

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALQI DHIMO,

APPELLANT

APPELLATE CASE NO. 2018-000110

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**State's Exhibit #3 (CD of defendant's interview); State's Exhibit #12 (CD of 911 call);
State's Exhibit #16 (DVD from dashboard camera); State's Exhibit #19 (Photo); State's
Exhibits #27 – 33 (Photos); State's Exhibit #36 (DVD bodycam footage)**

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STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
COUNTY OF HORRY) CASE NO.: 2015-GS-26-04000

July 31, 2017

BEFORE: The Honorable Steven H. John

THE STATE OF SOUTH CAROLINA,
Plaintiff,
vs.
ALQI DHIMO,
Defendant.

 ORIGINAL

APPEARANCES:

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Attorney for the Defendant.

Official Court Reporter
Natalie Dahl, RPR

I N D E X

JACKSON V. DENNO HEARING

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E X H I B I T S

STATE'S

ADMITTED

Exhibit 1	Miranda form	38
Exhibit 2	Unredacted interview (DVD)	37
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Exhibit 7	Body-cam video (DVD)	--
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1 (State's Exhibits 1-3, 7-9, 36-37 marked.)

2 P-R-O-C-E-E-D-I-N-G-S

3 THE COURT: State versus Alqi Dhimo. Is the
4 State ready to go forward with those motions?

5 MS. WALTER: Yes, Your Honor. The only issue
6 would be on the motion that requires live testimony, I
7 would request that we do those later.

8 THE COURT: After lunch?

9 MS. WALTER: Yes, please.

10 THE COURT: What motions would those be?

11 MS. WALTER: That would be the Jackson v. Denno
12 hearing and the defense's motion to suppress if
13 Mr. Long carries his burden first.

14 THE COURT: Okay. Are there any other motions
15 that have been filed by the defense that the State and
16 the defense have been able to resolve?

17 MS. WALTER: I believe there were several where
18 the State agreed. So, for instance, the defense
19 motion in limine for exclusion of the victim's
20 interview.

21 THE COURT: All right. So why don't we -- all
22 right. Let's find the particular motion so we're on
23 the same page.

24 Mr. Long, I think this is dated July 18, 2017
25 that you are moving before the Court for excluding any

1 and all recorded statements of the victim, and based
2 upon the fact that the victim is deceased, passed on
3 and unavailable for cross-examination; is that
4 correct?

5 MR. LONG: Yes, sir, Your Honor.

6 THE COURT: So to that particular -- to that
7 particular motion, is the State in agreement with that
8 motion?

9 MS. WALTER: Yes, Your Honor. As we noted in our
10 response, we do not intend to introduce the reporting
11 of the victim's interview; however, we plan to ask
12 Detective Jones if he interviewed her and what her
13 demeanor was during that interview.

14 THE COURT: So that you intend to ask that the
15 interview was conducted, not the results of the
16 interview, and that during the interview, on whatever
17 date it occurred, this is how she appeared before the
18 detective?

19 MS. WALTER: Correct. An interview took place,
20 the subject -- essentially, why were you questioning
21 her, and then her demeanor during the interview, but
22 nothing that she said.

23 THE COURT: All right. Any objection to that,
24 Mr. Long?

25 MR. LONG: Yes, sir, Your Honor. Just that if

1 Detective Jones or anyone else was to testify as to
2 her demeanor at the time of the interview, that that
3 would be hearsay, because she was making a statement
4 with her assertions were nonverbal contact that was
5 intended to prove the truth of the matter asserted.

6 THE COURT: What is the State's response.

7 MS. WALTER: If the testimony is as the State
8 believes it will be, is that she was crying
9 uncontrollably. It is not an assertion. It is not a
10 statement. It is not verbal conduct. It is an
11 observation by Detective Jones. Demeanor is all about
12 Detective Jones' observations.

13 THE COURT: Mr. Long, I don't -- I'm going to
14 allow the detective to state that he conducted an
15 interview with her, on whatever date and time he
16 conducted the interview, where the interview took
17 place. I will allow him to testify as to what he
18 physically observed about the victim, not anything she
19 said, not any of her responses, not any kind of
20 indication from the detective as to belief in any
21 shape, manner or form. I will allow him to say that
22 he conducted an interview with her on a certain date
23 and time, and how the subject of the interview was --
24 what, if anything, occurred on the dates alleged in
25 the indictment, and then her demeanor, that is, how

1 she appeared before him. All right?

2 MS. WALTER: And the detective has already been
3 instructed to that.

4 THE COURT: And that would be -- now, in any
5 response to cross-examination, if the question does
6 not require a response that would indicate something
7 the victim was saying or his belief as to what the
8 victim was saying, and that is basically placed in the
9 answer, I'll hear from you and whatever you believe
10 your motions would be at that point in time.

11 MR. LONG: Yes, sir. And if I could, just what
12 Ms. Walter was saying, is that he may testify she was
13 crying uncontrollably. That type of adjective, I
14 mean, I can't cross-examine uncontrollably.

15 THE COURT: Well, I think, you know, we need to
16 be careful, but you can -- I think you can -- visibly
17 upset, crying. I mean, if the person in front of her
18 -- in front of him is visibly shaking or whatever the
19 physical attributes are, okay. Now, a statement as
20 to -- uncontrollably, that could border on a comment
21 by the detective, but statements as to physically what
22 is going on in front of him, I'm going to allow him to
23 testify about that. So if she's crying, shaking,
24 whatever is physically going on with her, whatever is
25 happening in front of him, that he can relay, then I

1 will allow him to say that.

2 MS. WALTER: Your Honor, next, and in a similar
3 vein, defense's motion in limine redaction of victim's
4 sexual assault statement. This relates to the portion
5 of the document entitled "Sexual Assault Examination
6 Protocol" where the nurse essentially summarizes what
7 the victim has said happened to her. The State agrees
8 -- number one, we're not planning on introducing the
9 actual document, "Sexual Examination Assault
10 Protocol," and even if we were, we would certainly
11 redact the victim's statement, because it would be an
12 out-of-court statement offered for the truth of the
13 matter asserted.

14 THE COURT: The nurse in question, as I
15 understand it, her name is Ms. Hennig-Ryan?

16 MS. WALTER: Yes. I have a witness list actually
17 for the court reporter.

18 THE COURT: It says Nurse Emily H-E-N-N-I-G,
19 dash, Ryan. So I certainly have no issues with that
20 statement, correct?

21 MR. LONG: Yes, sir.

22 THE COURT: But since we're talking about Emily
23 Hennig-Ryan, do you have a motion regarding any
24 testimony by this particular individual; is that
25 correct?

1 MR. LONG: Correct, Your Honor.

2 THE COURT: Let's talk about that now, then.

3 MR. LONG: In the same area, ballpark, as we just
4 talked about with Detective Jones. I do believe that
5 any representation that Ms. Hennig-Ryan gives toward
6 the demeanor or conduct of the victim will be
7 nonverbal contact intended as an assertion by the
8 victim and, therefore, that would be inadmissible
9 hearsay under State versus Griffith.

10 THE COURT: All right. So let me -- give me
11 parameters, Solicitor, as to the intention of the
12 State regarding her testimony.

13 MS. WALTER: The State intends to call Ms.
14 Hennig-Ryan to -- essentially it would be where are
15 you employed, how are you employed, were you working
16 as a nurse on June 22, 2015, did you examine a woman
17 you came to know as J.K. , can you describe
18 what you did during that examination. So simply how
19 she went about collecting the different samples. Did
20 you speak with Ms. J.K. during this examination?
21 Can you describe her demeanor? Again, Ms.
22 Hennig-Ryan, I spoke with her and she's been told not
23 to mention any statements made by Ms. J.K. , but the
24 State certainly believes that she would be able to
25 testify to what she actually did and any observations

1 she made.

2 THE COURT: All right. So I don't have an issue
3 with the State calling Ms. Hennig-Ryan to come before
4 the jury and testify as to, first, her occupation,
5 where does she work, what does she do, how long has
6 she been so employed by the particular hospital, what
7 her duties entail, what are her duties given to her by
8 her employer, and as a result of that, she saw the
9 alleged victim, J.K., on a certain date and
10 time. I will allow her to physically describe what
11 she actually did, what she did -- assuming -- yes,
12 sir.

13 MR. LONG: I'm sorry, when you said "what she
14 did," you are talking about --

15 THE COURT: I'm talking about what the nurse,
16 Emily Hennig-Ryan, did. What Ms. Ryan did when she --
17 in the performance of her duties was assigned to this
18 particular patient, because I'm assuming she would
19 have talked about that previously. I have this
20 particular job responsibility given by my employer,
21 and as a result of that, I saw on a certain date and
22 time the alleged victim, J.K., and as a
23 result of that, I did X, Y and Z. I will allow
24 Ms. Emily Hennig-Ryan to testify as to what, again,
25 she physically observed. I'm taking this as an

1 example. I don't know what her testimony is. If for
2 some reason there was some, you know, deep gouges on
3 her left arm, or whatever it is, that she physically
4 observed, some open wound on her head, or whatever it
5 is, if she physically observed it, I will allow her to
6 testify that, you know, during the course of my
7 examination, I examined Ms. J.K. and I
8 found X, Y and Z, and this is what I did, X, Y and Z.
9 But at no point in time would I allow the -- Ms. Ms.
10 Hennig-Ryan to testify as to anything that Ms. J.K.
11 indicated to her that would be -- and of course
12 inadmissible hearsay testimony.

13 Again, if there is some physical manifestations
14 during the examination of Ms. J.K., that the nurse
15 grabs her left arm and as a result of that, you know,
16 Ms. J.K. jerks it away from her, then whatever she
17 physically observed, I'm going to allow her to do that
18 and testify. That comes as a result of her duties and
19 responsibilities given to her by her employer. Again,
20 not if she would know the results of any of the tests
21 and/or anything that Ms. J.K. said or told to her.

22 Further restrictions requested by the defense?

23 MR. LONG: No. I think that is adequate, thank
24 you.

25 THE COURT: Very good. Do you believe we are

1 clear, Solicitor, as to the limitations of the
2 testimony of Ms. Emily Ryan?

3 MS. WALTER: Yes, Your Honor.

4 THE COURT: All right. Do you know of any other
5 motion that there is at least some partial agreement
6 on or not?

7 MS. WALTER: I do. The defense's motion in
8 limine for redaction of interview of the defendant.

9 THE COURT: All right. Okay.

10 MS. WALTER: The State, prior to even getting
11 this, had already redacted the last portion of the
12 defendant's interview where he talks about his other
13 pending charge. I actually cut it off. At some point
14 I believe he says if we're going to keep going, I'll
15 want my attorney, and then he talks about other
16 charges, so I cut it off right there.

17 THE COURT: When he said he would like to have
18 his attorney?

19 MS. WALTER: And anything about his charges. I
20 did give Mr. Long a copy of that redaction statement,
21 and, Your Honor, we will be playing it during the
22 Jackson v. Denno.

23 THE COURT: That was going to be my question.
24 That is the interview subject of the Jackson v. Denno
25 hearing then?

1 MS. WALTER: Correct.

2 THE COURT: For my purposes, how long is that,
3 approximately?

4 MS. WALTER: 15 minutes or so.

5 MR. LONG: At most.

6 THE COURT: Okay. Obviously, we'll make a
7 decision regarding admissibility of the statement
8 through the Jackson v. Denno hearing. Mr. Long, as to
9 the actual redaction itself, do you have issues with
10 the redaction of the statement as presented by the
11 State?

12 MR. LONG: No, Your Honor. When I was listening
13 to it, the redacted part on the DVD was just as I
14 requested. There may be 15, 20 seconds before it cuts
15 off, and then the appropriate remarks by the police
16 officer, but I think during the Jackson v. Denno we
17 can go back and listen to it.

18 THE COURT: All right. So, I mean, for some
19 reason, if we need to stop it 30 seconds earlier,
20 certainly that can be accomplished?

21 MS. WALTER: Or make a new copy if Your Honor
22 determines this afternoon we can.

23 THE COURT: Very good. Okay.

24 MS. WALTER: There is a motion to sequester
25 witnesses, and I had agreed -- Your Honor, the one

1 amendment I would make is that there are, in essence,
2 two investigators assigned, Detective Hugh Jones was
3 the original case agent, and when I began to prepare
4 for trial, I was also assigned -- or the case was
5 assigned with Detective Whitmire, Tiffany Whitmire.

6 THE COURT: Thank you, ma'am.

7 MS. WALTER: I would just ask that both
8 detectives be allowed to remain in the courtroom.
9 Detective Whitmire, at this point, I don't have her
10 scheduled to testify, but I would like both of them to
11 remain in the courtroom to assist the State with its
12 prosecution.

13 THE COURT: Any problem with that, Mr. Long?

14 MR. LONG: No, Your Honor.

15 THE COURT: Very good. Other than that, the
16 Court would have it as mutually that the other
17 witnesses, as well as any potential witnesses,
18 obviously excluding the defendant, would be
19 sequestered then. All right.

20 MS. WALTER: And then one thing, Your Honor, that
21 I wanted to put on the record. The rest of the
22 motions, I believe, will be a little bit more
23 involved. Defense filed a motion to compel evidence.
24 He requested three items. Number one was the NCIC
25 report on the victim. I discussed that with Mr. Long,

1 and we agreed it was irrelevant given that the victim
2 is not going to be testifying.

3 THE COURT: Is that correct?

4 MR. LONG: Yes, Your Honor.

5 THE COURT: Very good.

6 MS. WALTER: Photo -- number two is photo line-up
7 copies. There was no photo line-up in this case. The
8 only thing I could think of -- and I did discuss this
9 with Mr. Long -- is that when Detective Allen,
10 A-L-L-E-N, spoke with a bartender at Jimmagan's, Chad
11 Morenus, M-O-R-E-N-U-S, in an attempt to determine
12 whether the victim and defendant had been at the bar,
13 she showed photos taken from the Myrtle Beach
14 Police -- sorry, it would have been the defendant's
15 mug shot from that arrest, and then a photo of the
16 victim. She showed those to the bartender. I have
17 copies of them, but it was not a photo line-up in the
18 traditional sense. Nothing was signed or placed in
19 evidence.

20 THE COURT: So this is a potential witness that
21 the State intends to call, a bartender?

22 MS. WALTER: That's correct.

23 THE COURT: And the purpose of that testimony is
24 to say that they were there at a certain time in the
25 bar drinking?

1 MS. WALTER: Yes, Your Honor. The bar bartender,
2 in essence, will testify that the victim and the
3 defendant were at the bar close to closing time, is
4 about as accurate as he can get, and that they did a
5 number of shots in quick succession. Detective Allen,
6 I believe, tried to interview him one day. He didn't
7 have a memory of it at that point. He thought about
8 it some more, and the liquor they had been drinking is
9 what jogged his memory, and he called Detective Allen
10 back, and Detective Allen showed him the photos which,
11 for trial purposes, would be marked Exhibit 36 and 37.
12 Did you need to see these?

13 THE COURT: Let me ask Mr. Long, are those the
14 photos you are talking about regarding the motion?

15 MR. LONG: I've never been given those, never
16 been offered -- I did not know they existed until 30
17 seconds ago.

18 MS. WALTER: That is not true, because I
19 discussed this with Mr. Long in the same discussion --

20 THE COURT: I appreciate -- hold on a second. I
21 appreciate that. It may or may not have come up in a
22 discussion, but that is not what is required.
23 Mr. Long, did you serve upon the State Rule 5
24 discovery requests?

25 MR. LONG: Yes, sir.

1 THE COURT: Solicitor, in response to the Rule 5
2 discovery request, did you send to the defense copies
3 of those photos?

4 MS. WALTER: No, Your Honor. I spoke to Mr. Long
5 and said I would make them available to show them to
6 him.

7 MR. LONG: I don't remember that.

8 THE COURT: Be that as it may, the requirements
9 of Rule 5 would dictate that if the State intends to
10 use evidence in the prosecution of the case, that that
11 evidence be turned over to the defense, or as best,
12 you know -- it has to be copies. You know, if it is
13 the -- the originals don't have to be turned over, but
14 representative facsimiles, copies of the documents
15 and/or photographs or recordings must be turned over
16 to the defendants. If that actually has not been done
17 as we speak, then I'm not going to allow the State to
18 use that in the prosecution of this case as a
19 violation of Rule 5. Thank you.

20 MS. WALTER: May I ask for clarification?

21 THE COURT: Yes, ma'am.

22 MS. WALTER: Will Detective Allen and Mr. Morenus
23 be permitted to testify -- so, for instance, Detective
24 Allen would testify that she showed a picture of the
25 defendant and a picture of the victim to Mr. Morenus,

1 without admitting the photographs?

2 THE COURT: Well, the problem is then that we
3 have.....

4 MS. WALTER: I don't mean to interrupt, but that
5 portion has been summarized in Detective Allen's
6 report, which defense has had for several years now.

7 THE COURT: Well, the fact that -- all right.
8 Mr. Long, I'll hear from you.

9 MR. LONG: May it please the Court. Your Honor,
10 I would -- nowhere in the reports or discovery did it
11 ever mention that Chad Morenus, the bartender,
12 identified the defendant and the victim due to
13 pictures that were shown to him and then he gave a
14 subsequent report due to the fact he identified the
15 defendant and victim from a picture. So because I
16 never had those pictures and was not aware that that
17 was a process, that his statement was elicited, then I
18 object to Mr. Morenus testifying at trial.

19 THE COURT: That was as a result of being shown
20 photographs, but let me understand -- and it may not
21 be -- but in the information provided to you, either
22 through that witness' statement or the detective's
23 report that this particular witness identified the
24 defendant and victim as patrons in the bar?

25 MR. LONG: Yes, sir.

1 THE COURT: So, certainly, the detective would be
2 able to say as a result of -- and the bartender would
3 be able -- the detective would be able to say he
4 interviewed him and discussed it and the witness
5 identified the two. The witness will be able to say,
6 I identified to the police the defendant and the
7 alleged victim in this matter as patrons in the bar,
8 and this is what they did when they came in the bar.
9 They came in here and ordered this kind of drink and
10 they drank it. But since we're not going to talk
11 about being shown photographs or as a result of being
12 shown photographs, just that the interview occurred,
13 he identified them, identified the defendant,
14 identified the victim as patrons of the bar, did
15 whatever it is that they came in the bar and did.

16 MS. WALTER: Just so that I'm clear, Your Honor,
17 they can testify to the actual identification, but not
18 mention --

19 THE COURT: Because you have not notified them of
20 such, you can do that, but the detective cannot say,
21 Here is these photographs and that is how they did it.
22 Mr. Long, if you ask how did you know that it was the
23 defendant, it was the defendant and the victim, if you
24 ask that question, you will get the answer; you
25 understand that?

1 MR. LONG: Yes, sir. Yes, sir.

2 MS. WALTER: The third item on the motion to
3 compel was 911 tapes. There was one 911 call that was
4 disclosed to the defense.

5 THE COURT: Very good. So that takes care of
6 that particular motion?

7 MR. LONG: Yes, sir, Your Honor.

8 THE COURT: All right.

9 MS. WALTER: The remaining, Your Honor, by the
10 State's count, there are -- there should be five
11 motions left.

12 THE COURT: Which ones -- obviously, Jackson v.
13 Denno and whatever motion --

14 MS. WALTER: Sorry, that is seven motions left.
15 Jackson v. Denno requires the live testimony.

16 THE COURT: What other one?

17 MS. WALTER: The motion to suppress that was
18 filed Friday night or Saturday.

19 MR. LONG: Suppress DNA, Your Honor.

20 THE COURT: Okay. Motion to suppress DNA.

21 MS. WALTER: That requires live testimony. There
22 are....

23 THE COURT: You will be prepared to go forward
24 with those this afternoon?

25 MS. WALTER: Yes, Your Honor. There are five

1 others that would not require live testimony. Motion
2 in limine, limit the scope of cross-examination of the
3 defendant, motion in limine exclusion of the testimony
4 of Justin Stephenson, motion in limine exclude
5 evidence of bite marks and scratches on the defendant,
6 motion in limine exclusion of sexual assault
7 examination results. The State filed a motion in
8 limine seeking introduction of portions of the
9 body-worn camera footage.

10 THE COURT: Very good. Why don't we argue the
11 motion regarding the motion in limine that covers the
12 scope of cross-examination of the defendant. I'm
13 assuming this is about the in-car video, correct?

14 MR. LONG: Yes, sir, Your Honor.

15 THE COURT: Mr. Long, I'll hear from you.

16 MR. LONG: May it please the Court. Your Honor,
17 as I mentioned in my motion in limine, from the
18 beginning of the case, the case relied on in-car video
19 of the defendant to prosecute this case. As the Court
20 may understand, the dash-cam video was installed in
21 the defendant's video from a prior 2014 CSC first
22 arrest. A condition of the bond was that they put the
23 dash-cam video in the vehicle. It has been relied
24 upon by the State prior to Ms. Walter becoming
25 involved in this case, the Solicitor's Office has

1 continuously relied on this video, and now it is my
2 understanding they do not intend to introduce the
3 video into evidence because of proper foundation could
4 not be laid because the victim is deceased. I had
5 said that I would allow -- that I would stipulate that
6 the video come in, and the Solicitor's Office declined
7 that stipulation. I do believe that this is the --
8 the video is direct evidence, frankly, about the only
9 direct evidence that we have towards the attempted CSC
10 charge, and that it is very probative in its nature.
11 It is not prejudicial to the State in any way, but for
12 me to lay the foundation, the State has put me in a
13 position that almost would require the defendant to
14 take the stand in order to introduce this direct,
15 extremely relevant video that was a recording of the
16 interaction between the defendant and the victim, and
17 so, therefore, it puts the defendant in a position
18 that he is compelled to take the stand just so that
19 the jury can see this direct and very relevant
20 evidence. I believe that if the defendant is put in a
21 situation by the State that requires him to be able to
22 present this evidence, that they have intended --
23 Solicitor Walter does not know this, but the previous
24 prosecutor that was assigned to this case had
25 continuously told me that they intended to show this

1 video, and they relied on this video. So now that
2 they are putting the defendant in a position to
3 testify just so that the jury can see this relevant,
4 direct evidence, I would ask that if he does decide to
5 take the stand, it would only be for purposes of
6 laying a foundation for this video and, therefore, ask
7 that the State be limited to their cross-examination
8 as to only laying the foundation for the video.

9 THE COURT: All right. Solicitor, I'll -- I'm
10 glad to hear from you, and want to hear from you, but
11 I will tell you that previous contact the Court had
12 with this matter regarding the elements of his bond,
13 it was always presented to the Court from the State
14 that this was evidence that the State had and the
15 State intended to use this evidence at the defendant's
16 trial. Those were assertions that were made to the
17 Court when I had bond hearings in this particular
18 matter. So I'll give you that information.

19 MS. WALTER: Thank you, Your Honor. It may have
20 been that any of the number of prosecutors that had
21 this thought it was crucial to the case; however,
22 Ms. Andrew and I are the ones that are presenting this
23 case, and neither one of us believes it is crucial to
24 our case. It is our decision not to admit it in the
25 case in chief. And as a matter of fact, one of my

1 first conversations with Mr. Long about this matter
2 months ago when I told him that we would be setting a
3 trial date, because I believe there was a motion for a
4 speedy trial outstanding, I said, We are going to set
5 the trial, and he said, Well, you can't use that
6 video, and I said, That's fine. I don't need to use
7 the video. So this is not something that is a
8 surprise. That is something from my first contact
9 with Mr. Long I told him I wouldn't use the video.

10 For the legal aspect, I'll turn to Ms. Andrew who
11 authored our response.

12 MR. LONG: Can I respond?

13 THE COURT: Just in a second, I want to hear from
14 her.

15 MS. ANDREW: As Ms. Walter said, the State is not
16 relying on that video. We feel we can prove the case
17 against Mr. Dhimo without the video; however, if he
18 does choose to take the stand, which the State admits
19 is completely his decision, we do not feel that the
20 cross-examination should be limited to merely laying
21 the foundation for that video. South Carolina case
22 law indicated that any time a defendant takes the
23 stand, on their own behalf, the offer of that
24 testimony, upon any fact, is not only a waiver as to
25 all other relevant facts, but extends to facts that

1 affect credibility.

2 So our first argument is that if he does take the
3 stand, our cross-examination should not be limited and
4 we should be able to ask him any question that we see
5 fit as to relevant facts affecting the case. We think
6 that places justice and a fair trial, and the State is
7 entitled to a fair trial just as the defendant is.

8 Also, if he does get on the stand and lay the
9 foundation for the video, a necessary part of that
10 inquiry are the facts and circumstances surrounding
11 the making of the video, not only the events depicted
12 on the video, but why he had it in his car, which was
13 a condition of bond for a then CSC charge. We think
14 that all of those things would be relevant if the
15 defendant takes the stand, and we should cross-examine
16 him on all of these issues. That is all from the
17 State.

18 THE COURT: All right. Thank you. Mr. Long?

19 MR. LONG: She says they are interested in
20 justice. The video is a direct and relevant evidence
21 of the incident in question. How many times have we
22 said if we could be a fly on the wall to see what
23 happened. This video is the fly on the wall. We can
24 see it. We didn't have to rely on any motion. We can
25 see it with our eyes. Justice requires, demands, that

1 the video be seen by the jury, and the reason that the
2 camera was installed into the car is of no value to
3 the jury. It would be significantly prejudicial to
4 the defendant if the State were allowed to explain to
5 the jury or ask the defendant, or any other witness
6 that may talk about the video, why the video was put
7 in. It has no value to it. As a matter of fact, it
8 would be alluding to other crimes and bad acts and
9 would be inadmissible under 404(b). So, therefore, I
10 think it would -- one, the video is direct and
11 relevant evidence. Two, the reason why the video was
12 installed into the vehicle is not allowed under the
13 rules of evidence.

14 THE COURT: First, I'm not going to require the
15 State to produce or to use the dash-cam video in the
16 presentation of its case. Now, its existence,
17 certainly it would seem, to me, a relevant question
18 regarding any case agent, that would be either one of
19 the two that the State has in this matter, would be
20 whether or not the State is in possession of a video
21 that depicts all of the events that occurred. I think
22 that is a relevant question and the defense would be
23 allowed to ask the detectives if it exists. Just,
24 again, assuming in this particular matter the
25 defendant did not testify, the State would not be able

1 to argue that the defendant had an opportunity to
2 present that, because that is going against the Fifth
3 Amendment in requiring the defendant to, in fact,
4 defend himself. Mr. Long would be able to argue to
5 the jury that the State had evidence and chose not to
6 present it to the jury, and the jury can take from
7 that whatever they choose to take from it. He's not
8 allowed to argue further, but certainly he could make
9 that fact.

10 If the detectives testify, those being the case
11 agents, they know it exists, they would have to affirm
12 that it does exist, and the State has not played it,
13 Mr. Long can certainly bring that point to the jury in
14 his closing argument.

15 As to if the defendant does testify and sets
16 forth the parameters to put the dash-cam video in
17 evidence, I would allow the State to ask a question as
18 to whether or not he was required to have that
19 equipment in his cab. If he denies that he was
20 required, basically forced to have that equipment in
21 his cab, then the State would be able to go into the
22 circumstances, but I would not allow the State to
23 examine the circumstances, because then you would
24 start trying the defendant for another crime, and that
25 is not what that jury is there to do. They are not to

1 consider matters for which he has not yet been
2 convicted. Whether or not it has been dismissed or
3 pending does not matter. It is not a conviction,
4 therefore, defendant cannot be asked about it, but the
5 State would be able to, in some fashion, have the
6 defendant, if he testifies, admit that he was
7 required, in essence, forced, to have that in his cab,
8 but I'm not going to further limit the examination.

9 If there is other areas, if the defendant takes
10 the stand, he is opened to any and all questions about
11 any relevant matters. I'm just limiting that
12 particular issue in that fashion, but if the defendant
13 decides to testify, he is open to questions about any
14 and all relevant matters in this particular case, all
15 right.

16 MS. WALTER: There was one other -- I apologize.

17 THE COURT: That's okay.

18 MS. WALTER: That I believe there was some
19 agreement on. Defense's motion in limine, exclusion
20 of any reference that the death of a victim is related
21 to this case.

22 THE COURT: Certainly, you will have to explain
23 that in some fashion, you know, that she's not here.
24 The State would be allowed to say -- as I understand
25 it, and correct me if I'm wrong, it is as a result of

1 an unrelated drug overdose and not anything that came
2 about as a result of this case?

3 MS. WALTER: Well, I cannot legally tie the
4 victim's death to the events of this case. That is a
5 matter I'll leave for sentencing, but for the evidence
6 that would come out at trial, it will simply be that
7 Ms. J.K. died of a drug overdose approximately
8 four-and-a-half months after.

9 THE COURT: And I certainly don't have a problem
10 with that. I think it is proper to explain to the
11 jury why the alleged victim is not present so that
12 they don't speculate unduly. There is a reason why
13 she's not here, and I think the jury, to properly
14 evaluate the case, has a right to know the unfortunate
15 circumstances that prevent her from being here. I
16 certainly don't have a problem with -- I think you
17 indicated at some point in time, and this might come
18 up -- is Justin Stephenson the boyfriend?

19 MS. WALTER: Yes, Your Honor.

20 THE COURT: So I don't have a problem with the
21 State and defense, either one of you, in opening
22 saying why she's not here, assuming that there will be
23 some testimony later that would back up that
24 assertion.

25 Justin Stephenson, there was a motion in limine.

1 As I read the motion, you wanted to exclude his
2 testimony in its entirety, Mr. Long?

3 MR. LONG: Yes, sir, Your Honor.

4 THE COURT: Let me hear from you.

5 MR. LONG: May it please the Court. He was not a
6 witness to anything that occurred that night. He can
7 testify as to what happened up to the point that Ms.

8 J.K. got out of his vehicle, but that is the only
9 thing that he, himself, witnessed that night. If he's
10 allowed to testify as to the victim's mannerisms
11 before or after the incident or anything that would
12 allude to the fact, you know, that this event actually
13 did occur and affected her, I think it would be -- his
14 testimony would be used to decide the ultimate fact
15 left up to the jury and would be hearsay and
16 irrelevant for the purposes of this trial.

17 THE COURT: What is the response of the State?

18 MS. ANDREW: Your Honor, we do expect her
19 boyfriend to testify as to her behavior before and
20 after the incident occurred. We think that is
21 relevant. We also are asking him to base that on his
22 own observations, how did she look and before and
23 after, was there a change in her demeanor, any
24 inference that can be drawn from that testimony will
25 be the jury's -- it is up to them. He's not going to

1 say that the rape -- or alleged rape caused her to
2 change, he's just going to say that she changed, the
3 change he observed. He also will testify that he saw
4 her following the rape at the hospital.

5 THE COURT: Okay. I would allow Mr. Stephenson
6 to testify as to what occurred prior to Ms. J.K.
7 leaving his presence. As I understand, and I'm going
8 from the motion, so I obviously haven't heard the
9 testimony, but apparently they had been drinking, they
10 had a fight and that is how they became separated,
11 however that occurred. He can testify as to how she
12 was acting, upset or however it was that she was
13 acting at that point in time. I will allow him to
14 testify as to the next time he saw her, what he
15 observed. Again, not what she told him, not what she
16 indicated to him, not that he believes her in any
17 fashion. He will be limited to what he observed, what
18 took place in his presence, how she acted. If she was
19 visibly -- you know, if she was shaking or crying or
20 was mad or happy, or whatever she physically displayed
21 to him, he'll be allowed to testify to that. If he
22 went to -- and if he saw her at the hospital, I would
23 allow him to say he went to the hospital and he
24 observed her and this is what he saw, not why she was
25 there, what she relayed to him, not his belief in her

1 as to what may or may not have occurred. Again, he
2 can certainly testify as to what took place in his
3 presence. This is what happened in front of me, and
4 this is what I saw, this is what I heard. I'll allow
5 him to so testify. So somewhere in there, in the -- I
6 would assume in the initial stages of the testimony
7 you would be able to get out the fact of the
8 unfortunate circumstances of her demise.

9 MS. ANDREW: Yes, sir.

10 THE COURT: Regarding Mr. Stephenson, that is the
11 parameters of his testimony.

12 I think we'll break for lunch just so that I --
13 we have a Jackson v. Denno, motion to suppress DNA.
14 What other motions remain that we need to dispose of
15 this afternoon?

16 MS. WALTER: Motion in limine exclude evidence of
17 bite marks and scratches on the defendant, and
18 defendant's motion in limine exclusion of sexual
19 assault examination results.

20 THE COURT: Okay.

21 MS. WALTER: And there were sort of cross-
22 motions. The State filed a motion in limine to admit
23 portions of a body-worn camera footage. Rather than a
24 response, defense filed a motion in limine exclude
25 body-worn cameras of law enforcement. So,

1 technically, I guess they are two separate motions,
2 but same issue.

3 THE COURT: Very good. Any others besides the
4 motion to suppress DNA and Jackson v. Denno and what
5 you just talked about?

6 MS. WALTER: I believe that is it with what I
7 just told Your Honor. That should be it.

8 THE COURT: Okay. Let's come back at 2 o'clock.
9 We'll go through all of these motions and resolve them
10 this afternoon.

11 MR. LONG: I think the results of the sexual
12 examination, I think that is dealt with.

13 MS. WALTER: No, it hasn't been.

14 THE COURT: We'll cover that this afternoon,
15 okay. Thank you very much.

16 (A lunch recess was taken.)

17 THE COURT: State ready?

18 MS. WALTER: Yes, Your Honor.

19 THE COURT: We'll start with the Jackson v.
20 Denno.

21 MS. WALTER: Certainly.

22 THE COURT: You may proceed.

23 MS. WALTER: State calls Detective swear square.
24

25 (CAROL ALLEN, having been duly sworn,

1 testified as follows:)

2 MS. WALTER: Just as an administrative matter, I
3 have prepared and marked both the un-redacted copy of
4 the defendant's statement, and then the redacted
5 version, which is what we would intend to introduce.
6 I was planning, for this hearing, just using the
7 redacted copy, just so everyone is clear what
8 redactions have been made.

9 THE COURT: That would be probably the best. Go
10 ahead. You may continue.

11 MS. WALTER: Thank you.

12 DIRECT-EXAMINATION

13 BY MS. WALTER:

14 Q Where do you work?

15 A Myrtle Beach Police Department.

16 Q Were you working there in June of 2015?

17 A Yes, I was.

18 Q What was your position at that time?

19 A I was detective.

20 Q Did you assist in the investigation of criminal
21 sexual conduct against the defendant Alqi Dhimo?

22 A I did.

23 Q Did you, as part of that assistance, take a
24 statement from the defendant?

25 A I did.

1 Q Do you recall when you spoke with the defendant?

2 A I do.

3 Q What time did you speak with the defendant?

4 A I want to say around 3:30 in the morning.

5 Q And he was arrested sometime before 3:00?

6 A Yes.

7 Q When you spoke with him, had he already been
8 charged?

9 A Yes.

10 Q Was he in custody?

11 A Yes, he was.

12 Q Where was -- where did this interview take place?

13 A In one of the interview rooms in the jail area.

14 Q So the defendant was held at the Myrtle Beach
15 jail?

16 A Yes, ma'am.

17 Q Prior to talking to the defendant, did you at
18 some point shortly thereafter advise him of his Miranda
19 rights?

20 A I did.

21 Q At any time during your interaction with the
22 defendant, did you threaten him in any way to convince
23 him to make a statement?

24 A No, I did not.

25 Q Did you somehow compel him to make a statement?

1 A I did not.

2 Q Did you make any promises to entice him to make a
3 statement?

4 A No, I did not.

5 Q Was that statement recorded?

6 A Yes, ma'am.

7 Q When you spoke with the defendant, did you notice
8 any smell of alcohol on him?

9 A No, I did not.

10 Q When you were speaking with him, were the
11 questions -- excuse me. Were the answers he was giving
12 to your questions responsive?

13 A Yes.

14 Q Did it seem as though he understood what you were
15 asking and saying?

16 A Yes. Each one of the questions on that we ask
17 before we question anyone if you would have a question,
18 you know to ask me to repeat myself, and he answered,
19 yes.

20 Q When you interviewed the defendant, describe the
21 area where this took place.

22 A It was in a room, a small room. It is --
23 normally the room that we would use for blood alcohol
24 testing. We don't have an interview, so to speak, in
25 the jail area, but that is the room we were in. So a

1 desk, two chairs, video equipment, stuff like that.

2 Q Was there anyone else in the room besides you and
3 the defendant?

4 A No, just us.

5 Q Was the defendant handcuffed at the time?

6 A No.

7 Q Did you have your firearm on?

8 A No, I did not.

9 MS. WALTER: If I may approach.

10 (Ms. Walter confers with Mr. Long.)

11 MR. LONG: That's fine.

12 MS. WALTER: I'm approaching, Your Honor, with
13 what has been marked Exhibit 2 and 3.

14 Q (MS. WALTER) Was a copy of the defendant's
15 interview made and turned over to the Solicitor's
16 Office as part of discovery?

17 A Yes.

18 Q And you had a chance to review it?

19 A I did.

20 Q It is a fair and accurate representation or
21 recording of the interview with the defendant?

22 A Yes, it is.

23 MS. WALTER: I ask that Exhibits 2 and 3 be
24 admitted, but just play Exhibit 3.

25 THE COURT: Any objection?

1 MR. LONG: No, Your Honor.

2 THE COURT: To be clear, what is 2 and 3?

3 MS. WALTER: Absolutely. Exhibit 2 is the
4 un-redacted a recording of the defendant's interview.
5 Exhibit 3 is the redacted version where we took out
6 when he requested an attorney and spoke of other
7 pending is charges.

8 (State's Exhibit 2 and 3 admitted.)

9 (Video is played.)

10 Q (MS. WALTER) Detective, other than the fact we
11 cut off the end of the interview where the defendant
12 talks about an attorney and other charges, is that the
13 substance of the interview?

14 A Yes, ma'am.

15 Q You can hear a woman screaming in the background
16 during several points of that interview, who is that?

17 A I can't be sure because I was behind a closed
18 door.

19 THE COURT: If she doesn't know, I don't need the
20 answer. Thank you. She can't testify to that.

21 Q (MS. WALTER) I'll approach with what is marked
22 as Exhibit No. 1. If you can open that for us. Do
23 you recognize what was marked as Exhibit 1?

24 A I do.

25 Q What is that?

1 A Miranda form, the form I used when I read the
2 Miranda rights to Alqi.

3 Q Did he sign that?

4 A Yes, ma'am, he did as did I, date and time.

5 Q This was at some point placed into evidence?

6 A Yes.

7 MS. WALTER: I ask that Exhibit 1 be admitted.

8 THE COURT: Any objection.

9 MR. LONG: No objection.

10 (State's Exhibit 1 admitted.)

11 MS. WALTER: We rest on the hearing.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MR. LONG:

15 Q You heard the video. What is Alqi's address that
16 he said on the video? Don't look at your notes.

17 A Just what I wrote down?

18 Q No, what you heard on the video. What is his
19 address?

20 A Just what I wrote down.

21 Q No. You just listened to the video. Repeat what
22 his address was?

23 A I can't.

24 Q You can't understand it, right?

25 A Well....

1 Q Do you want me to play it for you?

2 A If you would like.

3 MS. WALTER: I ask that the witness actually be
4 allowed to answer the question.

5 THE COURT: Let's cover the rules now. Attorney
6 asks a question, witness answers the question. If it
7 requires a yes or no, you give yes or no, then explain
8 the answer. Both of you will give the other courtesy
9 to either ask the question in full, or answer in full.

10 MR. LONG: I apologize.

11 THE COURT: It's all right.

12 MS. WALTER: I would also ask what -- if this is
13 the Jackson v. Denno hearing, I'm not sure what his
14 address has to do with the voluntariness of the
15 statement.

16 THE COURT: It has to do with whether or not he
17 understands, and whether or not she understands his
18 answers, and that partially answers whether it is
19 voluntary or not. I appreciate your arguments, ma'am.
20 I'll allow him to play it. Thank you. Let's
21 continue.

22 (Video is played.)

23 Q (MR. LONG) What did he say?

24 A [REDACTED] 37th.

25 Q He told you that his primary language was

1 Albanian, correct?

2 A I don't recall. Well, yes, he did say that, but
3 we -- I asked if he understood English, if he
4 understood everything that was going on.

5 Q He said his primary language is Albanian?

6 A That's correct.

7 Q And you had difficulty understanding his level of
8 education, correct?

9 A Sure.

10 Q You had difficulty understanding his answers to
11 your questions?

12 A I made sure we were understanding each other.

13 Q You understood everything he said?

14 A If I didn't, I would repeat my question.

15 MR. LONG: Could we play it, please?

16 (Video is played.)

17 Q (MR. LONG) What did he say right there?

18 A Which part?

19 Q The last sentence.

20 A Play it again.

21 (Video is played.)

22 Q (MR. LONG) That, what did he say?

23 A He said something to the effect that I can't
24 believe that, who said that?

25 Q Not something to the effect, I need to know the

1 exact words. It is very important. It is a
2 defendant's statement in a trial, very important of the
3 exact words. What did he say exactly?

4 A I cannot give you the exact words.

5 Q That was an ongoing problem throughout the whole
6 interview, correct?

7 A It was a problem, but at those points I made sure
8 we understood each other. Any questions I asked him, I
9 made sure he understood me, and then we would move on.
10 Now, the quality of this tape right here is a little
11 bit worse than what I was actually hearing during the
12 interview.

13 Q The jury doesn't have the opportunity to be in
14 the room with you, do they?

15 A No.

16 Q They have to rely on this recording?

17 A Correct.

18 Q So it was very important as a detective -- you
19 know it is important for the jury to understand
20 completely the evidence?

21 A Correct.

22 Q You did not get a transcript of this interview?

23 A No.

24 Q Is it safe to say there was several minutes that
25 you don't have a clue what Alqi Dhimo was saying?

1 A I couldn't tell you now.

2 Q And the few things that are understandable in
3 that video, is what you are saying, correct?

4 A Yes.

5 Q And you asked leading questions, correct?

6 A Yes.

7 Q And you said that you were taking the victim to
8 the hospital, correct?

9 A Not me, personally.

10 Q That is not what you said.

11 A I didn't tell him I was taking the victim to the
12 hospital, personally, myself.

13 MR. LONG: Can you go to about -- it is about 13
14 minutes into it.

15 (Video is played.)

16 Q (MR. LONG) What did he say right there?

17 A I don't know.

18 MR. LONG: Play, please.

19 (Video is played.)

20 Q (MR. LONG) That was a question he had for you.
21 What is his question to you?

22 A I can't tell you by listening to that.

23 MR. LONG: That's all I have.

24 THE COURT: Any redirect?

25

REDIRECT-EXAMINATION

1
2 BY MS. WALTER:

3 Q Detective Allen, you were sitting in the room
4 with the defendant, correct?

5 A Yes.

6 Q Right across from him?

7 A Yes.

8 Q And any time that you didn't understand, were you
9 able to clarify it at the time?

10 A Yes.

11 Q Was the sound quality of that face-to-face
12 conversation better than this audio?

13 A Yes, it was.

14 MS. WALTER: Nothing further.

15 THE COURT: You may step down.

16 Further witnesses from the State regarding
17 Jackson V. Denno?

18 MS. WALTER: No, Your Honor.

19 THE COURT: Witnesses from the defense.

20 MR. LONG: No, Your Honor.

21 THE COURT: Very good. Regarding this particular
22 statement of the defendant, obviously it is the
23 Court's determination that the defendant was in
24 custody, he was detained and Miranda warnings were
25 required in this particular circumstance. I find that

1 based upon Exhibit 1 and Exhibit 3, that the defendant
2 was advised of his Miranda warnings. There is
3 sufficient information before the Court to determine
4 that the defendant understood his Miranda warnings,
5 that he full voluntarily waived them to give the
6 statement to the police, to the extent that he gave a
7 statement, whether or not the jury will be able to
8 understand the contents of the statement, that's
9 debatable, but certainly the parts that are clear
10 regarding the Miranda warnings, I do find that is
11 clear. It is clear that the defendant knew his
12 rights, voluntarily waived them and gave statements
13 such as it is to the police. Obviously, the -- my
14 standard is preponderance of the evidence. Obviously,
15 the State must prove it beyond a reasonable doubt at
16 the trial for the jury, but based upon preponderance
17 of the evidence standard, I'm going to allow the
18 statement such as this to be played as evidence in
19 this particular matter.

20 All right. We had a motion to express DNA,
21 Exhibit 2. You need to give that to the court
22 reporter.

23 Madam Court Reporter, do you have Exhibit 1?

24 COURT REPORTER: I sure do, yes, sir.

25 THE COURT: So motion to suppress the DNA

1 evidence. Your motion, Mr. Long.

2 MR. LONG: Yes, sir, Your Honor.

3 THE COURT: I'll hear from you.

4 MR. LONG: The DNA was recovered from the
5 defendant based on a search warrant that was obtained
6 by Investigator Hugh Jones on June 22, 2015. The
7 basis or the probable cause for the finding of the
8 judge was based on Investigator Jones' sworn affidavit
9 as it appears in the search warrant. That affidavit
10 contains false statements that were known to be false
11 at the time they were written by Investigator Jones
12 and, therefore, would make a motion to suppress the
13 DNA evidence all evidence that was obtained and
14 requested through the description of the properties
15 sought in the affidavit.

16 My motion to suppress specifically the false
17 statements, one, that the victim was not found without
18 bathing suit bottoms. The detective knew at the time
19 that that was not accurate. The defendant was not
20 found standing over the victim, that is a false
21 statement. The investigation did not reveal that the
22 defendant removed the victim's pants. The victim was
23 known not to be wearing any pants at the incident site
24 and, therefore, he knew or should have known that the
25 only thing that the victim was wearing was her bathing

1 suit bottoms.

2 Finally, he said that there was proof that there
3 was attempted sexual intercourse with the defendant.
4 At the time he wrote the statement, there was
5 absolutely no proof that there was sexual intercourse
6 or attempted sexual intercourse between the victim and
7 the defendant. If not for these false statements,
8 then the search warrant would not have posed probable
9 cause for the judge to sign it, therefore, I request
10 that all the evidence that was obtained as a result of
11 the search warrant be suppressed from entering into
12 evidence.

13 THE COURT: State's response.

14 MS. WALTER: Your Honor, I will call Detective
15 Jones, but first may I ask is that considered the
16 defendant's offer of proof as to the false statements?

17 THE COURT: Mr. Long, is that your offer of
18 proof?

19 MR. LONG: No, I would like to call the detective
20 up to the stand.

21 THE COURT: Very good. Bring him around.

22 (HUGH JONES, having been duly sworn, testified
23 as follows:)

24 THE WITNESS: Hugh Jones, J-O-N-E-S.

25 DIRECT-EXAMINATION

1 BY MR. LONG:

2 Q Who are you employed by?

3 A City of Myrtle Beach.

4 Q What is the capacity that you serve there?

5 A Violent crime investigator.

6 Q How long have you been an investigator with the
7 Myrtle Beach City Police?

8 A Approximately, four years.

9 Q Two years prior to this incident?

10 A Yes, sir, I was working violent crimes.

11 Q At that night, were you assigned the case of --
12 to investigate this incident?

13 A The following day I was. This occurred in the
14 middle of the night. I came in the next day, roughly
15 7:00 a.m., and I was assigned to follow-up with the
16 case.

17 Q Did you say the next day, June 22nd?

18 A It was that day. I believe this was after
19 midnight, so the same day.

20 Q Who did you speak to about the incident?

21 A On coming in, my sergeant is Tony Allen. I think
22 he advised me to follow up on the case. The night
23 shift had received a possible criminal sexual conduct
24 and opened an investigation and asked me to follow up
25 on it.

1 Q What officer specifically did you speak to?

2 A Upon being assigned the case by Sergeant Allen, I
3 began to review the case. I read the -- basically the
4 follow-up from Detective Allen, as well as the incident
5 report, at which point I then -- along with Detective
6 Whitmire -- went and spoke to the victim at the jail.

7 Q In the incident report, is that completed by
8 Officer Eddy?

9 A Yes, sir.

10 Q Did you speak to Officer Eddy himself?

11 A No, sir.

12 Q The investigation report did not contain any
13 information about the victim's bikini bottoms being
14 off, did it?

15 A I believe Detective Allen's follow-up advised
16 that the victim's bikini -- genitalia was exposed.

17 Q But in your search warrant, that is not what you
18 said. In your search warrant, you said, Through
19 investigation, it was determined that witnesses
20 observed the victim lying face down on the beach
21 without her bathing suit bottoms, and the subject
22 standing over her with his pants and underwear pulled
23 down.

24 A Yes, sir. I was advised that the victim was
25 found without pants, which is maybe where the confusion

1 came in. She had no pants, and her bottoms were pulled
2 to the side exposing her genitalia.

3 Q Again, you said her bathing suit bottoms -- she
4 did not have them on?

5 A That is the way I understood it.

6 Q But you wrote a sworn statement giving the judge
7 probable cause for this saying that her bathing suit --
8 she was without her bathing suit bottoms, correct?

9 A Yes. I think my wording was that, but what was
10 passed on was genitalia was exposed, and I took it the
11 way it was written that it meant it was pulled down.

12 Q So it was an inaccurate statement you wrote in
13 your sworn affidavit, correct?

14 A I believe I misunderstood from the physical scene
15 to the way it was written.

16 Q Did you notify the judge of your error?

17 A I didn't know it was an error until coming into
18 trial.

19 Q Until when?

20 A Until right now, we're discussing it. The way I
21 understand it, the bathing suit was pulled down.

22 Q But you admit it was a mistake?

23 A Genitalia was exposed. She had no pants on. I
24 could have maybe worded it better, but it wasn't....

25 Q You can understand it would be misleading to a

1 judge to think that the victim's bathing suit bottoms
2 were off?

3 MS. WALTER: This is direct examination for Mr.
4 Long.

5 THE COURT: I appreciate that. I'll allow him to
6 fully explore the matter, thank you.

7 A Sorry.

8 Q (MR. LONG) You would admit that would be
9 misleading a judge -- excuse me. Strike that.

10 A judge could think that the victim did not have
11 bathing suit bottoms on in reading your affidavit,
12 correct?

13 A That is what I thought at the time.

14 Q And the victim did not wear pants on that night,
15 did she?

16 A She apparently had bathing suit bottoms on.

17 Q The first officer on the scene, he wrote in his
18 report she was found in her bathing suit bottoms?

19 A Yes, sir. He also wrote that the bottoms were
20 backwards when they saw him at the jail, which
21 indicates to me that --

22 Q Stop. That is not what I asked.

23 A Sorry.

24 Q I asked -- we're talking about her -- you said
25 she was wearing pants that night. You said that the

1 subject removed her pants?

2 A It was -- someone relayed to me that she was
3 found without pants.

4 Q No. I don't want to cut you off, I'm sorry, but
5 my question is, you said in your sworn affidavit that
6 the subject removed her pants?

7 A That is what he indicated at the time.

8 Q Who indicated that to you?

9 A That is the way I took it at the time. After
10 interviewing the victim, it was learned that she was
11 grossly intoxicated, learned that she did not consent
12 to sexual intercourse.

13 Q That is not what I'm asking you.

14 A But it was also --

15 Q I'm talking about --

16 MS. WALTER: Your Honor, I'm asking that the
17 detective be allowed to answer.

18 THE COURT: Let's be clear here. The attorney
19 asks a question. If you do not understand the
20 question, then you may ask him to repeat it. You
21 certainly are allowed to answer the question the best
22 you can, but you must respond as best you can directly
23 to the question, then you may explain it.

24 THE WITNESS: Yes, sir, Your Honor, I apologize.

25 THE COURT: Ask your question.

1 Q (MR. LONG) I'm talking in regards to
2 specifically your statement that you said that the
3 subject did remove her pants.

4 A Yes, sir.

5 Q No witness said that he removed her pants, at the
6 time of the sworn statement, did they?

7 A As far as the witnesses on beach, no; however,
8 upon interviewing the victim, she advised that she was
9 not -- she was not consenting --

10 Q Again --

11 THE COURT: I'll allow him to answer the
12 question, please, Mr. Long. Go ahead, sir.

13 A She advised that she was too impaired to consent
14 to sexual intercourse. She remembered none of the
15 events. She remembered the defendant basically
16 attacking her, at which point she advised she attacked
17 back. That, to me, was her basically stating that she
18 didn't pull her pants down for him or to the side, she
19 advised she was basically struggling during this
20 altercation.

21 Q (MR. LONG) She never told you that she was
22 wearing pants, did she?

23 A She didn't remember the entire incident but she
24 did not advise she was wearing pants.

25 Q Isn't it true that during the interview with the

1 victim that she told you she was wearing what she had
2 on at the time you talked to her?

3 A Yes, sir.

4 Q And what was she wearing at the time you talked
5 to her?

6 A I believe at the time we talked to her, they gave
7 her clothes from the jail.

8 Q What was she wearing at the time you talked to
9 her?

10 A Can't remember off the top of my head.

11 Q No witness saw the defendant standing over the
12 victim on the beach, did they?

13 A The way I understood it, reading the follow-ups,
14 was that the defendant was seen standing over the
15 victim.

16 Q Did you read the written statements of the
17 security guard who saw the defendant?

18 A I didn't have their written statements at the
19 time.

20 Q But that was given to Officer Eddy early that
21 day, correct?

22 A Yes, it was given to him that night, at which
23 point he would usually drop them into Records. They
24 are evidence, so he wouldn't physically come and hand
25 them to us, it has to go through a process.

1 Q Wouldn't you think it is important to review all
2 of the evidence before you swear an affidavit to a
3 judge for a search warrant?

4 A I reviewed Detective Eddy's report, Detective
5 Allen's report. I spoke to the victim, who advised me
6 she did not consent to any sexual activity, whatsoever.
7 I observed the defendant's photos from the -- booking
8 photo, and you can see the -- excuse me, Detective
9 Allen's report that you could clearly see injuries to
10 the defendant consisting with the victim's struggling
11 from the sexual assault.

12 Q At the time you wrote this affidavit, you did not
13 know that -- there was no evidence of sexual
14 intercourse at the time you wrote this affidavit,
15 correct?

16 A I believe there was an affidavit of -- attempted
17 sexual intercourse, yes, sir.

18 Q What is that evidence?

19 A The defendant was seen by witnesses with his
20 pants down. The way I took --

21 Q Stop. That, in and of itself, is not evidence?

22 A That was only partial --

23 MS. WALTER: The detective is not allowed to
24 finish his answer.

25 THE COURT: Mr. Long, when you ask a question,

1 please allow him to answer the question, and then you
2 can ask follow-up questions. Thank you.

3 Q (MR. LONG) At the time you wrote this affidavit,
4 there was no evidence of sexual intercourse, correct?

5 A In my opinion, there was evidence of attempted
6 sexual conduct. Witnesses saw the defendant in the
7 immediate area of the victim, the way I took it, was
8 standing over her with his pants down. The victim,
9 upon arrival of the officers, had her bottoms pulled
10 down in such a way that her privates were exposed. The
11 defendant had injuries on him consistent with the
12 victim's struggling to prevent a sexual assault. Upon
13 interview the victim --

14 Q But -- I'm sorry.

15 A Upon interviewing the victim, she advised that
16 she was too intoxicated to give any consent,
17 whatsoever, for sex. Upon interviewing the victim, she
18 advised that upon the defendant picking her up, he
19 carried her to a bar and gave her numerous drinks, and
20 then carried her to a beach.

21 Upon listening to an interview with Mr. Dhimo, he
22 picked her up in the area of 44th and carried her
23 straight to 77th, which is not consistent with what
24 actually happened. So based on all of that, and the
25 victim's reactions as we were walking through this, as

1 to what happened, that he was found in the immediate
2 area of her without -- with his pants pulled down,
3 seen by witnesses, that she had her pants to the side.
4 Her reaction to that seemed consistent with a victim
5 of a sexual assault, at which time she went to the
6 hospital for a sexual kit.

7 Based on the totality of the evidence, I felt
8 there was evidence of a sexual assault occurring.

9 Q So you used the evidence that was used during the
10 sexual assault as a basis for this affidavit?

11 A I don't believe I said that, no, sir. I said
12 upon interviewing the victim, she went for a sexual
13 assault kit.

14 Q Is that evidence in and of itself of sexual
15 intercourse?

16 A No. I described a list of things.

17 Q But you didn't put any of that in your affidavit?

18 A I put what I had at the time, yes, sir.

19 Q You said that, again, the investigation to the
20 incident did reveal that the subject did remove her
21 pants, as well as his, in an attempt to have sexual
22 intercourse with the incapacitated victim.

23 So you are saying that he did remove her pants
24 and his pants in order to have sexual intercourse?

25 A That is the way I understood it, yes, sir.

1 Q But her pants were not removed?

2 A To the side.

3 Q No. Those were bikini bottoms, not pants?

4 A Yes, sir. Okay.

5 MR. LONG: That is all I have -- I'm sorry,
6 that's all the questions.

7 THE COURT: Cross-examination?

8 MS. WALTER: May I approach the witness?

9 THE COURT: Yes, ma'am.

10 CROSS-EXAMINATION

11 BY MS. WALTER:

12 Q I'm approaching you with State's Exhibit 8; do
13 you recognize that?

14 A Yes, sir. It appears to be a search warrant
15 prepared.

16 Q That's the search warrant that we've been
17 discussing here?

18 A Yes, ma'am.

19 Q Is that a fair and accurate reproduction of that
20 search warrant?

21 A Yes, ma'am.

22 MS. WALTER: I ask that Exhibit 8 be admitted
23 into evidence.

24 THE COURT: Any objection?

25 MR. LONG: No, Your Honor.

1 (State's Exhibit 8 admitted.)

2 THE COURT: Admitted for this hearing.

3 Q (MS. WALTER) As you were gathering your
4 information for your affidavit, when you said there
5 was evidence of attempted sexual assault, tell us
6 piece by piece what it was that you learned that you
7 believed pointed to a sexual assault?

8 A Yes, ma'am. As I said, I wasn't working that
9 night. I came in the following morning. It was passed
10 onto me that a possible sexual assault may have
11 occurred. It was passed on that the defendant was
12 arrested for indecent exposure, so he was charged for
13 not having pants on in the immediate area of the
14 victim. It was also passed on that he had numerous
15 wounds or injuries on him consistent with bite marks
16 and scratches, I believe on his biceps area and
17 shoulder area. It was also relayed in Detective Eddy's
18 follow-up that upon approaching him -- or upon
19 approaching the victim, her private area was exposed.
20 Her pants were -- bikini bottoms were in such a way
21 that genitalia was exposed in a way that wouldn't be
22 natural where you just fell, is the way I took it.

23 Also, I believe they said that the sand was -- it
24 appeared that they possibly had a scene on the beach.
25 I listened to the interview of the defendant, and upon

1 doing so, he advised he picked her up at one location
2 and basically carried her straight to the beach. Upon
3 -- myself and Detective Whitmire interviewed the
4 victim, at which point she advised she was picked up
5 in a different area and carried to a bar with the
6 defendant, which does not seem like a natural thing
7 for a cab driver because he went inside and bought her
8 numerous shots.

9 After drinking numerous shots, she advised she
10 was highly impaired, wanted to go home. They ended up
11 on the beach. She remembered none of the sexual
12 assault. She remembered the defendant attacking her.
13 I don't know if that was the exact words, but it was
14 the defendant attacking her, and she attacked back
15 when being -- when he was grabbing her. In speaking
16 with her and kind of going through the incident, and
17 the defendant being arrested for indecent exposure for
18 being on top of her, and her being exposed, her
19 reaction appeared to be someone that was involved in a
20 sexual assault. She seemed nauseous. She seemed
21 disturbed and seemed -- she began crying. She got
22 visibly upset, and upon becoming sick, we stopped the
23 interview because she felt nauseous. Based on all of
24 that, I believe we had an attempted sexual assault.
25 She consented to a sexual assault kit and went to the

1 hospital.

2 Q Back up for a minute. So the defendant was found
3 on the beach by three security guards?

4 A Yes, ma'am, the way I understand it.

5 Q From a nearby hotel?

6 A Yes, ma'am.

7 Q Those three security guards saw the defendant
8 standing over the victim?

9 A Yes. And upon listening to a 911 call, the
10 complainant advised that he's standing -- the defendant
11 is standing on the beach with no pants; shirt down,
12 basically angry that someone wouldn't wake up.

13 Q In fact, one of the security guards was named
14 Benjamin Thompson.

15 A I can't remember the names off the top of my
16 head, but that sounds right.

17 MS. WALTER: May I?

18 THE COURT: Yes, ma'am.

19 MS. WALTER: I'm approaching with State's 9.

20 A I apologize. I did have his name on the record.

21 Q Doesn't Mr. Thompson say that when he first saw
22 the defendant, the defendant was laying in the sand and
23 jumps up, and it was at that point that Mr. Thompson
24 could see that he had no pants on?

25 A Yes, ma'am.

1 Q Would that also factor into an inference that
2 there was a sexual assault?

3 A Yes, ma'am, along with witnesses saying that he
4 basically told them to go away, everything is fine, go
5 away.

6 Q Did -- do you know whether Detective Eddy
7 actually saw marks and abrasions around the victim's
8 genital area?

9 A Yes, ma'am.

10 Q Yes, he did?

11 A Yes, ma'am.

12 Q And I believe you said this earlier, Detective
13 Eddy actually noticed at some point later that her
14 bikini bottoms were on backwards?

15 A Yes, ma'am. Going into jail, I believe he
16 pointed that out to Detective Allen.

17 Q Would that perhaps make you believe that her
18 bikini bottoms had been removed at some point?

19 A Yes, ma'am. That is basically where I got -- at
20 one point, they were off and then back on.

21 Q Other than the bathing suit bottom, the victim
22 did not have pants, skirt or shorts on, correct, just
23 bikini bottoms?

24 A Yes, just bikini bottoms and a very long shirt,
25 or....

1 Q Coverup?

2 A There you go.

3 Q In your affidavit, you never said that a witness
4 said that the defendant removed her pants, correct,
5 that was just an inference you were making from the
6 evidence at the time?

7 A Yes. That is the way I understood it at the
8 time, yes, ma'am.

9 Q Is it your understanding that when the officer --
10 now Detective Eddy -- he was first on the scene,
11 correct?

12 A I believe so, yes, ma'am.

13 Q When he approached, was the defendant still
14 standing over the victim, essentially?

15 A He was in the immediate area. He was very, very
16 close to her upon his arrival.

17 Q So victim was on the ground?

18 A Victim was basically unconscious. They had to
19 use smelling salts to revive her.

20 Q The defendant was standing?

21 A Yes, ma'am.

22 Q So he was distancing --

23 A Standing in the immediate vicinity of her. The
24 way I took it was he was basically standing over her.

25 MS. WALTER: Nothing further at this time. I

1 would ask that Exhibits 8 and 9, and I think we
2 admitted 8, but Exhibit 9 be admitted.

3 THE COURT: Any objection to State's 9 being a
4 part of this motion?

5 MR. LONG: None, Your Honor.

6 THE COURT: Admitted.

7 (State's Exhibit 9 admitted.)

8 THE COURT: You have further questions?

9 MR. LONG: Yes, sir.

10 THE COURT: Go ahead.

11 REDIRECT-EXAMINATION

12 BY MR. LONG:

13 Q Detective Jones, are you testifying that the
14 basis of your affidavit, which is three -- statements
15 from the three security guards?

16 A No, sir. I'm saying that the basis for my search
17 warrant is what we went over, but it was based on
18 Detective Eddy's follow-up, Detectives Allen's
19 follow-up, my interview with the defendant and
20 basically what we saw with the defendant.

21 Q I'll ask you specific questions.

22 A I'm sorry, I didn't mean --

23 Q You did not see the statements from the security
24 guards at the time that you wrote this affidavit?

25 A No, sir.

1 Q So the statements from three security guards was
2 not a basis for this affidavit?

3 A No, sir.

4 THE COURT: Let him finish answering the
5 question. Go ahead.

6 A The officer basically wrote down that "witnesses
7 state," and I went off of his statement.

8 Q When did you see the officer's statement?

9 A Next morning.

10 Q What time?

11 A I came in at 7:00, started looking at reports and
12 everything that morning. I can't give you an exact
13 time.

14 Q When did you learn that Officer Eddy's saw marks
15 and abrasions on the victim?

16 A Officer Eddy -- I didn't know about the marks and
17 abrasions at that time. I knew he found the victim
18 with her pants removed, and I think he basically
19 advised that it appeared that a sexual assault had
20 taken place.

21 Q How close did Officer Eddy say the defendant was
22 standing to the victim?

23 A I don't have the exact location.

24 Q It is a big difference from standing over someone
25 and standing ten feet away, right?

1 A Yes.

2 Q So what did he say?

3 A Can't give you an exact distance.

4 Q Did Officer Eddy tell you directly that he saw
5 the defendant standing over the victim?

6 A No, sir.

7 Q You just took that as an inference?

8 A That's the way I understood it, yes, sir.

9 Q And the removing the pants, you just told
10 Solicitor Walter that was an inference from -- the
11 evidence you obtained?

12 A Yes, sir. The victim advised she didn't remember
13 removing her pants, and she advised she was basically
14 passed out -- or that she was passed out on scene when
15 the officers arrived.

16 MR. LONG: That is all I have.

17 THE COURT: All right.

18 EXAMINATION

19 BY THE COURT:

20 Q Were there follow-up reports by the officers?

21 A Yes, sir.

22 Q Threes follow-up reports, did you read those?

23 A I read -- yes. Yes, sir. Detective Allen went
24 to the scene. She's the one that interviewed the
25 defendant, as well as talked to Detective Eddy, and,

1 yes, sir.

2 Q All right. So did you do that before you signed
3 the affidavit for the search warrant?

4 A Yes, sir. That is basically the first thing I
5 did at that point before I did the investigation.

6 Q You did not, yourself, look at the statements of
7 the security guards or the witnesses?

8 A No, sir.

9 Q What you are telling the Court is that you looked
10 at the reports, follow-up reports, of then Officer Eddy
11 and Detective Allen?

12 A Yes, sir.

13 Q You talked to the victim herself?

14 A Yes, sir, Your Honor.

15 Q What else did you do before you signed the
16 affidavit and gave it to the magistrate?

17 A That was basically the synopsis, going through
18 the reports, reviewing and listened to the defendant's
19 interview.

20 Q And you listened to the defendant's interview?

21 A Yes, sir.

22 Q And after that, you signed the affidavit and
23 presented it to the issuing magistrate for a search
24 warrant?

25 A Yes, sir. I completed the search warrant. It is

1 printed in the clerk's office. Our clerks have powers
2 to sign arrest warrants. I went up there and swore the
3 affidavit in front of them.

4 Q Of the magistrate?

5 A Yes, sir, municipal judge.

6 Q City judge?

7 A Yes, sir.

8 Q Did you orally add to or explain anything to the
9 issuing judge, city judge, before or at the time you
10 were asking for the search warrant?

11 A I don't recall off the top of my head. Usually
12 we print it out and discuss the case with them, but I
13 can't remember specifically.

14 Q You say your usual course is to do so, but in
15 this this particular instance, you can't tell me that
16 you added anything orally to what is in the written
17 affidavit?

18 A No, sir. I believe I did -- usually I explain to
19 them.

20 THE COURT: Anything on those questions?

21 MS. WALTER: No, Your Honor.

22 THE COURT: Mr. Long?

23 MR. LONG: Court's indulgence. May I ask a
24 question of the witness, Your Honor, in regards to the
25 police report, officer Eddy's?

1 THE COURT: Yes.

2 REDIRECT-EXAMINATION

3 BY MR. LONG:

4 Q Did you review Officer Eddy's written report?

5 A I believe -- I believe I read part of it. I
6 don't believe it was signed off on it, but we can
7 access the computer and read the narratives.

8 Q On Page 4 of the report, narrative, Officer Eddy
9 wrote, quote, She was wearing a white tank top and
10 either white underwear or white bathing suit bottoms.

11 At the time you read that report, you knew that
12 she was not found without bathing suit bottoms on?

13 A I don't remember reading it, no, sir. Like I
14 said, the way -- I may have misunderstood it, but I was
15 told that she didn't have pants on, which is the
16 bathing suit bottoms, and that her genitalia was
17 exposed. So her pants were pulled down, I meant her
18 genitalia was exposed.

19 MR. LONG: That's all.

20 THE COURT: Further witnesses on behalf of the
21 defense?

22 A No, Your Honor.

23 MS. WALTER: Court's indulgence.

24 (A brief pause in the proceedings.)

25 MS. WALTER: No witnesses.

1 THE COURT: Thank you. I'm going to take a few
2 minutes 20, read through State's 8 and 9, that is the
3 search warrant and attachments and the statement of
4 the witness, and then we'll come back in. Thank you
5 very much.

6 (A recess was taken.)

7 THE COURT: Solicitor, did you mark the report of
8 then Officer Eddy?

9 MS. WALTER: I did, Your Honor. It is marked as
10 State's 36. Your Honor, I also marked Detective
11 Allen's report, since Detective Jones said he referred
12 to that, and that is marked Exhibit 37, and I'm
13 apologizing for the numbers jumping around, but I
14 created my exhibit list ahead of time.

15 THE COURT: That's all right. Any objection to
16 State's 36 and 37 coming into evidence for this
17 hearing?

18 MR. LONG: No, Your Honor.

19 THE COURT: Very good.

20 (State's Exhibits 36 and 37 admitted.)

21 (A brief pause in the proceedings.)

22 THE COURT: Your arguments, Mr. Long.

23 MR. LONG: Your Honor, I believe that during the
24 hearing we have been able to determine that the
25 statements in question that were raised in the motion

1 were known not to be true at the time of the signing
2 of the affidavit. The detective, he admitted that he
3 made some inferences from the statements that were
4 made, from the reports that he looked over. He made
5 some assumptions, but the inferences and assumptions
6 and hearsay, the document that he signed made no
7 references to his sources. The affidavit, sworn
8 statement, for the basis of the probable cause, was to
9 the judge that these statements were true to the best
10 of his knowledge, and that simply is not true. I
11 mean, the evidence -- the proof or the evidence that
12 would be available -- or readily available for him to
13 verify these claims, there is no particular hurry for
14 him to get this affidavit for DNA. You know, it is
15 not going anywhere. So the detective had the time to
16 slow down, to get the true and accurate information
17 before he made a sworn statement to a judge, and
18 because he made these reckless statements or false
19 statements in a very rapid time, the judge did find
20 probable cause to give the search warrant. But for
21 these inaccurate reckless statements, the judge would
22 not -- the defense argues that the judge would not
23 have been able to find probable cause and, therefore,
24 not issue the search warrant, so that is why the
25 defense makes a motion to exclude any and all evidence

1 that was derived as a result of the search warrant.

2 Thank you.

3 THE COURT: Solicitor.

4 MS. WALTER: Your Honor, I don't think that there
5 has been any evidence that Detective Jones included
6 anything in the affidavit that he knew not to be true.
7 What he testified to is that he gathered as much
8 information as he could, as quickly as he could, and,
9 yes, he did make certain inferences from the evidence
10 that he gathered, but certainly there is nothing --
11 nothing has been brought forward where he knew any of
12 this was untrue at the time he presented it to the
13 municipal judge.

14 Furthermore, many of the statements that were
15 cited in the defendant's motion to suppress were, in
16 fact, true. The defendant was found standing over the
17 victim by three different security guards and by
18 Officer Eddy. There was proof, certainly
19 circumstantial proof, yes, but there was proof that
20 there had been an attempted sexual assault, and I
21 think that is borne out in Officer Eddy's report, that
22 the bathing suit bottoms were pushed to the side,
23 genital areas were exposed, abrasions on the genital
24 area, there were bite marks on the defendant's arm.
25 The victim stated that he attacked her, and she fought

1 back.

2 Whether or not -- there clearly was a little bit
3 of misunderstanding between "pants" and "bathing suit
4 bottoms," but it is not the death for the warrant.
5 She was wearing bathing suit bottoms and they were
6 pushed to the side to the point that Officer Eddy
7 could see her vaginal area.

8 Detective Jones did not include anything in the
9 affidavit that he knew not to be true. It may have
10 turned out that some things were not quite that he
11 believed them to be, but even if Your Honor were to
12 find that and excise just the portion about the
13 bathing suit bottoms or victim found without -- that
14 her bathing suit bottoms were off, certainly the rest
15 of the affidavit is such to establish the probable
16 cause. That is the remedy, as I'm sure Your Honor
17 knows, that if Your Honor believes that any of the
18 statements were intentionally misleading or made with
19 reckless disregard for the truth, you would excise
20 them from the affidavit, and if the affidavit as it
21 then stands establishes probable cause, then the
22 search warrant stands, and so that is what the State
23 submits to Your Honor should happen here.

24 THE COURT: Thank you.

25 As set forth originally in Franks versus

1 Delaware, there is a presumption of validity with
2 respect to the affidavit supporting the search warrant
3 regarding a challenge to it to be entitled to the
4 Frank's hearing for the defendant or person making the
5 challenge must make a preliminary showing that the
6 information in question was intentionally made or made
7 with reckless disregard as to its truth.

8 Further, there is not a Frank's violation if the
9 affidavit contains sufficient information to establish
10 the probable cause if certain -- if the offending
11 portion is omitted. The party attempting to
12 demonstrate information was intentionally or
13 recklessly placed the affidavit bears a heavy burden
14 of proof, and this action must be designed to mislead
15 or made in a reckless disregard and whether it would
16 mislead the issuing judge. The defendant must show
17 that that material was necessary to the finding of
18 probable cause such that if it was omitted, that the
19 affidavit would be insufficient to support probable
20 cause.

21 Regarding probable cause and the warrant being
22 issued on probable cause, that's as the Court has
23 defined it to be a fluid constant turning on the
24 assessment of probabilities in the particular factual
25 context, and the standards of proof beyond a

1 reasonable doubt or by a preponderance of evidence
2 have no place in the issuing judge's decision in
3 issuing a search warrant. There only needs to be --
4 it's a probability, not a prima facie showing.

5 So regarding this, looking at the affidavit and
6 the testimony of the detective, Investigator Jones,
7 that signed the affidavit before the magistrate, he
8 stated that he had spoken to the victim. He had
9 reviewed the reports of the officers -- investigating
10 officers in this particular matter, as reflected in
11 Exhibits 36 and 37. State's Exhibit 9 is a subpart of
12 the report of Exhibit 36. But in looking at that, the
13 information that the officer had was that independent
14 witnesses observed the defendant with his pants off,
15 that he did not want them coming to the scene where he
16 was located, that they knew there was an object right
17 next to him, who the independent witnesses could not
18 tell what that was, that the defendant was standing
19 next to with his pants down.

20 The first arriving officer found at that spot a
21 young female laying in the sand unconscious. He
22 stated that the female's bottom half was flat on the
23 sand with her backside facing up, her top half was on
24 her left side with her face in the sand. She was
25 wearing a white tank top and either white underwear or

1 white bathing suit bottoms. The bottoms were pulled
2 to the side exposing her private area. Sand was
3 covering the female's body, except around her mouth
4 and her private area. There were red marks close to
5 her butt and private areas.

6 The affidavit of Investigator Jones is
7 information to the issuing magistrate that on June 22,
8 2015, officers from Myrtle Beach Police Department
9 responded to the beach access within the city limits
10 of Myrtle Beach in reference to a possible CSC
11 incident. Investigation determined that a witness
12 observed a victim laying face down on a beach without
13 her bathing suit bottoms, and the subject standing
14 over her with his pants and underwear pulled down.
15 Investigation revealed that the victim was
16 incapacitated to the point she could not consent to
17 sexual intercourse. Investigation in the incident did
18 reveal that the subject did remove her pants, as well
19 as his, in attempt to have sexual intercourse with the
20 incapacitated victim. He was taken into custody.
21 They also -- the defendant had injuries on him which
22 were consistent with the victim's statements. The
23 investigator signed the affidavit. He had actually
24 talked to the alleged victim.

25 If you look at the information given to the

1 magistrate, based upon the information available to
2 the investigator, I do not find that -- it was not
3 demonstrated to the Court that any of the information
4 was intentionally or recklessly exchanged, deleted
5 purposely placed in an incorrect manner. While it is
6 clear that her underwear was not pulled down, as set
7 forth in the affidavit, actual information of her
8 underwear being pulled to the side and her private
9 areas being exposed is not such that it would change
10 the magistrate's or issuing judge's decision in any
11 way regarding an attempt or attempted CSC being that
12 the private areas were being exposed with a person
13 standing next to her with his pants down. Whether or
14 not he removed her pants does not -- if that is
15 admitted -- does not change the issuing magistrate's
16 decision in any way. The information is that she was
17 so incapacitated that she could not constant to any
18 sexual activity.

19 Since the defendant has failed in his
20 requirements under a Frank's hearing, I respectfully
21 decline to grant the defendant's request to exclude
22 any of the evidence secured as a result of the search
23 warrant, unless there are further grounds or reasons
24 to attack the -- that type of evidence, but based upon
25 the Frank's hearing, the request is denied.

1 All right. We have to decide the matter about
2 the exclusion of the sexual assault examination
3 results; is that correct?

4 MS. WALTER: Yes, that is one of the remaining
5 motions.

6 THE COURT: Mr. Long.

7 MR. LONG: What is it?

8 THE COURT: Exclusion of the sexual assault
9 results.

10 MR. LONG: I talked to Solicitor Walter about it,
11 and there may be a miscommunication, but I'm under the
12 understanding we resolved that earlier today when we
13 talked about the SLED sexual assault report, that it
14 would not be coming in due to the unavailability of
15 the victim.

16 THE COURT: What is it that the State is
17 intending to use regarding little sexual assault
18 examination kit or protocol?

19 MS. WALTER: Your Honor, the State, quite
20 honestly, was a little confused as to what
21 specifically the defense was trying to exclude, so I
22 covered it all in my written motion. I took it to
23 believe that he was trying to exclude reference to any
24 answers provided by the victim during the examination,
25 reference to the name of the sexual assault

1 examination protocol, and reference to the results of
2 the examination. I noted in my motion there was not a
3 single legal authority for that request. We have said
4 that we will not elicit any statements had by the
5 victim during the sexual assault protocol; however,
6 nurse Ms. Hennig-Ryan will testify that she spoke with
7 the victim, and she does that in part. She speaks
8 with the victim and reviews the reports to know
9 exactly what to do, what evidence to try to collect,
10 but she will not mention anything or any statements
11 made by the victim. So that kind of took care of the
12 first portion.

13 As to the defendant's request to preclude using
14 the name of "sexual assault examination protocol," it
15 seemed that he was arguing about that being unduly
16 prejudicial. The State notes the name in and of
17 itself would not be prejudicial; in fact, the
18 defendant is charged with criminal sexual conduct.
19 So, certainly, there is an allegation and inference by
20 the State that there was a sexual assault, or at least
21 an attempt for a sexual assault, so, therefore, we
22 mention a sexual assault examination protocol and it
23 is not unduly prejudicial.

24 The State also offered that if Your Honor was
25 concerned that there might be some type of prejudice

1 from that name, that certainly an instruction could be
2 given to take care of that. I focus the rest of my
3 argument on what I took to hear that the defendant was
4 trying to preclude us from even discussing the results
5 of the examination. There are several layers to that.

6 First of all, the results of the examination
7 could be that Nurse Ms. Hennig-Ryan scraped under the
8 victim's fingernails, she took vaginal swabs, oral
9 swabs. It could relate to any of the actual evidence
10 collection that she did. That kit was then sent to
11 SLED. Part of the work that was done at SLED was the
12 victim's blood -- and I think it was just her blood --
13 was submitted for a toxicological screen, which found
14 that ten-and-a-half hours after her documented last
15 drink, she was a .162 blood alcohol concentration.
16 She also had THC metabolite in her blood.

17 Additionally, with the right-hand fingernail
18 scrapes, they were submitted to DNA, and the DNA under
19 the right fingernails came back to the defendant. I
20 think it was a 1 in 67 trillion possibility that it
21 could have been someone else. So, certainly, that is
22 all probative and relevant evidence. None of it is
23 hearsay. None of it is being based on the victim's
24 statements. It is all, as I said, relevant and
25 admissible. It is prejudicial to the defendant, that

1 is the whole point of all of the State's evidence, it
2 prejudices the defendant because we're trying to
3 convict him, but it is not unduly prejudicial.

4 I think it was also -- yes, I did want to point
5 out that the defense's motion actually cited to the
6 wrong standard. It is not that the prejudice has to
7 be outweighed by the probative value, but the
8 probative value has to be substantially outweighed by
9 a danger of unfair prejudice, and that is simply not
10 the case here. It is relevant, admissible evidence
11 that is not substantially outweighed by a danger of
12 unfair prejudice.

13 THE COURT: All right. Mr. Long, as a result of
14 the motion, what are you asking the Court to exclude?

15 MR. LONG: I think it was handled earlier, Your
16 Honor, with your limited instructions for the nurse
17 person who did the sexual exam. I do not disagree
18 with what the Solicitor said, so with all of that in
19 mind, I can withdraw my motion. I think we're
20 satisfied.

21 THE COURT: Just so we're clear about this. You
22 know, I expect the nurse to be called, for her to go
23 through who she is employed by, duties and training,
24 what is expected of her, in her job, for the
25 particular hospital, and as a result of that, she saw

1 the alleged victim in this matter. As a result of her
2 examination of the victim, she got this information,
3 and go through the laundry list of things she
4 collected and that she put it together in a manner
5 prescribed by State Law Enforcement Division, and it
6 was transmitted or given to whoever she turned it over
7 to. That, then, does not go into, at any point in
8 time, an inference that she talked to the victim and
9 the victim pointed her to, you know, examine a certain
10 area which might tend to comment on the testimony of
11 the -- of the, unfortunately, deceased victim in this
12 matter.

13 So strictly stick with her duties and
14 responsibilities, she performed those, did the test,
15 collected this information, put it together in a
16 manner that it is supposed to be put together and gave
17 it to whomever was there to receive it, and then go on
18 with the chain from there, wherever it went, how it
19 got to SLED, who tested it at SLED and what the
20 results were that came down, but not any inferences or
21 comments that what she did was as a result of
22 communications with the victim. Because if we look at
23 -- and you are not intending to put the report in?

24 MS. WALTER: No, Your Honor. I don't know that
25 we would be allowed to.

1 THE COURT: That goes into that area.

2 MS. WALTER: Even if the victim is alive, I don't
3 think we're permitted to.

4 THE COURT: Very good. So with that then, body
5 camera footage is an issue. That's the State's
6 motion; is that correct?

7 MS. WALTER: This was the motion that sort of was
8 mixed, because the State had filed a motion in limine
9 to admit portions, and the defense filed a motion in
10 limine to exclude them in their entirety.

11 THE COURT: What is it that the State would like
12 to produce?

13 MS. WALTER: Your Honor, I have Exhibit 7, which
14 is -- what I did, Your Honor, was took body camera
15 video footage from three different officers and picked
16 portions. They are not duplicative, really, and I can
17 play it, but Officer Eddy was the first officer
18 responding. So, essentially, I took a portion of his
19 body camera video from when he first walked up until
20 EMTs finally removed the victim from the beach. So it
21 shows her on the ground completely unresponsive. It
22 also contains, I think, Officer Cooper and I think it
23 is Jeremy Williams who were the second and third
24 officers on the scene, and their attempts to revive
25 the victim, as well as the placement of some evidence

1 found in the sand.

2 Officer Freeman, his camera had the best attempts
3 to revive the victim, so it shows them applying the
4 smelling salts and her physical condition. It doesn't
5 contain any statements from her, whatsoever. I think
6 at one point she moans or says something
7 unintelligible. The third portion is Officer
8 Cooper's. Officer Cooper and Eddy spoke with the
9 victim in the ambulance, and none of those statements
10 -- again, I took quite a bit and condensed it and
11 picked portions where there was nothing of real
12 significance being said, but enough to show that the
13 victim's physical state, how intoxicated she was, how
14 incoherent she was. Your Honor, I think, will be able
15 to see. There is really nothing there offered for the
16 truth of the matter asserted. It is just going to
17 show really her state of mind and physical condition.

18 THE COURT: How long is that, please?

19 MS. WALTER: Probably all three, maybe 10
20 minutes.

21 THE COURT: Have you provided a copy to the
22 defense?

23 MS. WALTER: I think I did. I lost track at the
24 end, it was kind of a flurry.

25 MR. LONG: I haven't seen the condensed version,

1 but I've seen the totality of it.

2 THE COURT: Totality, but not this condensed
3 version?

4 MR. LONG: Correct.

5 THE COURT: Do you need to see that before you
6 make your argument?

7 MR. LONG: Yes, sir, because we might --

8 THE COURT: Let's play it.

9 MS. WALTER: For the record, this is marked
10 Exhibit 7. This is Officer Eddy's body camera.

11 (Video is played.)

12 MS. WALTER: Do you want to address them all at
13 once, or each?

14 THE COURT: One at a time. What is your
15 objection, Mr. Long.

16 MR. LONG: Your Honor, I don't object to the
17 video in and of itself. It is the content, hearsay
18 and inadmissible statements within the video that I
19 object to, specifically at the beginning. I did not
20 write down the time, but in the beginning the
21 defendant is immediately taken into custody. He had
22 handcuffs. He's questioned, not read his Miranda
23 rights, and he responds. So I make a motion to
24 suppress any statements that he made, because Miranda
25 was not given, but he was in custody and being

1 questioned.

2 THE COURT: You object?

3 MS. WALTER: Your Honor, I don't think that is
4 accurate with everything that the defendant said,
5 because, actually, when the defendant is being led
6 away, there are no questions asked of him. The State
7 certainly concedes he was in custody, but not an
8 interrogation going on.

9 THE COURT: He is placed in custody and asked a
10 question, and there is some response by him.

11 MS. WALTER: I agree for that one particular
12 statement, however -- and it is fairly to the close to
13 the beginning, but as he is being led away, there are
14 no questions being asked of him, and he is speaking.

15 MR. LONG: If I could respond, Your Honor?

16 THE COURT: Yes.

17 MR. LONG: If I'm able to understand, he -- said
18 he again is responding for the second time to the
19 question that was originally asked.

20 THE COURT: Let's go back to the beginning where
21 they ask him a question when he's placed under arrest.

22 (Video is played.)

23 THE COURT: Is there any reason that the video
24 should not be stopped after she sits up and makes some
25 unintelligible noises? The rest is milling around and

1 making comments, so it will stop after she sits up and
2 makes the unintelligible remark. Thank you.

3 (Video is played.)

4 THE COURT: Is that the comment you were
5 talking about, Solicitor?

6 MS. WALTER: Yes, that is not made in response to
7 any question.

8 THE COURT: I find it is responsive to the
9 questions and the prompting of the officer when he
10 asks the question. That will be suppressed, thank
11 you.

12 MS. WALTER: So, Your Honor, if we -- we do have
13 the ability to simply edit sound; is that sufficient?

14 THE COURT: I don't have a problem with that. So
15 that is the questions and the answers?

16 MS. WALTER: Yes, Your Honor. The person who
17 will be doing the actual redacting is sitting in
18 court, so I can do it from, Put your hands behind your
19 back, when he's handcuffed, and then through here to
20 the end of what he just said.

21 THE COURT: Whatever it is he is saying. Then
22 stop it.

23 MS. WALTER: After she makes the sound.

24 THE COURT: After EMS gets her sitting up.

25 MR. LONG: Can we see where that is, Your Honor,

1 just to make sure? There are a couple other
2 statements in there that I think are inappropriate.
3 The next happens at 2:55. It's the officer saying,
4 It's probably going to be a CSC. At 2:56, he's
5 talking to, I believe, officer Cooper, and Officer
6 Eddy said, It is Alqi, and he said, I tried to help
7 her.

8 THE COURT: That clearly comes from his response
9 that he answered in response to the officer's
10 questions, that part. The other one, whether it is
11 going to be -- since he's clearly on trial for
12 attempted CSC, I find no issue with that. All right.

13 MR. LONG: At the end at 2:57 the officers are
14 looking in the sand and speculating.

15 THE COURT: That is already stopped.

16 MS. WALTER: It's stopped.

17 MR. LONG: Okay.

18 MS. WALTER: Your Honor, this one will be
19 attempting to revive the victim.

20 THE COURT: Okay.

21 (Video is played.)

22 MS. WALTER: We redacted some portions of the
23 audio already where we felt it was inappropriate.

24 THE COURT: Objection to that.

25 MR. LONG: It duplicates what the original video

1 was. I don't see that this has extra value or weight
2 than the other video.

3 THE COURT: I think it is clear the other one
4 gives the jury a better understanding of the scene.
5 Let's have the third one.

6 MS. WALTER: It just takes the CD a moment to
7 catch up.

8 (Video is played.)

9 THE COURT: Mr. Long.

10 MR. LONG: It is the victim that is not available
11 for cross-examination, so it is clearly a violation of
12 my client's Constitutional right to insert such
13 statements that I cannot cross-examine her on. The
14 videos establish she's intoxicated, and at the end the
15 officer said -- I'm not sure which one -- I think you
16 were sexually assaulted, I want you to go to the
17 hospital. That goes to make a conclusion of the law
18 that is in question, so I would object to this coming
19 in.

20 MS. WALTER: Your Honor, it is somewhat hard to
21 have other specific statements pinpointed, but she
22 essentially says her name, okay. So that is not
23 offered for the truth of the matter asserted. We can
24 get her identity somewhere else. It is her physical
25 condition, how distraught and truly incoherent she is,

1 because although she's given her name and she's an
2 American citizen, her other responses are largely
3 unresponsive. Certainly nothing in that points to the
4 defendant specifically. I believe it was Sergeant
5 Hall that said he wanted her to go to the hospital.
6 That is a statement of intent not offered for the
7 truth of the matter asserted.

8 THE COURT: Before that he clearly says I think
9 you have been a victim of a sexual assault and trying
10 to elicit a response, so that part clearly is
11 improper.

12 MS. WALTER: We can take that out, Your Honor.

13 THE COURT: As to the beginning portion, I don't
14 know how long it lasts, but that would set the scene
15 as far as either a witness from EMS or one of the
16 officers present saying that was her condition at the
17 time and to play a minute or two or so of that, I
18 don't have a problem. That establishes her condition,
19 but, certainly, definitely well before he starts
20 asking that -- starts inquiring, it is clear he's
21 trying to get information and answers from her as to
22 what may or may not have occurred from that period on,
23 that needs to come out. To establish some witness
24 setting forth, you know, if it is EMS or whoever got
25 her in the ambulance, trying to get basic information

1 as to who she is and this is her condition at the
2 time. So a minute or two of that, I don't have a
3 problem.

4 MS. WALTER: I want to be sure I understand your
5 order, so I could follow it.

6 THE COURT: If you want me to pick a point in
7 time -- I can't tell you because there is no timer. I
8 wasn't looking on that, so I can't tell you at a
9 minute 02 to stop, but something that would clearly
10 show her condition, ability to respond to a question,
11 you know, what's your name, who are you, that sort of
12 thing, I don't have a problem with as far as it would
13 illustrate the testimony of a particular witness,
14 again, either an officer or EMS saying at the current
15 time we're trying to treat her or I was trying to help
16 EMS, and this is what we observed and this is clearly
17 her condition at that point in time.

18 MS. WALTER: Right. And I will pick a portion,
19 but -- again, I wasn't writing down the time stamps.
20 If the statement is in there, I will blur it out. I
21 think you were a victim of a sexual assault, if that
22 occurs within two minutes, I'll take it out.

23 THE COURT: Clearly when he starts that, there is
24 no question that none of that can be played.

25 MS. WALTER: None of the audio?

1 THE COURT: None of the video from that point on.
2 None of that point in time from when he starts that, I
3 believe you are a victim of a sexual assault, or some
4 comment of that, stop it clearly before that, and that
5 is the end of the video.

6 MR. LONG: As you were talking, I remember. The
7 full video, it shows not long after that that she kind
8 of comes to her senses and starts answering questions
9 intelligibly, so this will mislead the jury to think
10 that she was out of her mind during that process, when
11 not long after that, she tells them, I don't want to
12 go to the hospital, I don't want a sex rape kit, I was
13 not assaulted, all of that is intelligent statements
14 made by her. If the jury sees this taken out of
15 context, they are going to think that she was not able
16 to make any statements that night.

17 THE COURT: Is that what occurs afterwards?

18 MS. WALTER: No, Your Honor. In response to what
19 is your address, she starts screaming J.K.
20 That is not a coherent response. That was her last
21 name. Yes, she says she doesn't want to go to the
22 hospital, but what she's saying is, I don't want to
23 be, I don't want to be, I don't want to be sexually
24 assaulted.

25 MR. LONG: No. No.

1 MS. WALTER: Well, the end of this --

2 THE COURT: I appreciate that, and your objection
3 is noted, Mr. Long. Solicitor, you will comply with
4 the Court's requirements. All right.

5 MS. WALTER: Motion of limine to exclude evidence
6 of bite marks.

7 THE COURT: Who is making this statement?

8 MS. ANDREW: The State would present the
9 testimony of Officer Eddy, as well as Crime Scene
10 Investigator David Bailey, who photographed the bite
11 marks. We would be introducing the photographs of
12 bite marks and scratches on the defendant's arm, and
13 the nurse, Teresa George, who did the suspect kit on
14 the defendant.

15 THE COURT: Let's talk about the nurse and CSI
16 person in relation to the nurse's observations of
17 these bite marks. When did the CSI person take these
18 photographs, before or after?

19 MS. ANDREW: After the nurse did her examination.

20 THE COURT: After?

21 MS. ANDREW: Yes, sir. He was standing outside
22 of the door at the hospital, and he went in when she
23 finished, and took photographs.

24 THE COURT: So, if necessary, required by
25 Mr. Long, we had CSI come in, and say he took

1 photographs, those are the photographs and they
2 accurately reflect that. Mr. Long, please listen. If
3 not required by Mr. Long, I would limit it to the
4 nurse saying as a result of her examination what she
5 did, I see these bite marks, show photographs, are
6 these accurate and true representations of what you
7 saw on the victim at the time you did your
8 examination, all right.

9 If necessary, for identification purposes of the
10 photographs, if required by Mr. Long, then the CSI
11 person will come in and testify what their job is,
12 what they do as a result of the nurse indicating,
13 photographed, and that is the result of that. I do
14 not have -- also, once that is done, I don't know when
15 these people are going to testify, but if you need to
16 have them -- Officer Eddy come back and say, At the
17 time I found the alleged victim on the sand, I noticed
18 this, and those photographs are an accurate and true
19 representation of what I saw that night in the
20 ambulance, or whatever it is, I don't have a problem
21 with that. All right. Your objection, Mr. Long?

22 MR. LONG: The objection is that there is no
23 evidence linking the bite marks to the victim. There
24 has been no forensic evidence to show that they were
25 the teeth marks or bite marks of the victim. The

1 State had ample opportunity and resources to do a
2 proper forensic evaluation to determine that the bite
3 marks found on the defendant's body came from the
4 victim. There is no establishment of that. So,
5 therefore, any reference that the bite marks on the
6 defendant's body came --

7 THE COURT: I'm confused. These are bite marks
8 on the victim?

9 MS. WALTER: On the defendant.

10 THE COURT: On the defendant.

11 MR. LONG: I misspoke.

12 THE COURT: On the defendant.

13 MR. LONG: And the allegation is that they came
14 from the victim.

15 THE COURT: All right. How did we come about and
16 get photographs of bite marks?

17 MS. WALTER: Your Honor, Officer Eddy noticed
18 them when he saw the defendant on the beach.
19 Detective Allen noticed them when she was interviewing
20 the defendant. The nurse noted them when she was
21 examining the defendant. Crime Scene Specialist
22 Bailey took pictures of them. I have other responses,
23 but I'll wait.

24 THE COURT: Okay. All right. I don't have a
25 problem with that. If you don't have any evidence

1 that forensically links the bite marks to the victim,
2 and those are great cross-examination questions,
3 Mr. Long, pointing out the State cannot connect the
4 two in any way, but the fact that they were there.
5 I'm assuming -- this is assuming -- that testimony
6 from the nurse stating that in her professional
7 opinion, in her experience, that they were fresh, they
8 were not of any length, that they did not appear --
9 appeared to have been recently inflicted. If she
10 cannot give that testimony, then there is no way to
11 tie that to this -- those things could be three, four
12 weeks old, whatever it is. You have to have something
13 from a medical standpoint indicating that from the
14 nurse's opinion, in her experience, that they were
15 fresh wounds, whatever. If not, and she has no
16 opinion, can't give you an opinion, we're not talking
17 about it.

18 MS. WALTER: Over the lunch break I reconsidered
19 the State's position regarding the dash-cam video
20 based on Your Honor's ruling, and we will be
21 introducing that in our case in chief. One thing it
22 shows is a view of the defendant's left biceps with
23 not a mark on it. When he is arrested, within an
24 hour, he has the scratches on his shoulder, as well as
25 three bite marks on the arm. The State submits that

1 that is sufficient evidence linking --

2 THE COURT: So we're going back to -- so we're
3 clear -- the dash-cam video? We're talking about the
4 camera that was required to be installed in the
5 defendant's cab?

6 MS. WALTER: Yes.

7 THE COURT: So that is the video we're talking
8 about?

9 MS. WALTER: Yes, Your Honor.

10 THE COURT: So now the State intends to introduce
11 that into evidence?

12 MS. WALTER: Yes, Your Honor.

13 THE COURT: Okay. With that, then, you can
14 certainly tie that into the testimony of the officers
15 and what they observed, what the nurse observed and
16 what CSI took photographs of, all right. Thank you.

17 MR. LONG: The nurse, is she going to testify as
18 an expert witness as to bite mark identification?

19 THE COURT: I don't know.

20 MR. LONG: I haven't received any type of notice.

21 THE COURT: I don't know. If that is going to be
22 her testimony, I'll hear your objection at the time.

23 What other motions?

24 MS. WALTER: I believe that covers it.

25 THE COURT: Do you know of any other motions,

1 Mr. Long?

2 MR. LONG: No, Your Honor.

3 THE COURT: So you are prepared to get started at
4 9:00 in the morning?

5 MS. WALTER: Yes, Your Honor.

6 MR. LONG: Yes, sir.

7 THE COURT: All right. So you come up here and
8 talk to me for a second. For the purposes of the
9 motion, is there any problem with the in-camera video
10 being a part of the record, for the purpose of the
11 motion?

12 MR. LONG: No, Your Honor.

13 MS. WALTER: No, Your Honor.

14 (Whereupon, the proceedings concluded.)
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1 CERTIFICATE OF REPORTER

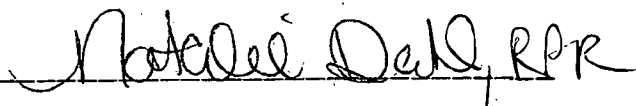
2 State of South Carolina)

3 County of Horry)

4
5 I, Natalie Dahl, Official Court Reporter for the
6 State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete Transcript
8 of Record of the proceedings had and evidence
9 introduced in the trial of the captioned case,
10 relative to appeal, in the Court of General Sessions
11 for Horry County, South Carolina, on the 31st day of
12 July, 2017.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

15
16 March 12, 2018

17
18 
19 Natalie Dahl, RPR

20 Court Reporter
21
22
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2015-GS-26-04000 and 04001

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

January 8-10, 2018

ALQI DHIMO,)

Defendant.)

B E F O R E:

Honorable Steven H. John
Horry County Courthouse
Conway, South Carolina

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

Mary-Ellen Walter, Esquire
C. Leigh Andrew, Esquire
Attorney for Plaintiff

John Reuben Long, II, Esquire
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TAKEN BY:

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VOIR DIRE

10

1 **(JANUARY 8, 2018 - DAY ONE)**

2 VOIR DIRE:

3 THE COURT: Thank you very much. You may be seated.
4 Thank you. All right, ladies and gentlemen, we are going to
5 start the process to select the jury in the case of the State
6 of South Carolina versus Alqi Dhimo. It's A-L-Q-I, the last
7 name is D-H-I-M-O. Now, the State of South Carolina has
8 charged the defendant with two crimes; attempted criminal
9 sexual conduct in the third degree and indecent exposure. In
10 this particular matter, I'm gonna read to you the allegations.
11 Those are the charges the state has brought against the
12 defendant. Now, the indictments, that's where the charges are
13 placed. The indictments are merely the charging document, the
14 document which brings the matter to court. It is not
15 evidence. It cannot be considered by anyone as evidence in
16 the case. That's how the matter comes to court; the person is
17 charged or indicted for a crime, they plead not guilty, ask
18 for a jury trial. So, the only reason I'm gonna read these
19 charges or allegations to you to see if you happen to know
20 anything about this particular case, have any information
21 about this particular case. We'll get to the questionnaire
22 next, but I'm gonna start off with this first to see if you
23 know anything about this particular matter in particular.
24 Now, the state has charged that Alqi Dhimo did in Horry
25 County, on or about June 22nd, 2015 attempt to engage in

State v. Dhimo - 2015-GS-26-4000 and 4001
VOIR DIRE

11

1 sexual battery with the victim, J.K. , when the
2 defendant knew or had reason to know that the victim was
3 mentally defective, incapacitated, or physically helpless, in
4 violation of the Code of Laws, State of South Carolina, 1976,
5 as amended.

6 The State has also charged that Alqi Dhimo did in Horry
7 County, on or about June 22nd, 2015 willfully, maliciously,
8 and indecently exposed himself in a public place on property
9 of others or to the view of any person on a street or highway
10 in violation of the Code of Laws, State of South Carolina,
11 1976, as amended.

12 So, is there any member of the jury panel that knows
13 anything about these two charges that the state has brought
14 against the defendant in this matter? If so, please stand.

15 Very good. All right. Now, I asked the jury panel to
16 fill out a questionnaire or -- question -- questionnaire and
17 regarding the responses, I will give those to the clerk at the
18 end to be sealed in this matter, but regarding the responses,
19 what I'm going to do is on -- based upon responses, I'm going
20 to have certain of the jurors come forward and talk to me.

21 So, counsel for the state and defense, if you'd like to
22 come forward, please.

23 All right. The first one -- first juror to come forward
24 would be Mr. David Bean, Juror number 24, come forward,
25 please, sir.

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VOIR DIRE

12

1 (REPORTER'S NOTE: Bench conference is held off the record in
2 the presence of but outside the hearing of the jury.)

3 THE COURT: All right. So the next one is Juror Number
4 57, Jennifer Burney.

5 (REPORTER'S NOTE: Bench conference is held off the record in
6 the presence of but outside the hearing of the jury.)

7 THE COURT: All right. Juror Number 91.

8 I'm not complaining about anybody's handwriting because
9 mine is the worst in the world. Everybody has always said I
10 should have been a doctor, because you can't read mine to save
11 your life. All right.

12 So, Ms. Tabitha Custer, Ms. Custer.

13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury.)

15 THE COURT: All right. Juror Number 98, Beverly Davis.
16 Ms. Davis?

17 (REPORTER'S NOTE: Bench conference is held off the record in
18 the presence of but outside the hearing of the jury.)

19 THE COURT: All right. Juror Number 135, Karen Fryer,
20 Juror Number 135, Karen Fryer.

21 (REPORTER'S NOTE: Bench conference is held off the record in
22 the presence of but outside the hearing of the jury.)

23 THE COURT: All right. Juror Number 174, Dawn Hensley.

24 (REPORTER'S NOTE: Bench conference is held off the record in
25 the presence of but outside the hearing of the jury.)

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VOIR DIRE

13

1 THE COURT: All right. Juror Number 176, Sharon Hester.
2 (REPORTER'S NOTE: Bench conference is held off the record in
3 the presence of but outside the hearing of the jury.)

4 THE COURT: All right. Juror Number 216, Lisa Kroneker.
5 Yes, ma'am. Thank you.

6 (REPORTER'S NOTE: Bench conference is held off the record in
7 the presence of but outside the hearing of the jury.)

8 THE COURT: All right. Juror Number 259, Joseph -- how
9 do you say your last name?

10 JUROR 259: Mead.

11 THE COURT: Mead.

12 (REPORTER'S NOTE: Bench conference is held off the record in
13 the presence of but outside the hearing of the jury.)

14 THE COURT: All right. Juror Number 400, David Swist.

15 (REPORTER'S NOTE: Bench conference is held off the record in
16 the presence of but outside the hearing of the jury.)

17 THE COURT: All right. Juror 450, Chelse Zolman. Ms.
18 Zolman.

19 (REPORTER'S NOTE: Bench conference is held off the record in
20 the presence of but outside the hearing of the jury.)

21 THE COURT: All right, ladies and gentlemen, let me go
22 into the more standard questions we have for a jury panel in
23 any criminal case.

24 Did y'all leave with me your witness list yet?

25 MS. WALTERS: I have mine, Your Honor.

State v. Dhimo - 2015-GS-26-4000 and 4001
VOIR DIRE

14

1 THE COURT: All right. That's fine. All right.

2 All right, ladies and gentlemen, I'm gonna read to you
3 potential or possible witnesses. Just because I read to you a
4 name, does not mean that actually all of these people will be
5 called, but potentially, depending on how the case is going,
6 there's a possibility that any or all of them could be called.
7 At the end of this, I'm gonna ask if you know them, are
8 related to them, have had any contact with them in any way in-
9 the past.

10 From the Myrtle Beach Police Department: Detective
11 Tiffany Whitmeyer; Detective Daniel Eddy; Detective Hugh
12 Jones; Detective Carol Allen; Officer Zack Cooper; Officer
13 Jeremy Freeman; Melinda Shadoan, S-H-A-D-O-A-N; Lynn Graven
14 Labiak, L-A-B-I-A-K; Jennifer Hennigan; Diane Phillips; CSS
15 Tony Humes; CSI Scott Williamson; CSS David Bailey. South
16 Carolina Law Enforcement Division: Jennifer Brown; Jaclynn
17 McKay; Catherine Leisy, L-E-I-S-Y; Jennifer Aycock; Jackie
18 Davis; Doris Yarbrough; Cherie Brown; Jarrod Castalani; Rachel
19 Nguyn, N-G-U-Y-N; Amanda Brooking; Linda D. Mitchell; Jessica
20 Kapp, with a K; Amy Stephens. Other witnesses: Justin
21 Stephenson; Benjamin Thompson; Joyce Dixon; Donald E. Paul;
22 Chad Morenus, M-O-R-E-N-U-S; Emily Hennig-Ryan; Teresa George;
23 Alqi Dhimo.

24 Is there any member of the jury panel that's related by
25 blood or marriage, close personal friends, related to, knows

State v. Dhimo - 2015-GS-26-4000 and 4001
VOIR DIRE

15

1 any of these possible witnesses? If so, please stand.

2 (REPORTER'S NOTE: No response.)

3 THE COURT: Very good.

4 Is there any member of the jury panel that either you
5 yourself or a member of your immediate family has ever had any
6 matters of any kind handled, worked on, touched by the
7 Fifteenth Circuit Solicitor's office, that's the prosecuting
8 office that covers Horry and Georgetown Counties? If so,
9 please stand.

10 Any member of the jury panel that's related by blood or
11 marriage, close personal -- I'm sorry, yes, ma'am?

12 UNIDENTIFIED JUROR: Will you repeat that last one?

13 THE COURT: Yes, ma'am. Is there any member of the jury
14 panel, either you yourself or a member of your immediate
15 family has ever had any matter of any kind handled, worked on,
16 touched, didn't have to court, just worked on in any way by
17 the Solicitor's Office that's here in Horry County or in
18 Georgetown County?

19 JUROR 437: I have.

20 THE COURT: All right. Yes, ma'am, your name and juror
21 number please, ma'am?

22 JUROR 437: Helen Winters.

23 THE COURT: All right, ma'am, and just -- I don't want to
24 know anything about it, just was it yourself or a family
25 member?

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VOIR DIRE

16

1 JUROR 437: Actually ---

2 THE COURT: Don't give me any explanation. I just need
3 myself, a family member, or both?

4 JUROR 437: Both.

5 THE COURT: All right. Very good. I need to ask you the
6 qualification question; I'm sorry.

7 JUROR 437: Okay.

8 THE COURT: Can you give to the State of South Carolina
9 and to the defendant a fair and impartial trial; can you be a
10 fair and impartial juror in this case?

11 JUROR 437: Yes, sir.

12 THE COURT: Thank you very much.

13 Yes, ma'am? You can have a seat. Thank you, ma'am.

14 Yes, ma'am, your name and juror number?

15 JUROR 193: Helen Johnson, 193.

16 THE COURT: Okay. And was it yourself or a family
17 member?

18 JUROR 193: Both.

19 THE COURT: Both, all right. Great. Can you give to
20 the State of South Carolina and to the defendant a fair and
21 impartial trial; can you be a fair and impartial juror in this
22 case?

23 JUROR 193: Yes.

24 THE COURT: Thank you very much, ma'am.

25 All right. Yes, sir, your name and juror number please?

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VOIR DIRE

17

1 JUROR 116: Scott Eagle, 116.

2 THE COURT: And yourself, a family member or both?

3 JUROR 116: Family member.

4 THE COURT: Can you give to the State of South Carolina
5 and to the defendant a fair and impartial trial; can you be a
6 fair and impartial juror in this case?

7 JUROR 116: Yes, sir.

8 THE COURT: Thank you very much.

9 Yes, ma'am?

10 JUROR 409: Sara Trembley, 409.

11 THE COURT: And yourself or family member ---

12 JUROR 409: My daughter.

13 THE COURT: All right. Very good. Can you give to the
14 State of South Carolina and to the defendant a fair and
15 impartial trial; can you be a fair and impartial juror in this
16 case?

17 JUROR 409: Yes.

18 THE COURT: Thank you very much.

19 Is any member of the jury panel that's related by blood
20 or marriage, close personal friends, acquaintances of anybody
21 employed at Fifteenth Circuit Solicitor's office either here
22 in Horry or in Georgetown County? If so, please stand.

23 (REPORTER'S NOTE: No response.)

24 THE COURT: All right, Solicitors, would y'all stand and
25 identify yourselves to the jury, please?

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VOIR DIRE

18

1 MS. WALTER: Good afternoon, my name is Mary-Ellen
2 Walter.

3 MS. ANDREW: Hi, my name is Leigh Andrew.

4 THE COURT: And Mr. Long?

5 MR. LONG: I'm John Reuben Long, II from Conway.

6 THE COURT: Is there any member of the jury panel that's
7 related by blood or marriage, close personal friends,
8 acquaintances of these lawyers that have identified themselves
9 or in the case of Mr. Long, have you been represented by him
10 or currently in -- in any manner? If any of that applies,
11 please stand.

12 (REPORTER'S NOTE: No response.)

13 THE COURT: Thank you very much.

14 We're not going back to the four-question questionnaire
15 that we talked about and if I've already talked to you about
16 it, then we don't need to go over that again regarding this
17 question but, is there any member of the jury panel that you
18 believe have any kind of personal, political, religious,
19 philosophical belief that you believe would prevent you from
20 being a fair and impartial juror in this case?

21 (REPORTER'S NOTE: No response.)

22 THE COURT: All right. Is there any member of the jury
23 panel that, you yourself or member of your immediate family is
24 a member of any kind of victim's rights or law enforcement
25 support organization? Let me give you a couple of examples --

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VOIR DIRE

19

1 I'm not giving you an exhaustive list here, I'm just giving
2 you a couple of examples: Mothers Against Drunk Driving the
3 Citizens Against Violent Crime, South Carolina Sheriffs
4 Association, South Carolina Law Enforcement Officers
5 Association, just some kind of law enforcement support
6 organization or victims rights organization, if you yourself
7 or member of your immediate family a member? If so, please
8 stand.

9 All right. Very good. Yes, ma'am, your name and juror
10 number, please?

11 JUROR 91: Tabitha Custer, 91.

12 THE COURT: And was it yourself or a family member?

13 JUROR 91: Family member.

14 THE COURT: Can you give to the State of South Carolina
15 and to the defendant a fair and impartial trial; can you be a
16 fair and impartial juror in this case?

17 JUROR 91: No, sir.

18 THE COURT: All right, ma'am, if you'd please come up and
19 talk to me for just a second please? Okay. I'm sorry, ma'am.
20 I had already excused you based upon the, the -- and if I
21 wasn't clear, based upon the four-question questionnaire, if I
22 excused you, you don't have to answer any more questions. All
23 right? Thank you.

24 Yes, ma'am, your name and juror number, please.

25 JUROR 221: Kristen Laakso, 221.

State v. Dhimo - 2015-GS-26-4000 and 4001
VOIR DIRE

20

1 THE COURT: And was it yourself or a family member?

2 JUROR 221: Family member.

3 THE COURT: All right, ma'am. Can you give to the State
4 of South Carolina and to the defendant a fair and impartial
5 trial; can you be a fair and impartial juror in this case?

6 JUROR 221: Yes, sir.

7 THE COURT: Thank you very much, ma'am.

8 Yes, ma'am?

9 JUROR 277: Carolyn Murray, Number 277.

10 THE COURT: And yourself or a family member?

11 JUROR 277: Myself.

12 THE COURT: Can you give to the State of South Carolina
13 and to the defendant a fair and impartial trial; can you be a
14 fair and impartial juror in this case?

15 JUROR 277: Yes, sir.

16 THE COURT: Thank you very much. All right. The next
17 question I'm gonna ask you -- let's do this one first. Is
18 there any member of the jury panel either you yourself or a
19 member of your family in law enforcement? So, for yourself,
20 you'd have been a former law enforcement officer or you
21 wouldn't be on the jury panel, and for a family member, it
22 could either be somebody currently in law enforcement or was
23 in the past in law enforcement. So, if any of that applies to
24 you, please stand.

25 Yes, sir, your name and juror number, please?

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VOIR DIRE

21

1 JUROR 207: John Kennedy, 207.

2 THE COURT: All right, sir. And was it yourself or a
3 family member?

4 JUROR 207: Family member.

5 THE COURT: All right, sir. And where were they in law
6 enforcement?

7 JUROR 207: Myrtle Beach.

8 THE COURT: All right, sir. Can you give to the State
9 of South Carolina and to the defendant a fair and impartial
10 trial; can you be a fair and impartial juror in this case?

11 JUROR 207: I don't believe so.

12 THE COURT: All right, sir. Come forward.

13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury.)

15 THE COURT: Yes, ma'am, you have to tell me name and
16 juror number again because it's a new question?

17 JUROR 193: Helen Johnson, 193.

18 THE COURT: All right. And was it yourself or a family
19 member?

20 JUROR 193: Family member.

21 THE COURT: And can you give to the State of South
22 Carolina and to the defendant a fair and impartial trial; can
23 you be a fair and impartial juror in this case?

24 JUROR 193: Yes.

25 THE COURT: Thank you very much.

State v. Dhimo - 2015-GS-26-4000 and 4001
VOIR DIRE

22

1 Yes, ma'am. Your name and juror number, please?

2 JUROR 21: Sandra Bastyr, 21.

3 THE COURT: Yourself or a family member?

4 JUROR 21: Family member.

5 THE COURT: And where were they in law enforcement?

6 JUROR 21: Southern Indiana.

7 THE COURT: Can you give to the State of South Carolina
8 and to the defendant a fair and impartial trial; can you be a
9 fair and impartial juror in this case?

10 JUROR 21: Yes, Your Honor.

11 THE COURT: Thank you very much. All right.

12 The next question I'm gonna ask you is whether or not you
13 yourself or a member of your immediate family has ever been
14 the victim of a crime. Now, I am not going to ask you what
15 occurred. I do not want you to volunteer any information to
16 me about what occurred. The question is gonna be
17 straightforward; was it yourself or a family member and then
18 I'll ask the qualification question. So, is there any member
19 of the jury panel either you yourself or a member of your
20 immediate family ever been the victim of a crime? If so,
21 please stand.

22 All right. Yes, sir, your name and juror number please?

23 JUROR 149: Paul Goodrich, 149.

24 THE COURT: Yourself or a family member?

25 JUROR 149: Both.

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VOIR DIRE

23

1 THE COURT: Can you give to the State of South Carolina
2 and to the defendant a fair and impartial trial; can you be a
3 fair and impartial juror in this case?

4 JUROR 149: Yes, sir.

5 THE COURT: Thank you very much.

6 Yes, ma'am, name and juror number again?

7 JUROR 437: Helen Winters, 437.

8 THE COURT: Yourself or a family member or both?

9 JUROR 437: Both.

10 THE COURT: Can you give to the State of South Carolina
11 and to the defendant a fair and impartial trial; can you be a
12 fair and impartial juror in this case?

13 JUROR 437: Yes, sir.

14 THE COURT: Thank you very much.

15 All right. Yes, ma'am. Name and juror number again?

16 JUROR 221: Kristen Laakso, 221.

17 THE COURT: And yourself, a family member or both?

18 JUROR 221: Both.

19 THE COURT: Can you give to the State of South Carolina
20 and to the defendant a fair and impartial trial; can you be a
21 fair and impartial juror in this case?

22 JUROR 221: Yes, Your Honor.

23 THE COURT: Thank you very much, ma'am.

24 Yes, ma'am, again, name and juror number?

25 JUROR 277: Carolina Murray, 277.

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24

1 THE COURT: Yourself or a family member?

2 JUROR 277: Both.

3 THE COURT: Can you give to the State of South Carolina
4 and to the defendant a fair and impartial trial; can you be a
5 fair and impartial juror in this case?

6 JUROR 277: Yes, sir.

7 THE COURT: Thank you very much.

8 Yes, sir, name and juror number?

9 JUROR 356: Gerald Shea, 356.

10 THE COURT: All right, sir, and is it yourself, family
11 member or both?

12 JUROR 356: Both.

13 THE COURT: Can you give to the State of South Carolina
14 and to the defendant a fair and impartial trial; can you be a
15 fair and impartial juror in this case?

16 JUROR 356: Yes.

17 THE COURT: Thank you very much. All right. My last
18 question, ladies and gentlemen, is what I call my general or
19 catch-all question. Do you know of any reason, have any
20 question in your mind, any doubt in your mind, that you
21 believe you cannot give to the State of South Carolina and to
22 the defendant a fair and impartial trial? That is for any
23 reason whatsoever, you believe you cannot be a fair and
24 impartial juror in this case? If so, please stand.

25 Very good. Further questions from the state?

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JURY SELECTION

25

1 MS. WALTER: No, Your Honor.

2 THE COURT: Further questions from the Defense?

3 MR. LONG: No, Your Honor.

4 JURY SELECTION:

5 THE COURT: Very good. All right, ladies and gentlemen,
6 this is how the selection process is going to go. The clerk's
7 representatives have basically used a computer program, put
8 your names in a random order, and the clerk is gonna call out
9 a name. If and when your name is called, you will stand, you
10 will come forward, you will come around to a place basically
11 right in front of Ms. Dixie here, the court reporter. You'll
12 stand and face to the back of the courtroom. At that point in
13 time, the clerk's representative will inquire from the state
14 to present or excuse the juror. Based upon that response, the
15 clerk will ask the defense to seat or excuse the juror. If
16 you're presented by the state and seated by the defense, the
17 clerk will instruct you to go to the jury box over there and
18 have a seat as a member of the jury. If you're excused by
19 either the state or the defense, you go back and have a seat
20 from whence you came.

21 All right. Madam Clerk?

22 CLERK: Number 21, Sandra Bastyr.

23 What say the state?

24 MS. WALTER: Please excuse this juror.

25 CLERK: You're excused from this particular case.

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JURY SELECTION

26

1 THE COURT: Thank you, ma'am.

2 CLERK: Number 193, Helen Johnson.

3 What say the state?

4 MS. WALTER: Please present this juror.

5 CLERK: Defense?

6 MR. LONG: Please seat the juror.

7 CLERK: Please be seated in the jury box.

8 THE COURT: And I always say this and the one time I

9 forget to say it. If you have any personal items, book,

10 purse, coat, whatever it is, if you'd please bring it along if

11 your name is called so you can go directly to the jury box.

12 Thank you.

13 CLERK: Number 89, Jan Cromwell.

14 What say the state?

15 MS. WALTER: Please present this juror.

16 CLERK: Defense?

17 MR. LONG: Please seat the juror.

18 CLERK: Please be seated in the jury box.

19 Number 236, Barry Martin.

20 What say the state?

21 MS. WALTER: Please present this juror.

22 CLERK: Defense?

23 MR. LONG: Please excuse the juror.

24 CLERK: You're excused from this particular case.

25 Number 259, Joseph Mead.

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JURY SELECTION

27

1 What say the state?

2 THE COURT: I'm sorry.

3 CLERK: He was excused.

4 THE COURT: You were excused by the Defense. (To Juror
5 236.)

6 CLERK: What say the state?

7 MS. WALTER: Please present this juror.

8 CLERK: Defense?

9 MR. LONG: Is it Number 239?

10 CLERK: 259.

11 THE COURT: 259.

12 MR. LONG: 259. Please seat the juror.

13 CLERK: Please be seated in the jury box.

14 Number 279, Ann Napier.

15 What say the state?

16 MS. WALTER: Please excuse this juror.

17 CLERK: You're excused from this particular case.

18 Number 149, Paul Goodrich.

19 What say the state?

20 MS. WALTER: Please present this juror.

21 CLERK: Defense?

22 MR. LONG: Please seat the juror.

23 CLERK: Please have a seat in the jury box.

24 Number 248, Sarah McCracken.

25 What say the state?

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JURY SELECTION

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1 MS. WALTER: I'm sorry, Your Honor, if we may have just
2 one moment? I'm sorry.
3 Please present this juror.
4 CLERK: Defense?
5 MR. LONG: Please seat the juror.
6 CLERK: Please be seated in the jury box.
7 Number 437, Helen Winters.
8 What say the state?
9 MS. WALTER: Please present this juror.
10 CLERK: Defense?
11 MR. LONG: Please excuse the juror.
12 CLERK: You're excused from this particular case.
13 Number 6, Peggy Alford.
14 What say the state?
15 MS. WALTER: Please present this juror.
16 CLERK: Defense?
17 MR. LONG: Please seat the juror.
18 CLERK: Please be seated in the jury box.
19 Number 151, Brett Goodyear.
20 What say the state?
21 MS. WALTER: Please present this juror.
22 CLERK: Defense?
23 MR. LONG: Please seat the juror.
24 CLERK: Please be seated in the jury box.
25 Number 64, Kim Carey.

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JURY SELECTION

29

1 What say the state?

2 MS. WALTER: Please excuse this juror.

3 CLERK: You're excused from this particular case.

4 Number 190, Angela Jenerette.

5 What say the state?

6 MS. WALTER: Please present the juror.

7 CLERK: Defense?

8 MR. LONG: Please seat the juror.

9 CLERK: Please be seated in the jury box.

10 Number 221, Kristen Laakso.

11 What say the state?

12 MS. WALTER: Please present this juror.

13 CLERK: Defense?

14 MR. LONG: Please excuse the juror.

15 CLERK: You're excused from this particular case.

16 Number 250, Marcus McDowell.

17 What say the state?

18 MS. WALTER: Please present this juror.

19 CLERK: Defense?

20 MR. LONG: Please seat the juror.

21 CLERK: Please be seated in the jury box.

22 Number 400, David Swist.

23 What say the state?

24 MS. WALTER: Please present this juror.

25 CLERK: Defense?

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JURY SELECTION

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1 MR. LONG: Please excuse the juror.
2 CLERK: You're excused from this particular case.
3 Number 117, Joan Eckert.
4 THE COURT: Joan.
5 CLERK: Joan, I'm sorry.
6 THE COURT: Joan B. Eckert. Yes, ma'am. I'm sorry.
7 CLERK: Okay. What say the state?
8 MS. WALTER: Please excuse this juror.
9 CLERK: All right. You're excused from this particular
10 case.
11 Number 266, Erica Mincey.
12 What say the state?
13 MS. WALTER: Please present this juror.
14 CLERK: Defense?
15 MR. LONG: Please excuse the juror.
16 CLERK: You're excused from this particular case.
17 Number 176, Sharon Hester.
18 What say the state?
19 MS. WALTER: Please present this juror.
20 CLERK: Defense?
21 MR. LONG: Please excuse the juror.
22 CLERK: You're excused from this particular case.
23 MS. WALTER: Your Honor, may we approach?
24 THE COURT: Yes, please.
25 (REPORTER'S NOTE: Bench conference is held off the record in

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JURY SELECTION

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1 the presence of but outside the hearing of the jury.)

2 THE COURT: Counsel, y'all come up and talk to me for a
3 second.

4 (REPORTER'S NOTE: Bench conference is held off the record in
5 the presence of but outside the hearing of the jury.)

6 THE COURT: Sorry, ladies and gentlemen. Again, note to
7 self, do not deviate from what you normally do ever, because
8 the one time that you do is the time that a question comes up.
9 Unfortunately, she has to stand and wait. I'm sorry.

10 MS. WALTER: Your Honor, may we approach?

11 THE COURT: Yes, ma'am.

12 (REPORTER'S NOTE: Bench conference is held off the record in
13 the presence of but outside the hearing of the jury.)

14 THE COURT: I'm sorry, ask the Defense on this particular
15 witness -- juror again please, ma'am.

16 CLERK: Juror Number 176, what say the Defense?

17 MR. LONG: Your Honor, if I could, what was your ruling?

18 THE COURT: That you were correct.

19 MR. LONG: Okay. Please excuse this juror.

20 CLERK: You're excused from this particular case.

21 Number 449, Natalie Zink.

22 What say the state?

23 MS. WALTER: Please present this juror.

24 CLERK: Defense?

25 MR. LONG: Please seat the juror.

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JURY SELECTION

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1 CLERK: Please be seated in the jury box.
2 Number 277, Carolyn Murray.
3 What say the state?
4 MS. WALTER: Please present this juror.
5 CLERK: Defense?
6 MR. LONG: Please excuse the juror.
7 CLERK: You're excused from this particular case.
8 Number 395, Lynn Swacker.
9 What say the state?
10 MS. WALTER: Please present this juror.
11 CLERK: Defense?
12 MR. LONG: Please excuse the juror.
13 CLERK: You're excused from this particular case.
14 Number 116, Scott Eagle.
15 What say the state?
16 MS. WALTER: Please present this juror.
17 CLERK: Defense?
18 MR. LONG: Please seat the juror.
19 CLERK: Please be seated in the jury box.
20 Number 269, Carole Moore.
21 What say the state?
22 MS. WALTER: Please present this juror.
23 CLERK: Defense?
24 MR. LONG: Please seat the juror.
25 CLERK: Please be seated in the jury box.

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JURY SELECTION

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1 THE COURT: All right. We're gonna have two alternates.
2 It will be one and two in this particular matter.

3 CLERK: Number 356, Gerald Shea?

4 MS. WALTER: Your Honor, may we, I'm sorry, approach one
5 more time?

6 THE COURT: Sure.

7 (REPORTER'S NOTE: Bench conference is held off the record in
8 the presence of but outside the hearing of the jury.)

9 THE COURT: I'm sorry. Ms. Zink, I'm sorry. I
10 apologize but a matter has come up and we're excusing you from
11 the jury. Thank you. You need to call, so ---

12 CLERK: One more regular?

13 THE COURT: Yes, ma'am, one more regular juror.

14 JUROR 356: Do I go back?

15 THE COURT: Yes, sir.

16 CLERK: Number 356, Gerald Shea.

17 THE COURT: Yes, sir, your status might change, that's
18 all.

19 CLERK: What say the state?

20 MS. WALTER: Please present this juror.

21 CLERK: Defense?

22 MR. LONG: Please seat the juror.

23 CLERK: Please be seated in the jury box.

24 THE COURT: All right. Mr. Shea, you are one of the
25 regular members of the jury panel.

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BY THE COURT

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1 Now we'll proceed with the two alternates. They'll be
2 one and two on each alternate.

3 CLERK: Number 179, Colby Hooks.

4 What say the state?

5 MS. WALTER: Please present this juror.

6 CLERK: Defense?

7 MR. LONG: Please seat the juror.

8 CLERK: Please be seated in the jury box.

9 THE COURT: All right. Mr. Hooks, you're one of the
10 alternates.

11 CLERK: Number 322, Joshua Rabon. What say the state?

12 MS. WALTER: Please present this juror.

13 CLERK: Defense?

14 MR. LONG: Please seat the juror.

15 CLERK: Please be seated in the jury box.

16 THE COURT: All right, Mr. Rabon, you're the other
17 alternate.

18 All right. Any objections to the jury as impaneled in
19 this particular matter from the state?

20 MS. WALTER: No, Your Honor.

21 THE COURT: From the Defense?

22 MR. LONG: No, Your Honor.

23 BY THE COURT:

24 THE COURT: Very good. I find the jury has been properly
25 impaneled pursuant to *Batson v. Kentucky* and *Jeb v. Alabama*.

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BY THE COURT

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1 Before I instruct you, ladies and gentlemen, the other
2 members of the jury panel, I'm sorry that this process took
3 longer than it normally does. I need for you to be back
4 downstairs at 1:30 for Judge Hyman to pick a civil matter. So
5 back in the assembly room at 1:30. You're excused. Thank
6 you.

7 (REPORTER'S NOTE: Jury venire exits courtroom.)

8 THE COURT: All right, ladies and gentlemen, you're the
9 jury in this particular case. I'm gonna ask that you go back
10 to your jury room in just a minute and I'm gonna be asking you
11 to do one thing for the Court and that's gonna be select your
12 foreperson for this particular jury. So, let me tell you very
13 briefly what the foreperson's duties and responsibilities are.
14 If we are here in the courtroom and the jury needs attention
15 somehow, the witness needs to speak up or lawyers or whatever
16 the issue is, whoever is the foreperson is gonna raise their
17 hand and gets the Court's attention and we'll handle that
18 matter whatever it might be. Now if you're back in the jury
19 room, some issue or matter comes up, you will take a pad and
20 pen provided for you, you write out a note, you sign it, give
21 it to the bailiff, it will come to me and again we'll handle
22 that matter whatever it is. When we've gone through the
23 evidentiary portion of the trial, you've heard all of the
24 evidence in this case and then I've given you the law that
25 you're gonna apply to the facts and evidence you've heard in

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BY THE COURT

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1 this case and I give the case to you, I submit to the case to
2 you for your deliberations and your unanimous decision in this
3 particular matter, the foreperson's duties and
4 responsibilities change in this regard. Whoever is the
5 foreperson, they're gonna act like the chairperson in a
6 meeting, guide the discussions if necessary. Now, the
7 foreperson's voice and vote, that carries no more weight than
8 any other member of the jury, everybody is equal in that
9 regard, but someone needs to be in charge. An important duty
10 and responsibility that foreperson has is to make sure that
11 everybody that wants to has an opportunity to speak.
12 Everybody that wants to has an opportunity for their voice to
13 be heard and that's a responsibility of the foreperson. The
14 final duty and responsibility of the foreperson is when the
15 jury has deliberated and reached your unanimous decision in
16 this matter, the foreperson will take the verdict form, the
17 printed verdict form that the Court will provide to you, check
18 the appropriate block or write out the appropriate word
19 regarding the unanimous verdict, thereafter sign your name as
20 the foreperson, then you knock on the door and let the bailiff
21 know that the jury has reached a verdict in this particular
22 matter. And again, if there is some question or issue, again,
23 you write out that note, you sign it, and give it to the
24 bailiff, who will come to me and we'll handle that matter
25 whatever it is. But understanding those are the duties and

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BY THE COURT

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1 responsibilities of the foreperson and please if y'all would
2 go back, select your foreperson. Now the two alternates, Mr.
3 Hooks and Mr. Rabon, y'all can vote on the foreperson, but
4 being the alternates, y'all cannot be the foreperson;
5 everybody else is eligible. So, if you'll accompany the
6 bailiff to the jury room, select your foreperson, knock on the
7 door and let the bailiff know who it is. Thank you.

8 (REPORTER'S NOTE: Jury exits courtroom. The following takes
9 place outside the presence of the jury.)

10 THE COURT: All right. Further matters from the state at
11 this point in time?

12 MS. WALTER: Not on this matter, Your Honor, I did have
13 an update for you on one of the trial roster cases, the other
14 trial roster cases.

15 THE COURT: Okay. What might that be?

16 MS. WALTER: On Mr. Chestnut's matter?

17 THE COURT: Yes, ma'am.

18 MS. WALTER: Mr. Hucks and I had some discussions and we
19 have reached a plea offer that will be accepted. So we just
20 need to know when you would like to do that?

21 THE COURT: 2 o'clock.

22 MS. WALTER: Okay.

23 THE COURT: All right. We can do that at 2 o'clock.

24 All right. Anything from the Defense?

25 MR. LONG: No, Your Honor.

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BY THE COURT

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1 THE COURT: All right. Very good. I'm gonna have
2 several guilty pleas that are scheduled at 2 o'clock. So
3 we'll go through those. I don't need for y'all -- some of you
4 need to be here for the pleas, but y'all, the rest of you
5 don't need to be back any earlier than 2:30. I'm probably
6 gonna tell the jury not -- once they select a foreperson, not
7 to come back before 2:45 anyway. Just to be safe, so I can
8 get through those pleas and have enough time to do that.
9 Okay?

10 MS. WALTER: Thank you.

11 THE COURT: Thank y'all.

12 MR. LONG: Thank you, Your Honor.

13 **(RECESS.)**

14 *******OFF THE RECORD*******

15 **(On the Record.)**

16 THE COURT: All right. This is the State of South
17 Carolina, County of Horry versus Alqi Dhimo, 2015-GS-26-4000
18 and 4001.

19 Is the state ready to proceed?

20 MS. ANDREW: We are, Your Honor.

21 THE COURT: Is the Defense ready to proceed?

22 MR. LONG: Yes, Your Honor.

23 THE COURT: All right. Very good. Was there something
24 matter, Solicitor?

25 MS. WALTER: Your Honor, I just wanted to clarify. I

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BY THE COURT

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1 believe we had addressed the sequestration when we were last
2 here. So, I do have my two case agents coming in, but I'm
3 assuming by her presence in the room that Mr. Dhimo's wife is
4 not going to be a witness in this matter?

5 THE COURT: Is that correct, Mr. Long?

6 MR. LONG: Court's indulgence?

7 THE COURT: Yes, sir.

8 MR. LONG: She will not be testifying.

9 THE COURT: All right. Very good.

10 (REPORTER'S NOTE: Jury enters courtroom.)

11 THE COURT: Mr. Foreman, ladies and gentlemen of the
12 jury, I appreciate that I kept you longer than I anticipated
13 before you come in but, unfortunately, there were matters that
14 I had to dispose of that kept me from doing that.

15 The very first thing that gonna happen in this trial is
16 the clerk's representative is gonna administer your oath to
17 you, so if you would all please stand at this time.

18 (REPORTER'S NOTE: Jury is duly sworn.)

19 THE COURT: As I told you at the very beginning, the
20 State of South Carolina has charged the defendant Mr. Dhimo,
21 with two offenses and I read to you the allegations, the
22 charges, that the state brought against the defendant in this
23 matter. I remind you again, the fact that I read those to you
24 carries no significance whatsoever. That's how the matters
25 come before the Court. Those are the charges against him.

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BY THE COURT

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1 Now, there are two charges. That means you will be
2 deciding two cases. I will go over this in more detail at the
3 end, but your verdict in one case does not mean the verdict in
4 the other case has to be the same. Both of these charges have
5 different elements that the state has to prove to you beyond a
6 reasonable doubt regarding these offenses. So, you will be
7 deciding two cases in one basically. When the state charged
8 the defendant, Mr. Dhimo, with these charges, he pled not
9 guilty. That put immediately the burden on the State of South
10 Carolina to prove the defendant guilty beyond a reasonable
11 doubt. That burden remains with the State of South Carolina
12 until you render a unanimous verdict in this matter. It is
13 always the state's burden to prove the defendant guilty beyond
14 a reasonable doubt. The defendant has nothing to show to you.
15 The defendant has nothing to prove to you. I tell juries all
16 the time, the defendant need not even show up for trial
17 because the defendant has nothing and no requirement to prove
18 or show anything to you whatsoever. The State must prove its
19 case to you beyond a reasonable doubt before you can vote for
20 a conviction.

21 There are certain elements to each crime. The State must
22 prove those to you on each crime separately, beyond a
23 reasonable doubt. The defendant is presumed innocent. The
24 defendant was presumed innocent when he was charged with these
25 offenses; he is presumed innocent now, he is presumed innocent

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BY THE COURT

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1 up until the time you render a verdict, a unanimous verdict,
2 whatever that verdict is.

3 How this case will proceed. After I get done with these
4 opening statements to you, we'll have the opening statements
5 of counsel. After that, we will have the evidentiary portion
6 of this trial which, you know, will continue, will certainly
7 through tomorrow. There's no question about that, how much
8 longer, I don't know, but we'll see how far along we progress
9 in the case tomorrow regarding the number of witnesses that
10 are presented to you. Whenever it is that we are done with
11 the evidentiary portion of the trial, we'll have the closing
12 arguments of the attorneys. After that, I will give to you
13 the law that you will apply to the facts and evidence that
14 have been presented to you in this trial. After which, you'll
15 retire to your jury room to deliberate, talk among yourselves,
16 to reach a unanimous verdict on both of these charges that
17 have been brought by the state against the defendant.

18 It is your job, your duty, and your responsibility in
19 this matter to listen to the facts and evidence to then at the
20 very end discuss the facts and evidence, apply the law that I
21 give to you and make your decision in this particular matter.
22 I will ask you not to talk about the case until I give it to
23 you at the very end. If you were to talk about it during a
24 break or at some other time before the end, you will do so
25 before you have heard all of the evidence. You will do so

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BY THE COURT

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1 before you know the law that you have to apply to the facts
2 and evidence you've heard. So, please, don't discuss the
3 case, don't allow anyone -- obviously if somebody would try to
4 discuss it with you, that's a crime.. It needs to be reported.
5 And I'm certain that's not going to occur, but you understand,
6 it is your collective judgment we are looking for. So again,
7 and I'll say this when I discharge you, if you happen to see
8 one of your fellow jurors tonight or some other time,
9 obviously you can't talk about the case. You cannot talk
10 about it until all of you are collectively together and only
11 at the end of the case may you discuss the case at that point
12 in time.

13 I'll remind you again, you're not researchers, you're not
14 investigators, you're making your decision on the facts and
15 evidence you hear in this courtroom and from no other source.
16 So, with that, I'll turn it over to the lawyers for their
17 opening statements. And I'll tell you this at the beginning,
18 their opening statements are an introduction to you, but
19 they're not evidence. Okay? The closing arguments, that's
20 not evidence. The evidence is what's gonna come in the
21 middle. These are their way of introducing themselves and the
22 case to you and their closing arguments are their comments on
23 it, but obviously you can't rely on any of that to make your
24 decision in this matter.

25 Solicitor?

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OPENING BY ANDREW

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1 MS. ANDREW: Thank you, Your Honor.

2 OPENING BY ANDREW:

3 MS. ANDREW: J.K. , over the next few days,
4 you're gonna hear a lot about J.K. . She's the
5 victim in this case. The victim of the attempted criminal
6 sexual conduct in the third degree that's the defendant is
7 accused of. You're gonna hear sometimes excruciating detail
8 what happened that night, the night of June 22nd, 2015, the
9 day of Father's Day in the early morning hours on the beach.
10 I would like to say that J.K. is gonna walk into this
11 courtroom and sit on the witness stand and tell you what
12 happened to her because that would be an ideal way to present
13 this case but, unfortunately, I can't do that because J.K.
14 passed about five months after this assault occurred. So,
15 you're not gonna get to meet her today. You're not gonna get
16 to hear from her. Instead, you're gonna find out what
17 happened in the early morning hours on that night from other
18 witnesses, people who saw J.K. and saw the defendant,
19 police officers who were there, crime scene technicians who
20 processed the evidence that was collected, and through video
21 tape.

22 So, you're gonna hear first from J.K. 's boyfriend,
23 Justin Stephenson. Justin will tell you that on the day of
24 June 21st, 2015, he and J.K. attended a barbecue at her
25 mother's house for Father's Day. And, while they were there,

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OPENING BY ANDREW

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1 J.K. , as she sometimes did, had too much to drink and she
2 got pretty drunk. So, when they went to leave, they got in
3 the car and they were leaving together heading back to their
4 home that they shared on 76th Avenue North, they got into some
5 silly argument over the radio and J.K. got out the car near
6 Chapin Park. Justin circled around looking for J.K. but
7 didn't see her, and his cell phone was dead so he went home.
8 The next time he heard from her was about 1:15 A.M. when she
9 texted him and said, I'm taking a cab home, I'll be home soon.
10 And that's what J.K. did, she got in a cab, but she didn't
11 go home that night. The next time Justin saw her was at Grand
12 Strand Memorial Hospital the following afternoon.

13 In the meantime, several people did see J.K. .
14 Security guards at the Grand Shores Hotel saw J.K. lying in
15 the sand on the beach access at 77th Avenue North curled up in
16 a ball unconscious. They saw the Defendant Alqi Dhimo
17 standing in front of her with his pants pulled down exposing
18 himself. He told them to get away, everything was fine, but
19 they didn't think everything was fine so they called the
20 police. When the police arrived, they also found J.K.
21 lying in the sand incoherent and unconscious. The defendant
22 had covered himself and he was no longer exposed, but J.K.
23 was exposed. Her bathing suit bottoms were pulled to the side
24 exposing her private parts and she had red abrasions around
25 her thighs, around that area.

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OPENING BY ANDREW

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1 Officers, when they arrived there, she was so incoherent
2 that, in fact, the only way they could revive her was by
3 applying smelling salts under her nose. And when they did
4 that, she woke up but she was still incoherent, so much that
5 in fact they couldn't get her to go to the hospital even
6 though they felt like something had happened to her. So, they
7 took her into custody and took her to the hospital the
8 following afternoon. The following afternoon around 1
9 o'clock, at Grand Strand Memorial Hospital, a toxicology was
10 done. Her blood alcohol level at that time was .169. I'm
11 sure many of you know that in South Carolina it's illegal to
12 drive with an alcohol concentration above .08. So, more than
13 12 hours later, her blood alcohol concentration was twice the
14 legal limit. A toxicology expert will testify today that if
15 you extrapolate backwards, back to the time when she was
16 actually on that beach with the defendant, her blood alcohol
17 level would've been about a .3. So, you can imagine how
18 intoxicated a person with that blood alcohol level would be.

19 You're gonna hear about the defendant today. He's a taxi
20 cab driver and he owns a cab company. His name is on the side
21 of his cab. He picked J.K. up that night. He was a
22 stranger before he picked her up. He picked her up near
23 Chapin Park and drove her around. When the police arrived at
24 the scene on the beach, his taxi cab was parked at the beach
25 access, her purse and cell phone was in the cab, and the

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OPENING BY ANDREW

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1 defendant and J.K. were on the beach.

2 You'll also see when officers arrived, they observed
3 scratches and bite marks on the defendant's arms. When they
4 later questioned him about that, which you'll hear, he says --
5 they said where did you get those bite marks and he just says,
6 not from her, meaning not from J.K. . But you'll also hear
7 evidence that J.K. 's DNA -- I'm sorry -- the defendant's
8 DNA was found underneath J.K. 's fingernails.

9 Now, the defendant is charged with criminal sexual
10 conduct or attempted criminal sexual conduct in the third
11 degree. That's the law that makes sexually assaulting someone
12 a crime in South Carolina. A sexual assault is defined as an
13 intrusion, however slight, into the genital opening of a
14 person's body or their anal opening. What makes the crime a
15 third degree sexual assault is that the person being assaulted
16 is either mentally or physically incapacitated to the point
17 that they cannot consent to the sexual conduct. In this case,
18 J.K. was drunk. She had had too much to drink. She was
19 completely intoxicated to the point that she couldn't consent
20 to any kind of sexual conduct.

21 The defendant is also charged with indecent exposure and
22 that's just exposing his private parts to those security
23 guards when he had his pants down on the beach.

24 Now, the criminal sexual conduct in the third degree
25 criminalizes exactly the kind of conduct that occurred in this

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1 case. I told you at the beginning that you're not gonna meet
2 J.K. toady and you're not, it's impossible, but you are
3 gonna see her, because there are video tapes of her on that
4 very night. The defendant had a dashcam installed in his taxi
5 cab. So, you're gonna get to watch the videotape when J.K.
6 enters the cab. You'll see her enter the cab and you can tell
7 that she's a little intoxicated. The defendant reaches up and
8 immediately turns the tape off so you don't see what happens
9 after that.

10 I'll tell you what happens after that, we have a witness,
11 Chad Morenus from Jimmagan's Bar and he's gonna tell you that
12 what happened is the defendant and J.K. went into
13 Jimmagan's Bar and the defendant bought J.K. a bunch of
14 shots of liquor. So when they get back in the cab, the tape
15 starts up again and you see J.K. and the defendant in the
16 cab together and you can tell J.K. is extremely
17 intoxicated.

18 Now what you see on the tape can be a little disturbing.
19 J.K. behaves in a very provocative manner towards the
20 defendant at some points. She goes back and forth between
21 touching him and kissing him and saying no, take me home.
22 Meantime, the defendant is kind of driving in circles near her
23 house and trying to talk her into going to the beach. He
24 initially takes her to the beach and we don't have a tape of
25 what actually occurred on the beach. You just have to infer

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1 that from what happened afterwards. We also have tape from
2 the responding officers who found J.K. on the beach that
3 night. You actually get to see them walk up on her and she's
4 lying on the ground in a ball, completely unconscious. You
5 get to see her behavior when she wakes up, which is a
6 completely drunk person.

7 While you're watching J.K. and the way she's behaving,
8 keep in mind that she's with a person she just met, a complete
9 stranger. She's with the taxi cab driver who just picked her
10 up to take her home that night. She's not with somebody she
11 knows and she literally is so drunk that she doesn't know what
12 she's doing, and you have to also keep in mind that alcohol is
13 fueling her behavior the whole time, but it's not fueling him,
14 his. He was at work. He was driving the cab and he just
15 picked up this young girl, who was intoxicated.

16 Now, you're the finders of fact and it's your job to
17 decide what you believe and what you don't believe, and
18 whether or not the defendant committed the crime in which he's
19 charged. J.K. is not here to tell her story. We're gonna
20 tell it for her through the evidence, the witnesses, the
21 videotapes and the evidence presented by the crime scene
22 specialists. And J.K. is not here to ask you, but we're
23 trying to present this to you. She's not here to see it,
24 she's not to here to see the results, but you can give J.K.
25 justice today of what happened to her on the beach in the

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1 early morning hours of June 22nd, 2015 with one word and
2 that's guilty. Thank you.

3 THE COURT: Counsel, can y'all come up and talk to me for
4 a second please?

5 (REPORTER'S NOTE: Bench conference is held off the record in
6 the presence of but outside the hearing of the jury.)

7 MS. ANDREW: Just so everyone is clear, J.K. passed
8 away about five months after this attack occurred. Her death
9 was due to an accidental drug overdose.

10 Thank you.

11 THE COURT: Defense?

12 OPENING BY LONG:

13 MR. LONG: May it please the Court? This is a case about
14 revenge and regret. As the state told you, J.K.
15 and her boyfriend Justin were riding down Kings Highway on
16 June 22nd about 1 o'clock in the morning. They got into a
17 physical fight, it wasn't a silly fight, he hit her. It made
18 her mad. It made her so mad she said, stop the car, I'm
19 getting out. He stopped the car on Kings Highway at 1 o'clock
20 in the morning, left Ms. J.K. on the side of the road.
21 That's when Mr. Dhimo, who is the taxi cab driver -- the state
22 said he owned a taxi service, he doesn't own it -- but be that
23 as it may, she waved down Mr. Dhimo and he stopped because
24 that's his job. Mr. Dhimo had not been looking for trouble
25 that night, trouble found him. And trouble found him in the

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1 form of J.K. . She was upset, she's a young girl,
2 very intoxicated, she decides when she gets in that cab, she
3 sees Mr. Dhimo, she said, I'll show my boyfriend, he wants to
4 kick me out, I'm gonna have revenge on him. Ms. J.K.
5 targets Mr. Dhimo and wants to show her boyfriend. So, as
6 evidence will show, Mr. Dhimo and Ms. J.K. voluntarily go
7 to Jimmagan's bar, just a few blocks up the road. The State
8 would like to have you believe that Mr. Dhimo was not
9 intoxicated, that he was just feeding alcohol to Ms. J.K. .
10 That is not accurate. They both had drinks at Jimmagan's.
11 She was buying drinks; he was buying drinks. They did several
12 shots. They stayed there for several minutes, then they get
13 back in the cab. Now, here's a benefit that you have, you
14 don't have to speculate what happened in the cab; you'll see
15 it, it's on video. They are all over each other from the word
16 go. She's kissing him, she's licking him, she's scratching
17 him. They even said I love you and I love you. They're all
18 over each other. At one time, Ms. J.K. even says to Mr.
19 Dhimo, you're F-ing hot. So, they're kissing, they're rubbing
20 up on each other, they're driving, and she says let's go to
21 the beach. Let's go to the beach. As they're driving to the
22 beach and they're all over each other, highly intoxicated,
23 both of them, you'll see it, Ms. J.K. says stop the car,
24 stop the car, I got to pee. She gets out of the passenger
25 seat, front passenger seat, she leaves the cab, you can't see

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1 what she does, obviously urinating, she's wearing nothing but
2 a bikini with a cover-up. Now, I don't want to have to be
3 gross, but that's what we're dealing with. How she urinates,
4 we don't know. Does she pull her bottoms off, does she pull
5 her bottoms off to the side; we don't know. All we know is
6 she urinates. When they get back into the car, Ms. J.K.
7 gets in the driver's seat. The State didn't tell you that.
8 They said Mr. Dhimo took her to the beach; that's not true.
9 The State is not being truthful. Ms. J.K. drove to the
10 beach. Mr. Dhimo was the passenger. And just right around
11 the corner they pull up to the beach access. They both get
12 out voluntarily. They get out. The last thing you see on the
13 video is Ms. J.K. and Mr. Dhimo walk onto the beach.
14 That's where the video stops.

15 We don't know what happened on the beach. They were on
16 the beach for about an hour. Ms. J.K. can't tell you. Mr.
17 Dhimo can't tell you. None of witnesses can testify that they
18 saw Mr. Dhimo and Ms. J.K. have physical contact on the
19 beach. This case is about what happened on the beach. Just
20 remember that please, it's about what happened on the beach.
21 Nobody can question what happened in the taxi cab. Mr. Dhimo
22 is not on trial for what happened in the taxi cab.

23 So they were on the beach for about an hour. A security
24 guard from the local hotel, he's doing his nightly patrols, he
25 sees the taxi cab parked crooked, and he assumes that Mr.

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1 Dhimo drove it. You're gonna hear a lot of assumptions in
2 this case, a lot of assumptions.

3 So, the taxi cab, he wants to make sure everything is
4 okay and he looks over at the beach and it's pitch black dark,
5 pitch black.. And he sees Mr. Dhimo and Ms. J.K. lying on
6 the beach and, when he looks out there, Mr. Dhimo stands up.
7 They're not near each other; they're apart from each other.
8 The security guard did not see Mr. Dhimo touch Ms. J.K. .
9 He can't say that. So, the Security Guard backs off, calls
10 the police, the police come. Mr. Dhimo is over here and Ms.

11 J.K. is unconscious over here. They're separated. The
12 police officers never saw Mr. Dhimo touch Ms. J.K. . Nobody
13 saw Mr. Dhimo touch Ms. J.K. on the beach.

14 So, the police walk out and they assumed the worst. It's
15 natural. We make assumptions and a lot of times we assume the
16 worst, and we assume that the police always get it right, but
17 our assumptions are not always correct. So what you have to
18 do is you have to assume that Mr. Dhimo is not guilty. That's
19 the only thing you can assume as jurors. But at any rate, the
20 police investigate, they arrest Mr. Dhimo, but they also
21 arrest Ms. J.K. for disorderly conduct. And they -- when
22 they talked to her on the scene, she denied any assault, she
23 said no, nothing happened, I just want to go home, nothing
24 happened. And they hit her over and over again asking her,
25 were you assaulted, you were assaulted. She said I was not

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1 assaulted.

2 MS. WALTER: Objection, Your Honor. May we approach?

3 THE COURT: Certainly.

4 (REPORTER'S NOTE: Bench conference is held off the record in
5 the presence of but outside the hearing of the jury.)

6 MR. LONG: So, they arrest Ms. J.K. for drunk and
7 disorderly conduct. They take her to the jail, she spends the
8 night in jail. She wakes up and the police indicate to her,
9 we think you've been assaulted, we think you've been
10 assaulted. We're want to take you -- we want to take you and
11 see if you've been assaulted. And by this time, Ms. J.K.
12 has sobered up. She, she regrets what happened. She regrets
13 trying to seduce Mr. Dhimo and she goes along with the
14 assumptions of the police, and that's why we're here today.

15 Yeah, today, I got to court, I honestly, I left my
16 wedding ring on my bedside table. It scared me to death
17 because my wife would kill me, and if you had seen me without
18 a ring, if you knew I was married, you would assume, what's
19 John up to, is he trying -- trying to act like he's single.
20 Is he trying to pick somebody up, because we assume the worst.
21 So, your job as a jury is don't assume the worst. The only
22 thing you can assume is Mr. Dhimo is guilty, beyond, excuse me,
23 that Mr. Dhimo is not guilty, that he is innocent until proven
24 guilty beyond a reasonable doubt. Mr. Dhimo comes into this
25 courtroom with a cloak of innocence draped over him. The

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1 State has to take that cloak of innocence off of him, thread
2 by thread. You don't start out as maybe he did, maybe he
3 didn't, I don't know; you start out as no, he didn't do it.
4 He didn't do it and the state's got to prove he did what they
5 say he did, and I submit to you they cannot do it. Thank you.

6 THE COURT: First witness, Solicitor?

7 MS. ANDREW: The State calls Justin Stephenson, Your
8 Honor.

9 THE COURT: All right. Please come around, sir, all the
10 way around right around up here to where the Clerk's
11 representative is standing right up here, please, sir.

12 CLERK: Please raise your right hand and place your left
13 hand on the Bible.

14 JUSTIN STEPHENSON, HAVING BEEN DULY
15 SWORN TESTIFIES AS FOLLOWS:

16 MR. STEPHENSON: My name is Justin Stephenson, S-T-E-P-H-
17 E-N-S-O-N.

18 THE COURT: Go ahead, Solicitor.

19 DIRECT EXAMINATION OF JUSTIN STEPHENSON BY MS. ANDREW:

20 Q: Mr. Stephenson, where do you live?

21 A: I live on [REDACTED], The Atrium.

22 Q: And how long have you lived there?

23 A: I've lived there about nine years.

24 Q: Nine years. Where are you currently employed?

25 A: I'm a Uber driver right now.

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1 Q: An Uber driver. Do you know the victim in this case,
2 J.K. ?

3 A: Yes, I do.

4 Q: And how do you know her?

5 A: We were boyfriend and girlfriend.

6 Q: Did you live together back on June 21st and June 22nd,
7 2015?

8 A: Yes, I did.

9 Q: Did you live at the address you just gave us?

10 A: That is right.

11 Q: How long did you and J.K. date?

12 A: Close to two years.

13 Q: Do you recall being with J.K. on June 21st, 2015 on
14 Father's Day?

15 A: Yes, I do.

16 Q: Can you tell me what you were doing that day?

17 A: I was at work and then, when I got off work, I went over
18 to J.K. 's mother's house where they were having a bonfire
19 and a barbecue.

20 Q: What did you do when you got there to J.K. 's mother's
21 house?

22 A: We played music. There was drinking involved and I was
23 playing hide-and-go-seek with J.K. 's daughter, Julia.

24 Q: And do you recall what J.K. ate that day at the
25 barbecue?

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- 1 A: It was just barbecue food, maybe a s'more.
- 2 Q: Do you recall her drinking alcohol at that party?
- 3 A: I do.
- 4 Q: Did she have a lot to drink?
- 5 A: Yes.
- 6 Q: Was that typical of J.K. to drink a lot?
- 7 A: Yeah.
- 8 Q: Can you tell me what J.K. was wearing that day?
- 9 A: She was wearing a bathing suit and I believe a tank top.
- 10 Q: Can you tell me how tall J.K. is?
- 11 A: About 5'8".
- 12 Q: And how much does she weigh?
- 13 A: About 140 pounds.
- 14 Q: Okay. And did you at some point leave her mother's
- 15 house?
- 16 A: Yes, I did.
- 17 Q: Where did -- how did you leave?
- 18 A: I left in a car with J.K.
- 19 Q: Do you remember what time it was?
- 20 A: It was probably about 10 o'clock.
- 21 Q: And who was driving the car?
- 22 A: I was driving.
- 23 Q: And where were you going?
- 24 A: I was going back home.
- 25 Q: What road were you traveling on?

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1 A: Business 17.

2 Q: And you were headed toward your house on 76th Avenue?

3 A: Yes.

4 Q: What happened while you riding that caused J.K. to get
5 out of the car?

6 A: We had gotten into an argument over cigarette smoke in
7 the car and the music.

8 Q: And what happened in the course of that argument?

9 A: She kinda like hit me while I was driving and it kinda
10 upset me. So, I pulled over and she got out of the car.

11 Q: Do you remember where you pulled over, what you were
12 close to?

13 A: I pulled over to a gas station next to -- near
14 Fuddruckers.

15 Q: In Myrtle Beach?

16 A: Yes, Myrtle Beach.

17 Q: And what did you do after J.K. got out of the car?

18 A: I circled around and I tried to get her back in the car
19 after she had got out of the car?

20 Q: Were you able to do that?

21 A: I was not.

22 Q: Why not?

23 A: She kicked the car and she said that I was embarrassing
24 her, so I drove around in a circle again, and my phone had
25 died, and I did not see her anymore. So, I went home to

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1 charge my phone.

2 Q: Do you remember the next time you heard from J.K. ?

3 A: She had texted me.

4 Q: What did her text say?

5 A: She said that she was okay, that she was gonna get a cab
6 and she was gonna -- she was gonna come home.

7 Q: Did she come home?

8 A: She did not come home.

9 Q: Do you remember the next time you saw J.K. ?

10 A: Yeah, it was at the hospital.

11 Q: And what happened once you got to the hospital?

12 A: I mean, it was very terrible day. It was probably -- it
13 was the worst day of my life until that day.

14 Q: And what was J.K. 's demeanor like when you got to the
15 hospital?

16 A: She was apologetic and she -- she ---

17 MR. LONG: Objection, Your Honor, hearsay.

18 THE COURT: I'm gonna allow the statement that she was
19 apologetic but, as we've previously covered, you may not
20 testify as to any comments made by her at the hospital.

21 BY MS. ANDREW:

22 Q: Her demeanor, do you mind telling me what her demeanor
23 was like, I mean, what she -- how she acted not what she said?

24 A: She was frazzled. She didn't know what was going on
25 kinda.

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1 Q: And following your time at the hospital, did you continue
2 living with J.K. after that?

3 A: Yes.

4 Q: And did you notice what her demeanor was like after that
5 night on June 22nd, 2015?

6 A: Well, she always liked to drink, but after that she kinda
7 took it up a notch, but I mean, she had been working as a
8 bartender and she had found Everclear and that kinda made
9 things worse and harder for us in our relationship.

10 Q: I know this is a hard question, but were you with J.K.
11 when she passed away?

12 A: I was the one who found her.

13 Q: And can you tell me what caused her to pass away?

14 A: She had taken too much melatonin and she had high blood
15 pressure and she had a heart attack.

16 Q: And can you tell me when that occurred?

17 A: I went to work around like 4 or 5 o'clock. I texted her
18 and no one probably responded ---

19 MR. LONG: I object to this line of questioning. It's
20 irrelevant.

21 THE COURT: Why don't you rephrase your question to get
22 -- I don't -- I'm assuming that is not what you were asking
23 for, Solicitor.

24 MS. ANDREW: Your Honor, I was asking for the date or the
25 month in which she passed away?

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1 A: November 11th, 2015.

2 BY MS. ANDREW:

3 Q: Thank you. May I approach the witness, Your Honor?

4 THE COURT: Yes, ma'am.

5 Q: Justin, I'm gonna show you what's marked as State's
6 Exhibit Number 21. It's a photograph, can you tell me what
7 the photograph depicts?

8 A: J.K. 's flip flops.

9 MS. ANDREW: Your Honor, the state moves to introduce
10 State's Exhibit Number 21 into evidence.

11 THE COURT: Any objection?

12 MR. LONG: I don't see the relevance, Your Honor. I
13 don't see how they're identified -- the proper foundation has
14 not yet been, Your Honor.

15 THE COURT: All right. We'll mark it for identification
16 at this time. Thank you.

17 STATE'S EXHIBIT NUMBER 25

18 MARKED FOR IDENTIFICATION

19 MS. ANDREW: Thank you, Your Honor. May I approach?

20 THE COURT: Yes, ma'am.

21 BY MS. ANDREW:

22 Q: I'm gonna show you what's been marked as State's Exhibit
23 Number 25, can you tell me what this photograph shows?

24 A: That is a wallet of J.K. 's.

25 MS. ANDREW: Your Honor, the state is gonna move to enter

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1 this into evidence as well. We'll have the crime scene person
2 who photographed it later, but he can identify it as her
3 wallet.

4 MR. LONG: Objection, Your Honor, no proper foundation.

5 THE COURT: We'll -- we'll mark it for identification and
6 you can ask to move it into evidence later.

7 MS. ANDREW: Thank you, Your Honor.

8 STATE'S EXHIBIT NUMBER 24

9 MARKED FOR IDENTIFICATION

10 BY MS. ANDREW:

11 Q: I'm gonna show you what's been marked as State's Exhibit
12 Number 24, can you tell me what this photograph depicts?

13 A: It's a picture of her purse and her phone.

14 Q: And when you say her, who do you mean?

15 A: J.K.'s.

16 MS. ANDREW: Your Honor, the state moves to introduce
17 Exhibit Number 24 into evidence.

18 THE COURT: Any objection?

19 MR. LONG: He can't properly identify it based on that
20 testimony, Your Honor.

21 THE COURT: All right. I'll -- we'll mark it for
22 identification and you may move to move it into evidence
23 later. Thank you.

24 MS. ANDREW: Thank you, Your Honor.

25 Court's indulgence for one moment, Your Honor?

1 THE COURT: Yes, ma'am.

2 BY MS. ANDREW:

3 Q: Justin, I just want to go back for a moment to the
4 hospital on June 22nd, 2015. I asked you what J.K. 's
5 demeanor was like and I'd like for you to describe that a
6 little more if you don't mind, but don't say what she said to
7 you, just what her behavior and demeanor was like.

8 MR. LONG: That's been asked and answered, Your Honor.

9 THE COURT: I appreciate that. I'm gonna allow the state
10 to ask the question again. You may proceed.

11 A: I mean, she was just waking up, I mean, she was just --
12 I'm trying to think of a good way to answer the question. I
13 mean, she was just, you know, an upset person. She just, you
14 know, I mean, I was crying, she was crying, you know her
15 mother was there. I mean, we were looking for her; we didn't
16 know where she was. We were all upset, but we were all happy
17 that we found her.

18 BY MS. ANDREW:

19 Q: And how did you find her that day?

20 A: Her mother called the hospital and found that her
21 daughter was at the hospital and she notified me.

22 Q: And you went there to see J.K. ?

23 A: Yes.

24 Q: The items that you identified in the photographs for me a
25 few minutes ago, can you tell me the last time you saw those

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1 items, before I showed them to you in the photograph?

2 A: I hadn't seen those in a while and since, you know, 2015,
3 but all of those items are her items. I mean, you don't
4 forget things like that.

5 Q: Thank you.

6 The State has no further questions for this witness at
7 this time.

8 Please answer Mr. Long's questions.

9 THE COURT: Cross examination?

10 CROSS EXAMINATION OF JUSTIN STEPHENSON BY MR. LONG:

11 Q: I don't take any pleasure -- can I move this ---

12 THE COURT: Go ahead, Mr. Long.

13 Q: Mr. Stephenson, I don't take any pleasure in asking you
14 this, but that night, June 22nd in the early morning hours,
15 was that the first time that J.K. had cheated on you?

16 A: She was a completely loyal girl and, yes, that was the
17 first time and she had never even spoke to another guy on
18 Facebook or anything. She was completely loyal and that's
19 something that I completely admire about J.K. .

20 Q: And you were not there on the beach with her and Mr.
21 Dhimo, correct?

22 A: That is correct.

23 Q: That's all the questions I have.

24 THE COURT: Redirect?

25 MS. ANDREW: No, Your Honor.

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1 THE COURT: All right, sir, you may step down. Next
2 witness please, ma'am?

3 MS. ANDREW: Your Honor, the state calls Detective Eddy,
4 Daniel Eddy.

5 THE COURT: Okay. All right, sir, if you'd please come
6 around and meet the Clerk's representative up here please,
7 sir.

8 CLERK: Please raise your right hand and place your left
9 hand on the Bible.

10 DANIEL EDDY, HAVING BEEN DULY SWORN
11 TESTIFIES AS FOLLOWS:

12 MR. EDDY: My full name is Daniel Eddy, last name is E-D-
13 D-Y.

14 THE COURT: Go ahead, Solicitor.

15 DIRECT EXAMINATION OF DANIEL EDDY BY MS. ANDREW:

16 Q: Detective Eddy, can you tell me what your occupation is?

17 A: Currently I'm a detective with the Myrtle Beach Police
18 Department.

19 Q: How long have you been employed by the Myrtle Beach
20 Police Department?

21 A: I'm coming up on seven years.

22 Q: And what was your previous law enforcement experience
23 before the Myrtle Beach Police Department?

24 A: Before I went to college and worked as a server in a
25 restaurant.

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1 Q: And what are your present duties as a detective at the
2 Myrtle Beach Police Department?

3 A: As detective now, I basically investigate cases. Prior
4 to being a detective I was a road supervisor and then also a
5 field training officer and then a regular patrol officer.
6 During this incident I was in the patrol officer capacity.

7 Q: Was one of your duties to respond to dispatch calls as a
8 patrol officer back on June 22nd of 2015?

9 A: Yes, ma'am.

10 Q: And did you have an occasion to respond to a call that --
11 to a call involving the defendant, Mr. Alqi Dhimo?

12 A: I did.

13 Q: What date did that occur?

14 A: I don't have my paper with me here, but it was back in
15 2015.

16 Q: Do you remember what time you got the call?

17 A: I'm not sure; it should be on the top of my report. If I
18 could utilize that?

19 Q: Court's indulgence one moment?

20 THE COURT: Okay. That's fine.

21 MS. ANDREW: May I approach the witness, Your Honor?

22 THE COURT: Yes, ma'am, go ahead.

23 BY MS. ANDREW:

24 Q: I'm gonna hand you a copy of your report so you ---

25 A: Thank you.

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1 Q: --- can refresh your recollection.

2 MR. LONG: Your Honor, may I see what was handed to him?

3 MS. ANDREW: I apologize.

4 THE COURT: Certainly.

5 BY MS. ANDREW:

6 Q: I'll give you a moment to look through that. Now that
7 you've looked at the report, do you recall what date you
8 received this call?

9 A: It was June 22nd, 2015, and the approximate time was
10 23:27, which would be 11:27 at night.

11 Q: And do you remember where you went that night?

12 A: I went to 77th Avenue North, the beach access, which is
13 Myrtle Beach Police, I'm sorry, Myrtle Beach city limits.

14 Q: Okay. And when you got to the scene, what did you
15 observe?

16 A: Before I get to the scene, you know, we turn on our body
17 cameras. We wear body-worn cameras. So, it's also gonna be
18 on my body cam. But, when I arrived on scene, I saw a taxi
19 cab that was kinda parked sideways in the beach access, got
20 out and met with the two security guards, who had called in
21 the call. So, that's when I first observed when I got on
22 scene. I spoke to the security guards. They informed me and
23 confirmed what was given to me by dispatch, which was that
24 there was male on the beach that was exposing himself, didn't
25 have any pants on.

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1 Q: Okay. After you spoke to the security guards, what did
2 you do?

3 A: After, I spoke to the security guards, I then started
4 walking down the beach access to get onto the beach. As I'm
5 getting onto the beach, I saw -- I had my flashlight off, I
6 turned my flashlight on and I saw the defendant, Mr. Alqi
7 Dhimo, standing there. To the right, was a female. She was
8 laying in the sand with her face down in the sand and kind of
9 her buttocks up in the air, kinda on her side. I kinda
10 describe it as almost like the fetal position on her side.
11 She was wearing what looked like a bathing suit cover and then
12 a bathing suit on top or maybe a bra and then either bathing
13 suit bottoms or underwear. When I walked up to him, I
14 immediately detained him, put him in handcuffs, and then I saw
15 the female and her bathing suit bottom or underwear were kinda
16 pulled to the side exposing her privates. So, I could see her
17 private area. She also had sand all over her body. She as
18 unconscious. I couldn't tell if she was breathing or not, so
19 I called for backup for other officers to come up to me, as
20 well as a supervisor and EMS, because I didn't know her
21 condition. I was the only officer on scene at this time, so I
22 actually walked the defendant back up to the security guards
23 and asked them to hold onto him for me and I went back down to
24 check on the female. Upon going back down to check on the
25 female, I tried to wake her up and she wouldn't wake up, and I

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1 | tried shaking her and talking to her, trying to get her to
2 | wake up, she wouldn't wake up. I could smell alcohol on her.
3 | At that point, upon my backup arriving on scene, they were
4 | able to get a smelling salt which is what finally woke her up.
5 | She was still kinda out of it. So, we waited for EMS to
6 | arrive on scene. When EMS arrived on scene, they started to
7 | check her to see what her condition was. She was heavily --
8 | what I would consider heavily intoxicated. I didn't know at
9 | the time if it was just alcohol or if maybe there's something
10 | else in her system or if she had been drugged or anything like
11 | that, I didn't know. She was just not really responsive and
12 | couldn't really answer basic questions like what's your name,
13 | you know, where are you, how are you; she couldn't answer
14 | those questions. She had to basically -- we had help kinda
15 | like hold her when she walked; she wasn't able to walk by
16 | herself. So, she got up to the ambulance and she was inside
17 | the ambulance. That's kinda what I first saw when I got to
18 | the scene.

19 | Q: Okay. And do you recall what you did -- what happened to
20 | J.K. after she got in the ambulance?

21 | A: Once she got in the ambulance, I actually went back and
22 | put Mr. Alqi Dhimo into the backseat of my police car. Before
23 | putting him in my police car, I could see what looked like
24 | scratch marks on his left shoulder, behind his shoulder and
25 | then bite marks down his arm. He was wearing a tank top, so I

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1 could see some fresh marks on his body. After that, then I
2 went into the ambulance to try to talk to the victim again.
3 She was in there with Officer Cooper, who was one of the
4 officers that arrived on scene, that was second on scene when
5 I called for backup. We had attempted to talk to her in the
6 ambulance. Again, she just couldn't answer basic questions.
7 She was visibly upset. She was crying. She couldn't answer
8 real basic questions. It was all male officers, so I don't
9 know if that was part of it or not, but she was just very
10 upset and very highly intoxicated still. Still couldn't
11 answer basic questions and now she had been awake for quite
12 some time. At that point, I got out to talk to my supervisor
13 and brief him on what was going on. I could see the taxi cab
14 that I originally saw. It was not parked in a spot, it was
15 parked across the -- it was actually parked in a no parking --
16 a zone that was marked no parking, kind of in front of the
17 beach access. I could see a female's pocketbook strap hanging
18 out of the passenger door, like the door had been shut with
19 her purse straps were hanging out, as well as when you look
20 through the window from outside with my flashlight you could
21 see a cell phone that was inside the passenger seat of the
22 vehicle and the rest of the purse inside that vehicle. You
23 could also see a taxi cab fare like the little computer that
24 usually tells you what your fare would be, and that was on,
25 but there was no fare illuminated on the taxi cab. So, that's

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1 where I was.

2 Q: And you said that when you arrived on the beach that you
3 detained Mr. Dhimo. Can you tell me what his demeanor was
4 like when you got there?

5 A: I didn't know if he was intoxicated or not, he kind of
6 has an accent, so it's hard to tell if he was intoxicated or
7 not at the time, but kind of just -- I would describe it as a
8 little bit standoffish, to understand why I was there. That
9 was pretty much his demeanor.

10 MS. ANDREW: Your Honor, may I approach the witness?

11 THE COURT: Yes, ma'am.

12 BY MS. ANDREW:

13 Q: I'm gonna show you what's been marked as State's Exhibit
14 Number 18, can you tell me what this photograph depicts?

15 A: Okay. It depicts an Atlantic Cab Taxi Cab, the same cab
16 that I saw that I'm describing as one that was not parked in a
17 parking spot, the taxi cab I saw when I arrived on scene that
18 night.

19 Q: So, is this photograph a true and accurate representation
20 of what you observed at the scene that night?

21 A: Yes, ma'am.

22 MR. LONG: No objection, Your Honor.

23 MS. ANDREW: Your Honor, the state would move State's
24 Exhibit Number 18 into evidence and publish it to the jury?

25 THE COURT: All right. No objection. It's in evidence

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1 without objection. You may publish.

2 MS. ANDREW: Thank you, Your Honor.

3 STATE'S EXHIBIT NUMBER 18

4 ADMITTED INTO EVIDENCE

5 BY MS. ANDREW:

6 Q: I'm gonna show you what's been marked as State's Exhibit
7 Number 19. Can you tell me what this photograph depicts?

8 A: This is gonna be that same taxi cab and this was the
9 purse strap that I was speaking of that was hanging outside
10 the closed taxi cab door on the passenger side.

11 Q: And is this photo a fair and accurate representation of
12 what you observed on scene that night?

13 A: Yes, ma'am.

14 MS. ANDREW: Your Honor, the state moves to introduce
15 State's Exhibit Number 19 into evidence? -

16 THE COURT: Any objection?

17 MR. LONG: No, Your Honor.

18 THE COURT: It's into evidence without objection, you may
19 publish.

20 MS. ANDREW: Thank you, Your Honor.

21 STATE'S EXHIBIT NUMBER 19

22 ADMITTED INTO EVIDENCE

23 BY MS. ANDREW:

24 Q: Detective Eddy, you said you were wearing a body-worn
25 camera that night that recorded your arrival at the scene?

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1 A: Yes, ma'am.

2 Q: I'm gonna show you -- okay. I'm gonna have the court
3 reporter mark this, first.

4 COURT REPORTER: I need to know the last number.

5 MS. ANDREW: I'm sorry.

6 MS. WALTER: 36 is the next number.

7 COURT REPORTER: Will be the next number?

8 MS. WALTER: The next number is 36.

9 COURT REPORTER: Thank you.

10 BY MS. ANDREW:

11 Q: Detective Eddy, your body-worn camera, does it -- does it
12 record what's actually happening on the scene?

13 A: Yes.

14 Q: Is it a fair and accurate representation of what you see
15 when you were on the scene?

16 A: Yes, it is.

17 Q: I'm gonna show you what's been marked as State's Exhibit
18 Number 36. This I represent to you is a DVD containing
19 excerpts from your body-worn camera. Have you made any
20 alterations or deletions to anything on your body-worn camera
21 video?

22 A: I have not, no.

23 MS. WALTER: Your Honor, we'll just need a moment to set
24 the T.V. back up.

25 THE COURT: I'm sorry, go ahead.

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1 MS. ANDREW: I apologize. The state moves to introduce
2 State's Exhibit Number 36 into evidence?

3 THE COURT: Any objection?

4 MR. LONG: Subject to our prior motion, no objection.

5 THE COURT: All right.

6 STATE'S EXHIBIT NUMBER 36

7 ADMITTED INTO EVIDENCE

8 MS. ANDREW: Thank you, Your Honor.

9 MR. LONG: I'd help you move it ---

10 MS. WALTER: That's very kind of you, Mr. Long.

11 THE COURT: Excuse me?

12 MS. WALTER: No, he said I'll help you move it -- he
13 almost toppled it last time.

14 (REPORTER'S NOTE: State's Exhibit 36 published. Audio not
15 transcribed herein.)

16 BY MS. ANDREW:

17 Q: Detective Eddy, can you see the screen?

18 A: Yes, ma'am.

19 Q: Can you tell me what you're doing right now?

20 A: Right now I'm walking him back to the vehicle. As I
21 stated earlier, to hand off to the security guards, so I can
22 go back down to the beach and check on her.

23 Q: When you say him, do you mean the defendant, Alqi Dhimo?

24 A: Yes, Alqi Dhimo.

25 (REPORTER'S NOTE: Continue publishing State's 36. Audio not

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1 transcribed herein.)

2 Q: Detective Eddy, other than the redactions, was that video
3 a fair and accurate representation of what you saw?

4 A: Yes, ma'am.

5 MS. ANDREW: Your Honor, the state has no more questions'
6 for this witness. Please answer Mr. Long's questions.

7 THE COURT: Cross examination?

8 CROSS EXAMINATION OF DANIEL EDDY BY MR. LONG:

9 Q: Detective Eddy, when you arrived on the scene, you saw
10 that the cab was parked at the beach access, correct?

11 A: Yes, sir.

12 Q: You assumed that Mr. Dhimo had driven that cab there?

13 A: I wasn't sure at the time until I saw him on the beach.

14 Q: Have you later found out that J.K. was driving
15 -- drove the cab to the beach?

16 A: I have no knowledge of that.

17 Q: You have no knowledge of that?

18 A: No, sir.

19 Q: Were you aware that they were on a date at the time of
20 the incident?

21 A: I have no knowledge of that either, sir.

22 Q: You didn't investigate that aspect of it, did you?

23 A: No, that was out of my realm of what I did at the time.

24 Q: Are you aware that they had been on the beach for about
25 an hour before you arrived there?

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1 A: I was not aware of that.

2 Q: Did you know they had been walking on the beach?

3 A: I did not know that.

4 Q: So, you don't know what happened on the beach between Ms.
5 J.K. and Mr. Dhimo, do you?

6 A: I do not know.

7 Q: When you first arrived at the beach, you had to turn on
8 your flashlight to see what was going on?

9 A: Correct, yes.

10 Q: Would you generally categorize that as a very dark area?

11 A: It's kinda dark, but obviously for our officer's safety,
12 we like to illuminate it a little bit more to make sure
13 somebody doesn't have weapons or something like that.

14 Q: Do you recall how close you got to Mr. Dhimo before you
15 turned the flashlight on?

16 A: Pretty close. I mean, if I could guess, I'd probably say
17 12 feet or so.

18 Q: So, then you couldn't see him clearly?

19 A: I could see him when I was walking up, I just didn't want
20 him to know I was coming up on him.

21 Q: And Mr. Dhimo didn't try to run away from him, did he?

22 A: No.

23 Q: And there's no evidence that Ms. J.K. tried to run
24 away, correct?

25 A: She was incapable of running at that time.

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1 Q: And so there's no evidence he tried to leave the scene,
2 correct?

3 A: Not to my knowledge, no.

4 Q: And so when you got to Mr. Dhimo, he was standing
5 approximately 10 feet away from Ms. J.K. ?

6 A: He's probably closer to her; about 12 feet from me when I
7 turned my flashlight on. I guess kind of almost like over
8 her but not like close. Probably, I don't know, three feet or
9 so.

10 Q: Was he this close to her from where I am to you?

11 A: I don't want to guess, I mean you can see it on the body
12 camera as far as how close it was, but he was fairly close to
13 her.

14 Q: This close? He wasn't standing -- when you say standing
15 over her, I think that's -- I'm standing over you now?

16 A: Uh-huh (affirmative response).

17 Q: He wasn't standing over her?

18 A: Just a little bit farther back, but pretty close.

19 Q: Thank you.

20 MS. WALTER: Your Honor, if we could just like for the
21 record that Mr. Long was right up against the witness box.

22 THE COURT: Thank you, ma'am.

23 BY MR. LONG:

24 Q: And you said that you testified that Ms. J.K. 's
25 bottoms were pulled away from her private parts?

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DANIEL EDDY - REDIRECT BY ANDREW

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1 A: Correct.

2 Q: Were you aware that she urinated on the side of the road
3 just prior to that time?

4 A: I am not aware of that.

5 Q: So, you don't know who adjusted Ms. J.K. 's bottoms, do
6 you?

7 A: I do not.

8 Q: She may have adjusted them herself, correct?

9 A: I can't speculate.

10 Q: And EMS, they checked her out at the scene?

11 A: Yeah, her vitals and stuff, yes, sir.

12 Q: And she refused any treatment, correct?

13 A: Correct.

14 Q: And so you arrested -- did you arrest her?

15 A: Yes.

16 Q: For disorderly conduct?

17 A: For public intoxication since she was a danger to
18 herself.

19 Q: That's all the questions I have. Thank you.

20 THE COURT: Any redirect?

21 MS. ANDREW: Just a couple, Your Honor.

22 REDIRECT EXAMINATION OF DANIEL EDDY BY MS. ANDREW:

23 Q: Detective Eddy, when you arrived on the beach that night,
24 other than the defendant, Alqi Dhimo, and J.K. , was
25 anyone else there?

1 A: I couldn't see anybody as far as I could see on the
2 beach.

3 Q: Do you recall security guards from the hotel who called
4 the call in?

5 A: Yes, ma'am, I talked to them when I first arrived on the
6 scene, they're the ones that originally seen him, I guess,
7 with no pants on. That's what they told me that night.

8 Q: And why did you arrest J.K. that night?

9 A: As I stated and also as you could see on the video, she
10 was out of it, she couldn't stand by herself, she couldn't
11 answer basic questions, but she knew enough when they kept
12 saying, hey, do you want to go to the hospital, she said, no,
13 no, no, I just want to go home, but she couldn't tell us where
14 she lived or anything like that. We couldn't find out where
15 she lived because we didn't have her purse, access to her
16 purse at that time. So, we arrested her for public
17 intoxication, which is not something we like to do in a
18 situation like that, but at the same time, at least she's in a
19 safe place where we could check her and we could make sure
20 that she's not going unconscious in a jail cell or something
21 like that to make sure she's safe for the night until she's
22 able to, I guess, come out of her intoxication and that kind
23 of stuff.

24 Q: Thank you, Lieutenant Eddy, no more questions for the
25 state.

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1 THE COURT: Anything on those questions, Mr. Long?

2 MR. LONG: Yes, Your Honor.

3 RECROSS EXAMINATION OF DANIEL EDDY BY MR. LONG:

4 Q: You say you took her into protective custody; you didn't
5 dismiss the charges against her, did you?

6 A: I, I wouldn't have dismissed the charges. I believe that
7 in court they were dismissed or null prossed, I believe.

8 Q: Thank you.

9 A: I'm not sure. I'm pretty sure though.

10 Q: Would it surprise you that she was found guilty?

11 A: Of the ---

12 Q: The disorderly conduct?

13 A: --- the PI, it would, yeah.

14 MS. WALTER: Objection, Your Honor, because she wasn't
15 arrested for disorderly conduct. Detective Eddy has said she
16 was arrested for public intoxication.

17 THE COURT: I appreciate that.

18 MR. LONG: I apologize. I didn't ---

19 BY MR. LONG:

20 Q: So, would it surprise you that she was found guilty of
21 public intoxication?

22 A: It would. I guess that morning, she could've pled guilty
23 to the judge, because I, I don't remember testifying or doing
24 a trial in her absence or anything like that with her, to my
25 knowledge.

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1 Q: Thank you.

2 THE COURT: Any further questions from the state?

3 MS. ANDREW: Nothing, Your Honor.

4 THE COURT: You may step down, sir.

5 A: Thank you.

6 THE COURT: Counsel, y'all come up and talk to me,
7 please.

8 (REPORTER'S NOTE: Bench conference is held off the record in
9 the presence of but outside the hearing of the jury.)

10 MS. WALTER: Your Honor, may Detective Eddy be excused?

11 THE COURT: Any objection to the detective being released
12 from his subpoena?

13 MR. LONG: No, Your Honor.

14 THE COURT: All right, sir, you're released from your
15 subpoena and may go back to your regular duties.

16 A: Thank you.

17 BY THE COURT:

18 THE COURT: All right, ladies and gentlemen, we are going
19 to stop for the evening. We're gonna resume tomorrow morning
20 at 9:30. The Clerk's office will have something for you in
21 your jury room. I'm sure the bailiff -- Madam Bailiff will
22 have you arrive in the assembly room tomorrow a little bit
23 early so that we can start at -- start at 9:30 and you'll have
24 some time before that you enjoy what the Clerk's office has
25 for you in the morning.

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1 I told you this once and I'm gone tell you again and
2 basically every time I let you go, you're not researchers,
3 you're not investigators, you can't look up anything on the
4 internet or any other source. You can't tell anybody about
5 what has transpired during the proceedings. After this case
6 is over with, you can talk to as many people as you want to or
7 not want to, but until the case is over, until you have
8 rendered a unanimous decision, you may not discuss this matter
9 with anyone, husband, wife, boyfriend, girlfriend, person down
10 the street, it doesn't matter. The only time you may discuss
11 it is when I give it to you at the very end for your
12 deliberations and for your unanimous decision.

13 Now, with that, I'll excuse you. See you back tomorrow
14 morning. Please arrive when Madam Bailiff tells you to arrive
15 downstairs, please. Thank you very much.

16 (REPORTER'S NOTE: Jury exits courtroom. The following takes
17 place outside the presence of the jury.)

18 THE COURT: Anything further from the state at this point
19 in time?

20 MS. WALTER: Yes, Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. WALTER: It is the state's position that based on Mr.
23 Long's opening, where he repeatedly said that the victim
24 denied having been sexually assaulted, that that in effect
25 opens the door because it is not accurate. When the detective

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1 spoke with her, she did say that she had been sexually
2 assaulted. That's why she eventually agreed to go to the
3 hospital. And so now the jury is left with the impression
4 that she said no, and the state is prevented from saying that
5 that's not true.

6 MR. LONG: The ---

7 THE COURT: Well, just a second, Mr. Long. We're gonna
8 let the evidence develop and if the evidence does support your
9 position that the defendant never says what Mr. Long has told
10 to the jury in his opening statement, you're gonna be free to
11 talk about that in your closing argument.

12 MS. WALTER: I just want to make sure I made myself
13 clear. I'm talking about what the victim said. Mr. Long,
14 said that the victim continually denied being sexually
15 assaulted and it's the state's position that that's
16 inaccurate. I just want to make sure it's on ---

17 THE COURT: And I appreciate that, but, you know, at this
18 point in time, I don't know what the rest of the evidence -- I
19 understand we had pretrial hearings and the matters were ruled
20 upon at the pretrial hearings, but at this point in time, I'm
21 not gonna allow any further presentation of the evidence other
22 than what I previously allowed. If there are further
23 questions or answers that you believe would cause me to
24 reconsider my rulings, I'll listen to you at the end of the
25 state's case before you close to see if there's anything

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1 further that I would allow you to present at that point in
2 time.

3 MS. WALTER: Thank you, Your Honor.

4 THE COURT: All right. Anything further -- other than
5 that then, ma'am, is there anything else from the state?

6 MS. WALTER: Yes, Your Honor, we do ask that the
7 defendant be remanded at this point.

8 THE COURT: All right.

9 MS. WALTER: And I have additional information about the
10 defendant because we were going to trial and it is custom and
11 my belief that he be remanded, but if Your Honor is hesitant
12 about that, I do have information that he's violated his bond
13 conditions.

14 THE COURT: Okay. Well, you have to remind me, was the
15 bond a personal recognizance or a surety bond?

16 MS. WALTER: I believe it was a surety bond.

17 MR. LONG: Yes.

18 THE COURT: All right. Mr. Long, do you have a
19 representative of the bonding company present?

20 MR. LONG: No, Your Honor, I did not know that that --
21 this is all news to me. He's on electronic monitoring. We --
22 at the previous trial that we began in August, there was no
23 question that he could go home. I need to talk to him over
24 the night to talk with him about the case and there's no
25 indication that he has violated any condition of bond. This

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1 is the first I've heard of it. There's been no evidence
2 presented and so I don't think it's necessary for him to go --
3 to be remanded.

4 MS. WALTER: Your Honor, the state cannot ask that he be
5 remanded until the jury was empaneled.

6 THE COURT: I understand that. I understand that.

7 MS. WALTER: But at this point, Judge ---

8 THE COURT: Well, at this point in time, I am going to
9 remand him to the custody of the Horry County Sheriff's office
10 and the detention center. Now, Mr. Long, if you would like to
11 bring the matter to the Court's attention tomorrow at some
12 appropriate time, having your representative of the bonding
13 company there, ready, willing, and able to stay on the bond
14 during the term of the trial I'll be glad to hear from you on
15 that.

16 MR. LONG: Your Honor, may I ask, is your decision based
17 on the representations of the state?

18 THE COURT: No, the matter is -- the usual course of
19 business is unless a representative of the bonding company is
20 present in court and will state to the Court, that they are
21 willing to stay on the terms and conditions of the bond, the
22 bond has ended. The bond ends when the defendant shows up for
23 trial and trial starts. That's when the bond ends. However,
24 if the representative of the bonding company comes before the
25 Court and states that they, you know, in open court that they

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1 will stay on the bond during the term and conditions of the
2 bond, then the Court can consider leaving the person on the
3 bond. But the terms and conditions of the bond are that he
4 come to court. That's when the bond ends. So, he's currently
5 remanded to the custody of the Horry County Sheriff's office
6 and detention center. I'll review the matter tomorrow when
7 you have a representative of the bonding company present
8 before the Court.

9 MR. LONG: May I make one point, Your Honor?

10 THE COURT: Yes, sir.

11 MR. LONG: As you may remember, he's also been charged in
12 a 2014 case and that bond is in effect, essentially it's
13 become interwoven with this 2015 case. The bond money for the
14 2015 is associated with the 2014 case. He's on GPS monitoring
15 for both of those cases. And so ---

16 THE COURT: Well, the one for the 2014 matter has not
17 been called to court. He's still under the terms and
18 conditions of that bond. That bond is not ended. That bond
19 does not end unless there's a matter before the court. That
20 bond, he still remains under the terms and conditions of that
21 -- that bond unless there is -- unless that matter is brought
22 to the Court's attention by reason of the case being called or
23 the state wishing that bond to be ended. That bond remains
24 active. But, the bond for this one, the terms and conditions
25 have been fulfilled. That is he is here and the case has

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1 started. So, but I will -- leaving it open, I will leave it
2 open. You have a representative of the bonding company
3 tomorrow come, if they are willing to stay on the bond, then
4 I'll hear you and then I'll hear from the state to see if I
5 will leave him on the bond. But currently, he is remanded to
6 their custody.

7 Now, gentlemen, I do -- what time do you want him back
8 here tomorrow morning, Mr. Long?

9 MR. LONG: What time are we planning on starting, if you
10 don't mind me asking?

11 THE COURT: The jury is -- we're gonna start the trial at
12 9:30. So do you want him here at 9 o'clock, you want him here
13 at 8:30, what time do you want him here?

14 MR. LONG: 8:30, please, Your Honor.

15 THE COURT: Gentlemen, let's make note and if we have to
16 just send him, and if there's nobody else coming, I want him
17 here by 8:30.

18 Thank you very much.

19 MR. LONG: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 All right. I'm sorry. Solicitor and Mr. Long, if y'all
22 will just hold on one second. I meant to put this on the
23 record earlier. As ---

24 MS. ANDREW: I apologize, Your Honor.

25 THE COURT: That's all right. As you recall I discussed

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1 with you more than once that in 2010-2011, Mr. Dhimo had a
2 civil case that was a bench trial that involved the City of
3 Myrtle Beach and involved the Airport Authority and I can't
4 remember the corporate name of the Airport Authority, the
5 entity operating the airport at Myrtle Beach, but there was a
6 case that Mr. Dhimo brought against them pro se regarding the
7 use of his taxi cab at the airport. The Court ruled on that.
8 I brought that -- the last time this came, this case came up
9 for trial, and since then with counsel reminding you about
10 that. I've heard no objection from the state or the defense
11 about this Court hearing this criminal matter having
12 previously ruled in the civil matter that Mr. Dhimo brought
13 pro se. Is there anything further on that from the state?

14 MS. WALTER: No, Your Honor.

15 THE COURT: From the defense?

16 MR. LONG: No, Your Honor.

17 THE COURT: Thank you very much.

18 Be at ease until tomorrow morning at 9:30.

19 Thank you.

20 **END OF DAY ONE.**

21 **(RECESS.)**

22 *******OFF THE RECORD*******

23 **JANUARY 9, 2018 - DAY TWO**

24 **(On the Record.)**

25 **BY THE COURT:**

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1 THE COURT: Thank you very much. You may be seated.
2 thank you.

3 All right, Solicitor, you ready for the jury?

4 MS. WALTER: We are, Your Honor, we're just trying to
5 figure out the best place for the T.V. so that Your Honor has
6 a view of it.

7 THE COURT: It's most important that the jury have a view
8 of it.

9 MS. WALTER: Okay.

10 THE COURT: All right.

11 MS. WALTER: Do you want to be able to see any of it,
12 it's mostly the excerpts from the body-worn camera.

13 THE COURT: All I -- all I'm concerned about is the jury
14 has a good view of it. That's all I'm concerned about.

15 MS. WALTER: Okay. So, then, John, do you mind if we ---

16 THE COURT: And, Mr. Long, if you need to move, you are
17 certainly welcome to do so.

18 MS. WALTER: Thank you, Your Honor.

19 MR. LONG: Thank you.

20 MS. WALTER: Yes, we are ready.

21 MR. LONG: Your Honor?

22 THE COURT: Sir?

23 MR. LONG: Can we get the defendant out here before the
24 jury comes out?

25 THE COURT: Well, I'm assuming that's what they're trying

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1 to do right now.

2 MR. LONG: I spoke too soon.

3 THE COURT: Go ahead and ask the jury to come in.

4 (REPORTER'S NOTE: Jury enters courtroom.)

5 THE COURT: All right, Solicitor, your next witness,
6 please.

7 MS. WALTER: The State calls Officer Zachary Cooper.
8 And, Your Honor, with the Court's permission, I'm not setting
9 the audio-visual up now. When we're ready for it, we'll move
10 it up just so Mr. Long's view is not ---

11 THE COURT: All right. Thank you, ma'am.

12 MR. LONG: Thank you.

13 THE COURT: All right, sir. Please come all the way up
14 front, right up here to where the clerk's representative is,
15 please.

16 CLERK: Please raise your right hand and place your left
17 hand on the Bible.

18 ZACHARY COOPER, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 MR. COOPER: My name is Zachary Cooper, C-O-O-P-E-R.

21 THE COURT: Go ahead, Solicitor.

22 MS. WALTER: Thank you.

23 DIRECT EXAMINATION OF ZACHARY COOPER BY MS. WALTER:

24 Q: Is it Officer Cooper?

25 A: Yes.

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- 1 Q: Officer Cooper, where do you work?
- 2 A: The City of Myrtle Beach Police Department.
- 3 Q: How long have you worked there?
- 4 A: I've worked there for a total of seven years; five years
- 5 as an officer.
- 6 Q: Directing your attention back to June of 2015?
- 7 A: Uh-huh, (affirmative response).
- 8 Q: That would be that you were employed by the Myrtle Beach
- 9 Police Department at that point?
- 10 A: Yes, it was.
- 11 Q: And I just want to talk about your assignment back then.
- 12 What was your assignment in June of 2015?
- 13 A: I was assigned to the Beach Patrol Division.
- 14 Q: What were your duties as part of the Beach Patrol?
- 15 A: To assist not only working the beach front area, but also
- 16 to assist officers in the area with any crime or any calls
- 17 that come on throughout the night.
- 18 Q: Were you working a particular shift?
- 19 A: Night shift, yes, ma'am.
- 20 Q: So what were your hours back then?
- 21 A: 6:00 A.M. to 6:00 P.M. were my hours.
- 22 Q: Did you work alone or with a partner?
- 23 A: I had a partner with me.
- 24 Q: Do you recall who your partner was?
- 25 A: Yes, I do, Officer Jeremy Freeman.

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1 Q: Now, directing your attention back to June 22nd of 2015
2 in the early morning hours, did you get a call for assistance
3 from now Detective Eddy?

4 A: Yes, I did.

5 Q: Can you -- what was the call?

6 A: I don't remember exactly how the call came out, I just
7 remember that Officer Eddy sounded excited on the radio asking
8 for assistance, so myself and Officer Freeman headed that way
9 to assist him in any way we could.

10 Q: And when you say headed that way, where did you head?

11 A: We headed to 77th Avenue North beach access.

12 Q: And is there any sort of hotel or resort there?

13 A: Yes, I believe it's the Horizon. I'm not a hundred
14 percent sure on the hotel name.

15 MS. WALTER: Your Honor, may I approach?

16 THE COURT: Yes, ma'am.

17 BY MS. WALTER:

18 Q: I'm approaching with what's been marked Exhibit 35, do
19 you recognize this area?

20 A: Yes, I do.

21 Q: What do you recognize it to be?

22 A: 77th Avenue North and right at the beach front at the
23 beach access and that's the Grand Shores Hotel.

24 Q: Is this a fair and accurate representation of the area to
25 which you responded on June 22nd?

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1 A: Yes, it is.

2 MS. WALTER: Your Honor, I would ask that this exhibit be
3 admitted and published to the jury.

4 THE COURT: Any objection?

5 MR. LONG: No, Your Honor.

6 THE COURT: It's in evidence without objection; you may
7 publish.

8 MS. WALTER: Thank you.

9 STATE'S EXHIBIT NUMBER 35

10 ADMITTED INTO EVIDENCE

11 BY MS. WALTER:

12 Q: So, Officer Cooper, when you and Officer Freeman first
13 got to the scene, can you tell me what you saw?

14 A: Yes, as we were approaching and parked in the beach
15 access, we saw the taxi and after we went past that -- I'm
16 very familiar with that area because it's a drive-on access
17 and there's only a few in the city to make access to the beach
18 for our vehicles. Once I made my way down that drive-on
19 access, that's where I saw the victim laying in the sand a
20 short way away from the kind of beach walk-over area.

21 Q: When you say it's drive-on access, what do you mean?

22 A: It's a -- so throughout the city we have certain areas
23 where our public safety vehicles can make it on to the sand,
24 so it's just an access that has been cleared; there's no beach
25 walk-over, it's just a driveway for us to make it through.

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1 Q: And you said you saw, I think, the victim?

2 A: Yes.

3 Q: Can you describe for us sort of more specifically what
4 you actually saw when you first got there?

5 A: Yes, so as soon as we pulled up, she was kinda laying on
6 the sand on her side and, to me, from where I was sitting she
7 looked to be unresponsive, she wasn't moving, and that's when
8 we got out of the vehicle and started to approach her.

9 Q: Once you got closer to her, were you able to have a
10 better look?

11 A: Yes, she -- she was covered in sand. She was disheveled
12 I'd say. She was also -- we tried several times to wake her
13 up verbally and, you know, kind of lightly jostling her to try
14 to wake her up, which it did not work.

15 Q: Can you describe her for us, what she looked like, black,
16 white, Hispanic?

17 A: I'm sorry, white female, blonde hair, seemed to be in her
18 twenties, early twenties maybe.

19 Q: So, after a few minutes of trying to wake her up or bring
20 her to consciousness, what did you do?

21 A: I then had to go back to my vehicle. We have a kit in
22 our cars and it had ammonia salt or smelling salts, and I then
23 had to go back and once I was able to put that on underneath
24 her nose it was able to bring her to enough consciousness for
25 her to somewhat make some noise, but she was able to sit up,

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1 but she was very intoxicated.

2 Q: And you said for her to somewhat make some noise, when
3 she woke up, was she speaking in any way that you could
4 understand what she was saying?

5 A: Absolutely not.

6 Q: When she eventually sat up, did -- did anything
7 physically happen to her?

8 A: She threw some kind of fluid up. I'm not a hundred
9 percent sure what it was, I just remember the motion of her
10 making like a spitting -- like she was spitting something out
11 and Officer Eddy pointed it out so that we could get of the
12 way so we wouldn't get spit on or thrown up on.

13 Q: Okay. So, after you were able to revive her, what did
14 you do?

15 A: We then began looking, EMS was there shortly after. So
16 then myself and Officer Freeman began looking in the area,
17 just to see if maybe we could tell -- find anything in the
18 sand maybe if she had something with her, because we had no
19 idea who she was at the time. Close to where she was, there
20 was an area of sand that had obviously had recently been
21 disturbed and we also found some cash and I believe an earring
22 in the sand close to where she was found.

23 Q: When you were able to sit her up, she did have a purse, a
24 wallet, or cell phone, or anything with her?

25 A: No, she did not.

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1 Q: So, after you kinda looked in that area around the sand
2 -- well, actually while you were doing that, was EMS tending
3 to Ms. J.K. ?

4 A: As far I believe, yes, ma'am.

5 Q: At some point, did you try to speak with her again?

6 A: Yes, after a short time of assisting Officer Freeman with
7 looking around the area, I went back to the back of the
8 ambulance and actually got in and I spoke with her in the back
9 of the ambulance. For a few minutes, it was just me and her
10 and then Officer Eddy was also in the back of the ambulance
11 with us.

12 Q: Can you describe for us her demeanor when she was in the
13 back of the ambulance?

14 A: She was very, very out of it. She had a very heavy smell
15 or odor of an alcoholic beverage coming from her like she had
16 been drinking heavily. We could not even get clear answers
17 out of her. She had very slurred speech; it was very hard to
18 understand her. She was just very distraught the entire time.
19 I couldn't get where she lived, if she lived here in the city,
20 I couldn't get any straight answer from her at all.

21 Q: When you say she was distraught, what made you think she
22 was distraught?

23 A: She was crying, did not want to be in the back of the
24 ambulance with two male officers. I could tell that just from
25 being there with her. She kept trying to get out just saying

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1 she wanted to go home, she wanted to get back to her
2 boyfriend, I believe is what she kept repeating, but I -- we
3 could not get any answers out of her as to where she was, who
4 she was or anything of that nature.

5 Q: During your time with the Myrtle Beach Police Department,
6 have you had an opportunity to see people that under the
7 influence of alcohol?

8 A: Yes, I have, several times.

9 Q: And have you had any special training in recognizing
10 someone who's under the influence?

11 A: Other than my DUI, SFST instruction, that I have been
12 trained in DSFST's so I do have some training in recognizing
13 people that are intoxicated, yes.

14 Q: And when you say SFT, that means like a Field
15 Sobriety Test?

16 A: Yes, Standardized Field Sobriety Test, sorry.

17 Q: Okay. So, based on your training and your experience as
18 a police officer, can you give us an idea of the level of
19 intoxication that you believe Ms. J.K. was acting under?

20 MR. LONG: Objection, Your Honor.

21 THE COURT: Sustained.

22 BY MS. WALTER:

23 Q: You said that there was odor of alcohol about her?

24 A: Yes.

25 Q: When, when you asked her questions, was she giving -- was

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1 she giving responsive answers?

2 A: No, she was on her little tangents. I would try to get
3 question in the best I could to her, but the answers to her
4 questions were not very -- they were very slurred as someone
5 that appeared to be intoxicated, and she a heavy odor of an
6 alcoholic beverage when she was talking to me, which was a
7 huge indicator to me that she had been drinking heavily.

8 Q: So, you smelled alcohol ---

9 A: Yes.

10 Q: --- as she was speaking?

11 A: Yes.

12 Q: So, at some point, I would imagine that you stopped
13 trying to interview her?

14 A: I did.

15 Q: Did you do anything else at that point at the scene?

16 A: The only thing, I did complete the tow sheet for Officer
17 Eddy and I secured that until -- made sure that no one messed
18 with anything with the taxi until Officer -- I believe it was
19 Officer -- Crime Scene Officer Humes arrived and took that
20 over from me.

21 Q: So, I just want to make sure, because it sort of slipped
22 in there. You said you completed the tow sheet, a tow sheet
23 for what?

24 A: A tow sheet so the vehicle, the taxi, could be towed back
25 to the annex for processing.

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1 Q: So, you saw a taxi cab on the scene?

2 A: Yes, I did.

3 Q: And I'm going to approach with Exhibit 35 again. If you
4 could -- and I'll have another picture, once we set up
5 everything else, can you tell us where you saw the taxi cab?

6 A: Yes, it was parked in this area right here.

7 Q: Okay. And so just indicating for the record that in an
8 area sort of near where there's a swimming pool on 77th Avenue
9 North. And so you said that you stood by the taxi cab?

10 A: Yes.

11 Q: And what was the purpose of that?

12 A: To make sure that the vehicle -- no one tampered with it,
13 no one went in it, no one messed with it until it could be
14 processed appropriately.

15 Q: So, did anyone ---

16 A: No.

17 Q: --- attempt to do anything to change anything about the
18 cab?

19 A: Absolutely not, no, ma'am.

20 Q: If you recall, was the cab running?

21 A: I do not recall.

22 Q: Do you recall anything else about the interior of the cab
23 or the exterior of the cab?

24 A: I do remember someone saying that they had seen a purse
25 or something inside the vehicle.

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1 Q: Now, let me back up. Were you and Officer Freeman
2 equipped with body-worn cameras?

3 A: Yes, we were.

4 Q: Can you just describe very briefly for the jury, do they
5 activate automatically, do you activate them, when do you
6 activate them?

7 A: Our body cameras, the way it works is basically there's
8 just a slide and whenever responding to calls of this kind of
9 nature, we just slide it down and record from the time we cut
10 it on until the time we cut it off and it's controlled by us.

11 Q: So, you had your own body-worn camera and Officer Freeman
12 had his own body-worn camera?

13 A: That's correct.

14 Q: And prior to trial today, did you review those body-worn
15 cameras ---

16 A: Yes, I did.

17 Q: --- the footage from them?

18 A: Yes, ma'am.

19 Q: And that would be a fair and accurate representation of
20 what happened that night?

21 A: Yes, they were.

22 MS. WALTER: And, Your Honor, if we could just take a
23 minute to set up?

24 THE COURT: Yes, ma'am.

25 MS. WALTER: And, Your Honor, this is going to be Exhibit

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1 36, which was admitted yesterday.

2 THE COURT: All right.

3 (REPORTER'S NOTE: State's Exhibit 36 published. Audio not
4 transcribed herein.)

5 BY MS. WALTER:

6 Q: And so that was footage of when you and Officer Freeman
7 were reviving the victim on the beach?

8 A: Yes, it was.

9 Q: Did you also have your bodycam on when you were speaking
10 with Ms. J.K. in the ambulance?

11 A: Yes, I did.

12 Q: And that's one of the -- that's part of the footage that
13 you previously reviewed and it's a fair and accurate
14 representation of your conversation with her?

15 A: Yes, it is.

16 MS. WALTER: And again, Your Honor, this is still Exhibit
17 36, which was admitted yesterday.

18 THE COURT: All right.

19 (REPORTER'S NOTE: State's Exhibit 36 published. Audio not
20 transcribed herein.)

21 BY MS. WALTER:

22 Q: Was what we just watched consistent with her demeanor the
23 entire time you were speaking with her in the back of the
24 ambulance?

25 A: Yes, it was.

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1 Q: Did you have anything else to do with this investigation?

2 A: No, I did not.

3 Q: Thank you. Do you want me to move this out of the way or

4 ---

5 MR. LONG: You can leave it.

6 MS. WALTER: Okay. I have no further questions, but
7 please answer any questions, Mr. Long has.

8 MR. LONG: Your Honor, may we approach?

9 THE COURT: Certainly.

10 (REPORTER'S NOTE: Bench conference is held off the record in
11 the presence of but outside the hearing of the jury.)

12 BY THE COURT:

13 THE COURT: All right, Mr. Foreman, ladies and gentlemen
14 of the jury, if you'd just go to the jury room for a minute
15 please. Thank you.

16 (REPORTER'S NOTE: Jury exits courtroom. The following takes
17 place outside the presence of the jury.)

18 THE COURT: All right, Mr. Long, I'll be glad to hear
19 from you, sir.

20 MR. LONG: Your Honor, during the course of the direct
21 examination of Detective Cooper, Solicitor Walter referred to
22 all the conversation that the detective had with Ms. J.K.
23 in the ambulance and the video was redacted or stopped before
24 it was referring to when the officer asked Ms. J.K. if she
25 had been assaulted. He said we believe that you could be the

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1 victim of a sexual assault and she denied it after that was
2 asked. Now the video was stopped to avoid that issue, but
3 they -- as the questions, as they were answered, I believe it
4 opens the door for cross examination of the entire
5 conversation that Detective Cooper had with Ms. J.K. .

6 THE COURT: I'm sorry, so what your -- what you want is
7 the entirety of the video played before the jury; is that what
8 you want?

9 MR. LONG: Well, I want to be able to ask him without
10 objection that he did not have any indication from Ms. J.K.
11 -- that she denied being a victim of an assault.

12 THE COURT: All right. Well, before I respond,
13 Solicitor, what's your response?

14 MS. WALTER: Well, quite frankly, I'm a little stunned
15 given that the redaction that we made was at Mr. Long's
16 request.

17 THE COURT: I appreciate that.

18 MS. WALTER: I'm happy to show the entire video. That
19 was what we wanted to do in the first place. But, this also
20 then goes back to the argument that I made yesterday, that by
21 Mr. Long saying she denied that she was assaulted. She didn't
22 always deny that she was assaulted. In fact, she told other
23 detectives quite vividly what had happened to her. So, in for
24 a penny, in for a pound; if we're putting in that whole
25 ambulance encounter, which again was redacted at Mr. Long's

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1 request, then the state renews its argument that that then
2 opens the door for other conversations with Ms. J.K. where
3 she clearly stated she had been sexually assaulted by that
4 defendant.

5 THE COURT: Mr. Long, if you want the entirety of the
6 video played before the jury, if you want to ask those
7 questions of this witness, then obviously, I'm gonna allow the
8 state to fully explore it with any and other witnesses that
9 they have.

10 MR. LONG: Yes, I'll remove my objection.

11 THE COURT: All right. Very good. Ask the jury to come
12 back in, please.

13 (REPORTER'S NOTE: Jury enters courtroom.)

14 THE COURT: Mr. Foreman, when I ask for y'all to come
15 back, just make sure everybody is with you when you come back.
16 Okay?

17 FOREPERSON: Yes, sir.

18 THE COURT: All right. Thank you, sir.

19 Mr. Long, you may continue.

20 CROSS EXAMINATION OF ZACHARY COOPER BY MR. LONG:

21 Q: Detective Cooper, you were the second officer on the
22 scene, correct?

23 A: Yes, sir, along with Officer Freeman.

24 Q: If I can just show you the picture of the area, maybe it
25 will refresh your memory. It happened -- you, you responded

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- 1 to this beach access, correct?
- 2 A: Yes, sir, right there in that area.
- 3 Q: And you say that's a very dark area, correct?
- 4 A: Yes.
- 5 Q: There's no -- to your knowledge there's no direct light
- 6 shining down on to that beach access?
- 7 A: Just whatever light spills over from the hotel.
- 8 Q: And did you have to use your flashlight to see on the
- 9 beach?
- 10 A: Yes, I did.
- 11 Q: You, you never saw Mr. Dhimo near Ms. J.K. , correct?
- 12 A: No, sir; I did not.
- 13 Q: And when you saw Ms. J.K. , her bikini bottoms were on,
- 14 correct?
- 15 A: To my knowledge, yes, sir.
- 16 Q: And her top was on?
- 17 A: Yes.
- 18 Q: They had not been ripped or torn, correct?
- 19 A: Not that I could tell, no, not from where I was.
- 20 Q: And are you aware that she urinated on the side of the
- 21 road prior, just prior to the time you saw her?
- 22 A: No, sir; I had no knowledge.
- 23 Q: Okay. And obviously you never saw Mr. Dhimo touch her in
- 24 any way?
- 25 A: No, sir; I did not.

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1 Q: Okay. And when you were on the scene, EMS, they checked
2 out Ms. J.K. , correct?

3 A: Yes, they did.

4 Q: And they told you she was good to go, right?

5 A: I don't exactly remember what they told us, but I do
6 remember that she didn't want to go to the hospital.

7 Q: And so EMS released her into your custody, correct?

8 A: Not into mine, but yes, into police custody, yes, sir.

9 Q: And do you recall that she was combative with EMS?

10 A: I, I do not recall.

11 Q: And did you talk with any of the EMS officers?

12 A: Yes, I did. When they first came up, I kinda gave them a
13 brief what-was-going-on and then, I believe at one other
14 point, I talked to one of the EMS personnel. I don't remember
15 the conversation but I do remember talking to some of them.

16 Q: Did you talk with EMS personnel after they had looked at
17 Ms. J.K. ?

18 A: I believe so, yes, sir.

19 Q: They gave no indication to you that she had been
20 assaulted, correct?

21 MS. WALTER: Objection, Your Honor.

22 THE COURT: Sustained.

23 BY MR. LONG:

24 Q: And she said she wanted to go home?

25 A: Yes, she did.

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ZACHARY COOPER - REDIRECT BY WALTER

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1 Q: She wanted to go to her boyfriend?

2 A: Yes, she did.

3 Q: Did she seem regretful?

4 A: I, I, I don't think regret would've been one of them;
5 distraught was the only thing I could get from her.

6 Q: And Mr. Dhimo, he was at the scene when you arrived,
7 correct?

8 A: Yes, he was.

9 Q: He did not try to flee the scene?

10 A: No.

11 Q: He was cooperative?

12 A: To my knowledge, yes, but I had very little interaction
13 with him.

14 Q: That's all the questions I have. Thank you.

15 THE COURT: Redirect?

16 MS. WALTER: Thank you, Your Honor.

17 REDIRECT EXAMINATION OF ZACHARY COOPER BY MS. WALTER:

18 Q: Counsel asked if you saw the defendant near the victim.
19 At the time that you arrived hadn't now Detective Eddy already
20 transferred custody, so to speak, of the defendant to the
21 security guards?

22 A: Yes, he was already detained by the time I arrived on the
23 scene.

24 Q: So, Mr. Dhimo was not on the beach when you got there?

25 A: No, he was not. He was already detained.

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ZACHARY COOPER - REDIRECT BY WALTER

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1 Q: And safe to say that if someone had come towards Ms.

2 J.K. while you were trying to revive her ---

3 MR. LONG: Objection, Your Honor, calls for speculation.

4 THE COURT: I'll allow the question and the answer.

5 BY MS. WALTER:

6 Q: If someone had -- if non-law enforcement, non-EMS
7 personnel had come and tried to approach the victim in any way
8 while you were trying to revive her, would you have stopped
9 them?

10 A: Yes, 100 percent.

11 Q: Sometimes it just the way us attorneys phrase things, but
12 you were asked if you recall her being combative and you said
13 you don't recall. I want to ask, was she combative?

14 A: She was not combative with me at all, no.

15 Q: The entire interaction that you had with her in the
16 ambulance, was she combative?

17 A: No.

18 Q: She said repeatedly that she wanted to go to her
19 boyfriend, correct?

20 A: That is correct; yes, ma'am.

21 Q: And just to be clear, Counsel asked you if she was
22 regretful, and you said that is not one of the emotions you
23 saw?

24 A: No. No, it was not. Just -- I forgot what I called it
25 earlier, but that was -- regret was definitely not one of

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ZACHARY COOPER - REDIRECT BY WALTER

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1 them; more distress, more upset, crying was what I was
2 getting.

3 Q: And I believe during initial direct, you stated that she
4 was fearful when it was you and Detective Eddy in the
5 ambulance with her?

6 A: Yes, it was. You could tell she was very defensive when
7 me and him were both in the ambulance.

8 Q: Thank you. Nothing further.

9 THE COURT: Anything on those questions, Mr. Long?

10 MR. LONG: No, Your Honor.

11 THE COURT: You may step down, sir. Do you wish this
12 witness to be excused, ma'am?

13 MS. WALTER: Yes, Your Honor.

14 THE COURT: Any objection?

15 MR. LONG: No, Your Honor.

16 THE COURT: You're released from your subpoena, you may
17 go back to your regular duties.

18 MR. COOPER: Thank you, sir, I appreciate it.

19 THE COURT: Next witness, please?

20 MS. WALTER: The state will call Benjamin Thompson.

21 THE COURT: All right, Mr. Thompson, come all the way
22 around and meet the clerk's representative right up here
23 please, sir.

24 CLERK: Please raise your right hand and place your left
25 hand on the Bible.

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1 BENJAMIN THOMPSON, HAVING BEEN SWORN
2 TESTIFIES AS FOLLOWS:
3 CLERK: State your full name and spell your last name.
4 MR. THOMPSON: Benjamin Thompson, T-H-O-M-P-S-O-N.
5 THE COURT: Go ahead, Solicitor.
6 MS. WALTER: Thank you.
7 DIRECT EXAMINATION OF BENJAMIN THOMPSON BY MS. WALTER:
8 Q: Good morning, Mr. Thompson.
9 A: Good morning.
10 Q: Where -- how are you employed?
11 A: I'm employed as a private security officer.
12 Q: And how long have you been working in private security?
13 A: I've been doing private security for 20 years.
14 Q: So, it's safe to say that you were working in private
15 security back on June 21st into the 22nd of 2015?
16 A: Yes, ma'am.
17 Q: Were you always assigned to a particular property?
18 A: During that year, yes, ma'am.
19 Q: And what property was that?
20 A: I was assigned to Grand Dunes and Horizon.
21 Q: Grand Dunes or Grand Shores?
22 A: I'm sorry, Grand Shores, sister properties.
23 MS. WALTER: And, Your Honor, if I may approach the
24 witness?
25 THE COURT: Yes, ma'am.

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1 BY MS. WALTER:

2 Q: I'm approaching you with what's been admitted as Exhibit
3 5 [sic], do you recognize what this photo depicts?

4 A: Yes, ma'am.

5 Q: And is this the Grand Shores, is that one of the
6 properties that you were working?

7 A: Correct, that's the Grand Shores Ocean Front Tower.

8 Q: And that's -- at least part of the property is on the
9 corner of 77th Avenue North and the beach access?

10 A: Yes, ma'am.

11 Q: So, were you in fact working back on June 21st into June
12 22nd of 2015?

13 A: Yes, ma'am.

14 Q: How many security guards were working that night?

15 A: There's three of us.

16 Q: Can you tell us who the other two were?

17 A: One of them was -- I can't remember the last name -- one
18 of them was Joyce and the other was Don.

19 Q: Were you working alone or were you working with one of
20 them?

21 A: I was working -- riding with one of them because I was
22 training Ms. Joyce on the properties.

23 Q: So, you and Joyce were riding together?

24 A: Yes, ma'am, we were on the golf cart.

25 Q: Directing your attention to the early morning hours of

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BENJAMIN THOMPSON - DIRECT BY WALTER

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1 June 22nd, did anything unusual or did anything happen that
2 caused you to reach out to the Myrtle Beach Police?

3 A: Yes, ma'am. I was contacted towards the end of my shift,
4 which was about -- I was supposed to get off work at 3:00 A.M.
5 and I -- we always park the golf cart over at Grand Shores
6 building. As I was rolling down to park the golf cart at the
7 back of the building, I observed a taxi cab sitting beside our
8 building on the 77th Avenue side with the engine still
9 running.

10 Q: What did you do after you saw the cab with the engine
11 still running?

12 A: After I seen the cab, I proceeded to look around the area
13 to see if I could see a driver or if anybody was passed out or
14 anything. And, when I couldn't see anybody, I started to
15 proceed down towards the taxi cab, which at this time, the
16 other security officer, Don, had joined me and he was walking
17 down the sidewalk going up towards the front of the cab. And,
18 I didn't see anybody around the cab or anything so that's
19 whenever I started to walk towards our beach access and, at
20 that point in time, that was whenever I heard somebody
21 hollering, started hollering at me to stop.

22 Q: Okay. Let me back you up a little bit. As you were
23 walking down to the beach access, first of all, is there --
24 are there any lights over the beach access?

25 A: There is one light on the corner of the pool deck and the

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BENJAMIN THOMPSON - DIRECT BY WALTER

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1 beach access.

2 Q: And so if I can approach again with Exhibit 35. Would
3 that be this pool in that area?

4 A: Yes, ma'am, it's right on the corner of the pool and
5 there's one also, a streetlight, over here on this side of the
6 parking lot.

7 Q: Okay. So, indicating on the 77th Avenue North side?

8 A: Correct.

9 Q: When you -- so was there enough light that you could see
10 what -- onto the beach?

11 A: Yes, ma'am.

12 Q: What did you see as you were approaching?

13 A: As I was approaching, I seen a male figure on the right-
14 hand side next to the grass. He was -- I could tell he was
15 either kneeling or laying down on his side and that was
16 whenever I said -- I just started to approach the beach
17 because I didn't know if somebody was passed out, if they're
18 injured or hurt or what, and that was when I started walking
19 down towards the beach.

20 Q: As you started walking down towards the beach, did this
21 male change his position in any way?

22 A: Yes, ma'am.

23 Q: What did he do?

24 A: The male subject jumped up and he started hollering at me
25 to stay away, stay away, don't come any closer, don't come

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1 down here.

2 Q: When he jumped up, was he facing towards you, away from
3 you?

4 A: Correct, he was facing towards me with his back towards
5 the ocean.

6 Q: Could you tell how he was dressed, if at all?

7 A: Yes.

8 Q: Can you tell us?

9 A: He had on a dark-colored shirt. I didn't see anything on
10 below his knees. Around his knees was what appeared to be
11 either white boxers or white underwear.

12 Q: So, how far did the tank top come down, if you know?

13 A: The tank town came down to just above where the waistline
14 is.

15 Q: Was there anything -- any kind of clothing between where
16 the waistline is and you said, I believe, there were white
17 short underwear around his knees?

18 A: No.

19 Q: So, there was nothing between the waistband area and his
20 knees?

21 A: No.

22 Q: And were you able to see his body between the waistband
23 and his knees?

24 A: Yes.

25 Q: What did you do -- you said that he was screaming to you

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1 stop, don't come near?

2 A: Yes, he was saying stop, don't come any closer; don't
3 come down here.

4 Q: What did you do as a result?

5 A: As a result, I stopped in my position because I didn't
6 know if he had a weapon or something was going on because he
7 was obviously in an irate state. At the point in time from
8 where I was stopped at, I started calling back down, is
9 everything okay, is everything okay, do you need help, and I
10 didn't get -- the only response I got from that one is, no,
11 I'm fine, don't come any closer, don't come any closer.

12 Q: As you -- during that little interaction, were you able
13 to see if there was anything in the area of where this man
14 jumped up?

15 A: Yes.

16 Q: What was there?

17 A: The only thing that I noticed, I couldn't tell exactly
18 what it was, but I did notice a -- object off to the right-
19 hand side, which would be my right as you're facing the ocean
20 on the right-hand side where the grass area is.

21 Q: And I'm sorry, you said a what object?

22 A: It was a white object, something like a towel or
23 something.

24 Q: Okay. But you didn't have a clear view of what that was?

25 A: No.

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1 Q: So, then after you sort of backed up and continued to see
2 if anyone needed help, what did you do?

3 A: After I backed up, actually he still never responded to
4 me whether everything was okay or not and, according to the
5 state that he was in, I backed up to a safe distance where I
6 could still see him where he was at and I called for a police
7 officer to respond.

8 Q: You said that you could still see where he was at, did
9 you stay in that position until the police responded?

10 A: Yes, ma'am, I stayed at the end of our driveway with
11 clear visual to the beach access.

12 Q: Did, did the defendant attempt to leave the beach or do
13 anything?

14 A: He didn't attempt to leave the beach. He went back over
15 to the right side where the white object was at and started to
16 get dressed.

17 Q: And so you maintained visual of him that entire time?

18 A: Yes, ma'am.

19 Q: No one else came to where he was on the beach?

20 A: No, ma'am, nobody came down to the beach where he was at.

21 Q: Now, you said that you called Myrtle Beach Police
22 Department, you've listened to that 911 recording?

23 A: Yes, ma'am.

24 Q: And is that a fair and accurate representation of what
25 you told Myrtle Beach Police?

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1 A: Yes, ma'am.

2 MS. WALTER: Your Honor, Exhibit 12 is the 911 call. I
3 would ask that they be admitted and published to the jury.

4 THE COURT: Any objection?

5 MR. LONG: No, Your Honor.

6 THE COURT: All right. Exhibit 12 is in evidence; you
7 may publish.

8 STATE'S EXHIBIT NUMBER 12

9 ADMITTED INTO EVIDENCE

10 MS. WALTER: Your Honor, I'm just gonna start it without
11 using the speakers.

12 THE COURT: All right.

13 (REPORTER'S NOTE: State's Exhibit 12 published. Audio not
14 transcribed herein.)

15 BY MS. WALTER:

16 Q: So, Mr. Thompson, that's the call that you had with
17 Myrtle Beach Police?

18 A: Yes, ma'am.

19 Q: And it's safe to say that you were speaking to them at
20 that time as you were making those observations, right?

21 A: Yes, ma'am.

22 Q: Were the events fresher on your mind at that time than
23 they are today almost two and a half years later?

24 A: Somewhat they are -- they were, yes.

25 Q: Okay. So, I just want to clarify just a few things.

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1 When you were -- at the beginning of the call you said he was
2 laying down on the beach?

3 A: Yes, ma'am.

4 Q: Earlier you had said you couldn't tell whether he was
5 kneeling or sitting. Does listening to the 911 call change
6 your recollection at all?

7 A: Yes, ma'am.

8 Q: Can you tell the jury when you first saw him on the
9 beach, what was his position?

10 A: When I first seen him on the beach, he was down on the
11 right side towards the grass area with his head facing towards
12 our pool deck, but he was laying towards face down.

13 Q: So, he was laying on the sand?

14 A: Yes.

15 Q: At the beginning of the call, again, you said he had
16 nothing but his underwear on, but later on you said no pants.
17 When you first saw him after he jumped up, was his underwear
18 up around his private area or was it down?

19 A: His underwear was down.

20 Q: And again you had a full view of ---

21 A: A full view of the front, yes, ma'am.

22 Q: And then one other thing that I noticed in the 911 call,
23 at one point, you said it looked like he may have had someone
24 down there with him?

25 A: Yes, ma'am.

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1 Q: What led you to believe that?

2 A: The shape of the object that was in the grass that I
3 didn't have a clear view of at the time, it wasn't the shape
4 of anything that was flat; it had some type of posture to it,
5 which could led me to be either a large duffle bag or a small
6 body.

7 Q: So, what you earlier described as remembering now as a
8 white object, is that you believed at the time to be a body on
9 the beach?

10 A: Yes.

11 MS. WALTER: Your Honor, may I approach with ---

12 THE COURT: Yes, ma'am.

13 MS. WALTER: --- what has been admitted as Exhibit 18?

14 A: Yes, ma'am.

15 BY MS. WALTER:

16 Q: Can you tell me what's depicted in that picture?

17 A: Yes, ma'am. That's an Atlantic cab parked in a no
18 parking zone that is parked right next to our pool deck.

19 Q: And is this how you saw the cab that night ---

20 A: Yes.

21 Q: --- or that morning I guess I should say. And is the no
22 parking zone delineated by those yellow lines sort of where
23 ---

24 A: Yes, ma'am, these white lines here is the very last
25 parking spot for the metered parking in our overflow parking.

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1 The yellow lines right here is emergency parking for our
2 emergency access vehicles.

3 Q: Okay. Thank you. I don't have any further questions,
4 but please just answer any questions Mr. Long has.

5 THE COURT: Cross examination?

6 CROSS EXAMINATION OF BENJAMIN THOMPSON BY MR. LONG:

7 Q: Mr. Thompson, you said you were working at Grand Dunes,
8 but you were working at Grand Shores; do you remember that
9 now?

10 A: Yes, sir.

11 Q: Okay. And it's been two-and-a-half years, so it's hard
12 to remember some of those things, right?

13 A: Yes, sir.

14 Q: And you can't remember the last names of your coworkers?

15 A: I was only with them, the two -- Ms. Joyce was only had
16 just started with us, so I hadn't known her very well for a
17 long time before I left, and Don, I had only been with him for
18 maybe a month.

19 Q: And did you have a flashlight with you that night?

20 A: Yes.

21 Q: And but the -- you had testified it was a dark area,
22 correct?

23 A: Correct.

24 Q: And did you use your flashlight to shine onto the beach?

25 A: I was gonna use the flashlight to shine down on the

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1 beach, correct, but the batteries was not working in it.

2 Q: Okay. So you didn't have a flashlight?

3 A: I didn't have a working flashlight.

4 Q: Okay. And you said that as you walked down to the beach,
5 you said you heard Mr. Dhimo before you saw him, correct?

6 A: Correct.

7 Q: And how close did you get to him when you heard him?

8 A: I would say I was probably about 20 feet away.

9 Q: Twenty feet, about from me to you?

10 A: Yes, sir.

11 Q: Okay. And so you didn't have a flashlight, right?

12 A: Yes, sir.

13 Q: Twenty feet away. And you said you saw and you could
14 tell he was a male figure?

15 A: Yes.

16 Q: You couldn't really see details of him, correct?

17 A: Not when he was down on the grass, no.

18 Q: Okay. And you said that there was an object laying next
19 to him; you said it could've been a duffle bag?

20 A: Yes.

21 Q: You couldn't tell -- from 20 feet away without a
22 flashlight, you couldn't tell if it was a person or not,
23 right?

24 A: No.

25 Q: And in the 911 call, you said that he appeared he would

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1 be in white boxers?

2 A: Correct.

3 Q: You don't know they were white boxers, do you?

4 A: It could've been white undershorts, it could've been
5 white boxers, it could've been white underwear. I just seen
6 the white.

7 Q: It could've been the white of the pockets of his pants?

8 A: It's -- I would say it wasn't his pants because his pants
9 was down around his -- wasn't on his -- like he was naked from
10 the waist down.

11 Q: He could've been wearing black underwear for all you
12 know, right?

13 A: I didn't see any type of underwear because I seen the
14 full frontal view.

15 Q: You didn't -- you didn't see his penis, did you?

16 A: Yes, sir.

17 Q: But you said you couldn't see a white object and tell
18 that that was a person from 20 feet away, right?

19 A: The white object that was in the grass, no, because it
20 was obstructed by the grass.

21 Q: So, you're saying that from 20 feet away in the complete
22 darkness, you could see a man's penis?

23 A: Correct, when he stood up, I was able to see his penis.

24 Q: And even if he was exposing himself, you didn't get the
25 impression he was trying to shock you with his nudity, did --

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1 you?

2 A: No, sir, because I've seen -- on the beach, I've seen
3 nudity on the beach before, so it really wasn't a shock to me.

4 Q: He wasn't trying to embarrass you, was he?

5 A: No, sir.

6 Q: And when you called 911, you said you were worried about
7 friends, excuse me, families and kids seeing him?

8 A: Yes, sir.

9 Q: But not about yourself seeing him, right?

10 A: No, sir.

11 Q: Because again, it didn't shock you?

12 A: No, sir.

13 Q: It didn't surprise you?

14 A: No, sir.

15 Q: There were no children around the area, correct?

16 A: Yes, sir, there was still families checking in.

17 Q: Okay. You didn't see them on the beach that night, did
18 you?

19 A: No, sir, they weren't on the beach; they were up by the
20 office.

21 Q: Okay. And you didn't see Mr. Dhimo have any physical
22 contact with Ms. J.K. , did you?

23 A: No, sir.

24 Q: And, and you said that when Mr. Dhimo stood up, that he
25 was -- he just stood up where he was, correct?

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1 A: He stood up where he was, which at that time he was out
2 of the grass.

3 Q: And then you say he went back over to where the white
4 object was after you saw him, correct?

5 A: Correct, he went back over towards the grass area.

6 Q: So, he wasn't near the white object when you saw him get
7 up, right?

8 A: I'd say he was probably about a, maybe a -- probably
9 about six or seven inches away from the white object when he
10 stood up.

11 Q: But you can't tell, right?

12 A: No, sir.

13 Q: It was dark. All right. And didn't see them have any
14 physical contact with each other, right?

15 A: No, sir.

16 MR. LONG: Court's indulgence?

17 THE COURT: Yes, sir.

18 MR. LONG: That -- that's all the questions I have.

19 Thank you.

20 THE COURT: Any redirect?

21 MS. WALTER: No, Your Honor. I'd ask that this witness
22 be excused.

23 THE COURT: Any objection?

24 MR. LONG: No objection.

25 THE COURT: All right, sir, you're released from your

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1 subpoena and may go back to your regular activities.

2 Next witness, please?

3 MS. WALTER: Joyce Dixon.

4 THE COURT: All right, ma'am, you want to come all the
5 way around, please, come all the way around up here.

6 CLERK: Please raise your right hand and place your left
7 hand on the Bible.

8 JOYCE CHESTNUT DIXON, HAVING BEEN

9 SWORN TESTIFIES AS FOLLOWS:

10 MS. DIXON: My name is Joyce Chestnut Dixon, D-I-X-O-N.

11 THE COURT: Go ahead, Solicitor.

12 MS. WALTER: Thank you, Your Honor.

13 DIRECT EXAMINATION OF JOYCE CHESTNUT DIXON BY MS. WALTER:

14 Q: Good morning, Ms. Dixon.

15 A: Good morning.

16 Q: I want you to think back to June of 2015. Were you
17 working at that time?

18 A: Yes, I was.

19 Q: Where were you employed?

20 A: Horizon and that's a hotel on 77th Avenue North.

21 Q: Is there also a property there Grand Shore?

22 A: Grand Shore as well.

23 Q: Now, how were you working, what was your capacity there?

24 A: I came in at 11 o'clock at night to 7:00 in the morning.

25 Q: And what type of work were you doing, what was your

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1 title?

2 A: Security.

3 Q: So, you worked the evening of June 21st 2015 into the
4 morning of June 22nd?

5 A: Yes.

6 Q: That -- during that shift, were you working with anyone
7 else?

8 A: Benjamin.

9 Q: And that's the gentleman that just left the courtroom?

10 A: Yes.

11 Q: Directing your attention to sort of the early morning
12 hours of June 22nd, did anything unusual happen that brings
13 you into court today?

14 A: Yes, when we were riding around just checking the area,
15 securing the area, and when we was on the golf cart and I
16 stated that I saw something on the beach at the time, and when
17 Benjamin was in the golf cart and we went closer to it and he
18 shined his flashlight, and it's like, okay, I saw something
19 white, didn't know what it was. And at the same time, we went
20 up to it, so this gentleman stood up with no bottom on, but
21 the top on and that was the T-shirt, saying go away, go away.
22 And then we didn't know what was going on so Benjamin called
23 the police at the time, and that's when we discovered
24 something was going on at the time.

25 Q: Okay. So, let me break that down a little bit. You said

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1 the T-shirt said go away, go away. Was there writing on the
2 T-shirt, or was it the person wearing the T-shirt?

3 A: No, the person that was wearing the T-shirt said go away
4 when he stood up.

5 Q: When this person stood up, I think you said you saw
6 something in the sand?

7 A: Yes.

8 Q: When he stood up, how close was he to this object in the
9 sand that you saw?

10 A: He was just leaning over the person, but when he stood
11 up, he was right close to the person, yes.

12 Q: And you said he had a top on. Did he have anything on
13 below his waist?

14 A: No.

15 Q: Was he facing toward you?

16 A: Yes.

17 Q: Could you see -- did you have, as someone else has said,
18 a full frontal view?

19 A: Yes.

20 Q: Okay. So, you were able to see his private area?

21 A: Yes.

22 Q: And while this was happening, is the hotel open, sort of
23 all night long, people can check in whenever they want?

24 A: Yes.

25 Q: And that area of the beach, that's a public beach?

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1 A: Yes.

2 Q: Nothing further at this time, if you'd just answer Mr.
3 Long's questions please.

4 THE COURT: Cross examination?

5 CROSS EXAMINATION OF JOYCE CHESTNUT DIXON BY MR. LONG:

6 Q: Ms. Dixon, you say that Mr. Benjamin shined his
7 flashlight?

8 A: Yes.

9 Q: That allowed you to see what happened?

10 A: Well, that allow us to see what was going on on the beach
11 when the gentleman at the time was leaning over on the person.

12 Q: Would you've been able to see what happened if he didn't
13 have that flashlight?

14 A: No, sir.

15 Q: Okay. What type of flashlight was it?

16 A: I have no idea what kind -- you know, what Mr. Benjamin
17 had. It's a regular flashlight that we use.

18 Q: Okay. But is it safe to say without that flashlight, you
19 couldn't tell what was going on on the beach?

20 A: No, you couldn't. You had to show the -- shine the
21 flashlight.

22 Q: Thank you.

23 A: You're welcome.

24 Q: That's all the questions I have.

25 THE COURT: Any redirect?

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1 MS. WALTER: No, Your Honor, we'd ask that this witness
2 be excused?

3 THE COURT: Any objection.

4 MR. LONG: No objection.

5 THE COURT: All right, ma'am, you're released from your
6 subpoena, you may go back to your regular duties.

7 MS. DIXON: Thank you.

8 THE COURT: Next witness, please.

9 MS. WALTER: Donald Paul.

10 MS. WALTER: Donald Paul.

11 THE COURT: All right. Come around, sir. If you just
12 come all the way around over here please, sir and come
13 straight up here to where the clerk's representative is.
14 Thank you.

15 CLERK: Please raise your right hand and place your left
16 hand on the Bible.

17 DONALD PAUL, HAVING BEEN DULY SWORN

18 TESTIFIES AS FOLLOWS:

19 MR. PAUL: My name is Donald Paul.

20 COURT REPORTER: Spell your last name, please?

21 MR. PAUL: Paul, P-A-U-L.

22 THE COURT: Go ahead, Solicitor.

23 MS. WALTER: Thank you.

24 DIRECT EXAMINATION OF DONALD PAUL BY MS. WALTER:

25 Q: Good morning, Mr. Paul.

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- 1 A: Good morning.
- 2 Q: I want you to think back to June of 2015; were you
3 working at that time?
- 4 A: Yes, ma'am.
- 5 Q: Where were you working?
- 6 A: At the Horizon and Grand Shores Motel on 77th Avenue.
- 7 Q: I'm gonna approach you with what's been marked as Exhibit
8 35. Is that the area where you were working?
- 9 A: Yes, ma'am.
- 10 Q: And what was your position there?
- 11 A: I was a courtesy officer.
- 12 Q: What did you do as a courtesy officer?
- 13 A: We -- just like a security guard, we patrol the areas
14 around the motel and try to keep down the noise and any
15 disturbances.
- 16 Q: So, were you working as a courtesy officer the evening of
17 June 21st of 2015 into the morning of June 22nd, 2015?
- 18 A: Yes, ma'am.
- 19 Q: Were you working alone or did you have someone with you?
- 20 A: No, ma'am. There was Benjamin and Joyce, they were
21 working with me. There were three of us on that night.
- 22 Q: Okay. More specifically, as you were doing your job that
23 night, were you in the constant company of Benjamin and Joyce?
- 24 A: No, ma'am.
- 25 Q: So, you were working alone, but they were also on duty;

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DONALD PAUL - DIRECT BY WALTER

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1 is that what you're saying?

2 A: Yes, ma'am.

3 Q: Did something happen in the early morning hours of June
4 22nd that brings you to court today?

5 A: Yes, ma'am.

6 Q: Can you tell us about that?

7 A: I came down from Horizon, down to Grand Shores, and I saw
8 a taxi cab pulled up at an angle. Well, I didn't pay any
9 attention to it for a while because they come down there all
10 the time. Well, I went around, went back up, and when I came
11 back around again, he was still sitting there. So, Ben and
12 Joyce came up on the golf cart and I asked them, I said have
13 you see that taxi driver, I said that cab has been sitting
14 down there a long time. I said it's been there 20 minutes or
15 more and they said no. So, they went down and pulled up
16 behind the taxi cab where they could shine the lights off the
17 golf cart onto the beach and they said they saw a man down
18 there with no clothes on. So, I said, what? So, I went down
19 and got up on the boardwalk and walked to the edge of the
20 boardwalk and picked up towels that was there, and when I got
21 there, he was standing in the beach. He had his pants on, but
22 he kept telling me he said go away, go away, nothing here
23 concerns you. Well, then I saw a girl down in the edge of the
24 grass from the light of the motel. And I went back and I told
25 Ben and Joyce, I said, there's a girl down there with that

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1 guy. And then so we got on the radio and called the office
2 and told them to get the police to come down there and it was
3 about 20 minutes later they came.

4 Q: So, when you saw the person standing over the woman who
5 was on the ground ---

6 MR. LONG: Objection, that's not what was testified to.

7 THE COURT: Let the witness describe what he saw.

8 BY MS. WALTER:

9 Q: Can you describe again what you saw? I believe you said
10 that you saw a woman.

11 A: Yes, ma'am.

12 Q: Where was the woman?

13 A: She was down at the edge of the grass in the -- on the
14 sand.

15 Q: And where was the man?

16 A: He was standing up probably about five or six feet from
17 her.

18 Q: And at the time you saw -- let me back up. Ben and Joyce
19 had already approached?

20 A: Yes, ma'am.

21 Q: So, by the time you saw this man, his pants were up?

22 A: Yes, ma'am.

23 Q: Nothing further at this time, Your Honor. Just please
24 answer any questions Mr. Long has.

25 THE COURT: Cross examination?

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DONALD PAUL - CROSS BY LONG

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1 CROSS EXAMINATION OF DONALD PAUL BY MR. LONG:

2 Q: You never saw the man and woman have any physical
3 contact, correct?

4 A: No, sir.

5 Q: That's all the questions I have.

6 THE COURT: Do you wish the witness to be excused?

7 MS. WALTER: Yes, please, Your Honor.

8 THE COURT: Any objection?

9 MR. LONG: No, Your Honor.

10 THE COURT: All right, sir, you are released from your
11 subpoena, you may go back to your regular duties. Thank you,
12 sir..

13 Solicitor, could you come up and talk to me? Mr. Long?

14 (REPORTER'S NOTE: Bench conference is held off the record in
15 the presence of but outside the hearing of the jury.)

16 THE COURT: All right. Your next witness please, ma'am?

17 MS. ANDREW: Your Honor, the State calls Chad Morenus.

18 THE COURT: All right. Very good. All right, sir, if
19 you'd come all the way around and meet the clerk's
20 representative right up here please, sir. Come right up here.

21 CLERK: Please raise your right hand and place your left
22 hand on the Bible.

23 CHAD DAVID MORENUS, HAVING BEEN DULY

24 SWORN TESTIFIES AS FOLLOWS:

25 CLERK: Chad David Morenus, M-O-R-E-N-U-S.

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1 THE COURT: Go ahead, Solicitor.

2 DIRECT EXAMINATION OF CHAD DAVID MORENUS BY MS. ANDREW:

3 Q: Mr. Morenus, where do you live?

4 A: Myrtle Beach, South Carolina.

5 Q: Where are you employed?

6 A: I'm sorry?

7 Q: Where are you employed?

8 A: Jimmagan's Pub.

9 Q: What did you do there?

10 A: I bartend.

11 Q: And how long have you been employed there?

12 A: Been around 14 years.

13 Q: Okay. So, were you working there on the night of June
14 21st into June 22nd, 2015?

15 A: Yes, I was working; uh-huh, (affirmative response).

16 Q: Do you recall speaking to Detective Carol Allen from the
17 Myrtle Beach Police Department ---

18 A: Yes, absolutely.

19 Q: --- about that night?

20 A: Uh-huh, (affirmative response).

21 THE COURT: And, sir, if you don't mind, you have to
22 answer yes or no because you say uh-huh, the court reporter
23 doesn't know what that means.

24 A: Okay.

25 THE COURT: So, yes or no.

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1 A: Yes.

2 THE COURT: Thank you.

3 BY MS. ANDREW:

4 Q: Do you recall what you spoke to Detective Allen about?

5 A: About this couple, if they had had come in or not that
6 night.

7 Q: Okay. Do you recall if Detective Allen showed you
8 photographs?

9 A: Yes.

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

11 THE COURT: Yes, ma'am.

12 BY MS. ANDREW:

13 Q: I'm gonna show you what's been marked as State's Exhibit
14 Number 37. Can you tell me what that photograph depicts?

15 A: What's that?

16 Q: Can you tell me what that is?

17 A: That was the woman that was there that night.

18 Q: Okay.

19 A: Absolutely.

20 MS. ANDREW: Your Honor, the State moves to introduce
21 State's Number 37 into evidence and publish it to the jury.

22 THE COURT: Any objection?

23 MR. LONG: No, Your Honor.

24 THE COURT: All right. It's in evidence and you may
25 publish.

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CHAD DAVID MORENUS - DIRECT BY ANDREW

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1 STATE'S EXHIBIT NUMBER 37

2 ADMITTED INTO EVIDENCE

3 BY MS. ANDREW:

4 Q: Next I'm gonna show you what's been marked as State's
5 Exhibit Number 38, can you tell me what this picture is?

6 A: That was the gentleman that she was with that night.

7 MS. ANDREW: Your Honor, the State moves to introduce
8 Exhibit Number 38 into evidence, a photograph of the Defendant
9 and publish it to the jury.

10 THE COURT: Any objection?

11 MR. LONG: No, Your Honor.

12 THE COURT: All right. It's also in evidence and you may
13 publish.

14 STATE'S EXHIBIT NUMBER 38

15 ADMITTED INTO EVIDENCE

16 BY MS. ANDREW:

17 Q: And did Detective Allen show you those two photographs
18 that day?

19 A: Yes.,

20 Q: Did you recall seeing those two people in the bar the
21 night of June 21st and 22nd at that time?

22 A: At that time, I wasn't sure. I wasn't sure. I didn't
23 think so and then -- not at that time, I didn't; I wasn't
24 sure.

25 Q: Okay. Did anything later refresh your recollection and

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CHAD DAVID MORENUS - DIRECT BY ANDREW

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1 cause you to remember those two people being at Jimmagan's
2 Bar?

3 A: Well, yes, that next night after a couple of hours of
4 working my shift, I went to pour some Crown Royal Apple and,
5 as soon as I poured that shot, I remembered that couple being
6 in there the night before.

7 Q: Okay.

8 A: Like as soon as I did it, it jogged my memory and then
9 that's when I called y'all.

10 Q: So, who did you call and tell that to?

11 A: The Allen, the Detective Allen.

12 Q: The same person who showed you the photographs?

13 A: Yes; uh-huh, (affirmative response)

14 Q: Detective Carol Allen?

15 A: Yes, ma'am.

16 Q: Okay. And what did you tell Detective Allen at that
17 time?

18 A: That I just -- it jogged my memory as soon as I saw that
19 Crown Royal, then I remembered them being there that night.
20 It was such a busy night but, you know, as soon as I saw that
21 Crown Royal, I remembered that that's what they were drinking
22 that night. I remembered them being in there.

23 Q: Okay. So, you remember seeing the victim, J.K.

24 ?

25 A: Uh-huh, (affirmative response).

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1 Q: And the Defendant, Alqi Dhimo, being at Jimmagan's bar
2 that night?

3 A: Absolutely.

4 Q: Do you recall what time they were there?

5 A: That's a little bit -- that's a tough one. I would say
6 around 1:00, 1:30, around there because I remember it was
7 shortly before we closed. We close around 2 o'clock.

8 Q: Do you know how long they stayed?

9 A: I honestly don't think any more than 45 minutes because I
10 remember them only having a few shots.

11 Q: Okay. And that leads me to this. Do you remember what
12 you served them?

13 A: The Crown Royal Apple shots.

14 Q: Shots?

15 A: Uh-huh, (affirmative response).

16 Q: And do you know how many you served them?

17 A: I honestly, I'm thinking three or four, right around
18 there.

19 Q: Okay. Do you remember anything else about them being
20 there that night?

21 A: That she was kind of dressed up that night. I remember
22 she's just real dressed up. I remember her, you know, more
23 than him, but I definitely remember seeing him as well.

24 Q: Oh, can you tell me where Jimmagan's is in Myrtle Beach?

25 A: What's that?

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1 Q: The physical location of Jimmagan's bar in Myrtle Beach
2 where you work?

3 A: Where is it? It's on 60th Avenue, North Kings Highway.

4 Q: Okay. Right on the highway?

5 A: Yes, ma'am.

6 Q: I have no further questions for this witness. Please
7 answer Mr. Long's questions.

8 THE COURT: Cross examination?

9 CROSS EXAMINATION OF CHAD DAVID MORENUS BY MR. LONG:

10 Q: Mr. Morenus, I want to show you Exhibit 34 of Ms.

11 J.K. , can you tell me what's the date on that photo?

12 A: 5/8/14.

13 Q: 2014?

14 A: Yes, sir.

15 Q: Okay. That's about a year before the date that we have
16 in question, correct?

17 A: Yes.

18 Q: And was her hair color the same?

19 A: The hair, that I can't tell you on that one; I'm not
20 sure. I just remember her having the dark hair. I don't know
21 if it was black hair or brown hair.

22 Q: She had dark hair?

23 A: Uh-huh (affirmative response)

24 Q: You said she was real dressed up?

25 A: Yes.

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- 1 Q: What was she wearing?
- 2 A: I just remember her being just, I don't know, just like a
3 fancy dress it seemed like she was wearing that night.
- 4 Q: Okay.
- 5 A: It just kind of stuck out a little bit.
- 6 Q: That's what -- that's what really refreshed your memory?
- 7 A: The Crown Royal. In bartending, that's just -- you put
8 people's faces with drinks and that's -- you don't remember
9 names, you just remember the faces and what they drink and as
10 soon as I poured that Crown Apple, that's when I called them.
11 I remembered them being in there.
- 12 Q: Okay. And they -- they had three or four shots each?
- 13 A: Yes, sir.
- 14 Q: And she bought some; he bought some?
- 15 A: He, he bought -- he was buying them.
- 16 Q: And Ms. J.K. , she was there -- she appeared to be on
17 her own free will, correct?
- 18 A: Yes. Yeah, it seemed like that.
- 19 Q: Do you recall where they were sitting in the bar?
- 20 A: They were -- if you're walking -- if you're walking out
21 of Jimmagan's, they would've been to the left of the door and
22 there's two tables right there, a big round one and a four-
23 top, and they were right there by the four-top.
- 24 Q: So, near the -- near the door?
- 25 A: Where the door would be right here and then they were --

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1 they were right here. I don't even think they were sitting;
2 they were standing right where the four-top was.

3 Q: And based on that appearance, she could have left any
4 time she wanted to?

5 A: Yes, I believe so, yes.

6 Q: And for all appearances, it looked like they were on a
7 date, right?

8 A: It did.

9 Q: You would assume that they were romantically involved?

10 A: That I can't -- I'm not sure about that.

11 Q: Okay. There's nothing really out of the ordinary of
12 their behavior, correct?

13 A: That I saw, no.

14 Q: That's all the questions I have. Thank you.

15 COURT REPORTER: Mr. Long, I think that was Exhibit 37,
16 not 34.

17 MR. LONG: You're right. Thank you. That's all.

18 THE COURT: All right. And I'm sorry, hold on one
19 second. Hold on one second.

20 Any questions, Solicitor?

21 MS. ANDREW: No, further questions. We'd ask this
22 witness be released, Your Honor.

23 THE COURT: Any objection?

24 MR. LONG: No, Your Honor.

25 THE COURT: You're released from your subpoena, now you

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BY THE COURT

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1 can go. Thank you, sir

2 BY THE COURT:

3 THE COURT: Thank you. All right, ladies and gentlemen,
4 we're gonna take a short break, about 10 minutes or so and
5 then we'll come back and resume, resume the trial. Go to the
6 jury room. Thank you.

7 (REPORTER'S NOTE: Jury exits courtroom. The following takes
8 place outside the presence of the jury.)

9 THE COURT: Anything from the State at this point in
10 time?

11 MS. ANDREW: No, Your Honor.

12 THE COURT: From the Defense?

13 MR. LONG: No, Your Honor.

14 THE COURT: All right. Ten minutes and we'll get back in
15 and resume the trial.

16 MR. LONG: Your Honor, I'm sorry.

17 THE COURT: Yes, sir.

18 MR. LONG: The issue of bond.

19 THE COURT: All right. Do you have someone from the
20 bonding company here?

21 MR. LONG: Yes, Your Honor.

22 THE COURT: All right, sir. Have them come forward.

23 All right, sir, could you tell me your name and the
24 company you work for?

25 MR. KIMMEL: Your Honor, my name is Edward Kimmel. I'm

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1 with A. Owens Bail Bonds.

2 THE COURT: All right, sir. And is your company
3 currently on the bond for the defendant, Mr. Dhimo?

4 MR. KIMMEL: We are.

5 THE COURT: All right, sir. There's been a request from
6 the defense that Mr. Dhimo be allowed to stay out on bond
7 during the -- during the trial, that is until the jury
8 retires. When the jury retires, then he would get into the
9 custody and control of the sheriff's office, but until that
10 time, there's been a request that the defendant stay out on
11 bond. If the Court were to do that, your company would need
12 to stay on the bond. That's what I need your presence for, to
13 see if, if your company is willing to stay on the bond until
14 the jury retires to deliberate.

15 MR. KIMMEL: May I just ask him one thing?

16 THE COURT: Yes, sir, please.

17 MR. KIMMEL: I'm sorry, Your Honor.

18 THE COURT: That's all right. That's not a problem, sir.

19 MR. KIMMEL: Okay, Your Honor.

20 THE COURT: Yes, sir.

21 MR. KIMMEL: We'll stay on the bond.

22 THE COURT: All right. Very good.

23 MS. WALTER: Your Honor, if I may, I'm sorry. I was
24 able ---

25 THE COURT: Okay. Is there anything else from the

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BY THE COURT

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1 defense as to your request to have the defendant stay out on
2 bond?

3 MR. LONG: No, Your Honor.

4 THE COURT: Do you -- is there any necessity for the
5 bonding agent to stay?

6 MS. WALTER: Well, I had a couple of questions, but also,
7 Your Honor, I believe that one of the conditions of him
8 staying on the bond is that he wants the defendant's passport
9 and he won't stay on until he gets it and he gets it today.
10 So, I just want to make sure that that's clear on the record.
11 It's not just he's on the bond now.

12 THE COURT: Is that correct?

13 MR. LONG: That's what we talked about, yes, sir.

14 THE COURT: All right, sir. All right. So, that will be
15 a condition of the bond that the defendant's passport be
16 surrendered to the bonding agent.

17 MR. KIMMEL: Or the attorney.

18 THE COURT: Or the attorney, all right, sir.

19 Mr. Long -- do you have any problem with Mr. Long having it in
20 his custody and control and he would not release it without
21 order of the Court?

22 MS. WALTER: Not as long as the state's made aware that
23 it's been taken out of the defendant's custody, but I do have
24 another concern, Your Honor.

25 THE COURT: All right. So, but with that, is there any

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BY THE COURT

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1 other need for the bonding agent to stay?

2 MS. WALTER: Well, it does -- it relates to the
3 conditions of the Defendant's bond and if the ---

4 THE COURT: Okay. And what might those be?

5 MS. WALTER: As Your Honor set the bond so I believe you
6 would remember that some of the conditions were that the
7 defendant is not to operate a cab on his own and I think there
8 may've also been ---

9 THE COURT: Well, there's an amendment to that at some
10 point in time that he could be with his wife while she
11 operated it or there was -- there's certain amendments to
12 that.

13 MS. WALTER: Right. And my point is that I don't believe
14 Your Honor ever changed the order to allow the defendant to
15 operate the cab on his own, and perhaps you can correct me if
16 I'm wrong.

17 THE COURT: And I appreciate that, but we're in trial,
18 we're here all day long. Okay? Is whether he's operating a
19 cab some great concern to the state?

20 MS. WALTER: Given that we are here because a victim, a
21 passenger in his cab said that she was raped by him when he
22 was operating the cab by himself and I have information that
23 he's operating the cab ---

24 THE COURT: Well, let's be clear, Solicitor. Okay?
25 There is no evidence and nothing has been presented to the

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BY THE COURT

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1 Court as to your assertion. Okay? All right. That's not in
2 this trial. All right?

3 MS. WALTER: I understand that.

4 THE COURT: Now, I appreciate your concern.

5 Mr. Dhimo, I'm gonna allow you to stay out on the bond.
6 You must surrender your passport to Mr. Long. You may not
7 operate the cab at all, with your wife, in any way, you may
8 not operate the cab at all until this matter is resolved.
9 After that, we'll see what the verdict is and then we'll deal
10 with that matter at that point in time. But until the jury
11 returns a verdict, you may not operate the cab; is that clear?

12 MR. DHIMO: Yes, sir.

13 THE COURT: Anything else from the State?

14 MS. WALTER: No, Your Honor.

15 THE COURT: Thank you very much. He's allowed to stay
16 out on bond under those terms and conditions. Thank you.

17 Short break.

18 Thank you.

19 **(RECESS.)**

20 *******OFF THE RECORD*******

21 **(On the Record.)**

22 THE COURT: All right. The State ready for the jury?

23 MS. WALTER: We are and, Your Honor, and just in general,
24 are you planning on working until about -- I'm just trying to
25 schedule our witnesses because we have some coming in from out

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ANTHONY HUMES - DIRECT BY ANDREW

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1 of town and some from SLED.

2 THE COURT: We're gonna work for about a, you know, for
3 another hour, hour-and-a-half depending on how the -- how the
4 witnesses go, we'll break for lunch and then come back at
5 2:00.

6 MS. WALTER: Okay.

7 THE COURT: All right. Ask the jury to come in please,
8 sir.

9 (REPORTER'S NOTE: Jury enters courtroom.)

10 THE COURT: All right, Solicitor, your next witness
11 please, ma'am.

12 MS. ANDREW: Your Honor, the state calls Crime Scene
13 Specialist Tony Humes.

14 THE COURT: All right, sir, if you'd come all the way
15 around and meet the clerk's representative up front, please,
16 sir.

17 CLERK: Please raise your right hand and place your left
18 hand on the Bible.

19 ANTHONY HUMES, HAVING BEEN DULY SWORN

20 TESTIFIES AS FOLLOWS:

21 MR. HUMES: Anthony Humes, H-U-M, as in Mary, -E-S.

22 THE COURT: All right.

23 DIRECT EXAMINATION OF ANTHONY HUMES BY MS. ANDREW:

24 Q: What is your occupation?

25 A: I am a crime scene officer for the City of Myrtle Beach

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ANTHONY HUMES - DIRECT BY ANDREW

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1 Police Department.

2 Q: May I call you Officer Humes?

3 A: Sure.

4 Q: And how long have you been employed by the Myrtle Beach
5 Police Department?

6 A: It will be 10 years next month.

7 Q: Okay. So is it safe to say you were employed by the
8 Myrtle Beach Police Department as a crime scene specialist on
9 June 21st and 22nd, 2015?

10 A: Yes, ma'am.

11 Q: Is one of your duties as a crime scene specialist to
12 document crime scenes?

13 A: Yes.

14 Q: Okay. Do you recall becoming in the incident we're here
15 for today that involved the defendant on June 21st and 22nd of
16 2015?

17 A: Yes, ma'am.

18 Q: And can you tell me how you became involved?

19 A: I was requested to respond to the location by Sergeant
20 Hall.

21 Q: Do you recall what that location was?

22 A: It was 77th Avenue North in the beach access.

23 Q: Okay. And did you respond to that location?

24 A: Yes, ma'am.

25 Q: What did you do when you got there?

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ANTHONY HUMES - DIRECT BY ANDREW

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1 A: I took photographs of the overall area to begin with,
2 which would've been outside of Grand Shores Drive or Grand
3 Shores Motel and Beach Drive, which is a intersection that
4 intersects with 77th Avenue North.

5 Q: Okay. Would it help refresh your recollection if I
6 handed you a copy of the report that you wrote documenting the
7 crime scene?

8 A: Sure.

9 MS. ANDREW: ay I approach the witness, Your Honor?

10 THE COURT: Yes, ma'am.

11 A: Thank you, ma'am.

12 BY MS. ANDREW:

13 Q: Can you tell me what you first saw when you got to the
14 crime scene?

15 A: I saw a taxi van that was parked along 77th Avenue North.
16 The vehicle was pulled into -- pulled down 77th Avenue North
17 where the front of the van was facing the beach and it was
18 parked in an area that was a non-parking area and the rear
19 part of the vehicle was at the first metered parking space.

20 Q: Okay. Did you see any persons in that area when you
21 first responded to the crime scene?

22 A: Just officers.

23 Q: Just officers?

24 A: Yes, ma'am.

25 Q: Did you speak to anyone when you arrived there?

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1 A: I probably spoke with Sergeant Hall, maybe PFC Eddy and
2 Cooper, and probably Freeman.

3 Q: Okay. Did you -- you said you saw the taxi cab parked at
4 the beach access?

5 A: Yes, ma'am.

6 Q: Did you photograph that taxi cab?

7 A: Yes, ma'am. I took numerous photographs of the outside
8 of the vehicle.

9 Q: Did you notice anything about the interior of the vehicle
10 at that time?

11 A: No, ma'am, I didn't enter into the vehicle.

12 Q: And after you left the area where the taxi cab was
13 parked, where did you go after that?

14 A: Directly in front of where the vehicle was is a beach
15 access. So I was advised that there was items of potential
16 evidence on the beach and I went on the beach and photographed
17 those items.

18 MS. ANDREW: Excuse me one second. May I approach the
19 witness, Your Honor?

20 THE COURT: Yes, ma'am.

21 BY MS. ANDREW:

22 Q: Officer, I'm gonna show you what's been marked as State's
23 Exhibit Number 17?

24 A: Yes, ma'am.

25 Q: Can you tell me what that photograph depicts?

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ANTHONY HUMES - DIRECT BY ANDREW

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1 A: That is the intersection sign for Beach Drive and 77th
2 Avenue North.

3 Q: Did you take that photograph?

4 A: Yes, ma'am.

5 Q: Is it a fair and accurate representation of what you saw
6 that night?

7 A: Yes, ma'am.

8 MS. ANDREW: Your Honor, the state moves to introduce
9 Exhibit Number 17 into evidence and publish it to the jury.

10 THE COURT: Any objection?

11 MR. LONG: No objection.

12 THE COURT: It's in evidence without objection.

13 STATE'S EXHIBIT NUMBER 17

14 ADMITTED INTO EVIDENCE

15 BY MS. ANDREW:

16 Q: Okay. And when you approached the beach, did you see
17 items in the sand?

18 A: Yes, ma'am.

19 Q: Did you ---

20 A: They were pointed out to me.

21 Q: They were pointed out to you, okay. I'm gonna show you
22 what's been marked as State's Exhibit Number 20 and can you
23 tell me what that depicts?

24 A: This is a picture of the beach area at the end of the
25 walkway. It also shows Marker Number 3, Number 4, and Number

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1 5 in the same picture.

2 Q: Okay. Did you place those markers on the beach?

3 A: Yes, ma'am.

4 Q: Can you tell from that photograph what those markers are
5 marking?

6 A: Number 3, I can; that is a pair of flip flops.

7 Q: And is this photograph an accurate and fair
8 representation of what you observed that evening?

9 A: Yes, ma'am.

10 MS. ANDREW: Your Honor, the state moves to introduce
11 Exhibit Number 20 into evidence and publish to the jury.

12 THE COURT: Any objection?

13 MR. LONG: Objection.

14 THE COURT: Come forward.

15 (REPORTER'S NOTE: Bench conference is held off the record in
16 the presence of but outside the hearing of the jury.)

17 THE COURT: I'm gonna allow the exhibit into evidence
18 over the objection of the Defense. You may proceed.

19 MS. ANDREW: Thank you.

20 STATE'S EXHIBIT NUMBER 20

21 ADMITTED INTO EVIDENCE

22 BY MS. ANDREW:

23 Q: I'm gonna show you what's been marked as State's Exhibit
24 Number 21.

25 A: Yes, ma'am.

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1 Q: Can you tell me what that photograph depicts?

2 A: I got it. This is a photograph of Marker Number 3, which
3 is the pair of flip flops.

4 Q: Okay. Is that photograph a fair and accurate
5 representation of what you found that night?

6 A: Yes, ma'am.

7 MS. ANDREW: Your Honor, the state moves to introduce
8 Exhibit Number 21 into evidence and publish to the jury.

9 THE COURT: Objection?

10 MR. LONG: Objection, Your Honor.

11 THE COURT: Same issue of relevance?

12 MR. LONG: Yes, sir.

13 THE COURT: I'm going to allow it into evidence over the
14 objection of the Defense.

15 You may proceed

16 STATE'S EXHIBIT NUMBER 21

17 ADMITTED INTO EVIDENCE

18 BY MS. ANDREW:

19 Q: I'm gonna show you what's been marked as State's Exhibit
20 Number 22. Can you tell me what that photograph depicts?

21 A: This is Items at number -- Items Number 4 and 5, which
22 are -- Number 4 is an area of money, and Number 5 depicts an
23 earring. Also with Number 5 is a business card for Corner
24 Cars that the patrol had placed there to mark the item. That
25 way they could find it easier.

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1 Q: Okay. So, that was something that the police officers
2 placed there?

3 A: Yes, ma'am.

4 Q: So, does this photograph, is it a fair and accurate
5 representation of what you saw that evening?

6 A: Yes, ma'am.

7 MS. ANDREW: Your Honor, the state moves to introduce
8 Number 22 into evidence and publish it to the jury.

9 THE COURT: Objection?

10 MR. LONG: Same objection.

11 THE COURT: All right, sir. So, regarding the objections
12 for relevancy, the Court overrules the objection and is
13 allowing the object or the photograph into evidence over the
14 objection.

15 You may proceed.

16 STATE'S EXHIBIT NUMBER 22

17 ADMITTED INTO EVIDENCE

18 BY MS. ANDREW:

19 Q: This final photograph, this is what's been marked as
20 State's Exhibit Number 23?

21 A: Uh-huh, (affirmative response).

22 Q: Can you tell me what this photograph depicts?

23 A: This is cash money that was on the beach.

24 Q: Okay. And when you found the money was it laid out like
25 that?

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1 A: No, ma'am, I took -- the money was wadded up and buried
2 in the sand partially, so I straightened all the money out and
3 laid it out.

4 Q: Okay. And that's a photograph that's a fair and accurate
5 representation of how you laid the money out that evening?

6 A: Yes, ma'am.

7 MS. ANDREW: Your Honor, the state moves to introduce
8 Exhibit Number 23 into evidence and publish it to the jury.

9 THE COURT: Objection?

10 MR. LONG: Same objection.

11 THE COURT: All right, sir. Overruled and I'm gonna
12 allow State's 23 into evidence over the objection.

13 You may proceed.

14 STATE'S EXHIBIT NUMBER 23

15 ADMITTED INTO EVIDENCE

16 BY MS. ANDREW:

17 Q: Do you recall seeing anything else on the beach that
18 night, any other objects?

19 A: Yes, ma'am. I placed Marker Number 1 at a red Solo cup,
20 plastic cup, which was located at the beginning of the beach
21 and a paper towel that was located next to it and also there
22 was another \$5 bill that I located with that same pile of
23 money; it was just further down.

24 Q: Do you know -- after you photographed the scene, what did
25 you do next?

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1 A: I was advised that the taxi vehicle would be towed to the
2 annex pending a search warrant. Patrolman Cooper gave me a
3 tow sheet and Shoreline Towing arrived on scene, and I
4 followed the taxi cab down to the crime scene lab and secured
5 it.

6 Q: Okay. Did you actually process the taxi cab when you got
7 to the annex?

8 A: No, ma'am.

9 Q: Okay. Do you recall if you filled out a request to have
10 SLED process the kit by Officer Bailey?

11 A: Yes.

12 MS. ANDREW: Court's indulgence?

13 THE COURT: Yes, ma'am.

14 MS. ANDREW: Your Honor, may I approach the witness?

15 BY MS. ANDREW:

16 Q: Do you recognize this bag that I'm handing you? It's
17 been marked as State's Exhibit Number 10.

18 A: Oh, okay. Yes, this is the flip flops that were
19 recovered at Marker Number 3.

20 Q: Okay. And can you tell me, does that bag have a seal on
21 it?

22 A: Yes, ma'am.

23 Q: And what is that seal that you see on the bag?

24 A: It's an evidence seal and my initials are still on it.

25 Q: Okay. And has that been tampered with or opened in any

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1 way since that evening?

2 A: No, ma'am.

3 MS. ANDREW: Your Honor, the state seeks to introduce
4 Exhibit Number 10 into evidence.

5 THE COURT: Objection?

6 MR. LONG: Not at this time, Your Honor.

7 THE COURT: All right, sir. So, State's 10 is in
8 evidence without objection.

9 STATE'S EXHIBIT NUMBER 10

10 ADMITTED INTO EVIDENCE

11 BY MS. ANDREW:

12 Q: I'm gonna hand you this?

13 A: Okay.

14 Q: I'm gonna open it, okay?

15 A: Sure.

16 THE COURT: Let the witness do that.

17 MS. ANDREW: Okay. I'm gonna hand him the knife too,
18 Your Honor, if that's okay?

19 THE COURT: Yes, ma'am.

20 BY MS. ANDREW:

21 Q: Okay. Thank you. If I can get you to open this ---

22 A: Okay.

23 Q: --- and show me what's inside?

24 MR. LONG: Your Honor?

25 THE COURT: Yes, sir.

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1 MR. LONG: I say there's no objection but I'm not sure
2 what's in the packet yet.

3 THE COURT: Well he's identified to ---

4 A: Flip flops.

5 THE COURT: --- from the outside to be flip flops.

6 MR. LONG: Right.

7 THE COURT: So ---

8 A: Did you want me to remove the items?

9 BY MS. ANDREW:

10 Q: Yes, please. You can hold them up.

11 A: A pair of flip flops.

12 Q: And they still have sand on them?

13 A: Yes, ma'am.

14 Q: Okay. I'm gonna show you again what's been marked as
15 State's Exhibit -- what's been marked and introduced as
16 State's Exhibit Number 21, are those the same flip flops that
17 you saw on the beach that night?

18 A: Yes, ma'am.

19 Q: Thank you. I'm gonna hand you a second envelope?

20 A: Okay.

21 Q: It's been marked as State's Exhibit Number 11?

22 A: Okay.

23 Q: Can you tell me what that is?

24 A: This is an envelope marked as Marker Number 5, an
25 earring.

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1 Q: Okay. And is -- does that envelope have the red evidence
2 tape seal on it?

3 A: Yes, ma'am, and my initials are on top.

4 Q: And has it been tampered with in any way?

5 A: No, ma'am.

6 Q: And did you seal that earring in that bag on the night
7 you collected it from the crime scene?

8 A: Yes, ma'am; I did seal this in there.

9 MS. ANDREW: Your Honor, the state moves to introduce
10 Exhibit Number 11 into evidence and publish it to the jury.

11 THE COURT: Objection?

12 MR. LONG: Objection to relevance.

13 THE COURT: I'm gonna allow it into evidence over the
14 objection of the Defense.

15 You may proceed.

16 STATE'S EXHIBIT NUMBER 11

17 ADMITTED INTO EVIDENCE

18 BY MS. ANDREW:

19 Q: Thank you. Please open the envelope and remove its
20 contents.

21 A: It is a single earring, pearl type.

22 Q: I'm gonna hand you what was introduced as State's Exhibit
23 Number 22. Is that the same earring located beside Marker 5
24 that you found that night?

25 A: Yes, ma'am; it is.

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1 Q: Thank you.

2 A: Uh-huh (affirmative response).

3 Q: I believe you also said you found a red Solo cup and a
4 tissue?

5 A: Yes, ma'am.

6 Q: Do you recall if those items were found to be -- later
7 found to be relevant or part of this crime scene?

8 A: No, ma'am. Yes, ma'am, they were found to not be
9 relevant to the crime scene.

10 Q: So, that was essentially just items that were left on the
11 beach in relation to something else?

12 A: Yes, ma'am.

13 Q: I have no further questions for this witness.

14 Please answer any Mr. Long's questions?

15 A: Yes, ma'am.

16 THE COURT: Cross examination?

17 CROSS EXAMINATION OF ANTHONY HUMES BY MR. LONG:

18 Q: Detective or Officer?

19 A: Officer.

20 Q: Officer Humes?

21 A: Yes, sir.

22 Q: What time did you get to the beach?

23 A: Approximately 4ish. My first photograph was around 4:19,
24 I believe.

25 Q: A.M.?

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1 A: Yes, sir.

2 Q: And did you use a flashlight to get around on the beach?

3 A: Yes, sir, partially.

4 Q: Partially?

5 A: Yeah.

6 Q: Did you use a flash to take the pictures of the items on
7 the beach?

8 A: Yes, sir.

9 Q: You don't recall who you spoke to at the scene, correct?

10 A: Not offhand, no, sir.

11 Q: Okay. And you testified that you processed the kit from
12 Officer Bailey?

13 A: I did not process it, no. All I did was the request for
14 it to get sent to the state for processing.

15 Q: Okay.

16 A: I didn't have any part of collection of the kit or
17 touching the kit or anything like that.

18 Q: You sent it off?

19 A: Yes, sir. I completed the SLED request in order for it
20 to get processed at the state.

21 Q: Okay. Thank you. That's all the questions I have.

22 THE COURT: Any redirect?

23 MS. ANDREW: No, Your Honor. The State asks that this
24 witness be excused.

25 THE COURT: Any objection?

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1 MR. LONG: No objection.

2 THE COURT: All right, sir, you're released from your
3 subpoena, you may go back to your regular duties.

4 MR. HUMES: Thank you, sir.

5 THE COURT: Yes, sir.

6 Next witness please, ma'am?

7 MS. ANDREW: Your Honor, the state calls Scott
8 Williamson.

9 THE COURT: Very good.

10 Did we leave the exhibits up here or what did we do with
11 them?

12 MS. ANDREW: I put them back over here.

13 THE COURT: All right. Very good. Thank you.

14 All right, sir, if you'd please come all the way around
15 and meet the Clerk's representative right up here please, sir.
16 Thank you.

17 CLERK: Please raise your right hand and place your left
18 hand on the Bible.

19 SCOTT WILLIAMSON, HAVING BEEN DULY
20 SWORN TESTIFIES AS FOLLOWS:

21 MR. WILLIAMSON: Scott Williamson, W-I-L-L-I-A-M-S-O-N.

22 THE COURT: Go ahead, Solicitor.

23 DIRECT EXAMINATION OF SCOTT WILLIAMSON BY MS. ANDREW:

24 Q: Officer Williamson, what is your current occupation?

25 A: I'm a police officer.

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1 Q: And where do you work?

2 A: Myrtle Beach Police Department.

3 Q: What do you do at the Myrtle Beach Police Department?

4 A: I'm currently assigned to the crime scene unit in the
5 Investigations Division.

6 Q: And what are your duties as a part of that?

7 A: I process crime scenes, handle evidence, work with latent
8 fingerprint and DNA evidence.

9 Q: How long have you been employed by the Myrtle Beach
10 Police Department?

11 A: Twenty-three years.

12 Q: Twenty-three years?

13 A: Yes, ma'am.

14 Q: So, it's safe to say you were employed by the Myrtle
15 Beach Police Department on June 21st, 2015?

16 A: Yes, ma'am.

17 Q: Okay. And did you have occasion to search and document a
18 taxi cab as part of this incident?

19 A: Yes, ma'am.

20 Q: Can you tell me how you became involved?

21 A: I came into work at 2 o'clock in the afternoon and was
22 told that a crime had happened earlier that morning and that a
23 taxi cab was secured in our crime scene laboratory and then I
24 was provided a search warrant to search that taxi for
25 evidence.

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1 Q: And so what's the first thing you did when you went and
2 got the taxi cab?

3 A: I took overall photographs of the outside of the taxi and
4 that normally includes the VIN that's displayed on the
5 dashboard and the license plate that's displayed on the back.

6 Q: Okay. After you did that, did you then search the inside
7 of the taxi cab?

8 A: Yes, ma'am.

9 MS. ANDREW: Okay. May I approach the witness, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. ANDREW:

13 Q: I'm gonna show you what's been marked as State's Exhibit
14 Number 24. Can you tell me what that photograph depicts?

15 A: Yes, ma'am, that's the front passenger side of the taxi
16 cab and it depicts a woman's purse lying on the ground and a
17 cell phone sitting on the bottom portion of the seat.

18 Q: And did you take that photograph?

19 A: Yes, ma'am.

20 Q: Is it a fair and accurate representation of what you
21 actually saw?

22 A: Yes, it is.

23 MS. ANDREW: Your Honor, the state moves to introduce
24 Exhibit Number 24 into evidence and publish it to the jury.

25 THE COURT: Objection?

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1 MR. LONG: No objection.

2 THE COURT: All right. It's in evidence without
3 objection.

4 STATE'S EXHIBIT NUMBER 24

5 ADMITTED INTO EVIDENCE

6 BY MS. ANDREW:

7 Q: I'm gonna show you what's been marked as State's Exhibit
8 Number 25, can you tell me what that photograph depicts?

9 A: Yes, ma'am, it's a ladies Michael Kors brand purse that I
10 found inside the taxi cab during the search.

11 Q: Okay. And did you photograph that wallet?

12 A: Yes, ma'am.

13 Q: Is it a fair and accurate representation of what you
14 actually saw?

15 A: Yes, it is.

16 MS. ANDREW: Your Honor, the state moves to introduce
17 Number 25 into evidence and publish it to the jury.

18 THE COURT: Any objection?

19 MR. LONG: No, Your Honor.

20 THE COURT: All right. So it's -- 25 is in evidence
21 without objection.

22 You may proceed.

23 STATE'S EXHIBIT NUMBER 25

24 ADMITTED INTO EVIDENCE

25 BY MS. ANDREW:

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1 Q: I'm gonna show you what's been marked as State's Exhibit
2 Number 26, can you tell me what that photograph depicts?

3 A: Yes, ma'am, it's the contents of that previous purse that
4 you just showed me. It has a South Carolina driver's license
5 issued to J.K. and also what appears to be an ATM
6 or some sort of debit card also in that name.

7 Q: And did you take that photograph?

8 A: Yes, I did.

9 Q: Is it a fair and accurate representation of what you
10 actually saw?

11 A: Yes, ma'am.

12 MS. ANDREW: Your Honor, the state moves to introduce
13 Exhibit Number 26 into evidence and publish it to the jury.

14 THE COURT: Any objection.

15 MR. LONG: No, Your Honor.

16 THE COURT: All right. It's into evidence without
17 objection.

18 You may proceed.

19 STATE'S EXHIBIT NUMBER 26

20 ADMITTED INTO EVIDENCE

21 BY MS. ANDREW:

22 Q: Officer Williamson, as you were going through the taxi
23 cab, what else did you do?

24 A: I was looking for biological evidence, so I used an
25 ultraviolet light and filter goggles to see if any areas

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1 would fluoresce to see if there's any kind of biological
2 fluids in there, and I also seized a dashboard camera that was
3 attached to the windshield.

4 Q: I'm gonna show you what's been marked as State's Exhibit
5 Number 15, it's a bag; can you tell me what that is?

6 A: That's the bag that I placed the Commando dash camera
7 into for safekeeping.

8 Q: Okay. And before you ---

9 THE COURT: I'm sorry, Solicitor, did you say 15 or 5-0?

10 MS. ANDREW: 15, Your Honor.

11 THE COURT: 15, all right.

12 MS. ANDREW: 1-5.

13 THE COURT: All right. Thank you, ma'am.

14 BY MS. ANDREW:

15 Q: And before you placed the dashcam camera into that bag,
16 what did you do with it?

17 A: I attempted to make a copy of the contents of the memory
18 card that was in there, but I found that it had a proprietary
19 player associated with the camera, so nothing on my computer
20 would play the actual video inside the camera. So, I attached
21 the camera to a T.V. in our crime scene laboratory and hooked
22 up a video camera to shine at the T.V. and recorded it that
23 way to make an extra copy of it.

24 Q: I'm gonna show you what's been marked as State's Exhibit
25 Number 16.

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1 COURT REPORTER: 16?

2 MS. ANDREW: 16, 1-6, yes, ma'am.

3 BY MS. ANDREW:

4 Q: Can you tell me what -- what that is?

5 A: It's a CD-ROM containing that digital video from the
6 camera that I used the camera off the television in the
7 laboratory.

8 Q: That's the actual recording that you made?

9 A: That's the recording I made; yes, ma'am.

10 Q: And just so we're clear, what you did was just film the
11 T.V. playing the video?

12 A: Yes, ma'am.

13 Q: Okay. And can you tell me, the bag, is it open?

14 A: Yes, it's been unsealed.

15 Q: Do you have any idea -- do you know who opened that bag?

16 A: I did on the 31st of October while preparing for the
17 case. The Solicitor had asked me to make sure that the camera
18 had the correct adapters and power cords and what not that
19 we'd be able to play it here in court for you. So, I unsealed
20 it and looked at it and then resealed in the presence of our
21 property and evidence technician.

22 Q: Okay. And has that camera been removed today so that we
23 can hook it up to the T.V.?

24 A: Yes, ma'am, it's over there on the table by the
25 television.

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1 Q: It's over on the table over there.

2 A: Yes, ma'am.

3 MS. ANDREW: Your Honor, the state moves to introduce
4 Exhibit Number 15 into evidence, which is the dash camera?

5 THE COURT: All right. Any objection to that?

6 MR. LONG: No, Your Honor.

7 THE COURT: All right. So, it's into evidence without
8 objection?

9 STATE'S EXHIBIT NUMBER 15

10 ADMITTED INTO EVIDENCE

11 MS. ANDREW: Thank you, Your Honor. We also move to
12 introduce Exhibit Number 16 into evidence, which is the -- the
13 Officer Humes' recording that he made that day?

14 THE COURT: Any objection to that?

15 MR. LONG: No, Your Honor.

16 THE COURT: All right. So it's in evidence without
17 objection and you may publish.

18 MS. ANDREW: Thank you, Your Honor.

19 STATE'S EXHIBIT NUMBER 16

20 ADMITTED INTO EVIDENCE

21 MS. ANDREW: Court's indulgence for one moment.

22 THE COURT: Yes, ma'am.

23 MS. WALTER: Just set it up, Your Honor.

24 THE COURT: Yes, ma'am.

25 MS. ANDREW: Your Honor, could we have Crime Scene

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1 Williamson come down and just ---

2 THE COURT: Yes, ma'am. You're gonna need to make sure
3 if you're gonna ask him questions, he's has to stand next to a
4 microphone, either that one on your desk or that one over
5 there.

6 BY MS. ANDREW:

7 Q: Just for the record, is this the dash cam that was in
8 that bag?

9 A: It is.

10 THE COURT: All right. So again, you have to stand next
11 to a microphone; that's a microphone also, yes, sir.

12 A: Yes, ma'am; that's correct.

13 (REPORTER'S NOTE: State's Exhibit 16 published. Audio no
14 transcribed herein.)

15 MR. LONG: Your Honor, may we approach?

16 THE COURT: Yes. We need to stop that.

17 (REPORTER'S NOTE: Bench conference is held off the record in
18 the presence of but outside the hearing of the jury.)

19 THE COURT: Mr. Foreman, take your jury to the jury room
20 for a few minutes while they get that organized properly,
21 please. Thank you very much.

22 (REPORTER'S NOTE: Jury exits courtroom.)

23 MR. LONG: Your Honor?

24 THE COURT: Yes, sir, Mr. Long?

25 MR. LONG: I didn't intend to --- may I go to the

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1 restroom?

2 THE COURT: Yeah, we can take a short break. Now
3 regarding this particular video, this one was not the subject
4 of any motions and so I did not see this one.

5 MS. WALTER: This was -- it's being entered by
6 stipulation. I filed ---

7 THE COURT: No, I understand that. No, no, I understand
8 that. What I am saying is the other ones I did see, so I knew
9 what was on those. This one, if there's gonna be any issue,
10 I've not had the opportunity to view this one. So, if there's
11 gonna be an issue or something come up, I'm not gonna know
12 what you're talking about unless you move it back in some way.

13 MS. WALTER: We can move it back.

14 MR. LONG: And, Your Honor, by stipulation, I stipulated
15 to the video that I was given through discovery.

16 THE COURT: Well, I'm assuming it's gonna be this one, so
17 if you see -- if otherwise it's not, then I guess you'll raise
18 it to the Court's attention. All right. So y'all work on
19 that and make sure it's operating and then let us know.

20 Thank you.

21 MS. ANDREW: Thank you, Your Honor.

22 (RECESS.)

23 *****OFF THE RECORD*****

24 (On the Record.)

25 THE COURT: All right, the state ready to proceed?

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1 MS. ANDREW: Yes, Your Honor.

2 THE COURT: Defense?

3 MR. LONG: Yes, sir, Your Honor.

4 THE COURT: Ask the jury to come in, please.

5 (REPORTER'S NOTE: Jury enters courtroom.)

6 THE COURT: Go ahead.

7 MS. ANDREW: Thank you, Your Honor.

8 BY MS. ANDREW:

9 Q: We're about to play what's been marked as State's Exhibit
10 Number 15. It's the dashcam video from the defendant's cab
11 that Officer Williamson played. Right now we're looking at a
12 picture of the screen and there appear to be two different
13 scenes. Can you tell me what those are and why it's like
14 that?

15 A: Yes, ma'am. The camera is equipped with two lenses. One
16 faces forward; one faces backwards. So the one facing
17 backwards will show the driver and the interior of the cab and
18 the one facing forward will show a view out the windshield of
19 where the cab's going.

20 Q: Can you read the date at the bottom of the screen for us
21 and the time?

22 A: Yes, ma'am, it's June 22nd, 2015, at 6 minutes after 1:00
23 in the morning.

24 Q: Okay. And do you mind playing this for us.

25 (REPORTER'S NOTE: State's Exhibit 15 published. Audio not

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1 transcribed herein.)

2 BY MS. ANDREW:

3 Q: Okay. Officer, you've reviewed this before; do you know
4 what just happened, why it stopped like that?

5 A: I'm sorry, what was the question?

6 Q: Do you know why the video stopped at that point?

7 A: To my knowledge, it records in small increments and then
8 it'll go into the next increment so you can pick out different
9 portions of the video instead of having to record the entire
10 thing.

11 Q: And did you see the defendant do anything to cause the
12 video to stop?

13 A: He reached up and touched the camera and there is a pause
14 or a stop button on it. I believe he might've -- might've hit
15 that when he reached up to the camera.

16 MR. LONG: Objection, Your Honor, speculation.

17 THE COURT: Sustained.

18 MR. LONG: I'd ask that that be stricken from the record.

19 THE COURT: The jury will disregard that statement.

20 BY MS. ANDREW:

21 Q: Can you help me play it again, please?

22 A: Yes, ma'am.

23 Q: And before you start it, can you tell me, can you read
24 the date and time at this point, by that microphone right
25 there?

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1 A: Yes, ma'am. The time and date shown on the -- on the
2 screen right now will be June 22nd, 2015 at 1:39 in the
3 morning.

4 A: Thank you.

5 (REPORTER'S NOTE: State's Exhibit 15 published. Audio not
6 transcribed herein.)

7 BY MS. ANDREW:

8 Q: Thank you. We just reviewed the dashcam video. Have
9 there been any alterations or deletions to that video since
10 you took out the cab and played it today?

11 A: No, ma'am; it's the same.

12 Q: Your Honor, I have no further questions.

13 Please answer any questions Mr. Long has.

14 THE COURT: Cross examination?

15 CROSS EXAMINATION OF SCOTT WILLIAMSON BY MR. LONG:

16 Q: Officer Williamson, the, the video showed that Ms.

17 J.K. was in a fight with her boyfriend when she got in the
18 cab, right?

19 A: I didn't see that part, no, sir.

20 Q: You didn't see it?

21 A: No.

22 Q: Well, they got back into the cab after going to the bar;
23 are you aware they went to the bar together?

24 A: Yes, sir.

25 Q: Okay. And by all appearance, she voluntarily got into

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1 the cab, correct?

2 A: Yes, sir.

3 Q: And you heard them say or tell each other I love you, I
4 love you; you heard that, right?

5 A: Yes, sir.

6 Q: Did you hear her say I'm having so much fun, I want to do
7 it again; did you hear her say that?

8 A: I believe so, yes, sir.

9 Q: And Ms. J.K. , she was kissing on Mr. Dhimo, his neck,
10 his lips, his arms; you saw that, correct?

11 A: Yes, sir.

12 Q: And she was licking his face; did you see that?

13 A: Yes, sir.

14 Q: And she was caressing his body; did you see that?

15 A: Yes, sir.

16 Q: Scratching him with her fingernails?

17 A: Yes, sir.

18 Q: In apparently a loving manner; did you see that?

19 A: Yes, sir.

20 Q: And she was caressing his body, did you see that?

21 A: Yes, sir.

22 Q: At one point in she even said she was gonna punch him in
23 his crotch; did you hear that?

24 A: Yes, sir.

25 Q: And she apparently punched him in the crotch?

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1 A: It appeared that way, sir.

2 Q: And it appeared to be playfully; wouldn't you agree with
3 that?

4 A: Yes, sir.

5 Q: And she rubbed his crotch for several minutes; you agree
6 with that?

7 A: Yes, sir.

8 Q: Now these -- the charges that he has, they don't stem
9 from what happened in the cab, correct?

10 A: I don't have any idea -- I don't have any way of knowing
11 what the charge is -- the probable cause was for the charges,
12 sir.

13 Q: What appeared -- the behavior in the cab appeared to be
14 completely consensual, wouldn't you agree to that?

15 A: I appeared to be, yes, sir.

16 MS. ANDREW: Objection, Your Honor.

17 THE COURT: I'm gonna allow it.

18 BY MR. LONG:

19 Q: And she said she wanted to go to the beach, right, in the
20 video?

21 A: The part I recall, she wanted to go to 76th North, which
22 I think is where she said he lived or where she originally
23 asked him to take her.

24 Q: You didn't hear her say she wanted to go to the beach?

25 A: I don't recall that part, no, sir.

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- 1 Q: And she told Mr. Dhimo to stop so that she could urinate;
2 did you see that?
- 3 A: Yes, sir.
- 4 Q: And she did get out of the vehicle and apparently
5 urinate, wouldn't you agree?
- 6 A: I don't know what she did off camera, but she did get out
7 of the vehicle.
- 8 Q: Okay. And she said she wanted to urinate?
- 9 A: Yes, sir.
- 10 Q: We don't know what happened outside of that car, right?
- 11 A: Correct, yes, sir.
- 12 Q: And so she was wearing bikini bottoms, correct?
- 13 A: I don't know, sir.
- 14 Q: And so we don't know how she urinated, right?
- 15 A: No, I don't have any idea, no, sir.
- 16 Q: She could've pulled off to the side or she could' pulled
17 them off; we don't know, right?
- 18 A: I don't have any idea, no, sir.
- 19 Q: It would call for us to speculate?
- 20 A: Yes, sir.
- 21 Q: And she drove to the beach, correct?
- 22 A: Towards the end, yes, sir.
- 23 Q: Okay. And she got out and walked onto the beach,
24 correct?
- 25 A: The part at the end, it appeared that she passed out

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SCOTT WILLIAMSON - REDIRECT BY ANDREW

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1 unconscious in the driver's seat and he had to come around and
2 assist her out of the cab at the very end.

3 Q: You saw her get out of the cab?

4 A: It was dark in the cab; I didn't see that part, no, sir.

5 Q: You couldn't see it?

6 A: No.

7 Q: All right. Court's indulgence?

8 That's all the questions I have. Thank you.

9 THE COURT: Redirect?

10 MS. ANDREW: Briefly, Your Honor.

11 REDIRECT EXAMINATION OF SCOTT WILLIAMSON BY MS. ANDREW:

12 Q: Officer Williamson, we all saw the video, as Mr. Long
13 stated, we couldn't see what happened not on the video,
14 correct?

15 A: Correct.

16 Q: But we can hear what happened and we did hear her say,
17 stop it, get away from me, I'm pissing or something like that?

18 A: Yes, ma'am, I did hear her say that, yes.

19 MS. ANDREW: Thank you, Your Honor. I have no further
20 questions.

21 THE COURT: Anything on that questioning?

22 MR. LONG: No, Your Honor.

23 THE COURT: Do you wish the witness to be excused?

24 MS. ANDREW: Yes, Your Honor.

25 THE COURT: Any objection?

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1 MR. LONG: No, Your Honor.

2 THE COURT: All right, sir, you're released from your
3 subpoena, you may go back to your regular duties. Thank you.

4 MR. WILLIAMSON: Thank you, sir.

5 THE COURT: Y'all come and talk to me for a second.

6 (REPORTER'S NOTE: Bench conference is held off the record in
7 the presence of but outside the hearing of the jury.)

8 THE COURT: All right. Very good. All right. Call that
9 one witness then.

10 MS. ANDREW: Your Honor, the state calls Teresa George.

11 THE COURT: All right, ma'am, if you'd come all the way
12 around please and come right up here to where the clerk's
13 representative is, please. Thank you. Right up here, please.
14 Thank you, ma'am.

15 CLERK: Please raise your right hand and place your left
16 hand on the Bible.

17 TERESA GEORGE, HAVING BEEN DULY SWORN

18 TESTIFIES AS FOLLOWS:

19 MS. GEORGE: My name is Teresa George, G-E-O-R-G-E.

20 THE COURT: Could you scoot up just a little bit closer
21 to the microphone?

22 MS. GEORGE: Yes, sir.

23 THE COURT: There you go. Very good.

24 Go ahead, Solicitor.

25 DIRECT EXAMINATION OF TERESA GEORGE BY MS. ANDREW:

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TERESA GEORGE - DIRECT BY ANDREW

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1 Q: Ms. George, what is your occupation?

2 A: I'm a Registered Nurse.

3 Q: And where are you currently employed?

4 A: Currently, I'm employed at Bristol Regional Medical
5 Center in Bristol, Tennessee.

6 Q: Do you recall where you were employed on the night -- on
7 the day of June 22nd, 2015?

8 A: Yes, ma'am, I was an emergency room nurse at Grand Strand
9 Regional Medical Center.

10 Q: Okay. And what did your duties as an emergency nurse at
11 Grand Strand Regional Medical Center entail?

12 A: Providing nursing care to patients that come to the
13 hospital to the emergency room.

14 Q: Okay. And did you have occasion to become involved with
15 the defendant in this case, Mr. Alqi Dhimo?

16 A: I did.

17 Q: And can you tell me how that involvement came about?

18 A: He was brought in by the police for routine evidence
19 collection for what we call a suspect kit.

20 Q: Okay. And can you tell me what a suspect kit is?

21 A: It's a way that you gather known evidence of the --
22 somebody who's been -- could potentially be charged with a
23 crime, perhaps like a DWI or, in this case, a sexual assault.

24 Q: Okay. And what kind of evidence do you collect as part
25 of those kits?

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TERESA GEORGE - DIRECT BY ANDREW

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1 A: Typically, it's blood, it's saliva.

2 Q: And in this case, did you collect evidence from the
3 defendant, Mr. Alqi Dhimo?

4 A: I did.

5 Q: And do you recall what you collected?

6 A: I know I collected a blood sample and swabs of his mouth,
7 but I can't remember anything more than that.

8 Q: Okay. And the blood sample, how would you collect that
9 sample from him?

10 A: From him, I would identify him as being the patient and
11 then I would gather my supplies, so in the kit comes a blood
12 tube and then you get a needle and a tourniquet, so you would
13 tie the tourniquet on the patient's arm and then you find the,
14 you know, find the vessel, clean it and then draw your blood
15 and label it and then return it back to the kit.

16 Q: Okay. And did you do that in this case?

17 A: I did, yes, ma'am.

18 Q: And after you drew the blood into a vial, what did you do
19 with that vial of blood?

20 A: We put it in the kit and then I held onto it until the
21 officer was -- until the stuff was returned back to it and
22 then signed it over to the officer.

23 Q: Okay. So, what did you do with the actual items, did you
24 place it inside the suspect kit?

25 A: Yes, ma'am.

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1 MS. ANDREW: May I approach the witness, Your Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. ANDREW:

4 Q: I'm gonna show you what's been marked as State's Exhibit
5 Number 13?

6 A: Thank you.

7 Q: Can you tell me what that is?

8 A: This is the -- part of the suspect kit, one of the
9 envelopes that's in it.

10 Q: Okay. Can you -- can you see your signature on that
11 suspect kit?

12 A: Yes, ma'am.

13 Q: Okay. Do you know what's inside there?

14 A: I don't know for sure -- everything that's in here, no.

15 Q: Okay.

16 A: It feels like perhaps the buccal swab, which is the oral
17 swab, but I don't feel a blood tube.

18 MS. ANDREW: Your Honor, I'm gonna have her open this.

19 THE COURT: All right. Very good.

20 MS. ANDREW: May I hand her the knife?

21 THE COURT: Yes, ma'am.

22 BY MS. ANDREW:

23 Q: Tell me what's inside.

24 A: Open the envelope?

25 Q: Yes, please.

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1 A: And it's okay for me to touch it?

2 Q: You can touch it. Would you like gloves? I can give you
3 gloves?

4 A: No, it's okay. As long as it's still in the envelope,
5 I'm okay. Thank you. Okay. I can open the inside one as
6 well?

7 Q: Yes.

8 A: Okay. So, these are the ---

9 THE COURT: Could you move behind the microphone, please?

10 A: Oh, I'm sorry. Yes, sir.

11 THE COURT: All right.

12 A: So, these are hair samples that were collected, but at
13 the time, the -- he didn't have any hair for me to collect, so
14 that's what's in here.

15 Q: Why was that?

16 A: It wasn't present. I'm not sure if he had shaved or just
17 didn't have any hair. But I have charted here that there's no
18 hair present from the pubic region or from his head.

19 Q: So, you were trying to collect hair from his pubic region
20 ---

21 A: Yeah.

22 Q: --- and you didn't find any there.

23 A: There wasn't any there.

24 Q: Is that all that kit has?

25 A: Yes, ma'am.

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1 MS. ANDREW: Court's indulgence one moment?

2 THE COURT: Yes, Ma'am.

3 MS. ANDREW: Your Honor, the state moves to enter Exhibit
4 Number 13 into evidence.

5 THE COURT: Any objection.

6 MR. LONG: If I can look at it just one second.

7 THE COURT: Yes, sir.

8 MR. LONG: No objection, Your Honor.

9 THE COURT: All right. It's in evidence without
10 objection.

11 STATE'S EXHIBIT NUMBER 13

12 ADMITTED INTO EVIDENCE

13 MS. ANDREW: Thank you, Your Honor.

14 BY MS. ANDREW:

15 Q: And you said you also took a blood sample from Mr. Dhimo?

16 A: Yes, ma'am.

17 Q: Your Honor, I have no further questions for this witness.
18 Please answer any questions Mr. Long has.

19 THE COURT: All right. Cross examination?

20 MR. LONG: No questions, Your Honor.

21 THE COURT: Do you wish the witness to be excused?

22 MS. ANDREW: Your Honor, we ask to have this witness
23 retained under subpoena at this time.

24 THE COURT: All right, ma'am, you may step down, but
25 you're not released from your subpoena just yet.

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BY THE COURT

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1 A: Okay. Thank you, sir.

2 THE COURT: Thank you, ma'am.

3 MS. ANDREW: Thank you, Your Honor.

4 BY THE COURT:

5 THE COURT: All right, ladies and gentlemen, we're gonna
6 break for lunch at this point in time. I'm just gonna remind
7 you obviously don't talk about the case, don't allow anybody
8 to talk to you about it. We'll -- I want you back such that
9 you can come into the courtroom at 2 o'clock. So, whatever
10 time the bailiffs let you know that they need you back, please
11 follow that, but we'll resume the trial at 2 o'clock. All
12 right?

13 Thank you very much.

14 (REPORTER'S NOTE: Jury exits courtroom.)

15 THE COURT: Anything further from the state at this point
16 in time?

17 MS. ANDREW: Nothing right now, Your Honor.

18 THE COURT: Mr. Long?

19 MR. LONG: Your Honor, Mrs. Dhimo provided the passport
20 for Mr. Dhimo.

21 THE COURT: All right, sir. So, you'll keep that in your
22 custody and control until the Court gives you directions
23 otherwise?

24 MR. LONG: Yes, sir, and if I may ask, talking with the
25 bailiffs, it's required before -- he needs to be released from

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BY THE COURT

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1 J. Reuben.

2 THE COURT: So they need to take him back and take him to
3 J. Reuben to release him then?

4 MR. LONG: Yes, sir, and I would like for it to be done
5 now, if that would be appropriate?

6 THE COURT: I don't have a problem. Can that be
7 accomplished, please?

8 DEPUTY: Yes, sir, but they need a release from the Court
9 stating that he was released from here.

10 THE COURT: All right.

11 MS. WALTER: Can I just ask what time would he be able to
12 be back here, because again with all of our witnesses from out
13 of town, I just -- I think Your Honor said he wanted to start
14 right at 2:00.

15 THE COURT: So, let's make sure -- and I guess I need to
16 ask you that. If we take him back and release him, will it be
17 such that he would have time to get back to the courtroom by 2
18 o'clock?

19 DEPUTY: I would bring him back myself.

20 THE COURT: All right. Very good. All right. Y'all, I
21 don't have -- I mean there is no form. We got -- is there a
22 Form 4 somewhere; do you have a blank Form 4 somewhere,
23 Solicitor? Solicitor, do y'all have a blank Form 4 anywhere?

24 MS. ANDREW: I can go print you one, Your Honor.

25 THE COURT: All right. If you can just do that and we'll

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BY THE COURT

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1 just put on there that the defendant's released back on bond.

2 MS. ANDREW: Okay.

3 THE COURT: Okay. All right. We'll be at ease then
4 until 2 o'clock. So as soon as they do that, I'll sign it.

5 DEPUTY: Yes, sir.

6 THE COURT: All right. Thank you.

7 (RECESS.)

8 *****OFF THE RECORD*****

9 (On the Record.)

10 BY THE COURT:

11 THE COURT: All right, Solicitor, you indicated there was
12 some matter brought to your attention about Exhibit 13?

13 MS. ANDREW: Yes, Your Honor. Exhibit 13 is a suspect
14 kit and when we open that there are multiple components to
15 that. There are hair samples, there's a blood standard and
16 there's another envelope. We were just talking about labeling
17 it 13A, B, C so that each of those individual components can
18 be identified. Just to suggest to the Court.

19 THE COURT: All right. Very good. All right. So, if
20 you want to go ahead and get those labeled and then we'll call
21 the jury in and proceed.

22 Just so you know, it's my intention to stop at 5 o'clock
23 or as close thereto as possible today. If we need to work
24 late, we'll do it tomorrow.

25 MS. WALTER: I have all my SLED people ready and I'm

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BY THE COURT

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1 gonna try and get through them.

2 THE COURT: Hopefully, we'll get them all done by that
3 time.

4 MS. ANDREW: Would you like me to present these to the
5 witness, Your Honor?

6 THE COURT: Yeah, you're gonna have to ---

7 MS. ANDREW: Get her to identify each one?

8 THE COURT: Yeah, you're gonna have to ---

9 MS. ANDREW: So we'll say this one is A, 13A.

10 MS. WALTER: She's probably gonna need to know what it
11 is.

12 MS. ANDREW: That's the hair. 13B is the envelope the
13 blood vial was in. It all came out of here.

14 MR. LONG: She said there was no hair.

15 MS. WALTER: No, she said there was hair or that maybe
16 ---

17 MS. ANDREW: Yeah, there's nothing in here.

18 THE COURT: There's nothing in there. She attempted and
19 got nothing.

20 MS. ANDREW: It says no hair present, but these are the
21 envelopes.

22 MR. LONG: Okay.

23 MS. ANDREW: Okay. And this is B, this is the envelope
24 the blood's in but it was stored separated in refrigeration,
25 so we had to go get it.

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BY THE COURT

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1 THE COURT: All right.

2 MS. ANDREW: And this is the blood standard which she
3 won't ---

4 THE COURT: All right. So you've got all those marked
5 and so let's bring the jury in and then you can recall the
6 witness and proceed after that.

7 MS. ANDREW: Thank you, Your Honor.

8 THE COURT: Is that -- that photograph is in evidence,
9 right?

10 MS. WALTER: Yes, Your Honor.

11 THE COURT: Okay. Why don't you bring that over to where
12 the court reporter is since it's already in evidence she
13 should be the one controlling that document.

14 MS. WALTER: Okay.

15 THE COURT: You can continue to use it, but it ought to
16 be in her custody and control.

17 MS. WALTER: Your Honor, the one thing that I discussed
18 with Ms. Dixie is the blood from the defendant and the blood
19 and the urine from the victim are kept -- to be kept cold.
20 So, Ms. Dixie said it would be okay if I kept it in this
21 because there's cold packs in there.

22 THE COURT: That's fine. That's fine. Just ---

23 MS. WALTER: I just wanted to let you know.

24 THE COURT: That's fine. Preserve it however it needs to
25 be preserved.

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TERESA GEORGE - DIRECT BY ANDREW

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1 (REPORTER'S NOTE: Jury enters courtroom.)

2 THE COURT: All right, Solicitor, you may proceed now.

3 MS. ANDREW: Your Honor, the state recalls Teresa George.

4 THE COURT: All right, Ms. George, if you'd come back
5 around please, ma'am, and please remember you remain under
6 oath. Just come back and have a seat and just remember to
7 kind of position yourself behind the microphone so we can hear
8 you. Thank you, ma'am.

9 DIRECT EXAMINATION OF TERESA GEORGE BY MS. ANDREW:

10 Q: You testified right before the break for lunch and stated
11 that you were an emergency room nurse at Grand Strand
12 Regional?

13 A: That is correct, yes.

14 Q: At that time, I showed you what's been marked and entered
15 as State's Exhibit Number 13, which you opened?

16 A: Yes, ma'am.

17 Q: I'm gonna hand it back to you?

18 A: Okay. Thank you.

19 Q: Okay. Do you mind taking out the individual components?

20 A: Absolutely.

21 Q: The first one, this one is labeled State's Exhibit Number
22 13A?

23 A: Yes, ma'am.

24 Q: Can you tell me what that is again?

25 A: This is an envelope for storing the hair combings and

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TERESA GEORGE - DIRECT BY ANDREW

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1 hair samples.

2 Q: Okay.

3 A: So, there's hair that's collected from the head and from
4 the pubic area that, neither that I was able to collect
5 because the suspect did not have any hair.

6 Q: Okay. So, those are just the envelopes that go into the
7 suspect kit?

8 A: They're empty, yes, ma'am.

9 Q: Okay. Okay. And if you'll look at what's marked as
10 State's Exhibit 13B?

11 A: Yes.

12 Q: I think that's C.

13 A: Yes.

14 Q: Okay. And can you identify that?

15 A: It's an envelope that is where the blood sample would've
16 been put in, the test tube itself.

17 Q: Okay. Is that the envelope that you put the blood sample
18 in and then put into the test kit?

19 A: Yes, ma'am, and here is my initials where I closed the
20 envelope.

21 Q: Okay. And is there a blood sample in there?

22 A: There is not. I think it has been stored in the
23 refrigerator.

24 Q: I'm gonna show you what has been marked as State's
25 Exhibit Number 42.

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TERESA GEORGE - DIRECT BY ANDREW

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1 A: Thank you.

2 Q: And can you identify what that is?

3 A: This is the blood tube that I collected on the day of the
4 -- that he came to the ER.

5 Q: Okay. Is your name on the outside of that envelope?

6 A: Yes, ma'am.

7 Q: Okay. And is that the same blood sample that you
8 collected that day?

9 A: I can't see the actual tube, but the outside label has my
10 label on it, so, yes.

11 Q: Okay. We're not gonna open it ---

12 A: Okay.

13 Q: --- because of what it is?

14 A: Okay. But, yes, the outside label clearly is my
15 signature and the time and the date I collected it.

16 Q: Okay. Thank you.

17 A: Yes, ma'am.

18 MS. ANDREW: Your Honor, the state moves to enter Exhibit
19 Number 42 into evidence.

20 THE COURT: Any objection?

21 MR. LONG: No, Your Honor.

22 THE COURT: All right. So it's in evidence without
23 objection.

24 STATE'S EXHIBIT NUMBER 42

25 ADMITTED INTO EVIDENCE

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TERESA GEORGE - DIRECT BY ANDREW

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1 THE COURT: You may proceed.

2 MS. ANDREW: Thank you, Your Honor.

3 BY MS. ANDREW:

4 Q: I'm gonna show you what's also marked as Exhibit 13C, I'm
5 not sure if you'll know what this is.

6 A: I don't and it doesn't have my name on it, so I'm not
7 sure.

8 Q: That's fine. Okay. Okay.

9 THE COURT: All right. And I'm sorry, so we're clear, so
10 changing it then that State's 13A and B would be in evidence
11 without objection and then C for a later time if necessary?

12 MS. ANDREW: That's correct, Your Honor.

13 THE COURT: Any problem with that?

14 MR. LONG: No, Your Honor.

15 THE COURT: All right. Very good.

16 STATE'S EXHIBITS NUMBERS 13A AND 13B

17 ADMITTED INTO EVIDENCE

18 STATE'S EXHIBIT NUMBER 13C

19 MARKED FOR IDENTIFICATION

20 THE COURT: Thank you.

21 MS. ANDREW: I have no further questions of this witness.
22 Please answer any questions Mr. Long has.

23 MR. LONG: I have no questions -- oh, excuse me.

24 A: Yes, sir.

25 CROSS EXAMINATION OF TERESA GEORGE BY MR. LONG:

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TERESA GEORGE - CROSS BY LONG

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1 Q: Can I take a look at that?

2 A: Absolutely, what would you like to ---

3 Q: Just the yellow one you said you couldn't identify.

4 A: Yes, this I'm sure is from where the lab took the sample
5 and did a blood card, but it's nothing that I collected, yes,
6 sir.

7 Q: That's all the questions I have.

8 THE COURT: All right. Very good. If you just want to
9 leave those items there, ma'am.

10 And with that, do you wish the witness to be excused?

11 MS. ANDREW: We do, Your Honor.

12 THE COURT: Any objection?

13 MR. LONG: No, Your Honor.

14 THE COURT: All right. So, at this point in time, you're
15 released from your subpoena and you may go back to your
16 regular activities.

17 MS. GEORGE: Thank you, sir.

18 THE COURT: Thank you, ma'am.

19 All right, Solicitor, who's your next witness please,
20 ma'am?

21 MS. WALTER: Emily Hennig-Ryan.

22 THE COURT: Okay. Just come all the way around up front,
23 ma'am, to right here where the clerk's representative is,
24 please. Thank you.

25 CLERK: Please raise your right hand and place your left

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EMILY HENNIG-RYAN - DIRECT BY WALTER

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1 hand on the Bible.

2 EMILY HENNIG-RYAN, HAVING BEEN DULY
3 SWORN TESTIFIES AS FOLLOWS:

4 CLERK: My name is Emily Hennig-Ryan. Last name, H-E-N-
5 N-I-G - R-Y-A-N.

6 THE COURT: Go ahead, Solicitor.

7 MS. WALTER: Thank you.

8 DIRECT EXAMINATION OF EMILY HENNIG-RYAN BY MS. WALTER:

9 Q: Good afternoon, Ms. Hennig-Ryan, how are you?

10 A: Good, how are you?

11 Q: I'm fine. And just so that we're clear, have you ever
12 testified before?

13 A: No.

14 Q: Okay. What do you do for a living?

15 A: I am a registered nurse.

16 Q: Were you a registered nurse back in June of 2015?

17 A: Correct.

18 Q: Directing your attention to specifically to June 22nd of
19 2015, were you working as a nurse?

20 A: Yes.

21 Q: Where were you working?

22 A: Grand Strand Medical Center.

23 Q: Were you on duty that day in fact?

24 A: Yes, ma'am.

25 Q: Do you recall what shift you were working?

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1 A: I work day shift 7:00 A to 7:00 P.

2 Q: And what were your duties there?

3 A: As an emergency room nurse?

4 Q: Yes.

5 A: Just to take care of the patients no matter what they
6 come in for.

7 Q: Did you have an opportunity on that day to treat a Ms.

8 J.K. ?

9 A: Yes, ma'am.

10 MS. WALTER: And actually, Your Honor, if I may approach
11 with 37?

12 THE COURT: Yes, ma'am, certainly.

13 BY MS. WALTER:

14 Q: Is that Ms. J.K. ?

15 A: Yes, ma'am.

16 Q: Okay. Did you, without telling us anything that she
17 said, did you have a conversation with Ms. J.K. before you
18 treated her?

19 A: Yes.

20 Q: Nothing that she said. Did you explain to her what
21 having a rape kit done entails?

22 A: Correct. I explained it in great detail and kinda let
23 her know what would happen and how long it would take.

24 Q: And just so we know, are you allowed to perform a rape
25 kit on someone without their consent?

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1 A: No.

2 Q: Now, can you tell the jury what is involved in taking a
3 rape kit?

4 A: Sure. So, we have a standardized rape kit that comes
5 from either the city or the county that they bring in and
6 they're sealed. Once they -- we need to complete a rape kit,
7 we open it up once you're in the patient's room. Then you're
8 one-to-one with that patient so you never leave their bedside;
9 you are with them the whole time. If you need something, we
10 have portable phones and we can call out and have them bring
11 us something, but we don't ever leave that patient. So what
12 we do is we'll open the kit. The first thing, it has
13 directions and it also has paperwork in it. We go through a
14 questionnaire and ask the patient all about whatever is on the
15 questionnaire and write down their answers. Then we start the
16 evidence collection. So, the first thing we do is we put a
17 debris paper down on top of a sheet and have the patient
18 undress so we can collect their clothing and also any debris
19 that might have fallen off of it. Then we'll go through and
20 depending on what we need to collect, we will collect. So,
21 for example, we'll collect fingernail scrapings, we also
22 always send a buccal swab. It's a swab inside the patient's
23 mouth that gets their DNA. I was in there to supervise the
24 physician that did the pelvic exam and collect the vaginal
25 swab.

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1 Q: And when you say a pelvic exam, probably some of our
2 jurors have not had one I would think, can you describe what's
3 involved in a pelvic exam?

4 A: For a rape kit, we don't use any type of a lubricant, we
5 use a water soluble and place it on top of a pelvic speculum,
6 which goes into the vagina and opens it up and allows them to
7 get any specimen that might be in the vagina, taken out to put
8 on a slide.

9 Q: And you were present when the doctor did that?

10 A: Yes, ma'am.

11 Q: And I think, but correct me if I'm wrong, did you say you
12 do fingernail scrapings?

13 A: We do.

14 Q: Okay. Did you do fingernail scrapings in this case?

15 A: Yes, ma'am.

16 Q: And when you do the fingernail scrapings, are they -- how
17 do you label them, how do you collect them and label them?

18 A: Each specimen that we're collecting has its own little
19 envelope, and inside those envelopes, they have for a starter,
20 fingernail scrapings for example. There will be a little
21 sheet with a wooden stick that you scrape underneath their
22 fingernails and it collects right into there and then we fold
23 it up and put it back into whatever envelope it belongs in.

24 Q: Do you -- are they labeled right and left for the
25 different hands?

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1 A: I'm not sure.

2 Q: I'll show you the kit in just a moment.

3 A: Okay.

4 Q: So, you did fingernail scrapings, a buccal swab and the
5 physician did a pelvic exam. Was there any other medical
6 procedure done on the victim?

7 A: We drew blood on her, also give her, I don't know if this
8 is really what you're asking, but we give her medication
9 prophylactically, just in case to prevent pregnancy, anything
10 for gonorrhea, chlamydia, anything like that, we'll give her
11 medication for.

12 Q: I'm showing you -- and I've shown it to Mr. Long, but ---
13 THE COURT: All right.

14 Q: --- Your Honor, if I may approach, I'm showing what's
15 been marked as State's Exhibit 14. If you could just look at
16 that and tell me if you recognize that?

17 A: This is my kit. I can tell by my handwriting.

18 Q: Okay. And in fact, is your name ---

19 A: My name would be on the back because we have a chain of
20 custody form on the back and my maiden name is on there.

21 Q: Okay. And if you can open that up and just tell me what
22 is in there?

23 A: Is this just one piece of paper? This is underwear. She
24 had a swimsuit on that day, so it's probably her swimsuit
25 bottom. This little container contains slides. When we would

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1 do like her buccal scraping or her pelvic swab, we put it on a
2 slide and let it air dry before putting it back in the
3 container for evidence.

4 Q: Would it help if we opened that up?

5 A: Yes, ma'am.

6 MS. WALTER: May I approach, Your Honor?

7 THE COURT: Yes, ma'am.

8 A: Thank you. These other two containers weren't from me;
9 just this one will be what I labeled.

10 BY MS. WALTER:

11 Q: Okay. So I'm gonna do this so that we're -- for the
12 record, if you could identify what's ---

13 A: It's for the vaginal smear.

14 MS. WALTER: Can I mark this 14A, Ms. Dixie?

15 MR. LONG: Your Honor?

16 THE COURT: Yes, sir.

17 MR. LONG: Is that 14A, is that what she can testify to
18 or what she cannot testify to?

19 MS. WALTER: She can. Her name is on here.

20 MR. LONG: Okay.

21 STATE'S EXHIBIT NUMBER 14A

22 MARKED FOR IDENTIFICATION

23 THE COURT: Let's -- okay. Let's just cover that again
24 with the witness since the question came up.

25 A: The vaginal smear is what I watched the doctor take. We

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1 let it air dry and then put it in this container for evidence
2 to go with the police.

3 BY MS. WALTER:

4 Q: Is there a label on 14A?

5 A: Yes, ma'am, with my handwriting and date and time.

6 Q: So, you completed that label?

7 A: Yes, ma'am.

8 Q: Did you ever lose sight of this sample?

9 A: No.

10 Q: Until I assume you gave it to the police?

11 A: Correct. So, next that's in here is that debris sheet
12 that I talked about.

13 Q: Let me just have you wait for one second.

14 A: Oh, I'm sorry.

15 Q: The court reporter has to multi-task here. And if I can
16 have this marked 14B and what is this?

17 STATE'S EXHIBIT NUMBER 14B

18 MARKED FOR IDENTIFICATION

19 A: That's the debris sheet that she stands on when she's
20 taking her clothes off.

21 Q: And is there a label on this?

22 A: Yes, with my handwriting and signature and date and time.

23 Q: And again, is this something that did not leave your
24 sight?

25 A: Correct.

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1 Q: It was turned over to the police?

2 A: Yes, ma'am.

3 COURT REPORTER: 14B.

4 MS. WALTER: Thank you.

5 BY MS. WALTER:

6 Q: Okay.

7 A: Good. And then the final thing is an envelope that we
8 put all the miscellaneous suspected, any type of evidence we
9 take goes into this envelope.

10 Q: And what is -- so does that have -- let's do it this way.
11 I'm gonna mark this as 14C and you would describe this as an
12 envelope of miscellaneous evidence?

13 A: Yes, ma'am.

14 STATE'S EXHIBIT NUMBER 14C

15 MARKED FOR IDENTIFICATION

16 Q: And do you recognize this envelope as something that you
17 ---

18 A: Correct, because whenever we seal anything, we put a red
19 evidence label on it and we have to initial it.

20 Q: And you see your initials?

21 A: Yes, ma'am.

22 Q: Okay. Now, I'm handing you what's inside of 14C.

23 Des Your Honor want this marked as sub-items?

24 THE COURT: Unless they're gonna go back in the -- how
25 many are there?

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- 1 A: Five that were collected.
- 2 MS. WALTER: Five that were collected; they wouldn't go
3 back to the jury.
- 4 THE COURT: Okay. All right. If they all got to go back
5 into 14C then I don't have a problem.
- 6 Mr. Long?
- 7 MR. LONG: No, sir.
- 8 THE COURT: All right. Very good.
- 9 BY MS. WALTER:
- 10 Q: Okay. So, if you can just describe what is contained in
11 14C?
- 12 A: Okay. The first one is fingernail scrapings.
- 13 Q: And for the record, is this your handwriting on the
14 front?
- 15 A: Yes, ma'am.
- 16 Q: Okay. And the next one?
- 17 A: The next one says miscellaneous collections and also in
18 my handwriting it says hand swabs.
- 19 Q: What does that mean, hand swabs?
- 20 A: It was the police request to swab her hands.
- 21 Q: So just as what -- you explained how you swabbed the
22 inside of her mouth and you did the same with her hands?
- 23 A: Correct.
- 24 Q: Okay.
- 25 A: The next one is the buccal swab for her DNA.

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- 1 Q: And actually what I can do for the record, on the
2 fingernail scrapings, is there another label on that like 1.3?
3 A: Yes, ma'am.
4 Q: And on the hand swabs, 1.5?
5 A: Yes.
6 Q: And then the buccal swab is 1.6?
7 A: Yes, ma'am. The next one is her pubic hair combing. We
8 put -- you want me to tell you what we do?
9 Q: Yes, please.
10 A: Okay. We put a piece of paper that comes in the kit
11 underneath her and then we use the comb that's provided in the
12 kit to scrape her pubic hair.
13 Q: And that has 1.4 on it?
14 A: Yes, ma'am.
15 Q: And this is your handwriting; you filled that out?
16 A: Yes.
17 Q: Okay.
18 A: The last one is the vaginal swab.
19 Q: And that has 1.2 on it?
20 A: Yep.
21 Q: And that's your writing?
22 A: Yes, ma'am.
23 Q: Now there are some empty envelopes there. Can you tell
24 me what those are?
25 A: I put those back in the kit; they were not collected and

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1 they're marked in my handwriting that the specimen was not
2 collected.

3 Q: Okay. So, once you -- and then these items you cannot
4 testify to?

5 A: No.

6 Q: So, once you've collected all of this evidence, what do
7 you do with it?

8 A: So, once I collect all of the evidence, then we seal the
9 box back up. These little red labels go on the box, once
10 again my initials go on it. This box stays in my possession
11 until the police come to actually pick up the box. We don't
12 give it to anyone else to hold on to it; it's our
13 responsibility that it stays with us the whole time.

14 Q: And is that what you did in this case, you held it in
15 your custody until someone from the Myrtle Beach Police
16 Department picked it up?

17 A: Yes, ma'am.

18 Q: And do you remember who that was?

19 A: Detective Bailey.

20 MS. WALTER: Your Honor, at this time, I would ask that
21 Exhibit 14 be admitted.

22 THE COURT: Objection?

23 MR. LONG: No objection, Your Honor.

24 THE COURT: All right. So and you are talking about 14
25 and all of its subsets?

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1 MS. WALTER: Yes, Your Honor.

2 THE COURT: Any objection to any of that?

3 MR. LONG: No, Your Honor.

4 THE COURT: All right, sir. So 14, 14A, B, and C are all
5 into evidence without objection.

6 STATE'S EXHIBIT NUMBER 14, 14A, 14B, AND 14C

7 ADMITTED INTO EVIDENCE

8 MS. WALTER: I have no further questions at this time.

9 Please answer whatever questions Mr. Long has?

10 A: Sure.

11 THE COURT: Cross examination?

12 CROSS EXAMINATION OF EMILY HENNIG-RYAN BY MR. LONG:

13 Q: Did you see the police bring in Ms. J.K. ?

14 A: Yes.

15 Q: Okay. So, she was in police custody at the time?

16 A: I don't believe she was in police custody, I thought they
17 brought her in for an examination.

18 Q: Was her mother present at the time?

19 A: We called her mother and her mother showed up after we
20 began the kit.

21 Q: Was she in the room at the time the kit was being
22 collected?

23 A: I believe so.

24 Q: Okay. And you said you had a -- you watched the
25 physician do the pelvic exam, correct? Do you know that

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1 physician's name?

2 A: I believe that paper, if my paperwork is in that kit, I
3 believe it's Dr. Tom Martel.

4 Q: Okay. And you said you collected fingernail scrapings?

5 A: Yes, sir.

6 Q: And based on -- there are several different ways to get
7 substances under your fingernails, correct?

8 A: Yeah.

9 Q: Okay. You can get scrapings under your fingernails from
10 consensual contact with somebody, correct?

11 MS. WALTER: Objection, Your Honor, unless she has any
12 training in that particular field.

13 THE COURT: Can you answer the question?

14 A: Can you repeat the question?

15 BY MR. LONG:

16 Q: Can you get things underneath your fingernails from
17 another person through consensual contact?

18 A: I guess.

19 Q: That's all the questions I have. Thank you.

20 MS. WALTER: Your Honor, with the Court's indulgence and
21 with Mr. Long's indulgence, we did discuss the blood that was
22 taken from the victim and I had it marked, I just didn't have
23 her identify it.

24 THE COURT: All right. Very good.

25 REDIRECT EXAMINATION OF EMILY HENNIG-RYAN BY MS. WALTER:

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1 Q: I am approaching with what's been marked as Exhibit 43,
2 do you recognize that?

3 A: It would be the blood tube that I collected from her.

4 Q: Do you know what time you collected the blood from her?

5 A: Approximately 12:49.

6 Q: So, that would be a little before 1:00 P.M. on June 22nd?

7 A: Yes, ma'am.

8 Q: And that would've been part of a rape kit?

9 A: It goes in that kit, correct.

10 Q: So, that was in your custody until you gave it to Mr.
11 Bailey?

12 A: Yes, ma'am.

13 MS. WALTER: Your Honor, I would ask that Exhibit 43 be
14 admitted.

15 THE COURT: Any objection to State's 43?

16 MR. LONG: No, Your Honor.

17 THE COURT: All right. It's in evidence without
18 objection.

19 STATE'S EXHIBIT NUMBER 43

20 ADMITTED INTO EVIDENCE

21 THE COURT: Further questions?

22 MS. WALTER: No, Your Honor, no further questions.

23 THE COURT: Any questions on that?

24 MR. LONG: No, Your Honor.

25 THE COURT: Do you wish the witness to be excused?

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1 MS. WALTER: Yes, please, Your Honor.

2 THE COURT: Any objection?

3 MR. LONG: No, sir.

4 THE COURT: All right, ma'am, you're released from your
5 subpoena, you may go back to your regular duties.

6 MS. HENNIG-RYAN: Thank you.

7 THE COURT: All right. Next witness, please.

8 MS. WALTER: Jennifer Brown.

9 THE COURT: If you'd please come around, all the way
10 around, please, all the way to the front up here where the
11 Clerk is, please. Thank you.

12 CLERK: Please raise your right hand and place your left
13 hand on the Bible.

14 JENNIFER MICHELLE BROWN, HAVING BEEN

15 DULY SWORN TESTIFIES AS FOLLOWS:

16 MS. BROWN: Okay. Jennifer Michelle Guard Brown, and
17 Brown is B-R-O-W-N.

18 DIRECT EXAMINATION OF JENNIFER MICHELLE BROWN BY MS. WALTER:

19 Q: Thank you. And where do you work?

20 A: I'm currently employed at SLED, the South Carolina Law
21 Enforcement Division.

22 Q: How long have you worked for SLED?

23 A: About 11 years.

24 Q: I'm sorry, 11 years?

25 A: Yep.

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1 Q: And what is your job title at SLED?

2 A: A forensic toxicologist.

3 Q: What -- can you tell us what a forensic toxicologist
4 does?

5 A: Sure. We analyze samples for the presence or absence of
6 drugs, that includes alcohol and others, and then we interpret
7 those results for courts, for officers, for coroners, for a
8 little bit of different people and biological samples, that
9 can be blood, urine, ocular tissues, sometimes we get various
10 other cases like moonshine in, too.

11 Q: So, what are your duties as a forensic toxicologist in
12 addition to just you kind of gave us a general idea that you
13 screen or do you test for those?

14 A: Yep. We test, analyze, interpret basically whatever
15 drugs we do or don't find in samples that we receive.

16 Q: And did you have any -- well, let's start with what's
17 your educational background?

18 A: I have a Bachelor of science in chemistry at the
19 University of South Carolina, but our in-house training is
20 where we get a lot of how we learn to be a toxicologist. And
21 for me, that was an extensive, about a year in-house program.
22 And so we start out with learning about alcohol. And so we
23 have written tests and lecture series that we have to take
24 tests with and we have to pass those tests and then after that
25 we're given samples and we have known comparisons too so we

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1 have to make sure that the results we get are what is known.
2 And for me, at least, 500 samples that we had to do that with.
3 After all that's done, we have a mock trial kind of like this,
4 but in-house, and if I didn't pass that, then I wouldn't be
5 here.

6 Once all that happens, we went into our formal drug
7 training where we look for other drugs like classes, like
8 benzodiazepines or opiates or amphetamines and a wide range of
9 those. We learn how to extract those, so finding those in the
10 samples that we receive and then we learn how to extract them,
11 how to interpret them and a little bit of ins and outs as it
12 pertains to a DUI or a death case or a different type of case.
13 And then once again, we're given kinda like a mock trial and
14 you have to pass that, otherwise I wouldn't be here today.

15 Q: And do you have other sort of continuing proficiency?

16 A: We all, we always try to continue with going to different
17 schools. In toxicology, there's the Borkestein School and
18 they have alcohol and drugs and post-mortem and stuff like
19 that. We try to go things like that, read general articles,
20 kinda do whatever we can within the limits of, you know, what
21 we can for money purposes.

22 Q: Have you testified as a forensic toxicologist before?

23 A: Yes.

24 Q: How many times?

25 A: I really don't keep count, but it's been at least 10

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1 times in summary courts, Magistrate Courts, General Sessions.

2 Q: When you have testified those times, have you been
3 declared an expert or accepted as an expert in the field of
4 forensic toxicology?

5 A: Yes.

6 MS. WALTER: Your Honor, at this time, I would offer Ms.
7 Brown as an expert in the field of forensic toxicology?

8 THE COURT: All right. Mr. Long, do you wish to voir
9 dire the witness as to her qualifications or challenge the
10 offer by the state?

11 MR. LONG: No, Your Honor.

12 THE COURT: All right. I will qualify her to give her
13 opinion in the field of forensic toxicology.

14 MS. WALTER: Thank you. Your Honor.

15 BY MS. WALTER:

16 Q: Ms. Brown, directing your attention, first of all, when
17 evidence is received at SLED, does SLED assign a unique number
18 to that case?

19 A: Yes, and I don't have my badge on me, but this is our
20 case tracker so it will have a unique bar code associated with
21 it. This one actually corresponds to my case file, that's why
22 it says T-o-x- but they'll be a number or a letter just
23 depending on if it comes in as a container or a separate
24 individual items in a heat-sealed pouch, but basically,
25 everybody gets a barcode and it keeps getting scanned wherever

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1 we go.

2 Q: Is the SLED Number in this case, L as in Larry 15-10948?

3 A: Correct.

4 Q: And you noted that there's a bar code. Does SLED keep
5 track and is there a report that's run as to who's handled
6 that?

7 A: Yes, we have what's considered a chain of custody.

8 STATE'S EXHIBIT NUMBER 34

9 MARKED FOR IDENTIFICATION

10 MS. WALTER: Your Honor, if I may approach with State's
11 Exhibit 34?

12 THE COURT: Yes, ma'am.

13 BY MS. WALTER:

14 Q: If you can look at State's Exhibit 34, do you recognize
15 what that is?

16 A: Yes, it looks like our chain of custody.

17 Q: And does that pertain to all of the evidence that was
18 processed in this case?

19 A: Yeah, everything that is in our chain of custody should
20 be in this.

21 Q: So, everything under that L number that I recited?

22 A: Correct.

23 Q: And that's kept in the normal course of SLED's business,
24 correct?

25 A: Correct.

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1 Q: All right. In this particular case, if I may approach,
2 Your Honor, with what's been admitted as State's Exhibit 43.

3 A: Okay.

4 Q: Do you recognize that?

5 A: Yeah, it looks -- sorry, I don't want to touch it without
6 gloves.

7 Q: Oh, let me give you the gloves. I'm sorry, I always do
8 that. I never wear gloves.

9 A: Thanks.

10 Q: You're welcome.

11 A: Thank you. Yes, this looks to be our evidence that we
12 received.

13 Q: Were any tests performed on the evidence in that exhibit?

14 A: Yes.

15 Q: As a result of those tests, were you able to form any
16 expert opinion on the blood alcohol concentration in Ms.

17 J.K. 's blood?

18 A: Yes.

19 Q: And if I can -- Your Honor, I'm approaching with State's
20 Exhibit 41, do you recognize Exhibit 41?

21 A: Yes, it's my report that we issued.

22 Q: So, can you -- and does that report contain your
23 conclusions in this case?

24 A: If you want to say conclusions of numbers and what's
25 there and what's not there, yes.

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1 MS. WALTER: Okay. So, Your Honor, I would ask that
2 Exhibit 41 be admitted into evidence.

3 THE COURT: Any objection?

4 MR. LONG: No, Your Honor.

5 THE COURT: All right. State's 41 is in evidence without
6 objection.

7 STATE'S EXHIBIT NUMBER 41

8 ADMITTED INTO EVIDENCE

9 BY MS. WALTER:

10 Q: Now, Ms. Brown, based on the tests that were performed
11 and the numbers contained in Exhibit 41, are you able to tell
12 us what the blood alcohol concentration was of Ms. J.K. 's
13 blood?

14 A: Yes.

15 Q: What was it?

16 A: The ethanol concentration is a 0.169 percent.

17 Q: Okay. And that would represent the blood alcohol
18 concentration at the time the blood was drawn?

19 A: Correct.

20 Q: Switching gears just a little bit, can you describe --
21 what do we mean by blood alcohol concentration or BAC; what
22 does that mean?

23 A: Basically, it's just how much ethanol is in your blood
24 system.

25 Q: Would the same BAC affect different people differently;

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1 in other words, if I had a .167, would it affect me
2 differently than say you?

3 A: No, it shouldn't.

4 Q: And what affects what a person's blood alcohol
5 concentration is?

6 A: In general, just how much they drink.

7 Q: Okay. Now what, based on your education, your training
8 and experience, can you tell us what effects alcohol would
9 have on a person?

10 A: Yes. Do you want it for this level?

11 Q: Yes, please?

12 A: Okay. This person will most likely be drowsy, they'll
13 have slow reaction time, increase inhibitions, decreased --
14 I'm sorry --- increased self-confidence, decreased
15 inhibitions, problems with multi-tasking, you think of that
16 more with driving, so driving and steering, driving and
17 braking, like I said, incoordination in walking, slurred
18 speech, being drowsy.

19 Q: And one of the things I think you said was decreased
20 inhibitions?

21 A: Uh-huh, (affirmative response).

22 Q: You just have to say yes or no?

23 A: Yes, sorry.

24 Q: Okay. That's okay. When you say decreased inhibitions,
25 what do you mean?

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1 A: They're more likely to do something otherwise that you
2 wouldn't.

3 Q: Now, we just talked about that that was her blood alcohol
4 content at the time the blood was drawn?

5 A: Correct.

6 Q: And we had earlier testimony that the blood was drawn at
7 12:49 on June 22nd?

8 A: Okay.

9 Q: So, is it possible to form an opinion as to what her
10 blood concentration -- blood alcohol concentration would have
11 been earlier in the day?

12 A: Yeah, you can.

13 Q: And how do you do that?

14 A: It's called retrograde extrapolation.

15 MR. LONG: Your Honor, I would object to any -- any
16 testimony as to retrograde extrapolation.

17 THE COURT: All right. Y'all come up and talk to me.

18 (REPORTER'S NOTE: Bench conference is held off the record in
19 the presence of but outside the hearing of the jury.)

20 BY MS. WALTER:

21 Q: Ms. Brown, as an expert in forensic toxicology, does that
22 include this calculation of retrograde extrapolation?

23 A: Yeah, it's the part of the lecture series that we get in
24 the beginning of our training.

25 Q: So, if you can please explain how you -- how does

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1 retrograde extrapolation work in this case. So if I -- if
2 hypothetically, Ms. J.K. 's last drink was say at 1:39 in
3 the morning?

4 A: Okay.

5 Q: So, that's 11 hours and 10 minutes ---

6 A: Okay. Yeah.

7 Q: So, let's say 11 hours?

8 A: Okay.

9 Q: Can you form an opinion as to what her blood alcohol
10 concentration would have been at that point, 11 hours earlier?

11 A: Yes.

12 Q: And what would it have been?

13 A: Where there are some general assumptions. You assume
14 that they're fully in elimination, which means you're fully
15 coming down, you finished your last drink and what your body
16 has absorbed is now starting to go downhill. So, usually,
17 let's say the last drink was, you know 11 hours ago, give or
18 take about an hour, you should be fully in elimination from
19 there. So, let's say 10 hours, the average rate of
20 elimination of alcohol is .015 percent per hour, so taking
21 that to 10 hours, that would be a .15 percent higher than what
22 we already are at.

23 Q: So, if it were 11 hours earlier, I'm sorry for making you
24 do math?

25 A: That would be, like you said, if I can do math right now,

1 .165 percent.

2 Q: So, it would be the .165 plus the .167 added together?

3 A: Yeah. It's .169, but yes.

4 Q: Oh, I'm sorry. .169, so you would take the .162 and add
5 it from the retrograde extrapolation?

6 A: Yes, from the retrograde extrapolation, add that to what
7 we already received.

8 Q: To the .169 so that would be about .33 doing math on the
9 run?

10 A: Thereabouts, yes.

11 Q: Can you -- you gave us an idea of what someone with a
12 .169 blood alcohol concentration would be like. What would
13 someone be like with a .332?

14 A: So, at that point, you're getting to where someone has
15 lost all of their motor functions. They have -- most likely
16 be unconscious and asleep and then not too far after you
17 get that, you started going into respiratory depression and
18 it's actually possibly also to die from consuming too much
19 alcohol.

20 Q: And the effects that you talked about a .169, with the
21 decreased inhibitions, do those inhibitions continue to
22 decrease as the blood alcohol concentration increases?

23 A: Yes, you just kind of the effects just worsening. So
24 where you might have then been drowsy, now you're more likely
25 asleep. Where your motor functions, you know, you might be a

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1 little wobbly, you might need to hold on to something, now you
2 don't really have that functionality at all.

3 Q: And the same with the inhibitions whereas the -- they
4 would further decrease?

5 A: Uh-huh (affirmative response).

6 Q: I have no further questions at this time.

7 THE COURT: Cross examination?

8 MR. LONG: No questions, Your Honor.

9 THE COURT: Do you wish the witness to be excused?

10 MS. WALTER: Yes, please, Your Honor.

11 THE COURT: All right. Leave the exhibits and you are
12 excused, ma'am, and released from your subpoena.

13 MR. LONG: Your Honor, could I ask one question?

14 THE COURT: Yes, sir.

15 MR. LONG: I apologize.

16 CROSS EXAMINATOIN OF JENNIFER MICHELLE GUARD BROWN BY MR.

17 LONG:

18 Q: Ms. Brown -- if I may approach, Your Honor?

19 THE COURT: Yes, sir.

20 Q: On the second page of this toxicology report, it says
21 that there's a, can you read this analysis?

22 A: Sure. It's 11 carboxy tetrahydrocannabinol, the last
23 part you can just say is THC, so it's -- it says underneath
24 that synonym it's THC metabolite, also known as marijuana
25 metabolite.

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1 Q: She tested positive for marijuana?

2 A: For the marijuana metabolite.

3 Q: Yeah?

4 A: Yes.

5 Q: 7 -- 7.3 result?

6 A: Correct.

7 Q: And the threshold is 2.0?

8 A: Correct.

9 Q: That's all the questions I have. Thank you.

10 A: Uh-huh (affirmative response).

11 THE COURT: Anything on that question?

12 MS. WALTER: Yes, Your Honor.

13 REDIRECT EXAMINATION OF JENNIFER MICHELLE GUARD BROWN BY MS.

14 WALTER:

15 Q: Is there any way to tell from that number when that
16 marijuana might have been ingested?

17 A: No.

18 Q: Do you know how long the metabolite would remain in
19 someone's blood?

20 A: It kinda depends on if they're a chronic user or not.

21 THC can absorb into your fat cells and leach out over time.

22 So, it kinda depends if they're a chronic user or not. It

23 just depends, it can be and depends how much they already

24 intake, too, so did they take a little bit, did they take a

25 lot. So, just you kind of need to know what the concentration

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1 is there. They say the half-life can be two to three days, so
2 it's dependent.

3 Q: So, you can't just tell us when?

4 A: No, I really can't without having the parent drug there
5 to use a model to say okay this number plus this number and
6 this is the range of times we have.

7 Q: Okay. Thank you. Nothing further at this time.

8 THE COURT: Anything else?

9 MR. LONG: No, Your Honor.

10 THE COURT: All right, ma'am, you are released.

11 MS. BROWN: Thank you.

12 THE COURT: Your next witness?

13 MS. WALTER: Jaclynn McKay.

14 CLERK: Please raise your right hand and place your left
15 hand on the Bible.

16 JACLYNN MCKAY, HAVING BEEN DULY SWORN

17 TESTIFIES AS FOLLOWS:

18 MS. MCKAY: My name is Jaclynn McKay. Jaclynn is spelled
19 J-A-C-L-Y-N-N, McKay, M-C-K-A-Y.

20 THE COURT: Go ahead, Solicitor.

21 MS. WALTER: Thank you, Your Honor.

22 DIRECT EXAMINATION OF JACLYNN MCKAY BY MS. WALTER:

23 Q: Good afternoon, Ms. McKay. How are you?

24 A: Well, thank you.

25 Q: Where do you work?

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- 1 A: I am currently employed at the South Carolina Law
2 Enforcement Division, which is commonly referred to as SLED.
- 3 Q: How long have you worked for SLED?
- 4 A: I have worked for SLED for three years in March. So,
5 since March 2015.
- 6 Q: What is your current position at SLED?
- 7 A: Currently, I'm a crime scene agent, but at the time I
8 performed analysis, I was a forensic serologist in the DNA
9 Casework Department.
- 10 Q: How long have you worked the forensic serologist?
- 11 A: I worked as forensic serologist for almost two years.
- 12 Q: What was your educational background prior to becoming a
13 forensic serologist?
- 14 A: I have a Bachelor's of science in forensic science with a
15 forensic biology concentration and minors in both biology and
16 chemistry from Virginia Commonwealth University.
- 17 Q: Did you receive any specialized training either through
18 SLED or another organization that helped you become a forensic
19 serologist?
- 20 A: After my employment with SLED, I participated in their
21 in-house training program, which consisted of learning the
22 laboratory's policies and procedures. I shadowed other
23 serologists. I performed trainings -- performed analysis on
24 training samples and supervised casework and I also completed
25 a competency test that tested my knowledge in the areas of

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1 forensic serology and once I passed that test, I was deemed
2 capable to perform independent casework.

3 Q: So, now we've been throwing around this term forensic
4 serologist. What does a forensic serologist do?

5 A: So, forensic serology is just the identification of body
6 fluids on items of evidence that are associated with a crime
7 and as a forensic serologist, what I would do is I'd work with
8 other agencies to determine the best sorts of analysis for the
9 items of evidence submitted to the DNA Casework Department. I
10 would analyze these items of evidence for possible biological
11 materials, primarily blood, semen, and saliva. If these
12 materials were found, I would take cuttings of them and
13 forward them to the DNA section for further analysis. I would
14 write reports based on my analysis and participate in the
15 technical review process of other serologists' reports and
16 I'll testify as needed in the area of forensic serology.

17 Q: Have you testified before in the area of forensic
18 serology?

19 A: I have, yes.

20 Q: Have you been accepted as an expert in the area of
21 forensic serology?

22 A: I have, yes.

23 Q: How many times?

24 A: Twice.

25 Q: And in what courts if you recall?

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1 A: I don't recall at this moment.

2 MS. WALTER: Your Honor, the state would offer Ms. McKay
3 as an expert in the field of forensic serology?

4 THE COURT: Do you wish to voir dire the witness or
5 challenge her qualifications.

6 MR. LONG: I'd like to challenge her qualifications, Your
7 Honor.

8 THE COURT: Go ahead, sir.

9 VOIR DIRE OF JACLYNN MCKAY BY MR. LONG:

10 Q: Do you -- you've never testified in general sessions
11 court in South Carolina?

12 A: I have testified three times in general session court in
13 South Carolina.

14 Q: Okay. Bear with me -- that's it. Thank you.

15 THE COURT: All right. I'm gonna ---

16 MR. LONG: And I ---

17 THE COURT: I'm sorry, go ahead.

18 BY MR. LONG:

19 Q: And you've testified as an expert in general sessions
20 court in South Carolina?

21 A: I have testified -- well, I have been qualified as an
22 expert in forensic serology twice in South Carolina.

23 Q: In general sessions?

24 A: In general sessions court, yes.

25 Q: That's all the questions I have.

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1 THE COURT: All right. Very good. I'm gonna qualify her
2 to give her opinion in the field of forensic serology.

3 MS. WALTER: Thank you.

4 THE COURT: You may proceed.

5 MS. WALTER: Thank you.

6 CONTINUED DIRECT EXAMINATION OF JACLYNN MCKAY BY MS. WALTER:

7 Q: Directing your attention to SLED Lab Number L-15-10948,
8 did you receive any evidence in that case?

9 A: May I verify my copy of my report that I brought with me?

10 Q: Yes.

11 A: For SLED Lab Number L-15-10948, I received a sexual
12 assault evidence collection kit from J.K., I,
13 received a suspect evidence collection kit from Alqi Dhimo,
14 and underwear from J.K.

15 Once the evidence collection kits were in my custody, I
16 then inventoried them and broke down what was actually inside
17 of each evidence collection kit. Would you like me to go into
18 further detail about what was -- what I received within the
19 kits?

20 Q: What I'm gonna do is I'm going to, if I may approach,
21 Your Honor?

22 THE COURT: Yes, ma'am.

23 Q: With what's been admitted as State's Exhibit 13, which is
24 the suspect kit?

25 A: Uh-huh, (affirmative response).

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1 Q: And this is State's Exhibit 14, which is the victim's kit
2 minus the blood. So, if you can just -- do you recognize
3 those two items?

4 A: I recognize this item. It has the SLED unique lab number
5 and my initials are here as well as the date in which I had
6 opened and sealed the container. The SLED lab number and my
7 initials are also on the actual suspect evidence collection
8 kit inside. So, I do recognize this item.

9 THE COURT: What is the exhibit number?

10 A: The -- it's Container B so it's ---

11 THE COURT: No, ma'am, the State ---

12 MS. WALTER: Exhibit Number 13, Your Honor.

13 THE COURT: All right. Thank you.

14 A: Sorry.

15 BY MS. WALTER:

16 Q: That's okay. And then if you can look at Exhibit 14 and
17 tell me if you recognize that.

18 A: So, this has the SLED unique lab number on it as well as
19 the item number, my initials, and the date in which I sealed
20 it, SLED lab number, and my initials, and the date that I had
21 opened it. So, I recognize the underwear and ---

22 Q: That's been opened, and I believe that there are multiple
23 pieces of evidence inside.

24 A: Do you want me to take them all out?

25 Q: Yes. Do you want gloves?

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1 A: I have some.

2 THE COURT: And again, identify the State's Exhibit
3 Number before you look at it, please.

4 MS. WALTER: I'll show her, Your Honor, where that is.

5 BY MS. WALTER:

6 Q: This is what we're looking for are those numbers.

7 A: Okay.

8 Q: So, this is part of State's Exhibit 14.

9 A: So, State's Exhibit 14, I recognize has my initials and
10 date that I sealed the heat-sealed pouch. And then inside, it
11 has the ---

12 MS. WALTER: Your Honor, that was marked with Ms. Hennig-
13 Ryan.

14 THE COURT: All right.

15 BY MS. WALTER:

16 Q: So, if you can tell us what that is?

17 A: So, these would be the tubes that I forwarded to the DNA
18 section, so -- yes.

19 THE COURT: All right. So, get those marked.

20 COURT REPORTER: 14A.

21 THE COURT: I'm sorry, didn't we already have that?

22 MS. WALTER: I thought we did. We went through A, B, and
23 C, right?

24 MS. WALTER: Yes.

25 THE COURT: So, what is that one?

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1 MS. WALTER: This should be 14D.

2 STATE'S EXHIBIT NUMBER 14D

3 MARKED FOR IDENTIFICATION

4 BY MS. WALTER:

5 Q: So this is Exhibit 14D is what, Ms. McKay?

6 A: Exhibit 14D, it's not in the original heat-sealed pouch
7 that I had sealed, but it has been saved. It has my initials
8 and date. But, these are the tubes of essentially samples, I
9 had then cut and forwarded on to the DNA section for further
10 analysis.

11 Q: And we'll get back to that in a minute.

12 A: Uh-huh, (affirmative response).

13 Q: This I'll need to mark, so if you want to go on to ---

14 A: Sure, this is A. So, State's Exhibit 14A is the same
15 smears that the hospital makes. Essentially, when they
16 collect swabs, they will wipe them onto a microscope slide. So
17 not only do we have the swab test, we also look at the
18 microscope slides to look for sperm cells and this has my
19 initials on it as well as the unique lab number.

20 STATE'S EXHIBIT NUMBER 14E

21 MARKED FOR IDENTIFICATION

22 Q: And I'm just gonna give the court reporter a chance here.
23 This will be 14E. Can you tell me what 14E ---

24 A: Uh-huh, (affirmative response). So, 14E is a microscope
25 slide with essentially a sample that I made when we take it's

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1 -- it's a microscope sample of the vaginal smear sample, I'm
2 sorry the vaginal swab sample. We take a small piece of the
3 swab and we make into a liquid sample and from that point, we
4 extract some of the cellular material and that's what we put
5 on the microscope slide and then look at that under the
6 microscope. So, we technically have two microscope slides of
7 the vaginal smears of the vaginal swabs that I had looked at.

8 Q: What's the next item?

9 A: Okay. This -- oh, sorry. Okay. So, this is Exhibit
10 14B. This is the debris collection from the sexual assault
11 kit. And, it has my initials on it and the unique lab number,
12 as well as the item number and the date that I had opened it.

13 And then this envelope is 14C. And this is the envelope
14 that the same smears and the debris collection would've also
15 came out of and then inside of it are smaller evidence
16 envelopes. So, we have ---

17 Q: I'm just gonna ask you to keep those together because I
18 think those were not marked separately because they're all
19 gonna go back into that one envelope.

20 A: Okay. So, we have vaginal swabs, which is 1.2, and they
21 have my initials and date. We have fingernail scrapings,
22 which is item 1.3, again initials and date. Item 1.4, which
23 is pubic hair combings, initials and date. A known DNA
24 standard buccal swabs, Item 1.6 initials and date. And then
25 we have miscellaneous collection, which was hand swabs and

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1 that's item 1.5, and again my initials and date are on that.

2 And then there are various empty envelopes that were also in
3 there, but they didn't contain any, any evidence.

4 Q: And now you're talking 1.1 and 1.2, who does that number?

5 A: So, that would be me. When I receive the sexual assault
6 kit, so I will receive this envelope that has all of this
7 inside and this will be given to me as Item 1. And I am the
8 first person to then -- the first person at the laboratory to
9 then open it up and inventory all of the envelopes inside of
10 it, and when I do that, that's when we get the smaller
11 numbers. So, 1.1 and 1.2 and so on and so forth.

12 Q: And that's just so that you can keep straight what item
13 you're analyzing or talking about?

14 A: Exactly. The sexual assault collection kit is the parent
15 item and then everything contained within it is then kind of a
16 decimal off of that.

17 Q: If I can go back to Exhibit 13, we can just put all that
18 back in.

19 A: Okay.

20 Q: So, if we go back to Exhibit 13, I'm just going to show
21 you Exhibit 13C, do you recognize that?

22 A: I do recognize Exhibit 13C. Again, it has the unique lab
23 number, item number, my initials and date, and it is a dried
24 blood standard from Alqi Dhimo.

25 Q: So, approaching you with what's been marked Exhibit 42,

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1 do you recognize that?

2 A: I do recognize this. The exterior heat-sealed pouch has
3 my initials and date of which I sealed. Again my name, date,
4 unique lab number, and the packaging on the inside also has
5 the unique lab number and my initials and date.

6 Q: And what does that exhibit contain?

7 A: This exhibit is essentially a liquid blood tube. So,
8 it's a tube that has liquid blood in it.

9 Q: And what do you do with the liquid blood once you get it?

10 A: So when I receive liquid blood, we take a very small
11 sample of it and dry it on a piece of sterile paper, which is
12 then dried. The liquid blood tube is usually sent back to the
13 original agency and the dried blood standard is then forwarded
14 with the rest of the evidence to the DNA section and the
15 reason we do this is because the dried blood standard is
16 allowed to stay at room temperature and it's easier to store
17 versus the blood tube needs to be refrigerated at all times.

18 Q: And so you created that blood standard that's marked
19 Exhibit ---

20 A: 13C.

21 Q: --- 13C, you created that sample?

22 A: I did create that, yes.

23 Q: Okay. And now I'm showing you Exhibit -- so now if we
24 can just go through your findings and if it's easiest for you,
25 what were you looking for when you examined all of these items

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1 that you took in?

2 A: The request that was placed on the sexual assault
3 evidence collection kit was for DNA semen. So, that was the
4 primary body fluid I was looking for. The request for the
5 underwear was DNA semen as well and the suspect evidence
6 collection kit, the request for that was essentially a DNA
7 known standard, so I was mainly just looking for a DNA
8 standard from the person whose kit that was.

9 Q: Now, how many would you say -- how many CSC kits have you
10 examined or did you examine during your, approximately two
11 years as a forensic serologist?

12 A: I'd say at least 200 or more.

13 Q: And would you expect to find evidence of bodily fluids in
14 every case where there's been sexual contact?

15 A: No.

16 Q: And can you tell us what factors into whether or not you
17 would find bodily fluids?

18 A: There's various factors that can present themselves. For
19 example, if a condom was used, there could be no bodily fluid
20 left behind. We have a two-tier essentially program at SLED
21 where we need to find two components of semen before we can
22 say semen has been identified. And so there's a lot of
23 various reasons why you may not get all components. There's a
24 -- it could be a result of the way the sample was collected,
25 could be a result of the timeframe in between the alleged

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1 assault and when the kit was actually collected. So, there
2 are various reasons for why we may not find evidence of
3 biological materials even though an alleged assault occurred.

4 Q: So, is it fair to say that the presence of biologic
5 material would mean something but the absence is harder to
6 give weight to?

7 A: Even if there is no biological materials present, I
8 cannot speak on whether or not an assault actually occurred.
9 I can just say that there was no biological materials found.

10 Q: Okay.

11 Your Honor, I'm approaching with what's been marked as
12 State's Exhibit 39.

13 Do you recognize that?

14 A: I do recognize this. It appears to be a copy of my
15 serology analysis report and I recognize it because my
16 signature is at the end of it.

17 MS. WALTER: Your Honor, I would ask that that exhibit be
18 admitted.

19 THE COURT: Any objection?

20 MR. LONG: No, Your Honor.

21 THE COURT: All right. State's 39 is in evidence without
22 objection.

23 STATE'S EXHIBIT NUMBER 39

24 ADMITTED INTO EVIDENCE

25 MS. WALTER: And, I'm sorry, Your Honor, if I could back

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1 up. Ms. McKay talked about Exhibit 13C, which was the blood
2 standard that she created. I believe I neglected to ask that
3 that be admitted and I'd ask that that be admitted at this
4 time.

5 THE COURT: Any objection?

6 MR. LONG: Was there testimony as to who created that?

7 MS. WALTER: Yeah, she did.

8 MR. LONG: No objection.

9 THE COURT: All right. So, Exhibit 13C is in evidence
10 without objection.

11 STATE'S EXHIBIT NUMBER 13C

12 ADMITTED INTO EVIDENCE

13 MS. WALTER: Thank you.

14 BY MS. WALTER:

15 Q: So, if we can just go through and talk about item by
16 item. Did you examine the vaginal smears for any biologic
17 evidence?

18 A: I, I did. We stained the smear with essentially a two-
19 color stain and we're looking for the sperm cell, and I had no
20 spermatozoa identified on the smear that the hospital made.

21 Q: Did you also examine the vaginal swabs?

22 A: I did. Examinations for components for P30 and
23 spermatozoa were negative. No semen was identified.

24 Q: And was that that two-component tier you were talking
25 about?

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1 A: Exactly; uh-huh, (affirmative response).

2 Q: Did you do anything with the fingernail scrapings?

3 A: So, the fingernail scrapings, I did not perform analysis.

4 However, I -- the fingernail scrapings that are submitted in
5 the sexual assault evidence collection kit are kinda like
6 plastic sticks with a point at the end and they're -- the left
7 hand and the right hand are in individual envelopes. So, I
8 just cut the tips off of each of the sticks and put them in a
9 tube and forwarded them to DNA for further analysis.

10 Q: Would that have been some of the tubes that you
11 identified for us before?

12 A: That is correct.

13 Q: What about the pubic hair combings?

14 A: I looked at the pubic hair combings and no hair was
15 found.

16 Q: And miscellaneous collection, those hand swabs?

17 A: I did not test them for biological fluid, I just took a
18 cutting from the swab, put them in a tube, and forwarded them
19 to the DNA section.

20 Q: And do you the same thing with the victim's buccal swabs?

21 A: Yes.

22 Q: Now, turning to the evidence that was contained in the
23 suspect evidence collection kit, was that your Item Number 2?

24 A: The suspect evidence collection kit is my Number 2, yes.

25 Q: What did you do with the evidence contained in your Item

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1 2?

2 A: So, when I opened the evidence collection kit, inside was
3 a liquid blood tube and pulled head hairs. I did not perform
4 any analysis on the pulled head hairs, but I did make a dried
5 blood standard from the liquid tube and, as I had explained
6 earlier, I just took a small portion from the liquid tube and
7 dried it on a piece of sterile paper and put that in an
8 envelope, and that went forward with the pulled head hairs to
9 the DNA section and the liquid tube went back to the
10 submitting agency.

11 MS. WALTER: If I may approach, Your Honor?

12 THE COURT: Yes, ma'am.

13 MS. WALTER: Your Honor, I'm gonna ask the witness to
14 open it and it's all part of Exhibit 13A, but it is their Lab
15 Number 2.2, which is ---

16 THE COURT: Well, if you're gonna ask her to open it,
17 then you're gone have to create another exhibit.

18 STATE'S EXHIBIT NUMBER 13D

19 MARKED FOR IDENTIFICATION

20 BY MS. WALTER:

21 Q: And also, so this has been marked Exhibit 13D, do you
22 recognize that?

23 A: I recognize it. It has the unique lab number, item
24 number, my initials and date, but this -- I did not open this
25 prior to.

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1 Q: So, you just -- you did not ---

2 A: I completely did no analysis performed on that.

3 Q: So, when you say that it's pulled head hairs, what are
4 you basing that on?

5 A: The labeling that says pulled head hairs here.

6 Q: And is there any writing there to indicate whether or not
7 there was any head hair in fact pulled?

8 A: It says, Was sample collected? Yes is checked. And then
9 it says, except from center and front. It says, no hair
10 present.

11 Q: And so you forwarded -- your Item Number 2, you just
12 forwarded the blood standard to the DNA section?

13 A: So, the -- the blood standard is the only thing that was
14 gonna have further analysis on it, but essentially the entire
15 kit, which would include the dried blood standard and the
16 pulled head hairs actually went to DNA.

17 Q: Okay.

18 A: But the dried blood standard was the only thing that
19 analysis was performed on after me.

20 Q: After you, so you did not perform any analysis on the
21 blood standard; you just created it?

22 A: Correct.

23 Q: The report that I handed you which I believe was Exhibit
24 39, is that a fair and accurate representation of the work
25 that you did in this case?

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JACLYNN MCKAY - CROSS BY LONG

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1 A: I'm just gonna verify it with my copy to make sure
2 nothing has been changed. Yes, a fair and accurate report.

3 MS. WALTER: Your Honor, I would ask that Exhibit 39 be
4 admitted?

5 THE COURT: I thought it already was.

6 MS. WALTER: The report was?

7 THE COURT: Yes, ma'am. It's already in evidence.

8 MS. WALTER: Okay. Thank you.

9 BY MS. WALTER:

10 Q: Okay. Thank you. At this time, I don't have any further
11 questions. Please just answer any questions Mr. Long has.

12 THE COURT: Cross examination?

13 CROSS EXAMINATION OF JACLYNN MCKAY BY MR. LONG:

14 Q: Ms. McKay, in other cases you've testified in, your
15 report is typically coupled with the testimony of the victim,
16 correct?

17 A: As far as the other cases I've testified in?

18 Q: Yes.

19 A: Usually ---

20 MS. WALTER: Objection, Your Honor, as to how she would
21 know whether the victim testifies.

22 THE COURT: It's unknown whether she knows or not. If
23 she can answer the question, she can; if she can't, she can't.

24 A: Usually, I am sequestered, so I can't recall viewing a
25 victim testify in a case that I have previously testified on.

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BY THE COURT

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1 BY MR. LONG:

2 Q: In your analysis alone, you cannot conclude whether there
3 was consensual or unconsensual contact between Ms. J.K. and
4 Mr. Dhimo, correct?

5 A: Correct, based on my analysis alone.

6 Q: That's all the questions I have.

7 THE COURT: Any redirect on that?

8 MS. WALTER: No, Your Honor.

9 THE COURT: You wish the witness to be excused?

10 MS. WALTER: Yes, please.

11 THE COURT: Any objection?

12 MR. LONG: No, Your Honor.

13 THE COURT: All right, ma'am, you're released from your
14 subpoena, you may go back to your regular activities.

15 MCKAY: Thank you.

16 BY THE COURT:

17 THE COURT: All right, ladies and gentlemen, we'll take a
18 short break for about 10 minutes, so you can go back to jury
19 room and we'll call you back out in 10 minutes. Thank you.

20 (REPORTER'S NOTE: Jury exits courtroom. The following takes
21 place outside the presence of the jury.)

22 THE COURT: And I know I didn't say it and I always do in
23 every case, when the jury retires, everyone please remain
24 seated; do not get up until the jury retires.

25 Thank you.

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BY THE COURT

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1 Short break.

2 (RECESS.)

3 *****OFF THE RECORD*****

4 (On the Record.)

5 THE COURT: All right, the state ready for the jury to
6 come back in?

7 MS. WALTER: I am, Your Honor.

8 THE COURT: All right. Defense?

9 MR. LONG: Yes, Your Honor.

10 THE COURT: Ask the jury to come in, please.

11 (REPORTER'S NOTE: Jury enters courtroom.)

12 THE COURT: All right. Solicitor, your next witness
13 please, ma'am.

14 MS. WALTER: The State calls Catherine Leisy.

15 THE COURT: All right, ma'am, if you'd come all the way
16 around and come up front over here to where the clerk's
17 representative is, please.

18 CLERK: Please raise your right hand and place your left
19 hand on the Bible.

20 CATHERINE LEISY, HAVING BEEN DULY
21 SWORN TESTIFIES AS FOLLOWS:

22 COURT REPORTER: First and last, please?

23 MS. LEISY: Catherine Leisy, C-A-T-H-E-R-I-N-E, L-E-I-S-
24 Y.

25 THE COURT: Go ahead, Solicitor.

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CATHERINE LEISY - DIRECT BY WALTER

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1 THE COURT: Thank you, Your Honor.

2 DIRECT EXAMINATION OF CATHERINE LEISY BY MS. WALTER:

3 Q: Good afternoon, Ms. Leisy?

4 A: Good afternoon.

5 Q: Where do you work?

6 A: I work for the South Carolina Law Enforcement Division
7 more commonly referred to as SLED.

8 Q: How long have you worked for SLED?

9 A: For 11 years.

10 Q: What is your current position with SLED?

11 A: I am a forensic scientist assigned to the DNA Casework
12 Department.

13 Q: How long have you been in that position?

14 A: My entire time with the agency.

15 Q: So 11 years?

16 A: Yes, ma'am.

17 Q: What's your educational background?

18 A: I have a Bachelor of science degree in genetic
19 engineering from Cedar Crest College in Allentown,
20 Pennsylvania.

21 Q: And did you receive any specialized training either at
22 SLED or with another agency to qualify you to be a forensic
23 DNA analyst?

24 A: I did. I received in-house training from other court-
25 qualified analysts in all the different types of tests and

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CATHERINE LEISY - DIRECT BY WALTER

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1 analysis that I perform at SLED. I've had approximately 4
2 years of experience as a Forensic DNA Analyst at a private
3 testing facility known as Orchid Cellmark, that at the time
4 was located in Germantown, Maryland and I ran the same type of
5 tests and analysis there as I do now.

6 Q: So what is it that a forensic DNA analyst does?

7 A: Basically my job is to try to develop a DNA profile from
8 unidentified biological material that's found on an item of
9 evidence or at a crime scene and compare it to the DNA profile
10 of a known individual to try and determine whether or not that
11 individual is the contributor of the biological material
12 related to a criminal case.

13 Q: Have you testified as an expert in forensic DNA analysis
14 before?

15 A: I have.

16 Q: How many times?

17 A: On over 50 occasions.

18 Q: And have any of those occasions been in general sessions
19 court?

20 A: They have.

21 Q: Approximately how many?

22 A: At least 40.

23 MS. WALTER: Your Honor, at this time, I would offer Ms.
24 Leisy as an expert in the area of forensic DNA analysis?

25 THE COURT: Do you wish to voir dire the witness or

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CATHERINE LEISY - DIRECT BY WALTER

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1 challenge her qualifications?

2 MR. LONG: No, Your Honor.

3 THE COURT: She is qualified to give her opinion in the
4 field of forensic analysis.

5 You may proceed.

6 MS. WALTER: Thank you.

7 Your Honor, I just need to approach and pull a couple of
8 items out of the exhibits.

9 THE COURT: Yes, ma'am.

10 BY MS. WALTER:

11 Q: So, I'm approaching with Exhibits 13 and 14, keeping them
12 separate. I'm showing you what's been marked Exhibit 13C and
13 that's been admitted. And these are all part of -- I'm giving
14 you 14D and then two parts from 14C, they will not be opened,
15 Your Honor.

16 THE COURT: All right.

17 Q: Do you recognize those specific exhibits that I've put in
18 front of you?

19 A: Yes, I do.

20 Q: And where do you recognize them from?

21 A: I recognize them as belonging to SLED Case L-15-10948. I
22 recognize the SLED case number as well as my initials on the
23 items.

24 Q: And that, we've been over this with other witnesses but
25 that SLED L number, that's a unique number that's assigned to

1 one particular case?

2 A: Correct, that number is assigned when the case is
3 submitted and it identifies the particulars to that case so
4 that there can't be any confusion between the items from
5 different cases.

6 Q: And we just heard from Ms. McKay, she's a forensic
7 serologist. Does she process items before getting them to
8 you?

9 A: She does.

10 Q: Okay. So, if you can just explain how it is that you get
11 an assignment on a particular case.

12 A: Once a case is assigned to an analyst and they're ready
13 to begin processing, they send notification to the evidence
14 control department where all of our evidence is stored or if
15 the evidence is still in the custody of the particular
16 serologist who worked processing the items, we can contact
17 them directly. We then take physical custody of the items
18 that we need for processing and then we begin our testing to
19 develop DNA profiles and make our comparisons.

20 Q: Did you in fact make comparisons in this case?

21 A: I did.

22 Q: And without getting too deep in the weeds with DNA
23 science, what do you do to make a comparison?

24 A: Again, we're developing a DNA profile from an item of
25 evidence. We then compare that DNA profile to the profile of

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CATHERINE LEISY - DIRECT BY WALTER

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1 a known individual. What we're looking for is whether or not
2 the profile of a known individual matches a particular profile
3 from evidence or is consistent with it so that we can make an
4 inclusion or a match to indicate that that person could be a
5 contributor or to make an exclusion if we believe the
6 information provided indicates that they did not contribute to
7 that particular item.

8 Q: Now, you're talking about an inclusion or an exclusion.
9 Are there times when there is either too little or too much
10 information to make a call?

11 A: There are. We have standards and protocols that have to
12 be followed and if we have too limited an amount of
13 information, it may not be possible for us to make a
14 respectable, suitable comparison between that evidence and a
15 known profile. And in the same regard, if you have DNA from
16 too many contributors on a particular item, it may be
17 impossible to make that comparison, because it may just be
18 that there are so many people there, you can't get a good
19 enough picture of one particular individual's possible
20 contribution.

21 Q: So, where there certain minimum requirements that are --
22 that you have in order to make a match or make an inclusion?

23 A: Correct, there are.

24 Q: So, turning your attention specifically to this case, did
25 you receive the items that we've laid out in front of you,

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CATHERINE LEISY - DIRECT BY WALTER

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- 1 which would be the buccal swabs from Ms. J.K. , and actually
2 I'll come up and use the exhibit number, Your Honor. So
3 Exhibit -- part of Exhibit 14C, but sub-labeled 1.6?
4 A: Correct, that was in my custody.
5 Q: And then the dried blood standard, which is Exhibit 13C?
6 A: I also tested that item.
7 Q: And then the fingernail scrapings which are part of 14C,
8 but your item 1.3?
9 A: Correct, I also tested those items.
10 Q: And this is also part of 14C, but it's your Item 1.5,
11 miscellaneous collection?
12 A: I tested cuttings from that item as well.
13 Q: Okay. And when you tested the fingernail scrapings and
14 the miscellaneous collection, whose known standards were you
15 comparing it to?
16 A: I compared those evidence profiles to the standards of
17 J.K. and Alqi Dhimo.
18 Q: What conclusions were you able to make?
19 A: In reference to SLED Item 1.3.1 which were the left-hand
20 fingernail scrapings. The DNA profile developed from this
21 item is a mixture of at least two individuals. The DNA
22 profile developed from the major contributor to this mixture
23 is attributable to J.K. and the partial DNA profile
24 developed from the minor contributor is insufficient for
25 interpretation.

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1 In reference to SLED Item 1.3.2, the right-hand
2 fingernail scrapings, the DNA profile developed was also a
3 mixture of at least two individuals. A partial DNA profile
4 developed from the major contributor to this mixture matches
5 the DNA profile of Alqi Dhimo. And, the probability of
6 randomly selecting an unrelated individual having a DNA
7 profile matching the major contributor to this mixture is
8 approximately 1 in 670 trillion. DNA types to attributable to

9 J.K. are also present in this mixture.

10 And in reference to SLED Item 1.5 which were swabs from
11 the hands, the profile developed again is the mixture of at
12 least two individuals. The DNA profile developed from the
13 major contributor is attributable to J.K. . And,
14 due to the inability to calculate a statistic, the partial DNA
15 profile developed from the minor contributor to this mixture
16 is not suitable for comparison.

17 Q: Okay. So, let me just back you up, and first we'll deal
18 with the fingernail scrapings from the left-hand where your
19 conclusion was that the profile was insufficient for
20 interpretation; what does that mean?

21 A: For that particular item, we do have what we consider a
22 major and minor contributor. So, when you have a mixture, if
23 one individual contributes significantly more DNA than the
24 other, you can pull out a major contributor and essentially
25 treat it as a single source individual profile. In this

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1 particular case, that major contributor is consistent with the
2 DNA profile of J.K. . The minor profile developed
3 was too weak for interpretation. There simply was not enough
4 information present for me from that minor contributor to make
5 a comparison to any known standard.

6 Q: So, you can say that there was a minor contributor, you
7 just can't include or exclude anyone as being that
8 contributor?

9 A: That's correct.

10 Q: And then turning to the swabs from the hands, you noted
11 due to inability to calculate a statistic that it was not
12 suitable for comparison; what do you mean by that?

13 A: So, our protocols and standards at SLED require us to be
14 able to calculate a statistic if we're going to include or
15 make a match statement on an individual. Basically, that's
16 done to give a weight to how common or rare that profile is.
17 In our protocols they think that if we cannot make a
18 statistical analysis on an inclusion, then we cannot use that
19 profile for an exclusion. Basically, it just means we're not
20 confident enough that we have enough information to make a
21 suitable comparison and because we can't generate that
22 statistic, we cannot make a comparison with any known
23 standard.

24 Q: So, the conclusions for the left-hand fingernail
25 scrapings and the swabs of the hand are essentially the same.

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1 There's not enough information for you to be able to include
2 or exclude anyone but you can say that there was a second
3 contributor?

4 A: That's correct. Both items do indicate the presence of a
5 second contributor, but I'm not able to make a comparison to
6 any known individual on those items.

7 Q: All right. And then now let's turn however to the right-
8 hand fingernail scrapings. You stated that the DNA profile
9 matched the known DNA profile of Alqi Dhimo and you gave us a
10 statistic of 1 in 670 trillion. So, can you just in layman's
11 terms tell us what that means?

12 A: Essentially, it means if you randomly select an
13 individual from the population and develop their DNA profile,
14 the probability that that profile would match the major
15 profile developed from this item is approximately 1 in 670
16 trillion.

17 Q: And when you -- so, in this case, you were able to make
18 an inclusion or a match?

19 A: That's correct.

20 Q: But when you make a match, you're simply saying that
21 someone's DNA profile was there?

22 A: Correct, we're saying that those profiles are consistent
23 with each other and could be an indication that they are the
24 contributor to that item.

25 Q: But you're not making any opinions or conclusions about

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CATHERINE LEISY - CROSS BY LONG

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1 how the DNA got there?

2 A: No, that's not something that we can do with the testing
3 we perform.

4 Q: Your test is simply to say, yes, the DNA is there or not?

5 A: Correct, it's a matter of an attempt at identification.

6 Q: I don't have any further questions at this time. If
7 you'd just answer the questions for Mr. Long.

8 A: Okay.

9 THE COURT: Cross examination?

10 CROSS EXAMINATION OF CATHERINE LEISY BY MR. LONG:

11 Q: Ms. Leisy, you're a DNA expert, your protocol, you go
12 through statistical analysis, correct.

13 A: Correct.

14 Q: You don't make any presumptions?

15 A: We don't.

16 Q: Okay. And so you have Mr. Dhimo's DNA and you could
17 match it up with the -- the only thing you could match that
18 Mr. Dhimo and Ms. J.K. , was his DNA under her fingernails,
19 correct?

20 A: That's correct.

21 Q: On her right hand?

22 A: Correct, that came off the right-hand fingernail
23 scrapings.

24 Q: And that -- that could have come from consensual contact,
25 right?

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CATHERINE LEISY - REDIRECT BY WALTER

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1 A: It is possible. Again, that's not something that we can
2 determine with the tests that we perform, but it is a
3 possibility, yes.

4 Q: That's all the questions I have. Thank you, ma'am.

5 THE COURT: Any redirect?

6 MS. WALTER: No, Your Honor.

7 THE COURT: You wish the witness to be excused?

8 MS. WALTER: Oh, I'm sorry, Your Honor, I did forget to
9 -- I apologize.

10 THE COURT: Yes, ma'am.

11 MS. WALTER: This has already been marked as Exhibit 40,
12 it's just her report. I apologize, Your Honor.

13 THE COURT: That's all right.

14 REDIRECT EXAMINATION OF CATHERINE LEISY BY MS. WALTER:

15 Q: I'm approaching you with Exhibit 40, is that a true and
16 accurate copy of your report?

17 A: It appears to be, yes.

18 MS. WALTER: Your Honor, I would ask that Exhibit 40 be
19 admitted into evidence.

20 THE COURT: Any objection.

21 MR. LONG: No, Your Honor.

22 THE COURT: All right. So, State's 40 is in evidence
23 without objection.

24 STATE'S EXHIBIT NUMBER 40

25 ADMITTED INTO EVIDENCE

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MELINDA SHADOAN - DIRECT BY WALTER

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1 THE COURT: You may -- anything further?

2 MS. WALTER: No, Your Honor. Thank you.

3 THE COURT: All right, ma'am, you are released from your
4 subpoena, you may go back to your regular duties.

5 MS. LEISY: Thank you, sir.

6 THE COURT: Your next witness please, ma'am?

7 MS. WALTER: Melinda Shadoan.

8 THE COURT: All right, ma'am, if you'd come all the way
9 around up here to where the Clerk's representative is, please.
10 Thank you.

11 CLERK: Please raise your right hand and place your left
12 hand on the Bible.

13 MELINDA SHADOAN, HAVING BEEN DULY
14 SWORN TESTIFIES AS FOLLOWS:

15 MS. SHADOAN: It's Melinda Shadoan, S-H-A-D-O-A-N.

16 THE COURT: Go ahead, Solicitor.

17 MS. WALTER: Thank you, Your Honor.

18 DIRECT EXAMINATION OF MELINDA SHADOAN BY MS. WALTER:

19 Q: Good afternoon?

20 A: Good afternoon.

21 Q: Where do you work?

22 A: The City of Myrtle Beach Police Department.

23 Q: What is your position there?

24 A: I am the property and evidence technician.

25 Q: What does that mean?

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MELINDA SHADOAN - DIRECT BY WALTER

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1 A: Basically, my position houses all the evidence that comes
2 in from either crime scene detectives or officers and I also
3 house all the lost and found of the city. It's in a secured
4 location.

5 Q: Who has access to the evidence room?

6 A: There's only one of three. I'm one and then there's
7 three or four others including my supervisor.

8 Q: So, everything stays secured in that room?

9 A: Yes.

10 Q: If something is removed from that room, is there
11 protocol?

12 A: Yes, there's a chain of custody and it's documented.

13 Q: Now, directing your attention to Myrtle Beach Police Case
14 15013220, is that the case number that relates to this
15 prosecution?

16 A: It is.

17 Q: And did you and your colleagues accept evidence from
18 detectives and crime scene specialists?

19 A: We did. We did.

20 Q: And once you accepted that evidence from the detectives
21 and crime scene specialist, I cannot say that today, what did
22 you do with it?

23 A: We -- what's called, we intake it so what we'll do is
24 make sure that the voucher that they create for it matches the
25 actual evidence that I have in the package. We house it in

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MELINDA SHADOAN - DIRECT BY WALTER

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1 the secured location and put a label onto it and it has what's
2 called a public record number. It's a unique number to each
3 -- each particular piece of evidence that comes in. So, it's
4 kind of categorized and individualized.

5 Q: And after you did that intake, the evidence is stored
6 until someone like perhaps me, calls and says do something
7 with it?

8 A: Correct, I'll get what's called an iLab for SLED and
9 that's basically a form to show that it's requesting to be
10 analyzed over there at the State Law Enforcement Division.

11 Q: So, if someone like me calls and says, can you send this
12 to SLED, what happens? How does it get to SLED?

13 A: I then drive it myself and hand deliver it or we have
14 evidence lockers that I would put it in and it's also secured.
15 And then from there they would do a chain of custody. I would
16 sign I stated I gave it to them and they would sign stating
17 they received it.

18 Q: When you -- eventually you get to pick that evidence back
19 up?

20 A: I do when they're done.

21 Q: And is that also documented?

22 A: Yes, every single bit of the way it's documented.

23 Q: I'm showing you what has been admitted as State's Exhibit
24 34, do you recognize that?

25 A: It's a little different than what I get, but yes.

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MELINDA SHADOAN - DIRECT BY WALTER

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1 Q: And what is that?

2 A: That looks like the SLED receipt and that shows every
3 single way that that particular piece of evidence went.

4 Q: And isn't there a signature and ---

5 A: There is; it's mine.

6 Q: So, is that what indicates that you sort of checked the
7 evidence in there?

8 A: Right, I signed it off to them to take, and that would be
9 out of my possession at that moment in time.

10 Q: And then so in this case, did you, all the items that
11 went to SLED for analysis, did you bring them there?

12 A: I was the one to take them, yes.

13 Q: And did you then also pick them up?

14 A: I took them back, yes.

15 Q: Did you also bring them here at my request?

16 A: I did.

17 Q: Okay. I don't think I have any further questions at this
18 time, so if you can just answer Mr. Long's questions?

19 A: Sure.

20 THE COURT: Cross examination?

21 MR. LONG: No questions, Your Honor.

22 THE COURT: All right. Do you wish the witness to be
23 excused?

24 MS. WALTER: I do.

25 THE COURT: Any objection?

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DAVID BAILEY - DIRECT BY ANDREW

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1 MR. LONG: No, sir.

2 THE COURT: All right, ma'am, you're released from your
3 subpoena, you may go back to your regular duties.

4 MS. SHADOAN: I appreciate it.

5 THE COURT: All right, Solicitor, your next witness
6 please, ma'am.

7 MS. ANDREW: Your Honor, the state calls David Bailey.

8 THE COURT: All right, sir, if you come all the way
9 around and then come up here and meet the Clerk's
10 representative, please.

11 CLERK: Please raise your right hand and place your left
12 hand on the Bible.

13 DAVID BAILEY, HAVING BEEN DULY SWORN

14 TESTIFIES AS FOLLOWS:

15 MR. BAILEY: My name is David Bailey. Last name is B-A-
16 I-L-E-Y.

17 THE COURT: Go ahead.

18 DIRECT EXAMINATION OF DAVID BAILEY BY MS. ANDREW:

19 Q: Officer Bailey, what's your occupation?

20 A: I'm a crime scene officer for Myrtle Beach.

21 Q: How long have you been employed in Myrtle Beach?

22 A: Approximately 19 years.

23 Q: Okay. So, it's safe to say you were employed by Myrtle
24 Beach as a crime scene specialist on June 22nd, 2015?

25 A: Yes, ma'am.

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1 Q: Did you have an opportunity to become involved in this
2 case on that date?

3 A: Yes, ma'am.

4 Q: And can you tell me how that occurred?

5 A: I was called to go the hospital in reference to evidence,
6 and I went to the hospital to take photographs also. So, I
7 took photographs and also collected evidence and returned it
8 and secured it in property and evidence.

9 Q: Okay. And when you say you took photographs, what did
10 you take photographs of?

11 A: Of the subject individual.

12 Q: The individual and who is that?

13 A: That's -- I can't pronounce his name correctly.

14 Q: The defendant, Alqi Dhimo?

15 A: Yes.

16 Q: Okay. May I approach, Your Honor?

17 THE COURT: Yes, ma'am.

18 Q: I'm gonna show you some photographs.

19 A: Yes, ma'am.

20 Q: This one has been marked State's Exhibit Number 3; can
21 you tell me what that is?

22 A: Yes, ma'am. It's a photograph that appears to be of
23 bruising on the arm, on his left upper arm.

24 Q: And you mean the defendant?

25 A: Yes, ma'am.

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1 Q: And did you take that photograph?

2 A: Yes, ma'am.

3 Q: Is it a fair and accurate representation of what you
4 actually saw?

5 A: Yes, ma'am; it is.

6 MS. ANDREW: Your Honor, the state moves to introduce
7 Exhibit Number 30 into evidence and publish it to the jury.

8 THE COURT: Any objection?

9 MR. LONG: I would just renew my objection from the
10 previous motion.

11 THE COURT: All right, sir. And I'm gonna allow it into
12 evidence at this time.

13 You may proceed.

14 STATE'S EXHIBIT NUMBER 30

15 ADMITTED INTO EVIDENCE

16 BY MS. ANDREW:

17 Q: I'm gonna show you now what's been marked as State's
18 Exhibit Number 27, can you identify that photograph?

19 A: Yes, ma'am, it's the photograph of the same subject and
20 it was what appears to be scratches on his left upper arm.

21 Q: Okay. And did you take that photograph?

22 A: Yes, ma'am.

23 Q: Is it a fair and accurate representation of what you
24 actually saw?

25 A: Yes, ma'am, it is.

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1 MS. ANDREW: Your Honor, the state moves to introduce
2 Number 27 into evidence and publish it to the jury.

3 THE COURT: Any objection?

4 MR. LONG: Renew my objection.

5 THE COURT: I'm gonna allow it into evidence over the
6 objection of the Defense.

7 You may proceed.

8 STATE'S EXHIBIT NUMBER 27

9 ADMITTED INTO EVIDENCE

10 BY MS. ANDREW:

11 Q: Okay. I'm gonna show you what's been marked as State's
12 Exhibit Number 28. Can you identify this photograph?

13 A: It's a photograph of -- it appeared to be like very, very
14 light scratching at the time.

15 Q: And there's a ruler?

16 A: A scale also, yes, ma'am. I included it in there just to
17 show -- give you an approximate size because it's hard to tell
18 a size just looking at a photograph with no scale in it.

19 Q: Okay. And did you take that photograph?

20 A: Yes, ma'am.

21 Q: Is it a fair and accurate representation of what you
22 actually saw?

23 A: Yes, ma'am; it is.

24 MS. ANDREW: Your Honor, the state moves to introduce
25 Exhibit Number 28 into evidence and publish it to the jury.

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1 THE COURT: Any objection?

2 MR. LONG: I renew my objection from the previous.

3 THE COURT: Again, it's in evidence over the objection of
4 the Defense.

5 You may proceed.

6 STATE'S EXHIBIT NUMBER 28

7 ADMITTED INTO EVIDENCE

8 MS. ANDREW: Thank you.

9 BY MS. ANDREW:

10 Q: I'm gonna now show you what's been marked State's Exhibit
11 Number 29 and can you identify that for me?

12 A: Yes, ma'am, it's a photograph of the subject's upper left
13 bicep and which appears to have -- what appears to be a bite
14 mark on it.

15 Q: Okay. Did you take that photograph as well?

16 A: Yes, ma'am.

17 Q: Is it a fair and accurate representation of what you
18 actually saw?

19 A: Yes, ma'am; it is.

20 MS. ANDREW: Your Honor, the state moves to introduce
21 Exhibit Number 29 into evidence and publish it to the jury.

22 THE COURT: Any objection?

23 MR. LONG: Objection, previous motion.

24 THE COURT: All right. I'm gonna allow it into evidence
25 over the objection of the Defense. You may proceed.

ADMITTED INTO EVIDENCE

BY MS. ANDREW:

Q: I'm gonna show you the state's Exhibit Number 31, can you identify that photograph as well?

A: It's also a photograph with scale in it that shows something like light bruising on his arm.

Q: Okay. Did you take that photograph?

A: Yes, ma'am.

Q: Is it a fair and accurate representation of what you actually saw?

A: Yes, ma'am; it is.

MS. ANDREW: Your Honor, the state moves to introduce Exhibit Number 31 into evidence and publish it to the jury.

THE COURT: Any objection?

MR. LONG: I renew my objection with previous motions.

THE COURT: And all of those were as to relevance, correct?

MR. LONG: It's in our previous motion. Yes, sir, that's correct.

THE COURT: All right. Very good. All right. And I'm allowing it into evidence over the objection of the Defense.

You may proceed.

STATE'S EXHIBIT NUMBER 31

ADMITTED INTO EVIDENCE

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1 BY MS. ANDREW:

2 Q: I'm gonna show you what's been marked State's Exhibit
3 Number 32, can you tell me what that photograph depicts?

4 A: Yes, ma'am, it shows three individual bruising areas.
5 One appears to be a bite mark on the left side of the ruler
6 and the other two appear to depression-like bruising.

7 Q: Okay. And did you take that photograph?

8 A: Yes, ma'am.

9 Q: Is it a fair and accurate representation of what you
10 actually saw?

11 A: Yes, ma'am; it is.

12 MS. ANDREW: Your Honor, the state moves to introduce
13 Exhibit Number 32 into evidence and publish it to the jury.

14 THE COURT: Objection?

15 MR. LONG: Same objection.

16 THE COURT: All right, sir. It's in evidence over the
17 objection of the Defense.

18 You may proceed.

19 STATE'S EXHIBIT NUMBER 32

20 ADMITTED INTO EVIDENCE

21 BY MS. ANDREW:

22 Q: This is the final photograph. This is State's Exhibit
23 Number 33. And could you just identify that photograph for
24 us?

25 A: Yes, ma'am, it appears to be a bite mark on the arm with

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1 a break in the skin in the center.

2 Q: Okay.

3 A: With scale in the photo, also.

4 Q: Okay. Did you take that photograph as well?

5 A: Yes, ma'am.

6 Q: At the hospital, you took all these photographs?

7 A: I took all these photographs in the hospital, yes, ma'am.

8 Q: Is it a fair and accurate representation of what you saw?

9 A: Yes, ma'am; it is.

10 MS. ANDREW: Your Honor, the state moves to introduce
11 Exhibit Number 33 into evidence and publish it to the jury.

12 THE COURT: Objection?

13 MR. LONG: Same objection, Your Honor.

14 THE COURT: All right, sir. It's in evidence over the
15 objection of the Defense.

16 You may proceed.

17 STATE'S EXHIBIT NUMBER 33

18 ADMITTED INTO EVIDENCE

19 BY MS. ANDREW:

20 Q: After you photographed the defendant, what else did you
21 do at the hospital?

22 A: I collected two kits, a suspect kit and a victim kit and
23 transported them from the hospital down to our property and
24 evidence refrigerator and locked them up.

25 Q: Okay. I'm gonna show you what's been previously marked

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1 as State's Exhibit Number 14. Can you tell me what that is?

2 A: Yes, ma'am, it appears to be victim kit for a sexual
3 assault.

4 Q: Is that the kit that you took from the hospital that
5 night?

6 A: Do you mind if I ---

7 Q: Yeah, you can touch it.

8 A: Yes, ma'am; it is.

9 Q: And what did you do with that kit when you removed it
10 from the hospital?

11 A: I collected it from the nurses at the hospital and I
12 drove it down to the Myrtle Beach Police Department and, in
13 our evidence room, we have evidence lockers for locking up
14 evidence as well as an evidence refrigerator, with a lock on
15 it also.

16 Q: Okay.

17 A: And we placed the biological evidence in the refrigerator
18 locker, lock it, and that's -- and then leave.

19 Q: Okay. Okay. I'm gonna show you what's been previously
20 marked as State's Exhibit Number 13. Is that the suspect kit
21 that you collected from the hospital that evening or that
22 afternoon?

23 A: Yes, ma'am; it is.

24 Q: And what did you do with that suspect kit?

25 A: The same thing, ma'am. I collected both kits and I drove

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1 from the hospital down to the police department, put them both
2 in the refrigerator, and locked both kits up.

3 Q: And you got that from the nurse at the hospital as well?

4 A: Yes, ma'am; I did. It's two different nurses.

5 Q: Okay.

6 A: Yes.

7 Q: Did you do anything else at the hospital that afternoon?

8 A: No, ma'am, just photographs and collected the kits.

9 Q: Okay. Thank you for your time. Please answer any
10 questions Mr. Long has?

11 A: You're welcome.

12 THE COURT: All right. Cross examination?

13 CROSS EXAMINATION OF DAVID BAILEY BY MR. LONG:

14 Q: Mr. Bailey, you don't know the source of those marks or
15 scratches, do you?

16 A: No, sir; I don't.

17 Q: To your knowledge, no analysis has been done to determine
18 that source?

19 A: No, sir.

20 Q: And do you know there is a thing called bite mark
21 analysis?

22 A: Yes.

23 Q: That wasn't done as far as you know, right?

24 A: As far as I know, it was not, sir.

25 Q: You don't know when these marks were made, right?

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DAVID BAILEY - REDIRECT BY ANDREW

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1 A: No, sir.

2 Q: Don't know when the scratches were made?

3 A: No, sir.

4 Q: Don't know who did it?

5 A: No, sir.

6 Q: It could've been anybody, right?

7 A: Perhaps, yes.

8 Q: That's all the questions I have. Thank you.

9 THE COURT: Any redirect on those questions?

10 MS. ANDREW: Briefly, Your Honor.

11 THE COURT: Yes, ma'am.

12 REDIRECT EXAMINATION OF DAVID BAILEY BY MS. ANDREW:

13 Q: Officer, in reviewing and seeing the victim that day at
14 the hospital and in reviewing those photographs, can you tell
15 by looking at those bite marks whether they were defined
16 enough for any bite mark ---

17 MR. LONG: Objection, Your Honor. I object.

18 THE COURT: Sustained.

19 MS. ANDREW: Thank you, Your Honor.

20 THE COURT: Further questions?

21 MS. ANDREW: No further questions. We ask that this
22 witness be released.

23 THE COURT: Any objection?

24 MR. LONG: No, sir.

25 THE COURT: All right, sir, you're released from your

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BY THE COURT

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1 subpoena, you may go back to your regular duties.

2 MR. BAILEY: Thank you, Your Honor.

3 MS. ANDREW: May we approach, Your Honor.

4 THE COURT: Please.

5 (REPORTER'S NOTE: Bench conference is held off the record in
6 the presence of but outside the hearing of the jury.)

7 BY THE COURT:

8 THE COURT: All right, ladies and gentlemen, based on
9 conversation with counsel, I do find this to be an appropriate
10 stopping time. We're gonna stop today. We're gonna come back
11 tomorrow morning to come back in the courtroom at 9:30, finish
12 the testimony. It's my anticipation that at some point in
13 time tomorrow, we are going to give this case to you for your
14 deliberations and unanimous decision in this matter.

15 So, based upon that, please remember, don't talk about
16 the case, don't allow anybody to talk to you about it, don't
17 go home and talk about it, husband, wife, boyfriend,
18 girlfriend, person down the street. You're not researchers,
19 not investigators, can't look up anything. You decide the
20 case only on the evidence presented in the courtroom and from
21 no other source. Again, the Clerk's Office will have
22 something for you in the morning. So, if you'll get there
23 when the, the bailiff asks for you to come so you can enjoy
24 that so that we can come into the courtroom at 9:30. All
25 right?

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BY THE COURT

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1 With that, you're now excused. Thank you very much.

2 (REPORTER'S NOTE: Jury exits courtroom. The following takes
3 place outside the presence of the jury.)

4 THE COURT: Anything else from the state at this point in
5 time?

6 MS. WALTER: No, Your Honor.

7 THE COURT: From the Defense?

8 MR. LONG: No, Your Honor.

9 THE COURT: All right. Very good. All right. So we're
10 gonna resume tomorrow morning.

11 Mr. Dhimo, before you go, let me talk to you about one
12 thing. I did allow you to get back out on bond. Now, you
13 understand those terms and conditions require you to come back
14 to court when court resumes. If you, for whatever reason, did
15 not come back, decided not to come back, that will not stop
16 the trial. The trial will proceed in your absence to a
17 conclusion. You understand that?

18 MR. DHIMO: Yes, sir.

19 THE COURT: Very good. All right.

20 We'll resume tomorrow morning and start at 9:30. Thank
21 you very much.

22 MR. DHIMO: Thank you, sir.

23 END OF DAY TWO.

24 (RECESS.)

25

*****OFF THE RECORD*****

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BY THE COURT

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1 **JANUARY 10, 2018 - DAY THREE**

2 **(On the Record.)**

3 BY THE COURT:

4 THE COURT: Is there anything from the state before we
5 get started?

6 MS. WALTER: Your Honor, just so that it's on the record,
7 I had advised both Defense and your Law Clerk that Detective
8 Whitmeyer recognized one of the jurors yesterday. Apparently
9 when she was a school resource Officer back in 2012 or 2013,
10 she had arrested the juror's son twice. I don't believe it
11 will be a problem, but I did just want to make sure that
12 everyone was aware of it.

13 THE COURT: Okay. So you're not asking the Court to do
14 anything about that?

15 MS.. WALTER: No, I'm not; just making sure it's on the
16 record, Your Honor.

17 THE COURT: All right. I appreciate you putting it on
18 the record, but I just wanted to be clear you're not asking
19 the Court to do anything about that?

20 MS. WALTER: I am not, I just needed to give Mr. Long an
21 opportunity to do anything or request anything that he might
22 want.

23 THE COURT: All right. Very good. All right. Anything
24 further from the state at this time?

25 MS. WALTER: Not at this time, Your Honor.

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1 THE COURT: All right. From the defense?

2 MR. LONG: No, Your Honor.

3 THE COURT: Ask the jury to come in, please.

4 (REPORTER'S NOTE: Jury enters courtroom.)

5 THE COURT: All right, Solicitor, your next witness
6 please, ma'am.

7 MS. WALTER: Detective Carol Allen.

8 THE COURT: All right.

9 CLERK: Please raise your right hand and place your left
10 hand on the Bible.

11 CAROL ANN ALLEN, HAVING BEEN DULY

12 SWORN TESTIFIES AS FOLLOWS:

13 MS. ALLEN: Carol Ann Allen, A-L-L-E-N.

14 THE COURT: All right, Solicitor, you may go forward.

15 MS. WALTER: Thank you.

16 DIRECT EXAMINATION OF CAROL ALLEN BY MS. WALTER:

17 Q: Detective Allen, I know that you brought some papers up
18 to the witness stand with you. If you could just turn them
19 over so that they're face down and if you need to refer to
20 them for anything, just let us know.

21 A: Yes, ma'am.

22 Q: Great. Thank you. By whom are you employed?

23 A: Myrtle Beach Police Department.

24 Q: How long have you been with the Myrtle Beach Police
25 Department?

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1 A: Just under 25 years.

2 Q: What is your current capacity?

3 A: I'm a master corporal assigned to the Investigative
4 Division.

5 Q: How long have you had that position?

6 A: Probably nine years.

7 Q: So, you were working in that position back in June of
8 2015?

9 A: Yes, ma'am.

10 Q: And what -- what are your duties as Master Corporal?

11 A: Okay. Being assigned to the Investigative Division, we
12 respond to all calls that are deemed by a supervisor. These
13 calls include anything from violent crimes, property crimes.

14 Q: And then when you respond, you might have a variety of
15 different duties depending on the investigation?

16 A: Yes, ma'am.

17 Q: Were you assigned or asked to help out in the
18 investigation that we're here for today?

19 A: I was.

20 Q: And as part of that assignment, did you attempt to
21 interview the victim in this matter, J.K. ?

22 A: Yes, ma'am; I did.

23 Q: Can you tell us what happened when you tried to interview
24 her?

25 A: Okay. I was at the jail and I seen them bring her in..

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1 She appeared to be under the influence. She was very loud.

2 She was crying. Her actions just led me to believe that she
3 was under the influence and she didn't appear to be in any
4 shape to be interviewed at that time.

5 Q: Do you recall, was that on the morning of June 22nd?

6 A: Yes, it was.

7 Q: Do you know about what time that was?

8 A: That was about 3 -- well, 3:30 I got the call. It was
9 right before 4:30 in the morning.

10 Q: So after, I assume then you didn't try to interview her
11 at that point?

12 A: No, I did not.

13 Q: Did you then go and interview the defendant?

14 A: Yes, ma'am; I did.

15 Q: When you interview a defendant, can you tell us, do you
16 have sort of a standard procedure that you use?

17 A: Yes, the first thing that we would normally do is
18 Mirandize anybody that's detained in a detention facility, in
19 which he was. And, every time that we read somebody the
20 Miranda rights, we always ask a series of questions.
21 Basically, the questions that we ask are: Are you under the
22 influence of any drugs or alcohol at this time; what is your
23 highest grade level you completed in school; what is your
24 current primary language; and we always ask if there was
25 something that you didn't understand, you would know enough to

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1 ask us. So those questions were asked that night or in the
2 morning.

3 Q: When you asked the defendant if he was under the
4 influence of alcohol or drugs, did he respond to you?

5 A: He did.

6 Q: What did he say?

7 A: He said that he did not smoke or something to that
8 effect; he doesn't do that.

9 Q: But did he ever mention to you that he was under the
10 influence of alcohol?

11 A: No, ma'am.

12 Q: Could you smell alcohol coming from him at that point?

13 A: I did not.

14 Q: Based on your interactions with him, did he appear to be
15 intoxicated?

16 A: No, he did not.

17 Q: Was he able -- did it appear that he was able to
18 understand your questions?

19 A: Yes, ma'am.

20 Q: You said that one of the questions you asked is the
21 highest level of education, do you recall what he responded?

22 A: Four years of college.

23 Q: And you also asked whether he would know enough to ask
24 you or stop you if he didn't understand something; how did he
25 respond to that?

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1 A: That he would understand enough to know that.

2 Q: So, after you got those answers to those preliminary
3 questions, do you then proceed to ask him the Miranda
4 questions ---

5 A: Yes, ma'am.

6 Q: --- and advise him of his Miranda rights?

7 A: Yes.

8 Q: And do you use any particular form or do you just explain
9 the rights since you've been doing this for so long?

10 A: No, we always go by a form. It doesn't matter if you've
11 been doing it five years, ten years, you may forget something
12 and Miranda rights are very, very important. So, the way I do
13 it and it's consistent, I will start off with the very first
14 right and then I will ask them if they understand that right
15 and then I'll put a check mark next to it. That just says
16 that they do understand it. I'll read each right, one right
17 after the other, and then when I'm done reading the rights,
18 I'll ask them if they do understand each right. And, I'll ask
19 them to sign the form and I'll say the only thing you're
20 signing is if you understand your rights, and he did sign the
21 form telling me that he did understand the rights.

22 MS. WALTER: May I approach the witness, Your Honor?

23 THE COURT: Yes, ma'am.

24 BY MS. WALTER:

25 Q: I am approaching with what's been previously admitted as

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1 Exhibit 1, can you tell me if you recognize that?

2 A: Yes, ma'am. That is the Miranda form that I used when
3 Mirandizing the defendant that morning.

4 Q: And you can you, just for the jury, read the questions
5 and remind us again of what the defendant's responses were to
6 those questions?

7 A: Yes, ma'am.

8 THE COURT: Let me cover one thing. It's previously
9 marked as Exhibit 1, you're offering it into evidence?

10 MS. WALTER: I'm sorry, I believe it was previously
11 admitted. I should have said admitted.

12 THE COURT: All right. Y'all come forward.
13 (REPORTER'S NOTE: Bench conference is held off the record in
14 the presence of but outside the hearing of the jury.)

15 MS. WALTER: Your Honor, at this time, the state would
16 ask that previously marked Exhibit 1 be admitted into
17 evidence.

18 THE COURT: Any objection?

19 MR. LONG: No, Your Honor.

20 THE COURT: It's into evidence without objection. You
21 may proceed.

22 STATE'S EXHIBIT NUMBER 1

23 ADMITTED INTO EVIDENCE

24 BY MS. WALTER:

25 Q: Can you please read to the jury, the rights that you

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1 advised Mr. Dhimo of and what his responses were?

2 A: The rights are you have the right to remain silent and
3 refuse to answer any questions, and there's a check mark by it
4 so he did understand it. Anything you say can be used against
5 you in a court of law. You have the right to talk to an
6 attorney and have him present while you are being questioned.
7 If you cannot afford an attorney, one will be provided at
8 government's expense before any questioning if you wish. And,
9 if you desire to make a statement or answer questions, you
10 have the right to stop at any time. And once he acknowledges
11 that he understood each right, the very last sentence is, the
12 above rights have been explained to me and I understand each
13 one of them. And, by him signing, means that he did
14 understand each right.

15 Q: And so the defendant did sign that and verbally also
16 explained to you that he understood those rights?

17 A: Yes, ma'am.

18 MS. WALTER: Your Honor, I would ask that this be
19 published to the jury?

20 THE COURT: Any objection?

21 MR. LONG: No, Your Honor.

22 THE COURT: You may do so.

23 MS. WALTER: Thank you.

24 BY MS. WALTER:

25 Q: After the defendant acknowledged that he understood his

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1 rights, did he go on to give you a statement?

2 A: Yes, ma'am.

3 Q: And during that statement, did you ask him a series of
4 questions?

5 A: Yes.

6 Q: For instance did you ask the defendant where he had
7 picked up Ms. J.K. ?

8 A: Yes, ma'am.

9 Q: Do you recall what his response was?

10 A: He said 44th Avenue North and Kings Highway.

11 Q: Did you ask him or did he tell you who owned the cab
12 company that owned the cab that was found?

13 A: Yes, he told me that he owned Atlantic Cab; that was his
14 company.

15 Q: In his statement to you or your questions to him, did he
16 ever tell you that he and Ms. J.K. had stopped at
17 Jimmagan's and had drinks?

18 A: No, ma'am.

19 Q: Did he ever tell you that he and Ms. J.K. transitioned
20 from cab ride to date?

21 A: No, ma'am.

22 Q: Did he ever tell you ---

23 MR. LONG: Your Honor, I object.

24 THE COURT: Y'all come and talk to me, please.

25 (REPORTER'S NOTE: Bench conference is held off the record in

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1 the presence of but outside the hearing of the jury.)

2 BY MS. WALTER:

3 Q: And, Detective Allen, during this conversation, were you
4 using any type of recording device?

5 A: Yes, ma'am; I was.

6 Q: So, was your entire interaction with the defendant
7 recorded?

8 A: Yes, ma'am.

9 Q: Have you had an opportunity prior to today's date to
10 review that recording?

11 A: I have.

12 Q: And is it a fair and accurate representation of what
13 happened during that interview?

14 A: Yes, it is.

15 Q: Can you describe to the jury the quality of that
16 recording?

17 A: It is very poor. The location where the interview took
18 place was -- it's not a real interview room; it's where they
19 do the alcohol, you know, the breathalyzers for when somebody
20 would get a DUI, and so there's a lot of echo and it's just
21 real poor quality.

22 Q: Additionally, before we play the tape, when you were
23 speaking with the defendant, did you have any difficulty
24 understanding him?

25 A: Somewhat, yes, he -- he told me he was from Albania, and

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1 he did have somewhat of an accent, so there's been times where
2 I had to ask him to repeat himself, so yes.

3 MS. WALTER: Your Honor, I'm approaching the witness with
4 previous marked Exhibit 3 and is that a CD of the defendant's
5 interview.

6 A: Yes.

7 Q: And again, you've reviewed that and it's a fair and
8 accurate representation of what happened?

9 A: Yes, ma'am.

10 MS. WALTER: Your Honor, at this time, we would ask that
11 Exhibit 3 be admitted and published to the jury.

12 THE COURT: Any objection?

13 MR. LONG: I renew my previous objection.

14 THE COURT: I'll reaffirm the Court's prior ruling on --
15 on this matter. At a break, we'll go over that again. Thank
16 you.

17 So, I'm gonna allow it into evidence and allow it to be
18 played at this time.

19 MS. WALTER: Thank you.

20 STATE'S EXHIBIT NUMBER 3

21 ADMITTED INTO EVIDENCE

22 (REPORTER'S NOTE: State's Exhibit 3 published. Audio not
23 transcribed herein.)

24 THE COURT: Let's turn it down a little bit. That's
25 good.

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1 MS. WALTER: I'm sorry, Your Honor, one of the jurors
2 indicated that she wanted it turned up.

3 THE COURT: Okay. Well, I think it's loud enough.

4 MS. WALTER: Okay. I just wanted to make sure everyone
5 can hear it.

6 THE COURT: All right. Thank you, ma'am.

7 (REPORTER'S NOTE: State's Exhibit 3 published. Audio not
8 transcribed herein.)

9 BY MS. WALTER:

10 Q: So, Detective Allen, at the end of that, you asked him
11 where he got the bite marks or I think I -- before we played
12 the video or the audio, I asked you if you had noticed any
13 marks on him?

14 A: Yes, ma'am.

15 Q: Where were these marks that you noticed?

16 A: They were like in the muscle area on the left arm.

17 Q: And so you asked him where he got those marks; what did
18 he say to you?

19 A: Not from her.

20 Q: Did you ask him again?

21 A: I believe I asked him three times and he gave me the same
22 answer every -- all three times, not from her.

23 Q: And that -- it's at that point that you decided to end
24 your part of the interview, correct?

25 A: Yes, ma'am.

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BY THE COURT

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1 MR. LONG: I ---

2 THE COURT: Do you have a matter, Mr. Long?

3 MR. LONG: I object to that, Your Honor.

4 BY THE COURT:

5 THE COURT: All right. Mr. Foreman, ladies and gentlemen
6 of the jury, go to the jury room, please.

7 (REPORTER'S NOTE: Jury exits courtroom. The following takes
8 place outside the presence of the jury.)

9 THE COURT: Yes, sir, Mr. Long?

10 MR. LONG: That's a misstatement of the facts, Your
11 Honor. Detective Allen did not choose to end the interview at
12 that time. Alqi Dhimo asked for an attorney. She wanted to
13 continue questioning. She didn't stop; he stopped. The jury
14 now thinks that Ms. Allen, Detective Allen was done with the
15 questioning. She wanted to continue, but Mr. Dhimo is the one
16 who wanted to stop based on ---

17 THE COURT: I'm sorry. Response from the state?

18 MS. WALTER: Well, again, this interview was redacted
19 according to Defense witnesses -- wishes, excuse me. The
20 state's not permitted to say that the defendant asked for an
21 attorney. And, in fact, it's not a misstatement of facts
22 because once someone requests an attorney, it is the
23 detective's motion or it's her move to stop the interview.

24 THE COURT: It's her duty.

25 MS. WALTER: It's her duty.

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1 THE COURT: Yes.

2 MS. WALTER: And that's what she did.

3 THE COURT: All right. Well, there's nothing wrong with
4 saying that at that point in time, the defendant asked for an
5 attorney and I was obligated to stop interviewing if that's
6 what occurred.

7 MS. WALTER: Okay.

8 THE COURT: Now, if that's not what occurred, then that's
9 fine, but what I heard from the question and the answer was,
10 the detective decided to stop this interview. It had nothing
11 to do with a request of the defendant for an attorney. So, is
12 that what happened?

13 MS. WALTER: That is what happened and she ---

14 THE COURT: So, the defendant never asked for an
15 attorney?

16 MS. WALTER: No, I misunderstood you. The defendant did
17 request an attorney and ---

18 THE COURT: Okay. Then you need to clear that up with
19 her because it's clear from your question and her answer that
20 it was her decision to stop this interview. It was not as a
21 result of the defendant asking for an attorney.

22 MS. WALTER: Okay. Again, this interview was redacted at
23 Defense's request. So, I can certainly -- I have the
24 unredacted copy, we can play that and it ---

25 THE COURT: I appreciate that, ma'am, that's not the

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1 point. The point is, when she ended the interview, was it her
2 choice or because the defendant asked for an attorney. Right
3 now, what's in front of this jury is the interview ended then
4 because the detective decided to end the interview. That's
5 what's before the jury. And if that is not what occurred,
6 then you need to clear that up. But if that's what occurred,
7 then that's fine.

8 MS. WALTER: I am happy to say that the defendant asked
9 for an attorney. In my 24 years of practice, I have never
10 been able to say that in open court.

11 THE COURT: Well, I'm gonna allow -- do you have an
12 objection to that, Mr. Long?

13 MR. LONG: No, Your Honor, that is what happened. I, I
14 ---

15 THE COURT: I mean, I have never redacted out of an
16 interview when a defendant says I would like to have an
17 attorney.

18 MS. WALTER: Again, Mr. ---

19 THE COURT: And then it ends right then.

20 MS. WALTER: Mr. Long asked for the redaction. I did the
21 redaction on a pretrial motion. I don't remember -- I don't
22 remember that part of it.

23 MR. LONG: The redaction has nothing to do with the
24 misstatement of the facts, Your Honor.

25 THE COURT: Anyway.

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1 MR. LONG: I, I make the motion for a mistrial, because
2 the jury has been told knowingly a misstatement of the facts.

3 THE COURT: I, I don't characterize it as such. There's
4 no reason for a mistrial. It can be clarified by a simple
5 question and answer from -- question from the state and answer
6 from the defendant that the interview ended because the
7 defendant requested an attorney, and it was her duty and
8 obligation to end the interview at that point in time. She
9 has to. So, I don't -- there's no problem.

10 All right. Now, Mr. Long, prior before you said when we
11 -- when the state introduced or asked to introduce State's 3
12 into evidence, you said based upon your prior objection. Why
13 don't you go ahead and put that on the record at this point in
14 time.

15 MR. LONG: Judge, that was the motion in limine, Your
16 Honor. There was -- all right. Your Honor, back from -- I
17 had a motion in limine for redaction of the interview of the
18 defendant and that was -- had been redacted.

19 THE COURT: All right, sir.

20 MR. LONG: So, I -- I apologize for that. That was --
21 based on that I withdraw my objection to the introduction of
22 the evidence.

23 THE COURT: All right. So, now then State's 3 is in
24 evidence without objection. All right.

25 Thank you very much.

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1 MS. WALTER: Your Honor?

2 THE COURT: Yes, ma'am.

3 MS. WALTER: Would it be acceptable, I'm just -- I don't
4 want to put an appeal issue in the case. Would it be
5 acceptable if I said and asked the detective instead, at that
6 point, did the defendant ask to end the interview?

7 THE COURT: If you would like to clarify -- classify it
8 as such.

9 Mr. Long, do you have a problem with that?

10 MR. LONG: No, Your Honor.

11 MS. WALTER: Thank you.

12 THE COURT: Very good. Yes, ma'am, don't have a problem
13 with that.

14 Ask the jury to come back in.

15 (REPORTER'S NOTE: Jury enters courtroom.)

16 THE COURT: All right, Solicitor, you may proceed.

17 MS. WALTER: Thank you, Your Honor.

18 BY MS. WALTER:

19 Q: Detective Allen, after the questions regarding the bite
20 mark, where the defendant denied that they came from the
21 victim, did he request to end the interview?

22 A: Yes, ma'am; he did.

23 Q: And as a result of that request, you ended the interview?

24 A: Yes, ma'am.

25 Q: Now, let's just go back to kind of the substance of the

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1 interview. The defendant acknowledged, did he not, that the
2 security came to the beach with flashlights, I think?

3 A: I believe that was said, yes.

4 MR. LONG: Your Honor, I object, that's -- that misstates
5 the evidence.

6 THE COURT: All right. What I'm gonna allow you,
7 Solicitor, to do is ask questions as to what she heard or that
8 was her understanding of the answer. What the statement is is
9 what the statement is, and that's for the jury to interpret
10 it, whether they can understand or not understand it, that's
11 the evidence. This witness' characterization of it is not
12 proper, but you can ask what it is that she heard, I'll be
13 glad for you to do that.

14 MR. LONG: Your Honor, if make a motion for that response
15 to be stricken from the record.

16 THE COURT: With the explanation and what I've asked the
17 state to do, I don't think that's necessary.

18 You may continue, ma'am.

19 BY MS. WALTER:

20 Q: Did you hear the defendant say, Ms. J.K. said her
21 boyfriend kicked her out of the car?

22 A: I believe that was said, yes.

23 Q: Did you hear him say that Ms. J.K. said her boyfriend
24 had given her steroids ---

25 A: Yes, ma'am.

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1 Q: --- a steroid, a steroid.

2 MR. LONG: Objection, Your Honor, again a misstatement of
3 evidence.

4 THE COURT: Again, ladies and gentlemen of the jury, I'll
5 explain this to you at the end, but I've allowed the statement
6 of the defendant to go into evidence. It's your job to have
7 heard it, listen to it and interpret it as best you can.
8 That's the evidence. What this witness says as to her belief
9 or a characterization of it, that's her statement only; that
10 does not govern your interpretation of the statement. I'm
11 allowing the question and the answer, but you are governed by
12 the statement as you heard it. Thank you very much.

13 BY MS. WALTER:

14 Q: Just so we're clear, did you hear the defendant say that
15 Ms. J.K. told him, her boyfriend had given her a steroid?

16 A: That's correct.

17 Q: Did you hear him tell you that she said they had a fight
18 over a radio station?

19 A: Yes.

20 Q: During one of his answers, did you hear him say that when
21 they got to Horizon and Grand Shore that she said no, no, keep
22 going?

23 MR. LONG: Objection, Your Honor, misstatement of
24 evidence.

25 THE COURT: I'll allow you to cross examine, and if you

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1 want to replay portions of the interview, you may do so, and
2 you may cross examine the witness. I'm gonna allow the
3 question and the answer based upon the Court's statement to
4 the jury that they're bound by what they heard on the
5 statement and that is not to overrule or govern -- the
6 witness' characterization is not to overrule what they heard.

7 MR. LONG: And not to impede the Court, but I have a
8 continuing objection to this line of questioning.

9 THE COURT: You'll need to object every time the question
10 is asked if you have that objection. Thank you.

11 MR. LONG: Thank you.

12 BY MS. WALTER:

13 Q: Did you hear the defendant say that when they got to the
14 area of Horizon and Grand Shore, the victim said keep going,
15 no, no, keep going?

16 A: That's correct.

17 MR. LONG: Objection, Your Honor, misstatement of
18 evidence.

19 THE COURT: Overruled.

20 BY MS. WALTER:

21 Q: Did you hear him say that the victim as completely passed
22 out?

23 MR. LONG: Objection, Your Honor, misstatement of
24 evidence?

25 THE COURT: Again, I'm gonna allow you to cross examine

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1 and if you wish to replay it, you may do so, and have the
2 witness point out where it is she thinks she heard that.

3 MR. LONG: Yes, sir.

4 THE COURT: Go ahead.

5 BY MS. WALTER:

6 Q: Did you hear him say that he turned on his fare?

7 A: Correct.

8 Q: Did you hear him say that Ms. J.K. said her boyfriend
9 tried to kill her?

10 A: Correct.

11 Q: Did you hear him say that he stopped the cab and said
12 here, and she said keep going?

13 A: Correct.

14 Q: Did you hear him say that she was completely passed out
15 and would not wake up?

16 A: Correct.

17 Q: When you asked him why, why he told Security to stay
18 back, did you ever hear from him a direct response to that
19 question?

20 A: I believe, if I could refer to my notes, I believe he
21 said he told -- he said that there was somebody approaching
22 him and he told the person to get back, I've got everything
23 under control.

24 Q: Did you hear him say that he had no idea what she had to
25 drink?

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1 A: Correct.

2 Q: Did you ever hear him say that she had gotten out of the
3 cab to pee by the side of the road?

4 A: No.

5 MR. LONG: Objection, Your Honor, that's not in evidence.

6 THE COURT: Overruled.

7 BY MS. WALTER:

8 Q: Did you ever hear him tell you that Ms. J.K. had
9 actually driven the cab at one point?

10 A: No.

11 Q: Did you ever hear him tell you that they had stopped at
12 Jimmagan's and had drinks?

13 A: No.

14 Q: Did you hear him say that the victim said she wanted to
15 go to 77th Avenue North?

16 A: Yes.

17 Q: And at one point during the interview, he says what are
18 you guys doing to her; did you hear anything in the background
19 that in your belief prompted that question?

20 A: Repeat that again?

21 Q: Did you hear him say at one point, what are you guys
22 doing to her?

23 MR. LONG: I object.

24 THE COURT: Sustained. Calls for speculation, sustained.

25 BY MS. WALTER:

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1 Q: And I apologize whether we were actually able to answer
2 this question. Do you recall the defendant saying that
3 security came with flashlights?

4 MR. LONG: Objection.

5 BY MS. WALTER:

6 Q: Did you hear?

7 THE COURT: All right. It was asked and answered; is
8 that your objection?

9 MR. LONG: Yes, sir.

10 THE COURT: Sustained.

11 MS. WALTER: As I said, I wasn't sure if we had gotten
12 that answer.

13 THE COURT: That's all right.

14 BY MS. WALTER:

15 Q: Did you ever hear the defendant say that they were on a
16 date?

17 A: No.

18 Q: Now, and you said you ended the interview after the
19 defendant requested it?

20 A: Correct.

21 Q: Did you have other duties with this investigation?

22 A: Yes.

23 Q: Did you speak with a bartender from Jimmagan's named Chad
24 Morenus?

25 A: I did.

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1 Q: Can you tell the jury about that conversation?

2 A: Yes, I met with Chad at Jimmagan's. He was a bartender
3 the night of the incident. When I met with him, I showed him
4 two photographs that I obtained from our report management
5 system. One was of Mr. Dhimo; the other one was of the
6 victim. And I asked the bartender if he recognized them for
7 being in the establishment that night and he looked at the
8 pictures and he said that he was ---

9 MR. LONG: Objection, Your Honor.

10 THE COURT: Sustained. The witness has already testified
11 so, you may not state what he told you.

12 MS. WALTER: If I may approach, Your Honor, with Exhibits
13 37 and 38. They've been previously admitted.

14 BY MS. WALTER:

15 Q: Are these the pictures that you showed to Mr. Morenus?

16 A: That's correct.

17 Q: And after -- after that conversation with him, did you
18 have another conversation with him?

19 A: I did.

20 Q: And during that conversation, did he provide you with
21 additional information?

22 A: That's correct.

23 Q: Did that essentially, those three things, attempting to
24 interview the victim, interviewing the defendant, and
25 interviewing Mr. Morenus, did that essentially end your

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1 involvement with this case up until now?

2 A: That's correct.

3 Q: No further questions at this time. If you'd just answer
4 any questions Mr. Long has.

5 THE COURT: Cross examination?

6 CROSS EXAMINATION OF CAROL ALLEN BY MR. LONG:

7 Q: Detective Allen, you said that you attempted to interview
8 Ms. J.K. at 4:30 A.M., correct?

9 A: It was around that time, yes.

10 Q: You said she was -- she was loud and crying?

11 A: Correct.

12 Q: And said she was not in any shape to be interviewed; is
13 that right?

14 A: Correct.

15 Q: What was her blood alcohol content at that time?

16 A: I don't know.

17 Q: You can't speculate what her blood alcohol content was?

18 A: No, sir.

19 Q: What's the blood alcohol content allowable for someone to
20 be interviewed?

21 A: I'm not sure what you're asking?

22 Q: You said she was too drunk to interview at 4:30 A.M.?

23 A: She was -- I could tell that she was under the influence;
24 whether that was alcohol, drugs, or a combination, I don't
25 know.

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1 Q: So, you don't want to interview anyone who's under the
2 influence, correct?

3 A: Correct.

4 Q: Because that would -- you wouldn't be able to rely on
5 their testimony, correct?

6 A: Correct.

7 Q: Were you in the courtroom yesterday when we heard the
8 SLED expert testify what the victim's blood alcohol content
9 was?

10 A: No, sir; I was not.

11 Q: Okay. At what time did Ms. J.K. become capable of
12 being interviewed?

13 A: I'm not sure. I didn't conduct the interview with her.
14 It would've been done later in the afternoon, if I'm not
15 mistaken, by other detectives.

16 Q: In the afternoon?

17 A: I believe so, yes.

18 Q: Because you wouldn't want to interview her while she was
19 under the influence, correct?

20 A: Correct.

21 Q: Because she would not be a reliable witness if she were
22 under the influence?

23 A: Right.

24 Q: And you were not present at the scene, correct?

25 A: No, sir.

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1 Q: You did not interact with Mr. Dhimo at the scene,
2 correct?

3 A: No, sir.

4 Q: Matter of fact, your interaction with Mr. Dhimo occurred
5 three hours after the incident?

6 A: Yes, sir.

7 Q: And you say you were in the BAC Room at Myrtle Beach
8 Police Department when you interviewed Mr. Dhimo, correct?

9 A: That's correct.

10 Q: And so you could've taken his blood alcohol content at
11 that time if you so chose to, correct?

12 A: I had no reason to.

13 Q: Okay. And during the interview, you can hear a female
14 voice in the background, right?

15 A: Yes.

16 Q: Do you know who that was?

17 A: I was behind closed doors. I mean, I can speculate, but
18 I don't know for sure.

19 THE COURT: You can't speculate, ma'am.

20 A: Yes, sir.

21 BY MR. LONG:

22 Q: So it's your testimony today that that was not Ms.

23 J.K. ?

24 MS. WALTER: Objection, Your Honor, that's actually not

25 ---

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1 THE COURT: Sustained. She can't, she said she doesn't
2 know; she can't speculate. Move along.

3 BY MR. LONG:

4 Q: Okay. Can Ms. J.K. , -- excuse me. Based on the
5 interview with Mr. Dhimo, it was determined that he told you
6 that Ms. J.K. did have a fight with her boyfriend, correct?

7 A: Correct.

8 Q: And that was true?

9 A: True.

10 Q: Okay. And you never asked them -- you never asked him if
11 she -- he and Ms. J.K. were on a date, did you?

12 A: I did not ask; that was not in my questioning, no.

13 Q: You never asked them if they voluntarily went to a bar
14 together, did you?

15 A: No, sir.

16 Q: Okay. And he said that he picked her up at 44th Avenue,
17 correct?

18 A: Correct.

19 Q: And that's true, right?

20 A: That's what he told me.

21 Q: Okay. And he told you that he had passed out on the
22 beach, right?

23 A: Right.

24 Q: And he admitted to having some consensual contact with
25 Ms. J.K. , correct?

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- 1 A: Consensual contact?
- 2 Q: Yes.
- 3 A: I don't recall that.
- 4 Q: You don't recall?
- 5 A: No, sir.
- 6 Q: Okay. And he denied having his pants down on the beach,
- 7 correct?
- 8 A: Correct.
- 9 Q: And he told the security guards stay back, right?
- 10 A: What he told me is he observed somebody approaching him
- 11 and he told the person -- I don't believe he said it was a
- 12 security guard at that time.
- 13 Q: Right. He didn't know it was a security guard, to your
- 14 knowledge?
- 15 A: Right.
- 16 Q: And he said stay back?
- 17 A: Right.
- 18 Q: You didn't know at that time that Ms. J.K. is the one
- 19 that drove to 77th Avenue, did you?
- 20 A: No, sir.
- 21 Q: She was behind the wheel, correct?
- 22 A: I did not know that. I didn't know because I was unable
- 23 to interview her at that time. I wouldn't know.
- 24 Q: And no witnesses, to your knowledge, can testify that
- 25 they saw Mr. Dhimo have any contact with Ms. J.K. on the

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1 beach, correct?

2 A: I didn't interview any other witnesses.

3 Q: Okay. And that Mr. Dhimo, he consented to a DNA test,
4 right?

5 A: Not to me. I didn't ask him for consent. I did not ask
6 him for consent.

7 Q: You didn't hear him on the interview say that he'll take
8 a DNA test?

9 A: Oh, that, yes; I'm sorry. I misunderstood you.

10 Q: Okay.

11 A: I'm sorry.

12 Q: So, he said give me a DNA test; he said give me a blood
13 test, right?

14 A: Yes, sir.

15 Q: And he was fully cooperative with you, correct?

16 A: Yes, sir.

17 Q: Okay. And he denied that those marks on his body came
18 from Ms. J.K. ?

19 A: That's correct.

20 Q: And you did not do any type of testing to determine if
21 those bite marks or scratches came from Ms. J.K. , did you?

22 A: No, sir.

23 Q: And there is a procedure for bite-mark analysis, correct?

24 A: I would assume so. That's normally something that our
25 crime scene officer would handle.

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1 Q: How long have you been a detective?

2 A: About nine years.

3 Q: Nine years and you don't know about bite-mark analysis?

4 A: Yes, that's something that our crime scene officers would
5 normally do.

6 Q: Okay. So, now you remember now. They didn't do that in
7 this case, right?

8 A: I don't know.

9 Q: Aren't you an investigator on this case?

10 MS. WALTER: Objection, Your Honor, she's not the lead
11 investigator. She's testified to her limited involvement.

12 THE COURT: All right. All right. Thank you.

13 Mr. Long, just ask questions about the matter.

14 BY MR. LONG:

15 Q: But no bite-mark analysis was done to your knowledge?

16 A: No, sir.

17 Q: No DNA test of the marks were done to prove that they
18 were from Ms. J.K. , correct?

19 A: Not to my knowledge.

20 Q: That's all the questions I have.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION OF BY MS. WALTER:

23 Q: You testified earlier that when you tried to interview
24 the victim, I think you said she was screaming?

25 A: Yes.

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1 Q: How much time passed between your attempt to interview
2 the victim who is screaming to your interview of the
3 defendant?

4 A: I would say maybe 15 minutes.

5 Q: Where was the victim in relation to the room where you
6 interviewed the defendant?

7 A: Probably between -- between me and halfway the -- well
8 probably towards the end, excuse me, towards the end of that
9 row.

10 Q: Of all the pews?

11 A: Yes.

12 Q: Okay. So indicating for the record, from the witness
13 stand to the last row of seats in the courtroom. And when
14 you -- I'll phrase it this way. Have you ever watched the
15 dashboard camera video?

16 A: No, I have not.

17 Q: So, then you hadn't watched that when you interviewed the
18 defendant?

19 A: Correct.

20 Q: When were you told that Jimmagan's had any involvement in
21 this?

22 A: When I returned to work the following evening at 5
23 o'clock P.M.

24 Q: So, when you interviewed the defendant, you had no
25 information that they had stopped at Jimmagan's?

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1 A: That's correct.

2 Q: And Counsel asked if the defendant was fully cooperative;
3 would you consider terminating the interview being fully
4 cooperative?

5 MR. LONG: Objection, Your Honor.

6 THE COURT: Sustained. That goes into -- no and that is
7 an improper question, ladies and gentlemen, that goes into the
8 Miranda warnings and constitutional rights. That's an
9 improper question by the state. Thank you very much. You may
10 continue.

11 MR. LONG: I have a motion to be made outside the
12 presence of the jury.

13 THE COURT: Mr. Foreman, ladies and gentlemen, go to the
14 jury room.

15 (REPORTER'S NOTE: Jury exits courtroom. The following takes
16 place outside the presence of the jury.)

17 THE COURT: Solicitor, how many cases are there that have
18 been published in this state by the United States Supreme
19 Court that says the state or the federal government cannot
20 comment on a defendant's exercising the constitutional rights
21 given to them regarding Miranda; how many are there? Probably
22 too numerous to count, correct?

23 MS. WALTER: Correct.

24 THE COURT: All right. You knew that question was
25 improper, correct?

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1 MS. WALTER: Based on the earlier ruling, where I was
2 told to make clear that the defendant had in fact invoked his
3 right to an attorney, no, I did not think it was improper.

4 THE COURT: All right. Thank you, ma'am.

5 Let me hear from you, Mr. Long?

6 MR. LONG: A motion for a mistrial, Your Honor. The
7 solicitor knew that question is improper. That is evidence
8 101, Constitutional Law 101 in law school. My client is
9 protected from the Fifth Amendment to have such a question
10 even being posed in front of a jury, that jury has been
11 tainted, knowingly, purposely by the solicitor's office, a
12 clear violation of his constitutional right. To continue with
13 this trial would be misjustice on his part and a violation of
14 the constitutional rights and I make a motion for a mistrial.

15 THE COURT: I decline your request for a mistrial in this
16 matter. I do not find it to be a manifest necessity to
17 declare a mistrial in this matter. I do find it to be an
18 improper question by the state. I'll accept the state's
19 answer regarding her belief. I do not find it was purposeful,
20 but it was improper. I will caution the jury again.

21 Your request is denied.

22 Thank you very much.

23 MR. LONG: Your Honor ---

24 MS. WALTER: I just also I would, I guess move to strike
25 it just so that the record is clear.

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1 THE COURT: Anything else, Mr. Long?

2 MR. LONG: That there be some remedy in front of the
3 jury.

4 THE COURT: I'm going to talk to them again when they
5 come back in.

6 MR. LONG: Thank you, Your Honor.

7 THE COURT: Thank you. Ask the jury to come back in.

8 (REPORTER'S NOTE: Jury enters courtroom.)

9 THE COURT: All right, ladies and gentlemen, the question
10 last asked by the state is hereby struck from the record. I'm
11 further instructing you that that question was improper. It
12 was an improper attempt by the state to influence your
13 decision in this matter. You heard at the very beginning, the
14 defendant had Miranda rights, they were read to him. One of
15 those, part of that is you can stop an interview at any point
16 in time. The state may not comment on the exercising of the
17 constitutional rights in any manner. Again, that goes back to
18 the defendant has nothing to prove to you. The defendant has
19 nothing to show to you. Again, that's stricken from the
20 record. You may not consider it in any shape, manner or form,
21 either discussing it in your deliberations or using it
22 mentally to decide this case. Thank you very much.

23 You may continue, Solicitor.

24 MS. WALTER: I have no further questions for Detective
25 Allen.

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1 THE COURT: Anything else Mr. Long?

2 MR. LONG: No, Your Honor.

3 THE COURT: All right, ma'am, you may step down.

4 Do you wish this witness to be excused, ma'am?

5 MS. WALTER: Yes, please, Your Honor.

6 THE COURT: Any objection?

7 MR. LONG: No, Your Honor.

8 THE COURT: All right, ma'am, you're released from your
9 subpoena, you may go back to your regular duties.

10 MS. ALLEN: Thank you, Your Honor.

11 THE COURT: Yes, ma'am. Next witness please, ma'am.

12 MS. WALTER: Detective Hugh Jones.

13 THE COURT: Please come around, sir, to be sworn.

14 CLERK: Please raise your right hand and place your left
15 hand on the Bible.

16 HUGH JONES, HAVING BEEN DULY SWORN

17 TESTIFIES AS FOLLOWS:

18 MR. JONES: Sure, it's Hugh, H-U-G-H, Jones, J-O-N-E-S,
19 and I work for Myrtle Beach Police Department.

20 MS. WALTER: May I, Your Honor?

21 THE COURT: Yes, ma'am, please. Thank you.

22 DIRECT EXAMINATION OF HUGH JONES BY MS. WALTER:

23 Q: So you took my first question away from me. You work
24 with Myrtle Beach Police Department?

25 A: Yes, ma'am.

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1 Q: My second question, how long have you worked there?

2 A: Approximately 17 years.

3 Q: What's your current position?

4 A: My current position, I'm a sergeant of what's called
5 power shift. It's basically a saturation team that
6 supplements patrol and handles areas of concern in the city.

7 Q: How long have you been a sergeant of the power squad?

8 A: About five months.

9 Q: What was your assignment before that?

10 A: Violent crime investigator.

11 Q: How long were you a violent crimes investigator?

12 A: I was in investigations for probably four and a half
13 years and violent crimes three of those years.

14 Q: So, were you working as a violent crimes investigator
15 during June of 2015?

16 A: Yes, ma'am.

17 Q: Can you tell us what you do as a violent crimes
18 investigator?

19 A: Basically, we respond to calls of a serious nature, with
20 injuries to people, anytime a violent crime had occurred.
21 We'll also, if violent crimes occur, we'll -- patrol will
22 initiate the cases, come down to us and we'll investigate them
23 afterwards.

24 Q: When there is such a report, is one detective or
25 investigator make the lead investigator on that case?

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1 A: Yes, usually one detective or there might be a co-lead
2 working in pair together.

3 Q: What does the lead investigator do?

4 A: Basically, compile all the evidence, look at it, they'll
5 usually be the one to make charges, and just kind of all the
6 data will kinda come to them and they'll make most of the
7 decisions from there.

8 Q: So, would a lead investigator ask other investigators to
9 do things?

10 A: Yes, ma'am. Cases are -- involve a large amount of
11 manpower. We'll kinda ask other detectives to help follow up
12 and supplement, you know, assist us with the investigation as
13 well as crime scene.

14 Q: Were you the lead investigator on this case?

15 A: Yes, ma'am.

16 Q: Well, actually you still are, correct?

17 A: Yes, ma'am.

18 Q: And so as part of your duties as lead investigator, would
19 it also be up to you to request any type of scientific testing
20 or search warrants, that type of thing?

21 A: Yes, ma'am.

22 Q: So, now let's sort of start in on this. Do you recall
23 when you were first advised about this case?

24 A: I believe it was the morning of June 22nd. I might have
25 my report if I need to -- if I could look at it.

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1 Q: Just let us know if you need to refresh your
2 recollection. Do you recall how you were first made aware of
3 the incident?

4 A: I was working day shift and Detective Allen had responded
5 to the call the night before. She was working night shift.
6 So, in theory, she would get off at 3:00 after 10 hours and
7 then go home. She also works property crimes. When I came in
8 that morning, I was informed that we had a possible criminal
9 sexual assault, the victim was in jail as well as the
10 defendant, and asked to follow up on the case and basically
11 take it from her since she worked property crimes and work it
12 through.

13 Q: You said that the victim was in jail; why was the victim
14 in jail?

15 A: It was relayed to me that she was arrested for public
16 intoxication.

17 Q: Did you attempt to interview the victim the morning of
18 June 22nd?

19 A: Yes, ma'am, I believe approximately 10 o'clock give or
20 take.

21 Q: Now, when you go to interview someone, do you administer
22 any sort of breathalyzer or blood alcohol concentration test?

23 A: No, ma'am.

24 Q: What is your concern when you're interviewing someone, is
25 it their blood alcohol concentration or is it something else?

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1 A: Especially with the victim, it's basically their ability
2 to answer questions. If I could have a coherent conversation
3 with you, talking back and forth, you're answering, you're not
4 slurring, you don't seem impaired, you seem present in the
5 interview then I can go forward and talk to you and go forward
6 from there.

7 Q: So, are you able to interview someone that has some
8 degree of intoxication?

9 A: Yes, ma'am.

10 Q: Did you in fact interview the victim, Ms. J.K., in
11 this case?

12 A: Yes, ma'am. Me and Detective Whitmeyer responded to the
13 jail and did conduct a recorded interview with her.

14 Q: What time was that?

15 A: 9:57, I believe.

16 Q: Can you describe her demeanor during that interview?

17 A: She seemed -- you could tell she had definitely been
18 drinking the night before; you could smell the alcohol coming
19 off of her. She seemed a little -- she didn't remember
20 everything that happened.

21 Q: And I just want to make sure you don't say anything that
22 Ms. J.K. said. I just want you to describe her demeanor?

23 A: Right. She, she seemed kind of withdrawn. She was kinda
24 holding herself like this in the chair.

25 Q: Indicating for the record, arms crossed in front of his

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1 chest.

2 A: And she -- she seemed kinda confused to begin with.

3 Basically, it was -- I won't word it that way. She seemed
4 withdrawn.

5 Q: Based on your conversation with Ms. J.K. , did either
6 you or another member of Myrtle Beach Police Department
7 transport her to Grand Strand Regional Medical Center?

8 A: Yes, we -- I asked if she would conduct a criminal sexual
9 assault kit and she agreed. At which point, we did have her
10 transported to Grand Strand Hospital and conducted a CSC kit.
11 What we call a CSC kit, criminal sexual assault kit.

12 Q: And as a man, you did not sit through that, correct?

13 A: I'm not involved in that process.

14 Q: Okay. Great. Now, as part of your duties as lead
15 detective, did you also either offer yourself or have others
16 obtain search warrants in this case?

17 A: Yes, ma'am. Mr. Dhimo was still in jail at that point.
18 So, I completed a search warrant and called a basically a
19 suspect criminal sexual assault kit. If we have a perpetrator
20 of a sexual assault, we can do -- it's a lot on the same lines
21 as the CSC kit for the victim, where they'll be transported to
22 the hospital, they'll do DNA and scrapings from fingernails
23 and stuff like that.

24 Q: And so you asked that one be done in this case?

25 A: Yes, ma'am, and completed a search warrant.

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1 Q: And were also the person who asked or either authored or
2 had someone else to author a search warrant for Mr. Dhimo's
3 van?

4 A: I believe that was Detective Whitmeyer that completed the
5 search warrant for the van.

6 Q: And as the lead investigator on this case, have you at
7 some point reviewed both the defendant's statement and the
8 dashcam video?

9 A: Yes, ma'am. Upon arriving to the -- at work that
10 morning, I was advised to follow up on this. The first thing
11 I did was basically look at Detective Allen's follow-up and
12 listened to whatever information we have available. We had
13 the defendant's statement so I played that to begin with
14 before I went and talked to the victim at the jail, so I would
15 have some background of what had happened the night before.

16 Q: And so when you first got there, you listed to the
17 defendant's statement. At some point later, were you able to
18 view the dashcam video?

19 A: Yes, ma'am, I believe that was later that night. Crime
20 scene had to download it after -- crime scene had several
21 things to do; the search warrant on the car, the video that
22 they got from the car, which came later. I don't remember if
23 it was later that day or the next day that I reviewed it, but
24 I reviewed it.

25 Q: And the jury has seen the dashcam video, so they're the

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1 two views, the one that looks into the interior of the cab and
2 the one that looks out the windshield, the front windshield?

3 A: Yes, ma'am.

4 Q: Now, you said that you'd been with Myrtle Beach Police
5 Department for 17 years?

6 A: Yes, ma'am.

7 Q: Have you been -- I would assume that means that you've
8 been in Myrtle Beach for 17 years at least?

9 A: I worked North Myrtle for eight years before that with
10 their police department. So, I've been in law enforcement
11 almost 25 years.

12 Q: And are you familiar with the City of Myrtle Beach and
13 there is landmarks along its different routes?

14 A: Yes, ma'am, it's basically laid out like a grid. There's
15 one main road -- well, there's three; Ocean Boulevard, Kings
16 Highway, and then 17 By-Pass. It's laid out like a grid. It
17 starts with 1st Avenue and then goes 1st, 2nd, 3rd North on up
18 that way and then South does the exact same thing on the other
19 side.

20 Q: And as you were reviewing the dashboard camera video,
21 were you able to pick out landmarks so that you could tell
22 where the cab was at certain times?

23 A: Yes, ma'am.

24 Q: So, directing your attention to 1:09 on the video when

25 Ms. J.K. gets into the cab, were you able to tell from what

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1 you could see where that pickup occurred?

2 A: Yes, ma'am. Do you remind if I refer to my follow-up?

3 Q: I do not if it's ---

4 THE COURT: Any objection to that, to him looking at his
5 notes?

6 MR. LONG: No, Your Honor.

7 THE COURT: You can look at your notes to refresh your
8 memory, then you put your notes away and answer the question.

9 A: Yes, sir. I believe it was 13th Avenue North and Kings
10 Highway.

11 BY MS. WALTER:

12 Q: And you came to that conclusion how?

13 A: Based on the video, you could see on the external camera
14 view, you can see landmarks of basically what's around. I've
15 policed Myrtle Beach for a long time, so you can kind of see
16 the middle of town, the north end, and see a different stores
17 and what not on the sides of the roads.

18 Q: And so you said 13th Avenue North, can you tell us where
19 that is in relation to Chapin Park?

20 A: It's right in the vicinity.

21 Q: Within a couple of blocks?

22 A: Yes, ma'am. Chapin is, I believe, at 16th.

23 Q: And then at some -- at 1:39 -- it appears that the phone
24 stops at some point, yes?

25 A: Right. I believe it starts at 1:09 and there's a brief

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1 conversation. The video stops and then I believe it picks up
2 again at 1:39 when they're leaving Jimmagan's.

3 Q: Okay. So that was my question. At 1:39 are you able to
4 tell, based on what you can see from the external camera,
5 where the cab is?

6 A: Yeah, it appears to be leaving Jimmagan's going onto
7 Kings Highway.

8 Q: And Jimmagan's, I think I heard yesterday, about 6003
9 North Kings Highway?

10 A: Yeah, at approximately 60th Avenue North.

11 Q: So how long were, and you can give me just a estimate,
12 how long would it take from 13th Avenue North Kings Highway to
13 60th Avenue North Kings Highway, 60th at North Kings Highway?

14 A: At 1 o'clock in the morning, I checked and there were no
15 wrecks or anything like that on the road, give or take at the
16 most seven or eight minutes. It's approximately four miles.

17 Q: All right. So, in your review, you saw Ms. J.K. get
18 into the cab about 1:09?

19 A: Yes, ma'am

20 Q: And then I think you said the next time it picks up is at
21 1:39 when they're leaving Jimmagan's?

22 A: Yes, ma'am, I believe so.

23 Q: And then when -- after they leave Jimmagan's, could you
24 tell -- well, let me phrase it this way. Are you aware of the
25 victim -- where the victim was living at that time on 76th

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1 Avenue?

2 A: Yes. Yes, ma'am, it was 76th Avenue.

3 MR. LONG: Objection, Your Honor, that's a leading
4 question.

5 THE COURT: Let the witness answer the questions, please.

6 BY MS. WALTER:

7 Q: Where was the victim living at?

8 A: It was approximately 76th Avenue. I have her exact
9 address on the report.

10 Q: If you can look at your report to refresh your
11 recollection and then turn it over?

12 A: But it was right at, right around 76th Avenue.

13 COURT REPORTER: Excuse me?

14 BY MS. WALTER:

15 Q: Speak up just a little.

16 A: Oh, I'm sorry. It was around ---

17 COURT REPORTER: Turn the microphone towards you please.

18 A: Sure. It was around 76th Avenue North.

19 BY MS. WALTER:

20 Q: If someone had taken or someone took a straight route
21 from 13th Avenue North Kings Highway, excuse me, to the
22 victim's apartment on 76th Avenue North, what would be the
23 most direct route?

24 A: The easiest way would be straight up Kings Highway,
25 northbound on Kings Highway to 76th Avenue. That's a main

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1 road going to the Boulevard straight down 76th to the
2 apartment. There's, I mean, like I said, it's like there's
3 main roads. Kings Highway is the easiest most convenient way
4 to go straight down, take a right on one of the main streets
5 and then end up.

6 Q: I believe you said you checked, were there any auto
7 accidents or any road closures on North Kings Highway that
8 morning?

9 A: No, ma'am, I checked with our dispatch and they advised
10 they had no reports that would be between 13th and 70 -- 13th
11 basically in the city northbound at all.

12 Q: And then so once the video picks up again with the cab
13 leaving Jimmagan's, did it take that most direct route from
14 Jimmagan's to Ms. J.K. 's apartment?

15 A: No, I believe it went from Jimmagan's to 62nd Avenue
16 North down to Ocean Boulevard and then North. It stops at
17 beach access shortly, heads north again, passes by where she
18 was staying at northbound where they stop a second time and
19 end up going back to -- at which point, the victim drove back
20 toward her apartment but ended up at the beach access at 77th,
21 I believe.

22 Q: Do you -- I think you said it stopped at the beach access
23 before that?

24 A: Yes, ma'am.

25 Q: Do you recall where that was?

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1 A: I believe it was 62nd North.

2 Q: And then in your review of the dashcam video, and the
3 jury's recollection controls, but did you ever see Ms. J.K.
4 scratch playfully or otherwise the defendant's left shoulder?

5 A: No, ma'am. If I can clarify the question before?

6 Q: Yes, sir.

7 A: I forgot, there's a little -- up on the north end,
8 there's Ocean Boulevard and then there's a little cut through,
9 a real small street called Beach Drive, it went up Ocean
10 Boulevard down the Beach Drive and then back up.

11 Q: Okay. Thank you for clarifying that.

12 A: Yes, ma'am.

13 Q: And so you did not see on the video, Ms. J.K., scratch
14 the defendant's left shoulder playfully or otherwise?

15 A: No, ma'am.

16 Q: And based on your investigation, what you learned in the
17 investigation, was the cab's fare meter ever turned on during
18 this ride?

19 A: No, ma'am.

20 Q: What was the -- well, what was the purpose of reviewing
21 both the defendant's statement and the dashcam video, what
22 were you hoping to learn?

23 A: Possible inconsistencies in his story and what actually
24 happened.

25 Q: Did you find any inconsistencies?

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1 A: Yes, ma'am. There were -- the first thing, I believe he
2 advised they were picked up around 44th Avenue North; it was
3 actually 13th, what appeared to 13th Avenue North. They went
4 to Jimmagan's, which he completely left out. He advised that
5 the fare was turned on, which we found -- we could find no
6 evidence that the fare was turned on. Let's see, he advised
7 that he basically was taking her straight home ---

8 MR. LONG: Objection, Your Honor.

9 THE COURT: Grounds?

10 MR. LONG: He's speculating.

11 THE COURT: Why don't you just respond directly to
12 questions asked by the state.

13 A: Yes, sir.

14 THE COURT: Thank you. Go ahead, Solicitor.

15 BY MS. WALTER:

16 Q: Did you notice any inconsistencies based on your review
17 of the dashcam video and the defendant's statement as to the
18 route he took to carry his customer home?

19 A: Yes, ma'am. The way I understood it from his interview,
20 was he went straight home, which there were several stops on
21 the way.

22 Q: In fact, did the defendant ever take Ms. J.K. home?

23 A: No, she was found passed out on the beach.

24 Q: And now we covered earlier, that as the lead
25 investigator, you would be responsible for asking for any

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1 testing or comparisons to be done, correct?

2 A: Yes, ma'am.

3 Q: Are -- and are you aware that the defendant had several
4 bite marks on his body?

5 A: Yes, ma'am.

6 Q: Counsel has said several times or talked about a bite-
7 mark analysis; is that something that you considered in this
8 case?

9 A: When -- my time in investigations, we have not done that.
10 We'll usually rely on the DNA. It was numerous hours from
11 there to then. I think I had asked SLED one time before for
12 bite-mark analysis and they advised that they mainly do DNA.
13 It's still a process, but it's not -- Myrtle Beach Police
14 Department does not do that. It would go to SLED or an
15 outside agency to do.

16 Q: Did you request that DNA be taken from the defendant's
17 bite marks?

18 A: With the CSC kit, usually they'll take DNA from any
19 areas.

20 Q: But and so if this was not done, it's not for lack of
21 your request?

22 A: No, like I said, we did the CSC kit and usually they'll
23 process fingernail scrapings, DNA, wounds, and all.

24 Q: Court's indulgence? So again, comparing your review of
25 the -- let me start off this way. Did you ever view the

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1 defendant or pictures of him after his arrest?

2 A: Yes, ma'am, I viewed pictures of him after the CSC Kit
3 was performed, I believe our crime scene officer had taken
4 photos and I reviewed those photos.

5 Q: And based on your review of the dashcam video, your
6 review of the defendant's statement and your review of those
7 photos, did you notice any other inconsistencies?

8 A: Yes, ma'am. At one part in the video, you can see him
9 hold his arm up to the left with Ms. J.K. in the cab.
10 There appears to be nothing on his arm, no injuries, no
11 anything else that were apparent in the photographs after
12 this.

13 Q: Thank you. I have nothing further at this time. If
14 you'd answer any questions Mr. Long has.

15 THE COURT: Cross examination?

16 CROSS EXAMINATION OF HUGH JONES BY MR. LONG:

17 Q: Detective Jones, you said that you spoke to Ms. J.K.
18 about 9:00 A.M. on June 22nd, correct?

19 A: I believe it was approximately 10 -- 9:57, so
20 approximately 10:00.

21 Q: And did you, earlier you were in the courtroom when
22 Detective Carol Allen testified that she would never rely on
23 an interview from an intoxicated person?

24 A: Yes, sir.

25 Q: So, Ms. Allen assumed that your interview was taken later

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1 that afternoon?

2 A: Yes, sir.

3 Q: But in fact, it was taken while the -- while Ms. J.K.
4 was intoxicated, correct?

5 A: We found out later that her blood alcohol was higher.
6 She didn't appear -- she appeared to have a good ability to
7 answer questions while I was asking them.

8 Q: She had that appearance?

9 A: Yes, sir.

10 Q: And so Ms. J.K. , her mental -- she was mentally
11 defective when you spoke to her, based on her intoxication?

12 MS. WALTER: Objection, Your Honor.

13 THE COURT: Sustained.

14 BY MR. LONG:

15 Q: Did Ms. J.K. 's intoxication alone cause her to be
16 mentally defective during your interview?

17 MS. WALTER: Objection, Your Honor.

18 THE COURT: Sustained.

19 BY MR. LONG:

20 Q: During her interview, did she appear to be incapable of
21 answering your questions?

22 A: No, sir.

23 Q: Was she aware of her surroundings?

24 A: Yeah, when she was talking to me, she appeared to be,
25 yes, sir.

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1 Q: And was she able to recall facts?

2 A: She remembered the initial part of the cab ride, but she
3 -- and going to Jimmagan's. After Jimmagan's she cannot
4 remember much at all.

5 Q: And so she was -- you said she was kinda confused, right?

6 A: She seemed, yeah, as to the events that happened after
7 Jimmagan's, she didn't remember at all. I had mentioned that
8 we were following up on a possible sexual assault and advised
9 her basically what was relayed to me on how she found the
10 night before, at which point, she started crying, shaking, she
11 became really withdrawn at that point.

12 Q: About an hour later, her blood alcohol content was
13 tested, correct?

14 A: Yes, sir.

15 Q: And it was tested to be .169?

16 A: I believe so.

17 Q: And that's more than double the level for -- beyond -- to
18 be intoxicated?

19 A: To drive, yes, sir.

20 Q: Thank you. So she was intoxicated during the interview?

21 A: Yeah.

22 Q: Okay.

23 THE COURT: I'm sorry, I didn't hear your answer.

24 A: Yes, sir, I apologize.

25 Q: You weren't present at the beach, correct?

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1 A: No, sir, I was home asleep.

2 Q: So, you don't know when she passed out, right?

3 A: You can see on the video at the very end, she appears to
4 kinda go down, but I can't tell you when she finally passed
5 out where we could revive her.

6 Q: And you don't know what happened before she passed out,
7 correct?

8 A: No, sir, just what you see on the video.

9 Q: Right.

10 A: And between the video and when she was found on the
11 beach.

12 Q: No idea?

13 A: Just basically how she was found, that's pretty much it.

14 Q: And you took Ms. J.K. to the hospital for a medical
15 examination, correct?

16 A: I did not. One of our police officers did.

17 Q: Okay. And she did not go to the hospital immediately
18 after the incident, correct?

19 A: No. No they didn't take her immediately after, they,
20 like I -- as I said, she was basically intoxicated, so they
21 brought her to jail.

22 Q: There was no indication after the incident that she
23 wanted to go to the hospital, correct?

24 A: I believe she wanted to go home. She didn't want to go
25 to the hospital.

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1 Q: Okay. She did not want to go to the hospital?

2 A: No, sir.

3 Q: But you told her that you were taking her to the
4 hospital, didn't you?

5 A: I asked her if she would complete a criminal sexual
6 assault kit or would like to complete a criminal sexual
7 assault kit, she advised she would, at which point, our people
8 carried her to the hospital to complete that kit.

9 Q: And that was your idea, right?

10 A: That's something we usually do in criminal sexual assault
11 cases, yes, sir.

12 Q: So someone from the police department drove her to the
13 hospital?

14 A: Yes, sir.

15 Q: And Mr. Dhimo and Ms. J.K. , they were taken to the
16 jail at approximately the same time, correct?

17 A: I don't have the exact times they went, but yeah, I will
18 say give or take within a very short period of time.

19 Q: And they were in the same area?

20 A: There's usually a girls' side and boys' side. I mean,
21 it's the same -- it's the same jail.

22 Q: Were you there when they arrived?

23 A: No, sir.

24 Q: Okay. And so you -- you looked at the video, right?

25 A: Which video?

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1 Q: The in-car, taxi cab video?

2 A: Yes, sir; yes, sir.

3 Q: No doubt, Ms. J.K., she got in the cab voluntarily?

4 A: Yes, sir; she did.

5 Q: And based on your investigation, she went to the bar,

6 Jimmagan's, voluntarily, correct?

7 A: Yes, sir.

8 Q: And she was there -- they were there for about 30

9 minutes; is that right?

10 A: I believe he picks her up at 1:09 and they leave

11 Jimmagan's at 1:39, I believe.

12 Q: And based on your investigation, they both had shots at

13 the bar, correct?

14 A: That's -- yes, sir.

15 Q: And no indication at all that she was not free to leave

16 the bar at any time she wanted to, right?

17 A: No, sir.

18 Q: Okay. And then the video from the car picks up after

19 being at Jimmagan's for about 30 minutes, right?

20 A: Yes, sir.

21 Q: And there's no indication that she was forced into that

22 cab, right?

23 A: No, sir.

24 Q: And she was hugging and kissing and licking Mr. Dhimo,

25 correct?

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1 A: Yes, sir.

2 Q: And she was saying he was F-ing hot, right?

3 A: Yes, sir.

4 Q: She loved him?

5 A: Yes, sir.

6 Q: She wasn't complaining that they were driving around, was
7 she?

8 A: No, I believe at one part, she points back to -- when
9 they passed by where she lived, she was like go back or
10 something to that effect.

11 Q: But then she continued hugging and kissing and licking
12 him, right?

13 A: Yes, sir.

14 Q: Okay. And she said she wanted to go to the beach in the
15 video, right?

16 A: I believe something to that effect, right.

17 Q: She was not taken to the beach against her will, was she?

18 A: No, sir, I believe she -- and the second time she ended
19 up driving there.

20 Q: And you said you never saw on the video Ms. J.K.
21 scratch Mr. Dhimo?

22 A: No, sir.

23 Q: Now, there's no evidence that she did scratch him, is
24 there?

25 A: I believe there's DNA from her fingernails consistent

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HUGH JONES - CROSS BY LONG

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1 with the scratch on his arm.

2 Q: But that DNA from under the fingernails, that could come
3 from any consensual contact, right?

4 A: I guess.

5 Q: You guess?

6 A: Yeah, I'm not sure what it requires if it's under her
7 fingernails. So, I would indicate it would be a scrape to get
8 under the fingernails.

9 Q: So, if I were to -- if I were to be kissing my wife and I
10 scratched her on her back lovingly, I could get her DNA under
11 my fingernails?

12 A: Yes, sir.

13 Q: That's not an assault, is it?

14 A: No, sir.

15 Q: That's not proof that I was attacking her, is it?

16 A: No, sir.

17 Q: Okay. So, there are ways to get DNA under your
18 fingernails without it being an assault, right?

19 A: Yes, sir.

20 Q: And you said, you testified that you don't -- you never
21 use bite-mark analysis, right?

22 A: No, sir, I have not.

23 Q: So, you rely on DNA when it comes to bite marks?

24 A: Yes, sir; we usually do.

25 Q: But you did not analyze Mr. Dhimo's bite marks with DNA?

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1 A: I did not -- I don't know if they did it in the CSC kit
2 or not. Like I said, I believe it was numerous hours after.

3 Q: So, with all this SLED analysis, with everything we
4 listened to yesterday for three hours, there's no bit of
5 evidence to say that those bite marks have a DNA contact to
6 Ms. J.K. , correct?

7 A: A DNA contact, no, sir.

8 Q: Okay. You cannot conclude from the marks on Mr. Dhimo
9 that Ms. J.K. made those marks, can you?

10 A: No, sir, just that you don't see them in the video
11 clearly and then you clearly them see them after this
12 incident.

13 Q: But that video is dark, isn't it?

14 A: You can see his arm pretty well.

15 Q: You, you -- you're speculating that she didn't make those
16 marks?

17 MS. WALTER: Objection, Your Honor, he's actually saying
18 that she did.

19 THE COURT: I'm gonna allow the question; he can respond
20 to the question however he deems proper. I'm gonna allow the
21 question.

22 A: Could you repeat it, Mr. Long?

23 BY MR. LONG:

24 Q: You cannot conclude right now in front of this jury that
25 without a doubt Ms. J.K. made those marks on Mr. Dhimo?

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HUGH JONES - REDIRECT BY WALTER

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1 A: No, sir, we don't have ---

2 Q: That's all the questions I have.

3 THE COURT: Yes, ma'am.

4 MS. WALTER: I'm sorry. May I?

5 THE COURT: Yes, ma'am.

6 REDIRECT EXAMINATION OF HUGH JONES BY MS. WALTER:

7 Q: Can you finish the answer that you were about to give?

8 A: Basically, no, except for the fact that, you know, you
9 don't see them before, and in the video you clearly do not see
10 them and then you see them after the incident on the beach.
11 And like I said, they're -- they're very, very visible so they
12 would've had to occur in the time between the cab and the
13 beach. There was no -- as stated earlier, there was no fight
14 or anything when he was taking when he was taken into custody.
15 So ---

16 MS. WALTER: And, Your Honor, may we approach on one
17 matter, please?

18 THE COURT: Yes, ma'am.

19 (REPORTER'S NOTE: Bench conference is held off the record in
20 the presence of but outside the hearing of the jury.)

21 BY THE COURT:

22 THE COURT: Mr. Foreman, ladies and gentlemen of the
23 jury, go to the jury room, please. Thank you.

24 (REPORTER'S NOTE: Jury exits courtroom. The following takes
25 place outside the presence of the jury.)

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BY THE COURT

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1 THE COURT: Yes, Solicitor, I'll be glad to hear from
2 you.

3 MS. WALTER: Thank you, Your Honor. In addition to
4 renewing a motion that I made after Mr. Long's opening wherein
5 the state's position is that he opened the door into
6 statements by the victim that she had in fact been potentially
7 assaulted, I would add to that renewed motion that based on
8 his questioning of Detective Jones, wherein he elicited
9 certain responses from the victim, that the state should now
10 be able to more fully explore that.

11 THE COURT: Your response, Mr. Long?

12 MR. LONG: I didn't ask any statements about the victim.
13 I just said that she didn't go to the hospital from the scene.

14 THE COURT: You walked a very fine line, Mr. Long. I do
15 not find that you crossed over it, but you probably with one
16 more question, you probably would have jumped over that line.

17 MR. LONG: I agree.

18 THE COURT: I don't need for you to agree.

19 MR. LONG: Sorry.

20 MS. WALTER: So, Your Honor, the only question that I
21 would ask the detective on redirect would be, and again, this
22 is based on Mr. Long's questions and implication that the
23 victim was forced to do this CSC kit.

24 THE COURT: Good. Go ahead and ask your question.

25 BY MS. WALTER:

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1 Q: You asked her if she would perform a CSC kit, would she
2 have the right to refuse that and just say yes or no?

3 THE COURT: And -- and -- Okay. Go ahead and answer the
4 question.

5 A: Yes, ma'am.

6 THE COURT: Do you object to that question?

7 MR. LONG: No, Your Honor.

8 THE COURT: All right.

9 BY MS. WALTER:

10 Q: And I would just say had she refused, would you have
11 forced her to do it?

12 A: No, ma'am.

13 THE COURT: Any objection to that?

14 MR. LONG: Now that's a speculation based on the
15 circumstances.

16 THE COURT: Well, I -- I'm gonna allow you to ask that
17 she had the -- I'm sorry, what was the first question that you
18 asked?

19 MS. WALTER: The first question was, when you asked her
20 whether she would consent to a CSC kit, did she have the right
21 to refuse?

22 THE COURT: Okay. And I -- and you're gonna say?

23 A: Yes, sir.

24 THE COURT: Yes. And I will be -- I'll be glad for you
25 then to follow up and then -- I mean the answer -- he's

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1 already given the answer previously that was unobjected to
2 that she agreed to take the test.

3 MS. WALTER: Right, because I want that in.

4 THE COURT: I understand that, but it's already in. So,
5 I mean, I'll be glad for the next question to be and she
6 agreed to take the test.

7 MS. WALTER: That's fine. I just want it in.

8 THE COURT: And then he can say yes.

9 MS. WALTER: Okay.

10 THE COURT: And that's already -- that's a question and
11 answer that's already been asked and answered without
12 objection, so you can ask that question again.

13 MS. WALTER: Thank you.

14 THE COURT: All right.

15 MS. WALTER: And that's all I would ask.

16 THE COURT: All right. Very good. And you certainly can
17 ask those questions. No question.

18 All right. Ask the -- well we're gonna have -- what --
19 and we're gonna have to send them right back out again
20 probably. Do you have, just so that I know, do you have
21 further witnesses after Detective Jones?

22 MS. WALTER: No, Your Honor. The State was intending on
23 resting after asking those to follow-up questions.

24 THE COURT: All right. Well, I mean it is what it is so
25 we'll just have to send them back out again just as soon as

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1 they get in.

2 Anyway, ask the jury to come back in.

3 (REPORTER'S NOTE: Jury enters courtroom.)

4 THE COURT: All right, Solicitor, you may continue, ma'am.

5 MS. WALTER: Thank you

6 BY MS. WALTER:

7 Q: I just wanted to follow up on a couple of questions, Mr.

8 Long had for you. So, you asked the victim if she would

9 consent to a criminal sexual conduct kit, correct?

10 A: Yes, ma'am.

11 Q: Would she have the right to refuse to participate in that
12 test?

13 A: Yes, ma'am; she absolutely would.

14 Q: Did she consent to the test?

15 A: Yes, ma'am; she did.

16 MS. WALTER: I have nothing further for this witness,
17 Your Honor.

18 THE COURT: Any questions on those questions just asked?

19 MR. LONG: No, Your Honor.

20 THE COURT: All right. Very good. All right, sir, you
21 may step down.

22 MR. JONES: Thank you, sir.

23 THE COURT: Further witnesses by the state?

24 MS. WALTER: No, Your Honor, at this time the state rests
25 on its case in chief.

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BY THE COURT

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1 THE COURT: All right. Very good.

2 BY THE COURT:

3 THE COURT: Are there matters of law that the defense
4 would like to take up at this point in time?

5 MR. LONG: Yes, Your Honor.

6 THE COURT: All right. Very good. All right, ladies and
7 gentlemen, we have reached the stage of the trial where the
8 state has ended its presentation of evidence in this
9 particular matter. At that point in time, in this case and in
10 every criminal case that we try, this is the time for certain
11 matters of law that the Court has to respond to and give
12 rulings on, and obviously I need to do that outside of your
13 presence. I'm going to talk to the lawyers as to exactly
14 where we are regarding the stage and status of this case. I'm
15 gonna have you go to your jury room and I'll be with you or
16 I'll send information to you shortly as to how we're going to
17 proceed next after this. All right? So, if you'll just go to
18 your jury room for a little bit, please. Thank you.

19 (REPORTER'S NOTE: Jury exits courtroom. The following takes
20 place outside the presence of the jury.)

21 THE COURT: All right, Mr. Long, I'll be glad to hear
22 from you, sir.

23 MOTIONS:

24 MR. LONG: Yes, sir, at this time I would make a directed
25 verdict to both the charges, Your Honor.

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MOTIONS

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1 THE COURT: All right. Let's deal with the directed
2 verdict motion on the charge of indecent exposure and then
3 we'll go to the one regarding attempted criminal sexual
4 conduct third degree.

5 Regarding your motion for directed verdict as to the
6 indecent exposure matter, when I rule on a motion for directed
7 verdict, the Court is concerned with the existence or
8 nonexistence of evidence. I'm not weighing the evidence, I'm
9 not judging credibility, I'm not judging believability; that's
10 the jury's job. I decide whether or not the evidence exists
11 or doesn't exist.

12 Now, the defendant and this is just in general, defendant
13 is entitled to a directed verdict when in any criminal case,
14 when a State would fail -- the state would fail to produce
15 evidence of the offense charged. Now, if the evidence only
16 raises a suspicion that the accused is guilty, a directed
17 verdict motion is proper.

18 Now I'm not required and it's not my duty and
19 responsibility under the directed verdict motion to decide or
20 find whether or not the evidence infers guilt to the exclusion
21 of any reasonable -- any other reasonable hypothesis. What I
22 do is look at all the evidence. If there is evidence that
23 exists that the jury could believe if that's, again that's
24 their job, that would sustain a verdict of guilty for indecent
25 exposure, then that matter goes to the jury.

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MOTIONS

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1 Here, there's clearly testimony from a security guard,
2 two of them, indicating that the defendant was nude from the
3 waist down on a public beach in the city Limits of Myrtle
4 Beach. Now, there's testimony otherwise, but again, that
5 testimony is in the record, it's there, if the jury believes,
6 that's more than sufficient evidence to convict him of the
7 crime of indecent exposure. Therefore, your motion for
8 directed verdict on the crime of indecent exposure is denied.

9 Now you want to make any arguments on the matter of
10 assault, attempted criminal sexual conduct in the third
11 degree?

12 MR. LONG: Yes, Your Honor.

13 THE COURT: All right, sir. The State has failed to give
14 any direct or substantial circumstantial evidence proving that
15 there was any type of touching or attempted touching on the
16 beach and that's where the -- the charges stem from
17 allegations of what occurred on the beach. And, there were no
18 witnesses to say that they saw the defendant attempt to touch
19 or touch the victim, much less that he tried to sexually
20 assault her. There's no evidence of force or coercion.
21 There's no proof of the mens rea of attempted CSC third, that
22 he consciously intended the completion of any overt act
23 constituting an attempt of criminal sexual conduct. No
24 evidence proves that there was an overt act committed in the
25 effort to commit the crime.

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MOTIONS

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1 As Your Honor knows, it's more than just mere preparation
2 and intent. They have to show there was an overt act
3 committed. And so there is zero proof, as I said, of any
4 physical contact on the beach. There are two hurdles that the
5 state has to overcome. One, they have to prove that there is
6 an overt act; and two, they have to prove the time of
7 impairment. They're relying on the intoxication of the victim
8 to determine that there was attempted criminal sexual conduct.
9 The state cannot prove at what time her actions went from
10 consensual to non-consensual. They can't prove what the time
11 of her impairment was, at what level her impairment was. And
12 so based on the lack of any direct or substantial
13 circumstantial evidence to those points, I move that there be
14 a directed verdict in the favor of the defendant.

15 THE COURT: All right. Let me hear from the state,
16 please.

17 MS. WALTER: Thank you, Your Honor. If Your Honor views
18 the evidence as a whole, what it shows is that the defendant
19 picked up Ms. J.K. at approximately 1:09 in the morning.
20 And, Your Honor, I believe was able to see the dashcam video
21 and, while there is that as well as the testimony of Mr.
22 Stephenson that the victim was somewhat impaired, intoxicated,
23 drunk at that point, it is clear that half an hour later, when
24 they leave Jimmagan's after doing three to four shots of Crown
25 Apple, according to Mr. Morenus, that the victim is severely

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1 intoxicated to the point that when the cab finally stops at
2 approximately 1:56, the victim appeared to pass out in the
3 driver's seat. And what I found most interesting -- well, not
4 most interesting, but interesting in that video is when you
5 see the defendant driving after they leave Jimmagan's, he's
6 able to drive in a perfectly straight line even while he is
7 kissing, doing whatever with Ms. J.K. . The van -- the cab
8 never varies; it goes straight. They pull off so that Ms.
9 J.K. can urinate at the side of the cab. She gets back
10 into the driver's side and as she drives away, you can see
11 first of all, she can't even figure out how to put the cab in
12 gear, she's slurring her words, when she first takes off, she
13 turns right and almost runs onto the grass, and all of a
14 sudden, Mr. Dhimo is like wait, wait, stop, stop, don't do
15 that. She's still driving. He says go left, go left, and she
16 turns before there's even a street to turn on. And again,
17 stop, stop, stop, don't do that, don't do that. So, then she
18 ends up pulling onto that parking space or non-parking space
19 in front of Grand Shores. At the end of that video, it is
20 clear that she is essentially passed out in the seat. Beyond
21 that, we also have Mr. Dhimo's statement where he says, she
22 was passed out. She was unconscious. She would not wake up.
23 You couple that with the security guards testimony that they
24 saw Mr. Dhimo laying on the ground next to what turned out to
25 be the victim.

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1 MR. LONG: That's a misrepresentation of the facts, Your
2 Honor.

3 THE COURT: All right, sir. I'll be glad to hear from
4 you. You allow the state to make their argument and then you
5 can make your argument.

6 MR. LONG: I apologize.

7 THE COURT: Thank you, sir.

8 Continue on.

9 MS. WALTER: Thank you. That Mr. Dhimo was laying on the
10 ground near what turned out to be Ms. J.K. , he jumped up
11 and was naked from the waist down. Then when Detective -- now
12 Detective Eddy gets on the scene, he testified that he bathing
13 suit bottom had been -- was pulled aside somehow, exposing her
14 privates and that she had red marks on her inner thighs.

15 Your Honor saw from the body-worn camera video, that even
16 at that point, Ms. J.K. was completely unresponsive until
17 the application of smelling salts. Excuse me. And that
18 would've been, she got out of the cab at approximately 1:56.
19 The officers responded about 2:53, 3 o'clock. So, that's an
20 hour and she is passed out to the point that they cannot
21 revive her.

22 Add to that, and again just as Detective Jones pointed
23 out, at least one point in the video, you can see the
24 defendant's entire left bicep area. There are no marks. When
25 he is arrested on the beach, again, approximately an hour

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1 later when there is no evidence that anyone else came in
2 contact with the defendant other than Ms. J.K. , there are
3 several visible fresh bite marks on his arm. Couple that with
4 the fact that there is also what appears to be a fresh scratch
5 on his shoulder and his DNA -- so it's his left shoulder, her
6 right fingernails. So, that makes sense if she's fighting him
7 off and biting him and scratching him, she would scratch his
8 left shoulder with her right fingernails and his DNA gets
9 under her fingernails. So, certainly there is enough evidence
10 at this point for the jury to conclude that there was an
11 attempted sexual assault because there was also all of the
12 language during the cab ride. Let me love you, oh J.K. , I
13 love you. Let's go to the beach. So, certainly the state
14 believes that there is enough here for the jury to conclude
15 beyond a reasonable doubt, but certainly for Your Honor to say
16 that there's enough evidence for it to go to the jury.

17 THE COURT: Thank you, ma'am.

18 In this particular matter, while there is some direct
19 evidence of the state, it's clear that on the charge of
20 attempted criminal sexual conduct third degree, the state is
21 basically presenting a circumstantial evidence case to the
22 jury. Now in that, when the state relies, and in this case,
23 must rely heavily, not substantially, regarding this charge on
24 circumstantial evidence. The Court looks at whether there is
25 substantial evidence that reasonably tends to prove the guilt

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BY THE COURT

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1 of the accused or from which his guilt may be fairly or
2 logically deduced.

3 Now, I don't have the same burden the jury has. It has
4 to be shown to them beyond a reasonable doubt that all of the
5 circumstances have to be consistent with each other and when
6 taken together point conclusively to the guilt of the accused
7 beyond a reasonable doubt. That's what the jury is gonna have
8 to decide, whether or not the state has proved that to them
9 beyond a reasonable doubt. I don't have that burden.

10 From the record, there is clearly enough, some direct
11 evidence and clearly enough circumstantial evidence that if
12 believed by the jury, could prove the guilt of the accused or
13 from which his guilt can be fairly and logically deduced by
14 the jury regarding this crime of attempted criminal sexual
15 conduct in the third degree.

16 I'm gonna respectfully decline to grant the motion for
17 directed verdict on the charge of attempted criminal sexual
18 conduct in the third degree.

19 All right. Further motions by the Defense?

20 MR. LONG: No, Your Honor.

21 BY THE COURT:

22 THE COURT: All right. Is your client prepared at this
23 point in time for the Court to question him regarding his
24 right to testify in this matter?

25 MR. LONG: May I have one moment, please?

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ALQI DHIMO - BY THE COURT

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1 THE COURT: Yes, sir.

2 MR. LONG: He's prepared.

3 THE COURT: All right. Mr. Dhimo, would you stand up
4 please, sir?

5 MR. DHIMO: Yes, sir.

6 THE COURT: Place him under oath.

7 CLERK: Please raise your right hand.

8 ALQI DHIMO, HAVING BEEN DULY SWORN

9 TESTIFIES AS FOLLOWS:

10 THE COURT: You can put your hand down. All right, Mr.
11 Dhimo, at this point in time, I'm going to explain to you
12 certain of your constitutional rights. If at any point in
13 time there's anything that you do not understand or you've got
14 a question about or some doubt about in any way at all, I need
15 for you to indicate that to me. You got to raise your hand,
16 you got to, you know, tell your attorney because unless you
17 indicate that to me, I don't know that you have a question or
18 a doubt what we're talking about; you understand that?

19 MR. DHIMO: Yes, sir.

20 THE COURT: All right, sir. So, during these questions
21 and my talking to you, I'm gonna rely upon you to indicate to
22 me if at any point in time you have a question or there is
23 some uncertainty of any kind; we're in agreement there?

24 MR. DHIMO: Yes, sir.

25 THE COURT: All right. Very good. Now, we've reached

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ALQI DHIMO - BY THE COURT

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1 the stage of the trial where you can present your defense.
2 You have the right to claim the protection given to you by the
3 Fifth Amendment to the constitution of the United States of
4 America, which states in part, that no person shall be
5 compelled in any criminal case to be a witness against
6 themselves, it obviously talks about a lot of other things but
7 in essence that's what it's talking about in relationship to
8 this matter; do you understand that?

9 MR. DHIMO: Yes, sir.

10 THE COURT: You can testify if you want to but nobody can
11 make you do so; do you understand that?

12 MR. DHIMO: Yes, sir.

13 THE COURT: All right. Now if you decide to testify,
14 first, it's got to be your decision. You can ask your
15 attorney for all the advice that you want, but it's your
16 decision; you understand that?

17 MR. DHIMO: Yes, sir.

18 THE COURT: All right, sir. If you decide to testify,
19 you're gonna be subject to the same rules that you've seen all
20 the other witnesses that have testified in this case. You'll
21 be asked questions by your attorney. You'll be cross examined
22 or asked questions by the defense, I'm sorry, as to the state,
23 as to any matters the Court deems proper or relevant in this
24 matter. Do you understand that?

25 MR. DHIMO: Yes, sir.

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ALQI DHIMO - BY THE COURT

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1 THE COURT: Solicitor, is there any criminal record that
2 you would be asking to question the defendant about?

3 MS. WALTER: There is none that I'm aware of, Your Honor.

4 THE COURT: All right. Very good. All right. Now, if
5 you decide to testify, again, it's got to be your decision,
6 freely made, voluntarily made, knowing this protection that we
7 have just talked about; you understand that?

8 MR. DHIMO: Yes, sir.

9 THE COURT: All right. Now, if you decide not to
10 testify, it will be part of my instructions to the jury, that
11 they cannot consider that fact whatsoever, that they can't
12 talk about it in the jury room, they can't use it mentally in
13 their deliberations, it's not part of their decision making in
14 this case; you understand that?

15 MR. DHIMO: Yes, sir.

16 THE COURT: All right. Again, being your decision to
17 testify or not, if you want to you can ask your attorney some
18 questions now or a family member if you want to. Do you want
19 to do that?

20 MR. DHIMO: Yes, sir.

21 THE COURT: Go ahead.

22 (REPORTER'S NOTE: Defendant confers with counsel.)

23 THE COURT: All right, sir. You've had an opportunity
24 now -- stand up.

25 MR. DHIMO: Yes, sir.

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BY THE COURT

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1 THE COURT: You've had an opportunity to talk to your
2 wife and your attorney, correct?

3 MR. DHIMO: Okay.

4 THE COURT: Do you understand what we've talked about
5 here?

6 MR. DHIMO: Yes, sir.

7 THE COURT: Do you have any more questions that you need
8 to ask?

9 MR. DHIMO: No, Judge.

10 THE COURT: Do you wish to testify in this case?

11 MR. DHIMO: No.

12 THE COURT: Very good, sir. Thank you very much. You
13 may have a seat.

14 BY THE COURT:

15 THE COURT: Mr. Long, regarding that, will there be the
16 presentation of any other witnesses or evidence or any
17 evidence on behalf of the defendant?

18 MR. LONG: No, Your Honor.

19 THE COURT: All right. Very good. So, the Defense
20 rests; is that correct?

21 MR. LONG: That's correct, Your Honor.

22 THE COURT: All right. Hold on a second.

23 All right. So, where we are then is that in this
24 particular matter, since the Defense did not present any
25 evidence in this matter, it will be the state's obligation to

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CHARGE CONFERENCE

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1 give its full and complete argument to the jury in the closing
2 arguments to be followed by the defendant's closing argument.
3 That will be the -- that will be the -- it regarding the
4 arguments in this matter.

5 Is there any objection to that from the state?

6 MS. WALTER: No, Your Honor.

7 THE COURT: From the Defense?

8 MR. LONG: No, Your Honor.

9 CHARGE CONFERENCE:

10 THE COURT: All right. Let's talk about then the -- do
11 you have a question? All right. Let's talk about then the
12 charge to the jury and then we'll talk about when we're going
13 to do this and what we're going to do, okay, as to the timing
14 of it.

15 I will charge the jury obviously at the very beginning,
16 the things that we always talk to them about; credibility,
17 believability, their job as judging the, the witnesses in this
18 particular case, that sort of thing. We'll talk about -- then
19 we'll go into direct and circumstantial evidence. Now
20 regarding that because it's obviously important in this
21 particular case, we'll talk about direct evidence obviously
22 being the -- the testimony of a person who asserts or claims
23 to have actual knowledge of a fact and circumstantial evidence
24 is proof of a chain of facts indicating the existence of a
25 fact and I will say, the law doesn't make a distinction

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CHARGE CONFERENCE

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1 between the two, there's not a greater degree of certainty
2 required of one over the other, but I am going to explain to
3 the jury that to the extent that the state relies upon
4 circumstantial evidence to prove its case, all of the
5 circumstances must be consistent with each other and, when
6 taken together, point conclusively to the guilt of the accused
7 beyond a reasonable doubt. If the circumstances merely
8 portray the defendant's behavior as suspicious, the proof has
9 failed. The state has the burden of proving the defendant
10 guilty beyond a reasonable doubt. This burden rests upon the
11 State of South Carolina regardless of whether the state relies
12 on direct evidence, circumstantial evidence, or some
13 combination of the two. After weighing all the evidence, if
14 you, the jury, are not convinced of the guilt of the defendant
15 beyond a reasonable doubt, you must find the defendant not
16 guilty.

17 Then we'll talk about expert witnesses, basically that we
18 allowed some witnesses to give their opinion. That doesn't
19 give them any special status. They judge all the witnesses
20 the same, judge all the credibility and believability the
21 same.

22 As I indicated to the defendant, I will charge the jury
23 that the fact that the defendant did not testify cannot be
24 used by them in any shape, manner, or form in making their
25 decision. They can't talk about it in the jury room. They

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1 can't use it mentally. That again cannot be any basis under
2 which they formulate their decision in this matter and we'll
3 talk about the -- the presumption of innocence going back to,
4 to the indictment. When I talked to them at the very
5 beginning, he pled not guilty, the defendant remains not
6 guilty unless and until the state proves the guilt of the
7 defendant beyond a reasonable doubt. Defining reasonable
8 doubt to them thereafter as the kind of doubt that would cause
9 a reasonable person to hesitate to act. It's a proof that
10 leaves the jury firmly convinced of the defendant's guilt.

11 The statement of the defendant, obviously telling them
12 that while the Court allowed it into evidence, they make the
13 decision as to whether or not first, obviously, that the
14 defendant made the statement. Whether it was made by him
15 voluntarily of his own free will, whether it was -- regarding
16 the questioning, they can consider the number of factors, age
17 of the defendant, defendant's education or lack thereof,
18 mental ability or mental capacity or capacity of the
19 defendant, background and environment, place and length,
20 nature of the questioning, and obviously the Miranda warnings
21 again and go over that with them. And again, that the state
22 as the burden of proof beyond a reasonable doubt that the
23 alleged statement was voluntary. If they find it's voluntary,
24 they give it the weight they decide it should have, if any.

25 As to the substance in this matter, I'll define attempt

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1 as an effort to accomplish a crime which does not succeed. An
2 attempt includes a specific intent to do a criminal act along
3 with an act falling short of the act intended. The state must
4 show more than mere preparation and intent. There must be
5 some overt act committed in the effort to commit the crime.
6 Intent means intending the result which actually occurs, not
7 accidentally or involuntarily. Intent may be shown by acts
8 and conduct of the defendant and other circumstances from
9 which you can reasonably infer intent.

10 Now, regarding intent, I will charge the jury that in
11 order to establish criminal liability, criminal intent is
12 required. Criminal intent must be proven by the state beyond
13 a reasonable doubt. It's always a matter to be determined by
14 the jury from the circumstances surrounding the situation and
15 it obviously can't be proved to a mathematical certainty.
16 I'll say that criminal intent is a mental state, a conscious
17 wrongdoing, it's up to determine what the defendant intended
18 to do, if anything, based upon the circumstances shown to have
19 existed, and again that must be proved to the jury beyond a
20 reasonable doubt.

21 Third degree criminal sexual conduct will be defined that
22 the state must first prove beyond a reasonable doubt the
23 defendant engaged in a sexual battery with the victim. he
24 sexual battery being a intercourse, cunnilingus, fellatio,
25 anal intercourse, or any intrusion however slight of any part

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1 of a person's body or any object into the genital or anal
2 openings of another person. If they find that the battery did
3 occur then the state has to prove one of the two -- one of
4 these two things. One, the defendant used force or coercion
5 without any aggravating circumstances to accomplish the
6 battery. Using force or coercion means to make the victim
7 follow a prescribed and dictated course to inflict or impose
8 or force one's will on someone, or the state must prove beyond
9 a reasonable doubt that the defendant knew or had reason to
10 know that the victim was mentally defective, mentally
11 incapacitated or physically helpless and that aggravated force
12 or aggravated coercion was not used to accomplish the sexual
13 battery. Mentally incapacitated means that the victim was
14 rendered temporarily unable to evaluate or control her
15 conduct. The condition may be caused by illness, mental
16 defect, defect, the influence of a substance or some other
17 cause. Physically helpless means that the victim was
18 unconscious, asleep or for any other reason physically unable
19 to communicate, consent to the sexual activity.

20 Indecent exposure, the defendant is charged with indecent
21 exposure. The State has to prove beyond a reasonable doubt
22 that the defendant willfully, maliciously, and indecently
23 exposed his private parts in a public place, property or
24 others to the view of any person on a street or highway.

25 That's the charge that I intend to give. Any -- anything

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1 further or additional requests from the state?

2 MS. WALTER: No, Your Honor, I believe that is complete.

3 MR. LONG: I agree, Your Honor.

4 THE COURT: All right. And so I will go over the verdict
5 form with the jury. I'll have y'all come up here in just a
6 second and look at it, but basically, it has the caption of
7 the case. It has (1), it says attempted criminal sexual
8 conduct third degree. On the charge of attempted criminal
9 sexual conduct third degree, we, the jury, by unanimous
10 consent, find the defendant, there's two choices, not guilty
11 or guilty and I'll tell them don't assign anything to that, I
12 got to put one before the other. And then it'll go to (2),
13 indecent exposure. On the charge of indecent exposure, we,
14 the jury, by unanimous consent, find the defendant and again
15 not guilty, guilty. At the bottom of the first one, it says
16 when you've reached a verdict on Charge (1) proceed to Charge
17 (2), knock on the door and notify the bailiff. I'll remind
18 them again, at that point in time, a couple of things, one,
19 they're deciding two cases, that the elements are different,
20 they have to decide both cases separately. Just because they
21 decide one way on one case doesn't mean they side the same way
22 on the other. They have to reach independent decisions on
23 these two matters and remind them about unanimous means
24 unanimous, means 12/0.

25 All right. If y'all want to come up and look at the

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1 verdict form and see if y'all have any questions about that.

2 (REPORTER'S NOTE: Counsel reviews verdict form.)

3 THE COURT: Any problems?

4 MS. WALTER: No, Your Honor.

5 MR. LONG: No, Your Honor.

6 BY THE COURT:

7 THE COURT: All right. Very good. All right. So what
8 -- looking at the time, probably I think the best thing to do
9 is let them go to lunch for a period of time. Give y'all a
10 little bit of an opportunity to have some lunch and then come
11 back and get organized for your closing arguments. Why don't
12 we have the -- 1:15, is that more than sufficient time? It's
13 11:45 now, is that more than sufficient time?

14 MR. LONG: Yes, sir.

15 THE COURT: From the state?

16 MS. WALTER: That'll be fine, Your Honor. I do have one
17 question and I can show Mr. John this. There is one -- I'm
18 planning on having PowerPoint slides for my closing.

19 THE COURT: Okay. All right.

20 MS. WALTER: And this is just a demonstrative exhibit.
21 Everything else is evidence that's already in.

22 THE COURT: All right. That's something that you want to
23 use in your argument, but it's not a matter that would go in
24 to the jury?

25 MS. WALTER: Correct, and so it's just based off of

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1 evidence. It's ---

2 THE COURT: I mean, that'll be fine. Just show that to
3 Mr. Long. So, it would just be something that you would use
4 when you're making your closing argument to make a point?

5 MS. WALTER: Correct. They would not be getting my
6 PowerPoint.

7 THE COURT: Right. Any -- any problem with that, Mr.
8 Long?

9 MR. LONG: No, sir, I don't believe so.

10 THE COURT: All right. Very good. All right. Good.
11 All right. So, with that, what I'll do is, unless you want me
12 to, I just don't see the necessity to call the jury in and
13 tell them to go to lunch. I'll just have the bailiff tell
14 them to be back, have lunch, 1:15. Okay.

15 MR. LONG: Yes, sir.

16 THE COURT: So with that, I'll see y'all back if y'all
17 will be back just a little bit earlier in case there's some
18 question that y'all might have. All right?

19 Thank you very much.

20 BAILIFF: You want me to go ahead and tell them, Judge?

21 THE COURT: Yeah, if you'll just tell them and just tell
22 them to make sure that I want to start at 1:15. So, whatever
23 time y'all want them back.

24 BAILIFF: Okay.

25 **(RECESS.)**

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*****OFF THE RECORD*****

(On the Record.)

BY THE COURT:

THE COURT: All right. Is the state ready for the jury to come in?

MS. WALTER: Yes, Your Honor.

THE COURT: And the defense?

MR. LONG: Yes, Your Honor.

THE COURT: Very good. Ask the jury to come in, please, sir.

(REPORTER'S NOTE: Jury enters courtroom.)

THE COURT: All right, ladies and gentlemen, as I indicated to you earlier, we have concluded the evidentiary portion of this trial. There will be no more evidence presented to you in this particular case. What remains in this matter are the closing arguments and then the charge on the law. I'll remind you as I did regarding the opening statements, the closing arguments by the attorneys, are not evidence. They cannot be considered by you as evidence in this case. You've received all of the evidence you're gonna receive in this particular matter. But the closing arguments are important. They're each side's summation to you of what they believe the evidence has shown to you during the course of this trial, remembering of course that you are collectively the judges of the facts of this particular case. After that,

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1 I will give you the law that you will apply to the facts and
2 evidence that you have heard in this particular matter and
3 then I'll give the case or submit the case to you for your
4 deliberations and unanimous decision in this particular
5 matter. So, if you'd give your attention to the attorneys
6 please.

7 Solicitor?

8 MS. WALTER: Thank you, Your Honor. If I may just have a
9 moment to set up.

10 Your Honor, do you want this angled so you can see it?

11 THE COURT: That's fine. No, no. No, ma'am, you go right
12 ahead.

13 And, Mr. Long, you can certainly move.

14 MR. LONG: Thank you.

15 CLOSING BY WALTER:

16 MS. WALTER: Alqi Dhimo is guilty of both charges,
17 indecent exposure and attempted criminal sexual conduct in the
18 third degree. As Judge John has explained to you, the opening
19 statement and the closing argument aren't evidence, but the
20 opening statement should've served to you as a road map of how
21 the state would like the case to go in. And that's because
22 trials are not perfect, this world is not perfect, so we can't
23 lay out the story for you always as if you'd read it in a
24 book. Sometimes things go out of order. Sometimes there are
25 rules that guide how the evidence must go in. But Ms. Andrew

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1 laid out for you this case and now it's my turn to show you
2 how the evidence that you heard, both from the witness stand
3 and that was presented to you and that you saw it with your
4 own eyes, how that proves beyond a reasonable doubt that Alqi
5 Dhimo is guilty of indecent exposure and the attempted rape --
6 let's call it what it is -- the attempted rape of J.K.

7
8 Now, I'm gonna deal first with indecent exposure, and I'm
9 not gonna go into depth on the law because that's Judge John's
10 job and he will go much more into depth, but just so that you
11 know how the evidence fits into the crime.

12 So, in order to convict Alqi Dhimo of indecent exposure,
13 the state has to show that he willfully, maliciously, and
14 indecently exposed his private parts either in a public place
15 or in the view of another person. So, what evidence do you
16 have in support of that charge? You heard from three security
17 guards, but two of them are especially germane to this charge.
18 You heard from Benjamin Thompson, who testified that as they
19 approached, they saw the cab, you know, where it was parked
20 illegally. As they approached down that little beach access
21 point, that he saw the defendant, who had initially been
22 laying on the ground next to what at that point he could only
23 identify as a white mass, laying down on the ground, jump up.
24 And when he jumped up, he was facing Mr. Thompson naked from
25 the waist at least to the knees. And we asked several times,

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1 does that mean you had, and I think he termed it, a full
2 frontal view. Yes, Mr. Thompson was able to see Alqi Dhimo's
3 full frontal view. It was willful, it was intentional, and it
4 was malicious. You heard that the beach is a public place and
5 certainly there were other people there.

6 In addition to Benjamin Thompson and Joyce Dixon, they
7 testified that the hotel was open to the public still at that
8 time and that guests could potentially be checking in. So,
9 there was also the risk that others would have the full
10 frontal view of Mr. Dhimo.

11 Joyce Dixon, who had been riding with Benjamin Thompson,
12 supported what he said. She agreed. She -- when they
13 approached the beach access road, she saw the defendant jump
14 up and she got the full frontal view. So, when you're
15 considering witness testimony, and the Judge will instruct you
16 on credibility, but you use this test every day. Every day of
17 your life, when someone talks to you about something, in your
18 mind, you are judging their credibility whether you recognize
19 it or not.

20 Well, in a criminal case, one of the things that I always
21 think is helpful is did that witness have a motive, have some
22 reason to lie, to make up what their testimony was? So, when
23 you're considering Benjamin Thompson and Joyce Dixon's
24 testimony, why on earth would they make that up? What is
25 there about their testimony that would lead you to say, oh,

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1 that's not credible?. They are two hardworking individuals
2 doing their job. They happened upon an illegally parked taxi,
3 they approach to see if anything is wrong, and up pops the
4 defendant in his altogether. He is guilty of indecent
5 exposure.

6 Now, he's also -- the defendant is also guilty as charged
7 of attempted criminal sexual conduct in the third degree. So,
8 this is actually sort of a combination of two charges that the
9 Judge is going to give you because attempt is sort of the
10 special idea, but with this crime it means the state has to
11 prove that the defendant attempted, had that specific intent
12 to commit criminal sexual conduct and that he took some act
13 towards that, but the act itself of criminal sexual conduct
14 was not necessarily completed. So, when we are discussing
15 this, you'll see I do have to show the specific intent and a
16 specific act in furtherance of that attempt to commit the
17 criminal sexual conduct.

18 So, what does criminal sexual conduct mean? It means a
19 sexual battery. Don't you wish the law could just speak
20 plainly and say what it is? Well, a sexual battery is whole
21 host of things, but at its very basic it means any penetration
22 of the genital area of the victim. And, with third degree
23 sexual misconduct, the portion of the statute that you should
24 be most concerned with -- there are a number of different ways
25 that we can prove it, but what the state is alleging in this

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1 instance is that the victim was either mentally incapacitated
2 or physically helpless, meaning she could not legally -- she
3 was not capable of giving consent based on her condition at
4 the time.

5 Now as we know, unfortunately, Ms. J.K. isn't here to
6 tell you what happened that day or that morning because she
7 died of an overdose four-and-a-half months after this, in an
8 unrelated overdose. So, the state can use what we call
9 circumstantial evidence. So, direct evidence is a witness
10 testifies or all the exhibits that we've entered, but there's
11 also this concept in the law called circumstantial evidence.
12 So, the best way that I can describe it and we just had what
13 some have called Snowmegeddon, although I did not get any snow
14 where I live really, but if you say you went to sleep at night
15 and before you went to sleep, I don't know, you looked out
16 your window or you let your dog out into the yard and there
17 was nothing on the ground. You go to sleep, you wake up in
18 the morning, you look out your window or you let your dog out
19 and there's snow all over the ground. You didn't see it
20 snowing but you have the facts in front of you to know that it
21 snowed. You don't have to have seen it snow to know that it
22 snowed because you went to bed there was no snow; you woke up,
23 there was snow. Another example that I like to use because I
24 tried using that when I was a prosecutor in Arizona and I was
25 right in the middle of it and it struck me, it doesn't snow in

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1 Arizona in Maricopa County. So, I use this one. I have dogs.
2 I love dogs. So, when our puppy was young, I got this calm
3 indestructible crate bed, guaranteed to last forever, right?
4 Put it in the crate with my puppy, shut him in, locked the
5 door, went to work, came back, and the indestructible calm
6 crate bed was in pieces and there was foam flying all over the
7 bedroom. Now, I didn't see him do that, but that's
8 circumstantial evidence that he did. So that's what I want
9 you to keep in mind as we talk about the evidence that goes to
10 the support the charge of criminal sexual conduct.

11 So, what evidence do we have? Your first witness was
12 Justin Stephenson, Ms. J.K. 's boyfriend. And when Mr.
13 Stephenson. And when Ms. J.K. left her mother's house,
14 where they had been celebrating Father's Day, he told you at
15 that point she was already drunk and that happened. She would
16 be drunk sometimes and they were trying to make their way home
17 and they got in a fight over of all things, the radio station
18 and I bet right now both of them wish that radio had never
19 been playing. But, because of that silly fight, she hit him
20 and got out of the car. He looked for her. He found her
21 once, he said get back in the car. She was still mad and she
22 said no. He drove around, he couldn't find her, and his phone
23 was dying so he went home to charge his phone. The next he
24 heard from her was early that morning, I think it was about
25 1:15, and she said I'm gonna get a cab and I'm gonna met you

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1 at home. The next time that he saw her, she was in the
2 hospital. She was emotional and I think he described it as
3 the worst day of his life up to that point.

4 If we want to go chronologically, the next logical
5 witness would be Chad Morenus. He was the bartender at
6 Jimmagan's. Jimmagan's, which is at 60th Avenue and North
7 Kings Highway. And Chad Morenus testified that while at first
8 he didn't recognize the defendant and the victim, when he saw
9 that bottle of Apple Crown or Crown Apple, it struck him, it
10 was like wait a minute, now I do remember that. And yes, he
11 mixed up her hair color and thought she was dressed up when we
12 know she was wearing a cover-up. But, what's important when
13 you recognize someone is you're not looking at their clothes
14 and saying, oh I remember a woman once that was wearing a
15 sweater like that, you look at their face. It's the face that
16 sparks that recognition. And Chad Morenus told you that
17 sometime around closing, the defendant and the victim came
18 into Jimmagan's. The defendant was buying the drinks and they
19 did three to four shots of Apple Crown, Crown Apple. I don't
20 drink it so I'm sorry if I'm messing up that name.

21 Now, if that were three to four shots over 24 hours, that
22 wouldn't be much. But let's first start with if anyone here
23 has ever taken a cab, has the cab driver ever stopped and
24 taken you out for drinks? Certainly not anything I have ever
25 heard of, but this was three to four drinks, and remember when

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1 you look at the dashcam video, the defendant picks her up at
2 1:09, turns off the tape, and then at 1:39 you see them
3 leaving Jimmagan's. So, that's a 30-minute period to get from
4 13th and North Kings Highway, four miles I think Detective
5 Jones said, four miles up to Jimmagan's and drink three to
6 four shots in half-an-hour, when she was already drunk,
7 visibly intoxicated.

8 Next, the next person to see the defendant and the victim
9 were the three security guards. Now I've spoken already about
10 what Benjamin Thompson and Joyce Dixon heard or saw and talked
11 to you about and some of the things -- this didn't go so much
12 for the indecent exposure but still keep in mind that they saw
13 him jump up with no pants on. But, what's even more telling
14 about his interaction with the security guards? You know at
15 this point, that J.K. is unconscious on the ground,
16 could not be woken up just by people shaking her. So, what
17 does the defendant do, go away, stay back, don't come here.
18 If you're trying to help the victim, who is laying
19 unconscious, why are you gonna tell three other people don't
20 come here, it's not your business, it's not your problem? You
21 wouldn't unless you didn't want them to see what you were
22 doing.

23 And, I do want to say one thing and I'm gonna jump off
24 track here for a minute. Understand that I will highlight
25 certain pieces of the evidence that have come in just as Mr.

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1 Long will and as the Judge instructed you during the trial, it
2 is always your recollection that controls. But in the
3 closing, I am permitted to highlight what I think are the
4 important parts of the evidence or the important pieces and
5 Mr. Long will have the chance to do the same thing.

6 So, Benjamin Thompson and Joyce Dixon and Donald Paul at
7 that point, who admitted he didn't see the defendant's
8 altogether, he didn't get the full frontal view, but they all
9 testified that he said, stay away, back off, don't come near
10 me.

11 Officer Eddy was the first to arrive and this is what he
12 found. He found 22-year-old J.K. curled in a ball
13 on the sand, covered in sand, with her bathing suit bottom
14 pushed to the side so that he could see her private area and
15 with red abrasions near her genitals. You saw on his body
16 camera, as well as on Officer Cooper's and Officer Freeman's,
17 ma'am, ma'am, wake up; ma'am, ma'am, wake up. Completely
18 unresponsive. And so he called backup, and who responded, but
19 Officer Cooper. And Officer Cooper and Officer Freeman are
20 the ones who were finally able to revive the victim only
21 because Officer Cooper had smelling salts. And remember that
22 even then, while it revived her and made her conscious, did it
23 all of a sudden snap her out of some magic spell? No. She
24 was completely incoherent, spitting up from her mouth, and the
25 first sound she makes other than trying to was uh, uh.

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1 Doesn't that tell you how intoxicated she was? The fact that
2 it took them so long to revive her tells you that.

3 Now, Officer Cooper also spoke with the victim in the
4 ambulance. And you'll remember the word that he kept coming
5 back to was she was distraught. And Mr. Long tried to say
6 well was she combative? No, that is not a word -- or
7 regretful I think he also said, was she regretful? That is
8 not the word that I would use to describe her. She was
9 distraught. She was fearful of being in an ambulance with two
10 police officers, two male police officers. And you can see in
11 this still that she's even curled in, she's in a defensive
12 position. And, you saw from that excerpt of the body camera
13 how hysterical she was.

14 Now, the dashboard camera video, that's difficult to
15 watch. It really is. It's disturbing, but what you need to
16 understand is that there is still evidence to be gathered from
17 that, important evidence, because that dashboard camera video
18 shows you how intoxicated she was as a result of him buying
19 her shots. It also shows you that the defendant was not
20 intoxicated. Why do I say that? What am I pointing to that
21 lets you know that? When they leave Jimmagan's, the defendant
22 gets in the driver's seat and you can see in that external
23 camera, he's driving, all the while having little shenanigans
24 with Ms. J.K., leaning over kissing her, pulling her in
25 kissing her, I love you, I love you, and he's driving in a

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1 perfectly straight line, perfectly straight line. Then
2 towards the end of the footage, if nothing else during that
3 footage shows you that she was intoxicated, the slurring of
4 her speech, the fact that she didn't even know how to put the
5 car in drive. Remember that when she finally got in the car,
6 she said -- she started to drive and, if you look again at
7 that external view, you can see she almost drove off the road
8 to the right into the grassy area, and Mr. Dhimo, still like
9 no, no, no, stop, stop, don't do that, don't hurt my cab. So,
10 she starts going and he goes turn left directing her where to
11 go, and she turns -- and again, if you look carefully, she's
12 turning before there's even a street to turn on. And again,
13 no, no, no, stop, stop, stop, stop, stop. Okay. Pull over,
14 park, park. And then what you see is she is actually
15 unconscious for a bit in the van, in the cab, before they end
16 up on the beach. But it also shows you the route of travel
17 that they took.

18 Now, I did my best to get the addresses of the different
19 places. So, the defendant picked Ms. J.K. up at 13th and
20 North Kings Highway. Their first stop -- well, first of all,
21 let's say that she asked to go home. She lived on 76th Avenue
22 just off of North Kings Highway. The shortest distance
23 between two points is a straight line, but did the taxi cab
24 follow the straight line? Did the defendant carry her
25 immediately home as he wanted Detective Allen to believe? No,

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1 first he stops at Jimmagan's, buys Ms. J.K. three or four
2 shots, gets her nice and inebriated, intoxicated, almost to
3 the point of unconsciousness at that point, and then he
4 continues. When he continues, he still doesn't take the
5 straightest distance up North Kings Highway so that he could
6 just turn onto 76th, which is where she lives -- she lives to
7 the left; he turns to the right. And what I want you to, if
8 you recall from the video, you can hear her say, no, you
9 passed it, turn around. Turn around. But he didn't. So,
10 first he stops at the 67th North beach access, drives past her
11 apartment, she says, stop, stop, turn around, turn around.
12 There's a brief stop where she gets out to pee by the side of
13 the car.

14 Now, any -- I laugh to myself when I say this -- self-
15 respecting person, we wouldn't be here if he was self-
16 respecting person.

17 MR. LONG: Objection, Your Honor.

18 THE COURT: Don't give your characterizations of -- in
19 that manner. I'm gonna allow you to continue on. Go ahead.

20 MS. WALTER: Think back to if you were ever -- if someone
21 is even involved in a relationship with someone, is the first
22 thing that you do watch them urinate? Is that something that
23 most women want someone to see them do and listen to the audio
24 while she is out there. What is she saying? Stop it, I'm
25 pissing, stop, no. And so we don't know what went on outside

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1 the van because Ms. J.K. can't tell us. But those words
2 are circumstantial evidence that whatever was happening, she
3 did not like.

4 So, along with the route information where he took
5 certainly not the most direct route, never dropped her at her
6 home, but they were together for a total of an hour and 49
7 minutes for a nine-minute ride. That's an awful lot of time
8 that's unaccounted for.

9 What other evidence do we have to support the fact that
10 he is guilty of criminal sexual contact in the third degree?
11 You heard from three different people from SLED and the
12 serology is really more just what wasn't found. Although,
13 what was important in that is that not finding something
14 really doesn't tell you much. If they find something, it
15 gives you an idea, but if they don't find anything it doesn't
16 really weigh one way or the other. But the serologist
17 performed the dried blood standard and prepared everything
18 that got sent to Ms. Leisy, the DNA analyst. And lo and
19 behold, the defendant's DNA was beneath Ms. J.K.'s
20 fingernails and he had a scratch on his shoulder. So, picture
21 if you're trying to fight someone off and you're face-to-face
22 with them, your -- your right hand is gonna be on their left
23 shoulder. And Mr. Long, in his questioning, was trying to
24 say, well you know they were caressing and it was playful and
25 -- that scratch, not playful. That scratch is Ms. J.K.

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1 defending herself.

2 Toxicology. How intoxicated was she? So we know, again
3 getting some of this from the dashcam video, we know that she
4 left Jimmagan's at 1:39. So, that was the last drink that she
5 had. Her blood was taken, you may recall at 12:49. Again,
6 I'm terrible at math, but that's a little over 11 hours later.
7 So, 11 hours after she had her last drink, her blood alcohol
8 concentration was .169. When you do the retrograde
9 extrapolation, you add .162 to that. She started off 11 hours
10 later twice the legal limit. When you figure in the time
11 lapse, you add another twice the legal limit. She ended up --
12 she was approximately .331 at the time of the assault. And,
13 the toxicologist, Ms. Brown, testified you're in danger of
14 dying at that alcohol level. And you know, and here's an
15 excerpt from the video, that she in fact had passed out in the
16 car before she got to the beach. And we know for certain that
17 they -- she was found unconscious on the beach because she was
18 a .331. You think anyone at a .331 blood alcohol
19 concentration has the wherewithal to consent to anything? If
20 we stop you from driving at a .08, how are we gonna say, sure,
21 .331, have at it, no problem, she knows what she's doing. She
22 doesn't and that's why we have this law.

23 You also have the defendant's statement and, you know,
24 there again, the defendant has every right not to give a
25 statement and stop a statement at any time. And this isn't

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1 one of those statements where it is completely inculpatory,
2 meaning he accepts all the blame for everything, but it's also
3 not completely exculpatory. And why is that? It's because of
4 some things that he didn't say and some things that he did
5 say.

6 So, what didn't he say? Well, if you're -- this is a
7 completely innocent event and, you know, this was a date,
8 spontaneous date, like picture the luck of this cab driver
9 that he picks up this beautiful 22-year-old girl, who wants to
10 have revenge sex because her boyfriend used the wrong radio
11 station. Well, okay, if that's even remotely believable,
12 you'll say to the detective, look, she got in; she wanted it.
13 We stopped at Jimmagan's. In the video, did you ever hear her
14 say, hey, let's stop and get drinks? What does she say when
15 she gets in the cab? I want to go home. He's the one that
16 stops at Jimmagan's, but he doesn't tell Detective Allen that.
17 And unfortunately, because of the timing of the investigation,
18 she didn't know at that point that they had stopped at
19 Jimmagan's because it wasn't until someone was able to review
20 the video that they knew that there was this stop. Certainly
21 the defendant didn't say it and he doesn't have a duty to say
22 anything. But, once he does speak, you can use your same
23 common sense, your same rules of credibility, to determine
24 whether or not you believe him. Well, what else? He didn't
25 ever say, well, we were on a date, you know, this was a

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1 budding new romance or, at the very least, it was gonna be an
2 easy conquest for me. He never said any of that. He, in
3 fact, didn't mention any physical contact with the victim.
4 Didn't say, oh, she was kissing on me, she was licking on me,
5 she was rubbing on me, I love you, I love you, I love you,
6 didn't say any of that. Why? Ask yourself that. But then,
7 sometimes omissions can be very telling, but let's take a look
8 and compare some of the things the defendant did say with some
9 of the things that we know are true. So, he tells Detective
10 Allen, I picked her up at 44th and North Kings Highway. No,
11 he didn't. No, he didn't. Because first of all, that would
12 mean that J.K. , already intoxicated, walked from
13 Chapin Park, which Detective Jones told you was about 16th and
14 North Kings Highway, from 16th and North Kingsway to 44th and
15 North Kings Highway without ever finding another ride.
16 Detective Jones was also able to tell you, I could tell by the
17 landmarks that he picked her up at 13th and North Kings
18 Highway. So, right from the get go, the defendant is not
19 being truthful. He says he turned the fare meter on. No, he
20 didn't. No, he didn't. Officer Eddy, I think, testified that
21 it wasn't on. It just simply was not on. And you can even
22 see if you look at the dashcam video, he never turns it on.
23 Another untruth. In his statement, he starts trying to
24 implicate Justin Stephenson. Oh, she told me her boyfriend
25 gave her a steroid. Well, there's two problems with that.

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1 Number one, she never said that. You saw that video. You
2 listened to that video. She never once said that her
3 boyfriend gave her a steroid. Second problem with that, no
4 evidence of a steroid in her blood. Still trying to blame the
5 boyfriend. The boyfriend kicked her out of the car. And
6 actually in his opening, Mr. Long said that the boyfriend hit
7 her, and we know that's not true. Justin testified, nope, she
8 jumped out of the car. She hit me and jumped out of the car.
9 I could not hit her back in the car. I looked for her, but
10 couldn't get her back. In his statement, he said, oh, she
11 said just keep going, keep going. Again, think back to that
12 moment when the defendant drove past 76th Avenue. What's the
13 first thing that Ms. J.K. says? You passed it, stop, turn
14 around, turn around. That's not keep going; that's get me
15 home. Get me where I asked you to take me. He says that he
16 parked at 77th and the beach access. Well, he might've
17 directed the victim where to park but he certainly didn't do
18 it. You saw her in her drunken attempt to drive, but she is
19 the one that parked the cab there, probably thinking that she
20 was home and safe.

21 He's also trying to say in a statement that, well, I was
22 20 feet away from her, and you heard every single one of those
23 security guards saying no, no, there was a white object on the
24 ground, couldn't really see what it was, but he was standing
25 right over it. Two of them said he was standing over that

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1 object with his pants down. So, he wasn't 20 feet away. Even
2 when Detective Eddy, he's now a Detective, Officer Eddy gets
3 there, he's not 20 feet away. He's pulled his pants up
4 wisely, knowing that the police are coming, but he's just
5 standing there probably just as close as you and I are and
6 again, like not trying to get her help. He's got her on the
7 beach for probably an hour, she's unconscious, and he says get
8 away, get away. Even when the police are there on the camera,
9 you don't see him say quick, quick, come here, you know, she's
10 passed out, she's unconscious, I can't help her. No.

11 Now one the biggest things that I want you to take away
12 from his statement is ---

13 (REPORTER'S NOTE: Portion of video published. Audio not
14 transcribed herein.)

15 MS. WALTER: The defendant promised her, promised
16 Detective Allen that he didn't get these bite marks from Ms.

17 J.K. . Well, look at this picture of his arm from the
18 dashboard camera. Not a blemish. Not a mark, not a scrape,
19 not a bite. Lo and behold, when he has only been with the
20 victim, all of a sudden, he has fresh bite marks and a fresh
21 scratch on his shoulder. If this was all sexual play by the
22 victim, why not say it. He didn't say it because it wasn't
23 true.

24 In his opening, Mr. Long wanted you to believe that this
25 was a case of revenge and regret, and I told you that the idea

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1 of revenge sex over a wrong radio station doesn't really hold
2 water, but also is this the face of regret or is that the face
3 of a woman who has just been assaulted?

4 Now, in her opening statement, my colleague, Ms. Andrew,
5 said that unfortunately you wouldn't get to hear from Ms.

6 J.K. , and you didn't get to hear from her live on the
7 witness stand but you heard her words. You heard her words
8 during that dashcam video.

9 (REPORTER'S NOTE: Portion of video published. Audio not
10 transcribed herein.)

11 MS. WALTER: Ladies and gentlemen, he is guilty and we
12 ask that you find him guilty.

13 THE COURT: All right, Mr. Long?

14 MR. LONG: May it please the Court?

15 THE COURT: Yes, sir.

16 CLOSING BY LONG:

17 MR. LONG: Ladies and gentlemen, I want to thank you for
18 your time and your attention. I know this is very different
19 from your normal everyday lives. So you are without a doubt,
20 the most important people in the courtroom and so I want to
21 thank you for your service.

22 As Judge John said from the beginning of this trial, Mr.
23 Dhimo is innocent until proven guilty. He comes in here with
24 a cloak of innocence draped around him for every charge that
25 he had, both the charges. The state's required to prove him

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1 guilty beyond a reasonable doubt for every element of each
2 crime. You can't just throw a blanket over each crime and say
3 he's guilty, he's guilty. You got to break down each crime
4 and its different elements.

5 Now, as I said, Mr. Dhimo, as he sits right there, he is
6 innocent. He cannot be presumed guilty. He must be presumed
7 innocent. If I could make an illustration, if we look at this
8 bar and we say at the end of this bar there's innocence; at
9 the end of this bar there is guilt. Now, in civil court, the
10 burden of proof is beyond -- by a preponderance of the
11 evidence. So, if you get in the middle of this bar, maybe he
12 did, maybe he didn't. If you get to 51 percent, in civil
13 court that's enough. That's called the preponderance of the
14 evidence. But we're in criminal court and it's a very
15 different standard. Criminal court, the standard is guilt
16 beyond a reasonable doubt, and that's the highest form of
17 proof that you can have in the court system. And the reason
18 why it's so high is we're dealing with taking away a person's
19 liberty, and so it's very important that we get it right. And
20 so when we look at the evidence, we start here at innocent.
21 We don't start here in the middle, maybe he did, maybe he
22 didn't, I'm not sure. I assume he did, I assume he didn't;
23 that's in the middle. That's not enough.

24 Now, beyond a reasonable doubt, you don't have to get all
25 the way down here. You got to get pretty close to down here

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1 before you can say that he's guilty beyond a reasonable doubt.
2 So, we start down here. What is reasonable doubt and that's a
3 very good question. We throw that term around in court all
4 the time, what is reasonable doubt? Reasonable doubt, is if
5 you're not being sure of guilt to a moral certainty. So, if
6 reasonable doubt causes you to pause or to hesitate from
7 saying, oh, yes, I'm certain that he committed that crime.
8 I'm certain he did. If you go, I don't know about that;
9 that's reasonable doubt. We do that every day in our lives.
10 We hear a story, I know what you're saying, but I just don't
11 know if that's true. That's reasonable doubt. If I told you
12 that I saw Billy Graham walk out of a strip joint in Myrtle
13 Beach, you'd say, I don't know about that. That's that
14 hesitation; that's reasonable doubt. So we're not talking
15 about what a reasonable person would do in this situation.
16 Sometimes jury's confuse that. They think reasonable doubt
17 equals what would a reasonable person do in a situation.
18 Please don't confuse that when you're deliberating. We're
19 talking about reasonable doubt, something that would make you
20 pause.

21 So, I first want to talk about the charge of attempted
22 criminal sexual conduct in the third degree. Attempt is
23 defined as an effort to accomplish a crime, which is not --
24 which does not succeed. So, the state has to prove beyond a
25 reasonable doubt that Mr. Dhimo had the specific intent to

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1 engage in sexual battery with Ms. J.K. . So, you have --
2 you have to get beyond a reasonable doubt that he had the
3 intent to commit sexual battery on her.

4 And what is sexual battery? That's any unwanted sexual
5 intercourse or intrusion into her body. And we're dealing
6 with what happened on the beach, so remember that. Don't
7 confuse what happened in the cab with what happened on the
8 beach. Don't make assumptions of what happened on the beach
9 based on what happened in the cab; two completely different
10 scenarios. We're not talking about assault. Okay? We're not
11 talking about whether he simply grabbed her or if he touched
12 her unwantedly. It's more than just touching her. They have
13 to prove that he had the intent to penetrate her body in a
14 sexual way.

15 You have not been presented with any direct evidence that
16 Mr. Dhimo even touched Ms. J.K. while they were on the
17 beach. You've been given circumstantial evidence and they've
18 spent a lot of time trying to put one piece, another piece,
19 another piece. And it's been described, circumstantial
20 evidence has been described as a chain. In a chain you have
21 several links and, in this case, we've got of links and every
22 link has to be tested. If one of those links in that chain is
23 insufficient to support that weight, the chain is gonna break
24 and you -- you're not allowed to find that he's guilty beyond
25 a reasonable doubt if one of the links in that chain is

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1 broken. So, there's no evidence of an overt act leading to
2 sexual assault, none, no direct evidence of a sexual assault.
3 In order to conclude that there was attempted of sexual
4 battery that occurred on the beach, you have to make
5 assumptions, and the state's hoping you're going to make
6 assumptions. They need you to make assumptions in order to
7 find Mr. Dhimo guilty because they don't -- they can't present
8 you direct evidence. You've got to jump, you got to -- they
9 walk you down here and maybe you get to the middle. He
10 might've done it; maybe he didn't. How you gonna get to maybe
11 to down there. You're gonna jump. I'm too old to jump, but
12 you got to jump. You got to jump; you can't -- they didn't
13 walk you down here, they led you to -- maybe they led you
14 here, maybe he did; I don't know, maybe he didn't. You can't
15 convict on that. You cannot convict on that.

16 So the state, they concede that there was hugging and
17 kissing and licking and groping and all that in the taxi cab,
18 but let's focus on what happened on the beach. Let's focus on
19 other things that happened that night. Let's focus on what we
20 do know. And the state, they'd like you to believe that she
21 wasn't interested in getting revenge on her boyfriend. You
22 apply your everyday common knowledge to that. Do men try to
23 get revenge on their spouse or their loved one if they're
24 wrong? Yes. Do women try to get revenge on boyfriends or
25 spouses when they're done wrong? Absolutely. That's what

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1 we're dealing with today. You know, they want to paint a
2 picture of Ms. J.K. that's simply just not true. She had a
3 lot of issues, and Mr. Dhimo got caught up in those issues.

4 So, we know that she flagged down Mr. Dhimo. We know
5 that Mr. Dhimo stopped. He had no idea what he was getting
6 into with her, let me tell you. So, they go to a bar; that's
7 true. They go to Jimmagan's. Completely consensual. She --
8 there's no evidence she's kicking and screaming saying take me
9 home, I want to go home, I don't want to be at this bar. She
10 was drinking, he was drinking. He had as many shots at the
11 bar as she did. They want to paint the picture that Mr. Dhimo
12 wasn't under the influence of alcohol. Well, if she was, he
13 was, they were both drinking the same amount taking shots. So
14 they go to the bar, again the bartender said, yeah, they had
15 shots. They had drinks. Then we see them get in the cab,
16 into the taxi, that's where the video starts. And again,
17 voluntary, consensual contact, and that's very important in
18 this case because we talk about the DNA. That DNA that was
19 under her right fingernails, you can see on the video that she
20 touched him on the arm. It doesn't take much contact to get
21 DNA under your fingernails. So, you cannot conclusively say
22 that the DNA came from an unconsensual act. It could just as
23 easily come from that consensual behavior that you see in the
24 cab.

25 So, when you get drunk, you lose your inhibitions.

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1 Clearly, Ms. J.K. had lost her inhibitions. She was saying
2 I love you, I love you, you're F-ing hot and she was ready to
3 go. She was ready to go. Mr. Dhimo, I got a 22-year-old girl
4 in my cab, she's interested in me, and so we had consensual
5 contact. No proof that there was any sexual intercourse, any
6 sexual behavior, but at the end of that night, after they were
7 found on the beach, the police took Ms. J.K. to the
8 hospital for an exam, at their request. They suggested it.
9 It was not her idea. She's not the one that said I've been
10 sexually assaulted ---

11 MS. WALTER: Objection, Your Honor.

12 MR. LONG: --- I want to go to the hospital.

13 THE COURT: Ma'am? I'm sorry. Grounds for the
14 objection?

15 MS. WALTER: Pretrial ruling, Your Honor?

16 THE COURT: Mr. Long, please confine your comments to the
17 evidence please. You may continue.

18 MR. LONG: Yes, sir. So, when we're in the cab, they're
19 in the cab, and this -- they played excerpts of the video of
20 her saying stop, and it was obviously cut and pasted, cut and
21 pasted, cut and pasted. Between those stop here, stop there,
22 no, no, she was kissing, she was hugging, she was caressing
23 him. It is was not as they portrayed her doing something
24 against her will. But the state paraded, I don't know, about
25 15 or witnesses up here in the courtroom from SLED, from crime

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1 scene investigators, Myrtle Beach police, and what did we
2 learn about Mr. Dhimo touching Ms. J.K. on the beach from
3 all those witnesses, how did that help us to determine what
4 happened on the beach? Nothing. They didn't do anything.
5 They didn't prove that he even touched her on the beach, much
6 less try to sexually assault her or attempt to sexually
7 assault her. We learned from there that Ms. J.K. was
8 drunk, that she was intoxicated. Well, duh, we knew that
9 before SLED even came in here. You watched the video, she's
10 drunk; there's no doubt about that, she's drunk. He's drunk.
11 They're both drunk. The other thing we learned from all those
12 SLED personnel is that Ms. J.K. touched Mr. Dhimo with her
13 right hand. Again, you see that from the video. Don't --
14 please don't be persuaded by the number of witnesses that the
15 state had in here as they brought up very smart people,
16 experts, but none of those experts can conclusively say that
17 Mr. Dhimo had any type of -- he tried to assault Ms. J.K.
18 They said they can't conclude that; they can't presume that.
19 Because remember what one of the SLED lab technicians said, at
20 SLED we rely on data and fact. We don't make presumptions.
21 So, if they can't make presumptions, you can't make
22 presumptions.

23 What injuries do we have for Ms. J.K. to suggest that
24 there's a struggle? The State didn't present any evidence of
25 any injuries. They said there were some abrasions. You don't

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1 know where those abrasions came from. There was no bruising
2 on her, there were no broken fingernails, she didn't have a
3 busted lip, no injuries to her mouth. Her bathing suit was
4 intact, it was not torn in any way. So, those facts don't
5 tell you anything that would show that Mr. Dhimo attempted to
6 sexually assault Ms. J.K. on the beach.

7 Now, I submit to you, you cannot get from innocent until
8 proven guilty beyond a reasonable doubt with this evidence
9 that's been presented. Please excuse me for reading from
10 this. I've -- I prefer not to read, but when these things are
11 very important, these facts and very important details, I'm
12 gonna have to rely on this paper. Now, the state, they rely
13 heavily on those bite marks and scratches. No one knows, no
14 one can say to a certainty that those bite marks came from Ms.

15 J.K. . They -- they said it was very important, you know,
16 they said that's what proves that the DNA in Ms. J.K. 's
17 fingernails came from those scratches. It's not true; we
18 don't know that. We don't -- if it was so important, why
19 didn't SLED do a DNA analysis. Why didn't they? And the
20 reason is they were scared for you to know what the results of
21 that test might be. They would rather have you assume what
22 those results could be. They want you to get right here.
23 They have the ability to get you to right here. This is a CSI
24 world. We see those T.V. shows all the time. Crime scene
25 investigators, they can prove anything. Why not relieve that

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1 burden off of you to make an assumption and test -- test the
2 bites, test the scratches. Why not do that? They didn't.
3 They have a burden, the state has a burden to do that, but
4 instead they put the burden on you to make those assumptions.
5 It's simply not fair to you.

6 So ask yourself when it comes to Ms. J.K. being on the
7 beach, as they say, said she was intoxicated, ask yourself did
8 she bite and scratch Mr. Dhimo while she was totally passed
9 out? Because that's their allegation, that she was totally
10 passed out. That's when the assault occurred.

11 If you find that the sexual assault, attempted sexual
12 assault did occur and Ms. J.K. was passed out, that's still
13 not enough. Then you still have to be convinced beyond a
14 reasonable doubt that Mr. Dhimo did not force or use coercion
15 to accomplish the sexual battery. That's ---

16 MS. WALTER: Objection, Your Honor, that's a misstatement
17 of the law.

18 THE COURT: Again, ladies and gentlemen, I will give you
19 the law that you will apply to the facts and evidence. I'm
20 gonna allow the attorneys to make their comments to you and
21 I'll give you the law. Thank you.

22 MR. LONG: You'll have an opportunity to review that in
23 the chambers. So, let's talk about the crime of indecent
24 exposure. You heard testimony from three security guards.
25 All three admitted it was very dark on the beach and they said

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1. they saw Mr. Dhimo lying down some distance from Ms. J.K. ,
2 he didn't have physical contact with her, but some distance
3 from her. Benjamin Thompson, he was the first security guard
4 that you heard from. He said that he did not use a
5 flashlight. He had one with him, but I think something was
6 wrong with the batteries; it wasn't working. And so he said
7 he got many feet, 20-something feet, I believe he said, away
8 from Mr. Dhimo. He said he saw a form of a body. Now, he saw
9 something beside Mr. Dhimo that he thought it could've been a
10 white duffel bag or something, he couldn't make it out. So
11 from that distance, with no flashlight, he can't see a human
12 being that's over here but he says he can see Mr. Dhimo's
13 penis from there. You have the right to question whether or
14 not you can believe him beyond a reasonable doubt.

15 Then we have Joyce Dixon. Ms. Dixon is the next security
16 guard. She was with Benjamin Thompson. Ms. Dixon said the
17 only way that she could see Mr. Dhimo was thanks to Benjamin
18 Thompson's flashlight and she said and you may recall, without
19 that flashlight I couldn't have seen anything. Mr. Thompson
20 did not have a flashlight. But how can you rely on what she
21 said. She's thinking Mr. Thompson's got a flashlight. I'm
22 sure she did not mislead you intentionally. It's been two and
23 a half years, she just doesn't remember maybe. I don't know,
24 maybe she does remember. I don't know. Do you know? Do you
25 know that -- do you have any doubt whatsoever that she's

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1 telling the truth? Or maybe -- maybe she saw him; maybe she
2 didn't. We know that Mr. Thompson did not have a flashlight.
3 So, you kinda get back to -- so, let's rely on this third guy.
4 You know, the third security guard, Donald Paul. He testified
5 -- he contradicts the other two. He said that they relied on
/ 6 the headlights of the golf cart to see Mr. Dhimo. You think,
7 what? So, it's not a flashlight; there is no flashlight.
8 There is a flashlight, no there's not a flashlight; they are
9 headlights. Doesn't that cause you again, innocent, innocent
10 is where he starts out. Does the three -- does the testimony
11 of those three security guards, get pass maybe/maybe not and
12 get all the way down here to, yeah, they saw him. Can you
13 say beyond a reasonable doubt, those three security guards saw
14 his private parts? No doubt, I don't have any reasonable
15 doubt? I think that you will be challenged to do that. I
16 don't think that the state will be able to -- to bring their
17 burden of proof from there all the way to down there. The
18 security guards, they never testified that they heard any
19 screams from Ms. J.K. , any type of that she was trying to
20 run away, there's no evidence that Ms. J.K. was on the
21 beach being attacked. They didn't hear anything. They were
22 regularly patrolling. You never hear about her making any
23 comments in that regard. Even if you get from innocent to
24 beyond a reasonable doubt that the security guard saw Mr.
25 Dhimo's private parts, Mr. Thompson testified that he didn't

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1 think Mr. Dhimo did that intentionally. That he wasn't really
2 trying to shock Mr. Thompson. Mr. Thompson testified he
3 wasn't shocked, he wasn't concerned about it himself. He's
4 seen it all on the beach. He was concerned about children,
5 families, and so he doesn't believe it was malicious, that
6 Alqi Dhimo did not expose himself maliciously; it was
7 unintentional. And that's an element of the crime. Don't
8 look over that. Again, you got to start right here where that
9 element of that crime. Was it malicious? Did Mr. Dhimo expose
10 himself to the security guards intentionally and with malice
11 to shock them?

12 Can you get down there? See, that's what I need you to
13 do. Every element of these two crimes, use that test. Can I
14 get from innocent, past maybe, this is speculation, this is
15 assumptions, presumptions, down there, that's where guilt
16 lies, down here, beyond a reasonable doubt.

17 And the state made -- made use of that there were
18 inconsistencies in Mr. Dhimo's statement and you should listen
19 to Mr. Dhimo's statement, if you have any concerns about that.
20 But my question is to you, if there are inconsistencies in his
21 statement, are you gonna find that he's guilty beyond a
22 reasonable doubt because he made some inconsistent statements;
23 is that enough for you to find a man guilty?

24 Now, remember Mr. Dhimo did not go looking for trouble
25 that night. Trouble found him. Trouble found him in the form

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CLOSING BY LONG

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1 of J.K. . A 22-year-old blonde, flirty, ready,
2 ready for action, ready for revenge. She was involved in a
3 lot of destructive behavior. I'm very sorry that she lost her
4 life. I am. I make no ill remarks about her, but she made
5 some poor lifestyle choices and she dragged Mr. Dhimo in with
6 those lifestyle choices. So, when you make your decision on
7 the guilt or innocence of Alqi Dhimo, don't do it out of pity
8 for the family. Don't do it out of pity for Ms. J.K. .
9 It's a temptation. I feel very sorry for her family, but
10 that's not a reason to find Alqi Dhimo guilty. Rely on the
11 facts of the case.

12 So, the state, they tried to paint you this picture and
13 they used PowerPoints and they used presentations and they had
14 this big screen, and they want to paint a picture of what
15 happened that night, but they can't paint the picture with
16 facts. They got some circumstantial evidence here, some
17 circumstantial evidence here, some here, but you can't tell
18 what that picture is completely, and they want you to fill in
19 these boxes where there's no paint. They want you to fill it
20 in with assumptions and presumptions, so they can paint this
21 picture of guilt. You can't do that. You can't fill in the
22 blanks. You're not allowed to. It's not your -- it's not
23 your call. You got to rely on the facts.

24 I thank you for listening to me and I thank you for your
25 service, and I believe that during your deliberations you can

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BY THE COURT

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1 analyze each piece of evidence, each element of the crime.
2 And you start here at innocent, I do not believe that you can
3 get all the way down here to guilty beyond a reasonable doubt.

4 Thank you.

5 BY THE COURT:

6 THE COURT: All right. Mr. Foreman, ladies and gentlemen
7 of the jury, I want to give you a short five-minute break. Go
8 to your jury room, come back, and I'll give you the law in
9 this particular matter.

10 Thank you.

11 (REPORTER'S NOTE: Jury exits courtroom. The following takes
12 place outside the presence of the jury.)

13 THE COURT: All right. We'll be at ease for about five
14 minutes.

15 Thank you very much.

16 (RECESS.)

17 *****OFF THE RECORD*****

18 (On the Record.)

19 THE COURT: You may be seated. Thank you. All right.
20 So is the state ready for the jury to come back in?

21 MS. ANDREW: We are, Your Honor.

22 THE COURT: Thank you very much. Defense?

23 MR. LONG: Yes, sir, Your Honor.

24 THE COURT: Ask the jury to come in please. Thank you.

25 (REPORTER'S NOTE: Jury enters courtroom.)

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CHARGE TO JURY

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1 CHARGE TO JURY:

2 THE COURT: All right. Mr. Foreman, ladies and gentlemen
3 of the jury, it is now my duty and responsibility to give you
4 the law, that you will apply to the facts and evidence that
5 you've heard in this particular case. If you came into the
6 courtroom with any preconceived ideas of what the law is,
7 should be, hoped it would be, obviously you will disregard
8 that. You take the law as I give it to you.

9 Now, I've told you that you are the judges of the facts
10 in this particular matter and in doing so, being the judges of
11 the facts, you have the responsibility to judge the
12 credibility and the believability of the witnesses that've
13 come before you and testified under oath in this particular
14 matter. And if you're thinking, how do I judge somebody's
15 credibility and believability, you do it every single day of
16 your life. When somebody is telling you something, you are
17 automatically judging in your own mind whether or not you
18 believe them. You use your good common sense, you use your
19 good judgment that you use in conducting your own affairs, you
20 apply to the facts and evidence you've heard in this
21 particular case. Now, in looking at the witnesses' testimony
22 and credibility and believability, you can believe one witness
23 against several, several against one, you can believe a
24 portion of what a witness says, disregard the remaining
25 portion of it. If you've got a good and sound reason for

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CHARGE TO JURY

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1 doing so, you can disregard it in its entirety, the testimony
2 of a particular witness. You look at whether or not that
3 witness has exhibited to you any kind of interest, motive,
4 bias, prejudice that they might have in giving you their
5 testimony. Obviously, you consider the opportunity for
6 knowledge. How did they come about that information that they
7 gave you from the witness stand?

8 Now, in looking at the witnesses' testimony, looking at
9 credibility and believability and the evidence in this matter,
10 it's not your job to reward anybody, punish anybody, your
11 verdict can't be the result of any kind of passion, prejudice
12 or sympathy. It has to be an examination of the facts and
13 evidence and then apply the law as I give it to you.

14 Now, in this particular case, as with many cases, they're
15 two types of evidence that have been presented to you, direct
16 and circumstantial evidence. Now, what's direct evidence?
17 That's testimony of a person who claims or asserts to have
18 actual knowledge of fact, what took place in their presence,
19 what they saw, what they heard. Circumstantial evidence,
20 that's a chain of facts indicating the existence of a fact.
21 The law doesn't make any distinction between the two and a
22 greater degree of certainty of one over the other is not
23 required. But, to the degree that the State of South Carolina
24 relies on any circumstantial evidence to prove their case,
25 that all of the circumstances that they've relied upon to

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CHARGE TO JURY

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1 prove their case, all of them must be consistent with each
2 other and, when taken together, point conclusively to the
3 guilt of the accused beyond a reasonable doubt. If the
4 circumstances merely portray a defendant's behavior as
5 suspicious, that proof has failed. The State has the burden
6 of proving the defendant guilty beyond a reasonable doubt.
7 That burden rests on the state whether the state relies on
8 direct evidence, circumstantial evidence, or some combination
9 of the two. After weighing all the evidence, if you are not
10 convinced of the guilt of the defendant of the particular
11 crime beyond a reasonable doubt, you must find the defendant
12 not guilty.

13 I qualified several witnesses in this case to give their
14 opinion. Sometimes they're called expert witnesses. That's
15 not really what they are. What we're allowing them to do is
16 something we don't normally allow people to do. We don't
17 normally let you testify as to your opinion, you have to
18 testify about facts, what you saw, what you heard. But some
19 witnesses, based upon their training, experience, expertise in
20 a particular field, we'll allow them to give their opinion.
21 Now, that doesn't give them any special status. That doesn't
22 mean you believe one over the other. You judge all the
23 witnesses the same. You look at all -- you look at their
24 credibility, you look at their believability, you judge all
25 the witnesses the same. The only difference is, some of them,

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CHARGE TO JURY

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1 we allow them to give their opinion.

2 In this particular matter, the defendant did not testify.
3 This will go into my instruction to you again about the
4 presumption of innocence. But I tell you, the fact that the
5 defendant did not testify in this case, is not a matter for
6 your consideration. You may not consider it in any manner.
7 You cannot use it mentally to make a decision, it may not be
8 discussed in the jury room, it is not part of this case. The
9 defendant, as I told you at the very beginning, I tell the
10 juries all the time, the defendant is not even required to
11 show up for trial because they don't have anything to prove to
12 you. They don't have anything to show to you. The State has
13 the burden of proof to prove the defendant guilty beyond a
14 reasonable doubt.

15 Now, in this particular matter, I talked to you about it
16 at the beginning, the presumption of innocence. When the
17 state charged the defendant, when the state served the
18 indictments on the defendant, he pled not guilty. That right
19 then, presumption of innocence goes upon the defendant and the
20 burden of proof goes on the State of South Carolina to prove
21 the defendant guilty beyond a reasonable doubt. A person
22 charged with a criminal offense, is never required to prove
23 themselves innocent. No matter what the seriousness of the
24 charge may be, a defendant is presumed to be innocent of the
25 crime for which the indictment was issued unless the state

State v. Dhimo - 2015-GS-26-4000 and 4001
CHARGE TO JURY

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1 proves that guilt to you by evidence satisfying you of that
2 guilt beyond a reasonable doubt. That presumption of
3 innocence didn't end at the start of the trial; it hadn't
4 ended now. It does not end unless and until you are convinced
5 of the defendant's guilt of the particular crime beyond a
6 reasonable doubt.

7 We liken the presumption of innocence to a robe of
8 righteousness. It's placed on the shoulders of the defendant
9 at the initiation of the proceeding, at the beginning of the
10 proceedings and it stays on the shoulders of the defendant
11 unless and until the state rips that robe of righteousness
12 from the shoulders of the defendant by the proof that
13 convinces you of the guilt of the defendant beyond a
14 reasonable doubt. This is not just some legal theory. It's
15 not some legal phrase. It's a substantial right to which
16 every American, every defendant is entitled that they are
17 presumed innocent, unless you, the jury, are satisfied from
18 the evidence of the defendant's guilt beyond a reasonable
19 doubt.

20 What's reasonable doubt? The kind of doubt that would
21 cause an ordinary, reasonable person to hesitate to act.
22 Proof beyond a reasonable doubt is proof that leaves you
23 firmly convinced of the defendant's guilt. Now, there are
24 very few things we can know with absolute certainty and the
25 law does not require the State of South Carolina to give you

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CHARGE TO JURY

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1 that kind of proof. But, what is required is that if based
2 upon your consideration of the facts and evidence in this
3 case, you are firmly convinced that the defendant is guilty of
4 the crime charged, you must find the defendant guilty. On the
5 other hand, if you are not firmly convinced that the defendant
6 is guilty of the crime charged, you must give the defendant
7 the benefit of the doubt and find him not guilty.

8 The statement, and I allowed a statement of the defendant
9 to come into evidence. Again, I basically decide whether or
10 not evidence should properly come in or not if there's an
11 objection. The statement of the defendant was allowed to come
12 in, but then it becomes your job, your job and responsibility
13 to determine certain things. Was it actually the statement of
14 the defendant, was it made freely, voluntarily, of his own
15 free will, was it caused by any kind of pressure, force, fear,
16 threats, coercion, intimidation, over promise of leniency,
17 reward of any kind. You can consider the details of the
18 question, the age of the defendant, education or lack thereof,
19 the mental capacity, the mental ability, the defendant's
20 intelligence, the background, the environment, the place and
21 length of the detention, the nature of the question and the
22 advice or the lack thereof of the defendant's constitutional
23 rights, more commonly called the Miranda Warnings. You have
24 the constitutional right to remain silent. That statement can
25 be used against you in a court of law. If you give that

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CHARGE TO JURY

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1 statement, you have the right to have a lawyer present at any
2 point in time of the questioning. If you cannot afford one,
3 one will be appointed to represent you. You can stop making
4 the statement at any point in time. So, you carefully
5 consider all of the considerations and all the circumstances
6 in this matter to decide what weight, if any, you give to the
7 statement of the defendant if you obviously find it is the
8 statement of the defendant. Now, as with everything else, the
9 state has the burden of proof here, to prove beyond a
10 reasonable doubt that the statement was voluntarily, was the
11 defendant's statement freely made, all those things that we've
12 talked about. If you so find, then you give that statement
13 whatever weight you deem it should have.

14 I told you at the beginning, the defendant was charged
15 with two crimes and the indictments were presented to you, or
16 we talked about the two indictments of the two crimes. That
17 is attempted criminal sexual conduct in the third degree and
18 indecent exposure. I'll go over this at the end, but that's
19 two crimes, two cases. You're deciding two different things
20 here. The elements of the crime, and I'm gonna go over those
21 right now with you, what they are, but they're different for
22 each crime. So you have to look at it for that particular
23 crime did the state prove all those elements, all those things
24 to us, beyond a reasonable doubt, everything that's contained
25 in that particular crime.

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1 So, we'll start off with attempted criminal sexual
2 conduct in the third degree. Let's talk about criminal sexual
3 conduct in the third degree, first. What is that? And then
4 we'll define attempt and intent to, okay, because this is the
5 attempt to commit this crime.

6 So, third degree criminal sexual conduct or criminal
7 sexual conduct in the third degree, the state has to prove
8 first beyond a reasonable doubt, everything, got to prove
9 everything to you beyond a reasonable doubt, that the
10 defendant engaged in a sexual battery with the victim. So,
11 what's sexual battery? That's intercourse, cunnilingus,
12 fellatio, anal intercourse, any kind of intrusion, however
13 slight, of a part of a person's body into the genital or anal
14 openings of another person. Now, if you find the sexual
15 battery, then you have to decide, did the state prove beyond a
16 reasonable doubt one of these two things. Don't have to prove
17 to you both of them; one of these two things. One, the
18 defendant used force or coercion without any aggravating
19 circumstance to accomplish that sexual battery. Using force
20 or coercion means to make the victim follow a prescribed and
21 dictated course, to inflict or impose, to force one's will on
22 someone else, or the defendant knew or had reason to know that
23 the victim was mentally defective, mentally incapacitated,
24 physically helpless, and that aggravated force or aggravated
25 coercion was not used to accomplish that battery. So,

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CHARGE TO JURY

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1 mentally incapacitated means the victim was rendered
2 temporarily unable to evaluate or control their conduct. The
3 condition could be caused by illness, defect, mental defect,
4 influence of a substance, or some other cause. Physically
5 helpless means the victim was unconscious, asleep, or for any
6 other reason physically unable to communicate consent to the
7 sexual activity.

8 Now, the defendant's charged with attempting to commit
9 criminal sexual conduct, commit a sexual battery. Under
10 either they were forced or the person was mentally defective,
11 mentally incapacitated, physically helpless. Okay? So,
12 what's attempt mean, because it's very specific as to what
13 attempt is. And, again, the state has got to prove that to
14 you beyond a reasonable doubt. So, attempt, that's an effort
15 to accomplish a crime which does not succeed. The attempt
16 includes a specific intent to do a particular criminal act
17 along with something else. You got to have the specific
18 intent to commit this crime and then you've got to do
19 something falling short of actually accomplishing that crime.
20 Specific intent means the defendant consciously intended to
21 complete the act comprising the underlying crime. The State
22 must show more than mere preparation and intent. There has to
23 be some overt act committed in the effort to commit the crime.
24 Intent means intending the result which actually occurs, not
25 accidentally, not involuntarily, intent can be shown by acts

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CHARGE TO JURY

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1 and conduct of the defendant and any other facts and
2 circumstances from which you could reasonably infer intent.
3 So, to prove intent, the state must prove the defendant had
4 the specific intent to commit criminal sexual conduct in the
5 third degree along with some overt act beyond mere preparation
6 in the furtherance of the intent to commit criminal sexual
7 conduct in the third degree.

8 Now, in order to establish criminal liability regarding
9 intent, criminal intent is required. Criminal intent must be
10 proven by the State of South Carolina beyond a reasonable
11 doubt. Now, that's a matter that must be determined by you
12 from the circumstances surrounding the situation. Criminal
13 intent, that's a mental state, conscious wrongdoing. It is up
14 to you to determine what the defendant intended to do based on
15 the circumstances shown to have existed and again, that that
16 has to be proven to you beyond a reasonable doubt by the State
17 of South Carolina.

18 The second crime is indecent exposure. The State
19 must prove to you beyond a reasonable doubt that the defendant
20 willfully, maliciously, and indecently exposed his private
21 parts in a public place on property of another or to the view
22 of any person on a street or highway. Willfully means the act
23 was not done by accident, that is was done knowingly,
24 consciously and of a stubborn purpose. Maliciously means the
25 act was done with a wicked or mischievous intent, or motive,

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1 wrongfully and intentionally without just cause or excuse.
2 Indecent means offensive, grossly vulgar, obscene, unseemly,
3 unfit to be seen or heard. That's the law. That's the law
4 that you have to apply to the facts and evidence you have
5 heard in this case.

6 Now, I have prepared for you a verdict form. Two pages,
7 two crimes, two decisions you have to make. The first one,
8 it's got the caption of the case, State of South Carolina
9 versus Alqi Dhimo, Defendant, attempted criminal sexual
10 conduct third degree. On the charge of attempted criminal
11 sexual conduct in the third degree, we, the jury, by unanimous
12 consent, find the defendant -- and there's two choices, I put
13 one before the other, don't assign anything to that, I have to
14 put one before the other -- not guilty or guilty. When you
15 have reached a unanimous verdict on that matter, you proceed
16 to the charge of indecent exposure.

17 On the charge of indecent exposure, we, the jury, by
18 unanimous consent, find the defendant, again two choices,
19 guilty or not guilty, choose one.

20 Mr. Foreman, when your jury has reached a unanimous
21 verdict on both matters, you sign the verdict forms, you put
22 the date, you knock on the door, and let the bailiff know.

23 Now, again, I remind you, two separate crimes, two
24 separate decisions, different elements. Your decision on one
25 does not govern your decision on the other. It's separate

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BY THE COURT

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1 decision on each one of them. And again, unanimous, it means
2 exactly what you think it means. Whatever the decision of the
3 jury is, it is 12/0, not 11/1, 10/2, any combination thereof.
4 Whatever the decision is, every single member of the jury
5 agrees, that's my decision.

6 So, Mr. Foreman, once the verdict is read in court by the
7 clerk's representative and the jury panel is called upon to
8 raise their right hand to affirm that verdict, you will make
9 sure before you come in that every member of the jury agrees
10 that's their verdict so they'll be able to, if called upon, to
11 raise their right hand and say, yes, that's my verdict.

12 Now, what I'm gonna have you do, Mr. Foreman is, take the
13 regular members of the jury -- gentlemen, the two alternates,
14 I want you to stay with us. The other members of the jury
15 accompany the foreman to the jury room. Do not, do not begin
16 your deliberations until the bailiff hands to you the verdict
17 forms and the exhibits. When those come into the jury room,
18 you may begin your deliberations.

19 So, Mr. Foreman, if you'll take the jury to the jury
20 room, please.

21 (REPORTER'S NOTE: Jury exits courtroom. The following takes
22 place outside the presence of the jury. Alternates remain in
23 courtroom.)

24 BY THE COURT:

25 THE COURT: All right. At this point in time, is there

State v. Dhimo - 2015-GS-26-4000 and 4001
BY THE COURT

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1 any reasons why the Court should not excuse the two alternates
2 in this matter?

3 MS. WALTER: No, Your Honor.

4 MR. LONG: No, Your Honor.

5 THE COURT: All right. Very good.

6 Gentlemen, I want to thank you for your service in this
7 case. Your job was to step in the shoes of one of the regular
8 members of the jury, should they be unable to proceed. I can
9 tell you, it happens unfortunately more often than we would
10 want it to. It happens on a somewhat regular basis that we
11 have to substitute in an alternate for a regular member, it
12 just didn't happen in this particular case. Your service in
13 this particular case and your service -- let's see, are they
14 coming back tomorrow or do you know? Call back the juror
15 information line after 6 o'clock. You will not coming back
16 for criminal court. I don't know what Judge Hyman's needs are
17 regarding civil court, but there will not be any more criminal
18 trials this week, so that part of your service is ended, but
19 call that juror information line tonight after 6 o'clock and
20 follow those instructions. Okay? With that, you are now
21 excused.

22 (REPORTER'S NOTE: Alternate jurors exits courtroom.)

23 THE COURT: All right. At this point, any exceptions,
24 deletions, additions to the charge from the State of South
25 Carolina?

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BY THE COURT

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1 MS. WALTER: No, Your Honor.

2 THE COURT: From the defendant?

3 MR. LONG: No, Your Honor.

4 THE COURT: First, Counsel, I want to thank all three of
5 you. You did exactly what the Court expected you to do to
6 fight for your particular -- for the state, for the defendant
7 and represented each side very well. I want to thank you for
8 your service, your work in this matter and I appreciate that
9 very much.

10 With that, if y'all would come forward, get with Ms.
11 Dixie and make sure we've got all the proper exhibits going to
12 the jury, please. All right?

13 Thank you.

14 MS. WALTER: Thank you, Your Honor.

15 THE COURT: At this point in time, Mr. Dhimo, the jury
16 having retired to deliberate, I am now turning you over to the
17 custody and control of the sheriff's office.

18 Thank you very much.

19 (REPORTER'S NOTE: Counsel reviews and agrees to exhibits to
20 be submitted to jury. Deliberations begin at 3:20 P.M.)

21 (RECESS.)

22 *****OFF THE RECORD*****

23 (On the Record.)

24 THE COURT: All right, Counsel, the jury has requested a
25 copy of the law regarding the charges. It is the Court's

State v. Dhimo - 2015-GS-26-4000 and 4001
BY THE COURT

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1 intention to do that with the definition of reasonable doubt
2 because contained within every single one of the pages that I
3 am sending in, it says the state has to prove beyond a
4 reasonable doubt these things and I think it is to give them a
5 full explanation that they need again the definition of
6 reasonable doubt, so that is my intention. I have marked this
7 as Court's Exhibit 1.

8 COURT'S EXHIBIT NUMBER 1

9 MARKED FOR IDENTIFICATION

10 THE COURT: First, has the state looked through State's
11 Exhibit 1?

12 MS. WALTER: Yes, Your Honor.

13 THE COURT: Has the Defense?

14 MR. LONG: Yes, Your Honor.

15 THE COURT: Is there any objection to Court's Exhibit 1
16 as it is compiled?

17 MS. WALTER: No, Your Honor.

18 THE COURT: From the state, none.

19 From the defense?

20 MR. LONG: No, Your Honor.

21 THE COURT: Is there any problem with sending in Court's
22 Exhibit 1 to the jury from the state?

23 MS. WALTER: No, Your Honor.

24 THE COURT: From the defense?

25 MR. LONG: No, Your Honor.

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BY THE COURT

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1 THE COURT: Very good. Thank you.

2 (REPORTER'S NOTE: Court's Exhibit 1 submitted to jury.)

3 (RECESS.)

4 *****OFF THE RECORD*****

5 (On the Record.)

6 THE COURT: To the state and Defense, I understand the
7 jury has reached a verdict in this matter.

8 Is the state ready to proceed?

9 MS. WALTER: We are, Your Honor.

10 THE COURT: Defense?

11 MR. LONG: Yes, sir, Your Honor.

12 THE COURT: All right. And I think it probably goes
13 without saying and probably looking at everyone assembled
14 here, I don't need to say this, but as I do it every time and
15 since I neglected to do something at the very beginning that I
16 do every time and it caused me to do it over again, I'll just
17 say what I normally say is that: We will receive this verdict
18 with respect and silence and then we'll address the matter as
19 the jury returns it to us.

20 Ask the jury to come in please.

21 (REPORTER'S NOTE: Jury enters courtroom at 5:00 P.M.)

22 THE COURT: All right, Mr. Foreman, has your jury reached
23 a verdict in this matter?

24 JUROR 259: Yes, we have, Your Honor.

25 THE COURT: All right. Could you hand the verdict form

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

ALQI DHIMO,

APPELLANT

APPELLATE CASE NO. 2018-000110

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SC Court of Appeals

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**State’s Exhibit #3 (CD of defendant’s interview); State’s Exhibit #12 (CD of 911 call);
State’s Exhibit #16 (DVD from dashboard camera); State’s Exhibit #19 (Photo); State’s
Exhibits #27 – 33 (Photos); State’s Exhibit #36 (DVD bodycam footage)**

State v. Dhimo - 2015-GS-26-4000 and 4001
VERDICT OF THE JURY

403

1 to the clerk's representative, please, sir?

2 JUROR 259: Yes, sir.

3 THE COURT: You may publish the verdict.

4 VERDICT OF THE JURY:

5 CLERK: Indictment Number 2015-GS-26-4000, State of South
6 Carolina, County of Horry, versus Alqi Dhimo, on the charge of
7 attempted criminal sexual conduct in the third degree, We, the
8 jury, by unanimous consent, find the defendant guilty. Signed
9 by Joseph Mead, Foreperson, dated January 10th, 2018.

10 Indictment Number 2015-GS-26-4001, State of South
11 Carolina, County of Horry, versus Alqi Dhimo, on the charge of
12 indecent exposure, We, the jury, by unanimous consent, find
13 the defendant not guilty. Signed by Joseph Mead, Foreperson,
14 dated January 10th, 2018.

15 THE COURT: All right. Does the -- I'm sorry. Will you
16 ask the jury to affirm.

17 CLERK: I apologize.

18 Ladies and gentlemen of the jury, if this is your
19 verdict, so signify by raising your right hand?

20 THE COURT: Thank you very much.

21 The jury having affirmed their verdict by the raising of
22 their right hand, does the state wish the jury polled?

23 MS. WALTER: No, Your Honor.

24 THE COURT: Does the Defense wish the jury polled?

25 MR. LONG: Yes, Your Honor.

State v. Dhimo - 2015-GS-26-4000 and 4001
POLLING OF THE JURY

404

1 THE COURT: Very good, Madam Clerk, if you'll poll the
2 jury by number only, please.

3 POLLING OF THE JURY:

4 CLERK: Juror 259 -- when I call your number, please
5 stand up.

6 Juror 259, is this your verdict?

7 JUROR 259: Yes.

8 CLERK: Is this still your verdict?

9 JUROR 259: Yes.

10 CLERK: 193. Is this your verdict?

11 JUROR 193: Yes.

12 CLERK: Is this still your verdict?

13 JUROR 193: Yes.

14 CLERK: Number 89. Is this your verdict?

15 JUROR 89: Yes.

16 CLERK: Is this still your verdict?

17 JUROR 89: Yes.

18 CLERK: Number 149. Is this your verdict?

19 JUROR 149: Yes.

20 CLERK: Is this still your verdict?

21 JUROR 149: Yes.

22 CLERK: Number 248. Is this your verdict?

23 JUROR 248: Yes.

24 CLERK: Is this still your verdict?

25 JUROR 248: Yes.

State v. Dhimo - 2015-GS-26-4000 and 4001
POLLING OF THE JURY

405

1 CLERK: Number 6. Is this your verdict?
2 JUROR 6: Yes, it is.
3 CLERK: Is this still your verdict?
4 JUROR 6: Yes, it is.
5 CLERK: Number 151. Is this your verdict?
6 JUROR 151: Yes.
7 CLERK: Is this still your verdict?
8 JUROR 151: Yes.
9 CLERK: Number 190. Is this your verdict?
10 JUROR 190: Yes.
11 CLERK: Is this still your verdict?
12 JUROR 190: Yes.
13 CLERK: Number 250. Is this your verdict?
14 JUROR 250: Yes.
15 CLERK: Is this still your verdict?
16 JUROR 250: Yes.
17 CLERK: Number 116. Is this your verdict?
18 JUROR 116: Yes.
19 CLERK: Is this still your verdict?
20 JUROR 116: Yes.
21 CLERK: Number 269. Is this your verdict?
22 JUROR 269: Yes.
23 CLERK: Is this still your verdict?
24 JUROR 269: Yes.
25 CLERK: Number 356. Is this your verdict?

State v. Dhimo - 2015-GS-26-4000 and 4001
BY THE COURT

406

1 JUROR 356: Yes.

2 CLERK: Is this still your verdict?

3 JUROR 356: Yes.

4 THE COURT: The jury having been polled and affirmed
5 their verdict, is there anything further as to the jury itself
6 from the state?

7 MS. WALTER: No, Your Honor.

8 THE COURT: From the defense?

9 MR. LONG: No, Your Honor.

10 BY THE COURT:

11 THE COURT: Ladies and gentlemen of the jury, I want to
12 thank you for your service in this particular case. You did
13 exactly what the Court asked you to do, that is to examine the
14 facts and evidence in this case and arrive at a unanimous
15 verdict based upon the facts and the evidence.

16 I understand, the parties here understand, we you ask you
17 to do a difficult thing. If any of you are in a relationship,
18 you understand, figuring out where you go to dinner is a
19 difficult thing. So, to get 12 people to agree in any matter
20 is difficult, but we understand and I appreciate the attention
21 that y'all paid to the evidence, the diligence that you
22 exhibited during the course of this trial, and I appreciate
23 that very much and thank you on behalf of your fellow citizens
24 of Horry County.

25 Since you served in this particular case, even though the

State v. Dhimo - 2015-GS-26-4000 and 4001
MOTIONS

407

1 panel as a whole is not being excused, I am going to excuse
2 the 12 of you from further jury service for this week. Your
3 jury service has ended with my thanks. Thank you very much.
4 (REPORTER'S NOTE: Jury exits courtroom. The following takes
5 place outside the presence of the jury.)

6 THE COURT: All right. Motions on behalf of the Defense?

7 MOTIONS:

8 MR. LONG: Yes, sir, Your Honor, two motions. First, the
9 Motion for judgment notwithstanding the verdict; I move to
10 have the verdict set aside.

11 THE COURT: All right. In this particular matter,
12 regarding the motion for a new trial in this particular
13 matter, there's no corresponding motion as there is in civil
14 court for a judgment notwithstanding the verdict, but in a
15 criminal trial, it's a motion for new trial.

16 MR. LONG: Yes, sir.

17 THE COURT: In this particular matter, I find that there
18 has been competent evidence presented by the State of South
19 Carolina. The jury was properly charged as to their
20 responsibilities regarding direct and circumstantial evidence.
21 Finding that the jury found him guilty of the crime of
22 attempted criminal sexual conduct third degree and so finding
23 that there was more than sufficient evidence, if that evidence
24 was believed by the jury, which they must have to have found
25 that verdict. I will not overturn the verdict in this matter

State v. Dhimo - 2015-GS-26-4000 and 4001
BY THE COURT

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1 and the motion for new trial is denied.

2 Further matters?

3 MR. LONG: One further motion, Your Honor, I believe
4 you've already explained your ruling, but the motion that you
5 act as the 13th juror, that the verdict is not consistent with
6 the evidence that was presented.

7 THE COURT: All right, sir. In this particular matter,
8 again, the Court respectfully declines to grant such a motion.
9 I do find that there was more than sufficient evidence in this
10 particular matter to sustain the jury's verdict. I do find
11 that there was proper evidence presented by the state. I do
12 find that credibility is attached to that -- to that evidence
13 that the state carried its burden of proof beyond a reasonable
14 doubt in the presentation of direct and circumstantial
15 evidence regarding the elements of criminal sexual conduct
16 third degree and therefore respectfully decline to grant your
17 motion.

18 MR. LONG: Yes, sir.

19 BY THE COURT:

20 THE COURT: All right. With that then is the state ready
21 to proceed with sentencing?

22 MS. WALTER: We are, Your Honor.

23 THE COURT: Very good.

24 MS. WALTER: The victim's mother would like to address
25 the Court at the appropriate time.

State v. Dhimo - 2015-GS-26-4000 and 4001
BY THE COURT

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1 THE COURT: Certainly.

2 MS. WALTER: I'm sorry, Your Honor, we just had the wrong
3 sentencing sheet.

4 THE COURT: That's all right. That's not a problem.

5 MS. WALTER: May I step out to ---

6 THE COURT: Yes, ma'am.

7 (RECESS.)

8 *****OFF THE RECORD*****

9 (On the Record.)

10 MS. WALTER: May I approach, Your Honor?

11 THE COURT: Yes, ma'am, please.

12 Madam Bailiff, would you go in my office and tell my
13 Clerk to bring her computer in the courtroom, please.

14 Unless you have it otherwise, the information I have,
15 Solicitor, is this is listed as a felony, but it is not --
16 they do not have it listed as a serious or most serious
17 offense; do you have information otherwise? First and second
18 degree are, but third degree is I find is not so classified.

19 MS. WALTER: We're just trying to reach someone that has
20 an up-to-date red book. I know that ---

21 THE COURT: No, and I appreciate that, but I'm looking --
22 I'm looking it up through the Judicial Department under
23 statute and CDR codes.

24 MS. WALTER: And I have no reason to doubt, Your Honor.

25 THE COURT: It has no -- usually they put in there and

State v. Dhimo - 2015-GS-26-4000 and 4001
BY THE COURT

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1 what I'll -- well -- all right. I'm looking at and just so
2 that we are all on the same page. Again, through the search
3 on the statute of violent crimes to find 16-1-60 and for the
4 purposes of definition under South Carolina Law, a violent
5 crime is -- includes the offenses of -- and it's got obviously
6 a laundry list of offenses. It has here criminal sexual
7 conduct in the first and second degree, criminal sexual
8 conduct with minors, first, second, and third degree, and
9 looking through it -- and then it says attempt to commit any
10 of the above offenses. So they've listed the ones that are
11 violent and it is not so listed. Criminal sexual conduct in
12 the third degree is not so listed. So with that -- I mean, do
13 you have -- who was it you were trying to communicate with?

14 MS. WALTER: I believe Ms. Walker is actually on her way
15 up whereas looking it up for us.

16 THE COURT: Okay. All right. Very good. Well, we'll
17 wait. I'm just saying what I've found doesn't so indicate,
18 but I'll be glad for you to continue to look.

19 MS. WALTER: Your Honor, I haven't necessarily found
20 anything different. It just is classified as a sexually
21 violent offense.

22 THE COURT: Well, the sex offender registry is required.
23 There's no question about that.

24 MS. WALTER: Right. It says sex offender registry,
25 sexually violent offense and that child abuse registry, DNA

State v. Dhimo - 2015-GS-26-4000 and 4001
SENTENCING

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1 database and no foster care or adoption.

2 THE COURT: Right.

3 MS. WALTER: And the statute for sexually offense appears
4 to be 44-48-30, Subsection 2.

5 THE COURT: Okay. And again, and I appreciate that. I
6 don't -- I have not been able to see anything that would
7 classify it then as a serious or most serious offense.

8 MS. WALTER: I don't either in that book, Your Honor.

9 THE COURT: All right. Very good. All right.

10 So, with that, I'll be glad to hear any presentation from
11 the state as to sentence?

12 MS. WALTER: Would Your Honor prefer to hear from me
13 first or the victim's mother first?

14 THE COURT: Either way you would like to do it, ma'am.

15 And could you move the microphone to the end of the
16 table. You can just stand right there at the end of the
17 table. Right there is fine. You can just stand there.
18 That's fine. And you don't have to lean down, it'll pick you
19 up. Just tell me your name and then I'll be glad to hear from
20 you.

21 SENTENCING:

22 MS. SHILOH: My name is Justine Shiloh, I'm
23 J.K. 's mother.

24 THE COURT: Yes, ma'am.

25 MS. SHILOH: I believe Mr. Dhimo to be a predator and

State v. Dhimo - 2015-GS-26-4000 and 4001
SENTENCING

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1 used his cab to prey on young girls. Also my daughter was
2 never the same after this incident. It destroyed her. It
3 destroyed my family. And, I believe he's a danger for the
4 community.

5 THE COURT: Thank you, ma'am.

6 Yes, Solicitor?

7 MS. WALTER: Your Honor, you are, at this point, well
8 familiar with the facts of this case and while we said that
9 Ms. J.K. 's death by overdose was an unrelated death, in
10 reality, the events of June 22nd, 2015 and what the defendant
11 did to her had a very lasting and tragic impact on her life.
12 Mr. Stephenson, as you may recall, testified that prior to
13 this day, she'd had issues with alcohol, I think that's clear
14 based on the facts of the case, but that after this event, she
15 took it to another level, I believe is the way that he
16 described it. This assault was on June 22nd, 2015 and quite
17 frankly, assault doesn't really seem to do it justice, what
18 Ms. J.K. suffered from, but from June 22nd to only November
19 11th of the same year and she died of an overdose because she
20 was medicating herself to get over what had happened. And,
21 Your Honor, knows from Your Honor's ruling on the fact that Ms.
22 J.K. wasn't here, that we didn't get a chance to hear what
23 she said, but what's important to note is that she did tell
24 the detectives that she had been assaulted. She did tell the
25 detectives that she fought back. She told the nurse at the

State v. Dhimo - 2015-GS-26-4000 and 4001
SENTENCING

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1 hospital that she bit him, that she fought back. And it must
2 have been in some brief period of consciousness, but I would
3 ask Your Honor in considering sentence to keep in your mind
4 that the last view of J.K. curled in a ball,
5 unresponsive on the sand. And even after having tried to
6 assault her or actually assaulting her, which we'll never know
7 at this point, the defendant still did nothing to get her
8 help. And, I won't mention his other cases that's just an
9 arrest and not a conviction, but the state agrees with the
10 victim's mother that the defendant is a predator and that he
11 does use his cab to trap unsuspecting women and we are asking
12 that you sentence him to the maximum of 10 years.

13 THE COURT: Thank you, ma'am.

14 All right, Mr. Long, I'll be glad to hear from you, sir.

15 MR. LONG: Mr. Dhimo is 53 years old. He's been married
16 for 34 years to Alexandria Dhimo. They have two grown sons.
17 His wife relies on him as a major source of income. She works
18 two jobs, but also Mr. Dhimo contributes to the household
19 income. Together they raised their young, very young, four or
20 five-year-old granddaughter with the two of them. Mr. Dhimo
21 plays a very large role in raising their granddaughter. He
22 has no prior record. He made a mistake the night that we have
23 in question, but there is no evidence that he's a predator.
24 Not speaking badly of the victim, I'm sorry that she's passed
25 away, but she was involved in dangerous activity before,

State v. Dhimo - 2015-GS-26-4000 and 4001
SENTENCING

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1 during and after this incident. Mr. Dhimo has a very serious
2 heart condition. He had surgery for it about a year and a
3 half ago. He takes medication on a daily basis. Since this
4 event occurred, his life has been turned upside down. He
5 spent or served 115 days in the J. Reuben Long Detention
6 Center and, since being released -- I have the exact date but
7 it should be around August of 2015 -- he has been on GPS
8 monitoring, and he has been restricted from working as a cab
9 driver, which before that was his primary income. So, we ask
10 that he have credit for the time that he served both on GPS
11 monitoring and with the time in J. Reuben Long Detention
12 Center.

13 Your Honor, before I close, Mrs. Dhimo would like an
14 opportunity to address the Court.

15 THE COURT: Yes, sir.

16 Yes, ma'am, just tell me your name and then I'd be glad
17 to hear from you, ma'am?

18 MS. DHIMO: Alexandria Dhimo.

19 THE COURT: Yes, ma'am.

20 MRS. DHIMO: Me and my husband, we met when we are 20
21 years old, Your Honor. We came to America 20 years ago with
22 two little kids. We work hard for this country and we provide
23 our kids and we made our living and we work our self up to get
24 a citizenship to believe of this country. My husband is
25 hardworking and he never been in trouble in all my life. That

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SENTENCING

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1 night was terrible night for my husband. He got the lady on
2 the car. He tried to help her and I know in my heart he did
3 not touch her. I know what happened on the car. I know he
4 was drunk because I can tell. He don't drink. He have one
5 part of his body is taken away and he's not allowed to drink
6 alcohol. So, we both of us never drink and never smoke in our
7 lifetime because his health. It's the way I raised my boys,
8 too. But that night, he got in the car and tried to help that
9 young lady. She stopped and she said, you have to take me to
10 the Jimmagan's because I have to take a couple of shots. It's
11 a big mistake. His foot got -- Jimmagan because he's not
12 drinker. One drink he can carry out, he can have no control
13 at all. And I see the video. It's not because I'm
14 embarrassed because my husband, that he was out of control. I
15 could tell he was out of control at the drinking. So, my
16 point, I know what he would have -- on the beach, I know he
17 don't touch that woman. I know my husband for all these
18 years, even with me, it will be 34 years, he never touched me
19 without asking me if I want it or not. That bite is from me,
20 Judge, I bite my husband. Everybody can know.

21 THE COURT: Please just talk to the Court.

22 MRS. DHIMO: I did bite my husband on the left arm. It
23 was before Father's Day on a Saturday morning, 4 o'clock in
24 the morning. He worked all day on that car, because he change
25 alternator in one of the cars and already have a big scratch

State v. Dhimo - 2015-GS-26-4000 and 4001
SENTENCING

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1 in here on the front and the right and on the left side is my
2 bite and I was already ready to tell everybody, I'm not shame.
3 I bite my husband. You can see he have more on his body today
4 because we have our ways. We are not all same way humans and
5 we have different ways to do it in our lifetime, but we are
6 good people. I believe to come in here not to destroy or
7 predator anybody. Not me, not my kids, not my husband. It's
8 the way I trained my family. And all that my kids stays with
9 me today at age 30, because I don't want them to be out there
10 by theirselves and make wrong decision in their life. We do
11 have a granddaughter, our granddaughter we're raising because
12 her mother is drug head and she using drugs, and my son is
13 hard worker, but from the police department he's not allowed
14 now to drive anymore because they're making our life hell.
15 We've been for four years our family is no more family.

16 Judge, I beg you, this is a good man I had for 34 years.
17 I met when he was 20 and I was 21 ---

18 (REPORTER'S NOTE: Inaudible statement by Defendant.)

19 MRS. DHIMO: I know he don't do it.

20 THE COURT: All right. Thank you, ma'am. Thank you.

21 Anything further, Mr. Long?

22 MR. LONG: Briefly, Your Honor, just society will not be
23 better served by Mr. Dhimo being incarcerated. He'll be a sex
24 registry and that, if there's any question whatsoever, even
25 though he's not a predator and there's no legal basis to

State v. Dhimo - 2015-GS-26-4000 and 4001
SENTENCING

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1 conclude that he's a predator, that's not even a part of the
2 statute. No prior record, so he will be, if there's any
3 concern about society, the GPS monitor and the sexual registry
4 will take care of that concern.

5 THE COURT: All right, sir. Thank you.

6 MR. LONG: Your Honor, the defendant would like to make a
7 brief statement.

8 THE COURT: Yes, sir.

9 MR. DHIMO: I'm sorry everybody. I'm sorry, Judge. I
10 know we -- time together, we were in court together one time.
11 I remember that. I'm just -- I'm sorry for this family for
12 their daughter -- it's not my that she died; it's not me.
13 It's not me. I tried to help her. I just like -- I was
14 drunk. I never drank in my life; I never smoked in my life; I
15 didn't do anything in all my life, ever in my life, even one
16 cigarette I can smoke. That night there I don't know what
17 happened. Somebody gave me something even in the bottle --
18 they give me something very strong and I be felt it, I felt it
19 and I don't know what happened after that. I don't even
20 remember anything what happened. This is true. I love my
21 wife. Thirty-four years we're together. We've grown up
22 together. I came this country to build this life. To get the
23 reputation and drive from zero, Judge. We came from zero,
24 from nothing, and kept -- communists were just destroyed life
25 over there. We came here to get our life and get liberty, not

State v. Dhimo - 2015-GS-26-4000 and 4001
SENTENCING

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1 to go to jail. To go for what?

2 THE COURT: Thank you.

3 MR. DHIMO: I'm sorry, Judge.

4 THE COURT: That's all right, sir. Thank you.

5 MR. LONG: That's all, Your Honor.

6 THE COURT: Thank you. Regarding this particular matter,
7 the Court has heard the facts and evidence in this case and I
8 am basing my decision on the facts and evidence as presented
9 in this matter. The defendant, while he has charges, the
10 Court is not considering those in this matter. Based on the
11 fact that he has no current record, I understand the state's
12 argument, the feelings of the victim's mother, but there is no
13 factual evidence of the defendant being classified as a sexual
14 predator. That is not evidence before this Court. What I'm
15 doing is making my decision on the facts and evidence as to
16 what occurred in this particular matter, the jury finding him
17 guilty of the crime of attempted criminal sexual conduct third
18 degree.

19 Therefore -- Mr. Dhimo, you need to stand up, sir. 2015-
20 GS-26-4000, the State of South Carolina, County of Horry
21 versus Alqi Dhimo regarding criminal sexual conduct in the
22 third degree attempted, criminal sexual conduct in the third
23 degree, the sentence of the Court is the defendant is
24 committed to the state Department of Corrections for a
25 determinate term of eight years. The defendant is required to

State v. Dhimo - 2015-GS-26-4000 and 4001
SENTENCING

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1 register as a sex offender once he is released. The defendant
2 is given credit for the time that he has spent in jail and on
3 GPS monitoring. Thank you very much.

4 MR. LONG: Thank you, Your Honor.

5 (ADJOURNED - 6:00 P.M.)
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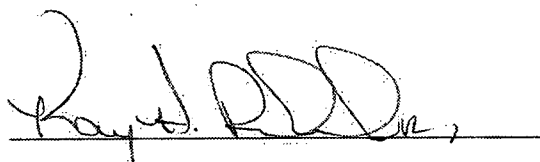
State v. Dhimo - 2015-GS-26-4000 and 4001
CERTIFICATE OF COURT REPORTER

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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Alqi Dhimo, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on January 8-10, 2018, as reported by Dixie C. Eubank.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Kay H. Richardson

Official Court Reporter

April 10, 2018.

SOUTH CAROLINA LAW ENFORCEMENT DIVISION

FORENSIC SERVICES LABORATORY REPORT

NIKKI R. HALEY
Governor



MARK A. KEEL
Chief

Tony Humes
Myrtle Beach Police Department
1101 Oak Street
Myrtle Beach, SC 29577

DNA ANALYSIS
August 08, 2016
SLED LAB: L15-10948
Your Case No: 15013220
Incident Date: 06/22/2015
[V] J.K.
[S] Alqi Dhimo

This is an official report of the South Carolina Law Enforcement Division Forensic Services Laboratory and is to be used in connection with an official criminal investigation. These examinations were conducted under your assurance that no previous examinations of person(s) or evidence submitted in this case have been or will be conducted by any other laboratory or agency.

Mark A. Keel, Chief
South Carolina Law Enforcement Division

DNA ANALYSIS

ITEMS ANALYZED:

- 1.6 Buccal swabs from J.K.
- 2.1.1 Dried blood standard from Alqi Dhimo
- 1.3.1 Left hand fingernail scrapings
- 1.3.2 Right hand fingernail scrapings
- 1.5 Miscellaneous collections swabs - hands

EXAMINATIONS

DNA analysis was performed on the items above using Short Tandem Repeat (STR) PCR DNA analysis. The results of the analysis are shown in the following table(s).



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014



P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351

RESULTS

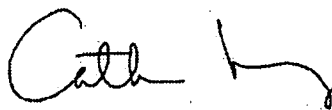
The DNA profile developed from item 1.3.1 is a mixture of at least two individuals. The DNA profile developed from the major contributor to this mixture is attributable to J.K. The partial DNA profile developed from the minor contributor to this mixture is insufficient for interpretation.

The DNA profile developed from item 1.3.2 is a mixture of at least two individuals. The partial DNA profile developed from the major contributor to this mixture matches the DNA profile of Alqi Dhimo and has been entered into the Combined DNA Index System (CODIS). The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this mixture is approximately 1 in 670 trillion. DNA types attributable to J.K. are present in this mixture.

The DNA profile developed from item 1.5 is a mixture of at least two individuals. The DNA profile developed from the major contributor to this mixture is attributable to J.K. Due to the inability to calculate a statistic, the partial DNA profile developed from the minor contributor to this mixture is not suitable for comparison.

Note: Any remaining evidence and/or packaging will be returned to the requesting agency.

This report contains the conclusions, opinions and interpretations of the analyst whose signature appears below.



Catherine Leisy
Forensic Scientist



AN ASCLD/LAB-International ACCREDITED TESTING LABORATORY SINCE 09/19/2014.

P.O. Box 21398, Columbia, South Carolina 29221-1398 Phone (803) 896-7300 Fax (803) 896-7351



WITNESSES

H Jones Myrtle Beach Police Department

DOCKET NO. 2015-GS-26- 04000

The State of South Carolina

County of Horry

Martin D. Spratlin

15H02917

COURT OF GENERAL SESSIONS

SEPTEMBER, 2015 TERM

FILED
2015 SEP 18 PM 1:13

CLERK OF COURT

DATE RECEIVED FROM

GRAND JURY

ARREST WARRANT NUMBER

✓ 2015A2620601387

CDR: 0162 16-03-0654

DOA: 6/23/2015

THE STATE

vs.

✓ Alqi Dhimo
W/ M



ATTORNEY: John Reuben Long, II

Indictment for

**ATTEMPTED CRIMINAL SEXUAL CONDUCT,
THIRD DEGREE**

Jimmy A. Richardson, II, Solicitor

ORIGINAL

ACTION OF GRAND JURY

TRUE BILL

Jack Smith
Foreperson of Grand Jury
Date: SEP 17 2015

VERDICT

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on September 17, 2015, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED CRIMINAL SEXUAL CONDUCT – THIRD DEGREE

CDR: 0162 16-03-0654, 16-01-0080

That Alqi Dhimo did in Horry on or about June 22, 2015, attempt to engage in sexual battery with the victim, J.K., when the defendant knew or had reason to know that the victim was mentally defective, mentally incapacitated or physically helpless, in violation of Section 16-03-0654, 16-01-0080, S. C. Code of Laws, 1976, as amended and the common law.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

524

STATE OF SOUTH CAROLINA

COUNTY OF Horry
 STATE VS.
Alqi Dhimo
 AKA: Alqi Dhimo
 Race: WHITE Sex: M Age: 53
 DOB: SS#:
 Address:
 City, State, Zip:
 DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Criminal Sexual Conduct - 3rd Degree - Attempted

in violation of § 16-03-0654 of the S.C. Code of Laws, bearing CDR Code # 0162
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (SC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant/Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Walter, Mary-Ellen SC103036 SC Bar# Defendant Attorney for Defendant 73831 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 8 years or ☐ under the Youthful Offender Act not to exceed 10 years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
 of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 15 days in jail credit for all time on GPS

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
 Total: \$ plus 20% fee: \$
 Payment Terms:
☐ Set by SCDPPPS

Recipient:

*Fine:
 § 14-1-206 (Assessments 107.5 %) \$
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$
 § 56-5-2995 (DUI Assessment) \$12 \$
 § 56-1-286 (DUI Breath Test) \$25 \$
 Proviso 61.6 (Public Def/Probation) \$500 \$
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$
 § 50-21-114(BUI Breath Test Fee) \$50 \$
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
 3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Renee N. Elvis
 Court Reporter: Dixie Eubank
 SCCA/217 (07/2016)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2604000
 A/W#: 2015A2620601387
 Date of Offense: 6/22/2015
 S.C. Code § : 16-03-0654
 CDR Code #: 0162

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☒ CONVICTED OF or ☐ PLEADS

Up to 10 yrs.

Sex Offender Registry Required.
15 days in jail credit for all time on GPS
provision to
attorney

PTUP days/hours Public Service Employment
 Obtain GED ☐
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning
 Substance Abuse Counseling ☐
 Random Drug/Alcohol testing ☐
 Fine may be pd. in equal consecutive weekly/monthly
 pmts. of \$ 25.00 beginning 2-10-2026
 \$ paid to Public Defender Fund
 Other:

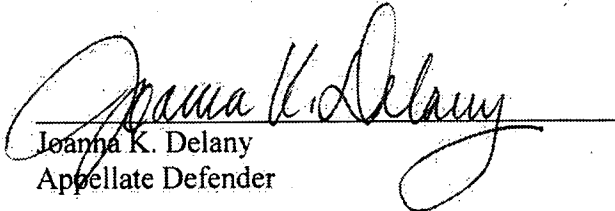
☐ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge 11/10/18
 Judge Code:
 Sentence Date: 11/10/18

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

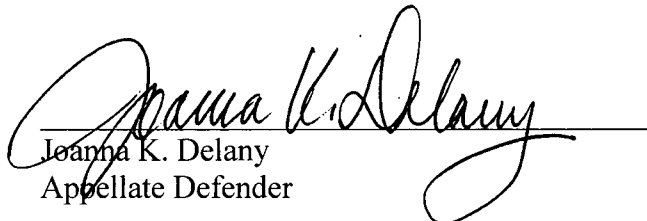
ATTORNEY FOR APPELLANT

This 19th day of February, 2019.

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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,


Joanna K. Delany
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Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 19th day of February, 2019.

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