of the final arguments of the attorneys and my instructions to you on the law of the case as -- to -- on the law as it applies to this case.

That process will take a couple of hours, probably up to an hour or two. So I think the best thing, most

efficient use of your time, would be to let you go now for your lunch hour.

I'm going to ask you to be back in the jury room at 1:15. That will give you a little over an hour for lunch, 1:15 at which time we will conclude this trial with the, as I say, final arguments and the -- my instructions to you on the law as it applies to this case.

I remind you again not to discuss this case with anyone during the lunch hour or when you return to the jury room. I hope you have a pleasant lunch, and we'll see you at 1:15.

Thank you very much.

(WHEREUPON, the jury left open court at approximately 11:50 p.m.)

THE COURT: Any motions at this time?

MR. O'NEIL: At this time I would renew all my previously made objections and motions, and I also would renew my directed verdict motion on the same grounds that I had at the close of the State's evidence.

THE COURT: All right.

Does the State have the same response?

MS. FENT: Yes, Your Honor.

THE COURT: All right. I respectfully deny your motion.

Now, any requests for jury instructions?

MS. FENT: Just to ensure the one --

THE COURT: Or proposed, proposed jury instructions. Let's do this now.

MR. O'NEIL: I have two, Your Honor.

THE COURT: All right.

MR. O'NEIL: I'm make Court's Exhibits, as well. It was on my pretrial written motions, too.

THE COURT: All right. Does the State have any requests to charge?

MS. FENT: Just to ensure that the hand of one hand of all is charged. I do have an objection to their --

THE COURT: Well, let me just --

MS. FENT: Okay.

THE COURT: Let me find out what you want charged, the State wants charged. How about that, hand of one, hand of all?

MR. O'NEIL: I have -- you're going to use the standard hand of one, hand of all? I have no objection to it.

THE COURT: Because it has that mere presence --

MR. O'NEIL: Yes, sir.

THE COURT: -- component.

MR. O'NEIL: Yes, Your Honor. I don't object to the hand of one hand of all charge.

THE COURT: Anything else the State is requesting?

THE COURT: Will you hand the verdicts to the bailiff, please?

(Pause.)

All right. Madam clerk, will you publish the verdicts, please?

THE CLERK: County of Richland, the State of South Carolina versus Edward Maurice Dunn, Jr., indictment 2011-GS-40-3518, assault with intent to commit CSC, first degree: Not guilty. Signed by the foreperson, number 305, on May 24th, 2012.

The State of South Carolina versus Edward Maurice Dunn on indictment 2011-GS-40-3526, indictment for kidnapping, verdict guilty, signed the foreperson, number 305 on May 24th, 2012.

The State of South Carolina versus Edward Maurice Dunn on indictment 2011-GS-40-3525, indictment for armed robbery: Verdict guilty, signed by the foreperson, number 305, on May 24th, 2012.

The State of South Carolina versus Edward Maurice Dunn, indictment 2011-GS-40-3527, indictment for burglary first degree, verdict guilty, signed by the foreperson number 305 on May 24th, 2012.

Mr. Foreman, is this your verdict and the verdict of the entire jury?

THE FOREMAN: Yes, ma'am.

locks on the doors. I have lights on at night.

I am debt for the first time in my life. The insurance rates on my house have doubled. I have lost my piece of mind.

In conclusion, I would like to say to the critics who do not like the DNA database, they should know what it's like to be held hostage for several hours and not know who your assailant is.

My thanks to Richland County Sheriff's Office. The investigators searched for hours and took samples that morning, especially Investigator Mauldin worked the neighborhood and made this all happen but not forgetting my thanks to Assistant Solicitor Bodman for all her hard work.

Thank you.

MS. FENT: Your Honor, he has a juvenile record, if you want to hear that.

THE COURT: Put it on the record.

MR. O'NEIL: Your Honor, I would just ask that be passed up. I don't think it's appropriate to be stated in open court. That can be made a Court Exhibit, and Your Honor can look at it.

THE COURT: That's fine.

MS. FENT: Okay.

(WHEREUPON, Court's Exhibit No. 9 was marked for

identification only.)

MS. FENT: I hand up Court's Exhibit 9 which is the defendant's juvenile record.

THE COURT: You've see this, Mr. O'Neil?

MR. O'NEIL: I have.

THE COURT: Well, just without disclosing anything, I think it's fair to say he has an extensive juvenile record.

Anything further?

MS. FENT: Your Honor, he was 17 when he committed this. He doesn't have any adult convictions. I do have two other pending charges on him, a burg. first and -- a burglary in the first degree and a burglary in the second degree, two separate other burglaries.

THE COURT: Two separate?

MS. FENT: Two separate other ones that are pending.

THE COURT: Did he have -- tell me burglary first, when did that occur?

MS. FENT: They both occurred on May 13th of 2011, so between the time that she was first burglarized on May 11th. Excuse me, they were before her first burglary.

THE COURT: Okay.

MS. FENT: May 13th of 2011.

THE COURT: Different locations?

MS. FENT: Different homes, different locations.

would be no conviction of voyeurism.

So Your Honor would have to only consider the charges he was convicted of and see if those are the charges were of a nature that would -- in Your Honor's discretion would require some sort of sexual registry.

SENTENCING:

THE COURT: All right, sir.

Mr. Dunn, after hearing the evidence in this case, I find your actions -- whether I accept your version of the facts or the State's version of the facts -- to be particularly heinous and egregious when it comes to dealing with elderly people.

I've taken into consideration your record, which is not good. You've been in trouble since you were 13. You've been in and out of trouble, all many times for breaking into houses and robbing people, both here and in Spartanburg County.

Just gone way down the wrong road, sir. I have no -- I don't have a lot of options when it comes to the punishment.

Mr. Edward Maurice Dunn, Jr., the sentence of the Court on all charges: That you be committed to the State Department of Corrections for a period of 30 years. You're given credit for time served June 2nd, 2011.

I'm going to order that your name be placed on the

sexual offender registry at such time that you are repleaded from the Department of Corrections. Good luck to you, sir.

MR. O'NEIL: Your Honor, just for the record, I do have a written motion as relates to Mr. Dunn's sentence. I'll make that a court order.

THE COURT: Yes, sir.

MR. O'NEIL: I would object and say that a 30-year sentence on Mr. Dunn is in violation of the 8th amendment of the US and State Constitution.

THE COURT: Well, you certainly can take that up with an appellate court, but as far as the trial court is concerned, it's considerably less than a life sentence. It's an 85 percent sentence, which even reduces the amount of time that he would be required to spend in the Department of Corrections.

So that's my thinking, and you're certainly welcome to take that up with an appellate court.

(WHEREUPON, Court's Exhibit No. 10 was marked for identification only.)

(Whereupon, the proceedings were concluded.)

336

WITNESSES

(S) Joshua Mauldin – Richland County Sheriff

ARREST WARRANT NUMBER

I901957

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: JUL 13 2011

VERDICT

Guilty

~~5,23,2012~~

5-24-2012 JOT

305

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS4003525

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2011

92

THE STATE
vs.

Edward Maurice Dunn Jr

Indictment for
ARMED ROBBERY

SC Code: **16-11-0330(A)**
CDR Code: **0139**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JULY 13, 2011, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Edward Maurice Dunn Jr did in Richland County on or about May 28, 2011, commit robbery by feloniously taking from the person or presence of INDIRA LONSDALE, by means of force or intimidation, goods or monies of INDIRA LONSDALE, such goods or monies being described as JEWELRY AND/OR MONEY, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon; all in violation of §16-11-330(A), SC Code of Laws (1976, as amended)

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAN JOHNSON, SOLICITOR

337

WITNESSES

(S) Joshua Mauldin – Richland County Sheriff

ARREST WARRANT NUMBER

I901958

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JUL 13 2011

VERDICT

Guilty

5-24-2012

305

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS4003526

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JULY TERM 2011

92

THE STATE
vs.

Edward Maurice Dunn Jr

Indictment for
KIDNAPPING

SC Code: **16-03-0910**
CDR Code: **0095**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JULY 13, 2011, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Edward Maurice Dunn Jr did in Richland County on or about May 28, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one INDIRA LONSDALE, without authority of law, in violation of Section 16-03-0910, S. C. Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAN JOHNSON, SOLICITOR

339

WITNESSES

✓(S) Joshua Mauldin – Richland County Sheriff

ARREST WARRANT NUMBER

I901959

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: JN 13 2011

VERDICT

Guilty

~~5,23,2012~~
5-24-2012 905

305

Foreperson of Petit Jury
Date:

DOCKET NO. 2011GS4003527

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

✓ **JULY TERM 2011**

92

THE STATE
vs.

Edward Maurice Dunn Jr

Indictment for
BURGLARY 1ST DEGREE

SC Code: **16-11-0311**
CDR Code: **0079**

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I _____ hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

340

STATE OF SOUTH CAROLINA)
) **INDICTMENT**
COUNTY OF RICHLAND)

At a Court of General Sessions, convened on JULY 13, 2011, the Grand Jurors of Richland County present upon their oath:

BURGLARY, 1ST DEGREE

CDR: 0079 16-11-0311

That Edward Maurice Dunn Jr did in Richland County on or about May 28, 2011, enter the dwelling of INDIRA LONSDALE located at , without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant did enter and/or remain during the night and/or was armed with a deadly weapon and/or did cause physical injury to a person who was not a participant in the crime and/or did use or threaten the use of a dangerous instrument and/or did display what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, in violation of Section 16-11-0311(A), Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

DAN JOHNSON, SOLICITOR

RICHLAND COUNTY SHERIFF'S DEPARTMENT
CONSENT TO SEARCH
FOR
D.N.A. EVIDENCE

DATE 9/21/10

LOCATION E

I, Edward Dunn, do hereby consent to the Search of my person without a search warrant by Inv Carnell, Investigator for the Richland County Sheriff's Department. This Investigator is authorize by me to take from my person any materials or other property which he/she may desire.

This search shall be made of my person for the purpose of obtaining Buccal, (oral), swabs, for D.N.A. evidence.

I am aware that any evidence obtained as a result of this search can be used against me in a court of law.

This written permission, is being given by me, to the above named Investigator, freely, voluntarily, and without threats or promises of any kind.

SIGNED: X Edward Dunn

WITNESS: [signature]

WITNESS: _____

[redacted]

RCSD Forensic Form # LAT 004, April 2006

Analyst Initials _____

RICHLAND COUNTY SHERIFF'S DEPARTMENT
CONSENT TO SEARCH
FOR
D.N.A. EVIDENCE

DATE 9/21/10

LOCATION

I, Edward Dunn, do hereby consent to the Search of my person without a search warrant by Ivy Carvell Investigator for the Richland County Sheriff's Department. This Investigator is authorize by me to take from my person any materials or other property which he/she may desire.

This search shall be made of my person for the purpose of obtaining Buccal, (oral), swabs, for D.N.A. evidence.

I am aware that any evidence obtained as a result of this search can be used against me in a court of law.

This written permission, is being given by me, to the above named Investigator, freely, voluntarily, and without threats or promises of any kind.

SIGNED: X Edward Dunn

WITNESS:

WITNESS:

RCSD Forensic Form # LAT 004, April 2006

Analyst Initials

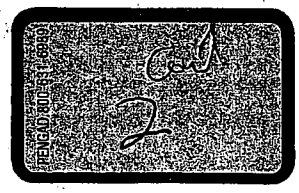
STATE OF SOUTH CAROLINA) **COUNTY OF RICHLAND)**	**IN THE COURT OF GENERAL SESSION** **Indictment#2011GS4003518, 3525-27**
The State of South Carolina,)	
vs.)	**MOTION SUPRESS DNA EVIDENCE AND DERIVATIVE EVIDENCE**
Edward Dunn,) **Defendant.)**	

The defendant thru his undersigned counsel moves to suppress both a DNA sample obtained on 9/21/10,which was retained and used for comparison in this present indictment, and any evidence derived from it usage as fruit of the poisonous tree. This evidence was obtained in violation of Mr. Dunn Fourth Amendment rights under both the US and South Carolina Constitution. U.S. Const. Amend. IV; see also S.C. Const. Art. I, § 10 (containing similar proscription under South Carolina law) The Court later applied the Fourth Amendment and its exclusionary rule to the individual states. Id. (citation omitted). Thus, all citizens enjoy this federal constitutional protection in every criminal proceeding, whether state or federal. Id.

Facts

The State did not obtain either a search warrant or a court order to obtain a sample of Mr. Dunn DNA. The State relies on the attached consent form for the search and seizure of Mr. Dunn's DNA. Mr. Dunn was suspected by police for a Burglary on that occurred on 9/20/11. The police obtained a buccal swab from Mr. Dunn on 9/21/11. Comparison to that buccal swab and items from the Burglary on was conducted on 11/11/11. None of the samples taken from items related to the burglary matched Mr. Dunn. Despite those facts a copy of Mr. Dunn DNA profile was store in Richland County in house DNA lab. When law enforcement uncovered a DNA sample in this case they compared the sample from this case to the samples stored in their in house database and discovered a match to the profile previously store of Mr. Dunn.

1. **Mr. Dunn asserts that under the totality of the circumstances his consent was not voluntary**



Warrantless searches and seizures are reasonable within the meaning of the Fourth Amendment when conducted under the authority of voluntary consent. Pichardo, 367 S.C. at 105, 623 S.E.2d at 851. Undoubtedly, a law enforcement officer may request permission to search at any time. Id. The State bears the burden of establishing the voluntariness of the consent. Id. The voluntariness of a consent to search is a question of fact to be determined from the totality of the circumstances. Id. Pichardo, 367 S.C. at 106, 623 S.E.2d at 851-52.

Mr. Dunn first maintains that his consent was his consent was coerced and involuntary. At the time of his consent Mr. Dunn was 16 years old. Mr. Dunn was arrested by Sherriff officers, taken to headquarters with his parents, without the assistance of counsel and interrogated. Mr. Dunn did not feel free to leave and felt coerced to comply with law enforcement it was at that time he signed the consent form.

2. Mr. Dunn asserts that law enforcement exceeded the scope of any alleged consent by retaining his DNA in their in house database.

State v. Forrester, 343 S.C. 637, 541 S.E.2d 837 (2001) stands for the proposition that under the South Carolina Constitution, "suspects are free to limit the scope of the searches to which they consent." Id. at 648, 541 S.E.2d at 843. "When relying on the consent of a suspect, a police officer's search must not exceed the scope of the consent granted or the search becomes unreasonable." Id. "The scope of the consent is measured by a test of 'objective' reasonableness-what would the typical reasonable person have understood by the exchange between the officer and the suspect?" State v. Mattison, 352 S.C. 577, 585-86, 575 S.E.2d 852, 856 (Ct.App.2003) (citation omitted).

At no time did Mr. Dunn consent to having his DNA stored in Richard County in house crime lab. In fact Mr. Dunn did not know this lab even existed. The scope of Mr. Dunn "consent" was for the 9/20/11 Burglary of only.

3. Mr. Dunn asserts all evidenced derived from the illegal retention and

comparision of his DNA profile should be excluded as fruit of the posionousness tree.

The exclusionary rule provides that evidence obtained as a result of an illegal search must be excluded. *State v. Sachs,* 264 S.C. 541, 560, 216 S.E.2d 501, 511 (1975). The inevitable discovery doctrine is an exception to the exclusionary rule and states that if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, the information is admissible despite the fact it was illegally obtained. *Nix v. Williams,* 467 U.S. 431, 443-44, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984). The fruit of the poisonous tree doctrine, most often associated with violations of the Fourth Amendment's prohibition of unreasonable searches and seizures, prohibits the use of evidence obtained directly or indirectly through an unlawful search or seizure. *Wong Sun v. U.S.,* 371 U.S. 471, 484, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

At the time warrants were sworn out against Mr. Dunn the sole evidence that provided probable cause was the DNA match obtained thru the illegally retained DNA profile. Once warrants were sworn out against Mr. Dunn a BOLO was placed on Mr. Dunn. Mr. Dunn was arrested days later and Inv. Mauldin was notified of Mr. Dunn arrested. Inv. Mauldin transported Mr. Dunn from The arrest site to Richland County head quarters where he was interrogated and told that police had a match to his DNA at the scene of the present incident. It was only at that time Mr. Dunn gave oral and written statements to Law enforcement. In addition to those statements the police recorded a conversation between Mr. Dunn and his mother at County headquarters.

Mr. Dunn requests that both his written and oral statements to Law enforcement and the recorded conversation with his mother be suppressed.

Deon O'Neil
Attorney for Defendant

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Columbia, South Carolina 2920
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Columbia, South Carolina

This _21 day of May, 2012

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."

October 29th, 2013

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1330

ATTORNEY FOR APPELLANT