

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable D. Craig Brown, Circuit Court Judge

EDWARD MAURICE DUNN, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001944

APPENDIX

VICTOR R. SEEGER
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

SAMUEL L. KEY
Assistant Attorney General
Rembert Dennis Bldg., Room 519
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

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	)	
THE STATE,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
EDWARD DUNN,	)	
	)	
DEFENDANT,	)	

May 21-24, 2012
Columbia, South Carolina

BEFORE:

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

APPEARANCES:

MARGARET FENT, ASSISTANT SOLICITOR
FOSTER MATTHEWS, ASSISTANT SOLICITOR
Attorneys for the State

VICTOR LI, ESQ.
DEON O'NEIL, ESQ.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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

6 Any objection?

7 MS. FENT: No, sir.

8 MR. O'NEIL: No.

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

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

12 THE COURT: Do you have the indictments?

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

15 THE COURT: Just hold on.

16 MS. FENT: Okay.

17 THE COURT: Go ahead.

18 MS. FENT: 2011-GS-40-3518 for assault with intent to
19 commit CSC in the first degree; 3525 for an armed robbery;
20 3526 for kidnapping, and 3527 for a burglary in the first
21 degree.

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

24 MS. FENT: We are, Your Honor.

25 THE COURT: On all four indictments?

1 MS. FENT: Yes, Your Honor.

2 THE COURT: All right. Defense ready to proceed?

3 MR. O'NEIL: Yes, Your Honor.

4 THE COURT: All right. Any matters of a pretrial
5 nature that need to be taken up prior to the swearing of
6 the jury from the State?

7 MS. FENT: None from the State, Your Honor.

8 THE COURT: All right.

9 MS. FENT: I mean, other than we do want to go
10 forward on the Jackson v. Denno --

11 THE COURT: Well, that's...

12 MS. FENT: -- regarding the statement.

13 THE COURT: Well, you're prepared to go forward if he
14 makes the motion.

15 MS. FENT: Yes, sir.

16 THE COURT: To -- that the -- whatever statement was
17 not taken as voluntary.

18 All right. Mr. O'Neil, you may proceed.

19 MR. O'NEIL: Thank you, Your Honor. May it please
20 the Court. I guess we will kind of start with just doing
21 housekeeping kind of motions here.

22 THE COURT: Okay.

23 MR. O'NEIL: I always like to renew my Rule 5 motion.
24 She originally filed June 23rd, 2011 in this case here.
25 At this point, I'd like to renew my Rule 5 that the State

1 is in possession of or that the State issues on our
2 position.

3 THE COURT: What's the State's position?

4 MS. FENT: (There was no response.)

5 THE COURT: What's the State's position?

6 MS. FENT: Everything has been handed over.

7 Everything that I have has been handed over.

8 THE COURT: Brady material?

9 MS. FENT: I'm sorry?

10 THE COURT: Brady material?

11 MS. FENT: Yeah, everything that I have Brady,
12 exculpatory, inculpatory has been provided to the defense.

13 THE COURT: And what's the other case?

14 MR. O'NEIL: Oh, Your Honor, I would pass up to the
15 State a Riddle motion.

16 THE COURT: Riddle?

17 MR. O'NEIL: Yes, sir.

18 THE COURT: I'm sorry.

19 MR. O'NEIL: I'll pass it up, make it a part of the
20 court record.

21 THE COURT: You want to make it part of the record?

22 MR. O'NEIL: Yes, Your Honor, a Court's Exhibit.

23 THE COURT: Give it to the court reporter.

24 (WHEREUPON, Court's Exhibit No. 1, 2 were marked for
25 identification only.)

1 THE COURT: Any Riddle evidence or knowledge of any
2 Riddle evidence?

3 MR. O'NEIL: And, Your Honor, particularly what I'm
4 concerned about, there are two potential lay witnesses
5 that could testify in this case.

6 Any plea agreements made of those witnesses and in
7 particular any sort of notes on the initial interview of
8 the victim on the incident date.

9 There is no formal statement given by the victim in
10 -- to my understanding on the day of the incident. The
11 formal statement came a couple of days later.

12 There are -- there is an incident report from the
13 responding officer. There is no formal statement from the
14 victim in the case here, any sort of notes that would be
15 had been made by the responding officer on the night of
16 the incident I would ask for in particular, Your Honor, in
17 addition to any sort of lineups that may have been shown
18 to the victim. I would ask for those, as well.

19 MS. FENT: I don't know of any notes taken by the
20 responding officer. All statements that the victim made
21 have been provided.

22 The responding officer took notes in the incident
23 report. Investigator Mauldin spoke with the victim over
24 the phone, so that conversation is detailed in his
25 investigative notes, his case notes that were handed over,

1 her written statement that she gave. We provided it in
2 discovery.

3 There were two lineups prepared, one with the
4 defendant on it and another with the person that the
5 defendant was blaming for committing the offense, and she
6 wasn't able to -- they were handed over. They were blank.

7 She didn't identify anybody in either photo lineups,
8 so those were provided in discovery.

9 THE COURT: He said something about other witnesses.

10 MR. O'NEIL: Those are Mr. Arrington and Mr. Moore,
11 both are lay witnesses.

12 THE COURT: Arrington?

13 MR. O'NEIL: Yes, Your Honor, Arrington and Moore,
14 Lavar Arrington and Moore, Donald Moore, both of which
15 have pending charges here in Richland County and both of
16 which could be potential witnesses in this case, any sort
17 of plea agreements or offers made of those two witnesses
18 that I would inquire about.

19 MS. FENT: Mr. Moore does not have any pending
20 charges in our office. Mr. Moore was never charged in
21 this. Mr. Moore was never a suspect in this. Mr. Moore
22 has nothing to do with this case.

23 THE COURT: Is he a witness?

24 MS. FENT: The defendant tried to blame it on
25 Mr. Moore. He is a potential witness, but he has no

1 pending charges in our office. Lavonne Arrington has
2 pending charges. An offer was made on his pending charges
3 prior to -- it is Foster Matthew's cases. They are not
4 burglaries related to anything here.

5 Mr. Matthews made an offer on those charges without
6 knowing there was any kind of connection, so there was no
7 relation with his --

8 THE COURT: Not for testimony?

9 MS. FENT: Correct. It was just an offer he made on
10 those charges.

11 THE COURT: Well, we know what they were?

12 MS. FENT: He's charged with a burglary in the first
13 degree, a burglary in the second degree, and a malicious
14 injury, correct?

15 It was an offer to reduce the burglary in the first
16 degree to a burg second nonviolent and to keep the other
17 burg second nonviolent as a -- as a nonviolent and then
18 a -- and then he just pled. So essentially, it's just
19 reduced to burg first; is that correct?

20 THE COURT: It's a straight-up plea?

21 MS. FENT: Yeah, but there was no -- that offer was
22 made previous to knowing that there was any potential
23 connection to this, to this case.

24 THE COURT: All right. Do you understand that?

25 MR. O'NEIL: Yes, Your Honor. My only point is --

1 according to -- I think my records of the public index,
2 the individual, Donald Moore and the Richland County
3 burglaries, arrested on October 10th of 2011 and released
4 on January 26th, 2012.

5 I think -- I think Ms. Bodman represented that
6 Mr. Donald Moore didn't have any Richland County charges
7 pending or that those are pending with a different agency,
8 but I think --

9 MS. FENT: Those have already been resolved. I don't
10 know when that was printed out, but those -- my
11 understanding in looking at -- my understanding is those
12 charges have been disposed of. He's on probation.

13 MR. O'NEIL: Okay.

14 MS. FENT: I don't know who in our office handled
15 those charges. There were no deals or offers or any
16 discussions about this case in disposing of those charges.

17 THE COURT: All right. Mr. O'Neil?

18 MR. O'NEIL: I guess the next thing I would have,
19 Your Honor, kind of along the same lines is we would have
20 to settle the records of any witnesses, lay witnesses we
21 have in the case, specifically Mr. Arrington or Mr. Moore,
22 to settle those records if they're going to be called as
23 witnesses.

24 MS. FENT: I haven't printed out their rap sheets,
25 but I will do that and we can look it over and see if we

1 have any prior to calling them, if we -- if we do.

2 THE COURT: All right. Mr. O'Neil?

3 MR. O'NEIL: My next motion would be to suppress any
4 statement Mr. Dunn may have made, given at June 2nd, 2011
5 at approximately 11:34 hours.

6 THE COURT: What time? When was it?

7 MR. O'NEIL: June 2nd, 2011. I'll move to suppress
8 that statement as to time -- as to not being voluntary,
9 voluntarily given, with regard to the Miranda rights not
10 having been voluntarily waived.

11 THE COURT: Okay. What about six? What is your --
12 I'll conduct the hearing.

13 What about number six?

14 MR. O'NEIL: Number six, Your Honor, the discovery
15 was not clear. There was no mention in the discovery that
16 the victim in this case was actually shown the lineup.

17 The line ups were part of that discovery, but they
18 weren't -- they were not -- the witness, the victim in the
19 case was shown the lineups in this case.

20 The only -- and she was not able to identify Mr. Dunn
21 here. All of this was done -- there would be an attempt
22 on the State's part to have an in-court identification.

23 If there's some sort of in-court identification, I
24 think we need to go into the out-of-court identification.
25 I don't know what their plans are.

1 THE COURT: I thought the victim could not identify
2 the defendant.

3 MS. FENT: Correct.

4 THE COURT: Certainly in court.

5 MS. FENT: Correct. She did not get a look at him.
6 He stayed behind her the whole time. He made her put an
7 article of clothing over her head. She was shown the
8 lineup of the defendant.

9 THE COURT: So she can't make an in-court
10 identification?

11 MS. FENT: Correct, could not identify -- in her
12 written statement, that's prior to being shown the lineup,
13 she indicates that she did get kind of a side view of the
14 person and the most she could see was something about
15 little curls.

16 He was a young black male. He wasn't very tall and
17 weighed 130 to 140 pounds. He seemed to have loose curls
18 or hair around his face. He was wearing black and white
19 and red shoes.

20 THE COURT: All right.

21 MS. FENT: And when he talked, he had northern accent
22 but essentially, it is not very tall, what he weighed.
23 And he seemed to have loose curls or hair around his face.

24 THE COURT: It's insufficient.

25 MS. FENT: I'm not saying -- I'm saying that's the

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

3 THE COURT: All right.

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

6 THE COURT: That's fine.

7 All right. Mr. O'Neil, continue.

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

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

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

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

25 The second thing that I would like to --

1 THE COURT: Well, let me just address that.

2 MR. O'NEIL: Okay.

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

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

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

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

10 THE COURT: That's where it was maintained?

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

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

17 THE COURT: In a database?

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

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

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

1 THE COURT: All right. Well --

2 MS. FENT: We would not even offer --

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

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

14 THE COURT: Do you stipulate to the chain?

15 MR. O'NEIL: No.

16 THE COURT: No, will not stipulate to chain.

17 MS. FENT: Okay. Well...

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

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

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

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

1 we are here in trial before. My review of the discovery,
2 that knowledge was gained from a codefendant of Mr. Dunn's
3 in an unrelated burglary.

4 Mr. Dunn had -- Mr. Dunn has unrelated burglaries
5 where he has a co--- has charged the codefendant in. In
6 investigating those unrelated burglaries, they had a ride
7 around with this codefendant, Mr. Dunn, in some of those
8 burglaries.

9 In doing that ride around, that codefendant, Your
10 Honor, in the unrelated burglaries, pointed out the
11 victim's home as the home they burglarized the week before
12 this incident.

13 Any sort of testimony from this codefendant, Mr.
14 Arrington, that him -- Mr. Arrington, Mr. Dunn, both
15 burglarized this home a week prior to this incident, Your
16 Honor, it's improper testimony all required a bad act.
17 That's testimony I would consider to be superfluous.

18 THE COURT: Ms. Bodman.

19 MS. FENT: At this point, Your Honor, we don't plan
20 on offering Lavonne Arrington to prove that Mr. Dunn did,
21 in fact, commit this prior burglary on the victim's home.

22 We're just offering through the victim that her house
23 was, indeed, burglarized the week before, that cash was --

24 THE COURT: She does not know by whom?

25 MS. FENT: She does not know. She was not at home;

1 that cash was taken from a particular dresser drawer in
2 her bedroom, and that when the defendant then comes in,
3 attempts to sexually assault her, he then goes over to
4 that dresser drawer, pulls it out and says, "Where is the
5 money?"

6 In addition, in the defendant's own statement --
7 because this provides the motive of why he is even in this
8 house, how he -- how he picked this house out, but in his
9 own statement to law enforcement, he says that -- I'm
10 sorry. It's -- it's in a recorded conversation that he
11 has with his mom at the sheriff's department.

12 They are interviewing him. He asks if he can call
13 his mom. He calls his mom and says, "Mom, mom, hey
14 listen. I was with this guy, and he says he burglarized
15 this lady's house about a week ago, and he got like
16 \$50,000. And he asked me if I wanted to go hit the house
17 again with him so I went to the house. I was the look
18 out. I was outside, and then I hear this noise inside."

19 So he, himself, is bringing up this, this prior
20 burglary; that the reason that they are there is to get
21 cash. He could have -- I mean, he --

22 THE COURT: Well, the question is what are you going
23 to offer?

24 MS. FENT: At a minimum, that he knew that there was
25 money. He spoke with somebody, and he knew that there was

1 cash. He has some knowledge that there's cash in that
2 dresser drawer, and that's why he hit this lady's house.

3 THE COURT: From his testimony, not from Arrington's
4 testimony?

5 MS. FENT: From the facts themselves, from the victim
6 herself.

7 THE COURT: Well, from the victim. I understand
8 that.

9 MS. FENT: Right, from the victim herself.

10 THE COURT: From the victim is not a problem.

11 MS. FENT: The --

12 THE COURT: The question is whether Arrington -- you
13 plan to offer Harrington's statement or the defendant's
14 statement about the \$50,000.

15 MS. FENT: We are offering -- yeah, we are offering
16 the defendant's statement himself because he doesn't admit
17 to doing the burglary. He just says he talked to someone
18 that committed the burglary previously; that they got this
19 cash, so he agreed to go back and burglarize it a second
20 time. So it's just essentially just that --

21 THE COURT: It's his admission?

22 MS. FENT: It's his admission that he knew this house
23 had money in it, and it was from that previous burglary
24 that he knew there was cash there to be had.

25 THE COURT: Mr. O'Neil?

1 MR. O'NEIL: Yes, Your Honor. I'm not asking to
2 suppress the actual statement. I'm only asking you to
3 suppress any sort of statements interviewed.

4 THE COURT: But she says they're not --

5 MR. O'NEIL: Along those same lines, it would be also
6 that Mr. Dunn had another series of burglaries about three
7 days after this, and he is actually arrested.

8 He is in custody for those burglaries when the
9 investigator in this case has a -- we have warrants out
10 for this case, and he goes to pick them up from being in
11 custody from the other case.

12 So it would be -- it would be the fact that that's
13 custody for burglaries after this incident. I would be
14 asking the Court to suppress any testimony.

15 THE COURT: How about that, Ms. Bodman?

16 (There was no response).

17 How about that?

18 MS. FENT: At this point, I'm not offering those
19 other two burglaries. They're unrelated. I don't -- I
20 don't at this point see a theory that they are admissible,
21 so I'm not offering those other two --

22 THE COURT: Okay.

23 MS. FENT: -- unrelated burglaries.

24 THE COURT: All right.

25 MR. O'NEIL: I understand she is not offering those

1 factual burglaries, but I think we still need to address
2 what the testimony is going to be as to how they got
3 Mr. Dunn in custody on this case.

4 MS. FENT: I'm sorry. My -- I think I misunderstood
5 what you were saying. Edward Dunn was arrested on these
6 warrants at Lavonne Arrington's house. It's the next day.

7 He comes to the station. He gives this statement
8 about these set of facts to Investigated Mauldin. It's
9 the next day that Don Robinson goes back and picked up
10 your guy and brings him to the station and asked them
11 about this unrelated burglary.

12 So he is arrested at Lavonne Arrington's house and
13 taken into custody. He is arrested on these warrants.

14 MR. O'NEIL: Okay. That's not how I read the
15 discovery, but any -- I just want to keep out any mention
16 that he had been arrested for any other burglaries.

17 That's -- that's not factually -- that's not how
18 factually it turned out. He was just at Mr. Arrington's
19 house, and he got arrested for these warrants here. I
20 don't have any other motion to suppress any of these
21 others if they don't intend on using them as the reason
22 why they got him in custody to start with.

23 THE COURT: All right. What's number four?

24 MR. O'NEIL: This is separate -- oh, I'm sorry. He
25 had two burglaries there, so he was arrested for two

1 burglaries.

2 THE COURT: That's three and four.

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

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

7 Number eight?

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

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

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

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

24 THE COURT: From the State?

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

1 well.

2 THE COURT: And the State.

3 MR. O'NEIL: Yes, Your Honor.

4 (Pause).

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

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

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

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

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

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

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

19 THE COURT: Are you doing your own work?

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

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

23 How about the number nine?

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

1 motions.

2 THE COURT: Okay.

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

6 THE COURT: Okay.

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

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

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

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

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

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

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

3 THE COURT: Sort of like --

4 MR. O'NEIL: No.

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

7 All right.

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

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

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

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

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

18 DIRECT EXAMINATION:

19 BY MS. FENT:

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

22 A Approximately ten years now.

23 Q And in what capacity do you work there now?

24 A Major crimes and homicide investigator.

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

1 And did you have occasion to be involved in the
2 investigation of the burglary, armed robbery, kidnapping
3 and attempted sexual assault that occurred at [REDACTED]
4 [REDACTED] involving Ms. Indira Lonsdale?

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

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

8 A I did, yes.

9 Q And who did you get those warrants on?

10 A Mr. Edward Maurice Dunn, Jr.

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

13 A Yes, I did.

14 Q And where did you have contact with him?

15 A It was at the home of Lavonne Arrington on Gayley
16 Street. I cannot recall the numerics on Gayley.

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

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

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

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

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

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

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

11 Q Okay. Do you --

12 THE COURT: Get the time of day.

13 BY MS. FENT:

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

17 A Yes.

18 Q All right. What day was this?

19 Let me show you --

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

22 THE WITNESS: June 2nd, 2011.

23 BY MS. FENT:

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

1 A I did, an investigative follow up, yes.

2 Q Is that what this is I just handed you?

3 A This does appear to be my follow up.

4 Q Okay. Do you know what time it was that you made
5 contact at that house at Lavonne Arrington's home?

6 A I would say that morning somewhere around maybe 9:00,
7 nine a.m.

8 Q Okay. And you said you took custody of him. How,
9 physically, was he restrained or not restrained? Describe
10 that.

11 A I believe he was handcuffed at that time. I would
12 switch out our handcuffs and placed him in my vehicle.

13 Q Okay.

14 A As to how he was cuffed, I cannot remember. As much
15 as I hate to say it, for safety's sake, you know, we
16 usually cuff from the back, but for comfort reasons,
17 typically in those situations and when I have another
18 investigator with me, I'll switch them around to the front
19 so it's a more comfortable ride.

20 Q Okay. So at this point, other than telling him what
21 he's charged with, what else do you tell him?

22 A I did apprise him of the DNA evidence that we had. I
23 had expressed to him that I wished to talk to him about
24 this case, but before I did so, that I had to provide him
25 with his Miranda warning.

1 Q Okay. And you said you apprized him of the DNA.

2 Specifically, what did you tell him about DNA?

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

6 Q Okay. So then what do you do next?

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

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

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

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

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

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

1 Q And what was his indication to that?

2 A He said that he would like to explain and talk to us
3 and tell us his side of the story.

4 Q Okay. And all of this is done just orally. You
5 don't have a written form at this point?

6 A At this point, no written form. It's done orally.

7 Q Okay. So what happens then? After you read him his
8 rights, he says he understands and he wants to talk to
9 you, what happens next?

10 A Mr. Dunn immediately begins talking and telling us
11 his version of events involving Mr. -- well, a person he
12 called only Shorty at that time.

13 Q Okay. So tell us, what was that version?

14 A Mr. Dunn informed us that he had been approached by a
15 guy named Shorty, and that this individual asked him if he
16 would help participate in a burglary; that there was a
17 woman who had -- and I shouldn't say a woman, a house that
18 had some money in it at that time; that he went to the
19 house where this Shorty individual, who I believe
20 brandished a gun, showed him physically the gun before
21 going inside the house.

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

25 He stood outside of a room while this Shorty

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

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

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

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

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

20 A No, no.

21 Q Do you coerce him in any way?

22 A No.

23 Q Do you --

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

1 Q Did you ever threaten him?

2 A No.

3 Q Did he appear to be under the influence of any
4 alcohol or drugs to the extent that he couldn't understand
5 you or you couldn't understand him?

6 A No.

7 Q Did he appear to understand everything that you were
8 asking of him, telling him, advising him?

9 A Yes.

10 Q What else do you remember about any conversation you
11 had then from your first contact at Lavonne Arrington's
12 house until you get down to the sheriff's department?

13 A He -- he persisted with that story or that version of
14 events and that -- that more or less got us to the
15 Richland County Sheriff's Department, at which time I, you
16 know, asked him if he would accompany us inside and
17 provide me with a written statement to that effect.

18 Q Okay. So then what happens once you get inside the
19 sheriff's department? Where do you take him?

20 A Mr. Dunn and I sat down in my cube at the back corner
21 of the sheriff's department in our criminal investigations
22 division office where I presented him a written advice of
23 rights.

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

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

5 Q Do you have that?

6 A That waiver, rather.

7 Q Do you have that advice of rights with you?

8 A I do.

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

11 A It is.

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

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

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

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

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

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

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

13 A Yes.

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

15 A Yes.

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

18 A Those are Mr. Dunn's initials.

19 Q And who put those initials there?

20 A He placed them there himself.

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

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

1 read it to him.

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

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

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

14 Q And whose initials are next to that waiver?

15 A Mr. Dunn's.

16 Q And who put those initials there?

17 A He placed it there.

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

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

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

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

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

24 A No.

25 Q Did you coerce him?

1 A No.

2 Q Did you make any promises to him in exchange for
3 giving a statement to you?

4 A No.

5 Q Did he appear to understand everything you were
6 saying, and you understood what he were saying?

7 A Yes.

8 Q Then did he proceed to give you a statement?

9 A He did.

10 Q And walk us through that statement, then.

11 A (There was no response.)

12 THE COURT: Just...

13 MS. FENT: I guess just more specifically, sorry.

14 THE COURT: It's not necessary.

15 MS. FENT: Okay.

16 THE COURT: It's not necessary to go through the
17 whole statement.

18 MS. FENT: I know. I -- that was a poor request.

19 THE COURT: The jury is not here.

20 BY MS. FENT:

21 Q Yeah, a poor request.

22 Just, essentially, can you give us the process? Did
23 you talk to him, first, and then memorialize it in a
24 statement, or did you just write down question and answer
25 as it happened?

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

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

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

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

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

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

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

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

23 A Yes.

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

1 statement, do you see him in the courtroom today?

2 A I do.

3 Q And can you point to him, describe where he is
4 sitting, so we know what you're talking about?

5 A Yes. Mr. Dunn is the young man in the red button
6 down shirt between Mr. Li and Mr. O'Neil.

7 MS. FENT: Thank you.

8 THE COURT: What time was the statement?

9 THE WITNESS: The statement was approximately
10 11:34 hours.

11 THE COURT: The same day?

12 THE WITNESS: 11:34 p.m., the same day, yes.

13 BY MS. FENT:

14 Q Now, while you were talking to him or I guess while
15 he's at the sheriff's department, did he make any requests
16 to talk to anybody?

17 A I believe he did ask to speak to his mother at some
18 point.

19 Q Okay. And what did you do about that request?

20 A He was ultimately -- I cannot recall when he asked to
21 speak to his mother. Honestly, he was allowed to talk to
22 her on the phone.

23 Q Okay. So talk to us about that. You said he wanted
24 to talk to his mom, and you obliged by doing what?

25 A Allowing him to speak to her on the phone.

1 Q Where?

2 A That would be in Major Stan Smith's office.

3 Q Okay. And the phones in the sheriff's department or
4 anywhere around the sheriff's department, are there
5 notices about whether or not the phones are recorded?

6 A Each phone, unless it's been removed by the
7 investigator, has a bright orange sticker on it that says
8 all calls placed on this phone are recorded.

9 Q So what happened then? You let him use Major Stan
10 Smith's telephone in his office?

11 A Yes.

12 Q And was he left alone, or was somebody left with him?

13 A He was not. He was there in the presence of Major
14 Smith, as well as Sergeant Kevin Isenhoward. I was there
15 for a large portion of the conversation, as well.

16 Q Okay. And so there are two law enforcement officers
17 standing. How big is this office?

18 A It's a fairly good size office. It is not a small
19 office.

20 Q As big as this courtroom?

21 A No.

22 Q Is there a place to stand in the office so you cannot
23 hear the phone conversation?

24 A No. There is no way you cannot overhear a
25 conversation in the office.

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

3 A Yes.

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

6 A Yes, that's correct.

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

9 A I could.

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

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

14 MS. FENT: I do not.

15 THE COURT: It might be helpful for the record.

16 Mr. O'Neil.

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

18 CROSS-EXAMINATION:

19 BY MR. O'NEIL:

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

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

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

1 period as investigator?

2 A Hundreds.

3 Q And you understand that these advice of rights forms
4 and these statements essentially can be used later on in
5 court?

6 A Yes.

7 Q You're careful to make sure that the information that
8 is put on these forms is adequate, one of the reasons why
9 they can be utilized in court later on?

10 A The information on the advice of rights form?

11 Q Yeah, the advice of rights form.

12 A Yes.

13 Q Okay. Now, before you came in contact with Mr. Dunn
14 that day, you already had sworn arrest warrants; is that
15 correct?

16 A I did.

17 Q And those arrest warrants were for the four charges
18 that he's on trial for today?

19 A Yes.

20 Q Okay. Now, you say you located him although Lavonne
21 Arrington's residence?

22 A Yes.

23 Q Okay. And was members of the fugitive team already
24 in contact with Mr. Dunn by the time you got there?

25 A They were.

1 Q Did they already have him in handcuffs at the time
2 you got there?

3 A Yes.

4 Q Okay. You said your first contact with Mr. Dunn was
5 that you notified him that he was under arrest for these
6 four warrants?

7 A Yes.

8 Q And at that point, was he already cuffed at that
9 points?

10 A He was.

11 Q Did you switch the fugitive team handcuffs with your
12 cuffs or you got those cuffs?

13 A I'm about 100 percent certain I did switch them out.

14 Q Okay. So you switched out, put your own cuffs on
15 him?

16 A Yes.

17 Q Okay. At that point, I think it's fair to say once
18 you had those cuffs on Mr. Dunn, he was not free to leave
19 at that point?

20 A He was not.

21 Q He was under arrest.

22 A Yes.

23 Q If he would have attempted to leave, you would have
24 stopped him from leaving?

25 A Yes.

1 Q And you also say you advised him about the DNA
2 evidence at that point, correct?

3 A Yes.

4 Q Now, you said that you actually read Mr. Dunn his
5 Miranda warnings orally?

6 A Yes.

7 Q Okay. You said you read that from a card?

8 A That's correct.

9 Q Do you normally, you know, carry that card with you?

10 A I always have that card.

11 Q You have it with you today?

12 A Yes.

13 Q Is that the same card you had last year?

14 A Yes.

15 Q Okay. Were there any witnesses that overheard you
16 reading Mr. Dunn his Miranda warnings?

17 A Investigator Baker was with me, but I do not believe
18 he was in the vehicle at the time the Miranda warnings was
19 read to Mr. Dunn.

20 Q So the Miranda warnings would have taken place inside
21 your vehicle?

22 A That's correct.

23 Q Is your vehicle equipped with any video surveillance?

24 A There is not.

25 Q So there is no footage of you reading Mr. Dunn his

1 Miranda warnings?

2 A There is no video.

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

5 A No.

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

9 A Yes.

10 Q How old was he at that point?

11 A Seventeen.

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

14 A No.

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

18 A No.

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

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

24 Q Did he make that mention at any time?

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

1 on.

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

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

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

7 A It was a very short period of time.

8 Q Okay. Less than 15 or...

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

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

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

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

16 A That's correct.

17 Q -- on the ride? You said Mr. Dunn was -- started
18 talking to you while you were on -- somewhere during this
19 30-minute period, Mr. Dunn was discussing with you his
20 version of what happened.

21 A Yes.

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

25 A Yes.

1 Q How long were you at headquarters before you and
2 Mr. Dunn started going through this statement process?

3 A It would not have been a very long time at all.

4 Q Okay, less than 15?

5 A I couldn't say. Anywhere between 15 minutes, half an
6 hour.

7 Q Okay. So no more than 30 minutes --

8 A Yes.

9 Q -- but as short as 15 minutes?

10 A Yes.

11 Q Okay. And is this statement contemporaneous, meaning
12 as Mr. Dunn is talking, you're typing?

13 A Yes.

14 Q Okay.

15 A And listening, as well.

16 Q Okay. So you didn't -- you didn't -- Mr. Dunn didn't
17 give you the whole story and then you started typing.
18 You're typing?

19 A No, go question by question.

20 Q Now, I see that the statement is timed at 11:34,
21 that's 11:34 a.m.?

22 A Yes.

23 Q Okay. And I just want to make sure this timeline is
24 right. It appears you got to the Dunn's residence -- I'm
25 sorry, Mr. Arrington's residence around 9:00 a.m.,

1 stayed --

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

4 Q Okay.

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

6 Q Okay.

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

9 Q But what you told Mr. Lavonne Arrington --

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

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

14 A Yes.

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

17 A Yes.

18 Q And then when you got to headquarters, no more than
19 30 minutes before you started talking?

20 A That's right.

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

22 A Yes.

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

24 A The statement did, yes.

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

1 statement started at 11:34?

2 A If I placed 11:34 there, that's when it started.

3 Q That's what time it started, fair enough. And your
4 testimony is that before you took the statement from
5 Mr. Dunn, you written, in written form, gave him an advice
6 of rights?

7 A Correct.

8 Q Correct, all right. And the statement says it began
9 at 11:34 a.m., correct?

10 A That's correct.

11 Q But the -- help me out, Mr. Mauldin, Investigator
12 Mauldin. Then the advice of rights is timed at
13 11:38 a.m.; is that correct?

14 A It does say that.

15 Q Okay. So you say you were saying you were sure that
16 the statement was at 11:34, and you placed the time on
17 this advise of rights.

18 A I placed it on both.

19 Q Okay. And the advice of rights, according to your
20 own documentation, was at 11:38?

21 A Those are the times that are on there, yes.

22 Q Okay. And you put those times on there.

23 A I did put the times on there.

24 Q Okay. At any time during your -- you -- during your
25 talk with Mr. Dunn, did you ascertain his ability to

1 understand the words you was saying?

2 A How do you mean ascertain his ability?

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

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

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

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

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

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

23 A Yes.

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

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

3 A Yes.

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

6 A I couldn't say.

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

10 A I can't say.

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

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

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

18 A There is not.

19 Q There is not, okay.

20 Beg the Court's indulgence, Your Honor.

21 (Pause.)

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

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION:

1 BY MS. FENT:

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

3 A Yes.

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

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

9 Q Okay.

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

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

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

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

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

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

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

7 A Yes.

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

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

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

21 A No. We were together the entire time.

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

24 THE COURT: Anything else you want to ask?

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

1 RECROSS-EXAMINATION:

2 BY MR. O'NEIL:

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

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

9 Q Yes, yes.

10 A No, there is not.

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

14 A I could have, yes.

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

16 THE COURT: Next witness?

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

20 THE COURT: All right. You may come down.

21 THE WITNESS: Thank you, sir.

22 THE BAILIFF: Watch your step.

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

25 All right. Ms. Bodman?

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

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

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

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

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

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

12 THE COURT: You may proceed.

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

14 THE COURT: He's cuffed behind his back?

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

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

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

21 DIRECT EXAMINATION:

22 BY MR. O'NEIL:

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

1 A I was 17 years old.

2 Q Seventeen back in June of 2011?

3 A Yes, sir.

4 Q Okay. How far had you gone in school at that point?

5 A The 10th grade.

6 Q The 10th grade. Do you remember coming into contact
7 with Investigator Mauldin back on June 2nd?

8 A I do.

9 Q Okay. Tell us -- do you remember about what time of
10 day it was when you came in contact with him?

11 A I want to say ten o'clock in the morning.

12 Q Okay. What -- when you came into contact with
13 Investigator Mauldin, what was the first thing that
14 happened? Let's just start there.

15 A All right. I was on -- I was at Lavonne Arrington's
16 residence and someone knocked on the door, and Lavonne's
17 mother answered the door. It was the police.

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

24 Q When you say "they", who are you referring to?

25 A The officers.

1 Q Okay. Was Mr. Mauldin included in that group of
2 officers you were talking about?

3 A No, sir. They were saying, "We know you did it. We
4 already have your DNA." You know, just I might as well
5 tell the truth now.

6 Q Okay. So what happened when you came in contact with
7 Investigator Mauldin? What did he say to you?

8 A He told me the same. He was like he already had my
9 DNA; that for me just to tell the truth. I was telling
10 him that I don't know what you're talking about. I want
11 to talk to my mom.

12 Q Okay. Then what did he say in response to that?

13 A He just -- he told -- he escorted me to the car.

14 Q Okay. Now, what happened when you got in the car?

15 A When we got in the car, it was him and another
16 officer in the car. They just kept asking me, you know,
17 what happened. I was like, "I don't know what you're
18 talking about. I want to talk to my mother."

19 Q Okay.

20 A So I never talked to him --

21 Q Okay.

22 A -- the whole ride there.

23 Q How long was the ride from Mr. Arrington's home to
24 the headquarters? Do you remember?

25 A The headquarters was on Two Notch, am I correct?

1 Q Yeah, Two Notch.

2 A I want to say at least 20 minutes.

3 Q Okay.

4 A At least 20 minutes.

5 Q Okay. At any time did Investigator Mauldin read you
6 your Miranda warnings?

7 A No, sir.

8 Q Okay. Any time in that car ride from -- either
9 from -- from any time when Investigator Mauldin came in
10 contact with you up until the time you actually got to
11 headquarters, did he ever read you your Miranda rights?

12 A No, sir.

13 Q Did he ever take out a card and read you those
14 Miranda rights?

15 A No, sir.

16 Q What happened when you got inside to headquarters?

17 A They -- they took me -- he escorted me to his cubby,
18 his little office. We sat down. You know, they started
19 -- they started -- they was talking to one another.

20 Q When you say "they", who are you referring to?

21 A Him and the officer that rode with us.

22 Q Okay.

23 A They were talking to one another, and I believe he
24 offered me a Coke, soda.

25 Q Okay.

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

4 Q Okay.

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

8 Q Okay.

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

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

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

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

20 A I was talking regularly to my mother.

21 Q Okay.

22 A They could have heard, yes.

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

1 A Yes.

2 Q Okay.

3 A Yes, sir.

4 Q Did you see any sort of sticker up there that said
5 these calls are going to be recorded?

6 A No, sir.

7 Q What happened after you got off the phone with your
8 mother?

9 A After I got off?

10 Q Yeah.

11 A I believe they escorted me into a holding.

12 Q Okay. Did they ever come back and talk to you more
13 about the case after that?

14 A When they took me to the room, I think he said that
15 he's going to -- he's going to have a DNA test, and that
16 he's going to come back with it to tell me the results. I
17 was in there about 15 minutes. Then he came back, and he
18 said it's a match with mine.

19 Q Okay. Did you -- did you say anything else after
20 they told you it was a match?

21 A No, sir.

22 MR. O'NEIL: Beg the court's indulgence, Your Honor.

23 (Pause.)

24 Nothing further, Your Honor.

25 THE COURT: Cross?

1 CROSS-EXAMINATION:

2 BY MS. FENT:

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

5 A In this case?

6 Q Ever in your life.

7 A No.

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

11 A Yes.

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

14 A Yes, ma'am.

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

17 A Yes, ma'am.

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

21 A My mom.

22 Q -- is what you asked?

23 A Yes, ma'am.

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

1 A Yes, ma'am.

2 Q Okay. And not only that case but back in 2010, you
3 acknowledged that you understood all of your rights and
4 that you waived your rights?

5 A Come again.

6 Q You, in fact, even back in this case in 2010, you
7 understood the rights that were given to you?

8 A Yeah; yes, ma'am.

9 Q And you waived them.

10 A Yes, ma'am.

11 Q You gave them up.

12 A Uh-huh, yes, ma'am.

13 Q Okay. Just like you understood all the rights that
14 Mauldin read to you?

15 A Yes, ma'am.

16 Q Correct? Both out at Lavonne Arrington's house, you
17 understood them when he read them to you.

18 A Not there, at the investigation house.

19 Q Okay. You understood them?

20 A Yes, ma'am.

21 Q Okay.

22 A In fact, I read it.

23 Q And -- Your Honor, may I have the...

24 (Pause).

25 On State's Exhibit No. 1, those are your initials and

1 that is your signature, correct --

2 A Yes, ma'am.

3 Q -- acknowledging that you understood all your rights
4 and acknowledging that you wanted to give them up --

5 A Yes, ma'am.

6 Q -- and talk?

7 A Yes, ma'am.

8 Q And then this statement, State's Exhibit No. 2,
9 that's your signature at the bottom of page one?

10 A Yes, ma'am.

11 Q That's your signature at the bottom of page two?

12 A Yes, ma'am.

13 Q And that is your signature at the bottom of page
14 three?

15 A Yes, ma'am.

16 Q And in this statement, it doesn't look like you made
17 any changes. You didn't mark anything out or add anything
18 with your handwriting --

19 A No, ma'am.

20 Q -- on all three of those pages.

21 A No, ma'am.

22 Q You said at one point Investigator Mauldin even
23 offered you a Coke or a soda.

24 A Yes, ma'am.

25 Q And this is while the you're at the cubical?

1 A Yes, ma'am.

2 Q At the cubical. You said he did tell you at Lavonne
3 Arrington's house that we know you did it because we have
4 the DNA?

5 A Yes, ma'am.

6 Q We have a DNA match?

7 A Yeah.

8 Q Did he specifically tell you about we got your semen
9 on the washrag?

10 A Yes, ma'am.

11 Q Okay. So you knew that at Lavonne Arrington's house?

12 A Yes, ma'am.

13 Q When you asked to talk to your mom, they did escort
14 you to an a office to be able to do that?

15 A Yes, ma'am.

16 Q And that was Major Stan Smith's office?

17 A Yes, ma'am.

18 MR. O'NEIL: Your Honor, can I see that?

19 MS. FENT: I just got it.

20 (WHEREUPON, State's Exhibit No. 3 was marked for
21 identification only.)

22 BY MS. FENT:

23 Q I'm going to show you State's Exhibit No. 3. It's a
24 picture of a telephone?

25 A Yes, ma'am.

1 Q Is that the phone that you used in Stan Smith's
2 office?

3 A That's the type of phone, yes, ma'am.

4 Q Okay. So the phone looks exactly the same. Was
5 there the label on the top that said "all calls recorded"?

6 A I did not see it, no, ma'am.

7 Q You don't remember it?

8 A Not seeing it there, no, ma'am.

9 Q Okay. But that was at Stan Smith's office that you
10 used the phone, and you said it was a phone that looks
11 exactly like this?

12 A Yes, ma'am.

13 Q And you did the call your mom, right?

14 A Yes, ma'am.

15 Q And you had a phone conversation with your mom,
16 right?

17 A Yes, ma'am.

18 Q And you told her about the DNA?

19 A Yes, ma'am.

20 Q And at one point, your mom said to you, "I don't want
21 to discuss this no more because you know these phones are
22 taped, and they're standing right there listening."
23 Didn't she say that?

24 A Yes, ma'am.

25 Q And you answered, "Yeah, they're right here." So you

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

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

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

8 A She said; yes, ma'am.

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

11 A No, ma'am.

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

14 A Yes, ma'am.

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

16 A No, ma'am.

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

19 A Yes, ma'am.

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

21 A Yes, ma'am.

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

23 A Yes, ma'am.

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

1 15 minutes later and said it was yours, was that before or
2 after you gave your written statement?

3 A That was after.

4 Q After. No further questions.

5 REDIRECT EXAMINATION:

6 BY MR. O'NEIL:

7 Q Just briefly.

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

11 A No.

12 Q Okay. You never saw that?

13 A No.

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

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

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

17 THE BAILIFF: Watch your step.

18 THE COURT: Any further witnesses from the State?

19 (There was no response).

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

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

24 THE COURT: When?

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

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

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

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

11 MS. FENT: Correct.

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

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

17 THE COURT: I understand that.

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

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

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

1 that he says. What she says on --

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

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

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

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

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

12 MS. FENT: We do.

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

15 MS. FENT: They are not here right now.

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

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

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

1 THE COURT: But he says they were close by.

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

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

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

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

12 MR. O'NEIL: The State --

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

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

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

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

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

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

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

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

11 THE COURT: How long is that?

12 MR. O'NEIL: About three minutes.

13 MS. FENT: Eight minutes.

14 THE COURT: All right.

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

19 THE COURT: Well, I understand.

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

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

1 wave?

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

4 THE COURT: Is that sort of like the cloud?

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

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

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

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

11 THE COURT: Huh?

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

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

16 MS. FENT: Okay.

17 THE COURT: She said it's best.

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

20 THE COURT: What do you need it to be?

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

23 MS. FENT: I did that.

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

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

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

4 MR. O'NEIL: Yes, Your Honor.

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

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

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

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

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

25 THE COURT: You're saying there is nothing more

1 inculpatory than his statement contained on this
2 recording?

3 MS. FENT: Nothing more inculpatory meaning...

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

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

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

12 THE COURT: Oh, okay.

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

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

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

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

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

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

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

9 THE COURT: Which he disputes.

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

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

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

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

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

3 THE COURT: How about that, Ms. Bodman?

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

9 THE COURT: Oh, I thought he admitted it.

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

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

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

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

4 THE COURT: Scribner's error?

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

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

14 THE COURT: All right.

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

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

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

25 MR. O'NEIL: Yes, sir.

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

2 MR. O'NEIL: Yes, Your Honor.

3 THE COURT: At least according to my recollection.

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

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

15 THE COURT: All right. Anything further?

16 MR. O'NEIL: No, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 mother.

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

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

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

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

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

25 All right. That concludes the hearing, the Denno

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

6 MR. O'NEIL: Yes, Your Honor.

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

8 MS. FENT: The State --

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

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

13 THE COURT: Nine o'clock.

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

15 MS. FENT: The State calls --

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

17 MS. FENT: John Carwell..

18 THE COURT: Your witness.

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

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

23 THE WITNESS: John Lewis Carwell, Jr.

24 DIRECT EXAMINATION:

25

1 BY MS. FENT:

2 Q With whom are you employed?

3 A Richland County Sheriff's Department.

4 Q And in what capacity?

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

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

8 A I was with the burglary unit.

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

12 A The following day I was.

13 Q Okay.

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

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

18 A I did.

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

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

25 Deputies were able to arrive, found the property

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

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

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

12 A Yes.

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

16 A That's correct.

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

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

21 Q And did you have a conversation Edward Dunn?

22 A That's correct.

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

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

1 provide a statement.

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

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

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

8 BY MS. FENT:

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

11 A I do.

12 Q What is that?

13 A A DNA consent form.

14 Q A particular DNA consent form?

15 A The Richland County Sheriff's Department.

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

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

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

23 A Yes, I did.

24 Q And he acknowledged all of his rights?

25 A He did.

1 Q And he waived them?

2 A Yes, he did.

3 Q Okay. Were you in here when the defendant testified?

4 A Yes.

5 Q And he acknowledged this advice of rights on 9/21/10?

6 A That's correct.

7 Q In relation to the DNA consent did you make any
8 promises to him about if he provided a DNA sample
9 something would happen?

10 A No, I did not.

11 Q Did you threaten him in any way?

12 A No, I did not.

13 Q Coerce him in any way to give consent?

14 A No, I did not.

15 Q Did you give him any type of qualifications about how
16 this DNA sample would be used, kept, maintained, what it
17 would be compared against?

18 A No.

19 Q And did you then actually get a sample from the
20 defendant's mouth?

21 A Yes, I did.

22 Q In the form of -- you said, "I swabbed it," a Q-tip
23 swab?

24 A Yes.

25 Q Do you see that person you got that swab from in the

1 courtroom today?

2 A Yes, I did.

3 Q The person that consented to provide you that sample?

4 A Yes, I did.

5 Q Can you point to him and describe where it is, what
6 he's wearing?

7 A He has got a red shirt on sitting in the middle of
8 the two attorneys at that desk over there.

9 THE COURT: For the record, he indicated the witness
10 identified the defendant.

11 BY MS. FENT:

12 Q Did he understand what you were asking of him in
13 terms of providing the DNA sample of the buccal swab?

14 A Yes, I did.

15 Q Did he appear to be under the influence of any drugs
16 or alcohol?

17 A No.

18 Q No further questions at this time.

19 THE COURT: Is there a waiver?

20 MS. FENT: I'm sorry, statements?

21 THE COURT: Cross-examination?

22 MR. O'NEIL: Yes, Your Honor.

23 THE COURT: No. I thought there was a separate
24 waiver. This is a consent to --

25 MS. FENT: There was an advice of rights.

1 THE COURT: You didn't offer that?

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

4 THE COURT: All right.

5 CROSS-EXAMINATION:

6 BY MR. O'NEIL:

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

9 A Yes, sir.

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

12 A It's two separate forms.

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

15 A That's correct.

16 Q Totally separate from --

17 A That's correct.

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

19 A Right.

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

23 A Right.

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

25 A That's correct.

1 Q You were investigating a burglary, I think, at the
2 Elmtree address?

3 A Yes.

4 Q [REDACTED]?

5 A That's correct.

6 Q Okay. And there was some DNA samples taken from that
7 incident location?

8 A Correct.

9 Q Correct? And you asked Mr. Dunn to give you a sample
10 of his DNA, correct?

11 A Right.

12 Q You asked him to give you a sample of his DNA to
13 compare it against the DNA samples you had from the [REDACTED]
14 [REDACTED] address?

15 A Correct.

16 Q Okay. And you never mentioned from Mr. Dunn that you
17 were going to put this DNA sample in this Richland County
18 DNA database?

19 A No.

20 Q You never told him that at all?

21 A No, I did not.

22 Q You are aware that later on, Mr. -- the sample Mr.
23 Dunn gave you did not match any of the items that were
24 ascertained on -- that were located at [REDACTED].

25 A Correct.

1 Q If I could -- permission to approach, Your Honor?

2 If I can get this mark as a Court's Exhibit here.

3 This is the DNA analysis. I just want to make sure you're
4 familiar with it.

5 (WHEREUPON, Court's Exhibit No. 4 was marked for
6 identification only.)

7 BY MR. O'NEIL:

8 Q Investigator Carwell, I'm going to show you what's
9 Court's Exhibit 4. Essentially, that's the DNA report
10 from the burglary at [REDACTED] that states that
11 the buccal Mr. Dunn gave was compared against the items
12 that were involved in the burglary at [REDACTED], and those two
13 did not match?

14 A That's correct.

15 Q So and after you -- you realized after Mr. Dunn gave
16 you that DNA sample, that DNA sample right there, the
17 profile, is put on the record at the Richland County
18 forensics lab?

19 A Yes.

20 Q That -- the same sample he gave in this case was kept
21 on file in Richland County's in-house lab?

22 A Correct.

23 Q And you never mentioned to Mr. Dunn that was going to
24 happen before he gave you that sample?

25 A No.

1 Q How old was Mr. Dunn when you gave that consent?

2 A He was 16.

3 Q He was 16 at that time. What's your common policy
4 when it comes to minors at age 16 when it comes to giving
5 a statement when it relates to consent and Miranda
6 waivers?

7 A Advise them of their rights.

8 Q Do you have any cut off in those situations where you
9 have to have --

10 A It's two hours.

11 Q I apologize. You have to have a minor -- you have to
12 have a parent involved in any one of those situations?

13 A No.

14 Q No matter what the age of the person?

15 A You don't have to have a parent there.

16 Q I'm asking do you have an internal policy as to when
17 you get parents involved when it comes to a suspect?

18 A No.

19 Q If the suspect was, you say ten years old, would you
20 have the parents involved before you have a consent form?

21 A Yes.

22 Q So is there a sliding scale, or is there no kind of
23 precise form to get the parents involved?

24 A I don't recall.

25 Q Okay. Do -- when victims -- when you obtained

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

3 A Yes.

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

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

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

10 A No.

11 Q No.. Okay.

12 Beg the Court's indulgence, Your Honor.

13 (Pause).

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

16 A Yes.

17 Q What was he under arrest for?

18 A For the burglary.

19 Q For the burglary at Elm Tree Road?

20 A Yes.

21 Q He was at headquarters?

22 A Yes.

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

24 A That's correct.

25 Q Beg the court's indulgence.

1 (Pause).

2 That's all I have, Your Honor.

3 REDIRECT EXAMINATION:

4 BY MS. FENT:

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

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

11 Q With regard to your investigation?

12 A That's correct.

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

15 A No.

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

18 A No.

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

21 A No, no promises.

22 Q No promises.

23 No further questions.

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

25 RECROSS-EXAMINATION:

1 BY MR. O'NEIL:

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

5 A And to enter into any database.

6 Q Did you tell him that?

7 A No.

8 Q Okay. You told him it would be compared against the
9 Elm Tree Road address?

10 A Correct.

11 Q That was going to use to compare this to Elm Tree
12 Road?

13 A Yes.

14 Q There was never any mention of this DNA evidence?

15 A No.

16 Q Okay.

17 THE COURT: Anything further?

18 MS. FENT: No.

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

20 Next witness?

21 MS. FENT: No further witnesses.

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

23 THE COURT: Okay.

24 MR. O'NEIL: Defense calls Edward Dunn.

25 EDWARD DUNN, having been previously

1 duly sworn, testified as follows:

2 DIRECT EXAMINATION:

3 BY MR. O'NEIL:

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

5 A Yes, sir.

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

9 A That, no.

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

12 A No, sir.

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

15 A No, sir.

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

19 A Uh-huh.

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

22 A Yes.

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

1 A No, sir.

2 MR. O'NEIL: Okay.

3 No further questions, Your Honor.

4 THE COURT: Cross?

5 CROSS-EXAMINATION:

6 BY MS. FENT:

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

10 A Excuse me.

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

13 A Yes.

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

16 A Yeah.

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

18 A Yeah.

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

22 A Yes, ma'am.

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

25 A Uh-huh.

1 Q -- and to take your DNA sample?

2 A Yes, ma'am.

3 Q Okay. Is there anything in this that says that it's
4 only going to be for this particular case?

5 A (Pause).

6 Now, what's the question again?

7 Q Does it say that this sample is being taken just for
8 Investigator Carwell's comparison, just for the case back
9 in September of 2010, not this case here today?

10 A No, ma'am.

11 Q Okay. Does it say anywhere in this consent to search
12 that they're going to destroy it after they do their
13 comparison?

14 A No, ma'am.

15 Q And that is your signature?

16 A Yes, ma'am.

17 No further questions.

18 MR. O'NEIL: Briefly, Your Honor.

19 REDIRECT EXAMINATION:

20 BY MR. O'NEIL:

21 Q Just so we're clear here, Investigator Carwell told
22 you that he was going to use the swab you gave him to
23 compare to the burglary on Elm Tree Road, correct?

24 A Yes, sir.

25 Q Did he tell you he was going to use it to compare it

1 to anything else?

2 A No, sir.

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

7 A Yes; yes, sir.

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

10 A To compare it to that case.

11 Q Compare it to that case?

12 A Yes, sir.

13 Q And that case alone?

14 A Yes, sir.

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

20 A No, sir.

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

24 A Match, yes, sir.

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

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

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

5 THE COURT: Anything further?

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

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

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

12 THE COURT: Yes.

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

16 THE COURT: Go ahead.

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

19 THE COURT: Yes.

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

25 THE COURT: "I understand this evidence may be used

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

4 MR. O'NEIL: Okay.

5 THE COURT: And then back on --

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

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

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

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

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

24 THE COURT: It will be on there tomorrow.

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

1 THE COURT: It will be on there tomorrow.

2 MR. O'NEIL: Yes, Your Honor.

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

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

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

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

16 THE COURT: You don't?

17 (There was no response).

18 You don't?

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

25 THE COURT: Well --

1 MS. FENT: -- the evidence that --

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

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

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

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

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

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

1 already happened.

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

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

6 THE COURT: And McCord is your only source?

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

9 THE COURT: All right.

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

11 THE COURT: Yes, sir.

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

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

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

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

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

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

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

12 THE COURT: All right.

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

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

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

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

1 that. I don't know.

2 MS. FENT: Well, actually --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 MR. O'NEIL: A week before.

24 THE COURT: Yeah.

25 MR. O'NEIL: But that --

1 THE COURT: Not for the date of the event.

2 MR. O'NEIL: Yes, sir.

3 THE COURT: That he was your point.

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

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

9 MR. O'NEIL: Yes, Your Honor.

10 THE COURT: All right. Anything further?

11 MR. O'NEIL: No, Your Honor.

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

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

14 THE COURT: -- pretrial motions?

15 MR. O'NEIL: Yes, sir.

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

18 MR. O'NEIL: Yes, Your Honor.

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

21 (Whereupon, There was an overnight recess).

22 THE COURT: All right. State ready to proceed?

23 MS. FENT: We are, Your Honor.

24 THE COURT: Is the defense ready to proceed?

25 MR. O'NEIL: Yes, Your Honor.

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

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

6 THE COURT: All right. Call your witness.

7 MR. MATTHEWS: The State calls Kevin Isenhoward.

8 THE BAILIFF: We don't have a clerk.

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

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

13 THE WITNESS: Kevin Scott Isenhoward.

14 DIRECT EXAMINATION:

15 BY MR. MATTHEWS:

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

18 A The Richland County Sheriff's Department.

19 Q And in what capacity?

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

21 Q And what are your duties?

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

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

1 department?

2 A In June of 2011, I was a sergeant of the Major Crimes
3 Unit.

4 Q And did you have a chance to participate in the
5 investigation of Edward Dunn during June 2011?

6 A Yes, briefly.

7 Q And what was your involvement on specifically
8 June 2nd, 2011?

9 A I was present during a phone call he made, I believe,
10 to his mother. It was Investigator Mauldin's case. I was
11 simply present to hear some of the conversation.

12 Q And you were able to overhear the defendant's portion
13 of this conversation?

14 A Yes. You could hear what he was saying, yes.

15 Q I'm showing you what's been marked as State's
16 Exhibit 3. Do you recognize that?

17 A This is obviously in our CID unit. With all have the
18 same phones. They are Cisco phones. This particular
19 phone is extension 3037. I recognize that as belonging to
20 my supervisor, Major Stan Smith, and I can see his office
21 in the background.

22 Q And what's the significance of that phone with
23 regards to Edward Dunn?

24 A It's the phone that he was -- he made the call on.

25 Q And is there anything specific on that phone noting

1 anything about recording of calls?

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

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

7 A Yes.

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

10 THE COURT: Cross-examination?

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

12 CROSS-EXAMINATION:

13 BY MR. O'NEIL:

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

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

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

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

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

24 A No.

25 Q Do you know who dialed the number?

1 A No.

2 Q Okay. Do you know at the time Mr. Dunn picked up the
3 phone, this sticker that says "All calls are recorded,"
4 you don't know whether or not that was visible at the time
5 Mr. Dunn picked up the phone?

6 A Oh, it's visible. I mean, you have to stand in front
7 of the phone to use it.

8 Q But you don't know whether anything was obstructing
9 this sticker at the time Mr. Dunn picked up the phone, do
10 you?

11 A I couldn't tell you. You don't typically lay
12 anything over the phone. Sometimes, you know, somebody
13 will ask, "Give us a number." We'll dial it because we
14 have to dial a nine to get out to an external line.

15 Q But that phone is on the desk in Stan Smith's office?

16 A Yes.

17 Q So you don't know whether -- at the time Mr. Dunn --
18 you can't testify whether or not this sticker was visible
19 to him at the time you picked up the phone.

20 A I can't say. I can say that the sticker has been on
21 there the entire time.

22 Q But you can't say that it was visible for Mr. Dunn
23 when he picked the phone up?

24 A I can only say that the sticker has been on there
25 since we started with the phone. I recognize the phone. I

1 used it quite frequently. I recognize that extension.

2 That's it. That's what I know.

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

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

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

8 A No.

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

12 A I can't say what he saw.

13 Q Yeah.

14 A I can only say the sticker is on there.

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

16 THE COURT: Redirect?

17 MR. MATTHEWS: No, Your Honor.

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

19 THE WITNESS: Thank you.

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

25 I believe that the testimony is pretty clear that the

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

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

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

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

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

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

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

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

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

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

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

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

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

11 THE COURT: Was that ever done?

12 MS. FENT: I'm sorry?

13 THE COURT: Was that ever done?

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

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

25 The other way of inevitable discovery is that if John

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

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

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

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

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

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

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

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

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

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

1 THE COURT: All right.

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

4 THE COURT: Mr. O'Neil?

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

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

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

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

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

1 cannot be considered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 THE COURT: All right.

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

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

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

25 What I also didn't understand is that police found

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

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

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

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

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

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

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

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

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

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

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

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

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

5 THE COURT: Without the assistance of counsel and
6 interrogated.

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

11 THE COURT: All right.

12 MR. O'NEIL: By himself.

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

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

16 THE COURT: No problem.

17 All right. Anything further?

18 MS. FENT: No, sir.

19 THE COURT: State ready for the jury?

20 MS. FENT: We are, Your Honor.

21 THE COURT: Defense ready?

22 MR. O'NEIL: Yes, Your Honor.

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

24 Ten and five?

25 MS. FENT: Yes.

1 THE COURT: And we don't hand out strike sheets
2 anymore.

3 MS. FENT: Note our objection for the record.

4 (Whereupon, the jury panel was brought into the
5 courtroom.)

6 THE COURT: Let's -- one of you, let's put this
7 evidence somewhere so the jury doesn't see it.

8 (Complies.)

9 Any requested voir dire from the State?

10 Did -- Mr. O'Neil, did you say you have some
11 requested voir dire? He has the stamp.

12 (Whereupon, the jury panel was brought into the
13 courtroom).

14 MS. FENT: Just the standard, you know,
15 interrogatories.

16 THE BAILIFF: The panel is seated, Your Honor.

17 THE COURT: Thank you. Good morning, ladies and
18 gentlemen.

19 PROSPECTIVE JUROR: Good morning.

20 THE COURT: Welcome to the court of General Sessions.
21 This is a criminal division of our court system, so those
22 of you selected on a jury today will be sitting on a
23 criminal case.

24 I'm going to tell you a little built about it in just
25 a minute, but before that, I'm going to introduce the

1 parties to you.

2 I have a series of questions to ask you, whether you
3 know anything about this case or have any connection one
4 way or the other with the parties and the principals
5 involved in the case, but before I start that process, let
6 me tell you two things: First, if you responded to the
7 questions I asked, please stand and give me your number,
8 not your name, all right.

9 We found over the years that in -- particularly in
10 criminal court, the jurors prefer to be identified by
11 their number as opposed to their name. It's just sort of
12 a thing that I found that jurors prefer, so if you give me
13 your number when you respond to the questions I ask.

14 Secondly, the purpose of these questions is not to
15 embarrass you in any way. If you feel that you have to
16 respond or can respond to one of the questions I ask and
17 you'd rather not describe to me from your seat the answer
18 to the question, I'll allow you to certainly come forward
19 and tell me privately, but because there are a couple of
20 questions that I think are going to be somewhat sensitive
21 to you.

22 You may, as I say, want to disclose certain things to
23 me in private as opposed to -- in front of your fellow
24 jurors, but I don't think as a whole the questions are
25 going to be that personal.

1 All right. As you know, I'm sure you know, in any
2 criminal case, the prosecuting entity, the person -- the
3 institution that prosecute cases is known as the state
4 solicitor's office.

5 Now, in some states that's known as the district
6 attorney. In some states, it's the state's attorney, but
7 in South Carolina, it is the state solicitor's office.

8 There are solicitors in every county in the state,
9 and in this jurisdiction, that is in Richland and Kershaw
10 Counties, the state -- your state solicitor is Mr. Dan
11 Johnson. He is your elected state solicitor.

12 I need to know if any member of the jury panel or any
13 member of your family is connected by blood or employment
14 to Dan Johnson. If so, please stand. Anybody know
15 Solicitor Johnson?

16 And your number, please?

17 PROSPECTIVE JUROR: 244.

18 THE COURT: And Ms. 244, how do you know Mr. Johnson?

19 PROSPECTIVE JUROR: He was in my United States Army
20 Reserve unit for a number of years.

21 THE COURT: He is now or was?

22 PROSPECTIVE JUROR: He's not right now but he was.

23 THE COURT: All right. And being a part of that
24 reserve unit, did you have daily, weekly, monthly contact
25 with him?

1 PROSPECTIVE JUROR: Monthly.

2 THE COURT: Monthly, all right. Would you consider
3 yourself friends as a result of that experience?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Okay. Let me ask you this, Ms. 244,
6 would that fact in any way interfere with your ability to
7 give both the State and the defendant a fair and impartial
8 trial in this case?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Thank you very much.

11 Anybody else?

12 (There was no response.)

13 THE COURT: All right. Now, Mr. Johnson will not
14 actively participate in this trial today. Two of his
15 assistant solicitors will be involved in the trial of the
16 case, and they are Ms. Margaret Fent-Bodman, please stand,
17 and Mr. Foster Matthews.

18 Any member of the jury panel related by blood,
19 connected by marriage or employment or a close personal
20 acquaintance of either Ms. Margaret Fent-Bodman or
21 Mr. Foster Matthews? Anybody know either of these two
22 attorneys?

23 (There was no response.)

24 Thank you, counsel.

25 Now, because the solicitor's office works very

1 closely with law enforcement, in this case it's been
2 investigated by the Richland County Sheriff's Department.

3 I need to know if any member of the jury panel is
4 related by blood, connected by marriage or employment or
5 in any way involved in the business of law enforcement.

6 If you have relatives or you, yourself, are involved,
7 I need to know that, and that can mean anything from the
8 Richland County Sheriff's Office, City of Columbia Police
9 Department, any military police force, the State Law
10 Enforcement Division, DEA, any law enforcement agency that
11 either you or a member of your family or a close personal
12 acquaintance are involved with.

13 Let me just start with the gentleman with the plaid
14 shirt on. Your number, please?

15 PROSPECTIVE JUROR: 108.

16 THE COURT: 108, and how are you --

17 PROSPECTIVE JUROR: My father is a retired agent from
18 the Columbia Police Department.

19 THE COURT: Your father is a retired detective from
20 the Columbia Police Department?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: All right. Sir, would that fact in any
23 way interfere with your ability to give both the State and
24 the defendant a fair and impartial trial in this case?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Thank you very much, Mr. 108.

2 Yes, ma'am with the black blouse on.

3 PROSPECTIVE JUROR: 117.

4 THE COURT: 1-1-7.

5 PROSPECTIVE JUROR: My husband is employed with South
6 Carolina Law Enforcement Division, and I'm close personal
7 friends with Leon Lott.

8 THE COURT: You've got them both covered.

9 PROSPECTIVE JUROR: I also have a cousin on Richland
10 County so...

11 THE COURT: Could you give me the name of your
12 cousin?

13 PROSPECTIVE JUROR: Mike Lockbee (phonetic).

14 THE COURT: Mike what?

15 PROSPECTIVE JUROR: Lockbee.

16 THE COURT: Lockbee.

17 Can you tell me what your husband does for SLED? Is
18 he involved in the laboratory?

19 PROSPECTIVE JUROR: He is a retired agent, and he is
20 a fingerprint examiner.

21 THE COURT: Fingerprint, okay. Ms. 117, would those
22 factors and those experiences in your life, would those
23 factors in any way interfere with your ability to give
24 both the State and the defendant a fair and impartial
25 trial?

1 PROSPECTIVE JUROR: I'm not sure.

2 THE COURT: I thought you might say that. All right.
3 Thank you very much, Ms. 117.

4 The lady with the white and black jacket.

5 PROSPECTIVE JUROR: 2-2-1.

6 THE COURT: Yes, ma'am.

7 PROSPECTIVE JUROR: I was married to a City of
8 Columbia investigator for about 12 years. He is my son's
9 father.

10 THE COURT: All right.

11 PROSPECTIVE JUROR: I'm pretty sure he was roommates
12 with Ms. Bodman's husband for several years.

13 THE COURT: She -- he was --

14 PROSPECTIVE JUROR: He was roommates with her
15 husband --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: -- for about the first four years
18 that we were dating before we were married.

19 THE COURT: All right. Do you -- did you have any
20 knowledge of Ms. Bodman -- Mrs. Bodman, no connection?

21 PROSPECTIVE JUROR: We have not met personally, but I
22 did know.

23 THE COURT: You know who she is?

24 PROSPECTIVE JUROR: Uh-huh.

25 THE COURT: Okay. Ms. 221, would that fact in any

1 way interfere with your ability to give both the State and
2 the defendant a fair and impartial trial?

3 PROSPECTIVE JUROR: No, I don't believe so.

4 THE COURT: Thank you very much, Ms. 221.

5 Yes, ma'am?

6 PROSPECTIVE JUROR: 208.

7 THE COURT: 2-0-8?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Yes, ma'am.

10 PROSPECTIVE JUROR: I'm a military police officer. I
11 was active duty for eight years, and I'm a military police
12 instructor in the United States Army Reserve.

13 THE COURT: You were a military policeman for eight
14 years, and now you are an instructor?

15 PROSPECTIVE JUROR: Military police instructor.

16 THE COURT: All right. Would that fact in any way
17 interfere with your ability to give both the State and the
18 defendant a fair and impartial trial?

19 PROSPECTIVE JUROR: I'm not sure.

20 THE COURT: Ma'am?

21 PROSPECTIVE JUROR: I'm not sure.

22 THE COURT: You're not sure?

23 PROSPECTIVE JUROR: No.

24 THE COURT: All right. Ma'am, I'll ask you some more
25 questions and maybe that will help you make a decision,

1 okay.

2 Yes, ma'am, in the blue?

3 PROSPECTIVE JUROR: 275.

4 THE COURT: Yes, ma'am.

5 PROSPECTIVE JUROR: I'm affiliated with the Richland
6 County Sheriff's Department Search and Rescue.

7 THE COURT: Search and Rescue?

8 PROSPECTIVE JUROR: Uh-huh.

9 THE COURT: What do you mean you're affiliated?

10 PROSPECTIVE JUROR: I ride with the Richland County
11 Sheriff's Department posse.

12 THE COURT: Okay. Mrs. 275, would that fact in any
13 way interfere with your ability to give both the State and
14 the defendant a fair and impartial trial?

15 PROSPECTIVE JUROR: I don't believe so.

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

17 All right. Now, anybody else?

18 (There was no response).

19 All right. I'm going to carry that one step further.
20 Does somebody have their hand up?

21 Yes, ma'am.

22 PROSPECTIVE JUROR: I'm juror number 98.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: I'm close friends with two, two
25 brothers that are twins, with the sheriff's department,

1 detective.

2 THE COURT: I can't quite hear you. You're friends
3 with some two --

4 PROSPECTIVE JUROR: I grew up with two --

5 THE COURT: Two people who are twins --

6 PROSPECTIVE JUROR: Two people who are detectives
7 with the Richland Sheriff's Department.

8 THE COURT: They are detectives there now?

9 PROSPECTIVE JUROR: One of them retired, but I think
10 he said he went back to work the last time I talked to
11 him.

12 THE COURT: Could you give him his name?

13 PROSPECTIVE JUROR: Livingston.

14 THE COURT: Mr. Livingston.

15 PROSPECTIVE JUROR: And one of our church members, he
16 is an FBI agent, Benjamin Blocker.

17 THE COURT: Blocker. All right. Ms. 298, would that
18 fact in any way interfere with your ability to give both
19 the State and the defendant a fair and impartial trial?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you very much, Ms. 98.

22 As I said, I'm going to carry that one step further
23 and ask if any member of the jury panel is a contributor
24 to or supporter of, very much like juror 275, law
25 enforcement or groups which have as their primary function

1 the support of law enforcement. For example, groups such
2 as the State Troopers Association; the Sheriff's
3 Association; Mother's Against Drunk Driving; Students
4 Against Drunk Driving; Citizens Against Violence, any of
5 these groups that you support.

6 I would even include groups like Sistercare, groups
7 like the Austin-Wilkes Society that does work with law
8 enforcement, works with people who are coming out of
9 prison, any of these groups that you support either as a
10 volunteer or with your financial contributions, any member
11 of the jury panel give to any of these groups or support
12 any of these groups as a volunteer?

13 Yes, ma'am with the blue blouse on, the number?

14 PROSPECTIVE JUROR: 159.

15 THE COURT: 159, okay.

16 PROSPECTIVE JUROR: Just financial contributions to
17 Sistercare.

18 THE COURT: Sistercare, all right. Thank you.
19 With the white sweater?

20 PROSPECTIVE JUROR: 225.

21 THE COURT: Yes, ma'am.

22 PROSPECTIVE JUROR: Sistercare, financial.

23 THE COURT: Sistercare.

24 Yes, sir with the black, yes, sir.

25 PROSPECTIVE JUROR: Sistercare.

1 THE COURT: Number, please?

2 PROSPECTIVE JUROR: I'm sorry, 211.

3 THE COURT: 2-1-1.

4 PROSPECTIVE JUROR: I donated to Sistercare and the
5 sheriff's department and the other one you mentioned.

6 THE COURT: The Troopers' Association.

7 PROSPECTIVE JUROR: Troopers Association.

8 THE COURT: All right. Mr. 211, let me ask you a
9 question. I'm doing a little private survey.

10 When you give to your Troopers' Association, did you
11 get a little sticker to put on the back of your car?

12 PROSPECTIVE JUROR: I did.

13 THE COURT: Did you put it on your car?

14 PROSPECTIVE JUROR: I did.

15 THE COURT: Have you ever gotten a ticket?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: You just ruined my theory.

18 Thank you, Mr. 211.

19 I didn't mean to embarrass you.

20 Yes, ma'am.

21 PROSPECTIVE JUROR: Juror 98. I give occasionally to
22 different charities, the sheriff's department and
23 organizations like Sistercare.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR: And Mothers Against Drunk

1 Drivers.

2 THE COURT: Okay. Thank you very much, Ms. 98.

3 Yes, ma'am?

4 PROSPECTIVE JUROR: Juror 287. I'm not sure how to
5 answer this, but my church does a lot with Sistercare and
6 I will volunteer a lot, maybe once or twice with the Boys'
7 Home.

8 THE COURT: With what?

9 PROSPECTIVE JUROR: The Boys' Home.

10 THE COURT: Boys' Home?

11 PROSPECTIVE JUROR: Right.

12 THE COURT: All right. Thank you very much, Ms. 287.

13 Then back, 275, of course, told us that you
14 volunteered with the sheriff's posse.

15 PROSPECTIVE JUROR: Yes.

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

17 Anybody else?

18 (There was no response.)

19 All right. Now, the defendant in this case today is
20 Mr. Edward Maurice Dunn.

21 Mr. Dunn, would you stand and face the jury panel,
22 please?

23 (Complies.)

24 Any member of the jury panel related by blood,
25 connected by marriage or employment or a close personal

1 acquaintance of Mr. Edward Maurice Dunn? Anybody know
2 Mr. Dunn?

3 (There was no response.)

4 Anybody? All right. Thank you very much, sir.

5 Mr. Dunn is represented in this matter today by
6 Mr. Deon O'Neil and Mr. Victor Li. Mr. O'Neil being on
7 your left, and Mr. Li being on your right.

8 Any member of the jury panel related by blood,
9 connected by marriage or employment or a close personal
10 acquaintance of either of these two lawyers, attorneys,
11 who practice here in Richland County? Any member of the
12 jury panel either know them or have been represented by
13 them presently or at some time in the past?

14 All right. Thank you, gentlemen.

15 Now, ladies and gentlemen, what I hold in my hand are
16 what are known as indictments. These are pieces of paper,
17 obviously.

18 They are the formal documents by which a case is
19 brought into court. They are the charging documents, in
20 other words, the documents which charge the defendant with
21 a specific crime.

22 They are not evidence of anything, and when I read
23 them to you -- and I'm going to tell you what the charges
24 are in this case, obviously -- you are not to assume
25 anything by the fact that this individual, Mr. Dunn, was

1 indicted. You are not to assume anything from the fact
2 that he has been indicted for these charges.

3 Any individual in the State of South Carolina and
4 this United States is presumed innocent of the charges
5 brought against him by the State until such time as those
6 charges are proven to a guilt -- a guilty beyond -- proven
7 to a jury of guilt beyond a reasonable doubt.

8 So these are just charges. They are not evidence of
9 anything other than the fact that these are, as I say, the
10 documents by which the defendant is brought into court,
11 but I need to tell you what he's charged with just so I'll
12 know whether you have any particular knowledge of this
13 case or any knowledge of any of the allegations contained
14 in this case.

15 Now, there are four indictments, and they all allege
16 that on May 28th, 2011 -- May 28th, 2011 -- at [REDACTED]
17 [REDACTED] -- [REDACTED] -- in Richland
18 County, that's the date and the location of the alleged
19 crime.

20 So some of you may live in that neighborhood, I don't
21 know, but the charging documents charge Mr. Edward Maurice
22 Dunn with burglary in the first degree in that Edward
23 Maurice Dunn, Jr. did in Richland County on or about May
24 28th, 2011 enter the dwelling of Indira Lonsdale, as I
25 said located at [REDACTED], without consent and

1 with the intent to commit a crime therein, and when in
2 effecting entry or while in the dwelling or immediate
3 flight, the defendant did enter or remain during the night
4 and/or was armed with a deadly weapon and did -- or did
5 cause physical injury to a person who was not a
6 participant in the crime and/or did threaten or use a
7 dangerous instrument or display what appeared to be a
8 knife, pistol, revolver, rifle, shotgun or other firearm.

9 So that's the first charge, burglary in the first
10 degree at that location, May 28th, 2011 in the nighttime
11 May 28th, 2011.

12 The second charge is that Edward Maurice -- is
13 kidnapping; that Edward Maurice Dunn did on May 28th in
14 Richland County unlawfully seize, kidnap, abduct or carry
15 away Indira Lonsdale without the authority of law.

16 The third charge is that -- is armed robbery in that
17 Edward Maurice Dunn did on or about May 28th, 2011 commit
18 a robbery by feloniously taking from the person or
19 presence of Indira Lonsdale by means of force or
20 intimidation goods or money of Indira Lonsdale, such goods
21 or money being described as jewelry and/or money to
22 deprive -- with the intent to deprive the owner
23 permanently of such property while armed with a pistol or
24 other deadly weapon or while alleging either by actions or
25 words that he was armed while using a deadly weapon.

1 The fourth indictment is assault with intent to
2 commit criminal sexual conduct in the first degree, which
3 traditionally was the -- called rape. It is now called,
4 identified, as assault with intent to commit criminal
5 sexual conduct in the first degree in that Edward Maurice
6 Dunn did in Richland County on or about May 28th, 2011
7 commit an assault with the intent to commit a sexual
8 battery upon and with the body of Indira Lonsdale, and the
9 defendant used aggravated force with the intent to
10 accomplish such sexual battery and/or the victim submitted
11 to such sexual battery under such circumstances where the
12 victim was also the victim of a kidnapping, burglary, or
13 robbery or other similar act.

14 So that's it. Those are the four charges: Burglary
15 in the first degree, kidnapping, armed robbery, and
16 assault with intent to commit criminal sexual conduct in
17 the first degree.

18 Now, the first question I need to ask is does any
19 member of the jury panel know anything about this case,
20 heard anything about the case, read anything about this
21 case?

22 I don't know if it was reported in the media or not.
23 It may have been, it may not have been. I just have no
24 knowledge, but it's approximately a year ago, on May 28th,
25 2011.

1 Any member of the jury panel remember anything about
2 this case or know anything about this case either from
3 your neighborhood or from the media or anything else?

4 (Pause).

5 I'm sorry. Your number, please?

6 PROSPECTIVE JUROR: Sixty-seven.

7 THE COURT: Sixty-seven. Yes, sir?

8 PROSPECTIVE JUROR: I stayed not far from that. I
9 remember hearing about this incident just by word of
10 mouth.

11 THE COURT: Word of mouth?

12 PROSPECTIVE JUROR: Yeah.

13 THE COURT: All right. Do you recall if -- if you
14 had any conversations with people about it who may have
15 expressed any opinion about the guilt or innocence of this
16 defendant?

17 PROSPECTIVE JUROR: No. They were just -- you know,
18 just talking about what happened, you know.

19 THE COURT: Okay. Was this defendant's name
20 mentioned?

21 PROSPECTIVE JUROR: I can't --

22 THE COURT: As best you can remember.

23 PROSPECTIVE JUROR: I can't -- you know, nobody was
24 really saying a name or whatever. You know, so --

25 THE COURT: Okay. Not a friend of somebody who is a

1 friend of somebody?

2 PROSPECTIVE JUROR: It was just kind of like, "Did
3 you hear about what happened down there?"

4 THE COURT: Over the road?

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: Okay. As a result of that of discussion
7 or whatever that you might have had, did you, yourself,
8 come to any conclusions about this case one way or the
9 other?

10 PROSPECTIVE JUROR: This side of town is a little
11 notorious. There's not too many times people -- they
12 didn't really do what they were accused of.

13 THE COURT: Okay. All right. Let me ask you this:
14 Based on your knowledge of this case, do you think that
15 you could be fair and impartial to both the State and the
16 defendant in deciding this case?

17 PROSPECTIVE JUROR: I don't really think so.

18 THE COURT: Sir?

19 PROSPECTIVE JUROR: No, sir.

20 THE COURT: All right. Thank you very much. I
21 appreciate your candor, Mr. 67.

22 Anybody else?

23 (There was no response.)

24 Any member of the jury panel -- and I'm not going to
25 ask you a lot of details about it, but any member of the

1 jury panel or any member of your family ever been the
2 victim of a violent crime?

3 Number, please, again.

4 PROSPECTIVE JUROR: 159.

5 THE COURT: Ma'am?

6 PROSPECTIVE JUROR: 159.

7 THE COURT: You or a member of your family?

8 PROSPECTIVE JUROR: Me.

9 THE COURT: All right. Can you tell me what it was?

10 PROSPECTIVE JUROR: May I approach?

11 THE COURT: Yes, ma'am.

12 Counsel.

13 (Whereupon, there was a bench conference.)

14 THE COURT: Anyone else?

15 PROSPECTIVE JUROR: I was raped when I was 11 also by
16 four white males.

17 THE COURT: When you were the 11? What else did you
18 say?

19 PROSPECTIVE JUROR: I was raped on a bus school when
20 I was 11.

21 THE COURT: On a school bus, okay. I didn't hear
22 that part.

23 And your number again?

24 PROSPECTIVE JUROR: 221.

25 THE COURT: 221. Ms. 221, would that fact --

1 PROSPECTIVE JUROR: Yes, it would. It would affect
2 me.

3 THE COURT: It would affect you.

4 PROSPECTIVE JUROR: Uh-huh.

5 THE COURT: All right. Thank you very much, ma'am.

6 And when I say violent crimes, I don't just mean
7 sexual assaults, any violent crime that you or a member of
8 your family has been the victim of. It could be any
9 violent crime.

10 PROSPECTIVE JUROR: Can I approach?

11 THE COURT: Yes, ma'am. Give me your number first.

12 PROSPECTIVE JUROR: Sixty-two.

13 THE COURT: Sixty-two, all right.

14 (Whereupon, there was a bench conference.)

15 THE COURT: Yes, ma'am.

16 PROSPECTIVE JUROR: Seventy-two.

17 THE COURT: Seventy-two.

18 PROSPECTIVE JUROR: Yes, sir, and I have a cousin who
19 was murdered last year in Augusta.

20 THE COURT: In Augusta, a cousin?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Ms. 72, would that fact, do you think
23 that fact, that experience in your family, would prevent
24 you from being fair and impartial to both parties in this
25 case, or do you think you could be fair and impartial?

1 PROSPECTIVE JUROR: Yes, sir, I think so.

2 THE COURT: Thank you very much, Ms. 72.

3 Anybody else?

4 (There was no response).

5 All right. I'm going to ask you the reverse of that.

6 Any member of the jury panel or any member of your family
7 ever been accused of committing a violent crime?

8 Any member of the jury panel or any member of your
9 family ever being accused, and I say that in law
10 enforcement sense, not just in a trivial sense, but in --
11 I mean actually accused of a violent crime.

12 Your number again, please?

13 PROSPECTIVE JUROR: 287.

14 THE COURT: Yes, ma'am.

15 PROSPECTIVE JUROR: I have a cousin who is serving
16 time now for murder.

17 THE COURT: A cousin?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: For what?

20 PROSPECTIVE JUROR: Cousin.

21 THE COURT: Where?

22 PROSPECTIVE JUROR: In Richland County.

23 THE COURT: Richland County. All right. Ms. 287,
24 I'll ask you again. Well, I didn't ask you the first
25 time. Those were the other ones.

1 Anyway, would that fact in any way interfere with
2 your ability to give both the State and the defendant a
3 fair and impartial trial?

4 PROSPECTIVE JUROR: No, sir.

5 THE COURT: Thank you very much, Ms. 287.

6 Ninety-eight.

7 PROSPECTIVE JUROR: Ninety-eight. May I approach?

8 THE COURT: Yes, ma'am.

9 (Whereupon, there was a bench conference.)

10 THE COURT: Thank you, Ms. 98.

11 (Whereupon, there was a bench conference.)

12 THE COURT: Anybody else?

13 (There was no response.)

14 All right. Ladies and gentlemen, I'm going to read
15 out a list of jurors -- I'm sorry. You're the jurors.
16 I'm going to read out a list of potential witnesses in
17 this case, and I need you to tell me if -- when you see or
18 hear the names of the witnesses, if you are in any way
19 related by blood, connected by marriage or employment or a
20 close personal acquaintance of any one of the following:
21 Indira Lonsdale.

22 This is Ms. Lonsdale who is the alleged victim in
23 this case.

24 Anybody know Ms. Lonsdale?

25 (There was no response.)

1 Thank you, ma'am.

2 Deputy -- these are all Richland County Sheriff's
3 Department employees unless I tell you different: Deputy
4 Benjamin Lasher; Investigator Kerry Johnson. And all of
5 these people may not be here at the moment but may be
6 called during the course of the trial.

7 Sergeant Don Robinson; Mr. Gray Amick. He is with --
8 again, with the Richland County Sheriff's Office;
9 Investigator John Baker; Investigator Nina Ducate; Deputy
10 Jamie Lucas; Investigator Joshua Mauldin. This is
11 Mr. Mauldin.

12 Christine Brickerman -- or Barrickman; John Barron;
13 Donald Moore; Patricia Weed; Anthony Branham; Investigator
14 Shawn Schroder; William Cedarstaff; Investigator Kevin
15 Isenhoward, Curtis Burnett; Deputy Joseph Richburg;
16 Investigator John Carwell; Rhett Hall, and Mr. Lavonne
17 Arrington, who is not a member of the Richland County
18 Sheriff's Department.

19 Yes, sir.

20 PROSPECTIVE JUROR: I've dealt with Detective
21 Isenhoward before.

22 THE COURT: All right.

23 How long ago or it's fairly currently?

24 PROSPECTIVE JUROR: A couple of years ago.

25 THE COURT: All right. Aside from that, are you

1 personal acquaintances?

2 PROSPECTIVE JUROR: No.

3 THE COURT: Friends, go to church?

4 PROSPECTIVE JUROR: No.

5 THE COURT: The fact that you have some dealings with
6 Kevin Isenhoward, would that fact in any way interfere
7 with your ability to give both the State and the defendant
8 a fair and impartial trial in this case?

9 PROSPECTIVE JUROR: No, it would not.

10 THE COURT: Thank you very much.

11 I'm sorry, what was your number again?

12 PROSPECTIVE JUROR: 211.

13 THE COURT: 211.

14 Thank you very much, Mr. 211.

15 Anyone else recognize any of those names?

16 (There was no response.)

17 Any other witnesses, Mr. O'Neil?

18 MR. O'NEIL: No, Your Honor.

19 THE COURT: Okay. From the State?

20 MS. FENT: Yes, Your Honor, Major Stan Smith. You
21 didn't inquire about Major Stan Smith.

22 THE COURT: Major Stan Smith with the Richland County
23 Sheriff's Department.

24 (There was no response.)

25 All right. Ladies and gentlemen, I've told you who

1 the people, the parties are, who the people are that are
2 going to be involved in the course of this trial, told you
3 what the charges are against the defendant.

4 I've asked you a series of questions with regard to
5 those indictments. I need to know if there's any member
6 of the jury panel other than those people who have already
7 told me so, who feel that they could not be fair and
8 impartial in listening to the evidence in this case,
9 listening to the attorneys, listening to me as I talk
10 about the law and be able to sit and fairly decide guilt
11 or innocence of the defendant from the evidence that you
12 hear in this case?

13 Any member of the jury panel feel that they cannot do
14 that for some -- any reason other than those who have
15 already told me?

16 (There was no response.)

17 All right. Anything further from the State?

18 MS. FENT: No, Your Honor.

19 THE COURT: From the defense?

20 MR. O'NEIL: No, Your Honor.

21 THE COURT: Approach the bench, please. With your...

22 (Whereupon, there was a bench conference.)

23 THE COURT: Ladies and gentlemen, one other or two
24 other witnesses I failed to call out. I wasn't aware of
25 that may be called in this case are the defendant's mother

1 and father, Mr. Edward Dunn, Sr. and Ms. Diane Dunn.

2 Any member of the jury panel know either of these two
3 individuals, Mr. Dunn's parents?

4 (There was no response).

5 All right. Anything further from the State?

6 MS. FENT: No, Your Honor.

7 THE COURT: Anything further from the defense?

8 MR. O'NEIL: No, Your Honor.

9 THE COURT: All right. Madam clerk, when you're
10 ready, please strike the jury, give us a jury.

11 THE CLERK: Ladies and gentlemen of the jury panel,
12 when I call your number, bring all your personal
13 belongings with you. Please come to the center of the
14 room here. State your juror number and your occupation,
15 please.

16 261.

17 (White female.)

18 PROSPECTIVE JUROR: 261, food service for Lexington
19 2, school district 5.

20 THE CLERK: What says the State?

21 MS. FENT: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. O'NEIL: Please excuse this juror.

24 THE CLERK: Have a seats in the back of the
25 courtroom, please.

1 279.

2 (White male.)

3 PROSPECTIVE JUROR: 279, restaurant manager.

4 THE CLERK: What says the State?

5 MS. FENT: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. O'NEIL: Please excuse the juror.

8 THE CLERK: Have a seat in the back of the courtroom,
9 please.

10 Twenty-seven.

11 MS. FENT: I apologize. What was that number again?

12 THE CLERK: Twenty-seven.

13 THE DEPUTY: Sir.

14 PROSPECTIVE JUROR: Sorry.

15 (Black male.)

16 PROSPECTIVE JUROR: Juror 27, unemployed at the
17 present.

18 THE CLERK: What says the State?

19 MS. FENT: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. O'NEIL: Please present the juror.

22 THE CLERK: Have a seat in the jury box, please.

23 (There was no response.)

24 THE COURT: Look at your badges.

25 THE CLERK: 211.

1 PROSPECTIVE JUROR: Oh, I'm sorry.

2 (White male.)

3 PROSPECTIVE JUROR: Self-employed, home builder,
4 developer.

5 THE CLERK: What says the State?

6 MS. FENT: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. O'NEIL: Please excuse the juror.

9 THE CLERK: Have a seat in the back of the courtroom,
10 please.

11 187.

12 (Black female.)

13 PROSPECTIVE JUROR: 187, machine operator for Prime
14 Contracting Service.

15 THE CLERK: What says the State?

16 MS. FENT: Please presents the juror.

17 THE CLERK: What says the defense?

18 MR. O'NEIL: Please seat the juror.

19 THE CLERK: Have a seat in the jury box, please.

20 THE BAILIFF: Watch your step, ma'am.

21 THE CLERK: 225.

22 (White female.)

23 PROSPECTIVE JUROR: Registered nurse, 225.

24 THE CLERK: What says the State?

25 MS. FENT: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. O'NEIL: Please excuse the juror.

3 THE CLERK: Have a seat in the back of the courtroom.
4 120.

5 (Black male.)

6 PROSPECTIVE JUROR: Juror 120. I got two jobs. I
7 work for a warehouse, and I do a janitorial job on my day
8 job.

9 THE CLERK: What says the State?

10 MS. FENT: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. O'NEIL: Please seat the juror.

13 THE CLERK: Have a seat in the jury box, please.

14 THE BAILIFF: Watch your step, please.

15 THE CLERK: 299.

16 (White female.)

17 PROSPECTIVE JUROR: 299. I'm a college student at
18 USC.

19 THE CLERK: What says the State?

20 MS. FENT: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. O'NEIL: Please seat the juror.

23 THE CLERK: Have a seat in the witness box.

24 305.

25 (Black male.)

1 PROSPECTIVE JUROR: 305, auto mechanic.

2 THE CLERK: What says the State?

3 MS. FENT: Please present the juror.

4 THE CLERK: What says the defendant?

5 MR. O'NEIL: Please seat the juror.

6 THE CLERK: Have a seat in the jury box.

7 THE COURT: What did you say is your occupation?

8 PROSPECTIVE JUROR: Auto mechanic.

9 THE COURT: Mechanic?

10 PROSPECTIVE JUROR: Uh-huh.

11 THE CLERK: 216.

12 (White female.)

13 PROSPECTIVE JUROR: 216. I'm a teen program
14 director.

15 THE CLERK: What says the State?

16 MS. FENT: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. O'NEIL: Please excuse the juror.

19 THE CLERK: Have a seat in the back of the courtroom.
20 262.

21 (White female.)

22 PROSPECTIVE JUROR: 262, I'm a retired elementary
23 school teacher.

24 THE CLERK: What says the State?

25 MS. FENT: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. O'NEIL: Please excuse the juror.

3 THE CLERK: Have a seat in the back of the courtroom.

4 Sixty-one.

5 (White female.)

6 PROSPECTIVE JUROR: Number 61. I'm college student
7 at USC.

8 THE CLERK: What says the State?

9 MS. FENT: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. O'NEIL: Please seat the juror.

12 THE CLERK: Have a seat in the jury box.

13 110.

14 (White male.)

15 PROSPECTIVE JUROR: Juror 110, construction.

16 THE CLERK: What says the State?

17 MS. FENT: Please present the juror.

18 THE CLERK: What says the defense?

19 MR. O'NEIL: Please excuse the juror.

20 THE CLERK: Have a seat in the back of the courtroom,
21 please.

22 Thirty-six.

23 (White female.)

24 PROSPECTIVE JUROR: I'm a dental hygienist with Miles
25 and Miles dentistry.

1 THE CLERK: What says the State?

2 MS. FENT: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. O'NEIL: Please seat the juror.

5 THE CLERK: Have a seat in the jury box.

6 THE BAILIFF: Watch your step.

7 THE CLERK: Ninety-eight.

8 (Black female.)

9 PROSPECTIVE JUROR: I'm 98. I'm retired.

10 THE CLERK: What says the State?

11 MS. FENT: Please excuse the juror.

12 THE CLERK: Have a seat in the back of the courtroom.

13 163.

14 (White male.)

15 PROSPECTIVE JUROR: I'm 163, and I'm a college
16 student.

17 THE CLERK: What says the State?

18 MS. FENT: Please present the juror.

19 THE CLERK: What says the defense?

20 MR. O'NEIL: Please seat the juror.

21 THE CLERK: Have a seat in the jury box.

22 Ninety-one.

23 (Black female.)

24 PROSPECTIVE JUROR: Juror 91. I'm a housewife.

25 THE CLERK: What says the State?

1 MS. FENT: Please present the juror.

2 THE CLERK: What says the defense?

3 MR. O'NEIL: Please present the juror.

4 THE CLERK: Have a seat in the jury box.

5 275.

6 (White female.)

7 PROSPECTIVE JUROR: 275, project manager with AT&T.

8 THE CLERK: What says the State?

9 MS. FENT: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. O'NEIL: Please excuse the juror.

12 THE CLERK: Have a seat in the back of the courtroom.

13 108.

14 (White male.)

15 PROSPECTIVE JUROR: 108.

16 (Unintelligible.)

17 THE COURT REPORTER: I'm sorry, I couldn't hear your
18 occupation.

19 PROSPECTIVE JUROR: Outdoor program coordinator.

20 THE COURT REPORTER: Thank you.

21 THE CLERK: What says the State?

22 MS. FENT: Please excuse the juror.

23 THE CLERK: Have a seat in the back of the courtroom.

24 201.

25 (Black female.)

1 PROSPECTIVE JUROR: 201, supply tech.

2 THE CLERK: What says the State?

3 MS. FENT: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. O'NEIL: Please seat the juror.

6 THE CLERK: Have a seat in the jury box.

7 289.

8 (White female.)

9 PROSPECTIVE JUROR: 289, administrative assistant.

10 THE CLERK: What says the State?

11 MS. FENT: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. O'NEIL: Please seat the juror.

14 THE CLERK: Have a seat in the jury box, please.

15 Thirty-four.

16 (White male).

17 PROSPECTIVE JUROR: Number 34. I'm a freelancer in
18 the film and video industry.

19 THE CLERK: What says the State?

20 MS. FENT: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. O'NEIL: Please excuse the juror.

23 THE CLERK: Have a seat in the back of the courtroom.

24 263.

25 (White male.)

1 PROSPECTIVE JUROR: I'm juror 263, I'm a
2 self-employed masonry contractor.

3 THE CLERK: What says the State?

4 MS. FENT: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. O'NEIL: Please excuse the juror.

7 THE CLERK: Have a seat in the back row, please.
8 Seventy-nine.

9 (White female.)

10 State, two strikes; defense, ten.

11 PROSPECTIVE JUROR: Seventy-nine. Presently, I am
12 press technician from the United Methodist Outreach
13 Center.

14 THE CLERK: What says the State?

15 MS. FENT: Please present the juror.

16 THE CLERK: Does the defense challenge for cause?

17 MR. O'NEIL: No.

18 THE CLERK: Have a seat in the jury box, please.

19 THE BAILIFF: Watch your step.

20 THE CLERK: 169, alternate.

21 (White male.)

22 PROSPECTIVE JUROR: 169, I'm a district manager.

23 THE CLERK: What says the State?

24 MS. FENT: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. O'NEIL: Please excuse the juror.

2 THE CLERK: Have a seat in the back of the courtroom.

3 Forty.

4 (White female.)

5 PROSPECTIVE JUROR: Number 40. I'm a nurse.

6 THE CLERK: What says the State?

7 MS. FENT: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. O'NEIL: Please seat this juror.

10 THE CLERK: Have a seat in the jury box, please.

11 THE BAILIFF: Watch your step, ma'am.

12 THE CLERK: 191.

13 (White female.)

14 PROSPECTIVE JUROR: I'm 191. I'm a student at USC.

15 THE CLERK: What says the State?

16 MS. FENT: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. O'NEIL: Please seat the juror.

19 THE CLERK: Have a seat in the jury box, please.

20 THE BAILIFF: Watch your step.

21 THE COURT: Any objection to the jury selection

22 process from the State?

23 (Pause.)

24 MS. FENT: It's -- no objections, Your Honor.

25 THE COURT: From the defenses?

1 MR. O'NEIL: No, Your Honor.

2 THE COURT: All right.

3 All right. Ladies and gentlemen of the jury of the
4 jury panel who were not selected on this case, I'm going
5 to ask you to return to the jury assembly room for further
6 instructions, but before I do that, I want to thank you
7 for coming, being here and being a part of this process.

8 It's so important that you participate in this
9 process as citizens of this county and this state that
10 your role as jurors was written into the Constitution of
11 the United States some 255 years ago, so your
12 participation is important.

13 We cannot operate this system of justice that we have
14 in this country without you. The system can do without
15 me. It can do without these attorneys, but it cannot do
16 without you. I want you to know that.

17 I want you to believe that you come here for a
18 purpose, and a purpose that all citizens of this state are
19 asked to give to the state and their nation.

20 So I do want to wish you all a pleasant day. I don't
21 know whether there are further instructions from the jury
22 assembly room, but thank you very much for your
23 participation. You're now excused to retire to the jury
24 assembly room.

25 (Whereupon, the unselected members of the jury left

1 the courtroom.)

2 THE COURT: All right. Ladies and gentlemen of the
3 jury, you've been here about an hour-and-a-half now.
4 We're going to take a short break while the attorneys get
5 prepared to make their opening statements to you.

6 So I'm going to ask you to go to the jury room for
7 just a few minutes, relax. The bailiffs are going to show
8 you where your jury room is.

9 During the course of this trial, that's where you
10 will -- it will be your home away from home, so to speak.
11 Just relax for a few minutes, and we'll call you in about
12 ten minutes when we begin -- at which time we will begin
13 the trial.

14 So I am going to ask you not to discuss the case
15 while you're in the jury room. You've only heard my
16 little introduction what about it's about, so it would be
17 improper to start making any comments about the case one
18 way or the other.

19 Just relax for a few minutes. We'll see you in about
20 ten minutes. All right. You're now excused to go to the
21 jury room.

22 THE BAILIFF: Follow me.

23 (WHEREUPON, the jury left open court at approximately
24 10:37 a.m.)

25 THE COURT: We'll stand at ease about ten minutes.

1. (WHEREUPON, a short break was taken.)

2 THE COURT: Is the State ready to proceed?

3 MS. FENT: We are, Your Honor.

4 THE COURT: Is the defense ready to proceed?

5 MR. O'NEIL: We are, Your Honor.

6 THE COURT: Is the clerk ready to proceed?

7 THE CLERK: Yes, Your Honor.

8 THE COURT: Bring the jury, please.

9 (WHEREUPON, the jury came into open court at
10 approximately 10:57 a.m.)

11 (WHEREUPON, State's Exhibits Nos. 5-10 were marked
12 for identification only.)

13 THE BAILIFF: The jury is present, Your Honor.

14 THE COURT: All right. Thank you very much. All
15 right.

16 Ladies and Gentlemen, we're now ready to begin the
17 trial. Will you swear the jurors?

18 THE CLERK: Please stand and raise your right hand to
19 be sworn. Upon completion, if you accept the oath, please
20 respond with, "I do."

21 Do you swear or affirm that you shall well and truly
22 try and true deliverance make, between the State of South
23 Carolina, and the defendant at bar, whom you shall have in
24 charge, and a true verdict give, according to the law and
25 the evidence, so help you God.

1 (All responded affirmatively.)

2 PRETRIAL CHARGE:

3 THE COURT: All right. Ladies and gentlemen, as we
4 begin this trial, I want to tell you that this trial
5 probably will be different from what you might expect.

6 Many people do not have the chance to attend actual
7 court sessions as you are now doing and may think from
8 watching television or movies or reading books that trials
9 are always full of a lot of drama and a lot of action and
10 rivetting circumstances.

11 While all of these things may be true from time to
12 time, this trial is not for entertainment. It's a
13 fundamental part of our democracy, a search for the truth
14 in an effort to make sure that justice is done between the
15 parties before the court.

16 In searching for the truth and making sure that
17 justice is done is often a slow, deliberative and
18 repetitive process, the opposite of what you may have seen
19 on television or read in books or seen in the movies.

20 This courtroom is a place of honor dedicated to the
21 protection and preservation of citizen's rights through
22 what many have called the greatest system of justice ever
23 devised.

24 The attorneys appearing before you are advocates for
25 the parties they represent, but first and foremost, they

1 are officers of this court sworn to uphold the integrity
2 and fairness of our judicial system and to help you in a
3 search for the truth.

4 You should expect them to be professional, competent
5 and ethical in the representation of their client's
6 interests and remember that you have also just taken an
7 oath to try this case and reach a fair and just verdict,
8 so you are also expected to be professional, reasonable
9 and ethical.

10 Now, what I say now is meant to serve as an
11 introduction to the trial of the case. These remarks are
12 not a charge on the law of the case.

13 I'll instruct you what the law is at the end of the
14 trial before you retire to decide the case, but before the
15 trial begins, I want to explain some of the procedure that
16 we will follow so you can better understand what's
17 happening during the course of the trial.

18 Now, I have provided you with notepads and pencils.
19 I hope you all have one. You certainly can take notes
20 during the course of this trial.

21 I would caution you that the notes are only for your
22 benefit and not to try to convince another juror that
23 you're better at taking notes than they are. They are to
24 assist your memory at the end of the trial, because at the
25 end of the trial, which may be sometime tomorrow or the

1 next day, you will be in a position to recall what the
2 witnesses said.

3 Now, as I told you, and you may just want to mark
4 this down also or write this down on your pad, the
5 defendant is charged with four crimes. I'll explain each
6 of the elements of them to you later, but for the purposes
7 of this preliminary instruction, the four crimes are
8 burglary in the first degree, armed robbery, kidnapping
9 and assault with intent to commit criminal sexual conduct
10 in the first degree.

11 As I mentioned to the full jury panel, that's what --
12 assault with intent to commit criminal sexual conduct.
13 Well, that's -- all right.

14 So you're going to have to consider all four of these
15 crimes in -- when you decide, and you're going to have to
16 decide them each separately at the end of the trial,
17 whether you find the defendant guilty or not guilty of
18 each of those four crimes.

19 Now, you've been selected as fair and impartial
20 jurors whose purpose is to find and determine the facts of
21 this case. You are the sole judges of the facts of the
22 case, and if at any time I make any comment regarding the
23 facts, you should disregard my comments.

24 The defendant has pled not guilty to all of these
25 charges, and the State, therefore, has the burden of

1 proving each of the elements of the indictments to you
2 beyond a reasonable doubt.

3 It will be your duty, ladies and gentlemen, to decide
4 whether the State has met that burden. You are to
5 determine the facts from the testimony you hear and any
6 other evidence that is presented during the course of the
7 trial.

8 It's especially important that you perform your duty
9 of determining the facts diligently and contentiously,
10 because ordinarily, there is no way to correct an
11 erroneous determination of the facts by a jury.

12 When you comply with your oath to impartially
13 determine the facts of this case, you will have fulfilled
14 your duty as jurors, and no one will have the right to
15 criticize your verdict.

16 On the other hand and with equal emphasis, the same
17 law that makes you the judges of the facts makes me the
18 judge of the law.

19 You must accept and follow the law even though you
20 may disagree with it. I cannot tell you what the facts
21 are. You should not disagree with me about what the law
22 is or what the law should be.

23 Your job is to take the law as I explained it to you,
24 apply it to the facts as you find them to the testimony,
25 and after doing that, you will render your verdict, a true

1 and just verdict, under the solemn oath you just took as
2 jurors.

3 Now, the procedure we'll follow is basically the
4 State will present its evidence first in the form of
5 witness's testimony and/or exhibits that will be made a
6 part of the record.

7 The defendant will then have the opportunity to
8 present his defense, bearing in mind, however, there is
9 absolutely no burden on the defendant to present any
10 evidence at all.

11 Following that, the attorneys will be allowed to sum
12 up their case, and I'm instruct you on the law in the
13 State of South Carolina as it applies to this case, and
14 after that, the case will be turned over to you for a
15 decision.

16 Now, let me remind you or instruct you about two
17 legal principles that will sort of guide us through this
18 trial. First is the legal yardstick you will use in
19 judging or measuring the evidence in this case.

20 That legal yardstick is known as the burden of proof
21 or the responsibility to prove the elements of the crime.
22 In a criminal case the burden of proof is on the State to
23 prove guilt beyond a reasonable doubt.

24 Should the State fail to meet that burden, it will be
25 your duty to find the defendant not guilty. There is

1 absolutely no burden whatsoever on the defendant to
2 disprove or prove anything.

3 There is no burden on the defendant to testify or
4 present any evidence because the burden is and remains on
5 the State to prove guilt beyond a reasonable doubt.

6 Secondly, I want to ask you to recall my earlier
7 comment to the entire jury panel concerning the
8 presumption of innocence. This is a cardinal and
9 fundamental rule of law that the defendant will always be
10 presumed innocent for the crime or crimes for which he is
11 indicted.

12 Presumption of innocence is not just a simple legal
13 theory or simple legal phrase. It is a substantial right
14 to which any accused, including this defendant, is
15 entitled.

16 Now, until I advise you to begin your deliberations,
17 I'm going to ask you not to discuss this case with anyone,
18 including your fellow jurors, friends or family members or
19 anyone involved in the case, and after the case is
20 submitted to you, I'll ask you to discuss it only in the
21 jury room with your fellow jurors.

22 It's important that you keep an open mind not to
23 decide any issue in this case until all of the evidence
24 has been presented, the parties have made their closing
25 arguments, and I've instructed you on the law of this case

1 as it applies in this case.

2 Now, in just a moment, the attorney for the State
3 will make what's called an opening statement. The
4 attorney will explain to you what the issues in the case
5 are or at least what he she thinks the issues are in this
6 case.

7 The attorney for the defendant will also make an
8 opening statement. What the attorneys tell you during
9 their opening statements is not evidence. It's only their
10 contention as to what the issues are and what the evidence
11 will prove.

12 The evidence in this case will be presented to you by
13 the testimony of sworn witnesses from this witness stand
14 and from any exhibits that may be introduced or made a
15 part of the record.

16 Now, from time to time during the trial, ladies and
17 gentlemen, you may hear one of the lawyers say something
18 like, "Your Honor, I believe we have a question of law or
19 a matter to discuss with you" or "may we approach the
20 bench", or sometimes I, myself, might find it necessary to
21 excuse you for a short period of time while the attorneys
22 and I discuss a matter of law.

23 The reason for this is because you are the judges of
24 the facts. Sometimes when I am discussing a matter of law
25 with the attorneys, it may be necessary for me to make

1 some comment about the facts in connection with a ruling
2 and whether or not a particular law applies or it doesn't
3 apply.

4 I'm not supposed to tell you what I think the facts
5 are, so I'll excuse you from the courtroom for a short
6 period of time while these discussions take place so that
7 you will not be influenced in any way by anything I might
8 say or do in connection with the facts.

9 In determining what the true facts are, you must
10 decide whether or not the testimony of any witness is
11 believable.

12 In deciding whether to believe a witness, you have a
13 right to consider whether the witness has some interest in
14 the result of the trial, whether the witness is prejudiced
15 towards either the State or the defendant and the
16 opportunity for the witness to have seen the matters and
17 things about which the witness may testify and the way the
18 witness acts on the witness stand.

19 Now, ladies and gentlemen, you and I do not ask
20 questions of witnesses. We do not offer any exhibits.
21 This is not CSI. Your duty is to listen openly and
22 honestly to the evidence. Keep an open mind. Do not form
23 any conclusions or judgments until you have received and
24 considered all of the evidence in the case, the arguments
25 of the attorneys and my final instructions to you on the

1 law.

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

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

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

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

18 Solicitor.

19 OPENING STATEMENT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 Edward Dunn is charged with those four crimes that

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

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

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

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

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

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

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

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

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

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

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

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

25 The first crime with which he is charged is assault

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Thank you.

14 THE COURT: Mr. Li.

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

17 OPENING STATEMENT:

18 MR. LI: Good morning, ladies and gentlemen.

19 THE JUROR: Good morning.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 They want to get this criminal sexual conduct, and

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

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

5 THE COURT: Overruled. Go ahead.

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

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

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

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

25 Be cognizant that they are going to be tugging on

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

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

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

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

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

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

1 choose what they want you to believe.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 MR. MATTHEWS: Objection, Your Honor. This is

1 argumentive. This is opening, not closing.

2 THE COURT: Sustained. Move on, please.

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

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

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

14 All right. Solicitor, call your first witness.

15 MS. FENT: The State calls Indira Lonsdale.

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

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

20 THE BAILIFF: Watch your step. State your name.

21 (There was no response.)

22 DIRECT EXAMINATION:

23 BY MS. FENT:

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

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

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

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

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

11 Q You said Carters, Inc.?

12 A Carters, yes.

13 Q Okay. And developing felt tip pens?

14 A Uh-huh.

15 Q Okay. What else?

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

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

22 A I came here in '86.

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

25 A [REDACTED] [REDACTED].

1 Q And how long have you lived at that Patterson Road
2 home?

3 A About 17 years.

4 Q Did you move here by yourself or with your children?

5 A No. I came with a companion.

6 Q Okay. And what are your children doing now? Where
7 are they and what kind of jobs do they have?

8 A I have one in New York, one in Kansas City, and one
9 still in Akron, Ohio.

10 Q And what kinds of things do they do?

11 A The one in New York is a designer. The one in Kansas
12 City is a manager for a car dealership, and my eldest one,
13 my daughter, is retired.

14 Q Okay. So the house at [REDACTED], [REDACTED], do you
15 live there by yourself?

16 A I do.

17 Q In May of 2011, I guess up until May of 2011, had
18 your house ever been burglarized until that month?

19 A About two years before that.

20 Q Okay. Other than that, any other --

21 A No.

22 Q So then in May of 2011, when was your house first
23 burglarized?

24 A May 21st.

25 Q Okay. And were you home when that happened?

1 A No.

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

4 A Probably around eight o'clock.

5 Q P.m. or a.m.?

6 A P.m.

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

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

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

18 Q You said of your dresser drawer?

19 A Yeah.

20 Q So this is in what room in your house?

21 A In the bedroom.

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

24 A Yeah.

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

1 A I discovered the money was missing, over 3,000.
2 There may have been more but a rough guess was over \$3,000
3 because I was saving that money.
4 Q Okay. What were your saving that money for?
5 A For dental work. I was facing a big dental bill.
6 Q Did you report that burglary to the police?
7 A I did.
8 Q Okay. And did they show up and...
9 A Yes.
10 Q I guess try to do whatever they could?
11 A Yes.
12 Q Then the following week I want to take you to
13 May 28th of 2011. I guess do you remember anything
14 particular about that day?
15 A No.
16 Q Or the previous day, I guess the May 27th?
17 A No. It was just a normal day like any other day.
18 Q Okay. So in the early morning hours of May 28th,
19 then, what do you remember happening?
20 A The early morning hours, I woke up. I went to put my
21 light on. It didn't come on, so I went back to the
22 kitchen to get a flashlight.
23 Q Okay.
24 A And I saw it was early. I was -- I thought I'm not
25 going to get up, so I went back to bed.

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

3 A Between two and three.

4 Q In the morning?

5 A In the morning.

6 Q Okay.

7 A Yes.

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

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

13 Q Okay. So what did you do then?

14 A I get up.

15 Q Okay.

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

18 Q What kind of dogs do you have?

19 A I have a Pomeranian and a Yorkshire terrier.

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

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

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

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

25 Q Okay. And what happens next then?

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

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

8 Q Okay.

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

12 Q Okay. You said the person is behind you?

13 A Uh-huh.

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

16 A No. I could look down and see shoes.

17 Q Okay. What do you remember about the shoes?

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

20 Q Could you tell, male or a female voice?

21 A It was a male.

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

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

1 Q Okay. Why did you realize that?

2 A Well, because he told me to bend over the bed.

3 Q Okay.

4 A And as I bent over the bed, he put his hand on the
5 bed. I could see he had a gun.

6 Q What, if anything, were your dogs doing at this
7 point?

8 A One of my dogs, the Pomeranian, jumped on the bed and
9 started to bark. The reason he could jump on the bed is
10 because I have little foot stools so they could do that.

11 Q Okay.

12 A The dog start to bark. He told me to make it shut
13 up, and I told him, "I can't." He said put it in the
14 closet.

15 Q So what did you do?

16 A I took the dog. I guess I must have been able to put
17 him under my arm because my hands were tied behind my
18 back. I asked him could we close the door to the outside
19 because I was afraid of my other animals getting out.

20 Q Okay.

21 A I can't recall whether I closed door or he closed it,
22 but the door got closed. I put the Pomeranian in the
23 closet.

24 Q Now, you said that your hands were tied behind your
25 back. Describe for us what you're wearing and how and

1 when does that happen.

2 A I was wearing a bathrobe. That was all --

3 Q Okay.

4 A -- which was tied at the waist with a sash.

5 Q Okay.

6 A And then Mr. Dunn took the sash out from behind my
7 back.

8 Q And when did this happen? Did it happen once you
9 were over the bed?

10 A It happened -- the tying of my hands behind my back
11 happened immediately when he reached over my shoulders and
12 told me to do what he told me to do.

13 Q Okay. So you after the door gets closed and the dogs
14 get out, he also said that -- he said to put the dogs in
15 the closet. What happens next?

16 A Then he took me to the side of the bed, the outside.

17 Q Okay.

18 A Puts his hands down on the bed again and fumbled with
19 his pants trying to unzip them.

20 Q You said at one point that you saw a gun?

21 A Uh-huh.

22 Q Describe when that is and how you see that gun?

23 A I saw the gun on the bed in his hand, saw the
24 handgun. I thought it was a toy at first, but it was
25 something like you would feel.

1 Q So a smaller gun?

2 A A real small gun, yeah.

3 Q And where -- you said it's in his hand that's on the
4 bed. Where is your face in relation to that gun and that
5 hand?

6 A The gun is in his hand. It's around -- the gun on
7 the bed like that and then here looking down bent over the
8 bed.

9 Q What happens then?

10 A Then he proceeds to rape me.

11 Q I know this is uncomfortable, but we need to tell you
12 the details of what happens. What do you mean by he
13 proceeds to rape you?

14 A He puts his penis between my legs. He doesn't
15 penetrate me.

16 Q Okay.

17 A And within -- I'm feeling really nervous about this
18 because I'm an older person. I haven't had sex in a long
19 time. I'm thinking this young man is going to be really
20 rough with me. I was very relieved to find out he had
21 already ejaculated.

22 Q Okay. You said that he put his penis between your
23 legs. What did he do?

24 A He just thrust his penis, you know, several times
25 until he did ejaculated. It seemed like he was so

1 excited.

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

4 A I have could feel the wet on my legs.

5 Q Okay. What happens next then?

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

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

11 A I actually got into the closet and got down.

12 Q Okay.

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

15 Q Okay.

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

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

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

4 A The whole head.

5 Q Okay.

6 A The whole head.

7 Q So is it blocking your eyes?

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

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

12 A Only one, only one.

13 Q Okay. And where was that --

14 A And I think the bathroom light is on also.

15 Q Okay.

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

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

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

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

22 A Yes. Just my face and hands usually.

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

25 A Uh-huh.

1 Q And then had you wash yourself again?

2 A Uh-huh.

3 Q Wipe yourself off?

4 A Right.

5 Q And where do you leave that washrag then?

6 A In the bathroom sink.

7 Q What happens next then?

8 A Then he leads me back to the bedroom and asked me to
9 put the light on. I try to with my shoulder and he said,
10 "No. Put the little light on," which was a little bedside
11 light.

12 Q Okay.

13 A And that goes on, and then he told me to lay down on
14 the floor face down.

15 Q Where in the bedroom did he tell you to lay down?

16 A By the side of the bed.

17 Q Okay. Did you do that?

18 A Yes.

19 Q And then what happens next?

20 A Then I hear all kinds of noise. I hear drawers being
21 turned out. He is looking frantically for money. He
22 asked about the top drawer. He opened it and said, "Where
23 is the money?"

24 Q Okay.

25 A I said, "They got it all last week." So he's going

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

4 Q Okay.

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

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

8 A No.

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

10 A Head covered up.

11 Q Head covered up with the underwear.

12 A Uh-huh.

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

15 A Uh-huh.

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

18 A Yeah.

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

21 A Just first.

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

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

1 Q Okay. And then that's when you said, "They got it
2 last week"?

3 A Uh-huh.

4 Q Okay. And so what can you hear then happening next?

5 A Well, in those dresser drawers, top drawers
6 especially, I have perfume, different momentos I've
7 collected over the years, just a lot of junk in my
8 drawers, actually, but I could hear all these things
9 rattling around, drawers being pulled out. I assumed he
10 was tossing everything on top of the bed.

11 Q So then what happens next?

12 A Then he says to me, "Where is your ATM card?"

13 I said, "I don't have one."

14 He said, "Well, what do you do when you want money?"

15 I said, "I go to the bank."

16 Q Okay.

17 A So he is frantically -- he must have gone back to my
18 little living room. That's where my purse was.

19 Q Okay.

20 A Then he says to me, "Well, where is your money? Do
21 you have any money? Do you have any jewelry?"

22 Q Okay.

23 A And I knew that without getting something, he wasn't
24 going to leave.

25 Q Okay.

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

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

6 Q Okay.

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

9 Q Okay.

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

12 Q Okay.

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

15 Q Okay.

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

20 Q You could hear it coming from that direction?

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

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

1 for a law enforcement officer to show up?

2 A Very quickly, very quickly.

3 Q What were your emotions and feelings while you were
4 talking to that 9-1-1 operator waiting?

5 A I was very stern because I didn't mention that when I
6 looked out, I saw the car was still there.

7 Q Okay.

8 A And I thought possibly he was still in the area and
9 would come back. So I was almost asking the officer to
10 get here as soon as you can. I'm still scared -- the
11 9-1-1 operator I'm talking about.

12 Q Okay. So do you remember the law enforcement officer
13 showing up at your house?

14 A Yes.

15 Q Okay. And essentially, what do you remember
16 happening next with that officer?

17 A He was very calm, and he took my statement and asked
18 me how old of a person did I think he was. I said he was
19 a young boy, probably early 20s, small, small build.

20 Q Okay.

21 A Gave him some description of him, as much as I could.

22 Q Okay.

23 A And what I had seen from the corner of my eye.

24 Q Okay.

25 A And then the officer asked me did I need to go to the

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

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

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

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

10 A Well, I want to say I ran away.

11 (Pause).

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

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

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

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

1 A I did.

2 Q And the -- from what you were -- you said you got
3 kind of a side view of the person in your house. What all
4 could you remember then about -- or what could you tell
5 about the description of this person?

6 A I knew from the accent he was a young, small built
7 black male.

8 Q Okay.

9 A I thought possibly he had a Jerry curl because I
10 could see a curl coming over the side of his face, but I
11 didn't want him to see me looking too much at him because
12 I thought he might kill me if he thought I could identify
13 him.

14 Q Okay. And other than that, you did not get a direct
15 view of this person's face?

16 A No, but I knew he had a northern accent.

17 Q Okay. It sounded like a northern accent?

18 A Yes. It wasn't a South Carolina accent, and I think
19 I gave that to the police in the statement.

20 Q Okay. I'm going to show you what is marked as
21 State's Exhibit No. 6. Have you had a chance to review
22 this?

23 A Yes.

24 Q Okay. And do you recognize what this is?

25 A Yes, my house.

1 Q Okay. Speak up.

2 A It's a plan of the house.

3 Q Okay. And is this a fair and accurate description or
4 sketch of the layout of your home?

5 A Yes.

6 Q Would it help you to use this to be able to tell the
7 jury where everything happened?

8 A Yes.

9 Q All right. I previously showed it to defense
10 counsel, but I'd offer State's Exhibit No. 6.

11 MR. O'NEIL: No objection.

12 THE COURT: Thank you.

13 (WHEREUPON, State's Exhibit No. 6 was admitted into
14 evidence.)

15 BY MS. FENT:

16 Q Ms. Lonsdale, can I have you step down over to this
17 diagram?

18 THE BAILIFF: Watch your step. One more time.

19 BY MS. FENT:

20 Q And I need you -- let's switch sides -- to keep your
21 voice up very loud since we don't have a microphone so
22 that she can hear you and everybody in the jury can hear
23 you, okay.

24 A All right.

25 Q Tell us then basically what we're looking at. Where

1 is the front of your house?

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

4 Q A little louder..

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

7 Q Okay.

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

11 Q Okay.

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

14 Q Okay.

15 A Out here the bathroom.

16 Q Okay.

17 A Laundry room and into the kitchen here.

18 Q Okay.

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

23 Q Okay. Through this sewing room --

24 A Yes.

25 Q -- or through the living room?

1 A Exactly.

2 Q Okay.

3 A This is an outside door to the outside of my house.

4 Q This right down here is that --

5 A Yeah.

6 Q -- door to the outside?

7 A Yeah, outside.

8 Q Okay. And is this where your car was parked on this
9 day?

10 A Yes.

11 Q So talk to us again about where you were sitting
12 listening to music with your dogs when you heard the
13 noise?

14 A I was sitting here.

15 Q In your sitting room?

16 A Uh-huh.

17 Q And where do you go when you decide to investigate
18 this noise?

19 A I come through here.

20 Q Speak up.

21 A I come through here. Sorry.

22 Q That's okay.

23 A Through here, come around to the house, around
24 through the living room. There's a little bookcase there,
25 so it makes it kind of like a passage.

1 Q Okay.

2 A Come through here. Here is the door to my bedroom.
3 I look out through the window over here. I can't see
4 anything over there, and I turned this way. I see this
5 door open.

6 Q So do you keep going in?

7 A No.

8 Q Or --

9 A I stood there. I stood there kind of looking at this
10 door perplexed. Why is the door open? That's when I
11 was -- he came from behind.

12 Q Okay.

13 A And put his hands on my shoulders, so he was over
14 here. I had my back to there facing the door to my
15 bedroom.

16 Q Okay. Were you standing inside the bedroom?

17 A No.

18 Q Or just outside?

19 A Just outside the door to the bedroom, just outside.

20 Q Just outside. Okay. When you're sitting here on the
21 sofa, you described there is a bookcase right there --

22 A Uh-huh.

23 Q -- and this fireplace kind of juts out?

24 A It does.

25 Q When you're sitting here on the sofa, can you see if

1 someone is walking around in this area?

2 A No.

3 Q What, if anything -- after this is all over with, do
4 you notice anything unusual or moved around different in
5 your living room?

6 A I noticed the blinds that are usually open were
7 closed.

8 Q Okay. There are blinds over here where the sofa is
9 is where you are pointing?

10 A Uh-huh.

11 Q And you said they're usually closed. Tell us about
12 that.

13 A No. They're usually open.

14 Q I'm sorry. You keep them open all the time?

15 A Yes.

16 Q Do you ever close them?

17 A No.

18 Q And you noticed that they had been closed?

19 A Yes.

20 Q Then when you described him taking you into the
21 bedroom and putting you over the bed, where did that
22 happen? Which side of the bed?

23 A It happened on this side of the bed (indicating).

24 Q Okay. And the closet that you described that he made
25 you get inside of?

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

1 are all of these photographs?

2 A My living room and my bedroom.

3 Q Okay. And is this what it looked like on the date
4 that this happened?

5 A Yes.

6 MS. FENT: Your Honor, I'd offer into evidence
7 State's Exhibit 9.

8 MR. O'NEIL: No objection.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibit No. 9 was admitted into
11 evidence.)

12 BY MS. FENT:

13 Q The location here where you said you're standing --

14 A Yes.

15 Q -- looking into your bedroom?

16 A Right.

17 Q And he comes up behind you, do we see that in any of
18 the photos?

19 A Where he came up behind me?

20 Q Correct, where you were --

21 A Right -- right here.

22 Q Okay. And what are these two photos here that we're
23 looking at?

24 A That is my living room. That is the door into my
25 little sitting room. That's the door to my bedroom.

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

4 A I would be standing there.

5 Q Okay. And these blinds?

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

8 Q Okay. Speak up.

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

11 Q Okay. And those are --

12 A There in the living room.

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

14 A These two?

15 Q Uh-huh.

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

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

19 A It's that closet.

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

22 A Uh-huh.

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

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

1 Q Okay. Meaning?

2 A Meaning there (indicating).

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

5 A That looks like underwear. That looks like the
6 underwear that was on my head.

7 Q A black pair of underwear?

8 A Uh-huh.

9 Q I'm going to show you what's marked on State's
10 Exhibit No. 5, if you'll look at it.

11 A Uh-huh.

12 Q Do you recognize all of the photos in State's Exhibit
13 No. 5?

14 A I do.

15 Q Okay. And what location are -- are these
16 photographs?

17 A They're in my bedroom. Yeah, they're all in my
18 bedroom.

19 Q Okay. And is this how your bedroom looked the day
20 that this happened?

21 A It did.

22 MS. FENT: I'd offer State's Exhibit No. 5.

23 MR. O'NEIL: No objection, Your Honor.

24 THE COURT: Without objection.

25

1 (WHEREUPON, State's Exhibit No. 5 was admitted into
2 evidence.)

3 BY MS. FENT:

4 Q Okay. Okay. So we come into your bedroom. Can you
5 tell us then what we're looking at?

6 A This is the bedroom where the bed light is on.

7 Q Okay.

8 A Which he tried to have me put on, which he tried to
9 have me do, because my hands were tied.

10 Q Speak up.

11 A Because my hands were tied, I couldn't do it. So he
12 would have to do it himself.

13 Q Okay.

14 A I didn't want the big light because -- obvious
15 reasons.

16 This then is my bed. That's a door to the closet.
17 That's the outside door.

18 Q Okay.

19 A My bed again, the outside door, and the French doors.

20 Q Okay. And so where are we in your bedroom, the views
21 that we're looking at?

22 A Closet, bed, outside door, French windows.

23 Q Okay.

24 A These are the chairs right beside the French windows.
25 The underwear was sitting here (indicating).

1 Q Okay.

2 A These are all the drawers in my dresser, and drawers
3 in my dresser again, the bed with everything turned down
4 to it.

5 Q Okay.

6 A That was my first one. My keys were out.

7 Q Okay.

8 A Again, my bed with some of the stuff still on it that
9 he emptied out of the drawers.

10 Q Okay. Now, the door that you said -- the door to
11 your --

12 A Bedroom.

13 Q Bedroom, and you said that initially when you looked,
14 you stood here and you looked, that it was opened?

15 A Yes.

16 Q What door is that?

17 A It was this door to the outside.

18 Q Okay. Now, I'm going to show you what's marked as
19 State's Exhibit No. 7 and ask you if you recognize the
20 photographs.

21 A I do.

22 Q Okay. And essentially, what are you -- what are we
23 looking at, or what are those photographs of?

24 A The car, the outside of my house, part of my porch,
25 and a stockade fence door that leads to a passageway down

1 the side of my house.

2 Q Okay. And is this how your house looked?

3 A Afterwards, yes.

4 Q That night.

5 A Yes.

6 Q Or that early morning.

7 A Correct.

8 MS. FENT: I'd offer into evidence State's Exhibit 7.

9 MR. O'NEIL: No objection.

10 THE COURT: Without objection.

11 (WHEREUPON, State's Exhibit No. 7 was admitted into
12 evidence.)

13 BY MS. FENT:

14 Q So just to put in relation with the sketch of where
15 these --

16 A This is the side window of the porch which is there,
17 which was broken down when he tried to get out.

18 Q Okay.

19 A This is my -- the car that is usually kept here
20 beside the house. There was a stockade fence here, the
21 door, which is this one, which is bolted from the inside.
22 The door to outside is here behind the fence.

23 Q So it's -- that door is going to be on the other
24 side?

25 A Yeah. You see this jutting out, the door is behind

1 there.

2 Q Okay. And do you recognize what this item is in this
3 bottom picture?

4 A That is a hatchet that had been leaning against a
5 pole in my backyard because I have a lot of bamboo. I
6 have been attacking some of the bamboo trying to get rid
7 of it.

8 Q So that is yours?

9 A That is mine.

10 Q That is yours.

11 A That is mine.

12 Q And where was it sitting, do you remember?

13 A It was sitting outside on the step of the outside
14 door in the bedroom.

15 Q Okay. So on the other side of the fence, so in your
16 backyard --

17 A Uh-huh.

18 Q -- to the door of your bedroom?

19 A The fence is here.

20 Q Uh-huh.

21 A It's on the fence, on this step of that door into the
22 bedroom.

23 Q Okay. I'm going to show you State's Exhibit No. 8
24 and ask you if you recognize those photographs.

25 A I do.

1 Q And, essentially, what are we looking at in these
2 photographs?

3 A The back, the porch, the side of my house.

4 Q And do these accurately reflect your house --

5 A They do.

6 Q -- on the night?

7 A They do.

8 MS. FENT: I'd offer into evidence State's Exhibit 8?

9 MR. O'NEIL: No objection.

10 (WHEREUPON, State's Exhibit No. 8 was admitted into
11 evidence.)

12 BY MS. FENT:

13 Q Okay. So then if you can walk us through these
14 photographs in relation to the scene.

15 A This is the porch way which runs in front of the
16 French window. It runs all across the house. Obviously,
17 he didn't know there was a door here or couldn't get out,
18 but after the French windows, he broke those doors down.
19 I had actually locked them on the inside, the door inside.

20 Q So this front door would be where in this photograph?

21 A This front door is not in that. It's over, further
22 over.

23 Q Over this?

24 A Actually, you can tell more in this one. It would be
25 over here (indicating).

1 Q Okay. So this door is what door?

2 A This door leads into my living room here.

3 Q Okay. And then these?

4 A This is the back of the house, the side, back of the
5 house. This is in my hallway leading to the amateur room
6 that I have built on the back of my house.

7 Q And the sketch, where would this room be?

8 A Over here.

9 Q Okay.

10 A That is the -- that's the side of my house. This is
11 the side of the house which would be over here.

12 Q Okay. And this door, was it in this condition when
13 you went to bed that night?

14 A No.

15 Q Finally, I'm going to show you State's Exhibit 10. I
16 want to just focus on the two photographs that are on -- I
17 guess if you're looking at State's Exhibit 10, it may on
18 the left-hand side, just those two photographs. Do you
19 recognize those two photographs?

20 A I do.

21 Q And, essentially, what is -- what are we looking at
22 there?

23 A The bathroom.

24 Q And is that -- what can you tell us about the top
25 picture?

1 A Well, the washcloth is in the sink.

2 Q Okay. Is that where you left the washcloth?

3 A Yeah. That's where I always keep it.

4 Q Okay. You can take a seat.

5 Did you ever determine what items may have been
6 missing from your home after this happened?

7 A As much as I could tell at that time. I was still in
8 a nervous stage, and I found certain items of jewelry were
9 missing.

10 Q Do you remember in particular what items of jewelry
11 you were missing?

12 A Well, especially there like was a satchel; earrings
13 and a necklace that I bought in Honduras, which was sort
14 of a silver wire with, I think, sapphire in them. There
15 was a chain missing, a gold chain with a diamond pendant;
16 and diamond earrings; emerald earrings; a watch was
17 missing.

18 Q The money that you said was in a -- some kind of
19 hidden compartment in your --

20 A Yes.

21 Q -- wallet or your billfold?

22 A Yes.

23 Q Was that still there?

24 A No, that was gone.

25 Q That was taken. Did you keep your jewelry in one

1 particular place?

2 A No, kind of several places in the house, actually.

3 Q Within your --

4 A In the bedroom, I should say, on that dresser.

5 Q Okay. So just several places on the dresser. Like
6 did you have one particular jewelry box that you kept all
7 of your jewelry in that box?

8 A No, huh-uh.

9 Q Ms. Lonsdale, when he had you on that bed and he was
10 rubbing his penis between your legs, what did you believe
11 was about to happen to you?

12 A I believed we were going to have sexual intercourse.

13 Q Did you ever feel that you were able to get up and
14 leave and run away from this situation?

15 A Not at any time.

16 Q And why is that?

17 A Because he the a gun on me.

18 Q The washcloth that he had you wash yourself off on,
19 you said that you typically used that washcloth to wash
20 what?

21 A My face and hands.

22 Q Okay. What did you specifically wash yourself when
23 he told you to wash yourself off with that washcloth, what
24 did you wipe?

25 A My vaginal area.

1 (WHEREUPON, State's Exhibit No. 11 was marked for
2 identification only.)

3 BY MS. FENT:

4 Q Ms. Lonsdale, you said that you called 9-1-1.

5 A Yes.

6 Q And how long from the time that you believed he had
7 left until you picked up that phone to call 9-1-1, do you
8 know about how much time passed?

9 A Possibly two minutes at the most.

10 Q Okay. Did you have a chance to review that phone
11 call that was made to 9-1-1?

12 A Yes.

13 Q Okay. And was your entire conversation recorded with
14 that 9-1-1 operator?

15 A I would think so, yes.

16 MS. FENT: Your Honor, at this time we'd offer
17 State's Exhibit 11.

18 MR. O'NEIL: I don't think the proper foundation has
19 been laid at this point for them to use the actual call.

20 THE COURT: That what?

21 MR. O'NEIL: I don't think the proper foundation has
22 been laid at this point to play that. Is someone going to
23 come from 9-1-1 to indicate it's a business record at this
24 point?

25 THE COURT: I understand.

1 MS. FENT: If I may respond?

2 THE COURT: Yeah.

3 MS. FENT: There are other ways to get in the call.
4 She actually can authenticate that she made this call,
5 which she just did.

6 MR. O'NEIL: Your Honor, it's irrelevant. It's
7 technically hearsay if it's --

8 THE COURT: Correct.

9 MR. O'NEIL: -- not testified sufficiently.

10 MS. FENT: She also indicated that she was -- it was
11 immediately thereafter, and she was extremely frightened
12 that they were coming back so it is an excited --

13 THE COURT: It is an exception.

14 MS. FENT: Excited utterance, yes.

15 THE COURT: All right. Overruled.

16 (WHEREUPON, State's Exhibit No. 11 was admitted into
17 evidence.)

18 (Whereupon, the 9-1-1 phone call was played for the
19 jury.

20 BY MS. FENT:

21 Q Ms. Lonsdale, the washcloth you used to wipe yourself
22 off, where did you keep that washcloth?

23 A In the sink in the bathroom.

24 Q Was it ever -- was it ever on the floor in your
25 bedroom?

1 A No.

2 Q Did you ever see another person in your hours?

3 A No, not at all.

4 Q Did you ever hear another person in your house?

5 A No, not at all.

6 Q Did you ever hear a conversation between the person
7 that was assaulting you and somebody else?

8 A No, there was only him and I.

9 MS. FENT: No further questions at this time. If
10 you'll just answer any questions that defense counsel will
11 have for you. Just stay seated.

12 THE COURT: Cross-examination?

13 MR. O'NEIL: May I approach?

14 THE COURT: Yes.

15 (Whereupon, there was a bench conference.)

16 CROSS-EXAMINATION:

17 BY MR. O'NEIL:

18 Q Ms. Lonsdale, you woke up, it was early Saturday
19 morning and you woke up?

20 A That's correct.

21 Q And when you woke up, it was dark in your home?

22 A Yes.

23 Q Okay. And it was dark in your home because, I think
24 at that time, the power was out?

25 A It seems so, yes.

1 Q And not only was it dark in your home. It was dark
2 on the outside of your home, as well.

3 A Yes.

4 Q Because at that time the street lights were out on
5 the outside of the building.

6 A It could have been. It's not very we feel lit early.

7 Q So regardless of the power being out, it's also not a
8 well lit area in general?

9 A No.

10 Q Okay. And I guess at some point, the power came back
11 on while you were in your sitting room?

12 A It was off when I got up to check the time to see
13 what was happening. I went back to bed and within ten
14 minutes, it was back on again.

15 Q So you wound up getting back up and listening to the
16 radio?

17 A Made some coffee and listened to the radio.

18 Q So you are sitting in the sitting room listening to
19 the radio. Is it still dark in your house at that time?

20 A I'm sorry?

21 Q Is it still dark in your house at that time?

22 A Not the back part of the house. The back part of the
23 house, the lights were on.

24 Q Did your bedroom have the lights on in your home?

25 A No, no.

1 Q So I'm going to show you what's marked as State's
2 Exhibit No. 6 here. You're sitting in the sitting room
3 here?

4 A Yes.

5 Q Is it still dark in the living room and your bedroom
6 area?

7 A Yes.

8 Q The only lit part is what areas?

9 A There was a light on in the bathroom.

10 Q Right here?

11 A Probably in the kitchen. I almost think the kitchen
12 was on.

13 Q Okay.

14 A And there was a little table lamp in the sitting
15 room.

16 Q So there was a light in the sitting room, the
17 bathroom and the kitchen maybe?

18 A Yeah.

19 Q But there's no light in the living room on your back
20 bedroom?

21 A Right.

22 Q Okay. That area is still dark?

23 A Yes.

24 Q And it's still dark outside?

25 A Right.

1 Q Is that correct? It's still dark outside at that
2 point?

3 A Yes.

4 Q And you got the radio on. At that point, you hear a
5 bang, correct?

6 A I did.

7 Q Okay. And you go to -- at that point, you're home by
8 yourself?

9 A Yes.

10 Q And I would assume you're a little bit nervous, but
11 you hear this loud noise?

12 A Uh-huh.

13 Q Would that be fair? You go check out what this loud
14 noise is?

15 A Uh-huh.

16 Q That's your -- so at that point, you still have got
17 the radio on. It's still dark in the back area of your
18 house, and you go and check out this noise, correct?

19 A Correct.

20 Q All right. And you said you had two dogs?

21 A Yes.

22 Q And your dog was barking at this time?

23 A No, he wasn't barking.

24 Q The dog wasn't barking once he heard the loud noise?

25 A He made one little bark, sat up on the sofa, made one

1 bark and no more.

2 Q And at that -- when you went to see what was going
3 on, somebody came up behind you, correct?

4 A Yes.

5 Q At that point, I would assume you're a little bit
6 more than nervous. You're essentially scared at this
7 point?

8 A I was scared stiff.

9 Q Scared at this point?

10 A Uh-huh.

11 Q The dog was barking. He's not barking right now. It
12 was dark in this back area of the house?

13 A Yeah.

14 Q Is all that fair?

15 A The front area of the house.

16 Q The area you were in. It's still dark at this point?

17 A Right.

18 Q It was dark. The radio was on. The dog hadn't
19 barked, and there's no lights on at this point?

20 A Right.

21 Q And you're scared at this point. Now, you said you
22 had two dogs. Do you know where your other dog was?

23 A Well, I assume he was still on the sofa.

24 Q Okay. So at some point, you wind up in your bedroom
25 here?

1 A Right.

2 Q Okay. And there's no light on in the bedroom?

3 A There was a faint filter coming through on the
4 sitting room.

5 Q From the sitting room?

6 A Uh-huh.

7 Q From this area right here, the only light that's
8 coming in your bedroom is from the sitting room right
9 here?

10 A Yeah.

11 Q Okay. And in between your bedroom and the sitting
12 room is the sewing room, fireplace and the hall. That's
13 fair?

14 A Not really a hallway. It was just one room after
15 another.

16 Q Okay. So there's a door separating your bedroom and
17 the sitting room. Would that be fair to say?

18 A Yes.

19 Q Okay. So you're in there, the radio was still on.
20 It's dark in there. At some point, one of your dogs comes
21 in there?

22 A Yeah.

23 Q Okay. And that dog is barking in there?

24 A Yes.

25 Q So you're in your bedroom. It's dark in the bedroom.

1 The dog is barking. The radio was still on, and at that
2 point, is anything over your face at that point?

3 A I'm sorry, I didn't hear you.

4 Q Is there anything over your face at that point?

5 A No.

6 Q Okay. At some point, you wind up face down on the
7 bed; is that correct?

8 A Not face down on the bed, no.

9 Q But you wind up bent over on the bed at some point?

10 A I did.

11 Q Okay. I think you said at that point, you saw the
12 intruder with a gun in his hand?

13 A I did.

14 Q Okay. And did you say you know specifically what
15 hand was the gun in, do you remember?

16 A In the right hand.

17 Q The gun was in the right hand. You know some
18 specific things about that gun, correct?

19 A Yes.

20 Q Do you remember what color it was?

21 A In the hall light, it looked like a dark brown or a
22 medium black. I wasn't sure.

23 Q So it was either dark brown or black and smallish?

24 A Very small.

25 Q Was it a revolver or --

1 A I don't know one gun from another.

2 Q Don't know, but you said it looked as though it was a
3 lady's gun?

4 A Yes.

5 Q And you saw that specifically there?

6 A I did.

7 Q Okay. At the time, it was still relatively dark in
8 the room. Is the dog still barking in the closet at this
9 point?

10 A No.

11 Q Is the radio still on in the sitting room?

12 A Very faint, very faint.

13 Q Okay. But you can't tell where the other dog is,
14 correct, at this point?

15 A Actually, I don't know whether the radio was still
16 on. I couldn't really say for sure whether it was or not.

17 Q Do you remember turning the radio off?

18 A No.

19 Q Do you remember anybody turning the radio off?

20 A There was no nobody else to turn it off.

21 Q Okay. Do you remember whether or not your dog was
22 still on the -- the other dog was still on the sofa?

23 A Uh-huh.

24 Q And you know -- do you know whether or not when you
25 were in the bedroom, was that other dog still on the sofa?

1 A I assume so. I don't know.

2 Q But you -- the reason why you don't know whether or
3 not he was still on the sofa because you can't tell what
4 was going on outside of your bedroom at this point?

5 A Right.

6 Q Okay. So you don't know what's going on in your
7 house other than what's going on in the bedroom?

8 A Right.

9 Q Okay. At some point, you are walked to the bathroom,
10 correct?

11 A Right.

12 Q And at that point, there's something covering your
13 head.

14 A Uh-huh.

15 Q You never see the face of the intruder at this point?

16 A No.

17 Q Because when he first came in, he was behind you?

18 A Correct.

19 Q And now you have something over your head, and you're
20 walking from your back bedroom to the bathroom at this
21 point?

22 A Yes.

23 Q Is that correct? And you -- to the best of your
24 knowledge, nobody shut the radio off, correct?

25 A I wasn't seeing a radio. I can't really tell you.

1 Q Okay. So you don't -- you don't know what -- to your
2 knowledge, nobody turned it off?

3 A No.

4 Q Okay. Is the -- is the dogs still barking?

5 A No.

6 Q Is it still dark in the room?

7 A In the bedroom?

8 Q In your house at that point, the back part of your
9 house.

10 A The part that -- in the bathroom, it was not dark.

11 Q Okay. But the back part of the house was still dark
12 at this point. There was no light turned on in your
13 bedroom at this point.

14 A I'm sorry. You've got me confused. Can you repeat
15 that?

16 Q When you're walking to the bathroom, the light in
17 your bedroom had not been turned on at this point,
18 correct?

19 A I'm not sure.

20 Q Okay. I think -- and do you remember giving your
21 statement? I think when you gave your statement, you said
22 once you came back into the bedroom from the bathroom the
23 light got turned on?

24 A Right.

25 Q Okay. So that would be fair?

1 A Yeah.

2 Q Okay. And when you came back in from the bathroom to
3 your bedroom, you were made to lay face down on the floor?

4 A Correct.

5 Q Okay. At what time were you made to lay down in the
6 closet, do you remember?

7 A Prior to going to the bathroom.

8 Q Prior to going to the bathroom. You were in the
9 closet at that point?

10 A Right.

11 Q The dogs were in the closet with you at that point,
12 as well?

13 A No. Actually, they escaped and ran under the bed.

14 Q Okay. So when you're lying down on the floor, are
15 you able to see any details about the intruder? Are you
16 able to see his face at that point?

17 A Am I able to see what?

18 Q Are you able to be see the intruder's face when
19 you're laying down on the floor?

20 A No.

21 Q Okay. You gave a description of the clothing that
22 the person had on.

23 A Correct.

24 Q Do you remember saying -- were you able to -- let's
25 back up a second. You gave a general description of the

- 1 person who came to your house that night, correct?
- 2 A Yes.
- 3 Q You said that he was a black male that you can tell?
- 4 A Yes.
- 5 Q You said he was -- he appeared to be in his early
- 6 20s. Would that be fair?
- 7 A That's what I said, yes.
- 8 Q Okay. And you also said he has either a Jerry curl
- 9 or some sort of hair hanging down in his face that you
- 10 could see?
- 11 A Sort of on the side of his face.
- 12 Q But it was hanging down over his face?
- 13 A No.
- 14 Q How was it -- how was it hanging down?
- 15 A Just like a curl that I could see just loose on his
- 16 head.
- 17 Q Okay.
- 18 A It wasn't the typical bottom on the top of his head.
- 19 Q Okay. It was a loose curl hanging down on his face?
- 20 A Yeah.
- 21 Q And you said he had on black clothes?
- 22 A I think they were black, yes.
- 23 Q Did he have on a long sleeved shirt or a short
- 24 sleeved?
- 25 A I don't know.

1 Q This was summertime? Do you remember? This was like
2 in May.

3 A Yes.

4 Q At some point, did you give a written statement to
5 the officer who came there that night?

6 A He wrote it down. He just asked me questions. He
7 wrote it down.

8 Q So he asked you questions. He didn't -- he didn't
9 allow you to write down --

10 A No.

11 Q -- kind of in your own words what happened?

12 A Well, he asked me in my own words what happened.

13 Q But he wrote it down?

14 A Uh-huh.

15 Q Did you have to sign anything that night?

16 A I'm not sure.

17 Q Would you -- you don't remember signing anything that
18 night?

19 A I'm not sure.

20 Q Okay. Do you remember if the officer who came there
21 that night asked you about the location of the washcloth?

22 A No.

23 Q Okay. Did -- and let me rephrase it. Did he ask you
24 or you don't remember whether or not he asked you or not?

25 A Well, the officer that took the original statement

1 checked the bathroom and found the location of the
2 washcloth. It wasn't integrated into the statement.

3 Q And that's what I'm asking. The initial officer you
4 talked to never mentioned anything about the location of
5 the washcloth?

6 A No.

7 Q Did he ever ask you at that -- on the night this
8 happened about whether or not you heard any of the voices
9 in the hall? Did he ever ask you that?

10 A No.

11 Q Was you -- at some point, you were shown at least two
12 photo lineups; is that correct?

13 A I'm sorry, could you repeat that?

14 Q At some point, you were shown at least two photo
15 lineups. When I say photo lineups, groups of six pictures
16 of individuals. Do you remember that?

17 A Later after I came back to town, yes.

18 Q You came back to Columbia, and they showed you two
19 sets of six people, pictures, correct?

20 A I'm not really sure. I was still in a state of
21 nervousness.

22 Q But were you able to pick out anybody from those set
23 of pictures you were shown?

24 A I picked out somebody I thought was similar to the
25 hairstyle.

1 Q Okay. You --

2 A But I hadn't seen the face, so I couldn't pick out
3 anybody.

4 Q So you picked out -- you picked out somebody in a
5 that lineup, in that picture lineup you were shown.

6 A I said that was the type of hair that I saw.

7 Q Do you remember who that -- what number that was?

8 A No, no.

9 Q Okay. You said several items were missing, jewelry
10 wise, from the home?

11 A Yes.

12 Q Do you remember what exactly those items were?

13 A There was a gold chain with a diamond on it, diamond
14 stud earrings, emerald rings, a watch, and the silver wire
15 sapphire earrings and necklace.

16 Q And your keys were also taken, as well?

17 A That's correct.

18 Q Did you ever get those keys returned back to you?

19 A No, I didn't.

20 Q Was any of that jewelry ever recovered, to your
21 knowledge?

22 A No.

23 Q Okay. Now, the person who came in your house that
24 night, mentioned something about that you had done
25 something to one of their friends?

1 A That's correct.

2 Q That's what they told you? That's what that person
3 told you that you had done something to his friend?

4 A Yes, yes.

5 Q Had you done anything to anybody that you remember at
6 that particular time?

7 A No.

8 Q Or in that time period?

9 A No.

10 Q Beg the Court's indulgence, Your Honor.

11 (Pause).

12 Now, do you remember Investigator Mauldin?

13 A I do.

14 Q Giving you a call a couple of days later?

15 A Yes.

16 Q Okay. At that point, did Investigator Mauldin tell
17 you that they had a suspect in custody?

18 A Yes.

19 Q Okay. And did Investigator Mauldin tell you what
20 that suspect's version of what happened was that night?

21 A Did he give me his version?

22 Q Yeah.

23 A Yeah.

24 Q Did he -- did Investigator Mauldin ask you some other
25 questions about the washrag and hearing voices?

1 A Not at that point, no.

2 Q Okay. When you actually got back in to Columbia, did
3 Investigator Mauldin ask you those questions?

4 A Yes.

5 Q And that was the first time that you heard those
6 questions being asked to you, when you got back to
7 Columbia and Investigator Mauldin asked you those
8 questions.

9 A Yes.

10 Q Beg the Court's indulgence, Your Honor.

11 (Pause.)

12 Just a couple more questions. I'm almost done. Do
13 you remember how long it was after the incident date that
14 you spoke to Investigator Mauldin back in Columbia about
15 the washcloth and anybody else being --

16 A The incident happened on the 28th of May, and I
17 believe I came back into Columbia -- well, they spoke to
18 me the night before, which would have been the Thursday
19 night. I came back into Columbia on Friday morning.

20 Q And if I told you that Friday morning was June 3rd,
21 would that sound about right?

22 A Yes.

23 MR. O'NEIL: Okay. That's all I have, Your Honor.

24 THE COURT: Any redirect?

25 REDIRECT EXAMINATION:

1 BY MS. FENT:

2 Q Ms. Lonsdale, in looking at this sketch, which side
3 of the bed -- when he was assaulting you, which side of
4 the bed were you on?

5 A Well, he tried to assault me on both sides of the
6 bed.

7 Q Okay.

8 A But he actually assaulted me on this far side near
9 the closet.

10 Q Okay. So when you say he tried on both sides of the
11 bed, describe that. What do you mean?

12 A Well, the first time he was going to assault me when
13 the dog was barking on the bed.

14 Q Okay.

15 A He told me to get rid of the dog.

16 Q Okay. And that was on -- sorry. I tell you what.

17 A That was the first time it was on this side.

18 Q Okay. And so when you're on this side of the bed --

19 A The dog has jumped up and is barking there.

20 Q Okay. Can you see your outside door from that
21 side --

22 A Yes.

23 Q -- from that side of the bed?

24 A Yes.

25 Q And is this before or after you then get up or he

1 gets up, somebody closes that door?

2 A When we get up, that's when the door got closed.

3 Q Okay. And then he takes you to which side of the
4 bed?

5 A To this side. We come by here, the door got closed,
6 the door in the closet, and then he tries to rape me over
7 here on this side.

8 Q Okay. And when he puts you across that bed,
9 describe, I guess, your body on that bed. Are you stomach
10 down, or are you back down?

11 A Stomach down.

12 Q Stomach down, and is your -- describe your actual
13 face, your eyes, your head. Is it down in the covers?
14 Are you up? How is that?

15 A I think that was down in the covers.

16 Q When you're facing the door the first time, do you
17 see anybody come through that door?

18 A No.

19 Q Anybody on that side of the bedroom?

20 A No, nobody.

21 Q When you're on the opposite side and he is attempting
22 to sexually assault you, do you see anybody come into your
23 bedroom?

24 A No.

25 Q Do you hear anybody come into your bedroom?

1 A No.

2 Q Do you hear anybody say anything to the person who is
3 attempting to sexually assault you?

4 A No.

5 Q Do you hear anybody? When you are being sexually
6 assaulted, do you hear anybody in any other part of your
7 house trying to come in?

8 A No, not at all.

9 Q Do you hear any doors being opened or closed?

10 A No.

11 Q Did you at any point hear what could have caused this
12 door to open?

13 A That door to the porch?

14 Q Uh-huh.

15 A Only after when he was leaving. I heard a loud noise
16 on the porch.

17 Q Okay. Coming from that direction?

18 A Yes.

19 Q And is this after the sexual assault?

20 A Uh-huh.

21 Q After going through the dresser drawer?

22 A Right.

23 MS. FENT: Okay. No further questions.

24 RECROSS-EXAMINATION:

25

1 BY MR. O'NEIL:

2 Q Ms. Lonsdale, just so I'm clear on this, when you
3 were bent over on the bed, he was attempting to sexually
4 assault you. Your face was down in the pillows?

5 A I think so.

6 MR. O'NEIL: Okay. That's all I have, Your Honor.

7 THE COURT: All right. You may come down, ma'am.
8 Thank you very much.

9 All right. Ladies and gentlemen of the jury, we're
10 going to take our lunch break at this time. I'll ask you
11 to be back in the jury room at two o'clock at which time
12 we'll continue with the trial.

13 Again, I'm going to ask you not to discuss this case
14 with anyone else over the lunch hour or amongst yourselves
15 when you return to the jury room. We'll see you at two
16 o'clock. Have a pleasant lunch.

17 (WHEREUPON, the jury left open court at approximately
18 12:50 p.m.)

19 THE COURT: All right. Stand at ease until
20 two o'clock.

21 (WHEREUPON, a lunch break was taken.)

22 (WHEREUPON, State's Exhibits Nos. 12-18 were marked
23 for identification only.)

24 THE COURT: Is the State ready to proceed?

25 MS. FENT: One matter I wanted to address is on his

1 written motions, there is a motion to sequester the
2 witness, the witnesses, but it was never brought up. I
3 just wanted to make sure that I --

4 MR. O'NEIL: It was for pretrial.

5 THE COURT: It was only for pretrial.

6 MS. FENT: Okay. Okay. I just wanted to make sure
7 we were all on the same page and that nothing
8 inappropriate was happening.

9 THE COURT: There was no --

10 MR. O'NEIL: I do have one issue I need to take up
11 before the jury comes up.

12 THE COURT: Yes.

13 MR. O'NEIL: During my cross-examination of the
14 victim in this case, she did indicate during my
15 cross-examination that she made some sort of pick on the
16 photo lineup she was shown as to somebody who looked --
17 had similar -- I think her words were similar hair.

18 THE COURT: But that she couldn't identify him.

19 MR. O'NEIL: Yes, Your Honor, but I am allowed to
20 know under my Riddle motion which person she picked as
21 having hair similar to the person.

22 THE COURT: Well, I don't know who would know that.

23 MR. O'NEIL: From my understanding, I think
24 Investigator Mauldin was the one who showed her the
25 lineup.

1 THE COURT: Well, ask him when he gets on the stand.

2 MR. O'NEIL: Okay. I understand. What I would like
3 to know -- I think I'm entitled to know before he gets on
4 the stand because...

5 THE COURT: All right. See if he knows.

6 MS. FENT: I asked him while she was testifying, and
7 Investigator Mauldin does not recall that happening.

8 THE COURT: Investigator Mauldin.

9 THE WITNESS: Yes, sir.

10 THE COURT: Let me hear it from you.

11 THE WITNESS: Yes, sir. I -- no.

12 THE COURT: You heard her testimony.

13 THE WITNESS: Yes. There was no pick of any sort,
14 mention of hair. All the individuals in the lineup had
15 the same sort of hair.

16 I think she may have indicated -- and I'm saying may
17 have indicated that's the type of hair, but she made no
18 pick. There was no pick. There was no, "It looks kind of
19 like this guy." There was no pick on either photo lineup.

20 MR. O'NEIL: I can only go by what Ms. Lonsdale said.

21 THE COURT: Well, I know but I can't solve that
22 problem. What do you want me to do?

23 MR. O'NEIL: I think -- like I said, there is nothing
24 I can do at this point. I just was wondering because she
25 said she picked somebody who looked similar.

1 THE COURT: Well, the officers said she didn't.

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

3 THE COURT: All right.

4 I've got juror that wants to leave at five o'clock,
5 folks. I'm not optimistic this case is going to finish
6 tomorrow, but I'll deal with it.

7 Bring the jury, please.

8 MS. FENT: I'll tell you, we have all of our
9 witnesses scheduled to come in at some point today.

10 THE COURT: Good.

11 MR. O'NEIL: So we're --

12 THE COURT: Moving right along.

13 MR. O'NEIL: We hope so, yeah.

14 (WHEREUPON, the jury came into open court at
15 approximately 2:13 p.m.)

16 THE BAILIFF: Jury is seated, Your Honor.

17 THE COURT: Juror 201, can I ask you where your child
18 is, in daycare?

19 THE JUROR: Yes, sir, at Fort Jackson.

20 THE COURT: Okay. How long does it take you to get
21 there?

22 THE JUROR: About 30 minutes, depending on traffic.

23 THE COURT: When does she have to -- is it a he or a
24 she or both?

25 THE JUROR: They, two boys.

1 THE COURT: Two boys?

2 THE JUROR: Yes, sir.

3 THE COURT: And what time does -- do they have to be
4 picked up?

5 THE JUROR: By six.

6 THE COURT: By six?

7 THE JUROR: Yes.

8 THE COURT: All right. I'm going -- we're going to
9 try to accommodate you.

10 THE JUROR: Okay. Thank you.

11 THE COURT: I just wanted to make sure.

12 Would it be all right if I had a deputy pick them up?

13 THE JUROR: I don't think they would let him do that.

14 All right. Solicitor, call your next witness.

15 MR. MATTHEWS: The State calls Deputy Jamie Lucas.

16 JAMIE LUCAS, after being duly sworn,
17 testified as follows:

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

20 MR. MATTHEWS: State your name.

21 THE WITNESS: My name is Jamie Lucas.

22 DIRECT EXAMINATION:

23 BY MR. MATTHEWS:

24 Q Deputy Lucas, where are you currently employed?

25 A The Richland County Sheriff's Department.

1 Q And what is your occupation there?

2 A Master deputy.

3 Q And what are some of your duties as a master deputy?

4 A Some of the duties include paroling the county for
5 the lower end of Richland County known as Region I,
6 answering calls such as larcenies, burglaries, anything
7 from a barking dog to a murder case.

8 Q So you respond to calls from dispatch?

9 A Yes, sir.

10 Q And where were you employed on the night of May 28th,
11 2011?

12 A Richland County Sheriff's Department paroling the
13 Region I area of Richland County.

14 Q And you were working that night?

15 A Yes, sir. It was considered the night shift. It
16 goes from seven p.m. to seven a.m.

17 Q And did you happen to be dispatched to a call at [REDACTED]
18 [REDACTED]?

19 A Yes, sir, I was.

20 Q And what was that dispatch for?

21 A It was for a home invasion.

22 Q And what time did you arrive on the scene?

23 A According to my report, I arrived on the scene at
24 4:47 a.m.

25 Q And can you tell me what you saw when you arrived on

1 the scene and what you proceeded to do after that?

2 A Sure. I made contact with -- with the original
3 complainant, Ms. Lonsdale, which is a white female, 74
4 years of age.

5 She proceeded to tell me that her house was broke
6 into. She had got up during that morning, went to her
7 kitchen to make herself some coffee. Then she walked to
8 her den area of her house. At that time, she said that an
9 unknown black male, slim build, probably in his 20s,
10 grabbed her from behind.

11 She was wearing a robe. She mentioned to me that she
12 had no clothing up under her robe, just the robe itself.
13 At that time, he -- he walked her toward the bedroom, and
14 she said that this unknown black male was armed with some
15 type of unknown type handgun. It was black in color. He
16 told her that, "Do what I say. I don't want to kill you
17 or hurt you."

18 Ms. Lonsdale then informed me that after that comment
19 was made by that individual, that she felt for her safety
20 and her life, so she did what he told her to do.

21 He then instructed her to lay on her bed on her
22 stomach. He then took the rope -- I call it a rope. It
23 goes around the bathrobe for the tie that ties the
24 bathrobe around it, used that to tie her hands up behind
25 her back.

1 At that time, she mentioned to me that after her
2 hands were tied, that this unknown black male placed his
3 penis between her thighs but did not penetrate her in any
4 way.

5 She pleaded with him, "Don't rape me." She then
6 stated that once that took place, the black male ransacked
7 her bedroom, then wanted to know where her money -- that
8 he wanted the car keys to her car, and once he found them,
9 he took about \$125 in cash and the car keys to her car.
10 He then left the residence by -- pulling on Ms. Lonsdale's
11 residence is like two French doors on the front side of
12 the house.

13 This -- I observed that evening, that morning, the
14 French doors being pulled from the hinges itself from the
15 inside.

16 When I arrived, I also observed, on her black Mazda,
17 the driver's side door to be opened and the dome light to
18 be on, but nobody was in it.

19 Once that, we attempted to set up a perimeter for K-9
20 units to come and hopefully make a track and track down
21 the individual.

22 Q And do you know what came of that K-9 track and that
23 perimeter? Was that successful?

24 A No, sir. It was not.

25 Q Who else was on the scene from law enforcement?

1 A It was the K-9 officer. I don't recall the name and
2 Corporal Bruce Kitchens.

3 Q Was anyone else from the sheriff's department
4 contacted to come on scene?

5 A Yes, sir. It was our unit that was contacted to come
6 and process the scene.

7 Q Beg the Court's indulgence.

8 (Pause.)

9 This address, [REDACTED], is that in
10 Richland County?

11 A It is, South Carolina.

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

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION:

16 BY MR. LI:

17 Q Thank you, Your Honor. May it please the Court.

18 Good afternoon, Deputy Lucas.

19 A Hey, counselor.

20 Q Just very -- I have just a few questions. You were
21 the first responding officer, correct?

22 A Correct.

23 Q And it's part of your duty to make an incident
24 report.

25 A Yes.

1 Q The report that you were referring to during your
2 earlier testimony, correct?

3 A Yes, sir.

4 Q You try to be as accurate and as detailed as
5 possible, correct?

6 A What we can, yes.

7 Q What you can. And when you first got to -- when you
8 first got to Ms. Lonsdale's home, you made contact with
9 her immediately.

10 A Yes, sir.

11 Q And it was just -- were you by yourself, did you have
12 a partner?

13 A No, sir. I was by myself.

14 Q Okay. And her appearances was -- she was nervous.
15 She was -- did she seem excited?

16 A I wouldn't say that. You could tell that something
17 has happened, but different people that we may interview
18 or come in contact with handle stress or handle issues a
19 different way than everybody else.

20 Q But you could definitely tell that something happened
21 despite her demeanor and her appearance?

22 A It wasn't overly, but yes, sir.

23 Q And at this time, one of your duties is to obviously
24 ascertain what happened to her, correct?

25 A Yes, sir.

1 Q You tried to get a description of the perpetrator,
2 correct?

3 A Yes, sir, as quickly as we can without leaving out
4 the important details so that I can then explain over the
5 radio to the other units out there setting up the
6 perimeter.

7 Q Exactly. So it's actually most important. Would you
8 say -- would you say it's fair to say it's most important
9 during the early stages of the investigation to get an
10 accurate description?

11 A Oh yes.

12 Q To get as much detail as possible, correct?

13 A Yes.

14 Q She told you that he was a black male?

15 A Yes, sir.

16 Q He was slim?

17 A Slim build, yes, sir.

18 Q Early 20s?

19 A Early 20s.

20 Q So he told you no other detail, correct?

21 A No.

22 Q No description about the hair?

23 A Nothing about the hair but that he did smell of an
24 alcoholic beverage.

25 Q I understand. I'm just talking about physical

1 description wise, no description about the hair.

2 A None, but he was wearing all black, too.

3 Q He was wearing all black, correct.

4 A Black male, early 20s, no description of tattoos, no.

5 Q No description of height.

6 A No, sir.

7 Q If there was, you would write it down, correct?

8 A I would.

9 Q You would do your best to write it down.

10 A Yes, sir.

11 Q And did she -- she didn't tell you -- she didn't tell
12 you about the pre-ejaculation, correct?

13 A No, sir.

14 Q She didn't tell you about being tied up in the
15 closet?

16 A No, sir.

17 Q She didn't tell you that he had flipped her over.

18 She didn't go in detail about what happened, the actual
19 assaults?

20 A The only thing she said is once she was escorted to
21 the bedroom and being placed in fear for the gun that --

22 Q Sure.

23 A -- that she wanted to do what he told her to do --

24 Q Sure.

25 A -- and when he instructed her to get on he were

1 stomach, she did.

2 Q Sure. And she never mentioned anything about a
3 towel?

4 A No, sir.

5 Q Okay.

6 A Not to me.

7 Q Did you notice if the radio was on in any way? Do
8 you remember?

9 A No, sir, I don't recall.

10 Q Did she tell you -- she didn't mention anything about
11 white shoes or red stripes, correct?

12 A Not that I recall.

13 Q And did you take a statement from Ms. Lonsdale at
14 that time?

15 A No, sir, just with what I wrote down because we were
16 requesting the investigators that would be able to give
17 Ms. Lonsdale more time than what the road units normally
18 get. We get just basically the meat of the situation so
19 that we can then set up the perimeter.

20 Q I understand.

21 A And then we bring in the investigators to get more
22 time after, yes, sir; correct.

23 Q By that point, you were still trying to get the most
24 details you could out of her at that time, correct?

25 A Yes, sir.

1 Q Since it's fairly important to get an accurate
2 description or as many details as possible to set up a
3 parameter so you know what you're looking for, correct?

4 A Yes, sir.

5 Q Now, there was -- did you call an ambulance?

6 A No, sir. I asked Ms. Lonsdale if she needed an
7 ambulance, and I don't know if I -- I called for -- I know
8 I requested and spoke with her. I believe either one, she
9 denied or declined to be transported.

10 Q There was no -- as far as you know, there was no rape
11 kit performed, no rape kit done on her.

12 A No, sir.

13 Q Okay. And did she mention -- at that time, did she
14 mention anything about the jewelry that was missing?

15 A No, sir. The only thing that I recall in that
16 evening was the \$125 in cash --

17 Q Uh-huh.

18 A -- and her car keys to her Mazda.

19 Q Okay. And when you got to the scene, did you get a
20 chance to look at the car?

21 A Yes, sir.

22 Q And what's the appearance of the car that you
23 remember.

24 A Yeah. The appearances of the car was a black Mazda.

25 Q Uh-huh.

- 1 A I believe it was a convertible, and the driver's side
2 door was open with the dome light on.
- 3 Q And at that point, you never asked the victim
4 anything about the washcloth at that point, correct?
- 5 A Didn't know anything about it.
- 6 Q Didn't know anything about it. She didn't tell you
7 anything about the closet either, correct?
- 8 A Not that I recall, no, sir.
- 9 Q And when you called -- you called the K-9 unit,
10 correct?
- 11 A Correct.
- 12 Q You called Richburg, I believe.
- 13 A I don't know who called. I believe Kitchens may have
14 gotten him on the scene.
- 15 Q Okay. I was saying Richburg because it was your
16 report.
- 17 A Yeah.
- 18 Q Okay. And then you also called CSI. Did you also
19 call CSI?
- 20 A The lab was notified, yes, sir.
- 21 Q And when the K-9 officer came on -- came to the scene
22 and CSI came on the scene, did -- did you stay?
- 23 A Just very briefly --
- 24 Q Uh-huh.
- 25 A -- because I wanted to get started on the report.

1 Q I see.

2 A And then our normal operation procedure is once a lab
3 gets there, if they don't need us to do anything, we kind
4 of step back, let them do their thing.

5 Q I understand. So by the time you left, other people
6 from the Richland County Sheriff's Department were already
7 on the scene?

8 A I know the lab was still on the scene, yes, sir, when
9 I left at six o'clock, but he was still on the scene.

10 MR. LI: Beg the Court's indulgence.

11 (Pause).

12 No further questions.

13 THE WITNESS: Thank you, counselor.

14 THE COURT: Redirect?

15 MR. MATTHEWS: Briefly, Your Honor.

16 REDIRECT EXAMINATION:

17 BY MR. MATTHEWS:

18 Q Tell me again your initial speaking with a victim on
19 the scene.

20 A Is to get as much but as -- as much description of
21 the victim, what occurred in a nutshell so that we kind of
22 know what we're dealing with and who we're looking for.
23 Then we can set up the perimeter because all of this was
24 happening pretty fast.

25 Q So it's a time sensitive issue?

1 A Yes, sir.

2 Q So you're not there to get a detailed statement?

3 A As far as a written statement, as far as all the i's
4 dotting the t's crossed. We want basically a nutshell so
5 we know what we're deal with. We know who to call.

6 We can get these perimeters set up, basically, when
7 you have a lead, such as K-9. The car door being open, we
8 felt that he may have been -- or she may have been on
9 foot, whoever the suspect was at the time. Because it was
10 unknown to me. They could have been on foot, and we could
11 get a track started.

12 Q So the fact that she was tied up and laying around
13 the house wasn't relevant to your purpose in this
14 investigation?

15 A It was. When she told me she was tied up because
16 again, that goes toward the type of crime that we're
17 looking for. So -- but as far as anything after that, no,
18 sir.

19 MR. MATTHEWS: Okay. Nothing further.

20 THE COURT: Thank you. You may come down.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Next witness?

23 MS. FENT: The State calls Shawn Schroeder.

24 May this witness be excused?

25 MR. LI: Yes.

1 THE COURT: Without objection.

2 SHAWN SCHROEDER, after being duly
3 sworn, testified as follows:

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

6 THE WITNESS: Investigator Shawn Schroeder.

7 DIRECT EXAMINATION:

8 BY MS. FENT:

9 Q Investigator Schroeder, with whom are you employed?

10 A Richland County Sheriff's Department with the crime
11 scene unit.

12 Q And how long have you been with the crime scene unit?

13 A Approximately one year-and-a-half.

14 Q Okay. Can you tell the jury about your education and
15 your training, your background, that lead you now to be a
16 crime scene investigator.

17 A Yes. I graduated with a bachelors of science from a
18 state university in criminal justice, criminal law.
19 During that timeframe, I took approximately two years in
20 the forensics science course, as we had our own crime lab
21 in Utah.

22 After that in 2007, I came to the Richland County
23 Sheriff's Department and worked the road for approximately
24 three, three-and-a-half years before I went to the crime
25 scene unit, and then I went to the crime scene unit. I've

1 been doing that for the last year-and-a-half.

2 Q Okay. Your duties as a road officer, what were
3 those.

4 A As a road officer, you initially respond to calls,
5 any call from, you know, a small crime up into a homicide.
6 You know, like Deputy Lucas said, you put out information
7 as soon as possible to try to get the suspect. Then you
8 turn that over to the investigators who send up the
9 initial report.

10 Q Did you ever, as a road officer, process crime
11 scenes?

12 A Absolutely.

13 Q And what does that mean? What is processing a crime
14 scenes?

15 A When you process a crime scene, it could be as easy
16 as throwing fingerprint powder, looking for a latent
17 fingerprint. It could be collecting an item, for example,
18 shell casings from the scene. It could be really, really
19 extensive or it could be very, very small.

20 Q And tell us once you actually went to the crime scene
21 unit as a full-time crime scene investigator, what types
22 of training did you get in preparation for your job now?

23 A When -- actually, before I went to the crime scene
24 unit, we go through an in-service training which takes
25 approximately a year to a year-and-a-half to complete.

1 It's going to go over crime scene processing, development,
2 documenting, talking about the crime, footwear, tire
3 tracks --

4 Q Slow down, slow down. Everybody wants to understand
5 what you're saying and hear it.

6 A Development and documenting, recording of prints,
7 fingerprints, footwear and tire track development and
8 documentation, blood stain pattern analysis, trajectory
9 analysis, latent print examinations, crime scene rape
10 construction, footwear, tire track examinations.

11 After that we're still completing that, I've attended
12 homicide question death seminars, approximately 16-hour
13 course, 16 hours of latent fingerprint techniques, eight
14 hours on blood stain pattern analysis, and another 40-hour
15 class in blood stain pattern analysis. That's about it.

16 Q You said part of your training has been documentation
17 and preservation of evidence?

18 A Documentation, development but it kind of goes
19 together. You try to preserve an item initial so when it
20 goes into evidence, it doesn't mold or have issues.

21 Q So packaging is important when you're --

22 A Correct.

23 Q -- trying to keep and save evidence.

24 A Yes.

25 Q Have you testified previously as a crime scene

1 investigator?

2 A No. This is my first time as a crime scene
3 investigator.

4 Q Okay. Okay. Were you called out to [REDACTED] [REDACTED]
5 Road on May 28th, 2011?

6 A I was.

7 Q Okay. Did you prepare reports, a report or reports
8 in connection with your involvement in this case?

9 A Multiple reports, yes.

10 Q Okay. Do you have copies of those with you?

11 A I do.

12 Q Okay. I guess, first of all, do you recall what time
13 it was that you responded out to the scene?

14 A I received a call approximately 4:45 in the morning,
15 and I arrived on the scene approximately 5:07.

16 Q And when you're going to, I guess, start processing a
17 crime scene walk us through. What do you first want to
18 know? What do you do at that scene?

19 A First is always going to be documentation. You want
20 to document a crime scene in its original condition
21 as -- you know, before you go and you process because then
22 you can destroy what the original scene looks like.

23 Q And documenting how?

24 A Documenting normally through photographs.

25 Q Okay. And did you do that in this case?

1 A Yes, ma'am.

2 Q Okay. And then after you go through and document,
3 what do you want to do next?

4 A After you document, you process the crime scene
5 either to latent prints, enter DNA swabs or collection of
6 evidence.

7 Q Okay. And then after you do that, what do you do
8 next?

9 A For processing, you're going to go into the
10 collection of any evidence that you may have found on the
11 scene.

12 Q Okay. And then after you collect it, what do you do
13 next?

14 A You can -- well, we're going to take it back with us
15 to the lab, whether it needs a follow up, which in this
16 case it did, or then we submit it to evidence to hold or
17 send on to another unit to get it processed.

18 Q So did you take all those steps in this particular
19 case at [REDACTED] [REDACTED]?

20 A Yes, ma'am.

21 Q Do you recall if you made contact with the victim,
22 Indira Lonsdale, out at that location?

23 A I did.

24 Q What do you remember, if anything, about your
25 communication or contact with her?

1 A When I first spoke with her, you know, she -- she was
2 distraught. I notified her, you know, it was in her best
3 interest to go to the hospital.

4 However, in this -- you know, in these types of
5 cases, some victims decide not to go to the hospital for
6 one reason or another. It's not necessarily unusual.

7 Q Okay.

8 A And she decided not to.

9 Q Okay. Is your role out there as a crime scene
10 investigator to get a detailed statement from her about
11 what happened?

12 A No, ma'am. It's -- my involvement is really
13 concerned with the crime scene, what happened, potential
14 evidence. That would be a criminal investigator.

15 Q So what rooms it happened in, where it happened, the
16 actual physical items at the scene?

17 A Correct, physical evidence.

18 Q Okay. I'll show you what we marked as State's
19 Exhibit 9, 8, 5 and 7. Real quick, take a look at 9. Do
20 you recognize the photos in nine?

21 A Those are the photos I took.

22 Q And eight?

23 A Photos I took.

24 Q Five?

25 A Same.

1 Q And seven?

2 A Same, as well.

3 Q Okay. These are all photos that you took when?

4 A That's correct. I took them at that time, on
5 May 28th.

6 Q Okay. 2011?

7 A Correct.

8 Q Okay. How was it then -- talk to us about the
9 process of how you were directed to particular rooms for
10 these items to take pictures of?

11 A I spoke with Ms. Lonsdale just -- you know, what
12 happened on the scene, where the incident occurred and
13 where -- you know, what possibly was the point of entry or
14 exit, evidence for collection, what items were possibly
15 rummaged through or disturbed in any way.

16 Q Do you have a certain procedure that you follow in
17 taking the photos and documenting the crime scene?

18 A There is no written rule on it. However, the way
19 that -- you know, you want to make sure initially when you
20 go in that nothing is moved. For sure, whenever I take
21 photographs, those initial photographs that you'll see,
22 nothing will ever be disturbed in those.

23 Q Okay.

24 A Then, you know, we go through and photograph possibly
25 what I have had processed and then collected.

1 Q Okay. So at any point in those early morning hours,
2 did you ever have the victim start going through her
3 dresser and her drawers and her items to tell you what had
4 been taken?

5 A No, ma'am. Definitely before I documented it through
6 photographs, nothing was done.

7 Q Okay. So you don't want anybody to be touching
8 anything?

9 A Correct.

10 Q Okay.

11 A For potential evidence reasons.

12 Q Let's start with State's Exhibit 9, and talk to us
13 about the photographs that you took here and why you took
14 them.

15 A All right.

16 Q And speak up as loud as you can so everybody can hear
17 you.

18 A This photograph would have been the closet in the
19 bedroom. This would have been the door to the closet.
20 Down here it's kind of dark, just depending on whether the
21 flash goes off or not. That's why you may see a lighter
22 area and then a darker area, especially at five o'clock in
23 the morning or so. This would have been the entry room
24 from the front porch towards the shade that she said were
25 closed.

1 This was her bedroom and some items on the floor with
2 the light on. This was some black underwear here that she
3 said was put over her face. Up here is a sitting area or
4 a dining room.

5 I took a photograph leading into the bedroom off to
6 the right there from that photograph, and this was a
7 photograph of the bedroom on the left-hand side on this
8 direction, both of these.

9 Q Okay. And she had drawn your attention to the blinds
10 that you said -- she said were closed?

11 A She did. That's why I would have photographed them.

12 Q Okay. What room did she indicate that the assault
13 took place in?

14 A The assault took place in her bedroom.

15 Q Okay. And State's Exhibit No. 5, is that what all of
16 this is documenting?

17 A Yes, ma'am, and it's all in the bedroom there.

18 Q Okay. And do you recall why you took the photo of
19 the purse?

20 A She said that the suspect had gone through the purse
21 looking for something.

22 Q Okay. And there is a dresser drawer sitting on the
23 bed. Where is that removed from?

24 A The initial photographs, it was on the bed, I
25 believe.

1 Q Okay.

2 A And if it was moved after that, it would have been
3 from putting some powder on it processing it.

4 Q But when you go into the bedroom, that's how you find
5 that dresser drawer, sitting on the bed?

6 A That's correct.

7 Q Okay. State's Exhibit 8, we have the four
8 photographs grouped here. Talk about those.

9 A These are photographs of the exterior of the
10 residence. This would have been looking from the front of
11 the house on the right-hand side. There was a gate area
12 and then toward the backyard, and in this photo --

13 Q Let me bring it over here.

14 A Again, toward -- in the backyard area to the right
15 side of the house. This would have been the back door on
16 the left photograph, the back door that was opened and the
17 back step leading to the back door.

18 Q And the three photographs closest to you.

19 A These were on the front porch on the right-hand side
20 looking toward the house from the roadway. This was the
21 entry, some French doors, a closeup of that door. This
22 would have been on the left-hand side of the front porch
23 on the main entrance.

24 Q Describe for us those doors here. Are they still
25 attached in the middle, or what is still connecting them?

1 A The -- I believe that there was -- they were knocked
2 down. The hinges are still on, on this white door from
3 the center.

4 Something -- I believe it might have been knocked all
5 the way down, and it was sitting on that door right there.
6 There may have been a lock. I don't recall whether there
7 was a lock on it, but I know the hinges were off.

8 Q Okay. It had come off on the hinges from attaching
9 to the doorframe --

10 A Correct.

11 Q -- essentially.

12 A Correct.

13 Q Okay. And then this is State's Exhibit 7.

14 A That photograph is the vehicle that was parked in the
15 driveway. The door was open at that time, just a closeup
16 of the door itself and inside of the vehicle.

17 This was a photograph before you go into the
18 right-hand side of the yard going toward the backyard.
19 That was the gate from back there.

20 This photograph was the porch area on the right-hand
21 side of the porch. You can see the door partially
22 sticking through it. This is a closeup of that on the
23 outside.

24 The next two photographs were of the gate, the gate
25 lock which was still locked and also the gate there at the

1 top of the door portion of the gate, and then down here is
2 the lock, as well as an item -- I guess it's a tool.

3 Q So the second part of this door, the fence lock was
4 on the ground?

5 A It was on the ground right near that open door.

6 Q Okay. And so when you're looking at, I guess this
7 top photograph right here, is it on the outside of the
8 gate where the car is or is this on the inside of the gate
9 where the door to the bedroom is?

10 A It's on the inside of the gate.

11 Q Okay. After taking all of the photos, then what's
12 the next process that you do specifically at this house?

13 A Process the crime scene for latent prints or
14 potential DNA.

15 Q And where did you look for prints?

16 A I looked numerous places. The front, the front doors
17 that you see knocked down. I looked at the interior and
18 exterior of those. I used black powder on those: The
19 back, the back door; the doorknob; the French door handle
20 in the bedroom.

21 Referring to the French door, there's some
22 matchabilities right there in the bedroom. They're on the
23 photograph but the French doors on the interior; a cell
24 phone on the bed; a black wallet on the bed; a small TV
25 stand in the bedroom; a dresser drawer on the bed; dresser

1 drawers in the bedroom; the bathroom sink handles; the
2 closet door exterior of that; a silver purse; the living
3 room shades. The living room, I'm referring to the room
4 that I took a photograph of the shades in.

5 Q The shades that she pointed out that were closed?

6 A That's correct, yes; that's correct.

7 Q Okay.

8 A And a basket near the back door that had propped open
9 the back door, basket or a pail with some items.

10 Q Talk to us about -- first of all, what do you mean by
11 latent print? What does that word mean?

12 A Latent print is an invisible print that you can't see
13 with your naked eye. It needs to be processed to develop
14 it so you can visibly see it.

15 Q And how do you process to see if you can find latent
16 prints?

17 A Generally with black powder or magnetic powder. In
18 this case, I used black powder and magnetic powder.

19 Q Can you tell the jury a little bit about prints and
20 being able to lift them and how often you actually find
21 prints.

22 A Prints can be fairly elusive. They -- you know,
23 there is no way to determine the age of a print, and also
24 depending on how many times a certain surface was touched,
25 you know, a dresser drawer, a purse, some of these other

1 items or how much dust was on it, you may not be able to
2 find a latent print.

3 It's not unknown not to find latent prints.
4 Generally on scene, you know, sometimes you find a lot.
5 Other times you just walk away with zero. About all you
6 can do is you look for where they would be. Sometimes,
7 you know, you may find 25 percent, find latent prints or
8 so.

9 Q Does the type of material that the person is
10 touching, does that affect?

11 A It does affect it. There's porous surfaces and
12 nonporous surfaces. Nonporous surfaces tend to leave
13 fingerprints.

14 With the touching of the hands, you can -- generally,
15 you'll be able to find a latent print a little easier than
16 on a porous surface such as popcorn ceiling or something
17 like that.

18 Q What about whether -- what other factors could -- I
19 guess how much moisture I have on my hand or what other
20 factors could affect leaving a print?

21 A All people are different when it comes to sweating
22 and their pores on their fingerprints where you sweat
23 from, and depending on how -- you know, if it's dry
24 weather, if it's humid weather. There's a lot of factors
25 that go into affecting whether a print is left.

1 Generally, the July here in South Carolina would probably
2 leave, you know, more sweat for a latent print.

3 Q So the type of material that's touched, how many
4 times a particular object is touched because I'm guessing
5 you could have prints on top of prints on top of prints?

6 A Yes.

7 Q Could how I move my hand on an object affect leaving
8 a print?

9 A Movement definitely can affect it. You may see a
10 smudge mark or a streak.

11 Q Because you actually need the ridge detail that's
12 left.

13 A Correct.

14 Q Okay.

15 A The center of the finger, the core of the fingertip.

16 Q So movement, the type of material, what's on my hand.
17 You said the weather. Is there anything else that you can
18 think of that affects?

19 A Well, just sometimes people have, you know, hands in
20 their gloves. Some people have socks in their gloves. It
21 could be -- it could be anything if the person is not bare
22 handed. So...

23 Q Could -- I touch this handrail right here. We all
24 know that I've stood here and I have touched it. We all
25 saw it, but possibly I could not leave a print?

1 A That's correct, yes.

2 Q Would you agree or disagree with the statement that
3 the -- the absence when you're talking about prints, the
4 absence of evidence is not evidence of absence.

5 MR. O'NEIL: Objection, Your Honor. Calls for
6 speculation.

7 MS. FENT: Would he agree or disagree?

8 THE COURT: Overruled, go ahead.

9 BY MS. FENT:

10 Q The absence of fingerprints is not evidence of
11 absence?

12 A Correct.

13 Q Were you able to lift any latent prints from all the
14 items that you processed?

15 A No, ma'am.

16 Q Okay. What do you do next then after you process for
17 prints?

18 A Generally, after processing I'll go and take a DNA
19 swab for potential DNA evidence, and I swabbed a few
20 items, usually.

21 Q I'm going to show you what is marked as State's
22 Exhibit No. 13. Take a look at that and see if you
23 recognize it.

24 A Yes. These are the swabs that I collected that
25 night.

1 Q Okay. And after you collected those swabs, what did
2 you do with them?

3 A Brought these back to our headquarters, and I
4 submitted them for evidence to our DNA section.

5 Q And how were they packaged?

6 A Like...

7 Q You mean --

8 A On the inside?

9 Q Yeah.

10 A They're containers. It's a regular cotton swab, and
11 then there's a box about this long where you put the swab
12 inside of there and mark specifically where the item --
13 you know, where the swab was taken from so we can keep
14 track of them.

15 Q And State's Exhibit No. 13 is containing what
16 property item numbers?

17 A .2, .3, .4, .5, .6, .7, .8, .9, and .10.

18 Q Do what did you say you did with this after the
19 individual swabs? You put it in this envelope?

20 A Correct.

21 Q And then what did you do with this envelope?

22 A After that, I'll drop it into our evidence to have
23 that basically forwarded on to DNA.

24 Q What do you mean by drop it into evidence?

25 A If we -- we have person-to-person drops or we have a

1 drop box in this case. I dropped it in the drop box.
2 That's when -- because this was at 9:10 in the evening
3 when I dropped these. So no one was working in the
4 evidence section. I dropped it there, so when they come
5 back they can collect that.

6 Q And these items two through ten, did they remain in
7 your custody from the time that you took the swabs into
8 the house until you submitted them into the drop box?

9 A They did.

10 Q I'd offer into evidence Exhibits 2 through 10.

11 (Pause).

12 I'll hold off and offer them again later.

13 THE COURT: Mark it for identification.

14 BY MS. FENT:

15 Q They are marked for identification, Exhibit 13.

16 I'm going to ask you to take a look at the individual
17 two through ten inside of 13 and just ask if you recognize
18 the handwriting on each of those swabs?

19 A Yes, they're all mine. I also have my name on all.
20 Whenever we collect them, I put my name on them.

21 Q And how are each of the swabs identified in terms of
22 where they are taken in the house?

23 A Identify them each by here. I put where I collected
24 the item from and then below it with a case number. It's
25 going to be the name, the time and the date collected.

1 Q And can you tell us where, essentially, you took the
2 swabs from?

3 A Sure.

4 Q That's six -- starting with item two.

5 A Item two was taken from a black wallet on the bed.

6 Q Three?

7 A Three is taken from the small bedroom TV stand.

8 Q Four?

9 A The dresser drawer on the bed.

10 Q Five?

11 A The back doorknob outside.

12 Q Six?

13 A The bedroom French door handle.

14 Q Seven?

15 A The vehicle outside driver door handle.

16 Q Eight?

17 A The vehicle gear shifter.

18 Q Nine?

19 A The vehicle steering wheel.

20 Q And ten?

21 A The vehicle emergency brake.

22 Q Let me get back here.

23 I'm going to show you what is marked as State's

24 Exhibit 10. Do you recognize these photographs?

25 A I do.

1 Q And who took these photographs?

2 A I did.

3 Q Do they accurately reflect what you saw at the house
4 and what you subsequently did with one of the items?

5 A Yes.

6 MS. FENT: Offer into evidence State's Exhibit 10.

7 MR. O'NEIL: No objection, Your Honor.

8 THE COURT: Without objection.

9 (WHEREUPON, State's Exhibit No. 10 was admitted into
10 evidence.)

11 BY MS. FENT:

12 Q What is in Exhibit 10?

13 A Starting on the left-hand side, this was the
14 bathroom. There was a washrag or a washcloth in the
15 bathroom sink that I collected, so this was before it was
16 disturbed in any way before I collected that. That was in
17 its original location.

18 Right below it is a picture of the bathroom. If you
19 notice with the coloration in the photo differences, you
20 can tell a flash went off. In the bottom one, this was
21 more natural light in the top there.

22 On the far right-hand side, these are photographs of
23 the washcloth that I collected, the one in the sink. I
24 took that back to our laboratory, and I photographed that
25 with and without the scale.

1 Q State's Exhibit 14, take a look at that and tell me
2 if you recognize State's Exhibit 14.

3 A I do. It's the wash cloth that I collected.

4 Q Okay. And who packaged it in that envelope?

5 A I did.

6 Q Is that your handwriting on the outside of the
7 envelope?

8 A It is.

9 Q Can you tell us then -- when you took the photograph
10 in State's Exhibit 10, is that where you found the
11 washcloth is in that sink?

12 A Yes, that's correct.

13 Q Tell us how was that pointed out to you? How did you
14 come to find out about it?

15 A Ms. Lonsdale stated that -- I had asked her if during
16 the incident, if anything was used to possibly wipe off
17 with or used during the incident. She stated that there
18 was a washcloth in the sink, so I went and photographed
19 that and collected that.

20 Q When did that happen? When did you find that out
21 from Ms. Lonsdale?

22 A It was -- it was actually later after I had already
23 processed the front room.

24 Q Okay. Inside of State's Exhibit 14, I just took out
25 a brown paper bag. Who put this in a brown paper bag?

1 A I did.

2 Q So after you collected it from that sink, what did
3 you do with it?

4 A I put it -- there was a smaller envelope that I put
5 inside the brown paper bag.

6 Q And then what did you do with it?

7 A After that, I brought it back to the laboratory,
8 photographed it with and without the scale, did stuff in
9 the laboratory, and I put it in this envelope.

10 Q And what condition was it when you got it out of that
11 sink?

12 A It was actually very wet, saturated. So before -- I
13 should take the step back. Before I -- initially, when I
14 brought this back, it was early in the morning on that
15 day, say it was around eight o'clock or so in the morning.

16 So we have in our forensic garage, we have some
17 drying cabinets where we dry, you know, bio -- it could be
18 bloody clothes, whether it's wet or saturated in any type
19 of way that would bring it back to dry it. So I put this
20 in one of those.

21 Q Okay. And then after it was in the drying rack, what
22 did you do with it?

23 A When I came back on shift that night, then I came
24 back, retrieved that item from the forensic garage, the
25 drying cabinet. I brought it, put it -- photographed it.

1 That's why you'll see a -- it looks like it was hung
2 on the photograph. We have individual hangers that we
3 basically throw away. They're one-use hangers so there's
4 no potential cross-contamination.

5 Q And who all has access to these drying racks?

6 A Only the crime scene investigators.

7 Q And it's more than one case put in a drying rack?

8 A Never. We have three separate drying racks.

9 Q So they came back. You took it out of the drying
10 cabinet. You said you took photographs of it?

11 A Yes.

12 Q The black marks on the rag, who put those on there?

13 A I did.

14 Q And what did they indicate?

15 A Well, when I brought this back, it was late. It was
16 nine or so in the evening that night, and we have an
17 alternate light source. With that, what we can do is we
18 can enhance certain fluids or chemicals that will enhance
19 under certain wave length. So I enhanced the washcloth
20 and it fluoresced. So I circled the areas that
21 fluoresced.

22 Q This item in the paper bag that we took out of
23 State's Exhibit 14, do you recognize that?

24 A Yes, that's a washcloth.

25 Q Okay. And then what did you do with the washcloth

1 after you took the photos?

2 A After I took the photos, I circled with a black mark,
3 with the areas that the black mark fluoresced, and then I
4 submitted that to DNA, as well, for a follow up for
5 potential DNA evidence.

6 Q And how is it packaged -- well, actually, you said
7 you submitted it to DNA. Where did you physically take
8 this item in State's Exhibit 14?

9 A To evidence.

10 Q Okay. And how did you?

11 A I put --

12 Q Who did you give it to? Where did you put it
13 physically?

14 A I put it in locker number 28 in the evidence room.

15 Q Okay.

16 A It was approximately 1:12 in the morning.

17 (WHEREUPON, State's Exhibits Nos. 19, 20 were marked
18 for identification only.)

19 BY MS. FENT:

20 Q I'm going to show you what's been marked as State's
21 Exhibit 19 and 20 and ask you if you recognize that?

22 A Yes. That's the quilt that I collected from the
23 scene, as well, in the bedroom.

24 Q Okay. You took those photographs?

25 A I did.

1 Q Okay. I'm going to show you what's marked as State's
2 Exhibit 17. Take a look at that label and ask if you
3 recognize that?

4 A It's mine. It's what I submitted.

5 Q Okay. What you submitted being...

6 A The quilt to evidence.

7 Q Okay. And you said to evidence. Where did you
8 physically take it and put it?

9 A I took it in locker 28, the same locker that I also
10 put the washrag in at approximately 1:15.

11 Q This is your handwriting?

12 A It is.

13 MS. FENT: I'd offer into evidence State's
14 Exhibit 17, 19 and 20.

15 MR. O'NEIL: No objection.

16 THE COURT: Without objection.

17 (WHEREUPON, State's Exhibits Nos. 17, 19, 20 were
18 admitted into evidence.)

19 BY MS. FENT:

20 Q I want to show you what's marked as State's Exhibit
21 No. 12 and ask if you recognize that.

22 A I do. This is a buccal swab from Ms. Lonsdale.

23 Q Okay. And when you say buccal swab -- speak up.
24 When you say buccal swab, what do you mean?

25 A All right. It's pretty standard on the scene that

1 whenever we have potential DNA evidence -- in fact, almost
2 every time on the scene, whether it's a burglary or where
3 the victim possibly had touched items throughout the
4 house, we'll take a buccal swab, which is just a standard
5 swab on the inside of the cheek. It has some really good
6 cells for DNA to go through and process for DNA.

7 Q Okay. And potentially why? Why do we want the
8 victim's standard or victim's swab?

9 A So then we have it on file. If we potentially have
10 two, two or more profiles, in a DNA sample.

11 Q Okay. Because she obviously lives there and has
12 touched items in her house, so if we develop a profile,
13 then --

14 A Right.

15 Q -- we can eliminate her or say, "Yeah, that's hers."

16 A It's mainly for elimination purposes.

17 Q And what did you -- did you actually physically get
18 this from the victim?

19 A Yes, ma'am.

20 Q And then what did you physically do with it?

21 A I submitted it to evidence into the drop box on May
22 28th, 2011 approximately 9:10 p.m.

23 MS. FENT: Okay. No further questions at this time.
24 If you'll just answering any questions Mr. O'Neil has.

25 THE COURT: Cross-examination?

CROSS-EXAMINATION:

1
2 BY MR. O'NEIL:

3 Q Essentially, you were not at the scene, at the
4 incident location, when this incident took place, correct?

5 A Right.

6 Q So essentially, you're relying on the victim to tell
7 you some of the areas of the house that's important for to
8 look into?

9 A Correct, she directed me to certain points.

10 Q So she directed verdict you to a certain extent as to
11 what to dust for fingerprints, what to swab for DNA.

12 A What actually was touched, yes, sir.

13 Q Because there's some obvious things, like the French
14 doors that are off their hinges that need your attention.

15 A Sure.

16 Q The open car, obviously, that needs to be swabbed for
17 DNA. That kind of stuff is pretty obvious but other
18 things that are not so obvious, you rely on the victim to
19 tell you where to look at that for potential DNA evidence.

20 A Sure.

21 Q So would it be fair to say if the victim is not aware
22 that particular item was touched and it's not obvious that
23 it needs to be fingerprinted, it probably will not be
24 fingerprinted or tested for DNA?

25 A Possibly. However, then it goes from my experience

1 what I've done in the past, you know, for certain items
2 that, you know, we call them high-touched items, drawers
3 and stuff like that that we have processed.

4 Q Were there any sort of high-touched items outside the
5 bedroom that you swabbed that you were put on notice by
6 Ms. Lonsdale to look at those items, anything outside the
7 bedroom that you did on your own volition?

8 A The bathroom, I went in the bathroom and then to the
9 back door, but I took the photographs of the back door.

10 Q Okay. But you are directed to go to the bathroom by
11 Ms. Lonsdale. She indicated there may have been some DNA?

12 A After we had discussed it, yes.

13 Q Okay. Yes. Let's talk about the things you dusted
14 for fingerprints, first, okay. You dusted some things for
15 fingerprints inside of the bedroom, correct?

16 A Correct.

17 Q Those things were the bedroom doors themselves, a
18 cell phone, a wallet, a TV stand, a drawer on the bed, the
19 closet door and a purse, correct?

20 A Yes.

21 Q And you didn't find any fingerprints of Mr. Dunn's
22 there on any one of those items?

23 A I did not.

24 Q Okay. You also went in the bathroom and dusted the
25 sink for fingerprints, correct?

1 A I did, yes, the bathroom sink handles.

2 Q No fingerprints of Mr. Dunn's there either?

3 A No, sir.

4 Q Then you dusted the vehicle that was on the outside
5 for fingerprints, no fingerprints of Mr. Dunn in that
6 vehicle in the driver's door, gearshift, steering wheel or
7 emergency brake.

8 A No, sir.

9 Q You took some swabs of DNA, and that's what you have
10 in front of you right there?

11 A Yes, sir.

12 Q Those ranged from items inside the bedroom like the
13 black wallet and the TV stand and the dresser drawer.
14 Those came from inside the bedroom, and Ms. Lonsdale
15 indicated that the incident actually occurred inside the
16 bedroom?

17 A Correct.

18 Q Didn't find any DNA of Mr. Dunn on the black wallet,
19 the TV stand, or dresser drawer?

20 A Not to my knowledge.

21 Q And you also swabbed the back door, front door of the
22 house itself in the same parts of the car that you dusted
23 for fingerprints. Now, you say you sent those over to the
24 DNA lab?

25 A To evidence to be forward on to DNA, correct.

1 Q Who decides whether or not those items are ultimately
2 tested for DNA?

3 A When we submit those, it's a request for testing of
4 DNA.

5 Q Okay. Does anybody have a policy so they don't test
6 those items?

7 A You would have to get with the DNA analyst on that
8 question.

9 Q Okay.

10 A You know, specifically on that question.

11 Q So do you know whether or not the swab from outside
12 the driver's door handle, the gearshift from the car, the
13 steering wheel of the car, the emergency brake, the swab
14 from the TV stand, do you know whether or not those items
15 were tested for DNA?

16 A Again, I would be having to look at somebody's else's
17 report.

18 Q So you don't have any personal knowledge about
19 whether or not they were tested?

20 A Correct, that would be the DNA analyst.

21 Q And you talked about -- you gave some factors as to
22 when some time DNA fingerprints may not be lifted. I
23 mean, I think you were referring specifically to
24 fingerprints. Under some circumstances, the fingerprints
25 would not be left.

1 Any of the items that you processed for fingerprints,
2 did -- one thing you said that sometimes if it there's a
3 -- sets of dusting on the items, it would be harder to get
4 to the place on there.

5 A Correct.

6 Q Many of these items that were tested inside of the
7 bedroom, were they -- did it have the sets of dust on them
8 that would have prevented fingerprints, specifically the
9 wallet, the cell phone, TV stand, the purse, closet door?

10 A TV stands generally tend to have more dust on them
11 because people don't wipe them off very often, same with
12 dresser drawers.

13 You basically think what you dust at home and what
14 you don't dust. That's where dust seems to accumulates.

15 Q I guess I'm asking specific -- not in general but
16 specifically in this case, was there any sets of dust on
17 the scene when you were processed this case?

18 A There was -- there was dust on the -- it would have
19 been the dresser drawers.

20 Q Okay.

21 A And the small TV stand.

22 Q And now the TV stand, did you dust for fingerprints
23 on the cord or the stand itself?

24 A The stand itself.

25 Q What about the cell phone, the wallet, the purse?

1 Any sets of dust on those items?

2 A I don't recall seeing excessive dust.

3 Q Now, would those items -- would they be considered
4 porous or not porous?

5 A The cell phone would be nonporous.

6 Q Okay. You said the nonporous items, it's easier to
7 get fingerprints on nonporous items?

8 A Generally.

9 Q Generally speaking. So cell phone would be a
10 nonporous items. What other items would be nonporous.

11 A The purse was porous.

12 Q Okay.

13 A The window shades were porous.

14 Q Okay.

15 A Most of the other items were porous, besides the
16 dresser drawers, but they were dusty.

17 Q So all of the door handles would be porous?

18 A No. Actually, the door handle would have been. It
19 would have been nonporous.

20 Q Okay. Not -- all of the door handles would be
21 nonporous.

22 A I'm trying to recall, you know, exactly which ones
23 were nonporous. We'll say they were nonporous.

24 Q Okay. It's easy to get fingerprints on nonporous
25 items?

1 A Generally.

2 Q Generally. Okay. You also said when there's -- when
3 it's more humid, it's probably more likely than not that
4 the fingerprint would be lifted in a more humid
5 environment than a non-humid environment?

6 A It's a lot of factors.

7 Q Yes, sir.

8 A But that can play a part.

9 Q Everything else is held constantly. If it's more
10 humid, it's going to be more likely to leave it. This
11 occurred on May 28th of last year?

12 A Uh-huh.

13 Q Do you remember whether or not this was a
14 particularly humid night or early morning?

15 A I do not recall. I do not write the weather down.

16 Q But this was, I guess, early summer?

17 A May 28.

18 Q Early summer. Okay. Now, and I may be confused
19 here. You said you dropped items two through ten off at
20 9:10 in the evening?

21 A That's correct.

22 Q What time did you leave the scene that day?

23 A When I left the scene, I went to -- back to
24 headquarters, and then I put those secured in my locker,
25 then I come back. If I came back on shift to process the

1 items and then dropped the evidence -- because it was
2 already after my shift.

3 Q Oh, you were getting off in the morning, essentially
4 put it in your locker, then you came back on that night.

5 A Correct.

6 Q You drop it off into evidence, right? Did you drop
7 it off in your locker or just out the door?

8 A We had individual lockers. I had locker number five.

9 Q Okay.

10 A We had the keys.

11 Q And you put two through ten in locker number of five.

12 A I -- yes.

13 Q Okay. And Ms. Bodman asked you about the fact that
14 the absence of a person's fingerprints at a scene does not
15 necessarily mean that they were not at that scene, okay.

16 A Yes.

17 Q Would it also be true that it's just as likely is the
18 fact that a person's fingerprint is not at the scene, that
19 person could not have been at the scene either?

20 A It's possible. It's -- you know, it's a fingerprint.

21 Q Yeah.

22 A So like I said, maybe 25 percent of the time I find
23 fingerprints on the scene.

24 Q Okay. And you said one of the reasons why you may
25 not find fingerprints on the scene is that in sort of --

1 some high-traffic areas, like for instance for it was a
2 convenience store, people coming in and out at a point,
3 that they check out counter, the convenience store, that's
4 a high-traffic area, probably not going to find
5 fingerprints --

6 A Yes.

7 Q -- people coming in and out? You're aware that
8 Ms. Lonsdale stayed by herself at this the residence?

9 A I believe that she did. She was there by herself.

10 Q And that probably would have -- that may have thought
11 it was less traffic there in that bedroom than any other
12 area?

13 A Well, let me change that. When -- when I say high
14 traffic, I mean, it could become the same person, you
15 know, touching over and over, like a dresser drawer handle
16 or something like that.

17 Q Okay. And you talked to Ms. Lonsdale on that night.

18 A Yes, sir.

19 Q Did she mention anything about the perpetrator
20 wearing any gloves or anything of that nature?

21 A I don't believe so.

22 Q You would have noted that if she said the perpetrator
23 wore gloves?

24 A Correct.

25 Q Now, I think you kind of wanted to -- you kind of

1 suggested Ms. Lonsdale go to the hospital and get a rape
2 kit conducted?

3 A Correct.

4 Q What sort of evidence could have been gained from
5 that rape kit? Why did you make that suggestion?

6 A Whenever there is an incident that has occurred, you
7 know, if the person has a gun, I'll just say as a second
8 suggestion, "Hey, go to the hospital. Have those done for
9 potential evidence."

10 Q And even though that victim in the case washed or
11 took a shower, the perpetrator's DNA still could have been
12 on her body at that point?

13 A I'm sorry, state that again.

14 Q Even if the victim in a rape case takes a shower,
15 washes up, there is still a chance that the perpetrator's
16 DNA could be a person, correct?

17 A There's a chance.

18 Q That's a reason that you recommend going to the
19 hospital and getting a rape kit done.

20 Beg the Court's indulgence, Your Honor.

21 (Pause.)

22 That's all I have, Your Honor.

23 THE COURT: Any redirect?

24 REDIRECT EXAMINATION:

25

1 BY MS. FENT:

2 Q When you went to this house, where did you meet the
3 victim? Was she standing outside of her house on the
4 road, or was she inside the house?

5 A I believe she was inside of the house.

6 Q Okay. When you processed this entire house for
7 prints, did you find any latent prints?

8 A I did not.

9 Q So you did not find the victim's prints in her own
10 house?

11 A I did not.

12 Q Did you find the victim's prints in her own car?

13 A I did not.

14 Q And you actually swabbed the emergency brake?

15 A I did.

16 Q And the door handle?

17 A Yes.

18 Q Gearshift, steering wheel and emergency brake?

19 A Yeah.

20 Q In her car you did not find her prints in her car.

21 A Correct.

22 Q Or her print in her house.

23 A Correct.

24 MS. FENT: No further questions.

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

1 Approach the bench.

2 (Whereupon, there was a bench conference.)

3 THE COURT: Just checking on the schedule, ladies and
4 gentlemen. Everybody all right? Anybody need a break?
5 Keep moving?

6 (There was no response).

7 MS. FENT: The State calls Anthony Branham.

8 ANTHONY BRANHAM, after being duly
9 sworn, testified as follows:

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

12 THE WITNESS: Anthony Branham, B-R-A-N-H-A-M.

13 DIRECT EXAMINATION:

14 BY MS. FENT:

15 Q Deputy Branham, with whom are you employed?

16 A Richland County Sheriff's Department.

17 Q In what capacity?

18 A I'm a criminal investigator.

19 Q Back in May of 2011, what was your assignment at that
20 point?

21 A I was a Richland County Sheriff's Department evidence
22 custodian.

23 Q And what are your jobs as an evidence custodian?

24 A Maintain the evidence room at the sheriff's
25 department, maintain the staff, make sure that -- maintain

1 the security of the evidence and make sure that it's
2 properly issued in and issued out.

3 Q And who -- can anybody enter into the property room
4 where the evidence is?

5 A No, ma'am.

6 Q Okay. Did you -- are you aware of property reports?
7 Do you keep reports of the evidence being logged in and
8 logged out?

9 A Yes, ma'am.

10 Q Okay. And did you look at the property report
11 regarding case number 1105009928?

12 A Yes, ma'am.

13 Q Okay.

14 A I put that here in front of me.

15 Q I've taken it apart here in front of the jury, but
16 I'm going to show you State's Exhibit No. 14. If you can
17 take a look at, I guess the item number would be on the
18 back, item 11.

19 A Yes, ma'am.

20 Q Okay. Did you take custody of that item at any point
21 in time?

22 A Yes, ma'am. I took it into the evidence room on
23 May 31st at 8:58 p.m.

24 Q Okay. And where did you get it out? Where did you
25 retrieve it from?

1 A It was inside of locker number 28.

2 Q And locker 28, who all would have access to that
3 locker?

4 A The only person is once the evidence is placed in
5 there and locked by the officer, it's placed into the
6 security room locker, the only persons that would be able
7 to get it out would be a member of the staff.

8 Q So you received it from locker 28, and then what do
9 you essentially do with that item?

10 A Log it into the system, the evidence system at the
11 sheriff's department. It's assigned a number, which would
12 be number 11. Then we briefly describe the item that's
13 inside the envelope, and then we place it into a location
14 inside the evidence room.

15 Q Okay. And then you said that that evidence room is
16 secure?

17 A It is. It's secured with alarm systems, cameras and
18 just regular key locks.

19 MS. FENT: Okay. No further questions at this time.

20 CROSS-EXAMINATION:

21 BY MR. O'NEIL:

22 Q Now, Investigator, you said you got it out of the
23 locker on May 31st.

24 A Yes, sir; that's correct.

25 Q Do you know when it was put in locker 28?

1 A Yes, sir. It was placed in there on May 29th at 1:12
2 p.m.

3 Q By whom?

4 A By Investigator Schroeder.

5 Q And that's your only part of this investigation,
6 getting it out of the locker. What did -- what did you do
7 with it after you got it out of the locker?

8 A I said I placed it in the system, which automatically
9 assigned it a number, and I placed it on a shelf in the
10 evidence room. That was my total, I guess, dealings with
11 this evidence.

12 MR. O'NEIL: No further questions.

13 THE COURT: Anything further?

14 MS. FENT: No.

15 THE COURT: All right, sir. You may come down. May
16 this witness be excused?

17 MR. O'NEIL: No objection.

18 THE COURT: Without objection. You're free to go,
19 sir. Thank you very much.

20 THE WITNESS: Thank you.

21 MS. FENT: State calls John Carwell.

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

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

1 THE WITNESS: John Carwell.

2 DIRECT EXAMINATION:

3 BY MS. FENT:

4 Q With whom are you employed?

5 A Richland County Sheriff's Department.

6 Q And in what capacity?

7 A I am assigned to the narcotics division at this time.

8 Q Okay. I'm going to show you what is marked as
9 State's Exhibit No. 4 and ask you if you recognize that?

10 A I do.

11 Q And just generally speaking, what is that form?

12 A This is a form that the Richland County Sheriff's
13 Department uses. It's a consent to search for an
14 individual's DNA.

15 Q In the form of -- does it speak about the specific
16 form, like are you going to take blood or how you're going
17 to get the DNA?

18 A It's going to say that -- it says that to take a
19 buccal swab, which was an oral swab, cotton swab, inside
20 of your mouth.

21 Q And, essentially, what is a buccal swab?

22 A It is a cotton swab with a Q-tip.

23 Q And just do you just do it yourself, or do you have
24 the person that you're asking --

25 A I opened the package and the individual that's

1 consented takes it from the package and swabs inside the
2 mouth and places it into the box, and then it goes into an
3 evidence bag.

4 Q I'm going to show you what is marked as State's
5 Exhibit 16 and ask if you recognize that.

6 A I do.

7 Q And, specifically, what is that?

8 A This is an evidence bag that has the buccal swab of
9 Edward Dunn.

10 Q And who took that swab?

11 A I did.

12 Q Do you see the person that you took that swab from in
13 the courtroom today?

14 A Yes. He is sitting at that table over there.

15 Q Can you describe what he's wearing so that we know
16 who you're talking about?

17 A He has a red shirt on with white stripes.

18 MS. FENT: May the record reflect this witness has
19 identified the defendant?

20 THE COURT: The record so reflects the witness has
21 identified the defendant.

22 BY MS. FENT:

23 Q And tell us then how it was, did you get a court
24 order or consent? How is it that you took this swab from
25 the defendant's mouth?

1 A It was a consent, voluntary consent, from Edward
2 Dunn.

3 Q And did he sign this consent form?

4 A He did sign it.

5 Q And he allowed you to take that swab from his mouth?

6 A Yes, he did.

7 Q And physically, what did you do with that swab then?

8 A I placed it in the cardboard box. His name is on it,
9 case number for my case. I placed it in this evidence
10 bag. I filled out the appropriate lines. I submitted it
11 to the evidence room. It was actually person to person.
12 I handed it to the evidence technician.

13 Q And the date and time that you submitted that hand to
14 hand to the property room?

15 A September 21st, 2010 at 4:12 in the afternoon.

16 MS. FENT: Your Honor, at this time I offer into
17 evidence State's Exhibit No. 4.

18 MR. O'NEIL: I renew my previous objection.

19 THE COURT: Subject to the defendant's objection,
20 it's admitted.

21 (WHEREUPON, State's Exhibit No. 4 was admitted into
22 evidence.)

23 MS. FENT: No further questions at this time.

24 MR. O'NEIL: Nothing further.

25 THE COURT: You may come down. Thank you.

1 MR. MATTHEWS: The State calls Patricia Weed.

2 PATRICIA WEED, after being duly sworn,
3 testified as follows:

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

6 THE WITNESS: Patricia Weed.

7 DIRECT EXAMINATION:

8 BY MR. MATTHEWS:

9 Q Ms. Weed, where are you currently employed?

10 A Richland County Sheriff's Department.

11 Q And what is your occupation there?

12 A I'm up in investigations now.

13 Q Okay. And in September of 2010, where were you
14 working in the sheriff's department?

15 A In the evidence room.

16 Q In the evidence room, and what were your duties in
17 the evidence room?

18 A To bring in evidence that the officers or others
19 investigators bring in from off the street and log it in
20 to the system.

21 Q I'm looking at property report here 1009205220. Is
22 that the one you have in front of you?

23 A No, I don't have that one.

24 Q Okay. I'm handing you up that property report. If
25 you'll just review that briefly, please. If you'll look

1 at line five, did you have a chance to handle any items in
2 this case?

3 A I did, sir.

4 Q I'm showing you what's been marked as State's
5 Exhibit 15. Is that reflected on that property report?

6 A Yes, sir.

7 Q And what was your involvement in the handling of this
8 item?

9 A I brought it in from the officer.

10 Q From which officer?

11 A John Carwell.

12 Q And what was the date of that?

13 A That was 9/21/2010 at 4:12 p.m.

14 Q And once you took it from Investigator Carwell, what
15 did you do with it?

16 A I take it from the officer, log it back into the
17 system, and put it back on the shelf where we got it
18 originally from.

19 Q Was it sealed when it was given to you?

20 A Yes, sir. The items that we take are always sealed
21 or we don't accept it.

22 Q Did you open it, open the seal or tamper with it in
23 any way?

24 A No, sir.

25 Q You entered it in the exact same condition that it

1 was given to you?

2 A Yes.

3 Q All right. Can I get that property report back,
4 please?

5 Thank you.

6 If I can refer you to line four on the property
7 report. What was the next thing you did with that item?

8 A I got -- removed the item from the shelf and gave it
9 to Christine Barrickman who works in the DNA lab.

10 Q And what was the date and time of that?

11 A That was 10/25/2010 at 9:08:55 in the morning.

12 Q Would it still have been sealed at that point?

13 A Yes, sir.

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

16 THE COURT: Any questions?

17 MR. O'NEIL: No questions, Your Honor.

18 THE COURT: All right. You may come down.

19 May this witness be excused?

20 MR. O'NEIL: No objection, Your Honor.

21 THE COURT: Without objection.

22 MS. FENT: The State calls Christine Barrickman.

23 CHRISTINE BARRICKMAN, after being duly
24 sworn, testified as follows:

25

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

3 THE WITNESS: Christine Barrickman,
4 B-A-R-R-I-C-K-M-A-N.

5 DIRECT EXAMINATION:

6 BY MS. FENT:

7 Q With whom are you employed?

8 A Richland County Sheriff's Department.

9 Q In what capacity?

10 A I work in the DNA laboratory.

11 Q And what are your duties and responsibilities in the
12 DNA laboratory?

13 A My main job is to assist the analyst with casework.

14 Q And how do you do that?

15 A Generally, I retrieve evidence from the evidence
16 room, open it up, inventory it and process it and turn it
17 over to the analyst for casework.

18 Q The first thing I want to do is bring your attention
19 to State's Exhibit 16, and ask you if you had any contact
20 with this item.

21 A I did.

22 Q Okay. And what was the nature of your contact with
23 State's Exhibit 16?

24 A I received it from the evidence room, brought it
25 upstairs. I opened it, inventoried it, processed it and

1 turned it over to the analyst.

2 Q And what does it mean by process it?

3 A It's a buccal swab, so it's just -- I put -- I drop
4 the buccal swab off. It's put into a tube, and it's put
5 on a rack and turned over to an analyst to run on an
6 instrument.

7 Q Do you know who you retrieved that item from the
8 property room?

9 A Patricia Weed.

10 Q Okay. And then does it remain in your custody and
11 control until you turn it over to the analyst?

12 A Correct.

13 Q And what analyst did you turn that item over to?

14 A John Barron.

15 Q Okay. And that item was identified to you as what,
16 whose buccal swab?

17 A It's a buccal swab from Edward Dunn.

18 Q Then regarding case number 1105009928, did you
19 process items of evidence regarding that case number?

20 A I did.

21 Q Did any of the items -- or was one of the items that
22 you had contact with, was it item 11, the washcloth?

23 A No.

24 Q Okay. So there were other items that you helped
25 process?

1 A Correct.

2 Q Okay. What were the items that you helped, I guess,
3 process?

4 A It was items seven, eight, nine, ten, and 16, which
5 were swabs from a vehicle and a buccal swab from Donald
6 Moore.

7 Q So you would not have opened State's Exhibit -- well,
8 I guess item 11, which we've marked as State's Exhibit 14?

9 A I did not.

10 MS. FENT: Okay. I have no further questions.

11 THE COURT: Any cross?

12 MR. O'NEIL: No questions.

13 THE COURT: Is this witness free to go?

14 MR. O'NEIL: Yes.

15 THE COURT: You may come down. All right.

16 Ladies and gentlemen of the jury, let's take a short
17 afternoon break. At this time, I'll ask you to -- we'll
18 take a break for about 15 minutes. Just relax in the jury
19 room. We'll call you when we're ready. Don't discuss the
20 case amongst yourselves while you're in the jury room.
21 Thank you very much.

22 (WHEREUPON, the jury left open court at approximately
23 3:39 p.m.)

24 THE COURT: All right. Stand at ease for about ten
25 minutes. All right.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: State ready to proceed?

3 MS. FENT: We are, Your Honor. Can we approach just
4 about scheduling?

5 THE COURT: Approach.

6 (Whereupon, there was a bench conference.)

7 THE COURT: Who is your next witness, Solicitor?

8 MS. FENT: We are calling Deputy Ben Lasher, who is
9 the reporting officer regarding the burglary that occurred
10 at the victim's home on May 21st, 2011, a week before this
11 sexual assault.

12 MR. O'NEIL: And, Your Honor, I would object to any
13 testimony by Deputy Lasher. I think any sort of testimony
14 from Deputy Lasher as it relates to the details of the
15 burglary that occurred seven days before the burglary that
16 we're here for today, Your Honor.

17 I think that would be double to the whammy of
18 improper bad act, which is, I think -- it may not --
19 Deputy Lasher may not have any direct knowledge as to who
20 perpetrated that burglary or not.

21 I think the only inference that can be drawn from the
22 testimony of Deputy Lasher concerning the burglary on
23 May 21st would be that Mr. Dunn committed that burglary,
24 because if Mr. Dunn didn't commit that burglary on
25 May 21st, 2011, then that testimony has no relevance to

1 this case.

2 THE COURT: Well, hadn't -- hasn't the victim, or
3 Ms. Lonsdale, already testified to that?

4 MR. O'NEIL: She testified that her house was
5 burglarized earlier, yes, Your Honor.

6 THE COURT: And the money was in a drawer.

7 MR. O'NEIL: I don't think she testified -- I don't
8 know if she --

9 THE COURT: I don't remember which.

10 MR. O'NEIL: I don't remember her testifying to the
11 exact location of where the money was or anything of that
12 nature. She may have said something. I don't recall it.

13 THE COURT: All right. It's in the record that she
14 was robbed a week before that. What's the purpose of this
15 witness testify?

16 MS. FENT: It corroborates her that she, indeed, did
17 call the police, make a report reporting that cash had
18 been taken from that dresser drawer. It corroborates her.
19 There is -- this officer is going to have no clue who
20 submitted it, doesn't have an opinion as to who committed
21 it.

22 THE COURT: But he said -- he says the implication is
23 that his client was somehow responsible for it or
24 otherwise, you wouldn't be submitting the officer.

25 MS. FENT: No. It just corroborates the victim's

1 account of what happened, that it, indeed, was
2 burglarized.

3 THE COURT: You stipulate it?

4 MR. O'NEIL: No, Your Honor. It don't -- it's not
5 relevant. If Mr. Dunn didn't commit it, there is no
6 relevance to that testimony. If the evidence is not --
7 Mr. Dunn committed -- it's not relevant at all if somebody
8 other than Mr. Dunn -- Mr. Dunn actually made it relevant
9 in his own statement when he said -- I meet up with Shorty
10 and Shorty said he hit this house earlier and got 10
11 stacks or 15 stacks, whatever it was, \$50,000, and did I
12 want to go back with him to hit the house again.

13 But at this point, that testimony is not in evidence.
14 That testimony is not in evidence at the point, and
15 therefore, it's still not evidence.

16 THE COURT: All right. I think until it becomes
17 relevant. I sustain its objection. Now, if the statement
18 comes in, then it becomes --

19 MS. FENT: Okay.

20 THE COURT: Is the State ready for the jury?

21 MR. MATTHEWS: Yes, Your Honor.

22 THE COURT: Is the defense ready for the jury?

23 MR. O'NEIL: One question as it relates to the
24 testimony of the DNA experts. I don't know what extent
25 they intend to go into in relates to this September 2010

1 incident. That day they were -- I don't know if they want
2 to go into what the DNA experts -- there was actually a
3 comparison in that case or just that the DNA experts
4 retained that DNA and put it in the evidence locker.

5 MS. FENT: We are just planning on calling John
6 Barron to say he received this swab from Christian
7 Barrickman.

8 She did the initial processing. He then received it
9 from her. He proceeds to develop a profile from that
10 swab, and then essentially, we'll be calling Gray Amick to
11 say he processed evidence in this case, and he compared
12 the profile that he developed to the profile that John
13 Barron developed.

14 MR. O'NEIL: As long as Barron essentially
15 testifies -- part of the chain, I don't have any
16 objection.

17 MS. FENT: Unless another issue arises, that's what
18 we're...

19 THE COURT: So Barron he will not identify the source
20 of the DNA in his testimony?

21 MS. FENT: No. John Barron will say, yes, he
22 received a swab that's labeled -- you know, pertaining to
23 custody purposes, he has to say it's a swab labeled for
24 Edward Dunn.

25 THE COURT: Okay. But he didn't compare it to 207?

1 MS. FENT: He did not compare it to any evidence in
2 our case.

3 THE COURT: Any --

4 MS. FENT: He just --

5 THE COURT: -- or the case in 2007.

6 MS. FENT: He -- no, not the case in 2007. It's a
7 2010.

8 THE COURT: I know that.

9 MS. FENT: This is not John Carwell. He does do
10 whatever he does to the evidence in the 2010 case, but
11 we're not making any reference to the other evidence that
12 was collected; that there was something to compare it
13 against.

14 THE COURT: Right.

15 Bring the jury.

16 (WHEREUPON, the jury came into open court at
17 approximately 4:01 p.m.)

18 THE BAILIFF: The jury is seated, Your Honor.

19 THE COURT: All right. Solicitor, call your next
20 witness.

21 MR. MATTHEWS: Your Honor, the State calls John
22 Barron.

23 JOHN BARRON, after being duly sworn,
24 testified as follows:

25

1 THE CLERK: Have a seat in the witness box. State
2 your name for the record.

3 THE WITNESS: My name is John Barron, B-A-R-R-O-N.

4 DIRECT EXAMINATION:

5 BY MR. MATTHEWS:

6 Q Where are you currently employed?

7 A Richland County Sheriff's Department.

8 Q And what is your occupation through the sheriff's
9 department?

10 A I'm a forensic scientist in the DNA laboratory.

11 Q And what are some of your duties as a forensic
12 scientist?

13 A I am specifically in a DNA laboratory. My duties are
14 to receive potential evidence that is brought in to the
15 lab, to take the sample that is already processed by our
16 technician and develop DNA profiles from them and compare
17 them to possible --

18 Q And how long have you worked in the lab in Richland
19 County?

20 A Eight years.

21 Q Can you go through your education for the jurors,
22 please.

23 A Yes. I have a bachelor of science degree in
24 microbiology from Clemson University. My initial venture
25 into forensics science was in South Carolina Law

1 Enforcement Division, otherwise known as SLED.

2 There, I performed various types of forensic
3 analysis. Ultimately in 1999, I was transferred to the
4 DNA laboratory where I was trained to become a DNA
5 analyst.

6 I successfully completed my training and my
7 competency and proficiency tests. In 2004, myself along
8 with Dr. Gray Amick, also from SLED, came to Richland
9 County and set up a DNA laboratory there.

10 Q All right. Do you have any certifications
11 specifically related to DNA?

12 A Well, I -- I've been court qualified as a DNA analyst
13 since about 19--- since about 2000. I testified about 50
14 times.

15 Q And do you undergo any continuing education in the
16 field of forensic sciences?

17 A Yes, I do.

18 Q How regularly would you say?

19 A At least once-a-year I have some type of continuing
20 education. I also attend the classes that if possible,
21 that -- if funds allow, the University of South Carolina.

22 I attended a molecular biology course. I
23 successfully completed it, along with several population
24 statistics courses related to forensic DNA analysis.

25 I attended various professional training classes at

1 least once a year. I receive, you know, certification
2 that I passed the initial part of being involved in a
3 class as far as the continuing education of DNA analysis.

4 MR. MATTHEWS: Okay. Your Honor, at this time I
5 would offer Mr. Barron as an expert in forensics DNA
6 analysis.

7 THE COURT: Any objection, any voir dire?

8 MR. O'NEIL: No voir dire, no objection.

9 BY MR. MATTHEWS:

10 Q Briefly, just for my enlightenment, as well as the
11 jury's, can you explain what DNA is, kind of in a
12 nutshell?

13 A Yes. DNA's molecule is in every enucleated cell in
14 your body. Most of the cells in your body have a nucleus.
15 Inside that nucleus is a molecule called DNA or
16 deoxyribonucleic acid.

17 It's a molecule that basically defines who you are as
18 a human being. 99.5 percent of it basically does that,
19 defines you as a human being, versus some other living
20 creature on the planet earth.

21 The other small percentage of it basically defines
22 you as an individual. As you can tell, all of us have
23 pretty much different, but DNA is specific to you. Unless
24 you have an identical twin, it will be unique to you in
25 the whole human population of the planet earth.

1 Therefore, it becomes an important forensic science
2 tool because it can be used for identity. So we -- in the
3 laboratory, we extract the DNA from various pieces of
4 evidence, and we target specific areas on the DNA molecule
5 that would be unique to you to help us identify you as an
6 individual.

7 By doing so, we compare it to known samples submitted
8 from people to determine whether or not that DNA belongs
9 to them or not.

10 Q So would each individual person have their own unique
11 profile?

12 A Yes. Unless you're an identical twin.

13 Q Okay. What would you need to actually recover DNA or
14 to find DNA present?

15 A You just need a few cells that have a nucleus in
16 them. So, for instance, a small drop of blood that has
17 white blood cells, which have a nucleus in them to
18 identify you from that drop of blood, the very small,
19 minute drop of blood, by the way, about the size of a
20 point of a pin, from any type of cell that you may excrete
21 from your saliva. Like you put your mouth on a drink can
22 or piece of pizza or cigarette or anything like that.

23 It would contain, generally speaking, not always --
24 but most of the time, it will contain skin cells from
25 inside of your mouth to identify you.

1 It would also be important in say a sexual assault
2 case where someone may ejaculate the semen or sperm cells,
3 which contain DNA as well.

4 Any type of cell, skin cell, has a lot of -- they are
5 all enucleated, so anything you're wearing, like your
6 shirt or your pants or your shoes or your socks would
7 probably contain enough DNA, as well.

8 We test it so it doesn't require very many cells at
9 all. So there are cases where people have just touched
10 something and left enough DNA cells or skin cells to
11 identify their DNA from that. So, you see, it becomes a
12 very important tool for the police to use in identifying
13 potential suspects in criminal cases.

14 Q And I think you said it earlier, but I just want you
15 to reiterate it. Does it take a large amount of cells or
16 fluid in order to be able to extract DNA?

17 A No. It just takes a few cells.

18 Q And if someone were to, say, attempt to wash an
19 article of clothing or something like that, could there
20 still be DNA left behind?

21 A There could. A lot of times there are tests that we
22 could use to identify, like blood tests. There are
23 screening tests we can use to say yes, there was blood
24 there, which would give us an idea that there was also DNA
25 there.

1 In the case of skin cells, we can't see it. So it's
2 kind of like hit and miss. It's tested to see if there's
3 DNA there or not, so like the mouth of a drink can, we
4 can't really see DNA there. We can swab it and put it in
5 a tube to extract it to see if there is DNA there.

6 Q And so if a person's semen was left behind and a
7 sample was obtained, you could identify them from a
8 specific genetic -- or DNA profile?

9 A Yes. Semen is material that was ejaculated from a
10 male. The semen itself is a fluid, but inside the fluid
11 are sperm cells. Each of those sperm cells carries a DNA
12 molecule in the nucleus of that sperm cell that is
13 typically the person who ejaculated that semen.

14 Q And, generally, how is an individual's known profile
15 provided to you?

16 A It used to be from a blood sample where it's actually
17 taken to a doctor in a medical facility and draw his blood
18 out, but that can be, you know, tedious and maybe even
19 traumatic to some people. I've actually seen people faint
20 from having blood drawn.

21 So since there are plenty of cells inside of your
22 mouth, it's common now. It's very noninvasive and very
23 pain free just to give a clean sterile swab and swab
24 inside of your mouth. We have got plenty of DNA present
25 on the swab to identify it.

1 Q And once provided with a buccal swab, what are you
2 able to create?

3 A From a buccal swab, we extract the DNA, like I'm
4 saying. Since it is known from an individual, that
5 person's DNA profile will be developed from that buccal
6 swab.

7 Q Do you know -- were you able, then, to obtain a known
8 sample from this defendant, Edward Dunn, at some point in
9 time?

10 A Yes. I received a cutting from Christine Barrickman
11 that was labeled as a buccal swab of Mr. Dunn.

12 Q Do you know when you received this?

13 A Yes, I do; then on October 26th, 2010.

14 Q At that point in time, was this provided directly you
15 by Ms. Barrickman?

16 A Yes.

17 Q And at that point in time, what did you do with that
18 sample?

19 A At that point in time, I extracted the DNA. I have
20 several chemicals on the swab itself and for a period of
21 time, this DNA was -- it is removed from the nucleus of
22 the cell. It's isolated. It's purified.

23 At that point, I copied the appropriate areas of the
24 DNA molecule and developed a profile.

25 Q I'm showing you what's been marked as State's Exhibit

1 No. 15. If you'll take a moment to look at that.

2 (Pause.)

3 Do you recognize that object?

4 A Yes. This is the -- no. I don't recognize this
5 object. This is a buccal swab of Donald Moore.

6 Q Excuse me. I handed you the wrong one.

7 A I did not test Donald Moore. It might be this one.

8 Q This one, and I apologize. This is State's
9 Exhibit 16.

10 A Oh yes, I'm looking at mine. This is the buccal swab
11 of Edward Dunn that I tested.

12 Q And is that what you received from Christine
13 Barrickman on that day?

14 A Yes. I actually received this along with the cutting
15 in the tube that she gave to me.

16 MR. MATTHEWS: At this point, Your Honor, I'd
17 introduce State's Exhibit 16.

18 MR. O'NEIL: Your Honor, I'll renew my previous
19 objection.

20 THE COURT: Overruled.

21 MR. MATTHEWS: Thank you.

22 THE COURT: It's admitted into evidence.

23 (WHEREUPON, State's Exhibit No. 16 was admitted into
24 evidence.)

25

1 BY MR. MATTHEWS:

2 Q And were you able to develop a profile for Edward
3 Dunn at that point in time?

4 A Yes, it was.

5 Q And was that profile documented in some sort of way?

6 A Yes, it is.

7 MR. MATTHEWS: Beg the Court's indulgence.

8 (Pause.)

9 Thank you. I have no further questions.

10 MR. O'NEIL: I have no questions of this witness.

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

12 May this witness be excused?

13 MR. O'NEIL: No objection.

14 THE COURT: Without objection.

15 MS. FENT: The state calls Gray Amick.

16 GRAY AMICK, after being duly sworn,
17 testified as follows:

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

20 THE WITNESS: My name is Gray Amick.

21 DIRECT EXAMINATION:

22 BY MS. FENT:

23 Q And with whom are you employed?

24 A I work for the Richland County Sheriff's Department.

25 Q In what capacity?

1 A I work as a forensic scientist in the DNA laboratory.

2 Q Can you tell the jury about your education and your
3 training, background, that brings you to be a DNA
4 scientist?

5 A Sure. I got a B.S. in biology in 1989 and a PhD in
6 biochemistry in 1993 from the University of South
7 Carolina. From there, I was employed at the State Law
8 Enforcement Division, commonly known as SLED, for 11
9 years.

10 Most of that in the DNA laboratory where I was
11 trained by court-qualified experts in the field of
12 forensic DNA and serology.

13 In 2004, as John said, I was hired by the Richland
14 County Sheriff's Department to help start up a DNA lab
15 there, and I did that, including validating all the
16 methods and authoring the protocols, along with John
17 Barron, to establish that DNA laboratory.

18 Q Do you have an estimate as to how many items of
19 evidence you have processed over your career?

20 A It would be thousands.

21 Q And have you testified in courts of South Carolina as
22 a DNA expert before?

23 A I have.

24 Q And have you been qualified as an expert in our
25 courts?

1 A I have.

2 Q Approximately how many times have you been qualified
3 as an expert?

4 A Approximately 75 times.

5 MS. FENT: Your Honor, at this time, we offer
6 Dr. Amick as an expert in the area of DNA analysis.

7 THE COURT: Any voir dire or objection?

8 MR. O'NEIL: No voir dire or objection, Your Honor.

9 THE COURT: You may proceed.

10 BY MS. FENT:

11 Q Did you have occasion to process some evidence
12 regarding case number 1105009928 regarding an Indira
13 Lonsdale?

14 A I did.

15 Q How did you first come in contact with the items of
16 evidence?

17 A I began the processing of these items, it looks like
18 on May 31st of 2011.

19 Q This occurred on May 28th, 2011. Is that a typical
20 timeframe for you to be starting processing items of
21 evidence?

22 A Sometimes but looking at the case notes, this was
23 a -- this was requested as a rush case. So it was quicker
24 than probably a normal case would.

25 Q Okay. And who actually physically went and got the

1 items of evidence on the 31st?

2 A That would have been me.

3 Q Okay. And where did you get those items of evidence?

4 A From the evidence room.

5 Q What items of evidence, what numbers did you
6 initially pick up from the property room on that day?

7 A I picked up a buccal swab from Indira Lonsdale, a
8 swab from black wallet, a swab from a TV stand, a swab
9 from a dresser drawer, a swab from a back door handle, a
10 swab from a French door handle, a swab from outdoor driver
11 door handle, a swab from the gear shifter, a swab from a
12 steering wheel, a swab from an emergency brake, a white
13 washcloth, and then subsequently a buccal swab from Donald
14 Moore.

15 Q Okay. That buccal swab from Donald Moore, was that
16 something you picked up on that day or you said
17 subsequently?

18 A That was a later date.

19 Q Okay. So items two through 11, you started on
20 May 31st?

21 A Items one through 11.

22 Q One through 11, okay. And I'm going to show you
23 what's marked as State's Exhibit No. 13 and ask if you
24 recognize that and its contents?

25 A I do. This is items two through ten, it looks like,

1 the packaging for those items bearing my initials and date
2 and are sealed.

3 Q And I ask you if you recognize State's Exhibit 12?

4 A Yeah. This is item one, which is a buccal swab from
5 Indira Lonsdale, again my initials and date on the seal.

6 Q Okay. And then in front of you here is the envelope
7 and the contents of State's Exhibit 14. I ask if you
8 recognize that.

9 A Yeah. This is the packaging for item 11, which was
10 the white washcloth, again with my initials and date on
11 this.

12 Q Okay. From the time that you pick it up in the
13 property room to when you, I guess, start your analysis of
14 it, does anybody else have contact with that -- with these
15 items of -- property items?

16 A No.

17 Q Can you generally tell us how you go about processing
18 these items?

19 A Sure. Basically, if there's swabs, I will fill out
20 kind of an inventory sheet and then take small cuttings
21 from those swabs. When I say swabs, it's like a Q-tip
22 swab, a sterile Q-tip and put these in labeled tubes for
23 extraction of the DNA.

24 In the case of the white washcloth, I would lay it
25 out and do some preliminary serology testing to try to

1 identify some stains or body fluids, and upon finding
2 stains, I will cut those out and put those in for
3 extraction of DNA.

4 Q And did you complete your processing of items one
5 through 11?

6 A I did. Some of those items were not requested to be
7 processed, but they were in the packaging. So initially,
8 they are listed, an inventory, but I would notate no
9 analysis was performed. So the ones that were requested
10 to be analyzed, they were analyzed. Some of them were not
11 at the time in the request of this, so it's in this
12 inventory.

13 Q And this initial analysis, you processed items one
14 through seven.

15 A Well, the ones that were actually requested?

16 Q And then -- I'm sorry, yeah, requested was one
17 through seven and then item 11.

18 A Actually, it was one, two, four, five, six that was
19 requested, according to my notes.

20 Q Okay.

21 A And 11, I'm sorry.

22 Q Okay. And, first of all, no known swab that was
23 taken from the victim's mouth, do you develop a profile, a
24 DNA profile?

25 A I did.

1 Q Okay. Items two through seven, what, if anything,
2 was your -- or I guess six, what is your result with
3 regard to those swabs?

4 MR. O'NEIL: Objection, Your Honor; my previous
5 objection.

6 THE COURT: Overruled.

7 THE WITNESS: What was the question again?

8 BY MS. FENT:

9 Q Two -- the results of your analysis on two through
10 six, so the black wallet, the TV stand, the dresser
11 drawer.

12 A All right. Item two, there was no DNA extracted from
13 item two.

14 Q And that's the black wallet?

15 A That's correct.

16 Q And what do you mean by no DNA extracted?

17 A That means I took a swab from that item and tried to
18 extract DNA or attempted to extract DNA and just didn't
19 get any DNA from it.

20 Q And does that mean that no one has touched that
21 wallet?

22 A Not necessarily.

23 Q Okay. Have you seen the show CSI?

24 A No.

25 Q Is there a reason you don't watch it?

1 A I...

2 Is there a reason I don't? Not that I can think of,
3 but I just don't watch it.

4 Q The -- I guess item three, what was your result of
5 that from the TV stand?

6 A Item three, there was no analysis performed on item
7 three.

8 Q Okay. The -- item four, the dresser drawer.

9 A Item four, there was a partial DNA profile developed
10 from item four that was too weak to reliably interpret.

11 Q What does that mean, too weak?

12 A That means I got something from there, but there
13 wasn't enough there to make an interpretation. It was too
14 weak of a profile to say okay, it matched somebody or it
15 didn't match somebody.

16 Q So are there standards in terms of how much of a
17 profile you develop before you can try to match it to
18 someone?

19 A Standards? No. It's up to the analysts to interpret
20 what, you know, profile they develop and whether or not
21 they -- whether or not there's enough data there to say
22 this person is included or excluded.

23 Q Okay.

24 A That probably would be the best answer for that.

25 Q Okay. And item five, swab from the back door handle?

1 A Item five is the same as item four. The partial DNA
2 profile developed was too weak to interpret.

3 Q Okay. Item six, swab from a French door handle?

4 A Item six, no DNA was extracted from item six.

5 Q Item seven, you said that you get at a subsequent
6 time. So what -- do you repackage these swabs, take it
7 back to the property room and then get it again later?

8 A Yes. What generally happens is it seems a little
9 confusing. The investigator will look at the evidence
10 they're submitting in the case and decide what they want a
11 DNA run on. So that's submitted to me, and I would go
12 pick up those items.

13 Well, in this case, there's several items in one
14 package. So I got all of those, but only a few were
15 requested. So I would do those analysis and then either
16 consult with an investigator, and in his subsequent
17 investigation, he may decide, "Oh, I want analysis on
18 these items, too. Initially, I didn't want that," or
19 whatever the case may be.

20 So I may already have these still in my custody. I
21 can just open it back up and do those requested analysis
22 or I may have returned it to the evidence room. I would
23 just go back down there and get them and do the analysis.

24 Q Okay. Because two through ten you said are all
25 packaged together?

1 A Uh-huh.

2 Q And did you personally again go back down and get
3 those items?

4 A The -- on the second request -- let me look at my
5 notes. I'm pretty sure Christine Barrickman, the
6 technician, she went back down on June 20th and
7 reprocessed seven, eight, nine, ten, and 16.

8 Q Okay. And reprocessed it doing, I guess, some
9 initial processing she testified about?

10 A I'm sorry. I shouldn't have said reprocessed. Those
11 were initially at that point.

12 Q Okay.

13 A So the exact way I described it, she would have done
14 the same thing, opened them, inventoried them on a
15 cutting, too.

16 Q And then did you get those cuttings and the swabs
17 from Christine?

18 A I did.

19 Q Okay. What were the results, then, of your analysis
20 on seven, the outside driver door handle?

21 A The item seven was the partial DNA profile developed.
22 Item seven was too weak to reliably interpret.

23 Q Okay.

24 A And these items, like swabs from door handles and
25 wallets, stuff where this is touch DNA, it's not common to

1 not get anything, not get enough of DNA to get a profile
2 or get nothing at all. So a lot of times you'll see that
3 result on the touch DNA on an item.

4 Q And that's -- I mean, we're talking about the -- it
5 says outside driver door handle. Someone obviously --
6 assuming the car is being used on a daily basis, someone
7 is opening and closing that door.

8 A Right.

9 Q So someone is touching it. Even though someone
10 touched it, you were -- there was still not enough DNA for
11 you to develop a profile?

12 A That's correct.

13 Q Okay. And eight, nine, and ten, those are also from
14 the gearshift, the steering wheel, and the emergency
15 brake. What were the results of eight, nine, and ten, as
16 well?

17 A For eight, nine, and ten, there was no DNA extracted
18 from those items.

19 Q I show you what is marked as State's Exhibit 15 and
20 ask if you recognize that.

21 A This looks like the buccal swab of Donald Moore,
22 which is item 16.

23 Q Okay.

24 A With my initials and date.

25 Q And did you subsequently develop a DNA profile from

1 that buccal swab?

2 A I did.

3 Q Item 11 then, the washcloth, State's Exhibit 14, I
4 believe you've already testified that you picked up this
5 item yourself from the property room, correct?

6 A Correct.

7 Q And did anyone else touch it from the time that you
8 got it from the property room to the time you started this
9 analysis on this washrag?

10 A No.

11 Q Okay. Can you tell us about how you processed that
12 washrag, specifically?

13 A Yes. That item was processed for body fluids,
14 basically. In this case, from investigative information,
15 I was looking for semen specifically, so I would have laid
16 that item out, done a chemical test that changes color in
17 the presence of semen, identified where the stain was on
18 the washcloth and then do an additional chemical test to
19 specifically confirm human semen, and then make a cutting
20 from that area where the stain is to extract the DNA from
21 that semen on that washcloth.

22 Q Let's see if I can do this one handed since I'm down
23 to one glove.

24 Okay. Who made the cuttings from this time?

25 A Can you turn it around?

1 Q Oh, sorry.

2 A I did.

3 Q And how do you -- how do you know that?

4 A Because my initials are on the corner.

5 Q Okay. Sorry I'm waving it around. And what did you
6 do then with those cuttings?

7 A What were my results? Is that the question?

8 Q I guess you're looking first.

9 A For semen.

10 Q For semen. You make those cuttings, and then you
11 process those cuttings?

12 A Correct.

13 Q To see if you can extract DNA?

14 A That's correct.

15 Q Okay.

16 A So the serology results are that seminal fluid was
17 identified on the two cuttings.

18 Q Okay.

19 MR. O'NEIL: Your Honor, I renew my previous
20 objections to this testimony, as well.

21 THE COURT: Yes, overruled.

22 THE WITNESS: In addition to serology, there was no
23 blood indicated on item 11.

24 BY MS. FENT:

25 Q Okay. Semen is indicated; blood is not indicated.

1 A That's correct.

2 Q Okay.

3 A Seminal fluid is identified. A little bit of
4 semantic difference there in that the actual sperm cells I
5 didn't visualize, but the chemical test was positive for
6 the fluid that contains those sperm cells. So we say
7 seminal fluid identified.

8 Q Okay. After you identify seminal fluid, what happens
9 next?

10 A I would have been made the cuttings and extracted the
11 DNA.

12 Q Were you able to develop a DNA profile from DNA
13 extracted from the seminal fluid?

14 A Yes, I was.

15 Q Did you have occasion then to compare the profile
16 that you developed from that washrag, from the cuttings
17 from that washrag, to the profile that was developed by
18 John Barron from Edward Dunn's buccal swab?

19 A Yes, I did.

20 Q And do you have an opinion as to a reasonable degree
21 of scientific certainty as to whose seminal fluid was on
22 that washrag?

23 A Yes, I do.

24 Q And whose seminal fluid is on that washrag?

25 A I will read it from my report, is probably the best

1 way to answer that.

2 Q Okay.

3 A The DNA result developed from item 11.2 is a mixture,
4 and the major profile developed matches Edward Dunn, Jr.

5 Q And you said there's a mixture. Are you able to
6 identify the minor profile?

7 A No. The minor profile is too weak to reliably
8 interpret.

9 Q And the cutting 11 -- you said that was 11.2?

10 A Yes.

11 Q The cutting 11.1 taken from the washrag?

12 A 11.1 is also a mixture, and a major profile developed
13 from 11.1 also matched Edward Dunn, Jr., and the minor
14 profile was too weak to reliably interpret.

15 Q Did you have occasion in preparation for your
16 testimony today to take a look at the minor profile that
17 you developed and the profile that you developed from
18 Donald Moore?

19 A I did.

20 Q Okay. And do you have an opinion as to whether or
21 not Donald Moore could be excluded as a minor contributor?

22 A Yes, I did have an opinion. That was that he is
23 excluded from that minor contributor, 11.1, and .2 after
24 conversations and relooking at that data.

25 Q And can you exclude the victim, Indira Lonsdale, as

1 being a contributor to that minor profile?

2 A Let me just look back at that to double check.

3 Q Okay.

4 A The statement is too weak too reliably interpret, and
5 basically you're asking me to interpret that now. So --
6 but I can give you my opinion based on a very small amount
7 of DNA that's in that minor contributor. We're talking
8 extremely small amount compared to the major contributor.

9 Q Okay.

10 A And her -- here DNA is consistent with those -- that
11 little bit of DNA that I do see in those two -- those two
12 cuttings from that washcloth.

13 Q Okay.

14 A So -- and the reason that doesn't show up on my
15 report is because we have to meet certain thresholds, so
16 to speak, in reporting inclusions and exclusions, but if
17 you just flat out hand me two profiles and say are
18 these -- is somebody included or excluded, I can give you
19 an opinion on that. I just have restrictions as far as
20 reporting goes.

21 Q Okay.

22 A So that's the explanation of kind of what I'm doing
23 here.

24 MS. FENT: Okay.

25 Your Honor, at this time I'd offer into evidence

1 State's Exhibit Exhibits 13, 14, and 15.

2 MR. O'NEIL: Your Honor, I have no objection to
3 these.

4 THE COURT: All right.

5 (WHEREUPON, State's Exhibits Nos. 13, 14, 15 were
6 admitted into evidence.)

7 MS. FENT: I have no further questions at this time.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION:

10 BY MR. O'NEIL:

11 Q Dr. Amick, help me out a little bit on some of your
12 reports here, all right.

13 You analyzed items four -- there are started at 11.
14 You analyzed 11.1 and 11.2, correct?

15 A I analyzed item 11, and from that I made two cuttings
16 labeled 11.1 and 11.2.

17 Q 11.1 and 11.2. You -- in your initial report, dated
18 June 1st, 2011, you indicated that the DNA profile from
19 items 11.1 and 11.2 were a mixture, correct?

20 A If I could see that report, I can confirm that. I
21 only have the most recent one in front of me. I don't
22 have the date on here.

23 Q I'm sorry. I'll give you the first page.

24 A Yeah. The initial report was 11.1, 11.2 are
25 mixtures, the same as it says in this report.

1 Q Let me see the report you have here.

2 A (Complies).

3 Q And 11.1 and 11.2 was the washcloth?

4 A The cuttings from the washcloth, yes.

5 Q Cuttings from the washcloth, which would be State's
6 Exhibit No. 14. You probably don't have that in front of
7 you but State's Exhibit No. 14.

8 Now, initially you said that Mr. Edward Dunn was the
9 major contributor to that mixture on items 11.1 and 11.2.

10 A Initially?

11 Q Yes. On your report you made on June 1st, 2011, you
12 indicated the profile was a mixture, and that Edward Dunn
13 was the major contributor to that mixture on 11.1 and
14 11.2.

15 A It says the same thing on the report I have, as well.

16 Q Yeah. And also, it said on your June 1st, 2011
17 report that the minor profile was too weak to reliably
18 interpret, correct?

19 A Correct.

20 Q So help me out a little bit. Are you now saying that
21 the minor profile is not too weak to reliably interpret,
22 or are you unreliably interpreting it today for your
23 testimony today?

24 A I'm not saying anything different than what's on the
25 report. What I was doing is offering my opinion as to the

1 minor profile compared to the victim.

2 Q Okay. The minor profile on 11.1 and 11.2?

3 A That's correct.

4 Q Okay. So is it your opinion that the minor profile
5 on 11.1 and 11.2 is consistent with Ms. Lonsdale's known
6 sample that you got?

7 A I don't like -- I don't use the word -- consistent is
8 semantics. I would say that her DNA profile, some of the
9 alleles, some of the pieces of her DNA profile are showing
10 up, are the same as that minor contributor. So I would
11 use the term cannot excluded versus consistent.

12 Q So you can't excluded Ms. Lonsdale as being the minor
13 contributor to the DNA mixture on 11.1 and 11.2.

14 A It's my opinion looking at those profiles here, yes.

15 Q What percentage of the general population can you not
16 exclude as being the minor contributor to 11.1 and 11.2?

17 A I don't know that, because I did not run the
18 statistic.

19 Q Okay. Is there a small group of people that you can
20 exclude from 11.1 and 11.2, or would it be a large group?

21 A That's a good question. It would be a -- it would be
22 very -- there would be a lot of people that could
23 potentially be included with a small amount of data that I
24 have on that minor profile.

25 Q So --

1 A Does that answering your question?

2 Q I want to summarize to make sure I understand what
3 you're saying. So what you're saying is there is a large
4 group of people that could be the minor contributor to
5 11.1 and 11.2?

6 A It's a possibility. It would be safer to give me a
7 profile and let me say include it or exclude it than just
8 straight out look at it, but in my opinion, because it's
9 such a weak profile, it's going to include more people.

10 Okay. So the less information you have -- say, for
11 example, if you told me, okay, let's say blue eyes is the
12 DNA, I mean, I can only -- I can include a lot of people
13 who have blue eyes, but if you continue to add, you
14 continue to add more traits, blue eyes, 6-foot tall, blond
15 hair, then the people that we can include shrinks.

16 Q Okay.

17 A So the analogy is the less DNA information you have
18 from that weak minor contributor, the more people are
19 going to be included, naturally.

20 Q I guess what I'm trying to say is that back on
21 June 1st, 2011, your opinion was that the minor profile
22 was -- in general, was too weak to interpret?

23 A No. That's not my opinion. That's what's on the
24 report, and that's what's on the report, the most current
25 report. That didn't change.

1 Q Okay.

2 A I was answering a question as to my opinion for
3 Ms. Fent. That was my opinion I was giving here, but the
4 wording on the report hasn't changed at all.

5 Q Okay. Did you ever compare the known sample of
6 Donald Moore to -- did you ever compare the known sample
7 of Donald Moore to item 11.1 and 11.2?

8 A I did in review in this case, just like I did with
9 the victim.

10 Q Okay. Could you give a determination that was
11 reliable in that comparison, that initial -- the threshold
12 that you spoke of earlier?

13 A I gave an opinion in the same way, to say that I
14 didn't think his alleles or his DNA was included in that
15 minor contributor.

16 Q But was that opinion to the level that -- that would
17 have met the threshold that you spoke of earlier. Did you
18 have enough information to make a comparison to the
19 threshold that you spoke of earlier?

20 A I'm not sure what you're asking. It's not on the
21 report that way. That hasn't changed. The reporting
22 syntax is that it's too weak to interpret.

23 Q What does that mean? What does --

24 A That means that I looked at it initially, just like I
25 look at it today, and I'm not going to make a call

1 including or excluding authored on a report based on that
2 little bit of information.

3 Q And that's what I'm asking. You didn't make an
4 opinion on your report, but yet you're coming in today in
5 court and giving an opinion.

6 A I was asked my opinion, so yeah. I looked at it, and
7 I would give you my opinion. Just like you could hand me
8 a profile from anybody and ask my opinion whether or not
9 they're included or excluded, and that would do the same.
10 That might not rise to the level of it being authored on
11 the report.

12 Q And what's the importance of that opinion not rising
13 to the level of to build it on the report? Why is that
14 important? Why is it? Why is it important that your
15 opinion has to rise to a certain level in order for it to
16 be on your report?

17 A Why is it important?

18 Q Yes, sir.

19 A I'm -- I'm not sure how to answer that. Can you
20 rephrase it?

21 Q I guess what I'm asking you is you're giving an
22 opinion today in court, but on your report that produced,
23 you didn't give an opinion. Why didn't you feel as though
24 you couldn't give an opinion on your report?

25 A Because it was too weak to reliably interpret.

1 Q Okay. So what you're saying today in court is that
2 you have an opinion, but it's not an opinion that would be
3 strong enough to rely upon or put in your report?

4 A I -- I got lost there. Let me put it this way: On
5 the report, I'm going to analyze the evidence, analyze the
6 standards, and in an unsolicited fashion author a report
7 and say, "Here is my findings."

8 When that gets published to whoever, the solicitor,
9 the defense, the investigators then may come to me and
10 say, "Well, what about this? Do you think this matches or
11 do you think it's included?"

12 That's kind of what happened in preparation for this
13 case, so when Ms. Fent asked me is -- "Do you think the
14 victim is included?" I can look at that and say, "Yeah.
15 In my opinion, it looks like she is included," but I'm not
16 going to put that on the report.

17 Q And why not?

18 A Okay.

19 Q That's what I meant to say.

20 A Okay. Because there are certain, I guess, thresholds
21 or a certain amount of data you need before you can author
22 that on a report.

23 Q Okay.

24 A And that was -- I didn't have that here.

25 Q So you don't -- you don't have enough data to make

1 the opinion. You just make it in court. You don't have
2 enough data to put that opinion on a report.

3 A That's accurate.

4 Q Okay. Why is there a higher threshold on your report
5 than the testimony you give in court?

6 A Basically, I'll try to answer that saying it has to
7 do with accreditation. It has to do with the technical
8 working group that controls standards, quality standards,
9 and how they specify what can go on a report and what
10 can't go on a report, and then the level of, I guess
11 experience that the analyst would have and the technical
12 reviewer reviewing that data, because all of the reporting
13 is -- would be by a second qualified analyst.

14 So there has to be somewhat of a consensus there,
15 quality and control standards that exist in this field
16 that say okay, you can put this kind of stuff on the
17 report. You can't put this kind of stuff in the report.
18 This boils down to the discretion of the analyst, as well.
19 That's probably the best way to answer that.

20 Q Okay. Fair enough, and there was also a profile
21 developed from items four and five, which would have been
22 a dresser drawer and a back door handle, correct?

23 A Partial DNA profiles, yes.

24 Q And you characterized those in your report as too
25 weak to be -- reliably interpret?

1 A That's correct.

2 Q Did you ever try to include or exclude either Edward
3 Dunn or Donald Moore from the DNA profile that was
4 extracted from items four and five?

5 A I think in preparation, Ms. Fent asked me to do that,
6 as well.

7 Q Okay. But what was your conclusion as it relates to
8 those, those items?

9 A If you'll give me a second, I'll look at that and
10 give you my opinion on that since you're asking.

11 (Pause).

12 You said four and five?

13 Q Yes, sir.

14 A All right. So the question again was?

15 Q Were you able to exclude or either include either
16 Edward Dunn or Donald Moore from the DNA profile that you
17 obtained from items four and five?

18 A All right. Item four is an extremely partial
19 profile, but the one place that the DNA shows up does
20 not -- or I'll use your term is not consistent with Donald
21 Moore.

22 So you couldn't say that my opinion would be to
23 exclude him based on that. I'm trying to find out. Oh,
24 here it is. And the Donald Moore -- who is the other one?

25 Q Edward Dunn.

1 A Edward Dunn would be the same statement would -- as
2 with Edward Dunn. That is the one location that shows up
3 for item 14, which means it's an extremely weak profile.
4 They don't -- he doesn't share DNA like that, Edward Dunn
5 doesn't. So I would probably exclude him based on that.

6 Q Okay.

7 A So that's item four.

8 Q Okay. And that would be the swab from the dresser
9 drawer?

10 A Yes, I think so.

11 Q Okay.

12 A And then item five, again, extremely weak profile.
13 Again, for Donald Moore, the DNA that does show up on this
14 extremely weak profile, didn't match Moore, and for Dunn,
15 it could potentially match, but it's just not -- it's just
16 not enough.

17 Q Okay. Not for you to give an opinion to the
18 standard?

19 A I mean, the ones that show up looks like him, but I
20 would have reported it the same way that I did back then.

21 Q And that would be too weak to reliably interpret?

22 A Right.

23 Q Right, okay. When you initially did not test items
24 three and seven through ten, whose decision was that?
25 Item three would have been the swab from the TV stand;

1 seven through ten would have been the items from the car.

2 A Let me -- I have things all messed up here, so hang
3 on a second.

4 Q Okay.

5 A Like I described before, they usually both have an
6 investigator. The investigator will submit an initial
7 request or an initial request was for items one, two,
8 three, four, five and six, it looks like.

9 Then to answer your question, it would have been --
10 either have been me discussing it with the investigator or
11 just straight out investigator gaining more information
12 and requesting that.

13 Q Okay. So initially, the investigator said don't
14 worry about the TV stand and the swabs from the car.

15 A Right.

16 Q And then later on, they came back and told you to
17 compare items seven, eight, nine, and ten to both Edward
18 Dunn and Donald Moore later on?

19 A Initially, and this was a rush case. This was --
20 looking at the request, this was a case where -- just work
21 on this case and get the results as fast as we can.

22 So what we asked the investigators to do, to limit,
23 you know, try to indicate the most probative items to help
24 their investigation. Then once that takes place, they can
25 go back and say, "Well, okay. Knowing that information,

1 what's on these items, as well?" That's the chronology of
2 what happened.

3 Q Okay. When you went back and tested seven, eight,
4 nine and ten, the only item you were able to get a DNA
5 profile from was seven, which would have been outside the
6 driver's door handle, but that profile was also too weak
7 to reliably interpret?

8 A That's right.

9 Q Okay. Now, you have no way of testing or determining
10 how DNA actually got on any one of these items?

11 A That's correct.

12 Q Now, you took a known sample from Ms. Lonsdale. What
13 did you do with that sample? Did you store that somewhere
14 in your lab there in Richland County?

15 A Took a what sample?

16 Q The buccal swab you got from Ms. Lonsdale. Did you
17 actually store that buccal -- that profile in your DNA lab
18 there in Richland County?

19 A Store the actual --

20 Q Profile. Did you develop a profile and store it in
21 your in-house lab there at Richland County?

22 A We developed a profile. We didn't -- we don't store
23 it per se. We develop it for elimination purposes.

24 Q Did you keep that? Did you keep that profile on file
25 there in Richland County?

1 A I'm not quite sure what you're asking. It's in my
2 file, and I could look it up on our instrument, but I have
3 her profile, yes.

4 MR. O'NEIL: Beg the Court's indulgence, Your Honor.

5 (Pause.)

6 Nothing further, Your Honor.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION:

9 BY MS. FENT:

10 Q These items four and five that he asked about that
11 you said are extremely weak but you could -- you could
12 exclude Donald Moore from item four and five, the dresser
13 drawer and the back door handle, correct?

14 A Correct.

15 Q And -- but the item five, back door handle, you could
16 not exclude Edward Dunn?

17 A Looking at that weak profile, that's my opinion, yes.

18 Q Okay. On the dresser drawer handle, could you
19 exclude the victim herself?

20 A Which item was that?

21 Q The dresser -- item -- I'm sorry, four, dresser
22 drawer, swab from dresser drawer.

23 A No. I don't think I could really exclude her from
24 that.

25 Q That's her dresser drawer. She is opening that and

1 closing that presumably on a regular basis to get her
2 items in and out of that drawer?

3 A That's correct.

4 Q Okay. Item five, the back door handle. Do you
5 know -- could you exclude her from that?

6 A I don't think I did.

7 (Pause).

8 I would not have been able to.

9 Q Again, her own house, her door to her own house.

10 A That's correct.

11 Q There is a statistic that you produce or come up with
12 in relation to your DNA profile, correct?

13 A That's correct.

14 Q And not specifically what statistic you came up with
15 but generally, what -- what is that statistic?

16 A That statistic is an estimation of the frequency of
17 that profile that I developed in the population, so each
18 one of those locations we test, and each one of those
19 traits that we develop exists with a specific frequency in
20 the population.

21 When you put all of those together, all of these 15
22 different locations, to get a combined statistic. So it's
23 kind of going back to the eye color example. Say, for
24 example, blue eyes exists at a one-in-four frequency in
25 the population. That is every one out of four people have

1 blue eyes.

2 Well, that's the frequency of that trait. So when
3 you look at multiple traits across the human genome, you
4 could multiply those together and have a combined
5 frequency of that genetic profile, and that's what the
6 statistic is.

7 Q So the statistic, is that related to how strong of a
8 profile you are able to develop?

9 A It gives weight to the match. The profile has
10 already been developed, and it's different I guess, but
11 that statistic kind of gives weight to a match statement
12 and what it's saying.

13 Q And your match statement in this case is what?

14 A The match statement is that for items 11.2 and 11.1,
15 they match Edward Dunn as the match statement.

16 Q Okay. And what then is your statistic, I guess the
17 frequency of seeing this profile that you developed in the
18 Caucasian population?

19 A Based on the genetic results obtained and the
20 frequency of seeing this population in a Caucasian --
21 seeing this profile in a Caucasian population is
22 approximately one in 12 sextillion.

23 Q And what is the frequency of seeing this profile in
24 the African American population?

25 A In the African American population, approximately one

1 in 140 quintillion.

2 Q Quintillion. What is the population of the earth?

3 A Recently just raised to about 7 billion.

4 Q I may be asking you to do this. Do you know
5 approximately how many times then -- how many populations
6 of the earth? How many earths would we have to have in
7 order to have 140 quintillion?

8 A Let me answer it this way: Billion is nine zeros,
9 and a quintillion, and a quintillion -- a quintillion has
10 18 zeros. So you can do the math from there, I guess.

11 Q Okay.

12 A Basically, that's describing a unique DNA profile.
13 That's what that means to put that on there. It's such a
14 large number. So, so, so much rarer than the earth's
15 population. Nobody else on earth is going to have that
16 same profile. That's basically what we're saying.

17 MS. FENT: No further questions.

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

19 May this witness be excused?

20 MR. O'NEIL: No objection, Your Honor.

21 THE COURT: Without objection.

22 All right. Ladies and gentlemen of the jury, that
23 will conclude the testimony for today. I'm going to ask
24 you to be back in the jury room in the morning at nine
25 o'clock, at which time we'll continue with the trial of

1 this case.

2 Now, a couple of things I'm going to ask you to do.
3 You've had a chance to meet each other over the course of
4 the breaks today.

5 When you come back in the morning, I'm going to ask
6 you to select one of your members. It doesn't matter who
7 it is. It cannot be one of the last two ladies who were
8 chosen, because they are alternates.

9 I'm going to ask you to select one of your members to
10 be the foreperson of the jury. Now, the foreperson of the
11 jury, when the case -- if the case is eventually turned
12 over to the jury for deliberation, the foreperson will
13 actually sort of conduct the discussion in the jury room
14 and will report back, sign the verdict form, if that
15 becomes -- eventually becomes necessary.

16 I need one person to do that. Now, the person that
17 does that, I'm going to ask tomorrow to take the seat
18 where the lady with the Pittsburgh Steelers jacket is on
19 and remain in that seat throughout the rest of the trial.
20 The rest of the seats don't have any number on them.

21 So if you will do that for me, I appreciate it.
22 Secondly, and this is very important. I'm going to ask
23 and instruct you not to do any independent research about
24 this case.

25 Now, I know in these days of social media and

1 Facebook and Twitter and Google and everything they're
2 available on the internet, sometimes jurors have a
3 curiosity and want to satisfy that curiosity and will try
4 to do some independent research about the case.

5 I don't know if there's anything out there that would
6 relate to this case, but it would be improper for you to
7 try to do that.

8 Now, I've had a problem before, and it's not an
9 unusual situation. I had a situation in Lexington County
10 where a juror decided, actually during deliberations, to
11 look up some information about the case online, found
12 something. I don't need to get into what it was but
13 shared it with the fellow jurors. Then it was reported to
14 me that those violations of my instruction had taken
15 place.

16 I had to -- I had to find that woman in contempt,
17 that juror in contempt. I fined her the amount that it
18 costs the county to conduct that trial, which was a
19 sizable amount of money, and I sentenced her to a short
20 period of jail time.

21 THE JUROR: God.

22 THE COURT: Now, they're an extreme situation, but I
23 just call it to your attention to impress upon you the
24 seriousness of trying to do your own research about a
25 case.

1 All of the evidence in this case you're going to hear
2 it right here. This is reality TV, if you want to call it
3 that, and trying to find out something about a case
4 through some sort of social media is just not allowed.

5 I hope you will follow my instructions in this regard
6 and not conduct any -- not do anything like that. The
7 consequences could be severe. I just -- I just say that
8 to impress upon you the seriousness of my instruction.

9 I guess, and the third thing I'm going to ask you to
10 do, have a pleasant evening. Don't discuss the case among
11 yourselves or with anyone else over the evening hours.

12 You can tell your family and friends you're on a
13 jury. I'm going to ask you not to talk about it, because
14 you never know if somebody might have something to say
15 about it, offer you an opinion as to what you ought to do
16 or what they might know about a case, a similar case.

17 So the easiest thing to do is just tell them you're
18 on a jury. That judge told you not to discuss it with
19 them over the evening hours. Have a pleasant evening.
20 We'll see you at nine o'clock in the morning. Thank you
21 very much.

22 (WHEREUPON, the jury left open court at approximately
23 5:08 p.m.)

24 THE COURT: Stand at ease until nine o'clock.

25 (Whereupon, There was an overnight recess).

1 (WHEREUPON, State's Exhibits Nos. 21-26 were marked
2 for identification only.)

3 THE COURT: Counsel approach the bench, please.

4 (Whereupon, there was a bench conference.)

5 THE COURT: Put this on the record. Juror number 120
6 has asked to be excused for work-related reasons, and both
7 the State and the defendant have agreed to release him and
8 draw one of the alternate jurors to take his place.

9 I anticipate that we could possibly get finished with
10 this case today, so I don't think there's a lot of risk in
11 taking one of the jurors now and still have a juror to
12 fill in if we need, if anybody else gets tired.

13 Any objections?

14 MS. FENT: No objections from the State.

15 THE COURT: From the defense?

16 MR. O'NEIL: No, Your Honor.

17 THE COURT: Madam clerk, would you pull one of the
18 alternate jurors, please, a random draw?

19 THE CLERK: 191.

20 THE COURT: Well, 191 will be seated as a regular
21 juror. That makes our jury almost all students. All
22 right. The state ready to proceed?

23 MS. FENT: The State is ready to proceed.

24 THE COURT: The defense is ready to proceed?

25 MR. O'NEIL: Your Honor, I just have one issue. The

1 State had a couple booking photos, both for Mr. Dunn and
2 Donald Moore.

3 THE COURT: Yes. A couple of what?

4 MR. O'NEIL: Booking photos.

5 THE COURT: Booking photos?

6 MR. O'NEIL: Yes, Your Honor. I would have an
7 objection to them at the proper time. I just would ask
8 that the State not show them to the jury before they're
9 admitted into evidence.

10 I will give them the opportunity to lay that
11 foundation, but I do have an objection to those photos. I
12 would ask they not be shown until they're actually
13 admitted.

14 THE COURT: What's the objection?

15 MR. O'NEIL: It's been a while, but I don't -- I
16 guess one would be relevance. The only issue in the case
17 is identity and how this -- how the perpetrator looked at
18 the time this incident occurred, May 28th.

19 I'm pretty sure that neither one of those booking
20 photos are -- I don't know when Donald Moore's booking
21 photo was from, but I know my client's booking photo, at
22 the earliest, would have been four days later. I'm not
23 sure which one they have.

24 THE COURT: How about it, Ms. Bodman?

25 MS. FENT: I believe I pulled the photo that is the

1 defendant from this day, from June 2nd -- excuse me, May
2 20--- what day? June 2nd, the day that he was arrested.

3 THE COURT: Is that his booking photo?

4 MR. O'NEIL: That is a booking photo. He has several
5 booking photos, and my client informed me that's not the
6 booking photo from that date.

7 MS. FENT: We're pulling that up now from Alvin S.
8 Glenn, but I thought I was very careful in looking at the
9 dates and pulling the one --

10 MR. O'NEIL: I looked at several photos, Your Honor.
11 I guess without the person here that took to photo, we
12 couldn't verify that. There have been times when the
13 photo was listed for that date, and that's not the photo
14 that was taken on that date. So I would say that's for a
15 unique person.

16 MS. FENT: State's Exhibit 25 is what I just handed
17 him. I'm holding up Alvin S. Glenn Detention Center
18 Detention Center website from my laptop to Mr. O'Neil, and
19 it's that photo that he is holding in the State's Exhibit
20 is June 2nd, 2011 at 5:38 p.m.

21 MR. O'NEIL: And, Your Honor, even if this is
22 June 2nd, I would still think it's not relevant to the
23 point they want to use it for that this is the way he
24 appeared on May 28th, 2011, four days earlier.

25 THE COURT: What's -- I can assume but tell me on the

1 record what the purpose, what the relevance of this
2 photograph is.

3 MS. FENT: The victim says that one thing she could
4 tell about this person is that he had little curls in his
5 hair; that he does, in fact, have -- that's how he wears
6 his hair.

7 He has curls in his hair, and then we have a booking
8 photo of Donald Moore that he's trying is to blame this on
9 as being the actual person, and Investigator Mauldin made
10 personal contact with Donald Moore and can confirm this is
11 how Donald Moore's hair was when he met Donald Moore.

12 MR. O'NEIL: That's June -- what day is that? It's
13 not May 28th. It's June some other date.

14 THE COURT: He cut his hair.

15 MR. O'NEIL: He could have. For all I have know, for
16 all the jury knows.

17 MS. FENT: But that goes to the weight that the jury
18 wants to give it. It's that he says this is how -- it
19 doesn't have to be -- this photo doesn't have to be the
20 day the crime happened. He says, that's -- "When I met
21 Donald Moore -- and that's Donald Moore -- that's Donald
22 Moore, and that's how his hair was." They can believe him
23 or not believe him.

24 THE COURT: What's the relevance of putting in the
25 Donald Moore photo?

1 MR. O'NEIL: They --

2 THE COURT: I mean, I can see the link with the
3 defendant's photo.

4 MS. FENT: He is saying that Donald Moore is the one
5 that sexually assaulted the victim, not him.

6 THE COURT: He didn't say that.

7 MS. FENT: Yes. We're at the point that I admit this
8 photo, the statement will be admitted and the tape of the
9 phone call to his mother saying, "This dude, Donald Moore,
10 is the one sexually assaulting the victim," and the victim
11 says clearly the perpetrator had --

12 THE COURT: Well, we'll cross that. We'll cross that
13 bridge when we come to it.

14 MR. O'NEIL: I'd just ask it not be shown to the jury
15 until it's actually been admitted.

16 THE COURT: That's fine.

17 MR. O'NEIL: That's the only question at this point.

18 THE COURT: I'll grant your motion at this point.
19 Bring the jury, please.

20 THE BAILIFF: Yes.

21 (WHEREUPON, the jury came into open court at
22 approximately 9:11 a.m.)

23 (WHEREUPON, Court's Exhibit No. 5 was marked for
24 identification only.)

25 THE COURT: And juror number 305 is our foreman.

1 (WHEREUPON, State's Exhibit No. 27 was marked for
2 identification only.)

3 THE BAILIFF: The jury is seated, Your Honor.

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

5 Good morning, ladies and gentlemen.

6 THE JUROR: Good morning.

7 THE COURT: Just for your information, juror number
8 120 has been excused from the trial of this case, and in
9 a -- we drew names for the juror to replace him, number
10 120, and juror 191 won the raffle.

11 Juror 191, you're now seated as a part of the regular
12 jury, and I think we're now ready to continue with the
13 trial. Call your next witness.

14 MR. MATTHEWS: The state calls Kevin Isenhoward.

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

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

19 THE WITNESS: Kevin Isenhoward, I-S-E-N-H-O-W-A-R-D.

20 DIRECT EXAMINATION:

21 BY MR. MATTHEWS:

22 Q Sergeant Isenhoward, where are you currently
23 employed?

24 A With the Richland County Sheriff's Department.

25 Q And what do you do for the sheriff's department?

1 A I'm a supervisor in the Major Crimes Unit.

2 Q And back on June 2nd of 2011, what was your position
3 then?

4 A Supervisor of the Major Crimes Unit.

5 Q And did you have a chance to interact with Edward
6 Dunn on that date?

7 A I did briefly, yes, sir.

8 Q Can you tell me what that interaction was and where
9 it was?

10 A We were in my -- our supervisor's office, our major's
11 office, Stan Smith.

12 Mr. Dunn was making a telephone call, and I was told
13 it was to his mother. Present in the room was
14 Investigator Mauldin, myself and Stan Smith who I said was
15 our major.

16 Q And what happened in that room?

17 A Mr. Dunn placed a phone call, and to my knowledge, it
18 was with his mother. We could hear -- obviously, he was
19 speaking loud enough we could hear his portion of the
20 call, and he was explaining to his mother what was going
21 on, basically.

22 Q I'm going to show you what's been marked as State's
23 Exhibit 27. If you'll glance at that. Did you have a
24 chance to listen to that recording? I believe it was
25 yesterday afternoon.

1 A I did.

2 Q And was that a recording of the phone call you
3 overheard on that date?

4 A It was.

5 Q Okay. Thank you.

6 Can you describe for me the phone in Major Smith's
7 office that Mr. Dunn used that day?

8 A It's a typical office phone. It's a Cisco phone with
9 multiple lines. Everyone in the sheriff's office has --
10 everyone in the office has the same phone, different
11 extensions. So people can call in, we can transfer calls
12 to each other.

13 It also has a sticker on it. Every phone in our
14 office does, that says "All calls recorded". We place
15 those on the phone to give anyone notice who is going to
16 use the phone that, in fact, all those calls are recorded,
17 and we have access to them at any point in time.

18 Q And you do record the calls and store them for later
19 access?

20 A Yes.

21 Q I'm showing you what's been marked as State's
22 Exhibit 3. Do you recognize that?

23 A I do. I recognize a few things. It's a phone like
24 we have in our office, and it's extension 3037. I know
25 that's my major's extension because he calls me all the

1 time from it, but I can also see his office in the
2 background with some furniture and things that I
3 recognize.

4 Q And is that a fair and accurate representation of the
5 way that phone looked on June 2nd, 2011?

6 A Yes, it is.

7 Q At -- when you were in the office that day, was there
8 anything covering the phone that would have obscured the
9 language that calls are recorded?

10 A No. In fact, if there were, we would remove anything
11 from it. There wasn't.

12 MR. MATTHEWS: Your Honor, at this time, I'll offer
13 State's Exhibit 3 into evidence.

14 MR. O'NEIL: I have no objection to the picture, Your
15 Honor.

16 THE COURT: Without objection.

17 MR. MATTHEWS: May I publish it to the jury?

18 THE COURT: Yes.

19 (WHEREUPON, State's Exhibit No. 3 was admitted into
20 evidence.)

21 MR. MATTHEWS: Beg the Court's indulgence.

22 (Pause).

23 Thank you. I have no further questions.

24 MR. O'NEIL: No questions.

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

1 very much.

2 MS. FENT: The State calls Rhett Hall.

3 RHETT HALL, after being duly sworn,
4 testified as follows:

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

7 THE WITNESS: Rhett Hall.

8 DIRECT EXAMINATION:

9 BY MS. FENT:

10 Q With whom are you employed?

11 A Richland County Sheriff's Department.

12 Q In what capacity?

13 A I'm a computer technician.

14 Q Okay. Can you tell the jury a little bit about the
15 phone system at the sheriff's department and their
16 recording, I guess, capabilities or your recording system?

17 A We have a phone recording device that records all
18 incoming and outgoing calls from the sheriff's department
19 into the sheriff's department.

20 The calls are recorded on to DVDs, and we have
21 software, I do, that I can access the device from my
22 computer and pick out certain phone calls depending on the
23 date and the time, and download them to my computer.

24 Q And what information do you need to know about the
25 phone call in order to find it or download it?

1 A There's several different ways: The date and time;
2 the extension that the call is made from, and the phone
3 number that the extension is called to.

4 Q Back in June of 2011, were you requested to pull a
5 phone call from extension 3037 that had happened on
6 June 2nd?

7 A Correct.

8 Q Okay. And I guess were you given the date, the time,
9 the extension and the phone number that was called?

10 A All of that on here.

11 Q Okay. And did you, in fact, pull that call?

12 A Yes.

13 Q And who did you then send that or give that call to?

14 A Stan Smith.

15 Q Okay. And what was the date and the time and the
16 extension of the call that you pulled?

17 A June 2nd. Excuse me.

18 Q It's okay.

19 A 15:37 with the phone extension is 3037, and the call
20 to number is ■-2534.

21 Q And you said 15:37. Is that military time?

22 A Yes.

23 Q So --

24 A That would be 3:37 in the afternoon.

25 MS. FENT: In the afternoon, okay.

1 No further questions.

2 MR. O'NEIL: No questions.

3 THE COURT: All right, sir.

4 You may come down.

5 May this witness be excused?

6 MR. O'NEIL: No objection, Your Honor.

7 THE COURT: You're free to go. Thank you.

8 MS. FENT: State calls Investigator Josh Mauldin.

9 JOSH MAULDIN, after being duly sworn,
10 testified as follows:

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

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

15 DIRECT EXAMINATION:

16 BY MS. FENT:

17 Q How long have you been with the Richland County
18 Sheriff's Department?

19 A I've been with the Richland County Sheriff's
20 Department approximately ten years now.

21 Q Okay. Can you tell the jury a little bit about your
22 background then, before coming to the sheriff's
23 department, about your education, your training, your
24 career history?

25 A I attended the University of South Carolina where I

1 received a bachelors and a masters in geology,
2 specifically, metals, petrology, rock and metal history.
3 I was then a high school chemistry teacher for about three
4 years at Sumter High School before joining the Richland
5 County Sheriff's Department.

6 I served as a uniformed patrol officer for several
7 years before progressing to the criminal investigative
8 division where I have been for the last -- oh, maybe six
9 years. During that stint, I've served as both a special
10 victim's unit investigator, a sex crimes investigator, and
11 a major crimes investigator.

12 Q Back in June of -- excuse me, May of 2011, where were
13 you assigned?

14 A I was a major crimes investigator, robbery, homicide,
15 during that time.

16 Q And how did you come to be involved in the
17 investigation of the home invasion and the sexual assault
18 at Indira Lonsdale's home?

19 A I believe the assault itself, if I'm not mistaken,
20 occurred on maybe a Friday evening, early Saturday
21 morning. I received the incident report the following
22 Monday. It was assigned to me, and I began working it at
23 that time.

24 Q Okay. Tell us what -- you know, what did you do at
25 that time. You know, what information do you have?

1 What's the first step you need to take?

2 A I reviewed the report and tried to get in contact
3 with the victim. At that time, I had some difficulty with
4 that. Ms. Lonsdale had ostensibly left South Carolina.

5 I believe she testified earlier, she was afraid; had
6 some property in -- I believe outside of Asheville, North
7 Carolina and went there to stay. It was difficult to get
8 in touch with her.

9 I reviewed the report, and I believe talked to crime
10 scene investigator Schroeder in reference to the items he
11 had collected. I felt it was important at that time to
12 get some of those items in immediately for DNA analysis
13 and put a rush on that.

14 Following that, I went back to the crime scene where
15 I canvassed the area, talked to some neighbors, left my
16 card for Ms. Lonsdale.

17 Q In talking to the neighbors, I mean, what information
18 are you trying to get? If anyone heard anything, saw
19 anything?

20 A That's correct, heard anything, saw anything, even if
21 they didn't realize they heard or saw something, it may be
22 important to us. That's the kind of information we try to
23 gather when we canvass a neighborhood there.

24 Q I want to step back a little bit when you're talking
25 about talking to Investigator Schroder and the physical

1 evidence and putting a rush on that. In sexual assault
2 cases, do you generally have a rape kit?

3 A Generally you do, yes.

4 Q Okay. And what does that mean, a rape kit?

5 A A sexual assault -- I guess a sexual assault nurse
6 examiner's kit or protocol kit is one in which a medical
7 examiner, a SANE, a Sexual Assault Nurse Examiner, will
8 process the victim in an effort to locate any evidence on
9 that victim's person that may assist us in our
10 investigation.

11 Q And when you have a rape kit, what is your primary
12 piece of evidence then in a sexual assault case?

13 A That rape kit. That's going to be the thing we focus
14 on at that point in time.

15 Q In this case, did you come to find out she did not go
16 to the hospital and get a rape kit done?

17 A That's correct. We did not have a protocol kit of
18 any sort.

19 Q So then in looking at your physical evidence and
20 talking to Investigator Schroeder, what did you determine
21 to be kind of your primary piece of evidence?

22 A The most important thing we would have -- out of all
23 the evidence that we have, we're going to select certain
24 things that we think are most likely to yield something
25 that is of probative value, of evidentiary value,

1 something that is going to lead us in the right direction.

2 In this particular case, the washrag, according to
3 the victim, her statements to Schroder, she used it to
4 clean after the victim had apparently ejaculated -- or I'm
5 sorry, the suspect had apparently ejaculated on her. That
6 would have been our primary focus at that time. That
7 would have been our most important piece of evidence at
8 the moment.

9 Q So do you know what day it was that you then
10 requested the rush on that evidence?

11 A It looks like May 31st.

12 Q Okay. And also in determining what items you're
13 asking them to process, are you just throwing everyone
14 single thing that was collected and asking DNA to process
15 everything or how are you kind of going through that
16 decision of what needs to be processed?

17 A No. Usually we're going to pick the items and only a
18 few items, even if we have -- you know, a lot of cases
19 there's lots of evidence. Some there's not so much. Some
20 there's lots that we could potentially process.

21 For the sake of time and getting -- expediting the
22 processing of that, those items, we'll just select a few
23 that we initially believe will yield or that are most
24 likely to yield important evidence that will help us out.

25 We can always go back, and often do later on, if

1 those items do not yield something that we're looking for
2 or something that can help us out. We'll request the
3 remaining items be processed, as well.

4 Q And is there actually, I guess, a form or documents
5 you have to fill out to request that processing?

6 A There is, a forensic sciences request form.

7 Q So what other items did you -- other than the
8 washcloth to be processed initially and immediately?

9 A The first one was the swab from Ms. Lonsdale herself,
10 which is necessary for elimination purposes. We like to
11 get victim's DNA, get it in the system, so that it can be
12 separated if that is an issue.

13 Items that she -- the other items on here, a black
14 wallet, dresser drawer, French door handle, back door
15 handle. I focused on items that were inside the house,
16 because that's where Ms. Lonsdale actually saw the suspect
17 inside.

18 So the items that were within the house and that
19 clearly -- that person would have touched, the dresser
20 drawer that was emptied and the wallet, those would have
21 been important items, possibly touch DNA.

22 Q I'm sure that there's a lot of investigators that
23 believe their case is the most important that needs to be
24 rushed, so do you have to get approval to get a rush on
25 the DNA analysis?

1 A We do. If our chief, the chief of investigations, if
2 he is available, he will be the person that expedites
3 that. If not, a designee, usually Major Stan Smith and on
4 down the chain, whoever is available will sign something
5 saying we need to get on this immediately.

6 Q And did you get that approval then for this case to
7 be rushed?

8 A I did.

9 Q What then basically happens next? This is May 31st.
10 You've requested this. You've not been able to talk to
11 the victim, so what, if anything, are you able to do at
12 this point?

13 A Honestly, we're in a holding pattern at this point,
14 but the up side is it was a very short time later that I
15 was contacted by our forensic scientist Gray Amick, our
16 DNA analyst who apprized me of the DNA match.

17 Q So what do you do now that you know that the semen on
18 that washcloth belongs to Edward Dunn?

19 A Well, at that time I have a -- at least the victim's
20 statements to the officers and forensic investigator,
21 crime scene investigator, that the suspect ejaculated on
22 her and then purportedly used a rag, a washrag to clean
23 her.

24 Having a suspect's or an individual's DNA who doesn't
25 have any reason to be there is a strong indication that

1 that person is responsible for that assault. At that
2 time, we obtained warrants, the appropriate warrants for
3 the crimes that were committed therein.

4 Q Specifically, what warrants do you then get for
5 Edward Dunn?

6 A It would have been warrants for -- I can tell you,
7 assault with intent to commit criminal sexual conduct in
8 the first degree; burglary first degree; kidnapping, and
9 armed robbery.

10 Q And I want to go back to something that you said
11 about, "I have the victim's statement about what
12 happened." In what form do you have this statement from
13 the victim?

14 A The initial incident report given to or documented by
15 Deputy Jamie Lucas, as well as her oral statements which
16 were described to me by crime scene investigator Schroder.

17 Q And if you can talk a little bit about the statement
18 that a deputy gets from a victim versus a statement that
19 an investigator is going to get from a victim.

20 A We clearly have two distinctly different sets of
21 things we're responsible for. A deputy's, you know,
22 primary responsibility when they show up on the scene is
23 to gather a synopsis, a summary of the information that
24 the victim gives them, witnesses, whoever that they can
25 relate to us to help us begin our investigation and have

1 some understanding of what transpired during that
2 particular incident.

3 They also want to gather as much suspect information
4 as they possibly can in an effort to try and apprehend
5 that person, especially in a freshly committed crime where
6 you have an individual at large who may or may not be
7 nearby.

8 They want to relay that. They are not -- because of,
9 obviously, time restraints and their own responsibilities,
10 they are not responsible for taking a detailed written
11 statement from a victim.

12 Q So the incident report summarizing what the victim
13 said to the -- to Jamie Lucas, did you did a get of that?

14 A I did.

15 Q And approximately how many lines or -- it's not even
16 one page of information that he got from the victim.

17 A That's correct, not even a full page. I don't
18 believe there is an investigative follow up.

19 Q Basically just kind of a paragraph summary of what
20 the victim told Deputy Jamie Lucas.

21 A Correct.

22 Q Okay. So you get the warrants based upon the match,
23 the DNA match to the washcloth. What happens now? What
24 are you doing about trying to find Edward Dunn?

25 A At that time, those warrants were transmitted to our

1 fugitive apprehension team for service, and they assisted
2 us in attempting to locate Mr. Dunn.

3 Q Do they locate Mr. Dunn?

4 A They do.

5 Q And when do you hear about his apprehension?

6 A I was actually assisting them. I was in the area
7 where Mr. Dunn was believed to be at that time, and I
8 believe this was on the 28th of May. I'm sorry, maybe the
9 2nd of May, excuse me.

10 Q Hold on. This happened May 28th.

11 A June 2nd, I'm sorry, I apologize. I was down in an
12 area nearby and received a call that a residence on Gayley
13 Street -- or that Mr. Dunn had been located at a residence
14 on Gayley street. It appears, [REDACTED], a short
15 distance away. I was present within a few minutes.

16 Q And what area of town is Gayley Street?

17 A It is in the Region I area of Richland County, lower
18 Richland County in the Leesburg Road, close to Leesburg
19 Road and Garners Ferry, right in that area. The lower
20 part of Leesburg Road.

21 Q How far away from [REDACTED] where
22 Ms. Lonsdale lives?

23 A Not very far. They're both within very close
24 proximity.

25 Q Okay. Is anybody with you when you find out that he

1 has been located and apprehended at [REDACTED]?

2 A Yes. Investigator John Baker, also with the Richland
3 County Sheriff's Department, was with me at that time.

4 Q Okay. So what did you do?

5 A Well, immediately proceeded to [REDACTED].

6 One of the reasons I took Baker is he worked there as a
7 uniform patrolman. He was very familiar with that area,
8 so he was able to direct me there quickly. At that time,
9 I took custody of Mr. Dunn while Investigator Baker dealt
10 with other individuals at the residence.

11 Q When you say you took custody, did you actually
12 physically go in the house and find him and arrest him or
13 was he already being detained?

14 A I did not. He was already being detained by our
15 fugitive team. Ray Aherst with our fugitive team was the
16 one that I spoke to and transferred Mr. Dunn over to me.

17 Q Okay. And what do you tell, if anything -- what do
18 you tell to Mr. Dunn?

19 A At that time, I do apprise Mr. Dunn that he is under
20 arrest, what the warrants that -- what the charges are
21 and --

22 Q Did you have the warrants with you at that time?

23 A I believe the fugitive team had the warrants.

24 Q Okay.

25 A I was -- I was very familiar with them. They were my

1 warrants, but the fugitive team, I believe, did have --
2 they did serve -- I don't believe I served those warrants
3 myself.

4 Q So do you remember -- did you just tell them, "Hey
5 you're under arrest for a burglary first, an armed
6 robbery, kidnapping," or do you tell him the substance of,
7 "This is at [REDACTED]"?

8 A Just the general charges --

9 Q Okay.

10 A -- that he's being charged with. I would seat him in
11 my vehicle at that time, and I did apprise him before,
12 asking him any questions or questioning him that we did
13 have DNA evidence at that scene.

14 Q Okay.

15 A And that, you know, I was going to offer him an
16 opportunity to explain. Immediately following that, I
17 read his Miranda warning from a card that I keep on my
18 person at all times.

19 Q When you say that, "We told him we have DNA," is that
20 how you say it, or are you more specific or just that
21 general?

22 A I believe I was very general, yes.

23 Q Okay.

24 A We have a DNA sample that matches.

25 Q So you said you read him his Miranda warnings.

1 Specifically, how did you do that, and what did you say to
2 him?

3 A I keep a card, as I said, on my person at all times
4 so that I don't get the Miranda warning wrong. Believe it
5 or not as many times as I've done it, I can't remember it
6 word for word necessarily.

7 I explained to Mr. Dunn, as I explained to everyone,
8 that before I talk to you, I've got read you this Miranda
9 warning and apprise you of your rights.

10 I read the card which says, "You have the right to
11 remain silent. Anything you say can and will be used
12 against you in a court of law. You have the right to talk
13 to an attorney and have him or her present with you while
14 you are being questioned.

15 "If you cannot afford to hire an attorney, one will
16 be appointed to represent you before any questioning, if
17 you want. You can decide at any time to exercise these
18 rights and not answer any questions or make any
19 statements. Do you understand these rights as I have
20 explained them to you?"

21 I would wait for an acknowledgment, as I did.
22 Mr. Dunn indicated he did understand his rights, and then,
23 "Having these rights in mind, do you wish to talk to us
24 now?"

25 He indicated that he did want to talk to me about

1 this incident and immediately began to explain the
2 presence of DNA.

3 Q At any point then, do you get more specific and say,
4 you know, "I said we have DNA. We specifically have your
5 DNA on a washrag"?

6 A Well, we discussed it, yes.

7 Q Okay. And so what did he then tell you?

8 MR. O'NEIL: Objection, Your Honor. I'm going to
9 renew my previous objection to this testimony.

10 THE COURT: All right. Overruled.

11 You may proceed.

12 THE WITNESS: Mr. Dunn informed me at that time that
13 he was approached by an individual that he only could
14 identify at that time as Shorty.

15 He stated that this Shorty person approached him at
16 some point and told him there was a house where a woman
17 lived who had lots of money; that he decide to accompany
18 Shorty to that house for the purpose of breaking into the
19 house and stealing money.

20 He claimed that he served as a lookout during this
21 home invasion, and that he did see Shorty with a gun. He
22 claimed that while outside the residence at some point, he
23 heard, I believe, Shorty call him into the house.

24 He walked into the house where he saw Shorty having
25 sex with the victim and that while Shorty was having sex

1 with the victim, they have some sort of exchange back and
2 forth. Like he asked Shorty, "Well, hey man, what are you
3 doing?"

4 Shorty said, "Don't worry about it."

5 Mr. Dunn said that while watching this go on, that he
6 became excited and that he masturbated and ejaculated and
7 that he picked a towel up that was on the floor just
8 outside the room and used it to clean himself; that he
9 threw the towel down and went back outside of the
10 residence and that shorty would come out a short while
11 later, give him some money and they part ways.

12 BY MS. FENT:

13 Q Did he say how much money he got from that burglary?

14 A I belief he told me \$300. I want to look back in my
15 follow up and make sure that's accurate.

16 Q If you want to refresh your memory, it's on the
17 second page, the first paragraph towards the end.

18 A Okay. I apologize.

19 Mr. Dunn told me that he and Shorty parted ways
20 immediately that evening and that they met up at gas
21 station later on where he received \$300.

22 Q If you want to refresh your memory from looking it up
23 on that paragraph is does the defendant say he walks out
24 of the house -- after seeing the sexual assault, that he
25 walks out of the house, and he immediately leaves or does

1 he wait then for Donald and then once Donald comes out,
2 they leave and then part ways?

3 A He remained until Shorty came out and didn't leave
4 right away until the act -- by that, I mean the ongoing
5 crime as a whole came to a conclusion.

6 Q Did he tell you anything about the vehicle, the car
7 that was parked there.

8 A (There was no response).

9 Q Did he say --

10 A He told me that he didn't know anything about anyone
11 attempting to take a vehicle at all.

12 Q Did he acknowledge seeing the car there?

13 A He did acknowledge seeing the car there. He didn't
14 know anything about anyone -- I knew the car was a manual
15 transmission. I then asked him if he was able to drive a
16 manual transmission. At that time, he told me that he was
17 not.

18 Q And all of this discussion that you just talked
19 about, where does all of this discussion take place?

20 A This takes place in my vehicle on the way to the
21 Richland County Sheriff's Department.

22 Q And I guess from the beginning when you first get to
23 Gayley street, you said that John Baker was in the car
24 with you?

25 A Yes..

1 Q Tell me then about his -- is he with you the whole
2 time or what's John Baker doing?

3 A He was not with me the whole time. He -- he was with
4 me the whole time on the ride away from Gayley Street but
5 in the initial -- when I initially took possession of
6 Mr. Dunn -- because he was the only investigator with
7 me -- he took charge of getting consent from the
8 individuals who lived in the residence where Mr. Dunn was
9 housed to search in that residence.

10 He completed that search himself with assistance of
11 members of the fugitive team while I began, while I
12 Mirandized and did begin to speak to Mr. Dunn.

13 Q Okay. So then what happens once you get to the
14 sheriff's department?

15 A We get to the Richland County Sheriff's Department,
16 and I take Mr. Dunn inside, seat him in my cube or office.
17 It's not an office. It's a cube.

18 I ask if he'll provide me with a written statement
19 and he agrees to do so, readily agrees to do so. I
20 proceeded to take a written statement from Mr. Dunn at
21 that time.

22 Q So talk to us about that process of how do you go
23 about taking his -- taking his statement?

24 A When we take the statement, as I took the statement
25 from Mr. Dunn, I will -- you know, if they do so, we will

1 do a second Miranda warning, a written Miranda warning at
2 that time, a waiver of rights.

3 Mr. Dunn was provided with that written waiver of
4 rights. I read the rights -- the waiver to him, first the
5 top section, which explains the individual rights and
6 cover -- make sure they understand those rights, at after
7 reading them themselves will initial beside each of those
8 rights and then sign stating that they understand the
9 rights.

10 The bottom section of the form is a waiver of rights,
11 which I will also read aloud, ask them to read themselves
12 and initial and then sign and get them to agree with that
13 waiver which they waive those rights.

14 Q First I'm going to show you what is marked as State's
15 Exhibit No. 1 and ask if you recognize that.

16 A Yes. This is waiver of rights that I presented to
17 Mr. Dunn.

18 Q And that was completed and filled out in your
19 presence with Mr. Dunn?

20 A Yes.

21 MS. FENT: The State offers into evidence State's
22 Exhibit No. 1.

23 MR. O'NEIL: Your Honor, I would renew my previous
24 objection.

25 THE COURT: Overruled.

1 (WHEREUPON, State's Exhibit No. 1 was admitted into
2 evidence.)

3 BY MS. FENT:

4 Q And I'm going to show you what's marked as State's
5 21. Is that an exact copy of State's Exhibit 1?

6 A It appears to be, yes.

7 Q Walk us through then, as you just did, how did you go
8 through this -- or how did you go through this advice of
9 rights form with the defendant?

10 A I reminded Mr. Dunn or informed him that before we do
11 take this written statement that I want to go back over
12 his rights.

13 I would then read the top section of the form aloud,
14 which reads, "Before we ask you any questions, you must
15 understand your rights. You have the right to remain
16 silent. Anything you say can be used against you in
17 court.

18 "You have the right to talk to a lawyer for advice
19 before we ask you any questions and to have a lawyer with
20 you during any questioning. If you cannot afford a
21 lawyer, one will be appointed for you before any
22 questioning, if you wish.

23 "If you decide to answer questions now without a
24 lawyer present, you still have the right to stop answering
25 at any time. You also have the right to stop answering at

1 any time until you talk to a lawyer."

2 Q And how do you -- I guess this is just for him to
3 acknowledge his rights?

4 A That's -- that's correct.

5 Q Okay. And how do you have him then document that he
6 acknowledged each of these rights?

7 A I asked Mr. Dunn to read these aloud -- not aloud,
8 I'm sorry, read these to himself and to initial beside
9 each of these points, at which time he initialed each
10 individual section. Then I asked him to sign if he
11 understands those rights.

12 Q And he signed in your presence?

13 A He did sign.

14 Q Okay. And then you move on to the waiver of rights?

15 A That's correct. The waiver of rights states the
16 following: "I have read the statement of my rights, and I
17 understand what my rights are. I am willing to talk and
18 answer questions.

19 "I understand and know what I am doing. No promises
20 have been made to me, and no pressure or coercion of any
21 kind has been used against me."

22 I then asked Mr. Dunn if he understands the meaning
23 of pressure or coercion. He did indicate yes. However, I
24 still explained those words, typically anyway. I told
25 him, I'm not forcing you to talk to me. You can tell me

1 to, for lack of a better term, to pounce in at any time.

2 I'm not -- I can't make you any promises that things
3 are going to be better or worse if you talk to me. If you
4 talk to me, you do so of your own volition.

5 Mr. Dunn then initialed that that subsection and
6 signing understanding or stating that he did wish to waive
7 his rights and talk to me and provide a statement.

8 Q So then how do you proceed in taking his statement?

9 A Our statements are taken in a Q and A format where I
10 memorialize a statement by typing my questions, and the
11 person who is giving the statement their responses.

12 I think I should add one of the reasons we do that is
13 it seems to be the most effective way of taking a
14 statement because everyone does not have the same level of
15 cognitive and intellectual ability.

16 Also, people don't want to write. They don't want to
17 write. They don't want to sit and write what happened.
18 They would much rather talk, and I -- as I said, I
19 memorialized that the best possible way that I can by
20 typing the words that they say and tell me.

21 Following that, I make sure they read over the
22 statement and allow them to make any changes, omit
23 anything or add anything that they wish to before signing
24 the statement.

25 Q I'm going to show you what is marked as State's

1 Exhibit 2 and ask if you recognize that.

2 A Yes. This appears to be the statement that I took
3 from Mr. Dunn.

4 Q The original?

5 A The original statement.

6 Q Did he sign -- actually, first of all, how many pages
7 is that?

8 A It's a three-page statement.

9 Q And did he sign all three pages?

10 A He did sign all three pages.

11 Q And at the top of that statement, it's also his
12 rights again, correct?

13 A There is an additional advice of rights at the top of
14 the statement, as well, yes.

15 Q Okay. And after you typed everything out, did you
16 give it to him to make any changes, additions, deletions?

17 A Yes. He was allowed to read his statement and given
18 that opportunity.

19 Q And did he change anything, cross out anything, add
20 anything?

21 A To be honest, I cannot recall whether or not he
22 corrected anything or not.

23 Q Okay.

24 A He was satisfied with what the statement said at the
25 point he signed the written statement.

1 Q So if he wanted to correct something, you would have
2 done it, I guess, on the computer and printed out the
3 corrected version?

4 A Yes; that's correct.

5 Q Okay. So this is the ultimate version that he signed
6 his name to?

7 A Yes.

8 Q I'm going to show you what's marked as State's
9 Exhibit 22. Is that a blown up copy of page one?

10 A It appears to be, yes.

11 Q State's Exhibit 23, is that a copy of page two?

12 A Yes.

13 Q And State's Exhibit 24, is that just a copy of page
14 three?

15 A That also appears to be a copy of his statement.

16 MS. FENT: At this time, Your Honor, we offer State's
17 Exhibit 2 into evidence.

18 MR. O'NEIL: Your Honor, I renew my previous
19 objection.

20 THE COURT: Subject to the defendant's objection,
21 which is overruled, the statement is admitted.

22 (WHEREUPON, State's Exhibit No. 2 was admitted into
23 evidence.)

24 BY MS. FENT:

25 Q Walk us through, then, the taking of the defendant's

1 statement?

2 A The first question I asked Mr. Dunn during the
3 statement is, "Did you participate in a home invasion and
4 robbery at [REDACTED] [REDACTED] on Saturday May 28th,
5 2011?"

6 His response was, "Yeah."

7 I asked him to describe to me what happened during
8 that incident.

9 The response, "As we were walking up to the house, we
10 saw a car at the house. He was thinking that she wouldn't
11 be there and that we could just go in.

12 "When he saw the car there, he said, 'Damn, she is
13 home, so I'm just going to have to pull a gun out.'
14 That's when he pulled it out walking toward the house.

15 "He told me to jump the fence and watch out while he
16 did it. I jumped the fence and was down behind it where I
17 could see the street. I could hear the door go boom.
18 Then I heard some dogs barking, so I pretty much knew he
19 was in there.

20 "He was in there about 15 to 20 minutes. Out of
21 nowhere, he was like, 'E.J.'.

22 "I didn't know what was up, so I ran in there.
23 That's when I saw him. He was fucking her from the back.
24 He was on the bed when he was -- he was on the bed when he
25 was doing it.

1 "I shrugged my shoulders like, 'What are you doing?'"
2 He just looked back cheezin' and waiving me off like just
3 chill."

4 Q Hold on one second. Let me get the second page up.

5 (Pause).

6 Okay.

7 A "I got a little excited, so I started to jack off. I
8 used the towel to clean up. I saw it on the ground. I
9 went back outside by the gate and kept watching.

10 "I would say that he came outside about a good ten
11 minutes later. I asked him if he got the money. He said
12 yes. He ran off another way.

13 "He told me to meet him on the hill. I didn't even
14 see him until the next day. I was pissed because he
15 didn't give me the money.

16 "When I have saw him the next day, he was up at the
17 McDonald's beside the Sonoco on Garners Ferry Road. I was
18 up there with one of my homeboys when I heard someone say
19 'E.J.'

20 "He was in the car with some of his homeboys. That's
21 when he gave me some money."

22 "Who are you talking about when you refer to as he?"

23 The response, "This guy that goes by Shorty and
24 Q-tip."

25 Question: "Do you know Shorty's real name?"

1 The response: "No, sir. If I did, I would tell
2 you."

3 Question: "How do you know Shorty?"

4 Response: "I've seen him around a couple of times.
5 When my friend Randy lived up on the hill, Shorty used to
6 come by his house. I've seen him around a few times.
7 That's how I met up with him this time. He came up to the
8 hill looking for Randy and some weed."

9 Question: "How did you and Shorty decide to go to
10 the woman's house on Patterson Road?"

11 Response: "Shorty was telling me about it on the
12 hill after I got him some weed. We were chilling and
13 smoking a blunt. He told me that he had hit this lady's
14 house a little while ago, and he got about ten to 12
15 stacks.

16 "He said he was back up here -- or back up here to
17 hit it again. He said that she didn't have a gun or
18 anything.

19 "He told me that he was looking for Randy to hit the
20 house. He asked me if I was in since Randy wasn't around.
21 He said all I had to do was watch out. I told him that I
22 would do it.

23 "We had finished the blunt, and we were just hanging
24 out. After about 20 minutes, he said let's go. That's
25 when we walked to the house and saw her car there. I

1 didn't even know that he had a strap that whole time until
2 he pulled it out."

3 Question: "Where is the hill?"

4 The response: "It's those brick apartments on
5 Patricia Drive. There's like two of them."

6 Question: "What is Randy's last name?"

7 Response: "I don't know."

8 Question: "Who would know Shorty's last name?"

9 Response: "This guy Jock might know his name."

10 Question: "Can you describe Shorty?"

11 "He is about my height with a low haircut. He is
12 dark brown. He has kind of slanted eyes and a peanut
13 head. He is from New Orleans and kind of talks like that.
14 As a matter of fact, he was in the NEC with me. He was
15 locked up on Pearl Unit. That was awhile ago."

16 Question: "Can you describe the gun that Shorty had
17 on the night of the incident?"

18 Response: "I think it was a .45. It looked kind of
19 like your gun. It might have been a little bigger. It
20 was all black."

21 Question: "When you saw Shorty at McDonald's the
22 next day, what kind of car was he in?"

23 Response: "I think it was a dark colored Crown
24 victoria."

25 Question: "What was Shorty wearing the night of the

1 incident?"

2 Response: "I think he had a black shirt with a
3 collar and maybe some blue jeans and black shoes. He was
4 wearing a black Doo-rag."

5 Question: "Did you or Shorty take car keys from the
6 house on Patterson Road?"

7 Response: "I didn't. He may have, though."

8 Question: What kind of car was in the driveway of
9 the victim's home?"

10 Response: "It was a small car. I think it was a two
11 door. I couldn't tell what kind of car it was, the color
12 it was."

13 Question: "Did you enter the car or try to take the
14 car?"

15 Response: "No, sir."

16 Question: "Is there anything else you can tell me
17 about this incident?"

18 The response: "I don't know anything else to say."

19 Question: "Do you promise that the statement you
20 have just given me has been true and correct?"

21 Response: "Yes."

22 Q What happens after you take the formal written
23 statement?

24 A As I complete the statement, at this point, I have
25 not had the luxury of speaking to Ms. Lonsdale herself.

1 As luck would have and it and due to the diligent
2 work of Investigator John Baker, he was able to locate
3 some family members of Ms. Lonsdale's in Ohio somehow, and
4 they were able to get in touch with her.

5 So almost as soon as I conclude this statement and
6 while he is at my desk, she calls me at the phone. I
7 believe it was at this time that I asked Investigator
8 Isenhoward or Sergeant Isenhoward, rather, to take
9 Mr. Dunn and allow him to use this phone while I spoke to
10 Ms. Lonsdale on the phone.

11 Q Are you going to sit there with a suspect while you
12 talk to a victim on the phone?

13 A Absolutely not.

14 Q Okay. So about how long do you think this took? The
15 document says that you started at around 11:30 in the
16 morning. How long do you think this whole process of
17 actually taking his formal statement took?

18 A I would say at a minimum, an hour, if -- if not
19 longer.

20 Q When you talked to Ms. Lonsdale, do you tell her
21 specifically what the defendant is saying happened?

22 A No. I wouldn't typically do that.

23 Q So what kind of information did you want to talk to
24 her about?

25 A I wanted to ask her specifics about what happened.

1 As I said, at this point, I have nothing that would
2 contradict anything Mr. Dunn has told me in terms of the
3 facts of the case because I have not myself spoken to
4 Ms. Lonsdale.

5 I'm relying solely on the incident report and my
6 conversation with Mr. Schroeder. She did relay some
7 details that were contrary to what Mr. Dunn had told me in
8 his statement.

9 Q So while you're talking to the victim, where is the
10 defendant?

11 A He is -- I'm not sure where he is at this point. He
12 have may or may not be in Major Smith's office. When I
13 walked back, finished that conversation, that's where he
14 was, but he was thereabouts.

15 Q Okay. So when you made contact with him again, he is
16 in Major Smith's office?

17 A That's correct.

18 Q When you made contact with him, was it at any point
19 during this phone call to his mom?

20 A It was.

21 Q Okay. So did you hear portions of that phone call --

22 A I did.

23 Q -- to his mother?

24 A Yes.

25 Q And in what tone of voice was he speaking?

1 A It was just loud. I mean, I was standing -- I was
2 probably the furthest away from Mr. Dunn, and I could
3 clearly hear at least what he was saying.

4 Q And physically, where do you remember him being in
5 terms of the telephone?

6 A If I were in Major Smith's -- it's -- his office is
7 no longer configured the same it was at the time this
8 happened, but if I were seated at Major Smith's table, the
9 phone would be on this side of the desk, and Mr. Dunn
10 would be standing on that side of the phone.

11 Q Okay.

12 A With investigator -- or I'm sorry, Sergeant
13 Isenhoward on one side and Major Smith at his desk on the
14 other side.

15 Q From where the defendant is standing and using that
16 phone, can you see the front of that phone that says, "All
17 calls are recorded"?

18 A The phone would have been right in front of him at
19 that location.

20 Q I'm going to show you what is marked as State's
21 Exhibit 18 and ask just if you recognize it, not what it
22 is, but do you recognize that exhibit?

23 A I do, yes.

24 Q And who took custody of these items?

25 A I did.

1 Q Okay. Did you, I guess, package it in that, in that
2 envelope?

3 A Yes, I did.

4 Q Okay. Is your signature or anything on that envelope
5 indicating you're the one that packaged it?

6 A It is.

7 Q I'm going to open it.

8 What did I just remove from State's Exhibit 18?

9 A A bunch of US currency.

10 Q Where did you get that money?

11 A This was on Mr. Dunn's person at the time of his
12 arrest.

13 Q Let me put it in this envelope.

14 How much cash is in there?

15 A \$355 and there's also a dime, ten cents.

16 Q Did I get the dime out of the envelope?

17 A No.

18 Q Okay.

19 (WHEREUPON, State's Exhibit No. 28 was marked for
20 identification only.)

21 BY MS. FENT:

22 Q What I've done is taken that cash and placed it in an
23 envelope that I have marked as State's Exhibit 28.

24 Do you subsequently have other evidence, request
25 other evidence also to be processed by the DNA department?

1 A Following, yes. Following Mr. Dunn's arrest, I did
2 go back and ask for additional items to be tested.

3 Q Did you ever make contact with Donald, Shorty, Moore?

4 A I did.

5 Q Yes. And how did that contact take place?

6 A After speaking to Mr. Dunn, I felt that at a minimum,
7 I needed to -- I needed to speak Mr. Moore.

8 Q Okay.

9 A I called his -- I had a contact for his mother and
10 called her, and she had him in my office within -- within
11 a few hours. It was immediate.

12 Q So you physically actually laid eyes on Donald,
13 Shorty, Moore?

14 A Yes, I spoke to him at length.

15 Q I'm going to show you what's being marked as State's
16 Exhibit -- I guess State's Exhibit 26 and just yes or no,
17 do you recognize that?

18 A Yes.

19 Q Okay. And does this photo accurately depict what
20 Donald, Shorty, Moore looked like when you made contact
21 with him?

22 A Yes.

23 Q Do you recall the exact day that you made contact
24 with Donald Moore?

25 A It would have been on June 15th, 2011.

1 Q And State's Exhibit 25, just yes or no, do you
2 recognize that photo?

3 A Yes.

4 Q And does it accurately depict what the defendant
5 looked like on June 2nd, 2011?

6 A Yes.

7 MS. FENT: Your Honor, at this time I'd offer into
8 evidence State's Exhibit 25 and 26.

9 MR. O'NEIL: Your Honor, I have an objection to 25
10 that I think needs to be taken up outside the presence of
11 the jury. I also have an objection to 26.

12 THE COURT: All right.

13 All right. Ladies and gentlemen of the jury, let me
14 try to work this out with the attorneys. I'll ask you to
15 just retire to the jury room for a few minutes.

16 I told you at the beginning of the trial that this
17 might happen from time to time, so just relax for a few
18 minutes. Don't discuss the case among yourselves while
19 you're in the jury room.

20 (WHEREUPON, the jury left open court at approximately
21 10:15 a.m.)

22 THE COURT: Mr. O'Neil?

23 MR. O'NEIL: Yes, Your Honor. I pass up State's
24 Exhibit 25. Pass it up so Your Honor can see it.

25 State's Exhibit 25 is clearly a booking photo of my

1 client. I don't have the case law in front of me on that
2 point, but I know there's cases law that stands for the
3 proposition of the prohibition against allowing booking
4 photos into evidence for the obvious type of connations
5 and inferences that can be drawn from booking photos or
6 what have you.

7 I have objections based on that's a booking photo as
8 it relates to Mr. Dunn and also a relevance issue as that
9 holding -- any photo of Mr. Dunn on June 2nd, I think is
10 not relevant to that --

11 THE COURT: These are both on June 2nd?

12 MS. FENT: This was on June 2nd, 2011 as I showed Mr.
13 O'Neil from the website.

14 THE COURT: I said are they both on the same day?

15 MS. FENT: No. Donald Moore's photo is from
16 August 2011, but it clearly is, you know, Investigator
17 Mauldin. It doesn't have to be that day.

18 THE COURT: I'm just asking.

19 MS. FENT: Yeah. That was his hair that was a match.

20 THE COURT: August?

21 MS. FENT: August 2011.

22 We have another -- there is another booking photo
23 from December of 2010, so it's six months previously. His
24 hair is the same, so I mean, we could go print that one
25 out, too, because he has six months before this happened

1 his hair is that way. Three months later, his hair is
2 that way.

3 THE COURT: All right. Let me just check something.
4 Generally, Mr. O'Neil, you're correct. It's not
5 admissible, but under certain circumstances they generally
6 are not admissible because there's been an obvious
7 implication that the defendant has been arrested before
8 and has a criminal history.

9 These are booking photos at the time. These are not,
10 as I understand -- well, they are. They're after --
11 certainly after the arrest of the defendant, that's number
12 one, and two, as to number 26, if that's Mr. Moore, he's
13 not on trial. His criminal history is not relevant to
14 this case so...

15 MR. O'NEIL: I just --

16 THE COURT: I'm trying -- I'm trying to pull some
17 booking photo cases.

18 MR. O'NEIL: I guess if --

19 THE COURT: -- from my clerk.

20 MR. O'NEIL: My argument is to Mr. Moore would be not
21 so much that it's booking photo but it's that -- that
22 picture illustrates what Mr. Moore looked like on
23 June 15th, 18 days after the incident. I don't think
24 she --

25 THE COURT: She said August 11th, August 2011.

1 MR. O'NEIL: Well, I think that's when it was taken,
2 I guess. What -- what she is using it for is Investigator
3 Mauldin, say this is what it looked like when I saw him on
4 June 15th of 2011.

5 I just -- my -- kind of my precise objection would be
6 what he looked like on June 15th, 2011 some 18 days after
7 this incident occurred is not relevant to this case
8 because the issue we had in this case is whether or not
9 the assailant on May 28th had hair, curly hair hanging out
10 his face.

11 MS. FENT: Well, then that gives weight that it is
12 relevant because that's what he looks like within a couple
13 of days of this.

14 Also, if I could just respond to the mugshot or
15 booking photos that are not admissible, the state of law
16 is that you can't call it that in front of the jury. It's
17 improper to call it a mugshot or a booking photo in front
18 of the jury, but they are completely admissible.

19 They are oftentimes admitted because the defendant --
20 the victim says they punched the defendant. It shows an
21 injury. It shows a tattoo. It shows the hairdo that the
22 victim described.

23 They are routinely admissible. They were used in the
24 photo lineups themselves and putting together photo
25 lineups that are admitted to the jury. Sometimes we don't

1 have DMV photos so we use Alvin S. Glenn mugshots, booking
2 photos. We just cannot call them that in front of the
3 jury.

4 THE COURT: Well, that's not the only restriction.
5 Let me call your attention to the Supreme Court case State
6 vs. Traylor, 2004 case, which I think is -- is the law.

7 The introduction of a mugshot of a defendant is
8 reversible unless: One, the State has a demonstrable need
9 to introduce the photograph; two, the photograph shown to
10 the jury does not suggest the defendant has a criminal
11 record; and three, the photograph is not introduced in
12 such a way to draw attention to its origin or
13 implications.

14 So that's basically what I explained in my laymen's
15 terms a few minutes ago. The State has to show a
16 demonstrable need to introduce the photograph. I think
17 you've shown that, okay.

18 The photograph shown to the jury does not suggest
19 that the defendant has a criminal record. If you identify
20 these photographs as being taken postarrest for the
21 defendant and --

22 MS. FENT: I actually --

23 THE COURT: Whatever this witness saw Mr. Moore, I
24 think that would meet that prong, and three, the
25 photograph is not introduced in such a way to draw

1 attention to its origin or implication.

2 So as I said earlier, the mugshot and booking photos
3 generally are not admissible because they tend to imply to
4 the jury that the defendant had a criminal record. If you
5 cross that hurdle, I think they're admissible.

6 All right.

7 MS. FENT: I believe by what you just said that I
8 have established all those things. I don't think there's
9 any further questions for me to ask him of him.

10 THE COURT: When did he first see Mr. Moore this way?

11 MS. FENT: June 15th. He says he met with Donald
12 Moore on June 15th, 2011.

13 THE COURT: And this photograph -- he looks in this
14 photograph exactly as he looked on June 15th.

15 MS. FENT: On June 15th.

16 THE COURT: That's what he testified?

17 MS. FENT: Yes. And he said the same thing about the
18 defendant, that essentially is this what he looked like
19 when he was in -- when you met with him on June 2nd, 2011?

20 THE COURT: He was under arrest at that time?

21 MS. FENT: Yes.

22 THE COURT: Overrule the objection.

23 Let's just take five minutes. The jury is out.

24 You which step down. Don't discuss the case at all
25 with anybody.

1 (WHEREUPON, a short break was taken.)

2 THE COURT: State ready to proceed?

3 MS. FENT: Yes, Your Honor.

4 THE COURT: Defense ready to proceed?

5 MR. O'NEIL: Yes, Your Honor.

6 THE COURT: Bring the jury, please.

7 (WHEREUPON, the jury came into open court at
8 approximately 10:29 a.m.)

9 THE BAILIFF: The jury is seated, Your Honor.

10 THE COURT: All right. Thank you. You may proceed,
11 solicitor.

12 MS. FENT: I failed to previously offer State's
13 Exhibit 28 into evidence, the cash.

14 MR. O'NEIL: No objection.

15 THE COURT: Without objection.

16 (WHEREUPON, State's Exhibit No. 28 was admitted into
17 evidence.)

18 MS. FENT: I offer State's Exhibit 25 and 26 into
19 evidence.

20 MR. O'NEIL: Subject to my previous objection.

21 THE COURT: Yes, overruled.

22 (WHEREUPON, State's Exhibits Nos. 25, 26 were
23 admitted into evidence.)

24 BY MS. FENT:

25 Q A photo of State's Exhibit 25, who is that a photo

1 of?

2 A That is Mr. Edward, Edward Maurice Dunn, Jr.

3 Q Okay. And is this how he looked on June 2nd, 2011
4 when you made contact with him on that day?

5 A Yes. That was how he appeared on that day.

6 Q And State's Exhibit 26, who is that a photo of?

7 A That is Donald Moore.

8 Q And is that what he looked like then on June 15th,
9 2011 when you made contact with him?

10 A Yes.

11 Q You said that you -- the phone conversation that the
12 defendant had with his mother in Stan Smith's office, did
13 you hear portions of that conversation?

14 A I did hear portions of that conversation.

15 Q Okay. Did you have occasion to review that phone
16 call and listen to that phone call prior to your testimony
17 today?

18 A Yes, I did.

19 Q And the phone call that you listened to, was that the
20 phone call the defendant made to his mom?

21 A Yes.

22 Q In Stan Smith's office?

23 A Yes.

24 MS. FENT: Your Honor, at this time I offer into
25 evidence State's Exhibit 27. That's also listed as

1 Court's 3?

2 MR. O'NEIL: Your Honor, I just renew my previous
3 objection.

4 THE COURT: Overruled. It's admitted.

5 (WHEREUPON, State's Exhibit No. 27 was admitted into
6 evidence.)

7 THE COURT: Ms. Fent, Mr. O'Neil. You can come.

8 (Whereupon, there was a bench conference.)

9 (Whereupon, the telephone call was played to the
10 jury.)

11 BY MS. FENT:

12 Q When you talked to Donald Moore, did you get a swab
13 from his mouth?

14 A Yes, I did.

15 Q Donald, Shorty, Moore?

16 A Yes.

17 Q And is that State's Exhibit 15?

18 A It is.

19 Q He consented to give you his swab?

20 A He did.

21 Q And did you later meet with the -- actually
22 physically sit down and meet with the victim, Indira
23 Lonsdale?

24 A I did. I took a statement from her, as well.

25 Q And that statement as opposed to the paragraph,

1 incident report, how long is that statement that you took
2 from her?

3 A That was a four-page statement.

4 MS. FENT: No further questions at this time.

5 THE COURT: Cross-examination?

6 CROSS-EXAMINATION:

7 BY MR. O'NEIL:

8 Q Investigator Mauldin, before you ever spoke with
9 Edward, you already had arrest warrants for him; is that
10 correct?

11 A That's correct.

12 Q Before you even got his side of what happened, you
13 already had arrest warrants for the four charges here?

14 A That's correct..

15 Q And before you got there when he was apprehended, the
16 old arrest warrants were already served on him.

17 A I can't state whether the fugitive guys had served
18 him officially or not.

19 Q Okay. Did you serve him?

20 A I don't believe I did.

21 Q At some time the warrants were served?

22 A I don't believe they were.

23 Q Presumably before you got to the fugitive team.

24 A Presumed.

25 Q And those warrants would have had specific details as

1 to the probable cause that he was under arrest for.

2 A Yes. The affidavits in those warrants, if they were
3 read, would have that, yes.

4 Q And part of the service of process is to read the
5 warrant to the -- to the individual that the warrants are
6 being served on?

7 A It is.

8 Q Now, you said that Edward voluntarily spoke to you in
9 the car?

10 A He did.

11 Q Essentially, you took him from the Gayley Street
12 address down to headquarters on Two Notch?

13 A Yes.

14 Q And while y'all were riding from that address on
15 Gayley Street to Two Notch, you say he voluntarily spoke
16 to you.

17 A Yes.

18 Q I mean, would you classify him as being eager to talk
19 to you during that ride?

20 A Yes.

21 Q He immediately began being able to -- he immediately
22 began telling you what he -- what he said happened?

23 A Yes.

24 Q And that's consistent with the written version that
25 he gave you and the phone call with his mother?

1 A It is consistent with the written version. There
2 were things at the end of the phone call that were
3 never -- that were a little different.

4 Q He made a couple of additions --

5 A Yes.

6 Q -- when he spoke to his mother.

7 He told you essentially that he was the look out for
8 this guy, Shorty, as he referred to him at that point?

9 A Yes.

10 Q Now, how long -- if you know, how long had Edward
11 been at the -- well, I take that back. How long had
12 Edward been apprehended by the fugitive team before you
13 got there?

14 A I would say less than ten minutes.

15 Q Okay. So -- and after you -- after you got there,
16 how long was it before you started talking with him?

17 A A couple of minutes.

18 Q Okay. And how long after you started talking with
19 him did he begin to tell you his side of what happened?

20 A Again, a couple of minutes, almost -- after I
21 apprized him of the nature of the charges and our DNA
22 evidence, it was almost immediately after that.

23 Q So almost immediately after you told him the DNA
24 evidence of what he had been charged with, he told you his
25 version of what happened?

1 A Yes.

2 Q Not a long time to think about his story, immediately
3 after you apprized him what he had been charged with, he
4 told you his version of what happened?

5 A Yes.

6 Q And it wasn't until June 2nd that you saw Edward,
7 correct?

8 A Correct.

9 Q And this incident happened on May -- the early
10 morning hours of May 28th?

11 A Yes.

12 Q So you can always -- Ms. Bodman showed you what's
13 been marked as State's Exhibit 25, a picture of Mr. Dunn.

14 A Yes.

15 Q You don't have -- you can't personally attest to what
16 Edward looked like on May -- the early morning hours of
17 May 28th, can you?

18 A No.

19 Q You only know what he looked like four days -- four
20 days later?

21 A That's correct.

22 Q And she also showed you what's been marked as State's
23 Exhibit 26.

24 A Yes.

25 Q Okay. And you thought this winds up being Donald

1 Moore.

2 A Yes.

3 Q You said that's what Donald Moore looked like when
4 you talked to him?

5 A Yes.

6 Q And you talked to Donald Moore on June 15th of 2011,
7 correct?

8 A That's correct.

9 Q That he was 18 days after the incident on May 28th.

10 A Yes.

11 Q Okay. And you said that Edward was located at, I
12 think, [REDACTED] when the fugitive team -- that's
13 where they apprehended him at?

14 A That was the address.

15 Q And that -- you said that was near the Patterson Road
16 address of this?

17 A Yes.

18 Q Okay. Now, K-9s came up the night of this
19 incidental, correct, a K-9 unit was called?

20 A As far as I know.

21 Q Investigator Richburg, does that name sound familiar
22 with the K-9s there?

23 A Yes.

24 Q Okay.

25 A That's what's in the record.

1 Q Okay.

2 A I believe.

3 Q And the K-9 unit didn't track back to [REDACTED]
4 Street, did it?

5 A I'm not sure where the K-9 unit tracked.

6 Q If it had tracked back to [REDACTED] where
7 Mr. Dunn was later located, you would have been made aware
8 of that?

9 A Hopefully, yes.

10 Q But that didn't happen?

11 A It did not.

12 Q Okay. Let's talk a little bit about Donald Moore
13 here. He was the person that you later identified as
14 being Shorty in Mr. Dunn's statement.

15 A He is the person Mr. Dunn identified as Shorty, yes.

16 Q Okay. And Edward told you that Mr. Moore was from
17 New Orleans?

18 A He did say that, yes.

19 Q Okay. And at some point, those 18 days later, you
20 talked to Mr. Moore on June 15th?

21 A Yes.

22 Q And he told you -- Mr. Moore told you that he was
23 with his girlfriend on that night on May 28th when this
24 happened.

25 MS. FENT: Objection to hearsay to anything Donald

1 Moore said.

2 MR. O'NEIL: Your Honor, he is the investigator. I
3 can ask him what the investigator --

4 THE COURT: Overruled.

5 BY MR. O'NEIL:

6 Q Donald Moore told you he was with his girlfriend,
7 correct?

8 A If you'll just let me refer to his statement.

9 Q Okay.

10 (Pause.)

11 A Yes.

12 Q So Donald Moore says, "I'm not involved. I was with
13 my girlfriend at that morning"?

14 A That's correct.

15 Q What's Donald Moore's girlfriend's name?

16 A I have written Majority Thomas.

17 Q Did you talk with Ms. Thomas?

18 A I did not.

19 Q Did you verify in any way that Mr. Moore was actually
20 with Ms. Thomas on that morning?

21 A I did not.

22 Q Did you talk to anybody that saw Mr. Moore with
23 Ms. Thomas that night?

24 A No.

25 Q Did you attempt to get Mr. Moore's cell phone

1 records?

2 A No.

3 Q Did you --

4 A I don't know that Mr. Moore had a cell phone,
5 necessarily.

6 Q Any phone records from Mr. Moore?

7 A No.

8 Q Okay. What else did Mr. Moore tell you he did that
9 early morning hours of May 28th and the late night of
10 May 27th?

11 A (There was no response).

12 Q Did he tell you he went anywhere?

13 A Nope, not in the report or not in his statement.

14 Q You know --

15 A I don't see that in the statement.

16 Q Do you know where he was the night of May 27th?

17 A I don't know where he was the night of May 27th.

18 Q Took any -- any other steps to verify where he was
19 the early morning hours of May 28th?

20 A No.

21 Q You did get a DNA sample from Mr. Moore?

22 A I did.

23 Q Okay. Did you have that DNA sample tested against
24 what items?

25 A It was asked to be run specifically -- not

1 necessarily tested against the swab from the car door
2 handle, the swab from the gearshift of the vehicle, a swab
3 from the steering wheel, a swab from the emergency brake,
4 those items, because the other items had been tested and a
5 profile had been established, so there would have been a
6 link to those regardless.

7 Q So the other items that had profiles already
8 established were the dresser drawer, the back door, and
9 the washrag, correct?

10 A The washrag, the wallet, the dresser drawer, the
11 French door handle, the back door handle.

12 Q Okay. Those all had -- those all had some -- either
13 one person's profile on them or a mixture of profiles on
14 them, correct?

15 A As I understand.

16 Q As you understood it. And the washrag in particular
17 had a mixture. The cutting from the washrag in particular
18 had a mixture on it, correct?

19 A Yes.

20 Q The major contributor was Edward Dunn, correct?

21 A Yes.

22 Q And at the time you got the report back from
23 Dr. Amick, the minor contributor, it was too weak to
24 reliably interpret who the minor contributor was?

25 A Correct.

1 Q Someone else's DNA was there, but it was too weak to
2 reliably interpret?

3 A Let me say this: I didn't receive the report on the
4 DNA until sometime later. All I was initially told was
5 there was a DNA profile matched to Mr. Dunn.

6 Q So let me make sure I'm clear on that. You
7 weren't -- you wasn't told that there were two, two DNA
8 profiles, on the washrag initially?

9 A I'm only going to be told about a match.

10 Q Okay.

11 A When I was notified by Mr. Amick. We are notified
12 and those results are confirmed many times before the
13 actual written report is generated that someone is a
14 match.

15 Q So you didn't know there was a mixture on the rag --

16 A No, I did not.

17 Q -- when you got -- I apologize. I cut you off.

18 You didn't know there was a mixture on the rag when
19 you got the warrants for Edward Dunn?

20 A No.

21 Q But you later found out not only was Mr. Dunn's DNA
22 on the rag, there was another profile identified on the
23 rag?

24 A That's correct.

25 Q And that profile that was identified was too weak to

1 reliably interpret, from your understanding?

2 A Yes.

3 Q Mr. Moore told you he knew Edward Dunn, correct?

4 A He did.

5 Q Okay. He told you that at some point he pulled a gun
6 on Mr. Dunn, correct?

7 A He told me -- if I could get into what Mr. Moore told
8 me, I would be more than happy to do so.

9 Q I'm just asking you a specific question. Mr. Moore
10 told you at some point he pulled a gun on Edward Dunn,
11 correct?

12 A He said he pulled a gun and robbed Mr. Dunn.

13 Q Okay. So he pulled a gun and robbed Mr. Dunn, and
14 that's what he told you?

15 A Yes.

16 Q So he didn't deny knowing Mr. Dunn?

17 A No. He didn't deny knowing him.

18 Q Did anything ever come up where you needed to follow
19 up on whether or not Mr. Moore was involved in this
20 burglary?

21 A No. In fact, the contrary.

22 Q There never was a reason to follow up to see whether
23 or not Mr. Moore was involved with this burglary?

24 A Well, we did follow up with Mr. Moore.

25 Q After --

1 A I didn't feel the need to follow up any further.

2 Q Okay. So the fact that he was arrested, Mr. Moore
3 was arrested for burglaries, two burglaries in October of
4 2011, that didn't give you a reason to follow up to see
5 whether or not he was involved in this burglary?

6 A No, because this was more than a burglary. This is a
7 sexual assault, robbery, kidnapping.

8 Q Well --

9 A There's a big difference.

10 Q There is, but you already had evidence that Mr. Moore
11 was involved in a previous robbery, correct? He told you
12 he was involved in the previous robbery.

13 A Yes.

14 Q Okay. So you -- you had evidence that he was
15 involved not previous robbery, okay. Correct?

16 A Yes.

17 Q You have Edward Dunn saying he was involved in the
18 burglary that we're here for today, correct?

19 A Correct.

20 Q You have no evidence verifying Mr. Moore's alibi,
21 correct?

22 A No.

23 Q And subsequently, after this case, he is arrested,
24 convicted of the two other burglaries.

25 A I believe he was arrested for burglary. I don't

1 know --

2 Q Okay.

3 A -- what happened, what the disposition of that is.

4 Q And despite all of that, you didn't think you needed
5 to follow up on Donald Moore, did you?

6 A No.

7 Q Okay. Ms. Lonsdale says the keys to her car were
8 taken, correct?

9 A That's correct.

10 Q Were those keys ever found on Edward Dunn?

11 A They were not.

12 Q Okay. Ms. Lonsdale said the intruder took some of
13 her personal effects, some of her jewelry, correct?

14 A That's correct.

15 Q Were those personal effects, that jewelry, ever
16 recovered?

17 A They never were recovered.

18 Q Were they found on Edward Dunn?

19 A No.

20 Q Okay. None of Edward Dunn's fingerprints were
21 located inside the bedroom or in Ms. Lonsdale's car?

22 A From my understanding, no fingerprints were
23 recovered; that's correct.

24 Q And I understand from that, but I guess I'm a little
25 more concerned about -- I may be a little biased, but I'm

1 more concerned about Edward's fingerprints. Were they
2 located in the car or in the house?

3 A No. They weren't located either.

4 Q Okay. You showed Ms. Lonsdale some photo lineups,
5 correct?

6 A That's correct.

7 Q In fact. You showed her, in particular, a photo
8 lineup with Edward Dunn in it, correct?

9 A Yes.

10 Q And she was not able to pick out Edward in that photo
11 lineup, correct?

12 A She was not able to pick out anyone in that photo
13 lineup.

14 Q Did she indicate anybody in the photo lineup had hair
15 similar to the person that came in that day?

16 A That the hair of all the people in the photo lineup
17 would be similar.

18 Q So she said all of them, all the people in the photo
19 lineup were similar?

20 A That particular hairstyle, at least.

21 Q She didn't pick just one?

22 A No.

23 Q Okay. She described the person that came into their
24 -- into her home that night as, among other things, a
25 black male, early 20s, correct?

1 A Yes.

2 Q And at the time you arrested Edward, he was 17 years
3 old?

4 A Seventeen.

5 Q Ms. Lonsdale also told you she was able to describe
6 the weapon that the intruder had, correct?

7 A Yes.

8 Q How did she describe it? How much detail did she
9 have?

10 A I don't believe very much. If I could refer to her
11 statement.

12 Q Go ahead.

13 A Yes. "Small gun, dark brown, and had like -- looked
14 like a lady's gun."

15 Q Did Ms. Lonsdale ever give you any sort of
16 information that -- when it relates to any sort of
17 identifying marks on the intruder's hands?

18 A I don't believe so, no.

19 Q If she had told you something like that, you probably
20 would have read that.

21 A Yes.

22 Q Didn't mention anything about the anything on the
23 intruder's hands or anything like that?

24 A No.

25 Q All right. Were you aware of the tattoos on Edwards

1 hands?

2 A No. I'm still not aware of tattoos on Mr. Dunn's
3 hands.

4 Q Okay. How much money did Edward say he got from
5 Shorty after this robbery?

6 A 300.

7 Q And how much money did you find on Edward the day he
8 was -- that you talked to him?

9 A \$355.10 if I remember correctly.

10 Q Okay. How much money did Ms. Lonsdale say was taken
11 from her residence that day?

12 A I can't recall.

13 Q Do you want to see that statement?

14 A Yes, please.

15 Q All right.

16 A If I wrote it in there.

17 Q Give me a second. I'll let you look at her statement
18 here, specifically on page three. See if that
19 refreshes --

20 A It appears to be \$120, all in 20s.

21 Q Okay. All in 20s. How much was it?

22 A \$120.

23 Q 120, and Edward said that he got how much from Donald
24 Moore?

25 A 300.

1 MR. O'NEIL: Beg the Court's indulgence, Your Honor.

2 (Pause).

3 That's all I have at this time, Your Honor.

4 THE COURT: Redirect?

5 (WHEREUPON, State's Exhibit No. 29 was marked for
6 identification only.)

7 BY MS. FENT:

8 Q I show you what's being marked as State's Exhibit 29.

9 Do you recognize that?

10 A Yes. This is the photo lineup.

11 Q Is this the photo lineup of who?

12 A Edward Dunn.

13 Q And is this the one you showed Ms. Lonsdale?

14 A That's correct.

15 Q That she was unable to or could not identify anybody
16 in?

17 A That's correct.

18 MS. FENT: I'd offer into evidence State's
19 Exhibit 29.

20 MR. O'NEIL: No objection.

21 THE COURT: Without objection.

22 (WHEREUPON, State's Exhibit No. 29 was admitted into
23 evidence.)

24 BY MS. FENT:

25 Q And the individuals in this lineup, the six

1 individuals, do you they all have a similar hairstyle?

2 A They do.

3 Q Now, your conversation with Donald Moore, you said
4 that he indicated that he had pulled a gun on Edward Dunn
5 and robbed him?

6 A Yes.

7 Q I want to draw your attention specifically to Donald
8 Moore's statement.

9 A Okay.

10 Q Where you were asked, "Can you describe the
11 circumstances of this robbery?"

12 A Yes.

13 Q And --

14 MR. O'NEIL: Objection, Your Honor.

15 THE COURT: What's the objection?

16 MR. O'NEIL: The complications are Mr. Dunn has the
17 inability to point who Donald Moore is.

18 (Unintelligible) .

19 THE COURT REPORTER: I'm sorry. I didn't understand
20 that.

21 MR. O'NEIL: Sixth.

22 THE COURT: Sixth amendment.

23 MS. FENT: Your Honor, Mr. O'Neil himself on direct
24 examination was asking what did Donald Moore ask this
25 investigator.

1 THE COURT: Ma'am, come here. No speaking.

2 (WHEREUPON, a bench conference was held in the
3 Presence but not within the hearing of the jury)

4 THE COURT: Overruled.

5 BY MS. FENT:

6 Q What did Donald Moore tell you about the
7 circumstances of this robbery?

8 A The question I asked Mr. Moore was, "Can you describe
9 the circumstances of the robbery?"

10 Mr. Moore responded, "I tried to get him to sell me
11 \$30 worth of crack. I gave him \$30, and he was bragging
12 about how much money he had. When he reached into his
13 right pocket, I pistol whipped him and stripped him. Ever
14 since then, he's been threatening to kill me, my mama and
15 my sister." That's why he bought that black gun.

16 Q And what type of gun was it that Donald Moore knew
17 that he was carrying around?

18 A He describes it as a black revolver with a black
19 handle. He said it was a snubnose .357. I have one just
20 like it, similar, just like it on my ankle now.

21 Q And is it a big gun, small gun?

22 A Surprisingly small.

23 MS. FENT: No questions.

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

25 RECROSS-EXAMINATION:

1 BY MR. O'NEIL:

2 Q Investigator Mauldin, I want to clear something up
3 about Edward's statement here. When Edward gave you a
4 statement concerning his interaction with Shorty inside
5 the residence, was that a nonverbal or verbal
6 communication between those two?

7 A When he talked to me about it in the car, it was
8 verbal. When we put it on paper, it was nonverbal.

9 Q Okay. So the statement on -- the version of what
10 happened that was indicated in the written statement is
11 more of a nonverbal interaction between the two of them?

12 A Even -- can I go back to his statement?

13 Q Yes, sir.

14 A Even on his statement, I believe he said that Shorty
15 called him into the house. Let me confirm that.

16 Q Yeah. You said that; that's correct.

17 A Okay.

18 Q I guess what I'm asking about is when they were --
19 according to Edward when they were both in the residence,
20 his communication with Shorty would have been nonverbal?

21 A On his written statement, yes.

22 Q And you gave him that written statement before he
23 signed it, correct? When I say him, I mean, Edward.

24 A That's correct.

25 Q And if he wanted to make any changes, he could have

1 made changes.

2 A That's correct.

3 Q He didn't change that part?

4 A No.

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

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

7 Thank you very much.

8 THE WITNESS: Thank you, Your Honor.

9 MS. FENT: State's Exhibit 12 is the last one I
10 neglected to introduce, the buccal.

11 MR. O'NEIL: I have no objection that.

12 MS. FENT: Okay.

13 THE COURT: All right.

14 (WHEREUPON, State's Exhibit No. 12 was admitted into
15 evidence.)

16 MS. FENT: Just to make sure it's...

17 (Conferring with the court reporter).

18 Your Honor, at this time the State rests its case.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, that's the State's case. Now, as I told you at the
21 beginning of the trial, this defendant has the opportunity
22 but not any obligation under any stretch -- under any
23 obligation to present a defense, because as I said then --
24 I'll say it again now -- the State has a burden of proof.

25 Whether they met that burden or not, it will

1 eventually be up to you, but I need to -- at this point in
2 the trial, I do need to discuss several things with the
3 attorneys about scheduling and the continuation of the
4 trial.

5 So it's about 11:15. I'm just going to ask you to go
6 to the jury room for a few minutes. Let me discuss how
7 the trial is going to proceed from here with the
8 attorneys, and I'll call you in just a few minutes when
9 we're ready.

10 Again, don't discuss the case among yourselves while
11 you're in the jury room. Just relax for a few minutes.

12 (WHEREUPON, the jury left open court at approximately
13 11:10 a.m.)

14 THE COURT: Any motions?

15 MR. O'NEIL: Your Honor, I guess at this time out of
16 an abundance of caution I would like to renew all my
17 previous motions and objections.

18 I would ask for a directed verdict on all four
19 charges in general. As Your Honor knows, at this
20 instance, what the court is concerned about is whether or
21 not viewing the -- the evidence in the light most
22 favorable to the State, is there any direct evidence, I
23 think, or any substantial circumstantial evidence that
24 would lead a jury to convict Mr. Dunn.

25 I think there has been a few cases that came out

1 recently that kind of addressed that substantially,
2 circumstantial evidence.

3 I think as it relates to the four charges that
4 Mr. Dunn has: The armed robbery, the assault with intent
5 to committed CSC, the kidnapping and the burglary, I think
6 the State is relying on circumstantial evidence to prove
7 the identity of Mr. Dunn, in particular for the
8 kidnapping, armed robbery, and assault with intent to
9 commit CSC.

10 I think there has to be substantial circumstantial
11 evidence in order for the case to go forward at this
12 point. That standard has kind of been enforced by State
13 vs. Arnold. That's 361-SC-386.

14 The point that there has not been substantial
15 circumstantial evidence that links Mr. Dunn as to the
16 identity of the perpetrator specifically for the armed
17 robbery, assault with intent to commit CSC, kidnapping.

18 I think what the State kind of relies on, the
19 majority of that circumstantial evidence, is the DNA match
20 on the washcloth in this case here.

21 I think Mr. Dunn had provided a misstatement in his
22 recorded phone calls, an alternative explanation for that
23 particular piece of evidence.

24 As it relates, specifically, Your Honor, to the
25 burglary charge, I don't think there has been any direct

1 or, really, any circumstantial evidence as it relates to
2 the consent element of burglary.

3 I think there has been no direct evidence or
4 circumstantial evidence that whoever the perpetrator was
5 that entered the home that night entered without the
6 consent of the lawful occupant there at the residence,
7 Your Honor.

8 So based on that, I would ask for a directed verdict
9 on all four charges.

10 THE COURT: State's position on each indictment?

11 MS. FENT: Well, on the defendant's own admission,
12 his own statement, he admits to a burglary, an armed
13 robbery, and a kidnapping. He admits to --

14 THE COURT: Now, wait a minute. Tell me specifically
15 how he does admit to those?

16 MS. FENT: "Shorty told me that he hit up this lady's
17 house a little while ago, and he got about ten to 12
18 stacks. He said he was back up here to hit it again. He
19 asked me if I was in since Randy wasn't around. I told
20 him that I would do it. That's when we walked to the
21 house and saw her car there.

22 "As we were walking up to the house, he saw the car,
23 he was thinking she wouldn't be there. When he saw the
24 car there, he said, 'Damn, she is home, so I'm going to
25 have to pull the gun out.'"

1 Burg first and armed robbery. He's now armed. He
2 says he goes in.

3 THE COURT: You're talking about the hand of one,
4 hand of all.

5 MS. FENT: Under hand of one, hand of all. By his
6 own admission, he is saying, "I'm guilty of burg first and
7 armed robbery."

8 THE COURT: When somebody comes in.

9 MS. FENT: Yeah. He says that he was the look' out.
10 "He asked me to watch" are the words. "He told me to jump
11 the fence and watch out while he did it. I jumped the
12 fence and was down behind it where I can see the street."

13 So he is admitting that he's the look out in a burg
14 first, armed robbery. Now he says he has the gun.
15 They're going in to get the cash, the stacks, to hit more,
16 get more from previously.

17 The kidnapping, obviously, is that he's going to --
18 there's a person in the home. I'm going to have to take
19 this weapon so that she doesn't run out, yell, you know,
20 get away from me. I'm going to use this weapon.

21 There is a person inside, so I'm going to detain
22 them, kidnap them, in order to complete this armed
23 robbery. So right there, the kidnapping.

24 Then his own admission, he's hand of one hand of all
25 under the CSC, under the assault with intent to commit

1 CSC, he says, "I hear something. I go inside. I see this
2 person sexually assaulting the victim."

3 He then goes on to describe what he does, but then he
4 says he says, "I go back out and watch again" which is the
5 same word that he uses as being the look out. He doesn't
6 call himself a look out. He says, "I'm supposed to watch.
7 I'm the watch guy."

8 He says, "I go back out and keep watch again until he
9 comes out." So now he is assisting and enabling the
10 sexual assault to occur. He is the look out to make sure
11 nobody walks up so he can help his buddy complete the
12 sexual assault, then goes outside.

13 He waits for Shorty to come out. They leave and then
14 they meet up how ever much time later, a day or so later,
15 and he gets his cut of the \$300 for participating in the
16 burg first, the armed robbery, the kidnapping, and the
17 sexual assault.

18 That's just under his own admission, and we certainly
19 have substantial evidence from the victim that actually he
20 is the principle. There is not another person. She never
21 sees another person.

22 There is not another person there; that the person
23 that sexually assaulted her and ejaculated on her leg, had
24 her go to the bathroom, wipe her leg off, and we have his
25 semen, one in 70 quintillion. So his semen on that rag

1 and there's -- they said they could exclude Donald Moore.
2 Certainly, in the light most favorable to the State, we
3 have enough to go forward for a verdict.

4 MR. O'NEIL: Your Honor, just to speak, and I'm not
5 going to belabor the point, but as it relates to Mr.
6 Dunn's statement, the only misstatement is the hand of one
7 is the hand of all law in South Carolina means, but my
8 understanding of it is that there has to be some sort of
9 agreement between multiple people under the theory of the
10 hand of one, hand of all.

11 The only thing that Mr. Dunn agreed to in his
12 statement was to go there principally for a burglary. I
13 would -- his statement pretty much says that.

14 The only other mentioning is that Mr. Dunn mentions
15 that Shortly has a weapon here. There is no agreement in
16 Mr. Dunn's statement that now he agreed to an armed
17 robbery and is inside his home.

18 There is definitely no agreement in Mr. Dunn's
19 statement to sexually assault anybody that's inside this
20 home or kidnap anybody that's inside this home.

21 I don't think, especially in the sexual assault and
22 the kidnapping, especially in the sexual assault, Your
23 Honor, it's not a foreseeable outcome from a burglary in
24 the first degree, so I think under the theory of hand of
25 one hand of all, you wouldn't have enough evidence based

1 on his statement alone.

2 The other evidence, the DNA evidence, is not direct
3 evidence. It's circumstantial. I don't think it rises to
4 a level of substantial circumstantial evidence.

5 THE COURT: All right. Now, based on your arguments
6 and the evidence I've heard and the evidence that's been
7 introduced during the course of this trial, I feel that
8 the evidence goes beyond that of mere conjecture or
9 suspicion; that there is evidence, either direct or
10 circumstantial or some combination of both which
11 reasonably tends to prove the guilt of the defendant or
12 from which that guilt might be logically and reasonably
13 deduced if that evidence is taken in the light most
14 favorable to the State. So I must respectfully deny your
15 motion for a directed verdict, sir.

16 Now, does the defendant plan to present a defense?

17 MR. O'NEIL: Your Honor, at this time we don't intend
18 on presenting any testimonial evidence. We would ask for
19 Mr. Dunn to be allowed to do a non-testimonial
20 demonstrate -- present non-testimonial demonstrative
21 evidence in this case.

22 There has been testimony that the victim in this case
23 saw the gun and presumably saw the hand, the right hand
24 that the gun was in of the assailant.

25 We would ask that Mr. Dunn be allowed to roll his

1 sleeves up and show his hands to the jury.

2 THE COURT: Any objection?

3 MS. FENT: Can I just have a little moment to look
4 that up, the propriety of that? I've not had that happen.

5 THE COURT: Well, let me go -- let me do this. Let
6 me give your client his fifth amendment rights, and you
7 can do your research.

8 Mr. Dunn, Edward Maurice Dunn, at this time, I'm
9 going to explain to you certain of your rights, your legal
10 rights. If you do not understand anything I say, please
11 let me know. In you want me to explain anything in more
12 detail, please let me know. Do you understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: We've now reached the stage of this trial
15 where you may present your defense. You have the right to
16 claim the protections given to you by the fifth amendment
17 to the constitution of the United States.

18 This amendment states in person no person shall be
19 compelled in any criminal case to be a witness against
20 himself. This means that you cannot be required to
21 testify in this case.

22 You have the right to testify on your own behalf.
23 However, no one can make you testify. This is a personal
24 right. No one can waive this right except you.

25 If you decide to testify, you will be subject to the

1 same rules that govern other witnesses. You may be
2 examined and cross-examined on any relevant issue in this
3 case.

4 in addition, if you have any convictions involving
5 dishonesty or false statement or for crimes punishable by
6 imprisonment of more than one year and this court
7 determines that the probative value of admitting this
8 evidence outweighs its prejudicial effect to you, the
9 solicitor will be able to introduce your record to attack
10 your credibility.

11 If you decide to testify, this decision on your part
12 must be freely, voluntarily, intelligently made with the
13 knowledge of the protections given to you by the fifth
14 amendment and the consequences of your decision to
15 testify.

16 If you decide not to testify, I will instruct the
17 jury that they cannot give the fact that you did not
18 testify any consideration whatsoever and that there is to
19 be absolutely no prejudice to you because you did not
20 testify.

21 It's left entirely up to you whether or not you
22 testified. You may talk with your attorney, your family
23 and friends or anyone else, but the final decision will be
24 left entirely up to you. Do you understand what I've
25 explained to you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about what I've
3 explained to you?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you discussed with your lawyer
6 whether you should testify or not?

7 THE DEFENDANT: No, sir.

8 THE COURT: You have not talked to your lawyer about
9 it?

10 THE DEFENDANT: No. Can I ask him now?

11 THE COURT: Yes, sir. Do you wish to talk to your
12 attorney about this?

13 (Pause).

14 I'll await your decision.

15 (Pause.)

16 MR. O'NEIL: Your Honor.

17 THE COURT: Just a minute.

18 (Pause.)

19 Yes, sir.

20 MR. O'NEIL: Can he discuss with his parents right
21 there?

22 THE COURT: Absolutely.

23 MR. O'NEIL: Come to the first row.

24 (Pause.)

25 I think we have an answer right now.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Dunn?

3 THE DEFENDANT: No, sir, I do not wish to.

4 THE COURT: Now, you still wish to...

5 MR. O'NEIL: Yes, Your Honor.

6 THE COURT: All right. I need to understand, for
7 both of you to understand the implications of
8 non-testimonial viewing. You still waive your right to
9 final argument.

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

11 THE COURT: You still waive -- by -- that is
12 considered evidence.

13 MR. O'NEIL: Yes, sir, Your Honor. I read State vs.
14 Pickert (phonetic), and it talks about -- I understand
15 that.

16 THE COURT: Go ahead.

17 MR. O'NEIL: Even non-testimonial waiving.

18 THE COURT: All right. I understand that. You
19 understand that.

20 Does the State have any concerns?

21 MS. FENT: No, Your Honor, as long as he does not say
22 anything and merely just shows them, then that's clearly
23 non-testimonial.

24 THE COURT: All right. Fine.

25 MR. O'NEIL: Procedurally, we need to figure out how

1 he's going to do it procedurally. He has shackles on.
2 That's all.

3 THE COURT: I know. Mr. Barefoot.

4 THE DEPUTY: Yes, sir.

5 THE COURT: Mr. Crosby.

6 (The deputies approached the bench.)

7 THE COURT: All right. Stand at ease for just a few
8 minutes, and then we'll continue.

9 MR. O'NEIL: Yes, sir.

10 (WHEREUPON, a short break was taken.)

11 (WHEREUPON, Court's Exhibit No. 6 was marked for
12 identification only.)

13 THE COURT: He can be unshackled, and he'll be
14 allowed to approach the jury, just for your information.
15 Mr. Crosby is going to sit where Mr. Addison sat, just to
16 be sure.

17 MR. O'NEIL: Yes, Your Honor.

18 THE COURT: We had somebody go out that door one
19 time.

20 State ready to proceed?

21 MS. FENT: We're ready.

22 THE COURT: Defense ready to proceed?

23 MR. O'NEIL: Yes, Your Honor.

24 THE COURT: Bring the jury, please.

25 Just announce to the jury what you want to do.

1 MR. O'NEIL: I will.

2 (WHEREUPON, the jury came into open court at
3 approximately 11:47 p.m.)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: All right.

6 Mr. O'Neil.

7 MR. O'NEIL: All right. Your Honor, may it please
8 the Court.

9 At this time, the defense would ask that Edward be
10 allowed to show the jury what his hands and what his arms
11 look like.

12 THE COURT: All right. Go right ahead.

13 (Whereupon, the jury panel saw the defendant's arms
14 and hands.)

15 MR. O'NEIL: I just want to make sure everybody in
16 the back can see it. Okay. Thank you.

17 Your Honor, at this time the defense rests.

18 THE COURT: All right. All right. Ladies and
19 gentlemen, that's the case.

20 Now, the final portion of this trial will consist of
21 the final arguments of the attorneys and my instructions
22 to you on the law of the case as -- to -- on the law as it
23 applies to this case.

24 That process will take a couple of hours, probably up
25 to an hour or two. So I think the best thing, most

1 efficient use of your time, would be to let you go now for
2 your lunch hour.

3 I'm going to ask you to be back in the jury room at
4 1:15. That will give you a little over an hour for lunch,
5 1:15 at which time we will conclude this trial with the,
6 as I say, final arguments and the -- my instructions to
7 you on the law as it applies to this case.

8 I remind you again not to discuss this case with
9 anyone during the lunch hour or when you return to the
10 jury room. I hope you have a pleasant lunch, and we'll
11 see you at 1:15.

12 Thank you very much.

13 (WHEREUPON, the jury left open court at approximately
14 11:50 p.m.)

15 THE COURT: Any motions at this time?

16 MR. O'NEIL: At this time I would renew all my
17 previously made objections and motions, and I also would
18 renew my directed verdict motion on the same grounds that
19 I had at the close of the State's evidence.

20 THE COURT: All right.

21 Does the State have the same response?

22 MS. FENT: Yes, Your Honor.

23 THE COURT: All right. I respectfully deny your
24 motion.

25 Now, any requests for jury instructions?

1 MS. FENT: Just to ensure the one --

2 THE COURT: Or proposed, proposed jury instructions.
3 Let's do this now.

4 MR. O'NEIL: I have two, Your Honor.

5 THE COURT: All right.

6 MR. O'NEIL: I'm make Court's Exhibits, as well. It
7 was on my pretrial written motions, too.

8 THE COURT: All right. Does the State have any
9 requests to charge?

10 MS. FENT: Just to ensure that the hand of one hand
11 of all is charged. I do have an objection to their --

12 THE COURT: Well, let me just --

13 MS. FENT: Okay.

14 THE COURT: Let me find out what you want charged,
15 the State wants charged. How about that, hand of one,
16 hand of all?

17 MR. O'NEIL: I have -- you're going to use the
18 standard hand of one, hand of all? I have no objection to
19 it.

20 THE COURT: Because it has that mere presence --

21 MR. O'NEIL: Yes, sir.

22 THE COURT: -- component.

23 MR. O'NEIL: Yes, Your Honor. I don't object to the
24 hand of one hand of all charge.

25 THE COURT: Anything else the State is requesting?

1 MS. FENT: Can we just get -- before we start, can we
2 get a copy of what version you use to find out how --

3 THE COURT: I'm going to give you a copy of
4 everything.

5 MS. FENT: Okay.

6 THE COURT: All right.

7 Frankly, I had already drafted a mere presence
8 charge.

9 What's your objection, Ms. Bodman, to the defendant's
10 proposed mere presence charges?

11 MS. FENT: It was the one that says three. The -- I
12 guess it has a number three at the top, mere presence or
13 association of coconspirator, conspiracy not charge. This
14 isn't a conspiracy to commit. It's just a hand of one,
15 hand of all.

16 It's confusing and hopefully would just be handled in
17 the presence of a mere hand of one, hand of all
18 instruction.

19 THE COURT: How about that? I mean, I sort tend to
20 agree with that.

21 MR. O'NEIL: I just think it's an issue of semantics,
22 really, I guess when it comes to the term co-conspirator.
23 I'm not aware to the term of co-conspirator. It's
24 semantics.

25 THE COURT: I haven't seen that yet.

1 All right. Let me do this. I'm going to give you a
2 set of charges, and if you have problem, let me know. If
3 you have any additions, let me know. It will just take me
4 a minute to print them.

5 MR. O'NEIL: Okay.

6 THE COURT: Other than that, we'll stand at ease
7 until 1:15, but I'll -- I'm going retire to my chambers,
8 but Mr. Bain will give you a set of charges in just a few
9 minutes.

10 Now, as far as the form of the verdict, we have two
11 choices, either -- what I normally do is since there are
12 no lesser-includedes, we're not talking about lesser
13 includedes here, correct?

14 MR. O'NEIL: No.

15 THE COURT: It's just submit the -- I mean, the
16 indictment form which has the verdict on the front of it.
17 Any objection?

18 MR. O'NEIL: No objection.

19 THE COURT: Okay. We'll do that. All right. Stand
20 at ease.

21 Mr. Barefoot, you can secure the defendant.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: State ready to proceed?

24 MS. FENT: We are.

25 THE COURT: Defense ready to proceed?

1 MR. O'NEIL: Yes. I did make a request for an
2 additional jury charge.

3 THE COURT: Yes. I just wanted to know if you were
4 ready to proceed.

5 MR. O'NEIL: Yes, sir.

6 THE COURT: Okay. The defense has made a so request
7 for an identification charge. Any objection from the
8 State?

9 MR. O'NEIL: Well, I just would like to read it.

10 THE COURT: Here.

11 MS. FENT: Okay. Thank you.

12 (Pause).

13 I do object, Your Honor, because this is making the
14 jury believe that the witness, the victim, had to be able
15 to identify the person. Identity can be done through
16 scientific evidence.

17 THE COURT: Well, I just sat down. I haven't even
18 looked at it.

19 MR. O'NEIL: When Mr. O'Neil --

20 THE COURT: Just wait a minute. Just wait a minute.
21 Please approach the bench.

22 (Whereupon, there was a bench conference.)

23 THE COURT: All right. State ready for the jury?

24 MS. FENT: Yes, Your Honor.

25 THE COURT: Who is going? Are you going to split

1 your argument?

2 MS. FENT: No, sir. I believe I'll just reserve it
3 all for --

4 THE COURT: Are you going to waive opening?

5 MS. FENT: -- response.

6 THE COURT: Mr. O'Neil will you close?

7 MR. O'NEIL: Yes, Your Honor.

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

9 THE BAILIFF: Yes, sir.

10 (WHEREUPON, the jury came into open court at
11 approximately 1:35 p.m.)

12 THE BAILIFF: The jury is seated.

13 THE COURT: All right. Ladies and gentlemen, we're
14 now ready to conclude the trial with the final arguments
15 of counsel, summations of counsel.

16 I will urge you to keep in mind throughout these
17 discussions that there are four charges that attorneys are
18 going to talk about, four charges, and the they're going
19 to talk to you about the elements of each and whether or
20 not the State has met the burden of proving the elements
21 of each of these four separate charges.

22 Mr. O'Neil?

23 MR. O'NEIL: Thank you, Your Honor. May it please
24 the Court.

25 THE COURT: Yes, sir.

1 CLOSING STATEMENT:

2 MR. O'NEIL: Over promising, under delivering, over
3 promising, under delivering.

4 When I was a law -- a major at USC, one of the common
5 scenes there was over promising, under delivering. That's
6 what the State of South Carolina has done in this case.
7 They over promise and they under deliver.

8 Now, we all have a job here today. Judge Cooper, his
9 job, is to be a referee of this proceeding here. My job
10 is to be an advocate for Ed here.

11 Law enforcement, like Investigator Mauldin here, they
12 have a job. Their job is to investigate crimes, to get
13 the details so that the State of South Carolina, through
14 Mr. Foster and Ms. Bodman here can do their job. Their
15 job is to prove the elements of all four of the crimes
16 they have charged beyond a reasonable doubt.

17 Now, beyond a reasonable doubt is a legal term. You
18 hear lawyers use it all the time here. Probably the best
19 kind of definition of beyond a reasonable doubt is I got
20 one lady that was not a lawyer.

21 Basically, what beyond a reasonable doubt means is
22 that you have got to be firmly convinced, firmly
23 convinced, of the defendant's guilt.

24 She gave us the example. She said, "You went to your
25 refrigerator and opened it up and got out a carton of

1 milk. On that carton of milk, the expiration date was for
2 the next following day." Say the day was Monday. The
3 carton of milk was supposed to expire on Tuesday.

4 Before you open that milk and pour it out into your
5 cup, if you stop and smell it before you pour it in your
6 cup, you hesitated to act. That's what a reasonable doubt
7 is.

8 You wasn't [sic] firmly convinced that it milk was
9 still good. You hesitated to act. They have to prove
10 their case beyond a reasonable doubt because as Judge
11 Cooper will tell you, Edward, he is presumed to be
12 innocent. He is presumed to be innocent.

13 What does that mean? Just because he was charged,
14 arrested and indicted for four charges doesn't mean that
15 he's guilty of these charges. I know that's kind of hard
16 to kind of wrap your mind around because we all used to
17 watch the news, read the newspaper, see the fact that
18 somebody got arrested, and what's the first thing we all
19 think? "Glad they got the person that did it."

20 Those rules don't apply to you when you step into
21 this little box right here, okay. When you come into the
22 courtroom and you take this job to be the juror.

23 You have to presume that the person on trial is
24 innocent, meaning he is innocent until they prove
25 otherwise.

1 Now, I mentioned earlier that we all have a job to
2 do, and you 13 now -- it was 14, you 13 now, you have a
3 job to do. Back on Tuesday here, we had a pretty large
4 job interview, and you 13 were chosen, probably not
5 willingly but you were chosen. You were chosen to be
6 supervised.

7 Your job is solely to figure out whether or not
8 Ms. Bodman and her co-counsel, whether or not they've done
9 their job. Your job is not to figure out what happened in
10 the early morning hours of May 28th then. That's not what
11 their job is.

12 We have law enforcement whose job it is to
13 investigate crimes. Your job is to solely decide whether
14 or not they've don't their job.

15 Now, this case, when you hear about the facts of this
16 case, you get a certain reaction. They always -- it
17 always elicits certain emotions. That's why you have this
18 box right here. I refer to this as my emotion box.

19 When you were sworn in on yesterday, you promised to
20 decide this case on two things based on the evidence that
21 came from the stand and the law that Judge Cooper is going
22 to give you. Those are the only two things to decide the
23 case on. You can't decide it on passion, sympathy, any
24 sort of emotions.

25 I know this case, the facts of this case, they

1 conjure up some emotions: Disgust, anger, sympathy. All
2 of those are natural emotions.

3 What I'm asking you 13 to do, all that sympathy, all
4 that anger, all that disgust can't go back with you in
5 that jury room. You have to put all of that aside when
6 you're deciding the case based on the evidence and the
7 law. So I'm going to give everybody room. All those
8 emotions have to go here.

9 What facts have you proved? They have proven to you
10 that on the morning hours of May 28th, 2011, Ms. Lonsdale
11 was burglarized, assaulted, and robbed.

12 What they have not proved to you is that Edward Dunn
13 sexually assaulted, armed robbed or kidnapped
14 Ms. Lonsdale.

15 What facts have you not heard? You have not been
16 presented any evidence of Edward's fingerprints, not in
17 the car, not in the bathroom, not on her purse, not on the
18 dresser, not on the TV stand, no fingerprints of Edward
19 anywhere in that house. None of the items that were taken
20 in that house were in Edward's possession.

21 What's key about the items that were taken is that
22 Ms. Lonsdale got on than stand, and Investigator Mauldin
23 also told you that \$120 was missing, was taken there,
24 \$120.

25 Edward said that he was just a look out for this

1 burglary, and when the burglary was completed, the person
2 Donald Moore who actually went outside the home gave him
3 \$300 a couple of days later.

4 When Edward Dunn -- and you have this back in the
5 jury room with you, there was 300-some-odd dollars in
6 here, not 120, 300-some-odd dollars, just like what Edward
7 said.

8 The only piece of evidence they have that linked
9 Edward to the sexual assault was a DNA on the washcloth,
10 the DNA on the washcloth, okay.

11 Edward immediately, after getting in contact with
12 Investigator Mauldin told Investigator Mauldin what
13 happened.

14 The statement Edward gave three times orally in the
15 car ride and riding at the headquarters and on the phone
16 with his brother all addressed how his DNA got on that
17 washrag. It must be disgusting, but that's how it got
18 there.

19 When they got the washrag tested for DNA, Dr. Amick
20 told you that he wrote a report that said on that
21 washcloth, the two cuttings that he did, there was a
22 mixture.

23 Edward was the major contributor, but there was a
24 minor contributor. At the time he wrote the report, he
25 said that minor contributor's profile was too weak to

1 interpret. A minor contributor, somebody else's DNA, but
2 it's too weak to interpret.

3 He got up on this stand and said, "Yes, I wrote that
4 in my report, but Ms. Bodman asked me to do her a favor
5 and get my opinion."

6 He said in his opinion, he can exclude Donald Moore,
7 but then I asked him could it exclude Donald Moore, why
8 didn't unit write that in your report? Why didn't you
9 report that it was too weak to reliably interpret?

10 He said, "Oh, oh, oh, we have standards,
11 accreditation for our reports, and I don't have enough
12 data to meet those standards for accreditation. So I'm
13 not going to sign it. I'm not going to put my name on
14 that. But I stand up on here, put my hand on the Bible
15 when a man's liberty is at stake here and give my
16 opinion."

17 Shouldn't he have the same or higher standards for
18 the information he gives you guys here at trial? What the
19 State is principally relying on is Mr. Lonsdale's
20 perception that night. That's what they were relying on
21 for their whole entire case, her perception, her memories
22 and her perception.

23 There are two things that are probably affected most
24 during the traumatic incident is her memory and her
25 perception. Those emotions you think about when you heard

1 those type of things, imagine the emotions that were going
2 through the victim's mind when he attacked her. Those
3 emotions, that adrenaline, that fear, that disgust, that
4 anger, that's going to affect her perceptions.

5 The State, on one hand, wants you to believe that all
6 of Ms. Lonsdale's perceptions were accurate and accurate,
7 but on the other hand, they want to explain away when
8 those perceptions don't meet the story they want to tell
9 you.

10 Three things she said she is certain of: One, she
11 states she is certain she didn't hear any other voices
12 there in the room that night. What's key about that, you
13 have Edward's statement.

14 What he said is when he got in the room here, the
15 communication between him and Donald Moore are nonverbal.
16 They were both in the room at the same time.

17 Ms. Lonsdale said she was sure that she picked up
18 that washrag in the bathroom; that it wasn't on the floor
19 like Edward said it was.

20 Remember how Ms. Lonsdale got to the bathroom. She
21 told you she couldn't see because her face was down on the
22 pillow, but when he moved her from the bed to the closet,
23 to the bathroom, he placed something over her head.

24 She couldn't see how she got to the bathroom, because
25 he was leading her the whole way. If Donald Moore was

1 leading her to the bathroom, it wouldn't make sense for
2 her to pick up the rag, take her to the bathroom, to have
3 the victim wash off.

4 They wanted to tell you that the victim's perception
5 is perfect when it comes to whether or not other things
6 were there, whether or not she saw anybody else, whether
7 or not she heard anybody else.

8 Well, what about cracked that? She couldn't pick
9 Edward Dunn out of the lineup. Investigator Mauldin told
10 you he showed her the photo lineup with Edward Dunn in it,
11 and she couldn't pick him out.

12 The only thing that she was certain about was she
13 said, "I saw a gun. I saw a gun in his right hand." She
14 remembered that. She said, "I saw the gun in his right
15 hand. It was a black color. It was small, lady like."
16 She said, "I saw it in his right hand."

17 All 13 of you saw Edward Dunn's hands, saw the
18 tattoos on each knuckle of his hands. On his right hand,
19 saw the colored tattoos up his arm.

20 This incident happened in May, May 28th, during the
21 summer. What would he wear during the summer? Short
22 sleeved shirts. If it was Edward Dunn in that room, if it
23 was his right hand that held that gun, she would have
24 remembered those tattoos on every knuckle and the color
25 tattoos on his arm.

1 Why doesn't she remember that? Why didn't you tell
2 anybody that I remember saying tattoos, colored tattoos on
3 his arm, tattoos on each knuckle? It wasn't the hand of
4 Edward Dunn that held that gun. It was the hand of Donald
5 Moore.

6 Investigator Mauldin told you he saw Donald Moore on
7 June 15th, 18 days after this happened, and described what
8 he looked like. Investigator Mauldin doesn't know what
9 Donald Moore looked like on the early morning hours of
10 May 28th, 2011.

11 Now, this is my last chance to talk to you here.
12 When I'm done here, Ms. Bodman is going to come up, and
13 she is going to be able to address you and have the last
14 word.

15 She may try to pull back out this emotions box, all
16 of those emotions that were in this box here. She may try
17 to tug at those emotions again.

18 Remember, you can't decide a case on emotion here.
19 You have to decide a case on the facts. What's wrong with
20 the facts that they gave you, their main thing they're
21 going to focus on? She is going to tell you that, "Look,
22 Edward Dunn's DNA is there on the rag. That means he did
23 it."

24 There's somebody else's profile on that rag, as well.
25 It was too weak to reliably interpret. That's before

1 Dr. Amick came here and gave his opinion.

2 Well, then she may say, "Well, Edward puts himself at
3 the scene here. Look at his picture. If he didn't do it,
4 it's the hand of one, hand of all."

5 Judge Cooper kind of explained to you what hand of
6 one is the hand of all means, but in the simplest terms,
7 what that means is that if two or more people agree to
8 commit a crime, then both of them are guilty of that
9 crime. If two or more people agree to commit a crime,
10 then they're guilty of that crime and all the natural and
11 probable things that pull over from that crime.

12 You're going to have Edward's statement here. Read
13 it, if you want. Look on that statement to see what did
14 he agree to. The only thing he agreed to do when he went
15 there was to be the look out for a burglary.

16 He didn't agree to any sort of assault with intent to
17 commit CSC, any sort of robbery, any sort of kidnapping.
18 He was just merely present when those things happened.

19 If we don't find an agreement, we can't find hand of
20 one is the hand of all. Edward's story, his account of
21 what happened here, is the only thing that's been
22 consistent.

23 He told it immediately after being arrested to
24 Investigator Mauldin in the car, minutes after being
25 arrested. He wrote it on the paper, and told his mother.

1 You have that phone call. Listen to it, as well. It's
2 never changed.

3 Even when they presented evidence to him,
4 contradictory evidence to him, it never changed. His
5 story always was this was Donald Moore.

6 What do we know about Donald Moore? Did we see
7 Donald Moore, Donald Moore, today in court? No. I know a
8 couple of things about Donald Moore. I know that he robs
9 people. I know that he carries guns, and I know that he
10 burglarizes people.

11 We know that Donald Moore carries guns. We know that
12 he robs people. We know that he burglarizes people. What
13 don't we know about Donald Moore? We don't know where he
14 was in the early morning hours of May 28th, 2011.

15 We talked to Investigator Mauldin here. He told
16 Investigator Mauldin, I was with my girlfriend that
17 morning, and I was sure Investigator Mauldin, when he got
18 the girlfriend's name, we're going to at least give the
19 girlfriend a phone call, didn't even give the girlfriend a
20 phone call. No verification about where Donald Moore was.

21 He didn't ask the neighbors, didn't ask his mother.
22 Even after the fact that Donald Moore had been arrested on
23 two other burglaries after this happened. They never even
24 followed up with Donald Moore to see where he was, what he
25 was doing, did he have an alibi.

1 Investigator Mauldin told you before he even talked
2 to Edward, once he got that DNA match, he had already
3 sworn out warrants.

4 Before they ever talked to Edward, got his side of
5 the story, he already had warrants for his arrest. Once
6 they had warrants for his arrest, there was no changing
7 their mind at that point.

8 Donald Moore, name of the suspect, no alibi, "Don't
9 worry. Go on about your business here. We're not
10 concerned about you. We got what we wanted." All we know
11 are problems and not doing anything about it.

12 Martin Luther King once said, "The true test of a man
13 is not where he stands at in times of comfort and
14 convenience, but in times of challenge and controversy;
15 not in times of comfort and convenience but in times of
16 challenge and controversy."

17 A lawyer once stood in this very courtroom and
18 proudly proclaimed, "This ain't Patrick's day. This ain't
19 Patrick's day." Why is that important? We have the best
20 legal system in the world, bar none. Why is that? We
21 have people like you 13 who are willing to come in, listen
22 to cases, set your emotions aside and decide it on the
23 facts and the law and nothing else.

24 You decide this case on the fact that they've proven
25 beyond a reasonable doubt, not what you think. You get

1 back there and you're say, "Well, I think this happened.
2 I feel this happened," you're not doing your job as
3 supervisors.

4 You're not giving a performance evaluation then.
5 You're doing your stuff. If you're not saying things
6 like, "They proved to me this or they proved to me that,"
7 then you're doing their job.

8 But when you've done your job, not what's
9 comfortable, it's not what's convenient but what's
10 correct, you'll find Edward Dunn not guilty of assault
11 with intent to commit CSC, not guilty of kidnapping, and
12 not guilty of armed robbery.

13 Thank you.

14 THE COURT: Ms. Bodman.

15 CLOSING STATEMENT:

16 MS. FENT: "Do what I say, and I won't hurt you."
17 Won't hurt you, as if sexual assault doesn't cause pain,
18 as if sexual assault doesn't cause an injury. I won't
19 hurt you.

20 He forces her down onto the bed, stomach down, face
21 down, pulls her robe so that she is naked and exposed,
22 starts rubbing his penis between her legs preparing to
23 penetrate her.

24 She is fearing for the worst, stares at a gun in her
25 face, and he says, "I won't hurt you."

1 In 1990, Texas governor's race, Clayton Williams is
2 running against Ann Richards. Clayton Williams, the
3 republican governor candidate, against Ann Richards, a
4 democrat.

5 He says, "Rain is just like rape. If it's
6 inevitable, lay back and enjoy it." A human being said
7 that. A human being said that just like the words came
8 out of his mouth, "You do what I say, and I won't hurt
9 you."

10 I'm going to narrow down some issues for you. The
11 judge is going to read you the law in this case, and I
12 want to just go over it so that we understand how the
13 facts of this case apply to the law and is going to lead
14 you to find the defendant guilty of all the charges.

15 The first one, burglary in the first degree, they
16 stood up in opening and said, "He is guilty of this."
17 Mr. O'Neil just stood up in closing and said, "He is
18 guilty of this crime."

19 You enter a home, a dwelling, without the consent
20 with the intent to commit any crime, and you are either
21 armed with a deadly weapon, the victim sees the gun in her
22 hand [sic] and by his own admission, he says it is his
23 supposed codefendant of his has a deadly weapon, has a
24 gun, or you cause physical injury to a person who is not a
25 participant in a crime.

1 Indira Lonsdale is tied up, put over that bed, uses
2 or threatens the use of a dangerous instrument, displays
3 what is or appears to be a knife, pistol, revolver,
4 shotgun, machine gun, or other firearm.

5 It could be a toy, but the victim believes that is
6 weapon or could be a weapon. So that is the fear that is
7 instilled, "I better do what I am told. Otherwise, I
8 cannot risk that is not a true weapon," or the entering or
9 remaining occurs at nighttime.

10 You heard the victim say this happened approximately
11 2:30 in the morning. So that is a burglary in the first
12 degree. They've already said he is guilty of this crime.

13 Armed robbery, the taking of property, \$120, some
14 jewelry from the presence of the another person. This is
15 Indira Lonsdale's house. She was in that home when it
16 happened, by means of force or intimidation while armed
17 with a deadly weapon. That gun that he says, even by his
18 own admission, "The person that I went in there with, I
19 went to commit this crime with, Donald Shorty Moore, had a
20 gun."

21 The gun can be hidden, but you just act like you have
22 it in your pocket or an object that the person reasonably
23 believes to be a deadly weapon. She sees it, and she is
24 lying on her bed. She turns her head and sees that gun.

25 Kidnapping: You seize, confine, inveigle, decoy,

1 kidnap or abduct or carry away someone. Typically, we
2 think about kidnapping as right, someone is drug out into
3 the trunk of a car and driven away. That is not the law
4 in South Carolina. That is not what a kidnapping is.

5 Somebody takes their weapon and walks into a
6 convenience store and walks up to a clerk and says, "Hold
7 it right there. Don't move a muscle and give me the money
8 in your cash drawer." That is a kidnapping.

9 The person no longer has their freedom of movement.
10 They can't step an inch to the right or an inch to the
11 left because that gun is holding them in that spot.

12 She is led around, even tie up, and she is led around
13 her home unable to leave. She did not run away, try to
14 get out of them because he had a gun on her, tied her up.
15 That is a kidnapping.

16 He takes her from one room to the other to the
17 bedroom, to the closet, back to the bedroom, to the
18 bathroom, back to the bedroom. "Lay down. Don't move.
19 That is a kidnapping."

20 Assault with intent to commit criminal sexual conduct
21 in the first degree: Criminal sexual conduct first
22 degree, there is an assault. An assault is just the
23 threat.

24 You heard the words assault and battery. The assault
25 is when somebody pulls back their arm as if they're going

1 to hit you and you are in fear that you are going to be
2 hit. That's the assault.

3 A battery is when -- an actual contact makes. The
4 arm comes forward, hits you in the nose. So all there has
5 to be and just an assault, just the fear that contact is
6 going to be made.

7 When the intent to commit a sexual battery, and
8 aggravated force is used. So either physical force or
9 violence of a high and aggravated nature where they
10 threaten the use of a deadly weapon.

11 There is a gun next to her head when he is bent over
12 her. She is naked. He is thrusting his penis between her
13 legs and gets excited before he is able to penetrate and
14 complete the act, or it could be even -- if there wasn't a
15 deadly weapon, but the victim is also a victim of a
16 forcible confinement.

17 A kidnapping, burglary that they already admitted to;
18 that this happened in the course of a burglary. So that's
19 CSC in the first degree.

20 Beyond a reasonable doubt: Proof beyond a reasonable
21 doubt is proof that leaves you firmly convinced of the
22 defendant's guilty. There are few things in this world
23 that we know with absolute certainty.

24 In criminal cases, the law does not require proof
25 that overcomes every possible doubt. If, based on your

1 consideration of the evidence, you are firmly convinced
2 that the defendant is guilty of the crime charged, you
3 must find him guilty.

4 If, on the other hand, you think there is a real
5 possibility that he's not guilty, you must give him the
6 benefit of the doubt and find him not guilty.

7 The only way you would know by absolute certainty --
8 there are few things that we know with absolutely
9 certainty is if you were in that house with Indira
10 Lonsdale and you saw it happen yourself. That's why you
11 didn't come to this witness stand. That's why you're
12 sitting over here as a juror, because you're not a
13 witness.

14 Sexual assaults are crimes of secrecy. They happen
15 when the defendant decides when and where it will happen.
16 They make sure that there are no other witnesses, but our
17 case has gone way beyond, way beyond, because we have his
18 DNA. We have the scientific certainty.

19 Credibility of the witnesses: Was the person
20 straightforward or hesitant? Ms. Lonsdale was very
21 straightforward. Her story -- if there had been any
22 inconsistency between what she said to the reporting
23 officer, to Investigator Mauldin, to you, they would have
24 hammered on it, pounded it in that she is very clear about
25 what happened to her.

1 Were they consistent or inconsistent? How does the
2 witness know what they are talking about? Was the
3 testimony strengthened or weakened by the other testimony?

4 Indira Lonsdale's testimony is completely
5 corroborated, backed up by that washrag and Dr. Gray Amick
6 and John Barron.

7 Is there some reason a witness would want to give you
8 testimony which would help or hurt one side or the other?
9 You do not leave your common sense outside of that door.
10 You brought it in here with you.

11 You are going to take it out that door and into the
12 jury deliberation room. You are taking your common sense
13 with you. You are also using this to test his statement,
14 as well. Just because he gave a written statement doesn't
15 mean you have to believe it. You test everything that was
16 said in that written statement and in that call to his
17 mom. Test it and question it.

18 In regards to the defendant's statement, the judge
19 has determined that it is admissible, but you also
20 determine whether or not that statement was given
21 voluntarily and you take into account these are just
22 factors for you to weigh how strong or weak you want to
23 weigh each of these is the person's age, their education
24 or lack thereof, their mental capacity, background, and
25 the advice or lack thereof that they were given in terms

1 of their constitutional rights, right to remain silent;
2 that a statement could be used against them, the right to
3 have a lawyer. If you can't afford a lawyer, we'll give
4 one to him, and the place and length of detention and the
5 nature of the questioning.

6 You heard Investigator Mauldin talk about that
7 statement, the advice of rights that he signed, went
8 through each one, put his initials next to each right.

9 Not only was he given his rights in the vehicle when
10 he was first arrested on Gayley Street and said, "Yeah, I
11 want to talk" and started giving his story all the way
12 down to the police station.

13 When he got to the police station, the place and
14 length of detention and the nature of questioning, he is
15 sitting in Investigator Mauldin's cubical, this cubical,
16 the big open space, for he said maybe an hour,
17 hour-and-a-half.

18 This wasn't all day in a room by himself. You can't
19 have anything to eat or drink. He wanted to give his
20 story, because even when he goes in to talk on the phone
21 to his mom, right, he is wanting to push this story that
22 he gave.

23 He was given his rights out at Gayley Street, giving
24 them again in writing and then again there on top of his
25 statement form. He signs that written statement. This is

1 the story he wants you all to have.

2 The judge is also going to instruct you about the
3 hand of one hand is the hand of all. If you just take his
4 story, his statement, what he is trying to push through
5 here.

6 If a crime is committed by two or more persons who
7 are acting together in the commission of an offense, the
8 act of one is the act of both of them.

9 Two people can be -- for example, two people can be
10 guilty of killing another person when only one of them has
11 a pistol and there's only one bullet.

12 If both are together, acting together, assisting each
13 other, he is the look out. He is outside the home making
14 sure that nobody comes up on this and stops the crime that
15 they have set forward, the burglary, the armed robbery,
16 the kidnapping, by his own admission.

17 The verdict form that the judge is going to give
18 you -- there is one verdict form for each crime -- say
19 guilty or not guilty. There is no different verdict form
20 that you have if you are deciding that somebody was
21 standing outside as a look out as opposed to the person
22 inside the home.

23 You just say, "Is this the hand of one is the hand of
24 all" which they've admitted to. They say -- right? They
25 say, "This is a burglary first. By our own admission, he

1 was outside as the look out."

2 This is an armed robbery because that was his role in
3 these acts. So they -- they understand the law. They
4 know the law, and that's why they're saying hand of one,
5 the hand of all. You've got us on a burg. first, armed
6 robbery.

7 What I'm going to talk to you about, then, is the
8 defendant's statement. State's Exhibit 1 is your -- the
9 advice of rights. State's Exhibit No. 2 is his statement
10 you'll have with you, okay.

11 "Did you participate in the home invasion and
12 robbery, burglary and robbery, at [REDACTED]?"

13 "Yes. We were walking up to the house, and we saw a
14 car." He wasn't thinking that she wouldn't be there; that
15 we would just go in. When he saw the car, he said, "Damn.
16 She is home, so I'm going to have to pull the gun out."

17 Now, the gun is the burg. first. The gun is the
18 armed robbery because they want to get the cash, but the
19 gun is also the kidnapping. So he is now hand of one,
20 hand of all.

21 By that sentence right there, he is hand of one, hand
22 of all for a kidnapping because that's what he used the
23 gun for, right, the threat of force, "Don't move. Don't
24 stop us from taking this money. Don't grab the phone.
25 Don't call anybody. Don't run out of the house. We're

1 going to do what we want to do," and that's your threat of
2 force. That's kidnapping, hand of one, hand of all.

3 That's when he pulled it out, the gun, walking
4 towards the house. He told me to jump the fence and watch
5 out. That's his word for lookout.

6 "I'm the lookout while he did it. I jumped the fence
7 and was down behind it where I see the street. I'm the
8 lookout. I'm watching the street to make sure we get what
9 we came for. I could hear the door go boom. Then I heard
10 some dogs barking, so I pretty much knew he was in there.
11 He was in there for about 15 to 20 minutes."

12 Out of nowhere, he hears him say, "E.J."

13 The victim says no, there is nobody out there. There
14 is no -- he's not talking to anybody else. He doesn't
15 yell for anybody else. There is no communication. That
16 is not true.

17 "I don't know what was up, so I ran in there. That's
18 when I saw him. He was fucking her from the back. He was
19 on the bed when he was doing it, and I shrugged my
20 shoulders like what are you doing. He just looked back
21 cheeing and waived me off like just chill."

22 So he does. "I got little excited, so I started to
23 jack off."

24 So he's now participating in the sexual gratification
25 of the sexual assault. He is now participating in this

1 act.

2 He doesn't run out, "Oh my gosh. This wasn't part of
3 the plan. What is going on? No."

4 He plants himself right there, so now there's another
5 person standing there that's not going to let this woman
6 leave, and he is going to continue sexual assaulting them.

7 "I get a little excited, and I start to jack off. I
8 used the towel to clean up. I saw it on the ground. I
9 went back outside by the gate and kept watching," lookout.

10 So now he knows that there is a sexual assault
11 happening in this house, and he stays with it. Hand of
12 one, hand of all.

13 He stays involved in it. He goes back inside the
14 house, continues acting as a lookout, saying, "I am
15 keeping my eyes on the street to make sure nobody stops
16 what we are trying to do, to make sure that we get what we
17 came for."

18 He is now hand of one, hand of all with an assault
19 with intent to commit a CSC first. Right there, "I went
20 back outside by the gate and kept watching."

21 I would say he came outside about a good ten minutes
22 later, ten minutes. His eyes are on the street. Make
23 sure this continues happening, she continues to be
24 victimized and nobody stops him.

25 I asked him if he got the money and he said yeah. He

1 ran off another way. Then he says, "I see him the next
2 day up at the McDonald's. I was up there, and that's when
3 he gave me the money."

4 The hand of one is the hand of all to the whole --
5 not only is the lookout because you can be the look out
6 free of charge. Sure, I'll help you. You don't need to
7 pay me. I'm a nice guy. I'll help you go in and
8 burglarize.

9 He could do it free of charge, but he actually got
10 some money for it. He talks about it again. "How did you
11 and Shorty decide to go to the woman's house on Patterson
12 Road?"

13 Shorty was telling me about it on the hill. We were
14 chilling. He told me he hit this lady's house a little
15 while ago and got about ten to 12 stacks. He said he was
16 back up here to hit it again. He asked me if I was in
17 since Randy wasn't around. He said all I had to do was
18 watch out."

19 Lookout, kept watching, that's his word. I told him
20 I would do it. Hand of one, hand of all.

21 About 20 minutes later they said, "Let's go. I see
22 him walk out to the house and see your car." Then he sees
23 the gun right there.

24 Just by his own statement, he is now all four charges
25 under the hand, hand of all by their own theory that

1 they're asking you to believe.

2 But some questions you can ask on his statement is he
3 picked up the rack off the floor, which is going to be
4 either in the entry way or in the bedroom. So she has a
5 washrag on the floor in her bedroom.

6 She says, "I keep that washrag in the bathroom. I
7 keep it in the sink for washing my hands and my face.
8 That is where I keep that washrag."

9 The other thing is then he tries to blame it on --
10 when he's trying to blame it on Shorty, he says he was
11 wearing a black doo-rag.

12 The victim said, "No. The one thing I could see is
13 when I turned, I could see curls." She doesn't see a flat
14 cut. She sees curls.

15 Donald Moore, Edward Dunn (indicating).

16 Sexual assault has got to be one of the worst crimes
17 to admit to. Sexual assault is the lowest of the low.

18 You think about, you know, your home, your house, a
19 person walks into their home or is in their home and a
20 stranger comes up to them, approaches them in their own
21 home, what is the first gut instinct a human being is
22 going to have is, "Don't touch me. Don't hurt my
23 children. You can have whatever you want to have. Take
24 it and please just don't touch me."

25 It is the worst of the worst to admit to, and I want

1 you to take that into account as he stands up and admits
2 in his statement and in a phone call to his mom, "Okay,
3 yeah. You know, he needs to cut his losses. Yeah, I did
4 this burglary. I did this armed robbery."

5 Even his mom, his mom, on the telephone when he's
6 saying, "Okay. I agreed to go hit this house with this
7 guy, I was just the lookout." She goes, "Uh-huh."

8 But then when he says in his own words, and I walk in
9 and, "Shorty is fucking the lady," she goes, "What? What?
10 Oh no."

11 He is not going to admit to the sexual assault. He
12 has got to come up with -- now that he knows Investigator
13 Mauldin tells him, "We have your DNA," he has got to come
14 up where that story and try to pollute it.

15 That's what he is doing in that phone call to his
16 mom. He is testing out his story. He is pulling milk out
17 of the refrigerator, handing it to his mom and saying,
18 "Drink this without smelling it." And you know what? She
19 smells it and it stinks. She doesn't drinking that milk.
20 She goes, "Shut up. Shut up. Oh my gosh."

21 Then when you listen to the call -- let's play it --
22 you listen to it. You can hear a male in the background
23 going, "Well, if somebody else did it, there's going to be
24 two semens there dude, two semens."

25 The mom is like, "Yeah. Yeah," but he repeats

1 himself over and over again. "I want to ask you, so I
2 just go ahead with it and be like, 'Yeah, I did it since
3 they ain't gonna to find no evidence'" on him?

4 He's floating out his defense to his mom. They can't
5 get nothing on him, so either it goes they got to put it
6 on somebody. You feel me, Mom?

7 He is like, you know, there are people standing here
8 listening to this conversation. Do I have to spell it out
9 for you mom? I did this. They ain't going to get any
10 evidence on anybody else because nobody else was there.
11 Do you feel me mom?

12 She says, "Don't say nothing." Well, then you hear a
13 male in the background saying, "Well, his should be on
14 that towel, too."

15 "Yeah, if that boy did something, there might be two
16 semens in there."

17 The male in the background, "There has to be." If
18 his story is true, there has to be two semens there. If
19 that boy did something, that stuff is on there, but I
20 don't want to talk because she is not drinking the milk.
21 It stinks.

22 "I don't want to discuss this no more because you
23 know these phones are taped, and they're standing right
24 there listening, ain't they?" But later he says, "Um,
25 dude, Shorty, he could have -- he could have -- when he

1 fucked her or whatever, he could have had a condom on."

2 So now he is trying to come up with, "Well, how can I
3 explain? I know there isn't going to be another DNA
4 there. I know it because there wasn't anybody else up
5 there. It was me. I did it to this lady. So let's work
6 through this, Mom, right? Do you feel me? That's the
7 only thing, mom.

8 That's -- I'm like trying to tell you. That's like
9 "Shut up, just shut up. You just said too much."

10 Phone call, State's Exhibit 27, trying to get his mom
11 to drink the milk, and she says it stinks.

12 Donald Moore, also in opening statements, Mr. Li
13 stood up here and said, "Yeah, he went to go burglarize
14 this house with his friend, his compadre." His compadre
15 is the exact word that he used.

16 They're not compadres. He decides that the person he
17 is going to try to throw under the bus is Donald Shorty
18 Moore, who awhile before pistol whipped him, stripped him
19 and stole his money, and now he is going to try to get
20 back at Donald Moore.

21 How great is that? Better than shooting him and his
22 mama and his family. I can try to throw him under the bus
23 as the rapist.

24 Donald Shorty Moore is the guy he runs with and now
25 trying to get back at him. Ms. Lonsdale, early morning

1 hours, two a.m., 2:30 is asleep in the bed, hears a noise
2 and wakes up, and then she can't get back to sleep.

3 So she goes to make some coffee. She sits down in
4 her sitting room with her dogs while the defendant is
5 lurking around the house. He is figuring out how to get
6 in there and to get to that drawer full of cash that he
7 knows about.

8 He is looking around, and the scary thing is, the
9 really, really scary thing is the back door, the back of
10 the house, he probably started coming through that back
11 door at some point but makes it up the hallway where she
12 is sitting in her sitting room, right.

13 The dresser is up here. He has gotten that fence
14 open, lurking around trying to figure out how to get in,
15 probably comes up here. She is sitting in here with the
16 light on, and he backs back out. Okay, got to figure out
17 another way.

18 He manages to get this door in her bedroom opened
19 because she says when she came in, she looks over and this
20 door is wide open. That's when she is standing there, but
21 he has -- by the time she sits there, she hears the noise,
22 she hears the bang.

23 She thinks, "I'm going to go check that out." He has
24 made his way across the room and is over here where he
25 closes the blinds, the blinds that are always open.

1 He is, "No, I got it. I need to shut these blinds
2 because I don't want anybody to be able to see."

3 She comes over here, is standing there, looking in
4 the door wondering, "Now, how in the world did that
5 happen?" He comes up behind her, puts his hands on her
6 shoulder and says, "Do what I say, and you won't get
7 hurt."

8 He takes her into the bedroom, puts her over the bed,
9 has her hands tied. The dogs are barking. She is worried
10 about her dogs getting out. She says, "Please, can I shut
11 the door?"

12 So they go shut the door, come back. Puts her down
13 back over that bed. It is dark in that room. This is
14 incredibly frightening.

15 As he bends her over that bed, her head down, she
16 turns. She sees that gun. The fact that she doesn't see
17 a tattoo is completely understandable. She is scared
18 about what's going to happen to her.

19 "Where is this going? How bad am I going to be hurt?
20 Is he going to be violent with me?" Now, I see her eyes
21 go to that gun, go to the gun and back again.

22 He is so excited by this violent terrorizing act that
23 he ejaculates on her legs, so she is now wet. He gets her
24 up, tries to put her in the closet, puts the underwear
25 over her head so she can't see him.

1 So now, the only possible opportunity that she had
2 before. If he stayed behind her, the only thing he -- she
3 was possibly going to see or have a chance to see, those
4 tattoos when they were on the bed, but his hand is
5 probably down, right, so all these tattoos on his forearm
6 are covered.

7 Her face is right there at the gun. You can only
8 take in so much. A human being can only process so much
9 information, and now he has got the underwear over her
10 head.

11 So, you know, any identifying information at that
12 point, she is not going to see a thing. He takes her to
13 the bathroom through the house to that washcloth that's in
14 that sink, that she keeps in that sink, makes her wash
15 herself off with it, runs it under the water, tells
16 herself to wash off with it again.

17 She is washing the semen of the person who assaulted
18 her. That person who did this act to her is what is being
19 washed off, and it goes back into the sink.

20 He marches her back into the bedroom, tells her to
21 get down on to the floor, walks over to the dresser, pulls
22 out the dresser where the cash had been just the week
23 before and said, "Where is the money?"

24 This greedy, vicious, violent person knows about the
25 money in this drawer, and he is coming back by himself to

1 get his own greedy share of it, which she has one week.
2 Why are you going to put all this cash back in the same
3 drawer where you just got burglarized? So he is an idiot,
4 and that's how criminals get caught is because they're
5 idiots.

6 Now, he's not going to leave until he gets something,
7 so he is starting to pull out all of the drawers. He is
8 looking for jewelry, any other cash. He says, "Where is
9 the money? What about an ATM card? How much do you have
10 in the bank?"

11 She knows he is not going to leave until I get
12 something. Finally, she says, "I have some money hidden
13 in my wallet" and takes it out and gives it to him,
14 100-some-odd dollars in \$20 bills.

15 Now, he has in his possession, when he's arrested, he
16 does have \$355, but some time has passed, A, and you heard
17 that Donald, Shorty Moore, said that one time he tried to
18 sell Donald some drugs. So there's some income from
19 something else.

20 MR. O'NEIL: Objection, Your Honor.

21 THE COURT: Sustained.

22 MS. FENT: There are other ways that he could have
23 more reasons that he could have more than \$120, more than
24 what was taken from the victim.

25 She can hear him rummaging around the house, and then

1 she hears this big bang from the front porch going out,
2 which is those doors that fell out, fell off their hinges
3 from the front door. She immediately gets up and calls
4 9-1-1.

5 (Whereupon, the 9-1-1 phone call was played for the
6 jury.)

7 Indira Lonsdale has every reason to make sure that
8 all of the people that contributed, participated in this
9 horrible crime would be caught and held accountable.

10 There was one person, one person, and it's him. As I
11 said, rape is a crime of secrecy. It is the defendant who
12 has the power to make sure that there are no other
13 witnesses and that the victim can't identify them, but the
14 one thing he can't hide from the case is his DNA.

15 That washrag, the major contributor to that washrag
16 is semen that is the defendant's. One -- the frequency of
17 seeing this profile, this DNA profile, is one in
18 140 quintillion. You heard Gray Amick say that there's
19 approximately 7 billion people on the earth is the earth's
20 population.

21 It would take 20 billion earths, 20 billion earths,
22 is the statistical analysis to see this profile again. He
23 said it's him. There is nobody else with this profile.

24 He did say there was a minor continuer to that
25 washrag and that it was too weak to reliably interpret,

1 but, he said that he can, in looking at the profiles, in
2 looking at them, he can say that Donald Moore is excluded
3 from that washrag, because he said there was one allele
4 that he saw on that washrag that Donald Moore does not
5 have.

6 Now, too weak to reliably interpret is he said,
7 "Well, I looked at the victim's -- for example, I have the
8 victim's profile. When I look at that, yeah, she can't be
9 excluded because she is consistent with it, but that's
10 when he is saying it's too weak to reliably interpret."

11 He is not going to professionally make a call and
12 say, "Yeah, that is, in fact, the victim's DNA profile.
13 That minor contributor that we see, I am not as an expert,
14 as a professional, going to sit here and say that is the
15 victim's, but I can say it is not Donald Moore."

16 I ask you to consider that is her washrag. She uses
17 it to wash her face, wash her hands, but it is very
18 significant here that she says she washes her face and she
19 washes her hands with that washrag.

20 Even with that, even if she wiped herself, right,
21 with that washrag she wiped herself, but that is hers, but
22 even doing that, it is a weak contribution.

23 The DNA of her is still very weak, but who -- how
24 many DNA is there that is a major contributor that he can
25 say one in 140 quintillion it is him, is the amount of

1 semen on that washrag belongs to the defendant, one
2 person.

3 The judge in the very beginning -- when you first got
4 sworn in -- told you that this is a place of honor; that
5 we are here for the search for the truth to ensure that
6 justice is done.

7 We have brought evidence of the weight of an iron
8 anvil down on those scales of justice, and that evidence
9 brings you to reach verdicts of guilty in all four charges
10 to ensure that justice is done.

11 Thank you.

12 THE COURT: All right. Ladies and gentlemen,
13 everybody okay?

14 (The jury nods in the affirmative.)

15 JURY CHARGE:

16 THE COURT: All right.

17 Mr. Foreman, ladies and gentlemen of the jury, you've
18 heard all of the testimony in this case. You've heard the
19 arguments of both the State and the defendant, and you
20 will take with you to the jury room all of the evidence in
21 this case that's been submitted.

22 Now, from time to time I've had juries ask me to send
23 them a copy of what I'm about to go over with you. I'm
24 not able to do that. In some states it's done, but it's
25 generally not done in South Carolina. So I'll ask you to

1 pay close attention to what I now tell you.

2 Some of this will be a review of what we told you at
3 the beginning of this trial. Under our constitution and
4 code of laws, only the jury can make the findings of fact.

5 Now, I'm not permitted to indicate to you how I might
6 feel about the facts. If I said or done anything in this
7 case which would indicate to you that I have an opinion
8 concerning the facts of this case, you should disregard
9 that. You must independently weigh the evidence presented
10 in this trial and render a verdict based solely on that
11 evidence.

12 Now, under the same constitution and laws which
13 designate and make you the finders of the fact also make
14 me the instructor of the law.

15 If you have some idea as to what the law is or what
16 the law ought to be, it does not agree with what I now
17 tell you it is, you are obligated under your oath to
18 abandon that preconception on your part and accept and
19 apply the law precisely as I now state it to you.

20 As you know, the indictments in this case charge the
21 defendant with assault with intent to commit criminal
22 sexual conduct in the first degree, burglary in the first
23 degree, kidnapping and armed robbery.

24 I remind you that the fact the defendant was
25 arrested, charged, and indicted in this case is not

1 evidence in this case and cannot be considered by you as
2 any evidence of guilt, nor does it create any presumption
3 or inference of guilt.

4 The indictments are simply the formal legal documents
5 which contain the charges brought against the defendant.
6 The indictments in this case allege several different
7 offenses: Each indictment, as you know, charges a
8 separate and distinct offense.

9 You must decide each indictment separately on the
10 evidence and the law applicable to that indictment
11 uninfluenced by your decision as to any other indictment.

12 The defendant may be convicted or acquitted on any or
13 all of the offenses charged. You'll be asked to write a
14 separate verdict of guilty or not guilty on each
15 indictment.

16 Now, the defendant has pled not guilty to these
17 charges, and that plea puts the burden on the State to
18 prove the defendant guilty.

19 I told you before a person charged with committing a
20 criminal offense in South Carolina is never required to
21 prove himself innocent, and I charge you again this is an
22 important rule of law that the defendant in a criminal
23 case, no matter what the seriousness of the crime or
24 charge may be, will always be presumed to be innocent of
25 the crime for which the indictment was issued unless guilt

1 has been proven by evidence satisfying you of that guilt
2 beyond a reasonable doubt.

3 This presumption of innocence does not end when you
4 begin your deliberations. It accompanies the defendant
5 throughout the trial until you reach a verdict of guilt
6 based on evidence satisfying of that guilt beyond a
7 reasonable doubt.

8 It has been said the presumption of innocence is like
9 a robe of righteousness placed about the shoulders of the
10 defendant which remains with the defendant until it has
11 been stripped from the defendant by evidence satisfying
12 you of the defendant's guilt beyond a reasonable doubt.

13 Presumption of innocence is not a mere legal theory.
14 It's not just a legal phrase. It is a substantial right
15 to which every defendant is entitled unless you, the jury,
16 are satisfied from the evidence of the defendant's guilt
17 beyond a reasonable doubt.

18 Well, what is a reasonable doubt at law? A
19 reasonable doubt is the kind of doubt that would cause a
20 reasonable person to hesitate to do something. Let me
21 repeat that. A reasonable doubt is the kind of doubt that
22 would cause a reasonable person to hesitate to act or to
23 do something, and the State has the burden of proving the
24 defendant guilty beyond a reasonable doubt.

25 Now, some of you may have served as jurors in civil

1 cases where you were told it's only necessary to prove
2 that a fact is more likely true than not, such as by the
3 greater weight of the evidence or the preponderance of the
4 evidence, but in criminal cases, the State's proof must be
5 more powerful than that. It must be beyond a reasonable
6 doubt.

7 To think that a person is probably guilty or the
8 circumstances are suspicious is not enough. Proof beyond
9 a reasonable doubt is proof that leaves you firmly
10 convinced of the defendant's guilt.

11 Now, there are very few things in this world that we
12 know with absolute certainty. In criminal cases, the law
13 does not require proof that overcomes every possible
14 doubt.

15 If, based on your consideration of the evidence, you
16 are firmly convinced that the defendant is guilty of the
17 crime charged, you must find the defendant guilty.

18 On the other hand, if you think there is a real
19 possibility that the defendant is not guilty, you must
20 give the defendant the benefit of the doubt and find the
21 defendant not guilty.

22 Now, generally, during the presentation of a trial,
23 there are two types of evidence: One we call direct
24 evidence, one we call circumstantial evidence. Direct
25 evidence is simply the testimony of a person who claims to

1 have actual knowledge of a fact such as an eyewitness.

2 It's evidence which immediately establishes the main
3 fact to be proved. Circumstantial evidence, on the other
4 hand, is proof of a series or chain of facts or
5 circumstances indicating some fact.

6 It's evidence which immediately establishes what we
7 call collateral facts from which the main fact may be
8 inferred.

9 In other words, circumstantial evidence is based on
10 inference, not on personal knowledge or observation, but
11 the law makes absolutely no distinction between the weight
12 or value to be given either direct or circumstantial
13 evidence, nor is a greater degree of certainty required of
14 circumstantial evidence than of direct evidence.

15 You should weigh all of the evidence in this case.
16 After weighing the evidence, if you're not convinced of
17 the guilt of the defendant beyond a reasonable doubt, you
18 must find the defendant not guilty.

19 Now, necessarily, you must determine the credibility
20 of the witnesses who testified in this case. Credibility
21 simply means believability.

22 It becomes your duty as jurors to analyze and
23 evaluate the evidence to determine which evidence
24 convinces you of its truth. In determining the
25 believability of a witness who has testified in this case,