

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TONY NEVAIL MYERS,

APPELLANT

APPELLATE CASE NO 2018-000474

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2016-GS-26-02411

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

vs.)

February 27, 28 and
March 1, 2018

TONY NEVAIL MYERS,)

Defendant.)

B E F O R E:

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

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1 FEBRUARY 27, 2018 - DAY ONE

2 BY THE COURT:

3 (REPORTER'S NOTE: Defendant not present in courtroom.)

4 THE COURT: All right. So, Mr. Myers -- you were able to
5 find and communicate with Mr. Myers?

6 MR. GALMORE: Yes, sir. He was here earlier. He went
7 downstairs. He had a transportation issue. He has asked that
8 we not start the trial before tomorrow morning.

9 THE COURT: All right. Well, the jury panel is here.
10 So, I don't have a problem with picking the jury and starting
11 tomorrow morning. Now, Solicitor, you indicated you had eight
12 to ten witnesses?

13 MS. WALTER: I may be able to pare that down. I have --
14 eight is probably closer but some of them are chain and it
15 should go fairly quickly.

16 THE COURT: Okay. All right. So, if we started tomorrow
17 morning, you think we can finish it or would it be better ---

18 MS. WALTER: I think we -- we would be very close to
19 finishing it because it's a fairly straightforward case. The
20 victim's testimony is fairly straightforward. There's an eye
21 witness, a crime scene tech who swabbed a bite mark on the
22 victim and then some SLED people and maybe one detective. I
23 believe there was a photo spread.

24 THE COURT: All right.

25 MS. WALTER: So, as long as I know we're a go, I will

1 have my victim and my witness come in from Georgia. I'll let
2 the SLED people know that we're back on and we should be able
3 to finish it tomorrow.

4 THE COURT: Okay.

5 MS. WALTER: And I'll just need five minutes to put my
6 suit on.

7 THE COURT: Okay. All right. That's fine.

8 So, the -- with that, the state is not prepared to go
9 forward today either, then, from what you're telling me?

10 MS. WALTER: Well, the witness, the witness from Georgia
11 I can put on any time. I mean, I could certainly start today
12 with some of my witnesses, but we don't oppose picking the
13 jury today and starting tomorrow, but I can certainly start
14 today. That's not a ---

15 THE COURT: All right. Very good.

16 Well, why is it that we -- what's the request based upon,
17 Mr. Galmore?

18 MR. GALMORE: Mr. Myers and I have not been in the best
19 of contact. That's -- everyone has blame in that, but he did
20 come in this morning and his request -- I guess just out of an
21 abundance of caution was to try to start tomorrow morning so
22 that we can continue to discuss this case this afternoon.

23 THE COURT: Okay. All right. All right. Well, we'll
24 just -- being mindful of the now limited time that we have, if
25 we can -- everybody can keep that in mind. I'm not saying

1 don't do your job, you know, ask the questions you need to
2 ask, but let's just kind of keep in mind we're starting
3 Wednesday morning. Okay?

4 MR. GALMORE: Yes, sir.

5 THE COURT: We will pick the jury since they're here and
6 they're downstairs, so we'll go ahead and pick the jury. So,
7 if you wanted to go find Mr. Myers before they come on up.
8 Okay?

9 MS. WALTER: Thank you, Your Honor.

10 MR. GALMORE: Thank you. So, the jury is gonna come up.
11 Maybe 15 minutes, perhaps?

12 THE COURT: I'm sorry?

13 MR. GALMORE: Fifteen minutes, perhaps?

14 THE COURT: All right. Fifteen minutes, we'll have the
15 jury come up.

16 MR. GALMORE: Yes, sir; thank you.

17 THE COURT: So, just bring them up in 15 minutes, then.
18 Okay?

19 DEPUTY: Yes, sir.

20 *****OFF THE RECORD*****

21 (On the Record.)

22 (REPORTER'S NOTE: Jury Venire enters courtroom.)

23 VOIR DIRE

24 THE COURT: Thank you. All right, ladies and gentlemen,
25 we are going to pick a jury in the case of the State of South

1 Carolina versus Tony Nevail Myers. The state has charged the
2 defendant with the crime of assault with intent to commit
3 criminal sexual conduct third degree.

4 In this particular matter, I have asked the panel at
5 large to fill out an extra juror questionnaire over and above
6 the normal questions that we ask every single jury we impanel
7 in criminal court and so what we'll do is -- okay -- we'll go
8 over those in just a minute. So, we'll go over those in just
9 a second. But my intention is, regarding those, if there was
10 a response of yes to any of the four questions, I'll call you
11 up and we'll discuss that here at the -- the bench with the
12 presence of the counsel regarding those matters.

13 Just give me a minute.

14 All right. So, if you would, Juror Number 54, Juror
15 Number 54, would you come forward please, sir? And just come
16 around to the space right up here in front of -- right in
17 front of the bench here, please.

18 (REPORTER'S NOTE: Bench conference is held off the record
19 with Juror 54. Juror 54 remains in Jury Venire.)

20 THE COURT: All right. So, the next one -- there's
21 several of them so y'all just stay up here.

22 Juror Number 66, Juror Number 66, please.

23 (REPORTER'S NOTE: Bench conference is held off the record
24 with Juror 66. Juror 66 remains in Jury Venire.)

25 THE COURT: All right. Juror Number 69.

1 (REPORTER'S NOTE: Bench conference is held off the record
2 with Juror 69. Juror 69 excused for this particular case.)

3 THE COURT: So, the next one is Juror Number 79, Juror
4 Number 79.

5 (REPORTER'S NOTE: Bench conference is held off the record
6 with Juror 79. Juror 79 remains in Jury Venire.)

7 THE COURT: Juror Number 87, please, 87.

8 (REPORTER'S NOTE: Bench conference is held off the record
9 with Juror 87. Juror 87 remains in Jury Venire.)

10 THE COURT: Number 205, Number 205, please.

11 (REPORTER'S NOTE: Bench conference is held off the record
12 with Juror 205. Juror 205 remains in Jury Venire.)

13 THE COURT: 256, Juror Number 256.

14 (REPORTER'S NOTE: Bench conference is held off the record
15 with Juror 256. Juror 256 remains in Jury Venire.)

16 THE COURT: All right. Number 259, 259.

17 (REPORTER'S NOTE: Bench conference is held off the record
18 with Juror 259. Juror 259 remains in Jury Venire.)

19 THE COURT: All right. Juror Number 292, 292.

20 (REPORTER'S NOTE: Bench conference is held off the record
21 with Juror 292. Juror 292 excused from the trial of this
22 particular case.)

23 THE COURT: All right. 325, Juror Number 325.

24 (REPORTER'S NOTE: Bench conference is held off the record
25 with Juror 325. Juror 325 excused from the trial of this

1 particular case.)

2 THE COURT: 350, 350, please.

3 (REPORTER'S NOTE: Bench conference is held off the record
4 with Juror 350. Juror 350 remains in Jury Venire.)

5 THE COURT: All right. Juror Number 385.

6 (REPORTER'S NOTE: Bench conference is held off the record
7 with Juror 385. Juror 385 remains in Jury Venire.)

8 THE COURT: And 401.

9 (REPORTER'S NOTE: Bench conference is held off the record
10 with Juror 401. Juror 401 remains in Jury Venire.)

11 THE COURT: Last one, Juror Number 419.

12 (REPORTER'S NOTE: Bench conference is held off the record
13 with Juror 419. Juror 419 excused from the trial of this
14 particular case.)

15 THE COURT: All right, ladies and gentlemen, I'm gonna go
16 over the general qualification questions with you now at this
17 time. The possible or potential witnesses in this case are as
18 follows. They all or some may be called; potentially not all,
19 but we'll tell you all of them just in case: Sharedia, S-H-A-
20 R-E-D-I-A, Funderburke; Garth Lee Wood from the State Law
21 Enforcement Division; Doris Yarbrough; Paul Meeh, M-E-E-H;
22 Andrea Simmons from the Myrtle Beach Police Department; Steve
23 Clothier, C-L-O-T-H-I-E-R; Tony Humes; Mike Quinn; Lynn
24 Grayden-Labiak, L-A-B-A-K; Melinda Shadoan; John Bertang;
25 Kerry, I'm not sure how to pronounce that one.

1 MS. WALTER: Aiesi, Your Honor.

2 THE COURT: --- Aiesi, A-I-E-S-I; and Tony Myers. So, is
3 there any member of the jury panel that is related by blood or
4 marriage, close personal friends, acquaintances of, any of
5 these possible witnesses? If so, please stand.

6 (REPORTER'S NOTE: No response.)

7 THE COURT: Very good. Is there any member of the jury
8 panel that either you yourself or a member of your immediate
9 family, has ever had any matter of any kind handled, worked
10 on, prosecuted, just in any way touched by the Fifteenth
11 Circuit Solicitor's office; that's the prosecuting office that
12 covers Horry and Georgetown counties? If so, please stand.

13 JUROR 385: Involving the witness or ---

14 THE COURT: Yes, ma'am.

15 JUROR 385: Or a victim?

16 THE COURT: Yes, ma'am. So, could you stand and give me
17 your name and juror number please, ma'am?

18 JUROR 385: Sherriann Vail, 385.

19 THE COURT: All right, ma'am, was it just simply was it
20 yourself or a family member?

21 JUROR 385: My daughter.

22 THE COURT: All right. Can you give to the State of
23 South Carolina and to the defendant a fair and impartial
24 trial; can you be a fair and impartial juror in this case?

25 JUROR 385: Yes.

1 THE COURT: Thank you very much.

2 Is there any member of the jury panel that's related by
3 blood or marriage, close personal friends, acquaintances of
4 anybody employed at the Fifteenth Circuit Solicitor's office,
5 the prosecuting office either in Horry or Georgetown counties?
6 If so, please stand.

7 (REPORTER'S NOTE: No response.)

8 THE COURT: Is there any member of the jury panel that
9 either you yourself or member of your immediate family has
10 ever had any matter handled, worked on, touched in any way by
11 the Fifteenth Circuit Public Defender's office? If so, please
12 stand.

13 (REPORTER'S NOTE: No response.)

14 THE COURT: Is there any member of the jury panel that's
15 related by blood or marriage, close personal friends,
16 acquaintances of anybody employed at the Fifteenth Circuit
17 Public Defender's office either in Horry or Georgetown County?

18 (REPORTER'S NOTE: No response.)

19 THE COURT: Other than the four question questionnaire,
20 is there any member, just excluding those questions, is there
21 any member of the jury panel that you believe you have any
22 other kind of personal, political, religious, philosophical
23 belief that would prevent you from being a fair and impartial
24 juror in this case?

25 (REPORTER'S NOTE: No response.)

1 THE COURT: All right. Is there any member of the jury
2 panel, you yourself, a former law enforcement officer or you
3 have a current family member who is now in law enforcement or
4 was in the past in law enforcement? If that applies, please
5 stand.

6 (REPORTER'S NOTE: No response.)

7 THE COURT: All right. The -- is there any member of the
8 jury panel that either you yourself or a member of your
9 immediate family a member of any kind of victim's rights or
10 law enforcement support organization? I'm gonna give you a
11 few examples, it's not an exhaustive list, I'm just trying to
12 give you some examples here: Mothers Against Drunk Driving,
13 Citizens Against Violent Crime, South Carolina Law Enforcement
14 Officers Association, the South Carolina Sheriff's
15 Association, just some kind of victim's rights or law
16 enforcement support organization, either you yourself or a
17 member of your family a member?

18 Yes, sir?

19 JUROR 401: I volunteer for the Horry County Sheriff's
20 Department.

21 THE COURT: All right, sir, could you tell me -- could
22 you tell me your name and juror number, please?

23 JUROR 401: William Watkins, and it's 401.

24 THE COURT: All right, sir. Can you give to the State of
25 South Carolina and to the defendant a fair and impartial

1 trial; can you be a fair and impartial juror in this case?

2 JUROR 401: Yes, sir.

3 THE COURT: Thank you very much.

4 All right. Now, the next questions, ladies and
5 gentlemen, I'm going to ask whether either you yourself or a
6 member of your immediate family has ever been the victim of a
7 crime. Now, I am not going to ask you what occurred. I do
8 not want you to volunteer the information to me about what
9 occurred. The question is gonna be very straightforward, was
10 it yourself or a family member, after which I'll ask the
11 qualification question. So, is there any member of the jury
12 panel, either you yourself or a member of your immediate
13 family ever been the victim of a crime? If so, please stand.

14 All right. We'll start on the end of the row, please,
15 sir, your name and juror number, please?

16 JUROR 69: Jeff Coffman, Number 69.

17 THE COURT: Was it yourself or a family member?

18 JUROR 69: Myself.

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

22 JUROR 69: No, sir; I can't.

23 THE COURT: Did we excuse him?

24 MS. WALTER: Yes, Your Honor.

25 THE COURT: I'm sorry, I thought I had told everybody I

1 had excused that you didn't have to answer any other
2 questions, but I'm sorry. All right. Very good. I'm sorry,
3 sir.

4 All right. Yes, ma'am, you have to state your name and
5 juror number again?

6 JUROR 385: Sherriann Vail, 385.

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

10 JUROR 385: Yes.

11 THE COURT: Thank you very much.

12 Yes, ma'am?

13 JUROR 259: Linda Mission, 259.

14 THE COURT: Was it yourself or a family member?

15 JUROR 259: Myself.

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

19 JUROR 259: Yes, I can.

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

21 All right, sir, in the center?

22 JUROR 401: William Watkins, 401.

23 THE COURT: Yourself or a family member?

24 JUROR 401: Family member.

25 THE COURT: Can you give to the State of South Carolina

1 and to the defendant a fair and impartial trial; can you be a
2 fair and impartial juror in this case?

3 JUROR 401: Yes, Your Honor.

4 THE COURT: Thank you very much.

5 All right. Directly behind, yes, ma'am?

6 JUROR 66: Taylor Clemmons, Number 66?

7 THE COURT: Yourself or a family member?

8 JUROR 66: Family member.

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

12 JUROR 66: Yes, Your Honor.

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

14 Yes, ma'am, right next?

15 JUROR 79: Marlana Corbin, 79.

16 THE COURT: All right, ma'am. And I'm sorry, was it
17 yourself or a family member?

18 JUROR 79: Myself.

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

22 JUROR 79: Yes, sir.

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

24 JUROR 46: Hernando Cabeza, Number 46.

25 THE COURT: All right, sir. Yourself or a family member?

1 JUROR 46: Myself.

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

5 JUROR 46: Yes, Your Honor.

6 THE COURT: Thank you very much, sir.

7 Yes, ma'am?

8 JUROR 325: Chris Rotruck, Number 325.

9 THE COURT: Yourself or a family member?

10 JUROR 325: Both.

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

14 JUROR 325: I'm afraid not. I'm sorry, sir.

15 THE COURT: I'm sorry, you were already excused. Again,
16 if I excused you earlier, you don't have to answer any more
17 questions. I'm sorry. I didn't make that clear.

18 All right. Final question, I call it my general, catch-
19 all question, do you know of any reason, have any question in
20 your mind, any doubt in your mind that you believe you cannot
21 give to the State of South Carolina and to the defendant a
22 fair and impartial trial? That is for any reason whatsoever
23 you believe you cannot be a fair and impartial juror. If so,
24 please stand.

25 (REPORTER'S NOTE: No response.)

1 THE COURT: Further questions from the state?

2 MS. WALTER: Your Honor, may we approach momentarily?

3 THE COURT: Certainly.

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

6 THE COURT: All right. That's fine. All right. If
7 y'all want to do that, that'd be great. I appreciate it. All
8 right.

9 Solicitor, if you'd identify yourself to the jury please?

10 MS. WALTER: Thank you. Good afternoon. My name is
11 Mary-Ellen Walter.

12 MS. ANDREW: I'm Leigh Andrew.

13 THE COURT: All right. And, Mr. Galmore, if you'd
14 introduce yourself and the staff, please.

15 MR. GALMORE: I'm James Galmore from the Public
16 Defender's office. This is Jerome Randall, who is an
17 investigator with the Public Defender's office.

18 THE COURT: Is there any member of the jury panel that's
19 related by blood or marriage, close personal friends,
20 acquaintances of these individuals that have stood up and
21 identified themselves to you? If so, please stand.

22 (REPORTER'S NOTE: No response.)

23 THE COURT: Very good.

24 Any further questions from the state?

25 MS. WALTER: No, Your Honor, thank you.

1 THE COURT: From the defense?

2 MR. GALMORE: No, sir.

3 THE COURT: All right. Very good.

4 JURY SELECTION:

5 THE COURT: All right, ladies and gentlemen, how the
6 selection process is going to go is the clerk's representative
7 is going to call out a name. If and when your name is called,
8 you will stand up and you will come, basically come around and
9 you'll come to a place basically right in front of the court
10 reporter here, Ms. Dixie, right there. You'll stand right in
11 front of her and turn around and face to the back of the
12 courtroom. At that point in time, the clerk's representative
13 ask, inquire of the state to present or excuse the juror.
14 After that, the clerk will inquire of the defense to seat or
15 excuse the juror. If you are excused by the state or the
16 defense, you go back and have a seat from whence you came. If
17 you're presented by the state and you're seated by the
18 defense, the clerk will instruct you to go over there to the
19 jury box and have a seat in the jury box as a juror in this
20 particular case. So, if you happen to have any kind of
21 personal item, purse, book, whatever it might be, please bring
22 that along if and when your name is called so that if you are
23 seated, you can go directly to the jury box. All right?

24 All right, Madam Clerk.

25 CLERK: Number 396, Judi Wallace.

1 What say the state?

2 MS. WALTER: Please present this juror.

3 CLERK: Defense?

4 MR. GALMORE: Please seat the juror.

5 CLERK: Please be seated in the jury box.

6 Number 354, Lynne Sousa.

7 What say the State?

8 MS. WALTER: Please present this juror.

9 CLERK: Defense?

10 MR. GALMORE: Please excuse the juror from the trial of
11 this case.

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

13 Number 350, Howard Smith.

14 What say the State?

15 MS. WALTER: Please present this juror.

16 CLERK: Defense?

17 MR. GALMORE: Please excuse the juror in the trial of
18 this case.

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

20 Number 110, Richard Ellerbe.

21 What say the state?

22 MS. WALTER: Please present this juror.

23 CLERK: Defense?

24 MR. GALMORE: Please seat the juror.

25 CLERK: Please be seated in the jury box.

1 Number 157, Tyler Hayes.
2 What say the state?
3 MS. WALTER: Please present this juror.
4 CLERK: Defense?
5 MR. GALMORE: Please seat the juror.
6 CLERK: Please be seated in the jury box.
7 Number 243, Cheryl May.
8 What say the State?
9 MS. WALTER: Please present this juror.
10 CLERK: Defense?
11 MR. GALMORE: Please seat the juror.
12 CLERK: Please be seated in the jury box.
13 Number 103, Ryan Dorsey.
14 What say the state?
15 MS. WALTER: Please present this juror.
16 CLERK: Defense?
17 MR. GALMORE: Please seat the juror.
18 CLERK: Please be seated in the jury box.
19 Number 324, Robert Ross.
20 What say the state?
21 MS. WALTER: Please present this juror.
22 CLERK: Defense?
23 MR. GALMORE: Please seat the juror.
24 CLERK: Please be seated in the jury box.
25 Number 259, Linda Mission.

1 What say the state?

2 MS. WALTER: Please excuse this juror.

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

4 Number 401, William Watkins. What say the state?

5 MS. WALTER: Please excuse this juror.

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

7 Number 66, Taylor Clemmons.

8 What say the state?

9 MS. WALTER: Please present this juror.

10 CLERK: Defense?

11 MR. GALMORE: Please excuse this juror from the trial of
12 this case.

13 CLERK: You're excused from this case.

14 Number 94, James Dean.

15 What say the state?

16 MS. WALTER: Please present this juror.

17 CLERK: Defense?

18 MR. GALMORE: Please seat the juror.

19 CLERK: Please be seated in the jury box.

20 Number 236, John Marden.

21 What say the state?

22 MS. WALTER: Please present this juror.

23 CLERK: Defense?

24 MR. GALMORE: Please seat the juror.

25 CLERK: Please be seated in the jury box.

1 Number 71, Judith Cole.
2 What say the state?
3 MS. WALTER: Please present this juror.
4 CLERK: Defense?
5 MR. GALMORE: Please seat the juror.
6 CLERK: Please be seated in the jury box.
7 Number 303, Bree Pryor.
8 What say the state?
9 MS. WALTER: Please present this juror.
10 CLERK: Defense?
11 MR. GALMORE: Please excuse the juror in the trial of
12 this case.
13 CLERK: You're excused from this case.
14 Number 60, Amanda Chapman.
15 What say the state?
16 MS. WALTER: Please present this juror.
17 CLERK: Defense?
18 MR. GALMORE: Please seat the juror.
19 CLERK: Please be seated in the jury box.
20 Number 79, Marlana Corbin.
21 What say the state?
22 MS. WALTER: Please present this juror.
23 CLERK: Defense?
24 MR. GALMORE: Please seat the juror.
25 CLERK: Please be seated in the jury box.

1 Number 23, Bridget Britt.

2 What say the state?

3 MS. WALTER: Please present this juror.

4 CLERK: Defense?

5 MR. GALMORE: Please seat the juror.

6 CLERK: Please be seated in the jury box.

7 THE COURT: All right. We're gonna have two alternates
8 in this matter. It will be one and two on each alternate.

9 CLERK: Okay. Number 57, Charlene Chagnon.

10 JUROR 57: Darlene.

11 CLERK: I'm sorry.

12 What say the state?

13 MS. WALTER: Please present this juror.

14 CLERK: Defense?

15 MR. GALMORE: Please seat the juror.

16 CLERK: Please be seated in the jury box.

17 Number 24, Audrey Brletich.

18 What say the state?

19 MS. WALTER: Please present this juror.

20 CLERK: Defense?

21 MR. GALMORE: Please seat the juror.

22 CLERK: Please be seated in the jury box.

23 THE COURT: All right. The last juror, ma'am, how do you
24 pronounce your last name please?

25 JUROR 24: Brletich.

1 THE COURT: Brletich. All right. So, Ms. Brletich and
2 was it Chagnon?

3 JUROR 57: Yes.

4 THE COURT: And Ms. Chagnon, y'all are the alternates in
5 this particular matter. All right?

6 Is there any objection to the jury as impaneled in this
7 particular matter from the state?

8 MS. WALTER: No, Your Honor.

9 THE COURT: From the defense?

10 MR. GALMORE: No, sir.

11 THE COURT: I find the jury properly impaneled pursuant
12 to *Batson v. Kentucky* and *JEB v. Alabama*.

13 BY THE COURT:

14 THE COURT: All right, ladies and gentlemen, I'm going to
15 ask you to do one thing for the Court in just a minute or two
16 and that's going to be pick your foreperson for this
17 particular jury. So, let me tell you very briefly what the
18 foreperson's duties and responsibilities are regarding this
19 matter. Regarding the foreperson, the foreperson's duties and
20 responsibilities, you know, are, if there is some matter that
21 happens in the courtroom, the witness needs to speak up or the
22 lawyers or whatever it is, the foreperson raises their hand,
23 gets the Court's attention and we'll handle the matter
24 whatever it is. If you're back in the jury room and some
25 issue comes up, you'll take the pad and pen provided to you,

1 the foreperson will write out a note, sign it, give it to the
2 bailiff, it'll come to me and, again, we'll handle that matter
3 whatever it might be. Once we have gone through the
4 evidentiary portion of the trial, we've heard all of the
5 witnesses and we've heard the closing arguments of the
6 attorneys and I've given you the law that you're going to
7 apply to the facts and evidence you're heard in this
8 particular case, the foreperson's duties and responsibilities
9 change in this regard. The foreperson is gonna act like the
10 chairperson at a meeting, guide the discussions, if necessary.
11 An important duty that the foreperson has is to make sure that
12 everybody that wants to, has an opportunity to be heard,
13 everybody has the opportunity to speak on the issue if they
14 want to. Now, the foreperson's voice and vote carries no more
15 weight than any other member of the jury. Everybody is equal
16 in that regard, but the foreperson remains in charge, again
17 guides the discussions, if necessary. Final duty -- and
18 again, obviously if some issue comes up, again the foreperson
19 writes out that note, signs it, gives it to the bailiff, it'll
20 come to me and we'll respond to that. Final duty and
21 responsibility of the foreperson is once the jury has well and
22 truly deliberated, you have reached your unanimous verdict in
23 this particular matter, the foreperson will take the verdict
24 form that the Court will provide to you, check the appropriate
25 block or write out the appropriate word, thereafter sign their

1 name as foreperson indicating that that verdict on the verdict
2 form is indeed the unanimous verdict of each and every member
3 of the jury in this particular case. So, those are the duties
4 and responsibilities of the foreperson.

5 Now, the two alternates, ladies, y'all can vote on the
6 foreperson, but being the alternates cannot be the foreperson.
7 Everybody else is eligible, so if you would all accompany the
8 bailiff to the jury room, select the bailiff [sic], knock on
9 the door and know the bailiff know who that is, please. All
10 right? If you'd please accompany them. Thank you.

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

13 THE COURT: All right, ladies and gentlemen of the jury
14 panel not selected for this particular case, I'm going to
15 excuse you for the balance of the day. Please call that juror
16 information line tonight -- not tonight, tomorrow after 12
17 noon. Call the juror information line tomorrow after 12 noon,
18 please. Thank you very much. You are now excused.

19 (REPORTER'S NOTE: Jury Venire exits courtroom.)

20 THE COURT: All right. Mr. Galmore and Solicitors, could
21 y'all come up and talk to me for one second, please.

22 (REPORTER'S NOTE: Bench conference is held off the record.)

23 THE COURT: Thank you very much. All right. With that.

24 ---

25 DEPUTY: Your Honor?

1 THE COURT: Yes, sir.

2 DEPUTY: The juror that ---

3 THE COURT: Is she here?

4 DEPUTY: She's on the way. They had trouble trying to
5 locate her, but they found her. She is on the way.

6 THE COURT: Okay, great. Do we have an idea when she
7 might or when they might arrive?

8 DEPUTY: They didn't give me -- but from where they said
9 they were at, it'll take about 30 minutes, I'm guessing, Your
10 Honor.

11 THE COURT: Okay. All right. Just let me know. Thank
12 you.

13 DEPUTY: You're welcome.

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

15 (On the Record.)

16 THE COURT: Thank you very much. Ms. Greene?

17 JUROR 141: Yes.

18 THE COURT: You're a member of the jury panel, okay, and
19 they were to be here this morning at 10:30 and you showed up
20 at 11:30 and you were supposed to be on that panel that -- for
21 which we were selecting a jury this morning.

22 JUROR 141: Yes, sir.

23 THE COURT: And because you didn't show up and you show
24 -- well, you showed up. You showed up an hour late; they
25 didn't put you on there. So, somebody else got on the panel

1 and took your place. What was the problem?

2 MS. GREENE: Okay. I had called this morning whenever I,
3 you know, everything started going array. I had problems with
4 my mother last night until this morning before she went to
5 work, it turned into this whole big thing. My car is filled
6 with my clothes and I actually arrived at 10:55. I got here
7 about 30 minutes late and ---

8 THE COURT: Didn't they offer you this morning that a
9 deputy would come out and get you and bring you in on time.

10 MS. GREENE: Well, yes, sir, it was like 9:30 when I
11 called and they was like we can have somebody come and pick
12 you up or whatever and I was just like well, no, because I was
13 like my grandma can come and bring me the money. What
14 happened with her was she was like I don't have any cash on
15 me, I have to run to the bank. It really turned into a whole
16 thing where I might as well as have left whenever I did
17 because I drove down here literally on E and got home beneath
18 the E. So, I still never have gotten the money from her. So,
19 whatever, but I was just like I got to go; I can't wait on her
20 any longer or whatever. So, I still ended up driving my car
21 down here and then that's how I -- when I arrived here, she
22 was calling out numbers. She called about maybe 10 more and
23 then she picked about 10 more people after I had got here, and
24 I walked over to her after the end and I was like, hi, I just
25 got here late and I was just seeing did I get called. She was

1 like, what's your name, I said Alyssa Greene. She looked at
2 the paper and she said no. She said they had instructed us to
3 call us tomorrow at 12. Now, beforehand, I had the whole
4 thing with my momma kicking me out, I didn't have any money to
5 put in my gas tank like that so I was like I didn't -- I was
6 like okay, what can I do.

7 THE COURT: That's why we have the availability of a
8 deputy to pick you and bring you. All right?

9 MS. GREENE: Okay.

10 THE COURT: Now, the jury panel needs to call in tomorrow
11 at 12 noon. If we ask for you to report, you need, you need
12 to communicate with the clerk of court's office and get the
13 assistance necessary to report to court. Okay? It's your
14 job; it's your responsibility. I'm gonna excuse this one. If
15 it happens again, I'm gonna hold you in contempt of court.
16 That means, at the outside, I could send you to the Department
17 of Corrections or I can send you to J. Reuben Long Detention
18 Center. You have a duty and obligation. All right? And
19 you're gonna fulfill it. Now, they're gonna take you back,
20 you call that number after 12:00 noon tomorrow, if they tell
21 you to report, you call the main number of the clerk's office
22 and make arrangements to be here. You understand me?

23 JUROR 141: Yes.

24 THE COURT: Thank you, ma'am.

25 Take her back.

1 (RECESS.)

2 END OF DAY ONE

3 *****OFF THE RECORD*****

4 DAY TWO - FEBRUARY 28, 2018

5 (On the Record.)

6 (REPORTER'S NOTE: The following takes place outside the
7 presence of the jury.)

8 THE COURT: All right. We'll have the matter of whether
9 or not there's gonna be a trial in the absence for Mr. Tony
10 Myers, then I'll take the guilty plea in that other case
11 that's on the roster and then we'll go forward as indicated.
12 All right?

13 So, all right. So, all right, you have the indictment,
14 ma'am?

15 All right. This is 2016-GS-26-2411, State of South
16 Carolina versus Tony Myers. The state has indicted the
17 defendant for the crime of assault with intent to commit
18 criminal sexual conduct third degree. As I understand it,
19 Mr. Galmore, Mr. Myers is not present; is that correct?

20 MOTIONS:

21 MR. GALMORE: Yes, Your Honor, I would request a
22 continuance on his behalf and that a bench warrant be issued
23 until he can -- and this case be continued until such time as
24 he can be taken into custody.

25 Your Honor, the issue here is whether or not Mr. Myers

1 was given notice that this case could be tried today in his
2 absence. Your Honor, the last time that Mr. Myers was before
3 the Court was April 17th of 2017. At that time, he was before
4 Judge Seals on several matters. There was a motion for a
5 speedy trial, a motion to lift a bench warrant, and an
6 arraignment had also taken place at that time. I cannot say
7 whether or not Judge Seals informed Mr. Myers. I don't have a
8 transcript from that hearing. It's just that that was almost
9 a year ago and we're in court on a regular basis.

10 Your Honor, for those reasons, I would submit that Mr.
11 Myers did not have proper notice that he could be tried in his
12 absence and I would ask for the case to be continued at this
13 time.

14 THE COURT: All right. Let me hear from you, Solicitor?

15 MS. WALTER: Your Honor, would you like me to proceed
16 with presenting evidence?

17 THE COURT: Whatever your argument is. If you want to
18 argue he should be tried in his absence or in response to the
19 motion, however you want to respond to the motion.

20 MS. WALTER: Your Honor, it is the state's position that
21 the defendant has had more than adequate notice that he would
22 be tried in his absence, and I will present evidence from the
23 clerk of court with the certified bond paperwork which the
24 defendant signed, which advises him and he acknowledged that
25 he could be tried in his absence. Additionally, we have the

1 clocked arraignment findings, which indicate that he can be
2 tried in his absence, and I'll put up the testimony of my
3 administrative assistant regarding the subpoena.
4 Additionally, Your Honor, in chambers, Mr. Galmore himself
5 said that he had spoken to the defendant and advised him that
6 trial could proceed in his absence.

7 THE COURT: In the past ---

8 MS. WALTER: In the past.

9 THE COURT: --- but that wasn't -- that wasn't as to this
10 particular week?

11 MS. WALTER: The question that I asked was not that
12 specific. I just said have you spoken to him about that?

13 THE COURT: In the past. All right. Go ahead.

14 MS. WALTER: All right. The state would call Janet
15 Tarulli.

16 THE COURT: Please come around, ma'am. Place your left
17 hand on the Bible, raise your right hand, please.

18 JANET TARULLI, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 THE COURT: Have a seat, state your name and where you
21 work please, ma'am.

22 MS. TARULLI: Janet Tarulli, Last name is spelled T-A-R-
23 U-L-L-I. I work for the clerk of court's office.

24 MS. WALTER: May I, Your Honor?

25 THE COURT: Yes, ma'am.

1 DIRECT EXAMINATION OF JANET TARULLI BY MS. WALTER:

2 Q: Good morning, Ms. Tarulli.

3 A: Good morning.

4 Q: As part of the duties of the clerk of court's office, do
5 you and other members of your office maintain bond paperwork
6 for each criminal case?

7 A: Yes, we do.

8 Q: And that would include the case that's been called today,
9 the State of South Carolina versus Tony Nevail Myers?

10 A: Yes.

11 MS. WALTER: If I may approach, Your Honor?

12 THE COURT: Yes, ma'am.

13 MS. WALTER: I'm sorry, Ms. Daisy -- Ms. Dixie. Thank
14 you.

15 BY MS. WALTER:

16 Q: I am approaching with what's been marked State's Exhibit
17 1, if you could please just look at that.

18 A: Okay.

19 Q: And does that appear to be a certified copy of the bond
20 paperwork issued in this case?

21 A: It is.

22 Q: And if I can direct your attention to Page 2 of that
23 exhibit, is there language in there that says -- well,
24 actually can you just read that one sentence?

25 A: I understand and have been informed that I have a right

1 and obligation to be present at trial and should I fail to
2 attend the court, the trial will proceed in my absence, and
3 signed by the defendant.

4 Q: Thank you. And this would be a record that's kept in the
5 ordinary course of the clerk's business?

6 A: Correct.

7 MS. WALTER: Your Honor, would you like to see this?

8 THE COURT: All right. Any -- the state is offering
9 State's Exhibit 1 into evidence in regards to this particular
10 motion; any objection to that?

11 MR. GALMORE: No, sir.

12 STATE'S EXHIBIT NUMBER 1

13 ADMITTED INTO EVIDENCE

14 THE COURT: All right, sir. Very good. That's used as
15 part of this particular motion hearing.

16 Any questions for the representative of the Clerk?

17 MR. GALMORE: Very briefly, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION OF JANET TARULLI BY MR. GALMORE:

20 Q: Ma'am, you work here at the clerk of court's office with
21 General Sessions; is that correct?

22 A: Yes.

23 Q: So, you do not work at the Magistrate's Court?

24 A: No, I work here.

25 Q: So, you're not a clerk at J. Reuben Long?

1 A: No.

2 Q: All right. Did you see Mr. Myers sign that form?

3 A: I did not.

4 Q: Okay. Were you present in court when Mr. Myers signed
5 that form?

6 A: I didn't see him sign it, so I don't know if I was or
7 not. If he was in here or he was at J. Reuben Long, I did not
8 see him sign it.

9 Q: Okay. Did you hear the Magistrate discuss being tried in
10 his absence with Mr. Myers prior to signing that bond
11 document?

12 A: I wasn't there; so, I didn't hear that.

13 Q: Yes, ma'am. Thank you.

14 No further questions.

15 THE COURT: Anything on that, Solicitor?

16 MS. WALTER: No, Your Honor.

17 THE COURT: All right. you may step down, ma'am.

18 Thank you.

19 A: Thank you.

20 MS. WALTER: And the state would next call Senior
21 Solicitor Josh Holford.

22 THE COURT: Mr. Holford, please come around.

23 CLERK: Please raise your right hand and place your left
24 hand on the Bible.

25 JOSH HOLFORD, HAVING BEEN SWORN TESTIFIES

1 AS FOLLOWS:

2 CLERK: Have a seat.

3 MR. HOLFORD: Joshua Holford, H-O-L-F-O-R-D.

4 DIRECT EXAMINATION OF JOSH HOLFORD BY MS. WALTER:

5 Q: Slow down a little bit for Ms. Dixie.

6 COURT REPORTER: Oh, you're fine.

7 BY MS. WALTER:

8 Q: Mr. Holford, where do you work?

9 A: The solicitor's office here in Horry County.

10 Q: And you're employed as a senior assistant solicitor?

11 A: I am.

12 Q: Taking you back to last year to April of 2017, were you
13 the head of the criminal sexual conduct team?

14 A: In, in April then I still was the head of the criminal
15 sexual conduct team. It -- right in between that time, the
16 reason for the hesitation is because Martin Spratlin left and
17 I then took over as the senior solicitor, on another team, but
18 was still handling all of the criminal sexual conduct cases
19 for victims over the age of 14.

20 Q: And in that position, were you assigned to the case
21 that's been called today, State of South Carolina versus Tony
22 Myers?

23 A: I was.

24 Q: A plea offer had been made and, at some point, was the
25 defendant scheduled to be arraigned?

1 A: Yes, I made a plea offer and scheduled an arraignment.

2 Q: As part of scheduling that arraignment, did you prepare
3 arraignment findings that would be presented at court at the
4 arraignment?

5 A: Yes, I did.

6 MS. WALTER: May I approach, Your Honor?

7 THE COURT: Yes, ma'am.

8 BY MS. WALTER:

9 Q: I'm approaching you with State's Exhibit 2, do you
10 recognize that document?

11 A: Yes, I do.

12 Q: Does that appear to be a document of the arraignment
13 findings that you prepared in this case?

14 A: Yes, it is.

15 Q: Do you recall whether you were the solicitor who actually
16 handled the arraignment?

17 A: I cannot. I can say that, that I prepared these
18 arraignments, that my name appears on here, but I know that
19 Bri Moreno in admin with my team actually printed them for me.
20 Whether I was the one who stood up in court, I cannot -- it is
21 routine that while we may all be in court, one person might
22 handle a certain case.

23 Q: Right. Now, those arraignment findings, have they, if
24 you can tell, been clocked by the clerk of court?

25 A: They have. They were signed by the Judge on April 17th,

1 2017. They were filed and clocked in Horry County on April
2 17th, 2017 at 4:34 P.M.

3 Q: And do those arraignment findings indicate an advise that
4 the defendant can be tried in his absence if he fails to
5 appear for trial?

6 A: They do. They say you also realize that if you do not
7 show up when your case is called for trial that you can be
8 tried in your absence and, if you are convicted, your sentence
9 will be sealed and opened when you are brought back before
10 this court.

11 Q: But again, you don't have any independent recollection of
12 whether that advisement was read to the defendant in this
13 case?

14 A: I do not.

15 MS. WALTER: Nothing further, Your Honor.

16 THE COURT: Questions, Mr. Galmore?

17 CROSS EXAMINATION OF JOSHUA HOLFORD BY MR. GALMORE:

18 Q: Mr. Holford, I understand that April 2017 there were some
19 turnover and, and hirings and resignations and things of that
20 nature in the Solicitor's Office regarding this case; is that
21 correct?

22 A: Regarding this case, I had been over the criminal sexual
23 conduct division for approximately nine months prior to that
24 and there was some turnover as far as who was going to lead
25 certain teams, but I still maintained that case load until Ms.

1 Walter passed the bar.

2 Q: So, this case was previously assigned to Solicitor Martin
3 Spratlin?

4 A: Originally, yes.

5 Q: And then it was assigned to you for a period of time?

6 A: Yes, for probably 10 months.

7 Q: And now it's been assigned to Ms. Walter?

8 A: That's correct.

9 Q: Now, regarding this hearing on April 17th of 2017, was
10 that the only hearing that took place that day?

11 A: No, there was also a -- we keep notes on the red file.
12 There was also a bench warrant lift and a motion for a speedy
13 trial made by -- made by the defense, and so the Judge heard
14 the arraignment, the bench warrant lift, and the motion for a
15 speedy trial.

16 Q: In addition, the Judge, that was just a standard plea
17 day; is that correct?

18 A: That's correct; that was a normal court day where we
19 handled pleas, arraignments, bond matters.

20 Q: And on a normal plea day, would it be fair to say that we
21 handled 40 to 50 pleas per day?

22 A: Yes.

23 Q: And pleas and motions and other matters in a single day?

24 A: Yes.

25 Q: Would it be fair to say, back in April of 2017 we did

1 perhaps 40 or 50 different pleas and motions in addition to
2 Tony Myers' case that day?

3 A: Yes, somewhere between 35 and 40 is what the sheets say.

4 Q: Do you happen to have a transcript from this hearing on
5 April 17th of 2017?

6 A: I do not.

7 Q: Now, the arraignment form that was signed by the Judge,
8 was that form also signed by Mr. Myers?

9 A: It was not.

10 Q: Thank you, sir; no further questions.

11 THE COURT: Anything else, Solicitor?

12 MS. WALTER: No, Your Honor.

13 THE COURT: You may step down. Thank you.

14 A: Thank you.

15 MS. WALTER: The state calls Magdalena Salemno.

16 CLERK: Please raise your right hand and place your left
17 hand on the Bible.

18 MAGDALENA SALEMNO, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 MS. SALEMNO: Magdalena Salemno. M-A-G-D-A-L-E-N-A S-A-
21 L-E-M-N-O.

22 MS. WALTER: Ms. Dixie, were you able to get that, I'm
23 sorry.

24 COURT REPORTER: I do. I have it.

25 MS. WALTER: May I, Your Honor?

1 THE COURT: Yes, ma'am.

2 DIRECT EXAMINATION OF MAGDALENA SALEMNO BY MS. WALTER:

3 Q: Ms. Salemno, by whom are you employed?

4 A: Solicitor's office.

5 Q: And what solicitors do you work for?

6 A: Mary Ellen, Walter and Leigh Andrew.

7 Q: What is your position with the solicitor's office?

8 A: I am an administrative assistant.

9 Q: As an administrative assistant, is it part of your duties
10 to insure that subpoenas are issued in any cases that Ms.
11 Andrew or I call to trial?

12 A: Yes.

13 Q: Did you issue subpoenas in the case that's been called
14 today, State of South Carolina versus Tony Myers?

15 A: I did.

16 MS. WALTER: May I, Your Honor?

17 THE COURT: Yes, ma'am, please.

18 BY MS. WALTER:

19 Q: I'm approaching you with State's Exhibit 3, if you could
20 just take a minute to look at that; do you recognize that
21 exhibit?

22 A: I do.

23 Q: What do you recognize it to be?

24 A: It's a subpoena for the defendant for this week.

25 Q: And the address that it is addressed to, where do you get

1 that address?

2 A: I get it from the bond form and it's also the same
3 address on the application for public defender.

4 Q: As an administrative assistant, do you also keep track of
5 whether or not we ever receive information that the defendant
6 has changed his address?

7 A: Yes.

8 Q: Was there ever such information in this case?

9 A: No.

10 Q: So, as far as we had been informed, this is the only
11 address we have for the defendant?

12 A: Correct.

13 Q: And can you just tell us the procedure by which that
14 subpoena is issued?

15 A: I prepare them, print them, bring them to the clerk's
16 office, the clerk's office they sign it, stamp it, I put it in
17 the mail, in our mail bin, and then from that, the mailman
18 picks it up and does his thing with it.

19 Q: And we've never received any returned mail related to
20 this subpoena?

21 A: No.

22 MS. WALTER: Your Honor, I would ask that, and I don't
23 think I asked that Exhibit 2 be admitted, but I'd ask that
24 Exhibit 2 and 3 be admitted at this time?

25 THE COURT: Any objection to Exhibit 2 and 3 being made

1 part of the record for this motion?

2 MR. GALMORE: No, sir, Your Honor.

3 THE COURT: All right. So ordered.

4 PLAINTIFF'S EXHIBIT NUMBERS 2 AND 3

5 ADMITTED INTO EVIDENCE

6 MS. WALTER: And I have no further questions for Ms.
7 Salemno.

8 THE COURT: Questions, Mr. Galmore?

9 CROSS EXAMINATION OF MAGDALENA SALEMNO BY MR. GALMORE:

10 Q: Yes, ma'am. You indicated that you put the subpoena in
11 the mail; is that correct?

12 A: Yes, I put it in our mail bin in the courthouse in our
13 office.

14 Q: Did you put it in the U.S. Mail?

15 A: No, we don't do that. We have a mailman that does that.

16 Q: So, you put it in the county mail system?

17 A: We have a separate mail bin in our office and then, yes,
18 I guess our county mailman sends it out.

19 Q: All right. Was this subpoena sent by certified mail?

20 A: No.

21 Q: Was a return receipt requested?

22 A: No.

23 Q: Do you have a return receipt indicating that Mr. Myers
24 received that subpoena?

25 A: No.

1 Q: Is the subpoena signed by Mr. Myers?

2 A: It is not.

3 Q: Was the subpoena served by hand by a sheriff's deputy?

4 A: No.

5 Q: Thank you, ma'am, no further questions.

6 THE COURT: Any redirect?

7 MS. WALTER: No, Your Honor.

8 THE COURT: All right. You may step down.

9 MS. WALTER: And, Your Honor, the state next calls Leigh
10 Andrew.

11 THE COURT: All right. Please come around, ma'am.

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

14 LEIGH ANDREW, HAVING BEEN SWORN

15 TESTIFIES AS FOLLOWS:

16 CLERK: State your name.

17 MS. ANDREW: Okay. Leigh Andrew. It's L-E-I-G-H, A-N-D-
18 R-E-W.

19 MS. WALTER: May I, Your Honor?

20 THE COURT: Yes, ma'am.

21 DIRECT EXAMINATION OF LEIGH ANDREW BY MS. WALTER:

22 Q: Good morning, Ms. Andrew?

23 A: Good morning.

24 Q: Where do you work?

25 A: I work at the solicitor's office here in Horry County.

1 Q: And what is your position there?

2 A: I'm an assistant solicitor.

3 Q: Do you and I work together to prosecute criminal sexual
4 conduct cases?

5 A: We do. We are the criminal sexual conduct team.

6 Q: And are you assisting me or working with me in the trial
7 that's been called today, State of South Carolina versus Tony
8 Myers?

9 A: I am.

10 Q: Did you appear in court yesterday at the direction of
11 Judge John to assess whether or not the case would proceed?

12 A: I did.

13 Q: At some point, did you go to try and locate Mr. Galmore
14 to let him know to come into court?

15 A: I did. I went down to Courtroom D to look for Mr.
16 Galmore, and then I asked the deputy sitting at the front and
17 he told me that Mr. Galmore was in the ante room to this
18 courtroom, right outside the courtroom.

19 Q: Did you go to that ante room and contact Mr. Galmore?

20 A: I did. I knocked on the door and Mr. Galmore came to the
21 door with another individual in the room, and I told Mr.
22 Galmore that our case was being called to trial. He asked me
23 which case and I said Tony Myers, and he said this is Mr.
24 Myers here with me now, and then Mr. Myers began to speak to
25 me about the case.

1 Q: What did Mr. Myers say?

2 A: He said that he was just being honest with me and real
3 and that he was not prepared to go forward with the trial
4 today, and then he asked if he could speak to me. I asked Mr.
5 Galmore if he wanted the solicitors to speak with his client
6 with him present and he indicated no, so I came into the
7 courtroom.

8 Q: But at -- was it clear in your understanding that Mr.
9 Myers knew the case had been called for trial?

10 A: Yes, he was standing there when I told Mr. Galmore that
11 the case had been called to trial. I said the case has been
12 called to trial, and Mr. Galmore said which case and I said
13 Tony Myers' case. So, it was very clear to the defendant and
14 that's when he voluntarily responded, I'm not ready to go to
15 trial.

16 Q: And just so that the record is clear, you -- you
17 performed jury selection with me yesterday, correct?

18 A: I did.

19 Q: Did the defendant participate in that?

20 A: No.

21 Q: What information was given to the Court as to where the
22 defendant was?

23 A: Mr. Galmore stated that the defendant went downstairs to
24 tell his ride that he wasn't to leave or -- I'm not sure
25 exactly what -- he went downstairs and Mr. Galmore said that

1 the defendant had requested that the jury trial not start
2 until this morning on Wednesday.

3 Q: Nothing further at this time.

4 THE COURT: Cross examination?

5 CROSS EXAMINATION OF LEIGH ANDREW BY MR. GALMORE:

6 Q: Ms. Andrew, did you inform Mr. Myers that he could be
7 tried in his absence when you saw him yesterday?

8 A: I did not.

9 Q: Thank you, ma'am, no further questions.

10 THE COURT: Anything else?

11 MS. WALTER: Not from Ms. Andrew at this time, Your
12 Honor.

13 THE COURT: You may step down, ma'am, thank you.

14 MS. WALTER: Your Honor ---

15 THE COURT: Any other witnesses?

16 MS. WALTER: --- well, I'm not exactly sure. Mr.
17 Galmore, I take as an officer of the court, I can call him to
18 re-ask him what we spoke about in the back and get a more
19 pointed answer as to when he had the conversation with Mr.
20 Myers about trial in his absence.

21 THE COURT: I'm not gonna have him do that.

22 MS. WALTER: But that is obviously part of the state's
23 argument that Mr. Galmore has spoken with his client and has
24 advised him that the trial could proceed in his absence.

25 THE COURT: All right. Thank you, ma'am.

1 MS. WALTER: And it is my information from Mr. Galtmore
2 that they sent an investigator out to pick the defendant up
3 this morning, that when asked which apartment he was in, he
4 said just meet me in the courtyard or the lobby and he did not
5 appear and, again, the state believes that there has been
6 ample evidence that the defendant was advised that he could be
7 tried in his absence. I don't believe that the case law
8 requires that he be advised of that every single trial term.
9 He's advised by the bond paperwork, he was -- he's advised by
10 Mr. Galtmore. I believe there is strong circumstantial
11 evidence that he was advised during the arraignment and we
12 would ask to proceed in his absence.

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

14 Further argument, Mr. Galtmore?

15 MR. GALTMORE: I would just point out, Your Honor, that
16 this is a felony charge; it is a serious charge. We would ask
17 that the Court not proceed under these circumstances given
18 that the defendant is facing up to 10 years incarceration.

19 THE COURT: All right. Just one question, Mr. Galtmore.
20 You attempted -- your office did attempt to assist Mr. Myers
21 in getting to court today by providing a ride, and he did not
22 cooperate with that; is that correct?

23 MR. GALTMORE: Yes, sir. I spoke with a family member
24 yesterday who asked that we send a ride, pick him up at 7:30
25 this morning. They gave us an address, Mr. Myers did not meet

1 at that rendezvous at that scheduled time, sir.

2 BY THE COURT:

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

4 All right. In this particular matter and I'm
5 specifically looking at several cases; *State versus Fairey*
6 found at 646 S.E. 2d 445; also *State versus -- I'm sorry, City*
7 *of Aiken versus Koontz*, K-O-O-N-T-Z, found at 629 S.E. 2d 686,
8 and *State versus Ravenell*, it's found 692 S.E. 2d 554.

9 Regarding these cases, it is clear that the defendant must
10 receive notice that he could be tried in his absence.

11 In *State v. Fairey*, the Court of Appeals indicated that a
12 person indicted for misdemeanors and for felonies may
13 voluntarily waive their right to be present and may be tried
14 in their absence upon a finding by the Court that such person
15 has received notice of his right to be present and that a
16 warning was given that the trial would proceed in his absence
17 upon failure to attend court. In that particular case, Mr.
18 Fairey received -- the Court found received notice regarding
19 the bond form paperwork.

20 In *State v. Koontz*, the Court indicated that while there
21 may be a knowing and intelligent waiver of the right to be
22 present, such a waiver is permitted only in limited
23 circumstances, those being that the criminal -- in order for
24 the criminal defendant to be tried in his absence, the
25 requirements are that the trial judge must determine a

1 defendant voluntarily waived his right to be present at trial
2 in order to try the defendant in absentia. Additionally, the
3 trial judge must make findings of fact on the record that the
4 defendant received notice of his right to be present and was
5 warned that the trial would proceed in his absence should he
6 fail to attend. The Court, in that particular case, did take
7 or found that there was sufficient notice including notice of
8 the term of court for which trial is to be set as well as the
9 notice of the trial in absentia.

10 In the other case, *State v. Ravenell*, that Court
11 indicated that although the Sixth Amendment to the
12 Constitution of the United States of America guarantees the
13 right of an accused to be present at every stage of his trial,
14 this right may be waived and defendant may be tried in his
15 absence, except in a capital punishment case. They indicated
16 that the Trial Court must make findings of fact on the record
17 that the defendant received notice of his right to be present
18 and was warned that he would be tried in his absence should he
19 fail to attend, and the Court must make a finding that the
20 defendant received requisite notice of his right to be present
21 and advised that the trial would proceed in his absence.

22 In this particular matter, at the initial stages of this
23 case being prosecuted by *The State v. Tony Nevail Myers*,
24 regarding his bond paperwork, there is, as reflected in
25 State's Exhibit 1, the notice that and the acknowledgement of

1 the defendant that I understand and have been informed that, I
2 have a right and obligation to be present at trial and should
3 I fail to attend, the court trial will proceed in my absence.
4 It has been explained to me that if I fail to appear before
5 the Court as required, a warrant for my arrest will be issued.
6 There is a signature underneath that acknowledgement by
7 acknowledgement or the paragraph says acknowledgement by
8 defendant and there is a signature right above the line that
9 says signature of defendant. Obviously, there's no
10 information before the Court that actually that Mr. Myers
11 signed that, but it is -- does bear the signature of T.N.
12 Myers.

13 I also have the documentation that Mr. Myers has
14 reflected in State's Exhibit 2, appeared before the Court
15 regarding, among other things, an arraignment, part of the
16 arraignment proceeding in a normal proceeding does have
17 paperwork that reflects a trial in his absence. Again,
18 there's no information that Mr. Myers was specifically told
19 about that.

20 A subpoena to come to court today or come to court this
21 particular week for this term of court was issued to Mr. Myers
22 using the same address as listed in the bond paperwork, the
23 same address that is listed next to the purported signature of
24 Mr. Myers and that subpoena indicates that the trial could
25 take place from February 26, 2018 through March 2nd, 2018,

1 8:30 A.M. each day this term of court or until disposition of
2 the case at this particular courthouse.

3 Yesterday and today being the 28th, February 28th, within
4 that timeframe set forth in the subpoena, yesterday the Court
5 did call the case as one of the matters on the trial roster
6 and did call it for trial. We were picking a jury and did
7 indicate to counsel that we would start on Wednesday. The
8 Court was informed by the state and the defense that Mr. Myers
9 had been present earlier just prior to the picking of the jury
10 and then had left the building and had not returned by the
11 time we were going to pick the jury. I do find important the
12 testimony of the assistant solicitor, who was present and
13 notified, actually went to notify Mr. Galmore to come into the
14 courtroom regarding the picking of the -- the jury and her
15 testimony regarding the acknowledgement of Mr. Myers
16 understanding the situation, that the case had been called for
17 trial.

18 Therefore, I do find that Mr. Myers, not only through the
19 bond paperwork, but through actual notice appearing in court
20 yesterday, knew about the trial, knew that his trial would
21 take place this particular week and, knowing that, has by his
22 absence, voluntarily waived his right to be present at trial.
23 The motion for continuance is hereby respectfully denied
24 because I do find that the defendant had notice of a trial in
25 the absence, both through paperwork and through actual

1 knowledge, and he knew that the matter would proceed in his
2 absence and he has, of his own volition, decided not to
3 appear. Therefore, the Court will proceed with a trial in
4 absence regarding Tony Nevail Myers regarding indictment 2016-
5 GS-26-2411, indictment for assault with intent to commit
6 criminal sexual conduct third degree.

7 All right. So, with that, counsel, y'all want to get
8 organized and I will take the guilty plea of the other matter.
9 All right?

10 MS. WALTER: Thank you, Your Honor.

11 *****OFF THE RECORD*****

12 (On the Record.)

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

14 MS. WALTER: We are, Your Honor.

15 THE COURT: And defense?

16 MR. GALMORE: Yes, sir, Your Honor.

17 THE COURT: All right. Ask the jury to come in, please.

18 MS. WALTER: Your Honor?

19 THE COURT: Yes, ma'am.

20 MS. WALTER: I apologize. We did add one witness,
21 Susanna Lyons. I told Mr. Galmore this morning and he did not
22 oppose the addition.

23 THE COURT: All right. You want to spell that last name
24 please?

25 MS. WALTER: L-Y-O-N-S, and the first name is S-U-S-A-N-

1 N-A, and she's the 911 custodian of records.

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

3 THE COURT: All right. Good morning, ladies and
4 gentlemen, I apologize for the delay. There were some matters
5 that the Court had to take up out of your presence.

6 All right. I understand that there might be an issue
7 about taking notes. I'll remind you if there are any
8 communications with the Court and I'll address this with the
9 foreman. It needs to be in writing. The foreman needs to
10 write that note out and sign it and give it to the bailiff.
11 It always needs to be in writing. All right?

12 I do not expect this case to be particularly long. I
13 expect that we'll finish it tomorrow. We find sometimes, not
14 saying y'all directly, but sometimes we find juries, when they
15 take notes, they have a habit of looking down, concentrating
16 on taking their note, the trial continues while you're taking
17 your note. The attorneys continue to ask questions, answers
18 are given by the witness while you're doing that, your
19 attention is diverted from the question, the answer, and it
20 might be that that question is, could be, more important than
21 the note that you were taking. Since I do not expect it to be
22 a particularly long matter, we'll follow the general rule of
23 the jury not taking notes.

24 So, what we'll do is the very first thing that's gonna
25 happen in this particular matter is the clerk's representative

1 is going to administer your oaths, so if you would all please
2 stand at this time.

3 CLERK: Please raise right hands to be sworn?

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

5 THE COURT: All right, ladies and gentlemen, first, is
6 there any member of the jury panel that did not affirmatively
7 take the oath as just given by the clerk's representative? If
8 so, please stand.

9 No juror having stood, I find the jury properly sworn in
10 this matter.

11 As I told you at the very beginning when I was addressing
12 the panel as a whole, the state has charged the Defendant Tony
13 Nevail Myers with the crime of assault with intent to commit
14 criminal sexual conduct third degree. Now, to that
15 indictment, to the charge, and I'll remind you, the
16 indictment, the charge that I read to you, the information
17 regarding this particular matter, that's not evidence. The
18 evidence will come to you from the witness stand, but to the
19 charge brought against him by the State of South Carolina, the
20 defendant pled not guilty. At that point in time, the burden
21 of proof immediately came upon the State of South Carolina to
22 prove the defendant guilty beyond a reasonable doubt.

23 Now, I'll address this matter at this time and I'll again
24 remind you at the end when I give you my charge on the law.
25 The defendant is not present. That cannot, I repeat, cannot

1 affect your decision in any way. You may not discuss it in
2 the jury room, you may not mentally consider it in any way in
3 making your decision in this case. That is because the
4 defendant in this case, in any case, has nothing to prove to
5 the jury. The state must prove the defendant guilty beyond a
6 reasonable doubt. The burden is on the State of South
7 Carolina. That is the only entity that has a burden of proof.
8 That's the state's job. Can they, by the evidence they
9 produce, prove the defendant guilty of the crime charged
10 beyond a reasonable doubt. And that's what you'll be called
11 upon ultimately to make a decision upon.

12 You'll be operating as the judges of the facts. I will
13 not indicate to you in any way what I think the facts are in
14 this particular matter or anyone's credibility or
15 believability. That will be your decision; it's your
16 obligation in this particular matter.

17 The defendant in this matter, in all criminal cases, the
18 defendant is presumed innocent of the crime unless and until
19 the jury, after proper deliberation, finds that by the
20 evidence presented, the state has proven the defendant guilty
21 beyond a reasonable doubt. That presumption of innocence
22 never ends unless and until the jury decides the defendant is
23 guilty of the crime beyond a reasonable doubt, based upon the
24 evidence presented by the state in this matter.

25 How this trial will proceed. After I get done with these

1 brief opening statements to you, the attorneys will give you
2 their opening comments. Their opening comments, their
3 summation after the evidence, their closing arguments, that's
4 not evidence, cannot be considered by you as evidence. The
5 only evidence is the persons coming before you testifying
6 under oath and the submission of any kind of other documentary
7 or other kind of physical evidence that might be introduced.
8 That's the evidence you're gonna use in this particular
9 matter.

10 Now, the opening statements and the closing arguments,
11 they're important. The opening statements, they're each sides
12 request of you regarding the trial to pay attention to the
13 facts and evidence, what they're gonna be asking you to do in
14 this matter, and then their closing arguments are their
15 conclusions about the facts and evidence.

16 During the facts and evidence, persons will come before
17 you and testify under oath and present evidence for your
18 consideration. After the closing arguments by the attorneys,
19 we'll have the charge on the law. That is when I will explain
20 to you the law that you will apply to the facts and evidence
21 that have been presented to you in this particular case. And
22 then I'll submit the case to you for your deliberations and
23 your unanimous decision in this particular matter.

24 I've told you that you are the judges of the facts.
25 Obviously, that calls upon you to pay attention to the

1 evidence presented, and that you are the judges of the
2 credibility and the believability of the witnesses that come
3 before you. And if you're thinking, how do I judge somebody's
4 credibility and believability, and I'll remind this to you
5 again at the end, that's something you do every single day of
6 your life. When somebody is telling you something, you're
7 automatically, in your own mind, judging whether or not you
8 believe them. You use your good common sense. You use your
9 good judgment that you use in conducting your own affairs.
10 That's what we're gonna be asking you to do; apply your good
11 common sense, your good judgment, for the facts and evidence
12 in this matter on the issue of credibility and believability.

13 During the trial of this matter, I'm gonna ask you not to
14 talk about the case at all until I give it to you at the very
15 end. Because if we take a break after you've heard one or two
16 witnesses and you start talking about it and you espouse a
17 particular position, it might be the very next witness that
18 you hear when we come back from break, totally and completely
19 changes your mind and then you've got to explain that. So, do
20 not talk about the case until I give it to you at the very
21 end. You'll have all the time you deem necessary to talk
22 about it before you reach your unanimous decision in this
23 particular matter.

24 During the course of the trial, there might be certain
25 objections or motions raised by the attorneys. If I rule on

1 them in your presence, please remember, I'm not making any
2 comments on the facts or anybody's credibility or
3 believability. I'm ruling upon whether or not that matter is
4 proper for you to hear or not. If I send you back to the jury
5 room, please understand there are matters that I have to talk
6 about that have to discuss outside your presence so that I can
7 more fully explain or get reasons and rationale from the
8 attorneys regarding their objections. So, with that, I'll
9 turn it over to counsel for their opening statements.

10 OPENING BY ANDREW:

11 MS. ANDREW: Good morning. May 27th, 2012. This morning
12 you guys are gonna hear about the events of May 27th, 2012.
13 It was a typical day in May, a Sunday, a sunny day, and
14 Sharedia Funderburke, the victim in this case, decided to walk
15 to her friend's house to visit. As she was leaving her
16 residence, she ran into an acquaintance. It was a friend's
17 boyfriend, someone who lived in the same apartment complex.
18 And that boyfriend had a friend with him. He introduced his
19 friend to Sharedia and he -- and that friend identified
20 himself as Jack. We later learned that that person's name was
21 not Jack; it was Tony Myers, the defendant in this case. They
22 chatted for several minutes and the defendant, Tony Myers,
23 offered to walk Sharedia to her friend's house. As many
24 people would, she assumed that he was gonna walk with her to
25 make sure that nothing bad happened to her along the way, that

1 nothing bad happened while she was walking to that friend's
2 house.

3 And at first, that's pretty much what happened.
4 Everything was okay. They walked together to the friend's
5 house and chatted. But then the defendant, Tony Myers,
6 started saying things to Sharedia like you're pretty, you're
7 sexy, which was okay, but it kind of went from there. Then he
8 started trying to touch her body. He tried to touch her
9 bottom, he tried to touch her breast, and she didn't want him
10 to do that. After a while, he said to her, I'm gonna take
11 that and I get what I want. After he said that, he started
12 trying to pull her clothes off. They were walking toward a
13 secluded area with a construction trailer, and when he started
14 trying to pull her clothes off, he drug her behind that
15 construction trailer. When they got back there, he fell on
16 top of her, she struggled and tried to get him off. As she
17 was trying to push him off, he bit her hand. She was yelling
18 rape and help me. She saw a car passing by and yelled at that
19 car but, unfortunately, it didn't stop. Luckily for her,
20 there was another person there that day, a stranger, a man who
21 was walking in the vicinity. His name was Garth Wood. You're
22 gonna hear from him today or tomorrow testify about what he
23 saw that day and what he saw was Sharedia struggling, the
24 defendant holding her arms as she was yelling for help. So,
25 Garth walks toward the defendant and Sharedia and, when he

1 did, the defendant ran away. Sharedia then used Garth's phone
2 to call 911 and she told the 911 operator, I was almost raped;
3 someone was trying to rape me.

4 Law enforcement responded and when they got there, a
5 crime scene technician came and he did something very
6 important that day. He swabbed Sharedia's hand for DNA
7 because the defendant had bit her. It was that DNA that
8 allowed us to identify the defendant, Tony Myers, after he was
9 identified as a suspect, as the person who attempted to rape
10 Sharedia that day.

11 Now, the Judge has told you that at the end of the trial,
12 he's gonna tell you -- he's going to instruct you on what the
13 law is that you'll apply to this case. I'm gonna give you a
14 brief summation now. The defendant is charged with assault
15 with intent to commit criminal sexual conduct in the third
16 degree. Criminal sexual conduct in the third degree is what
17 you probably think it is. It's rape. It's a sexual battery
18 accomplished by force is what most people think of as rape.
19 An attempt is an individual's effort to commit a crime that
20 doesn't succeed. Luckily for Sharedia, the defendant was not
21 able to rape her that day because a stranger or passerby
22 happened by and stopped the whole -- and saved that from
23 happening. But I feel confident that at the end of the trial,
24 after you hear from -- hear all of the evidence about what
25 happened this day, that you can find the defendant guilty of

1 the attempted rape of Sharedia Funderburke.

2 THE COURT: Mr. Galmore?

3 OPENING BY GALMORE:

4 MR. GALMORE: Bike week, 2012. You all live in Myrtle
5 Beach, you live in Horry County, you're familiar with the
6 atmosphere, you're familiar with the debauchery, you're
7 familiar with everything that goes on when black bikers show
8 up at the end of May every year. We have traffic patterns, we
9 have stores shutting down; it's always some degree of chaos
10 and confusion. That is the background for what happened in
11 this case, Bike Week of 2012.

12 I'd like to talk to you about roles and responsibilities
13 because everyone in this courthouse has a role and
14 responsibility in regard to this case. Madam Court Reporter's
15 responsibility is to take a transcript of everything that's
16 said in court today. Our opening statements, our witness
17 statements, testimony will all be recorded, and if you have
18 any doubt about any portion of the testimony, you can come
19 back and ask the Judge to have the court reporter play that
20 portion of the testimony so that you can hear it for yourself
21 and get a better understanding of it.

22 You all are very familiar with the bailiffs and deputies.
23 Their role is to keep you safe and keep you fed. I don't know
24 if they gave you breakfast this morning. Their role is also
25 to make sure that you don't get any outside influences that

1 affect your judgment in this case. Our bailiffs and our
2 deputies have a very important role in the courthouse.

3 His Honor has already explained part of what his
4 responsibility is. He has explained to you that sometimes the
5 attorneys will have objections and his job is to rule on these
6 objections and decide which way to go from there. He's sort
7 of like a referee at a football game.

8 Now, I have a job. My job is to advocate and defend my
9 client to the best of my ability. Solicitors, they have a
10 job. Their job is to present the case to you so that you can
11 make a decision.

12 Most importantly here today, the Myrtle Beach Police
13 Department has a job, and whether it was 2012 or 2018, they
14 did not do their job. You will hear all of the evidence that
15 the state has to present. They're not gonna leave anything
16 out. They're not leaving anything on cutting room floor.
17 First, you'll see that it's not much evidence at all. Then
18 you'll see this evidence is incomplete and inaccurate. You'll
19 see that there's no physical evidence. You'll see that
20 there's no video evidence. You'll see that this case revolves
21 around sketchy scientific evidence. That's it. And
22 regardless how many police officers they put on the stand
23 today, this case boils down to some questionable scientific
24 evidence.

25 As jurors, you have a responsibility and your

1 responsibility has been misinterpreted over time. So, people
2 think the role of the jury is to find the defendant guilty or
3 not guilty; it's not exactly the jury's role. Your job as
4 jurors is to determine whether the State of South Carolina has
5 carried its burden of proof beyond a reasonable doubt. What
6 that means is did the state prove the defendant's guilt beyond
7 a reasonable doubt to you or not and, if they did prove it,
8 then you find the defendant guilty. And if, as I submit to
9 you today, the state has not carried its burden of proof then
10 you find the defendant not guilty. Your job is not to help
11 them with their evidence, your job is not to go looking for
12 evidence. Your job is to take what the state gives you from
13 that witness stand, take what the Myrtle Beach Police
14 Department has had six years to develop and to ask yourselves,
15 have they proven this case or not. I submit to you that they
16 have not, they cannot, and they will not be able to prove the
17 guilt of Tony Myers. I ask you to keep an open mind. I ask
18 you to look at the evidence, and I ask you to question that
19 one simple issue, have they proven his guilt or have they
20 given you mere speculation.

21 This won't take very long; there's not a lot of evidence.
22 Like I said it's six years old, but there's not a lot of
23 evidence. You will hear it all. They won't leave anything
24 out and then you will have an opportunity to decide this case.
25 Right now I just ask that you pay attention to the evidence,

1 keep an open mind, and I thank you for your attention.

2 THE COURT: All right. Solicitor, your first witness,
3 please, ma'am?

4 MS. WALTER: Detective Kerry Aiesi.

5 THE COURT: Please come around to be sworn.

6 CLERK: Please raise your right hand and place your left
7 hand on the Bible.

8 KERRY AIESI, HAVING BEEN DULY SWORN

9 TESTIFIES AS FOLLOWS:

10 THE COURT: And if you would, ma'am, spell your first
11 name too?

12 MS. AIESI: Okay. My name is Kerry Aiesi, spelled K-E-R-
13 R-Y, last name A-I-E-S-I.

14 THE COURT: Go ahead, Solicitor.

15 MS. WALTER: Thank you, Your Honor.

16 DIRECT EXAMINATION OF KERRY AIESI BY MS. WALTER:

17 Q: Detective Aiesi, good morning still?

18 A: Good morning.

19 Q: By whom are you employed?

20 A: The Myrtle Beach Police Department.

21 Q: How long have you worked for the Myrtle Beach Police
22 Department?

23 A: I've been employed with them for 15 years.

24 Q: What is your current assignment?

25 A: Currently, I'm a detective in the violent crimes section.

1 Q: How long have you held that position?

2 A: Less than a year.

3 Q: All right. What were you doing prior to that?

4 A: I was a patrol officer, a road officer.

5 Q: How long were you a road officer?

6 A: At that particular time about 10 years.

7 Q: At the particular time that we're talking about today,
8 2012?

9 A: Yes, I'm sorry.

10 Q: So, jumping ahead, let's talk about May 27th of 2012.

11 You were working at that time as a patrol officer for Myrtle
12 Beach?

13 A: Yes, ma'am.

14 Q: Can you tell us, what does a patrol officer do?

15 A: It varies. We work certain sectors of the city. We're
16 call responsive. Any calls that come out, we of course
17 respond to and handle. We try to be proactive in our patrols
18 as well.

19 Q: When you were on duty on May 27th, 2012 in the afternoon,
20 did you in fact respond to a call that took you to the area of
21 8th and Lumber Street within the city limits of Myrtle Beach?

22 A: I did.

23 Q: And for legal reasons, we have to say this, is that in
24 Horry County?

25 A: Yes.

1 Q: Okay. Can you describe what was it that brought you to
2 that location?

3 A: I remember I was dispatched. It was a call assigned to
4 me through our dispatch call center, and I believe it came out
5 as an assault or an attempted sexual assault.

6 Q: Did you proceed immediately to that area?

7 A: I did.

8 Q: Do you have any recollection of how long it took you to
9 get there?

10 A: I was dispatched at ---

11 Q: And let me just stop you. I see that you're referring to
12 something. If you -- is that a copy of your report?

13 A: Yes.

14 Q: Okay. So, if you need to refer to that to refresh your
15 recollection, if you could just let us know ---

16 A: Okay.

17 Q: --- and then we'll deal with it.

18 A: Do you mind if ---

19 Q: So what you can do, if you want to read through ---

20 A: Uh-huh (affirmative response).

21 Q: --- refresh your recollection and ---

22 A: It was less than 10 minutes it took me from the time the
23 call came in till when I responded on scene; it was less than
24 10 minutes.

25 Q: Perfect. And when you got to the scene, what did you

1 see?

2 A: I met the victim, Ms. Funderburke, and she was crying.
3 She was very visibly upset. I could tell immediately that,
4 something, something was bothering her. It was very apparent.

5 Q: Was -- what was it about her emotional state; was she
6 crying, yelling?

7 A: She was crying. She was shaken up. You could tell she
8 was nervous, scared. She was holding her hand. You know, I
9 -- I observed, you know, minor injury to her hand. I had
10 asked her what happened and that's how it all unfolded.

11 Q: When you asked her what happened, what did she say?

12 A: She said, he bit me.

13 Q: Did she indicate anything else that had happened to her
14 that day?

15 A: Once she had calmed down, I questioned her further and
16 she told me that she was leaving her residence. She was going
17 to meet a friend. She had met an acquaintance in the parking
18 lot of her residence, who had a male friend. He had offered
19 to walk with her to where she was going. She said that she
20 referred to him as Jack was the name that she was given.
21 During this walk, you know, he would say things, and to
22 paraphrase -- I have them written, but to paraphrase ---

23 MR. GALMORE: Objection, Your Honor, hearsay.

24 THE COURT: The victim is gonna testify, correct?

25 MS. WALTER: We believe so, Your Honor.

1 MR. GALMORE: Your Honor ---

2 THE COURT: You want to talk about that outside the
3 presence of the jury?

4 MR. GALMORE: Yes.

5 THE COURT: Mr. Foreman, ladies and gentlemen of the
6 jury, go to the jury room, please.

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

9 BY THE COURT:

10 THE COURT: All right. Solicitor, you indicated some --
11 I detected some uncertainty as to whether or not the victim
12 was going to testify in this case. Is the victim going to
13 testify in this case?

14 MS. WALTER: Your Honor, we are -- because of the sort of
15 back and forth that's been going on with whether we were going
16 or not. There's been some challenges with her schedule. She
17 has several school meetings with her children. I have a
18 Myrtle Beach Police Detective and an investigator from our
19 office going out there now to see if we can get her in this
20 afternoon. If not, she has assured us that she will be here
21 tomorrow morning at 10:30. Regardless of whether she
22 testifies or not, we believe that we can move forward with the
23 case. I can certainly instruct the detective -- well, first
24 of all, the state's reply to Mr. Galmore's argument would be
25 that that is not being offered for the truth of the matter

1 asserted. It's more being offered to show the victim's state
2 of mind and the defendant's state of mind. If Your Honor has
3 concerns about that, I believe under the case law, certainly
4 the detective could say that Ms. Funderburke said she had been
5 assaulted without providing any further information.

6 THE COURT: All right. At the present time, I'm not
7 gonna have you, ma'am, go into the details of the
8 conversation. You can obviously indicate whether or not she
9 indicated to you that she had been assaulted without the --
10 without the details at this present time. Since the victim
11 has not testified. All right?

12 Obviously, the witness can testify as to the things she
13 saw, observed, you know, the -- how the witness appeared to
14 her, her emotional state, obvious wounds or anything like
15 that, anything that was obvious to the detective that she saw
16 and took place in her presence. Obviously, she can testify to
17 any of that. All right?

18 MS. WALTER: I just want to make sure I understand Your
19 Honor's ruling. So, she can say that Ms. Funderburke advised
20 that she had been assaulted, but no further details?

21 THE COURT: At the present time.

22 MS. WALTER: Perfect. Thank you.

23 THE COURT: Because the victim has not yet testified.

24 MS. WALTER: Right.

25 THE COURT: All right. That does not mean that she could

1 not, if necessary, come back later and fill in those details.

2 MS. WALTER: Thank you.

3 THE COURT: All right. Ask if they're ready, the jury,
4 to come back in, please.

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

6 THE COURT: All right, Solicitor, you may continue.

7 MS. WALTER: Thank you, Your Honor.

8 CONTINUATION OF DIRECT EXAMINATION OF KERRY AIESI BY MS.

9 WALTER:

10 Q: Detective Aiesi, did -- let's go back. Did the victim
11 tell you anything else that had happened to her that day?

12 A: She advised me that she was assaulted. I could -- I saw
13 the injury to her hand. Her clothes were in disarray; there
14 was a rip in the back of the pants as well.

15 MS. WALTER: May I approach, Your Honor?

16 THE COURT: Yes, ma'am. Have you shown those to ---

17 MS. WALTER: Yes, and they were provided in discovery.

18 THE COURT: All right. Very good. Go ahead.

19 BY MS. WALTER:

20 Q: I'm approaching you with what's been marked as State's
21 Exhibit 4 and State's Exhibit 5. Can you look at those
22 please? Do you recognize the person contained in those
23 photographs?

24 A: That's Ms. Funderburke.

25 Q: And that's the woman that you met on May 27th, 2012?

1 A: Yes.

2 Q: And do those -- are those a true and accurate
3 representation of what she looked like as you were interacting
4 with her?

5 A: Yes.

6 MS. WALTER: Your Honor, I would ask that these be
7 admitted and published?

8 THE COURT: Any objection to the admission of State's 4
9 and 5?

10 MR. GALMORE: No, sir.

11 THE COURT: All right. They're in evidence without
12 objection. You may publish.

13 STATE'S EXHIBITS NUMBERS 4 AND 5

14 ADMITTED INTO EVIDENCE

15 MS. WALTER: So -- thank you, Your Honor.

16 BY MS. WALTER:

17 Q: I'm showing you first State's Exhibit 4. Does this just
18 appear to be a photo of Ms. Funderburke?

19 A: Uh-huh, (affirmative response); yes.

20 Q: And then what is shown in Exhibit 5?

21 A: That was the rip that I observed in the back of her
22 shorts.

23 Q: And what is she holding up there; was she wearing ---

24 A: That's a skirt that she had on over her shorts.

25 Q: As a result of the information both from the call and

1 from Ms. Funderburke, did you make any additional
2 notifications to bring any other personnel to the scene?

3 A: I did. Based on the nature of the incident, I notified
4 my supervisor. I did summon EMS to come as well. An intern
5 detective in our crime scene unit showed up.

6 Q: When you arrived at the scene and first saw Ms.
7 Funderburke, were there any other people there?

8 A: There was a male witness.

9 Q: Was that the other person whose phone she used ---

10 A: Yes. Yes.

11 Q: I'm sorry, and you said that crime scene responded to the
12 scene as well?

13 A: Yes.

14 Q: That would be for the collection of any evidence that
15 there might be?

16 A: Yes.

17 Q: And other than that initial response to the scene and
18 then coming in to testify today, have you had any other
19 involvement with this case?

20 A: No, I have not.

21 Q: Thank you. Nothing further at this time.

22 THE COURT: Cross examination?

23 CROSS EXAMINATION OF KERRY AIESI BY MR. GALMORE:

24 Q: Detective Aiesi, I understand that you were a road
25 officer back in 2012?

1 A: Yes, sir.

2 Q: Okay. And today you are a detective?

3 A: Yes, sir.

4 Q: Okay. Are you the lead detective investigating this

5 case?

6 A: No, sir.

7 Q: Okay. So, you're testifying as a road officer?

8 A: Yes, sir.

9 Q: All right. Now, we've seen some photographs. Did you

10 take those photographs?

11 A: I did not.

12 Q: And you're not the crime scene technician?

13 A: No, I'm not.

14 Q: Do you know who took those photographs?

15 A: Crime Scene Officer Tony Humes.

16 Q: Okay. Were you present when the alleged sexual --

17 attempted sexual assault occurred?

18 A: No, sir; I was not.

19 Q: Now, your duties in this case, you were one of the

20 responding officers; is that correct?

21 A: That is correct.

22 Q: And you had a brief opportunity to speak with Ms.

23 Funderburke?

24 A: Yes.

25 Q: And you contacted a detective and EMS to come to the

1 scene?

2 A: Yes, sir.

3 Q: Would it be fair to say that was the extent of your
4 involvement in this case?

5 A: I gathered up the preliminary information, got a
6 statement from Ms. Funderburke, a statement from the witness,
7 and I relayed that information to my supervisor, who in turn
8 did call a detective, yes.

9 Q: Okay. Now, I understand that this was May 27th of 2012;
10 was that black bike weekend?

11 A: It was around that time.

12 Q: Around that time. Do you know if there were extra
13 officers on duty? Usually, there are black bike weekend.

14 A: I'm sure possibly, you know, during that timeframe we
15 normally employ more. I, I -- I'm sure there were.

16 Q: Okay. Did you have any luck in locating a suspect?

17 A: No, I did not.

18 Q: All right. Thank you. No further questions, ma'am.

19 MS. WALTER: May I, Your Honor?

20 THE COURT: Yes, ma'am.

21 REDIRECT EXAMINATION OF KERRY AIESI BY MS. WALTER:

22 Q: As the responding patrol officer, was it your duty to
23 investigate as to any potential suspect?

24 A: If it -- it was -- if it had come through the 911 call
25 with a description of any possible suspects, officers in that

1 area of course would look for people identifying any possible
2 matches. And when I respond to a scene, I always am aware of
3 my surroundings and look for anybody leaving the immediate
4 area in which I'm responding to, but I did not see anybody
5 matching that description.

6 Q: And once you are finished with that initial call out, is
7 further investigation into developing any suspects your job or
8 the job of a detective?

9 A: That would be the job of a detective.

10 Q: And at this point, you were not a detective, you were a
11 patrol officer?

12 A: Correct, yes.

13 Q: Thank you. I would ask that she not be excused, but I
14 have no further questions at this time.

15 THE COURT: Any further questions?

16 MR. GALMORE: No, sir, Your Honor.

17 THE COURT: All right. You may step down, ma'am.

18 Next witness, please.

19 MS. WALTER: We'd call Crime Scene Officer Tony Humes.

20 THE COURT: All right. Please come around and be sworn,
21 sir.

22 CLERK: Please raise your right hand and place your left
23 hand on the Bible.

24 ANTHONY HUMES, HAVING BEEN DULY SWORN

25 TESTIFIES AS FOLLOWS:

1 MR. HUMES: Anthony Humes, H-U-M-E-S.

2 THE COURT: Go ahead, Solicitor.

3 MS. WALTER: Thank you.

4 DIRECT EXAMINATION OF ANTHONY HUMES BY MS. WALTER:

5 Q: Good morning, Officer Humes; how are you?

6 A: I'm good. How are you?

7 Q: I'm fine. By whom are you employed?

8 A: With the City of Myrtle Beach Police Department.

9 Q: How long have you been there?

10 A: A little over 10 years.

11 Q: What is your current assignment?

12 A: I am currently assigned to the Investigative Division
13 with the crime scene unit.

14 Q: How long have you been in that position?

15 A: A little over six years.

16 Q: Can you tell us what you do as part of the crime scene
17 unit?

18 A: I respond to a wide variety of calls between shootings,
19 burglaries, criminal sexual conduct calls, just whatever a
20 supervisor deems that I need to respond to collect any type of
21 potential evidence.

22 Q: What type of evidence collection do you do?

23 A: Photography, video, fingerprints, DNA, blood, semen,
24 things of that nature.

25 Q: Can you describe for us what sort of training you've had

1 in evidence collection?

2 A: I've had multiple crime scene classes in evidence
3 collection, yes.

4 Q: Directing your attention back to May 27th of 2012, were
5 you in fact employed by the Myrtle Beach Police Department as
6 a crime scene unit officer?

7 A: Yes, ma'am.

8 Q: Did you respond to the scene in the area of 8th and
9 Lumber Street in Myrtle Beach?

10 A: Yes, ma'am.

11 Q: Can you describe what you saw when you got to the scene?

12 A: When I arrived on scene, the area in question is kind of
13 a bend in the road. At the -- that area is a construction
14 business. There's a large field type area alongside the north
15 side of the business there. There was construction trailers
16 there as well.

17 Q: Did you see any people there when you got there?

18 A: Officer Aiesi was there, Sergeant Bertang was there, the
19 victim was also there.

20 Q: When you got there, what specifically in this case did
21 you do?

22 A: I was requested to take photographs of the victim, and I
23 also swabbed the victim's right hand and took photographs of
24 her person.

25 Q: Why did you swab the victim's right hand?

1 A: She had stated to me that she had been bitten on her hand
2 in that area, so I used two sterile cotton swabs with ,
3 distilled water and swabbed her hand in the hopes that
4 potentially there could be some saliva or type of DNA on her
5 hand.

6 Q: So, did you swab the area that she indicated to you?

7 A: Yes, ma'am.

8 Q: And can you tell us what's involved in swabbing her hand?

9 A: The swab itself is a Q-tip type device. It's a small
10 piece of wood with on the end is cotton. We use two of them
11 and we put two drops of water, distilled water, on the end to
12 swab the area. That way it takes the skin follicles and
13 whatnot from the actual hand.

14 Q: And then once you swab it, what do you do with the actual
15 swab itself?

16 A: I placed the swabs inside an evidence envelope that was
17 marked for what location I took the swabs from.

18 Q: And once you put it in an evidence envelope, what do you do
19 with it?

20 A: I seal it.

21 Q: How do you seal it?

22 A: With evidence tape and initials.

23 Q: Does that evidence tape show -- would that evidence tape
24 show signs if someone tried to open the evidence envelope?

25 A: Yes, ma'am; it's tamper resistant.

1 Q: So, once you seal the evidence envelope with this tamper-
2 resistant tape, what do you do with it; where does it go?

3 A: It goes up to the property and evidence.

4 Q: Is property and evidence part of Myrtle Beach Police
5 Department?

6 A: Yes, ma'am.

7 Q: When you check it into the property and evidence, do you
8 give it to someone who works specifically in that area?

9 A: Yes, ma'am. It's either them or the locker, secure
10 locker that it would go into.

11 Q: When you say a secure -- do you have an independent
12 recollection in this case whether you handed it to an actual
13 person or whether you used a locker?

14 A: I believe I used the locker.

15 Q: So, let -- let's go over that locker system. Can you
16 describe -- where are these lockers located?

17 A: They're located outside the property and evidence room at
18 the main police department.

19 Q: Once you put the evidence in the locker, first of all,
20 does -- do other officers use the same locker that you're
21 using at that same time?

22 A: No, it's -- they're individual lockers.

23 Q: So, you go off to a locker, you put the evidence in; then
24 what do you do?

25 A: Once you close the door on it, it is locked, and nobody

1 else has keys to it except for property and evidence.

2 Q: So, in this case you believe you used the locker. Once
3 you shut it in the locker, you never touched it again until
4 property and evidence got it?

5 A: Yes, ma'am; that's correct.

6 Q: I'm approaching you with admitted Exhibits 4 and 5 and
7 what exhibits have been marked as 6 and 7?

8 A: Okay.

9 Q: So, turning first to Exhibits 4 and 5. Did you take
10 those photographs?

11 A: Yes, I did.

12 Q: And again, that's a fair and accurate representation of
13 what Ms. Funderburke looked like that day and the state of her
14 clothing?

15 A: Yes, ma'am.

16 Q: Now, turning to Exhibits 6 and 7.

17 A: Okay.

18 Q: Do you recognize those photographs?

19 A: Yes, ma'am.

20 Q: Are those photographs that you took of the scene that
21 day?

22 A: Yes, they are.

23 Q: Are they a fair and accurate representation of what that
24 area looked like at the time that you arrived?

25 A: Yes.

1 MS. WALTER: Your Honor, I would ask that Exhibit 6 and 7
2 be admitted?

3 THE COURT: Any objection?

4 MR. GALMORE: No, sir.

5 THE COURT: They're into evidence without objection.

6 STATE'S EXHIBITS NUMBERS 6 AND 7

7 ADMITTED INTO EVIDENCE

8 MS. WALTER: I would ask them to publish them as well,
9 Your Honor.

10 THE COURT: You may do so.

11 BY MS. WALTER:

12 Q: So, first with Exhibit 6 -- I'm gonna hold it this way.
13 What are we looking at here?

14 A: This is the incident area. To the right is 84 Lumber, to
15 the left is Dargan's Construction, and then straight behind is
16 the incident area that the victim pointed out to me where the
17 incident occurred.

18 Q: Okay. So, you can see just on the ---

19 A: Off in the distance.

20 Q: --- middle of the left side just the beginning of like a
21 little dirt road?

22 A: Yes, ma'am.

23 Q: And I'm showing you Exhibit 7?

24 A: Yes.

25 Q: Is that this dirt road here?

1 A: Yes, that's a close -- close-up view of that road.

2 Q: And is this where the incident took place?

3 A: Yes, that's where she showed me that the attack had taken
4 place, yes.

5 Q: Now, in addition to swabbing, excuse me, Ms.

6 Funderburke's hands, do you do anything else to aid the State
7 Law Enforcement Division in doing eventually DNA testing?

8 A: I did the request to have the swabs further analyzed.

9 Q: You testified that you swabbed the victim's hand?

10 A: Yes, ma'am.

11 Q: Did you take any other swabs that day?

12 A: Yes, I took the victim's DNA standards to send along with
13 the potential suspect standards.

14 Q: And when you take the victim's standards, what do you do?

15 A: It's the same type process. I use a sterile cotton swab
16 and swab the interior cheek of the person in order to get
17 their saliva. Once those are collected, there's two, they're
18 placed in a evidence envelope. In this instance, I marked
19 that envelope with her name and date of birth.

20 Q: And did you follow the same procedure placing it into the
21 evidence locker at property and evidence?

22 A: Yes, ma'am.

23 MS. WALTER: May I approach, Your Honor?

24 THE COURT: Yes, ma'am.

25 BY MS. WALTER:

1 Q: I'm approaching you with what's been marked as Exhibits 8
2 and 9 ---

3 A: Okay.

4 Q: --- and if you need us to open them so that you can see
5 them better, let me know. Do you recognize Exhibits 8 and 9?

6 A: Yes.

7 Q: What do you recognize them to be?

8 A: Number 8 is the victim's standard that I collected and
9 Number 9 is the swabs of the hand.

10 Q: And the -- they're contained now in a plastic envelope.
11 The manila envelope inside, is that the original packaging
12 that you used?

13 A: Yes, ma'am, that's my packaging.

14 Q: And do you recognize that to be the packaging that you
15 used?

16 A: Yes.

17 Q: Do they appear to be in essentially the same condition as
18 when you packaged them?

19 A: Yeah.

20 Q: Other than maybe some other markings from other people?

21 A: Right.

22 MS. WALTER: Your Honor, at this time, I'd ask that
23 Exhibits 8 and 9 be admitted.

24 THE COURT: Any objection?

25 MR. GALMORE: No, sir.

1 THE COURT: All right. `State's 8 and 9 are into evidence
2 without objection.

3 STATE'S EXHIBITS NUMBER 8 AND 9

4 ADMITTED INTO EVIDENCE

5 BY MS. WALTER:

6 Q: At some point, let me rephrase that. Were you assigned
7 to actually investigate and develop any suspects in this case?

8 A: No, ma'am.

9 Q: At some point, was a suspect developed?

10 A: Yes, ma'am.

11 Q: Did you take any evidence from the suspect who was
12 developed?

13 A: Yes.

14 Q: Okay. Was that suspect Tony Myers?

15 A: Yes.

16 Q: What evidence did you collect?

17 A: I was requested to respond to obtain his DNA standards on
18 January 18th, 2007?

19 Q: 2000 ---

20 A: Or 2017, I'm sorry.

21 Q: That's okay. And was the collection process with the Q-
22 tips swabbing the inside of the mouth?

23 A: Yes, ma'am. It would've been two sterile cotton swabs
24 inside the cheek of the defendant.

25 Q: What did you do with those swabs once you collected them?

1 A: They were also placed inside an envelope and sealed.

2 Q: And what did you do with the sealed envelope?

3 A: It would've been taken to property and evidence and
4 secured with them.

5 Q: Same procedure as we've described before?

6 A: Yes, ma'am.

7 MS. WALTER: May I approach, Your Honor?

8 THE COURT: Yes, ma'am.

9 BY MS. WALTER:

10 Q: I'm showing you State's Exhibit 10. Can you look at that
11 and tell me if you recognize it?

12 A: Yes, ma'am, this is the envelope with the defendant's
13 swabs and his information on it.

14 Q: And again, do you recognize -- is there something
15 specific about it that you recognize? Do you recognize it to
16 be the envelope that you used?

17 A: Yes, it is mine, yes. My initials are still on the top
18 of the evidence seal tape.

19 Q: And does it appear other than maybe additional packaging
20 or writing, does it appear to be in the same condition?

21 A: Yes, ma'am.

22 MS. WALTER: Your Honor, I'd ask that this exhibit be
23 admitted?

24 THE COURT: Any objection?

25 MR. GALMORE: No, sir.

1 THE COURT: Into evidence without objection. You may
2 proceed.

3 STATE'S EXHIBIT NUMBER 10

4 ADMITTED INTO EVIDENCE

5 MS. WALTER: Thank you. Court's indulgence for just a
6 moment.

7 I have nothing further of this witness at this time.

8 THE COURT: All right. Cross examination?

9 CROSS EXAMINATION OF ANTHONY HUMES BY MR. GALMORE:

10 Q: Investigator Humes, I'm a little bit confused. Maybe
11 it's too many television shows, but can you explain to us the
12 difference between a crime scene technician and police
13 officer?

14 A: A crime scene technician has specific skills in order to
15 process a actual scene.

16 Q: Okay. So, are you -- I know you work for the police
17 department, but are you a police officer?

18 A: I am also a police officer, yes.

19 Q: Okay. So, you can write speeding tickets, also?

20 A: Yes, sir; I can.

21 Q: Are all crime scene technicians police officers?

22 A: We currently just hired a civilian officer ---

23 Q: Okay.

24 A: --- that cannot write tickets.

25 Q: But in your case, you are a police officer, who is also a

1 crime scene technician?

2 A: Yes, sir; I am.

3 Q: Now, you said when you arrived on the scene, Officer
4 Aiesi, Sergeant Bertang and the victim were there, right?

5 A: Yes, sir.

6 Q: So, you had an opportunity to see these people?

7 A: Yes.

8 Q: Okay. You see Officer Aiesi in court today?

9 A: Yes.

10 Q: You see Sergeant Bertang in court today?

11 A: No, sir.

12 Q: Okay. Do you see Ms. Funderburke in court today?

13 A: No, sir.

14 Q: All right. Now, as I understand it, part of your duties
15 are to process the crime scene; is that correct?

16 A: That'd be correct.

17 MR. GALMORE: May I approach the witness, Your Honor?

18 THE COURT: Yes, sir.

19 BY MR. GALMORE:

20 Q: And I'm going to show you what's been marked as State's
21 Exhibit Number 7.

22 A: Okay.

23 Q: And ask you, where exactly is the crime scene in this
24 photograph?

25 A: I was told that it was as the pavement area, which is

1 right here, ended and in the grass, kind of gravel area,
2 began. So, somewhere in this vicinity is what I was shown.

3 Q: So, you were not present for the alleged attempted sexual
4 assault?

5 A: I was not.

6 Q: All right. And information was given to you that this
7 was the general location of the crime scene?

8 A: That's correct.

9 Q: Did you collect any evidence of value from this so-called
10 crime scene?

11 A: Other than the photos, no.

12 Q: So, was there any clothing laying on the floor, on the
13 ground? I'm sorry.

14 A: No, sir.

15 Q: Was there any blood or DNA or saliva on the ground?

16 A: Not that I saw; no, sir.

17 Q: What about State's Exhibit Number 6?

18 A: Uh-huh, (affirmative response).

19 Q: What does this picture portray?

20 A: This is a further-away photo of that same picture. This
21 area here is located right here.

22 Q: So, it would be fair to say that Number 6 is just a
23 further back angle of Number 7?

24 A: That's correct, yes.

25 Q: All right. Was there any other processing that you did

1 to the scene itself?

2 A: No, sir.

3 Q: Okay. Were you able to collect any videos of this
4 alleged assault?

5 A: There was no videos in that area, to my knowledge, no.

6 Q: Okay. So, there are no businesses in the area that had
7 cameras covering this particular area?

8 A: Not to my knowledge, no.

9 Q: All right. Now, let me hand you what's been marked as
10 State's Exhibit Number 4.

11 A: Okay.

12 Q: Did you take that photograph?

13 A: I did.

14 Q: And what does that photograph portray?

15 A: That is the victim.

16 Q: All right.

17 A: That's her overall person from the front.

18 Q: That's Ms. Funderburke?

19 A: Yes, sir.

20 Q: All right. And I see that her hand -- she's holding her
21 hand out; is that for a particular reason?

22 A: That's how she was holding it whenever I got there and
23 through the duration. That's when she would've advised me
24 that she had been bitten on her hand, near her thumb and index
25 finger.

1 Q: Okay. So, is this photograph supposed to be a picture
2 of Ms. Funderburke's alleged injuries?

3 A: No, it's just an overall person photo just showing her.

4 Q: And let me hand you what's been marked for State's
5 identification, it's State's Exhibit Number 5; do you
6 recognize that photograph?

7 A: Yes.

8 Q: And what is that photo portray to be?

9 A: That would be the backside of the victim as well as it
10 shows the tear in her underwear.

11 Q: All right. So, this photograph shows the tear in her
12 underwear?

13 A: Yes, sir.

14 Q: Would it be fair to say that she is holding up her skirt
15 in order for you to take that photo?

16 A: Yes.

17 Q: So, you took photos of the area where the alleged assault
18 may or may not have occurred and you took photos of Ms.
19 Funderburke's alleged injuries?

20 A: Yes.

21 Q: And the alleged damage to her clothing?

22 A: Uh-huh, (affirmative response).

23 Q: Did you take any witness statements?

24 A: No.

25 Q: Okay. So, other than collecting these photos, the next

1 thing that you did in the case was collect the DNA samples?

2 A: Yes.

3 Q: All right. Now, what makes you qualified to collect DNA
4 samples?

5 A: From the victim?

6 Q: From anybody?

7 A: I'm not sure what you're asking.

8 Q: You went to class to -- to take some training in how to
9 collect a sample?

10 A: Yes.

11 Q: Okay. And is that something that you have to update on a
12 regular basis?

13 A: Not that I'm aware of.

14 Q: Not that you're aware of?

15 A: No.

16 Q: Okay. So, you've taken a class ---

17 A: Uh-huh, (affirmative response).

18 Q: --- in how to collect DNA samples?

19 A: Yes.

20 Q: All right. I take it, you successfully completed the
21 course?

22 A: Yes.

23 Q: All right. Because they wouldn't have you out there
24 collecting samples if you didn't?

25 A: No, sir.

1 Q: Do they discuss in your class, the issue of cross
2 contamination?

3 A: Yes.

4 Q: All right. Now, in this case, you collected samples from
5 Ms. Funderburke?

6 A: Uh-huh, (affirmative response).

7 THE COURT: You need to answer yes or no, I'm sorry.

8 A: I'm sorry. Yes.

9 Q: And that would have been her known -- her known standard?

10 A: That's correct.

11 Q: That's another way of saying you put the Q-tip in her
12 mouth and took a cotton swab and swabbed the inside of her
13 mouth?

14 A: That's correct.

15 Q: Now, did Ms. Funderburke show you her identification when
16 you took that sample?

17 A: No, sir.

18 Q: Okay. So, you just kind of assumed that that was Ms.
19 Funderburke?

20 A: Yes, I was told that.

21 Q: Fair enough. Fair enough. So, you collected her known
22 sample and you collected the alleged site of the injury
23 sample; is that correct?

24 A: That would be correct.

25 Q: Okay. Did you use the cotton swab and collect a sample

1 in that manner?

2 A: From her hand?

3 Q: Yes.

4 A: Yes.

5 Q: Were you wearing gloves when you collected that sample?

6 A: Yes.

7 Q: Did you contaminate that sample in any way?

8 A: Not to my knowledge, no.

9 Q: And you've taken a class to teach you to prevent such

10 things from happening?

11 A: Right.

12 Q: And then you also collected a sample from Tony Myers?

13 A: Eventually, yes.

14 Q: Yes. Not that same day?

15 A: No, not that same day.

16 Q: All right. So to summarize, you took pictures of the

17 crime scene, you took pictures of Ms. Funderburke and you

18 collected the samples; is that correct?

19 A: That's correct.

20 Q: Did I leave anything out as part of your duties in

21 regards to this case?

22 A: Not that I'm aware of, no.

23 Q: All right. Thank you, Investigator or Technician Humes.

24 Thank you very much.

25 A: Uh-huh, (affirmative response).

1 THE COURT: Redirect?

2 MS. WALTER: Thank you, Your Honor, very briefly.

3 REDIRECT EXAMINATION OF ANTHONY HUMES BY MS. WALTER:

4 Q: Defense counsel asked you if you collected any clothing
5 on the ground. Based on what you had been told, would you
6 expect to find any clothing on the ground?

7 A: Normally no, but different circumstances I guess it
8 could.

9 Q: In this case, based on what you knew about this case, do
10 you have any information that there should be clothing on the
11 ground?

12 A: No, ma'am.

13 Q: Defense counsel asked if you looked for blood and saliva
14 in State's Exhibit 7?

15 A: Uh-huh, (affirmative response).

16 THE COURT: Again, you need to say yes or no ---

17 A: Yes.

18 THE COURT: --- because the court reporter can't
19 understand that. Thank you.

20 BY MS. WALTER:

21 Q: Yes?

22 A: Yes.

23 Q: Did you -- why didn't you take the time to swab that
24 entire gravel road looking for saliva?

25 A: I don't -- I wouldn't know how to proceed with how many

1 swabs it would take to swab dirt and grass.

2 Q: And based on what you knew at that point, did you have
3 any reason to believe that there would be blood and/or saliva,
4 that you would be able to see and swab in that area?

5 A: No, ma'am.

6 Q: Now, when you, not to belabor the point, but you took the
7 swab from Ms. Funderburke's hand and her known standard on May
8 27th of 2012, correct?

9 A: That's correct.

10 Q: Sealed in an -- sealed them in an envelope and locked
11 them in an evidence locker?

12 A: Yes.

13 Q: Almost five years later, you're asked to get a swab from
14 the defendant, Mr. Myers, correct?

15 A: Yes.

16 Q: Same process followed?

17 A: Yes.

18 Q: After you took a swab from Mr. Myers, did you go to
19 property and evidence and open up all the envelopes and start
20 rubbing the Q-tips altogether?

21 A: No, ma'am; I wouldn't have had access to the other ones.

22 Q: So, when you took the swab from Mr. Myers, it never
23 touched or saw the swab from Ms. Funderburke or her hand,
24 correct?

25 A: Not to my knowledge, no.

1 Q: Nothing further at this time.

2 THE COURT: Anything on those questions, Mr. Galmore?

3 MR. GALMORE: No, sir.

4 THE COURT: You may step down, sir.

5 MS. WALTER: Your Honor, may we approach briefly?

6 THE COURT: Certainly.

7 MS. WALTER: You can step down.

8 A: Okay.

9 MS. WALTER: Thanks.

10 A: No problem.

11 THE COURT: All right. Mr. Humes, you are released from
12 your subpoena and may go back to your regular duties.

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

15 MR. HUMES: Thank you, Your Honor.

16 THE COURT: Your next witness please, ma'am?

17 MS. WALTER: Your Honor, the state calls Susanna Lyons.

18 THE COURT: Please come around to be sworn.

19 CLERK: Please raise your right hand and place your left
20 hand on the Bible.

21 SUSANNA LYONS, HAVING BEEN DULY SWORN

22 TESTIFIES AS FOLLOWS:

23 MS. LYONS: Susanna Lyons, first name S-U-S-A-N-N-A, last
24 name Lyons, L-Y-O-N-S.

25 MS. WALTER: Thank you, Your Honor.

1 THE COURT: Yes, ma'am.

2 DIRECT EXAMINATION OF SUSANNA LYONS BY MS. WALTER:

3 Q: Good morning, Officer Lyons?

4 A: Good morning.

5 Q: And you work for Myrtle Beach Police Department?

6 A: I do work for the Myrtle Beach Police Department.

7 Q: How long have you been there?

8 A: Just over nine years.

9 Q: What is your current position?

10 A: I'm a communications officer or most people call them
11 dispatchers.

12 Q: What does a dispatcher do?

13 A: When assigned to the dispatch radio, we'll dispatch
14 police officers, firefighters to calls for service or we
15 answer 911 or non-emergency phone numbers into the police
16 department.

17 Q: And how long have you been in that position?

18 A: I have to do the math because I started out there,
19 supervised for a couple of years, stepped down to become a
20 mother, and then back as a communications officer.

21 Q: Okay. So, let's actually jump right to May 27th of 2012.

22 A: Uh-huh, (affirmative response).

23 Q: Were you -- what was your position at the time of this
24 incident?

25 A: At this time, I was a communications supervisor.

1 Q: What were your duties as a communications supervisor?

2 A: Same as a dispatcher, but we would also have, you know,
3 supervisor roles of, you know, disciplinary actions,
4 overseeing the dispatch room. At this time, we also would
5 pull calls for service, voucher them into our property and
6 evidence, and store it onto local network.

7 Q: So, were you working during the daytime hours of May
8 27th, 2012?

9 A: I was.

10 Q: Were you actively accepting calls that came into 911?

11 A: Yes, ma'am.

12 Q: Did you in fact answer the 911 call that occurred in this
13 case?

14 A: I did.

15 MR. WALKER: May I approach, Your Honor?

16 THE COURT: Yes, ma'am.

17 BY MS. WALTER:

18 Q: I'm approaching with State's Exhibit 11. Let me back up.
19 Once a 911 call comes in, if requested, is it memorialized in
20 any way? Let me rephrase that?

21 A: Yes.

22 Q: As they come in, are they -- first of all, are they
23 recorded?

24 A: Yes, all of our phone calls are recorded through our
25 phone system, which is called Equature and it's stored in

1 that.

2 Q: And is it recorded at the same time that the conversation
3 is taking place?

4 A: Yes.

5 Q: And if requested, can that conversation then be burned
6 onto a disc ---

7 A: Yes, ma'am.

8 Q: --- to save it?

9 A: Uh-huh, (affirmative response), and sometimes they don't
10 have to request them. Certain types of calls call for, you
11 know, we're just proactive, go ahead and pull them.

12 Q: And in this case, was the 911 call that you took burned
13 onto a disc?

14 A: Yes, it was.

15 Q: And looking at State's Exhibit 11, does that appear to be
16 the evidence envelope containing the 911 call?

17 A: Yes.

18 Q: Does anyone have the ability to edit or tamper that 911
19 call in any way?

20 A: Certain supervisors can, but the original phone call or
21 the original track cannot be altered. Our records supervisor,
22 she will do it for FOIAs or Freedom of Information Act phone
23 calls where we redact, you know, phone caller information, but
24 the original track is not altered, a separate file is saved.

25 Q: Okay. And that would be the original file?

1 A: This is the original.

2 Q: So, that has not been altered in any way?

3 A: No.

4 MS. WALTER: Your Honor, I would ask that State's Exhibit
5 11 be admitted.

6 THE COURT: Any objection?

7 MR. GALMORE: No.

8 THE COURT: State's 11 is into evidence without
9 objection.

10 STATE'S EXHIBIT NUMBER 11

11 ADMITTED INTO EVIDENCE

12 MS. WALTER: And, Your Honor, may we just approach very
13 briefly?

14 THE COURT: Yes, ma'am.

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

17 BY MS. WALTER:

18 Q: Other than answering the 911 call and then coming into
19 court today, have you any other involvement in this case?

20 A: No, ma'am.

21 MS. WALTER: I have no further questions for the witness
22 at this time.

23 THE COURT: All right. Cross examination?

24 CROSS EXAMINATION OF SUSANNA LYONS BY MR. GALMORE:

25 Q: You were not present at the scene of this alleged

1 attempted sexual assault, were you?

2 A: No, sir.

3 Q: Your role in this case was to receive a 911 telephone
4 call?

5 A: Correct.

6 Q: All right. Thank you very much. No further questions.

7 THE COURT: Anything else, ma'am?

8 MS. WALTER: Not from this witness, Your Honor.

9 THE COURT: All right. Do you wish this witness to be
10 excused?

11 MS. WALTER: Yes, please.

12 THE COURT: Any objection?

13 MR. GALMORE: No, sir, no objection.

14 THE COURT: All right, ma'am, you're released from your
15 subpoena and may go back to your regular duties.

16 MS. LYONS: Thank you.

17 BY THE COURT:

18 THE COURT: All right. Ladies and gentlemen, we're gonna
19 take a short break for about five minutes or so. Go to your
20 jury room. Please remember, don't talk about the case until I
21 let you talk about it at the very end.

22 Thank you very much.

23 (REPORTER'S NOTE: Jury exits courtroom.)

24 THE COURT: All right. We'll take a short break for
25 about five minutes. Thank you.

1 MS. WALTER: Thank you, Your Honor.

2 *****OFF THE RECORD*****

3 (On the Record.)

4 THE COURT: All right, Solicitor, the state to proceed?

5 MS. WALTER: We are, Your Honor.

6 THE COURT: Defense?

7 MR. GALMORE: Yes, sir.

8 THE COURT: Ask the jury to come in, please.

9 MS. WALTER: Your Honor, with Mr. Galmore's permission, I
10 opened up Exhibit 11, which is the 911 call, and it is ready
11 to play.

12 THE COURT: All right. Very good.

13 MR. GALMORE: Your Honor, while the jury is coming in,
14 the Solicitor has given me the NCIC for Ms. Funderburke and it
15 appears that the only relevant issue would be a 2010 resisting
16 arrest charge where Ms. Funderburke was convicted and received
17 a sentence of one year suspended to time served.

18 THE COURT: Hold on one second.

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

20 THE COURT: All right, counsel, if y'all want to come up
21 and talk to me for one second, please.

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

24 THE COURT: Next witness please, ma'am.

25 MS. WALTER: Your Honor, the state calls Sharedia

1 Funderburke.

2 THE COURT: All right. Please come around to be sworn
3 please.

4 CLERK: Please raise your right hand and place your left
5 hand on the Bible.

6 SHAREDIA FUNDERBURKE, HAVING BEEN
7 SWORN TESTIFIES AS FOLLOWS:

8 MS. FUNDERBERKE: My name is Sharedia Funderburke.
9 Spelled S-H-A-R-E-D-I-A, that's my first name. My last name
10 is Funderburke, F, as in Frank, -U-N-D-E-R-B-U-R-K-E.

11 THE COURT: Go ahead, Solicitor.

12 MS. WALTER: Thank you.

13 DIRECT EXAMINATION OF SHAREDIA FUNDERBURKE BY MS. WALTER:

14 Q: Good afternoon, Ms. Funderburke.

15 A: Hello, how are you.

16 Q: If you need to take a break, let me know, there are some
17 tissues right there for you. Thank you for coming in today.

18 A: You're welcome.

19 Q: How old are you?

20 A: I'm 28.

21 Q: And do you live in Myrtle Beach?

22 A: Yes, ma'am.

23 Q: Do you have any children?

24 A: Yes, I do.

25 Q: How many children do you have?

1 A: Five boys.

2 Q: And I know that it's difficult, but I want you to think
3 back to May 27th of 2012?

4 A: Yes, it was on a Sunday.

5 Q: Do you remember what you were doing?

6 A: It was actually Memorial Weekend, so everybody know we
7 have Memorial Weekend down here in Myrtle Beach every weekend,
8 where bikers and stuff come. Me and my girlfriends, we was
9 getting on, or I was getting dressed, I was going to go meet
10 my girlfriend. She stay approximately -- my grandmother stay
11 on Third Avenue South. She stay approximately about driving
12 distance five minutes; walking distance, it'd be probably
13 about 10 to 12. I was gonna over there and go meet her
14 because we were gonna go out on the boulevard actually at that
15 moment in time. I was at that time 22. So, it's been about a
16 couple of years ago. So, as I was going to leave out my
17 grandmother house, I seen a guy that I knew, not the guy that
18 currently did this to me, which is Tony Myers. He was
19 standing by another guy. I knew his wife and I was telling
20 the other guy to tell his wife that I'd be back later, to come
21 by to see her. Tony told me I was beautiful and where you was
22 heading at. I said thank you, but no thanks, I'm going out
23 with my girlfriends. So, we -- I kept walking. I got up
24 towards 501, walk across from 501 over there near, what's it's
25 called, it's by Charity and I think it's a Dargan Construction

1 Company or something. As soon as we was walking across -- as
2 soon as I was walking across the street, I get across, I
3 immediately know that he was behind me. After I had get up
4 around the Dargan Construction Company, he, he came from
5 behind me and told me that I said you were beautiful and
6 that's all I get. Well, you know what, I'm going for it; I'm
7 gonna take it. So, that's when I immediately tried to fight
8 back. He tried to drag me behind a construction company where
9 the trailers was located at. It was like five, six, seven
10 trailers. If you go by there, the trailers is not there
11 anymore because of that reason. They had move them. 'Because
12 if he were to get me back there, you wouldn't have been able
13 to see me from the road. I was acting hysterical. I was
14 acting wild, trying to get people to stop. It was in broad
15 daylight. He -- he smelled like a bowel of liquor. You could
16 tell he'd probably been up for days. I could tell from --
17 from looking at his eyes, the gloss and stuff. So, when we
18 got up around the corner and when I had got up around the
19 corner that I came down -- we come up around the corner, he
20 was trying to drag me over behind the construction company, it
21 had rocks and stuff, so as he was dragging me, my pants start
22 ripping from the rocks as he was dragging me. I'd immediately
23 fought back. My shirt started tearing up. I was immediately
24 thinking, defend yourself, so I immediately fell. We fell, he
25 got on top of me and somehow I took my wrist and I was hitting

1 him in his face with my wrist and that's -- that's when he
2 took a chunk out my hand. And when he took a chunk out my
3 hand, actually that's -- that was one of the biggest things
4 that kind of helped y'all to find him because of the DNA from
5 him biting me on my hand. So, when he immediately did that, I
6 was fighting, fighting, fighting, and then it was a guy that
7 came up and he said he heard me and it sound like I was a cat,
8 but he said I could tell you yelled and he knowed that
9 something wasn't right when I got up and tried to run. So, he
10 had yelled like hey, get off of her, leave her alone, and
11 before you know it, he just jumped up and immediately break
12 camp. That's when the guy sat there with me and asked -- I
13 asked him can he call the ambulance; I didn't have no phone at
14 the time. I asked him can he call the ambulance. I asked him
15 to call 911 for me and I sat there and wait for the police to
16 get there.

17 Q: Okay. I'm just gonna go back over a couple of things.

18 A: Yes, ma'am.

19 Q: When you initially -- you said you were leaving to go
20 walk to your girlfriend's house?

21 A: Uh-huh, (affirmative response).

22 Q: I just want to make sure we have the people correct.
23 When you came, you encountered two men?

24 A: Yeah, it was two men when I first left out my grandmother
25 house.

1 Q: And so one of them you knew as the husband of a friend of
2 yours?

3 A: Yes.

4 Q: And then the second man was the man that assaulted you?

5 A: Yes.

6 Q: On that day, did he give you a name?

7 A: He didn't gave me a name; he just told me I was
8 beautiful.

9 Q: When you began to walk to your friend's house, was he
10 walking with you?

11 A: No, he's actually was walking behind me.

12 Q: Okay. When he was walking behind you, can you just tell
13 us again, what was he saying to you?

14 A: You're a beautiful girl, but when -- actually when he was
15 walking behind me, he actually wasn't saying nothing. When he
16 creeped up behind me to come grab me, that's when he actually
17 said, oh, I said you was a beautiful girl; you didn't heard
18 what I said? Well, I'm gonna -- basically, I'm gonna take
19 you. I'm gonna take this. So, the first thing immediately
20 I'm thinking of somebody come out their mouth that type of
21 way, what are you gonna take? What, you gonna try to rape me?
22 Was you gonna try to do that? And then he immediately just
23 tried to rip my shirt off. So, that's when I really start
24 defending myself.

25 Q: Okay. And you were saying that this happened near the

1 Dargan Construction site?

2 A: Yes, ma'am.

3 MS. WALTER: May I approach, Your Honor?

4 THE COURT: Yes, ma'am.

5 BY MS. WALTER:

6 Q: I'm showing you State's Exhibit 6 and State's Exhibit 7?

7 A: Correct. This one.

8 Q: All right. So, you're pointing to Exhibit 7; is this
9 where he dragged you?

10 A: Yes, this is the rocky rows and this is the trailers that
11 they had right here behind him. They actually don't have them
12 trailers back there anymore because my grandmother go to the
13 Charity which is on the other side of that, and I went there
14 the other day with her and they don't have the trailers back
15 here no more. But it's actually these trailers and these the
16 rocks that -- that me and him tripped on when he was trying to
17 drag me back there.

18 Q: Okay. So, there's a spot in the picture where it looks
19 like the paved road ---

20 A: Uh-huh, (affirmative response).

21 Q: --- and then there's some gravel and that's where you
22 tripped ---

23 A: Uh-huh, (affirmative response); yes, ma'am.

24 Q: That's where you fell down?

25 A: Yes, ma'am.

1 Q: Okay. And now, I'm showing you Exhibits 4 and 5.

2 A: Yep, he ripped my pants; he tried to rip my pants. He
3 had ripped my shirt off. Actually, somebody gave me, the guy
4 that ran the road gave me the shirt that I have on. I don't
5 -- I kinda don't recall if it was the guy or it was the
6 police, but I know they gave me that shirt. I did not have
7 that shirt on at all.

8 Q: Okay.

9 A: I didn't have that shirt on at all. He had already
10 ripped my shirt off, off of me.

11 Q: Okay.

12 A: And he did rip my pants.

13 Q: Okay. And you're holding something out? What were you
14 ---

15 A: Matter of fact, that was the shirt -- no, no, no, I don't
16 -- I had a skirt on, so from him dragging me, he ripped my
17 pants like that from dragging me and I actually had a skirt
18 on. So yes, that's what I was holding up, my skirt.

19 Q: Okay. And then you said he bit your hand; do you
20 remember which hand he bit?

21 A: Yes, ma'am; it was my right hand.

22 Q: Right hand. And do you recall one of the responding
23 officers swabbing your hand?

24 A: Yes.

25 Q: And then swabbing your mouth?

1 A: Yes.

2 Q: Okay. Two separate things, right? He swabbed your hand
3 and then he later swabbed your mouth?

4 A: Uh-huh, (affirmative response); yes, ma'am.

5 Q: You said that you asked this stranger to call 911?

6 A: Yes, ma'am.

7 Q: Do you remember calling 911 and talking on the phone to
8 the police department?

9 A: I remember calling 911, but I can't really too much
10 remember exactly or recall what I said. Like there was so
11 many things going through my mind, and it happened so long
12 ago, I tried to put it back behind me. So, I can't really
13 recall exactly what I said on the 911 call. And then I don't
14 know exactly if it was me that -- when I called exactly talked
15 at first. I can't -- I can't really recall, but I don't know
16 if I was on the 911 call after the guy had called the police
17 for me or whichever one, but I can't really recall what I said
18 on the 911 call.

19 Q: But you'd be able to recognize your voice, right?

20 A: Yes, ma'am.

21 MS. WALTER: Your Honor, at this time, I'd ask that
22 State's Exhibit 11 be published to the jury.

23 THE COURT: Any objection?

24 MR. GALMORE: No, sir.

25 THE COURT: You may do so.

1 (REPORTER'S NOTE: State's Exhibit 11 published to jury.

2 Audio not transcribed herein.)

3 BY MS. WALTER:

4 Q: Is that your voice?

5 A: Yes, ma'am.

6 (REPORTER'S NOTE: State's Exhibit 11 published to jury.

7 Audio not transcribed herein.)

8 BY MS. WALTER:

9 Q: You okay?

10 A: Yes, ma'am.

11 Q: Before I forget, I want to ask you one thing that I'm
12 sure Mr. Galtmore will ask you about?

13 A: Yes, ma'am.

14 Q: You were convicted in 2010 of resisting arrest, right?

15 A: Yes, ma'am.

16 Q: And you received one year suspended to time served plus a
17 hundred hours of community service?

18 A: Yes, ma'am.

19 Q: Does that mean you're not telling the truth here today?

20 A: No, I'm telling the truth about everything.

21 Q: And did you recognize your voice on that 911 call?

22 A: Yes, ma'am.

23 Q: Is it fair to say it was fresher in your mind back in
24 2012 than now?

25 A: Yes, ma'am.

1 Q: You said when you were trying to get away from him, that
2 you were screaming; what were you screaming?

3 A: Rape, help, stop, anything that I, I could get anybody --
4 to get anybody attention, anything.

5 Q: What was it about the defendant's actions that made you
6 think he was going to rape you?

7 A: Immediately when he start trying to drag me to the back
8 and started ripping my clothes off, like ripping my shirt,
9 didn't care how he dragged me, when he told me he was gonna --
10 he's taking it. It's numerous of things. All I just know is
11 something just tell me to defend myself. That's it, but I --
12 I knew whatever he did wasn't right. It wasn't right. It
13 wasn't right.

14 Q: And in the 911 call, you say he even offered me money.
15 Do you remember what you were referring to then?

16 A: He, he -- when we -- okay. When me and him got in the
17 struggle or the tussle or just before we got in the tussle and
18 I told you he came up behind me and tried to come at me, he
19 was trying to basically have sex with me. That's how I knew
20 right then and there that it was kind of in the way that he
21 wanted to rape me and try to offer things, offer money, offer
22 things, and that's when I said I'm not that type of person. I
23 don't know -- as you see what I said in the 911 call, I'm not
24 that type of person. I don't know what -- what makes you
25 think that, and that's when he went forth effort to do what he

1 wanted to do.

2 Q: And as you were fighting him off and screaming rape, I
3 think on the 911 call you said there are, actually people went
4 by before ---

5 A: Before this, yeah.

6 Q: How many people went by while you were screaming?

7 A: Three different cars.

8 Q: No one stopped for you?

9 A: No one stopped.

10 Q: Until that last man?

11 A: Until that last man.

12 Q: Okay. And he's the one whose phone you borrowed?

13 A: Yeah, he's the one that saved me.

14 MS. WALTER: Nothing further at this time from Ms.

15 Funderburke, Your Honor.

16 THE COURT: Cross examination?

17 MS. WALTER: James, do you need the 911 tape?

18 MR. GALMORE: No.

19 CROSS EXAMINATION OF SHAREDIA FUNDERBURKE BY MR. GALMORE:

20 Q: Ms. Funderburke, can you describe what were you doing;
21 you said you were at a party was it?

22 A: No, we was -- we was going to the boulevard. It was bike
23 weekend, Memorial weekend.

24 Q: Right.

25 A: Uh-huh, (affirmative response), and we was going to the

1 boulevard.

2 Q: Okay. And where were you before all of this happened,
3 were you at a different apartment complex or something?

4 A: Yeah, that's where he seen me at.

5 Q: Okay. And what apartment complex was that?

6 A: That was Carolina Breeze; that's where my grandmother
7 stay at.

8 Q: Okay. And so who was over there with you at Carolina
9 Breeze apartments?

10 A: Me, my grandmother and my -- one of my kids, I think; one
11 or two of my kids was there; at the time I only had three.

12 Q: And you said that you met him through another person that
13 was there also?

14 A: Yeah, we all was standing there together before I start
15 walking to go meet my girlfriend to go to the boulevard. We
16 was all standing there talking. I actually really didn't too
17 much say nothing to him. I was talking to my friend's husband
18 and he was standing there talking to him.

19 Q: Okay.

20 A: So, it was like we all was -- I wasn't talking to him,
21 but he was amongst the -- when me and him -- me and my friend
22 -- when my friend's husband was talking to me, he was amongst
23 us.

24 Q: So, your friend's husband, that would be Buck?

25 A: I guess, yes.

1 Q: Okay. And your friend was Nia?

2 A: Keisha.

3 Q: Keisha, okay.

4 A: Uh-huh, (affirmative response).

5 Q: And you met Tony Myers through Buck; is that fair to say?

6 A: Yeah, but I haven't met him. He was amongst us. So,

7 what I mean by -- like what you mean by meet is we actually,

8 like I actually knew him, no, I haven't met him. He was just

9 amongst our conversation.

10 Q: All right.

11 A: Basically, they was standing there talking before I even

12 came up.

13 Q: Had you known of him prior to this day?

14 A: No.

15 Q: Okay. He didn't have any kind of relationship with your

16 boyfriend?

17 A: No.

18 Q: No, all right. So, was this a party or was it just

19 people talking?

20 A: What party? We never went to a party.

21 Q: Okay. So, when you were at your grandmother's house at

22 Carolina Breeze Apartments ---

23 A: Uh-huh, (affirmative response)

24 Q: --- it was just people talking?

25 A: Yeah, we just -- we was out there talking because I know

1 him. He was standing out there with my grandma. Like
2 basically every day we get up, I see them or I speak to them
3 and say hey to them, go over there to their house, talk to
4 them; they friends to me. I'm friends of them, but I'm not
5 friends with Tony Myers. He was a friend of Tony Myers.

6 Q: Right. But just to get it clear, it was not like a party
7 going on at your grandmother's house?

8 A: No, it was not.

9 Q: Okay. It was just some people, some neighbors out there
10 were talking?

11 A: Uh-huh, (affirmative response)

12 Q: And Mr. Myers was already there talking to ---

13 A: Buck.

14 Q: --- Buck?

15 A: Yes.

16 Q: All right.

17 A: Yes, sir.

18 Q: Now, it's my understanding that Mr. Myers lives in the
19 neighborhood -- in the same neighborhood that you live in?

20 A: No, sir.

21 Q: No, okay. And you -- you left and you were walking ---

22 A: Yes, sir.

23 Q: --- is that correct?

24 A: Yes, sir.

25 Q: All right. And you were going from the Carolina Breeze

1 Apartments ---

2 A: The apartments that I was going to was named Alliance
3 Inn.

4 Q: Alliance Inn Apartments?

5 A: Yes.

6 Q: And where is the Carolina Breeze Apartments located in
7 Myrtle Beach?

8 A: Third Avenue South.

9 Q: Okay. And the Alliance Inn is located where?

10 A: Mr. Joe White.

11 Q: So, that's 10th Avenue North?

12 A: Uh-huh, (affirmative response)

13 Q: That's a little bit of a walk?

14 A: Yeah, but if you walk through the way we walk, you walk
15 down to back behind the -- back behind Food Lion and you cut
16 through the park and you cut across 501. There used to be a
17 car wash on the right-hand side, and then it used to -- now
18 they have it, it's -- it's a homeless shelter for men, and
19 then it's the Dargan Construction Company. Instead of me
20 walking all the way down third Avenue South and come up down
21 501, it's roads that you can cut through to get to Mr. Joe
22 White.

23 Q: Is this like behind that Budweiser plant?

24 A: Yep, you take that way.

25 Q: Okay. And this was on a Sunday afternoon?

1 A: Yes.

2 Q: All right. And what time of day do you think it was when
3 you left from your grandmother's house?

4 A: Right now, I can't recall. I know it was the evening. I
5 know it was afternoon. I don't know exactly what time, but I
6 know it was the afternoon.

7 Q: Okay. And when you left out, was anybody walking with
8 you?

9 A: No, I was by myself.

10 Q: You were by yourself?

11 A: Yes.

12 Q: I think you said one of your sons was at the house; he
13 didn't walk with you?

14 A: No.

15 Q: So, you're cutting through some alleys or something along
16 those lines ---

17 A: Uh-huh (affirmative response).

18 Q: --- from Third Avenue South headed towards 10th Avenue
19 North, Mr. Joe White?

20 A: Uh-huh, (affirmative response).

21 Q: Right. And at some point, you noticed that Mr. Myers is
22 behind you?

23 A: Uh-huh, (affirmative response).

24 Q: Okay.

25 THE COURT: And, ma'am, could you say yes or no.

1 A: Yes, sir. Yes, sir, I'm sorry.

2 THE COURT: The court reporter has a hard time.

3 A: Yes, sir. I'm sorry. I apologize.

4 THE COURT: Thank you, ma'am.

5 A: Yes, sir.

6 BY MR. GALMORE:

7 Q: So, this would have been after you did most of the walk
8 already?

9 A: Yes, sir.

10 Q: And that's when you said he started making comments
11 towards you and tried to come at you?

12 A: Yeah, he already made a comment towards me before I left
13 from over there from my grandmother house.

14 Q: Right.

15 A: So, when I noticed he was behind me, that's when he start
16 making more comments, when he noticed that I noticed he was
17 behind me.

18 Q: Okay. Well, did he penetrate you?

19 A: No, sir.

20 Q: All right. So, you're absolutely clear about that?

21 A: Oh, I'm clear about that one.

22 Q: All right. Would it be fair to say that you fought him
23 off?

24 A: Yes, I did. Yes, sir.

25 Q: Okay. Well, I'm gonna ask you a few questions that will

1 sound a little bit weird, but just hang with me for a minute.

2 A: Yes, sir.

3 Q: You're not a mentally defective person, are you?

4 A: No, sir.

5 Q: Okay. You're not a mentally incapacitated person, are
6 you?

7 A: No, sir.

8 Q: Are you a physically helpless person?

9 A: No, sir.

10 Q: Okay. Now, back May 27th of 2012, were you mentally
11 defective back then?

12 A: No, sir.

13 Q: Okay. Were you mentally incapacitated back then?

14 A: No, sir.

15 Q: Were you physically helpless back then?

16 A: No, sir.

17 Q: Okay. Now, when you were at the Carolina Breeze
18 Apartments, did Mr. Myers attempt to give you anything, you
19 know, drugs or alcohol, anything like that?

20 A: No.

21 Q: Okay. He didn't try to spike your punch or anything like
22 that?

23 A: No, because we ain't had no punch.

24 Q: All right. All right. And you said that he smelled like
25 beer?

1 A: Yes, he smelled -- he smelled like instead of beer, a
2 bowl of alcohol.

3 Q: Okay. And I think you described it as he was up for days
4 in your opinion?

5 A: Yes.

6 Q: All right. Well, what made you say that?

7 A: Because I have family in the streets and I know that look
8 in the eye.

9 Q: You kinda recognize that look?

10 A: Uh-huh, (affirmative response); yes, sir.

11 Q: And you said he had glossy looking eyes also?

12 A: Yes, sir.

13 Q: All right. Now, as I understand it, you were giving him
14 him some hand strikes to the face?

15 A: Yes, sir.

16 Q: Okay. It wasn't your average punch, you were kind of ---

17 A: Upper cutting, yes, sir.

18 Q: So, you were giving it to him?

19 A: I surely was, yes, sir.

20 Q: And that is the reason why he bit you?

21 A: Yes, sir.

22 Q: Okay. Describe that for, for me, please.

23 A: He got on top of me, when he got on top of me, I was
24 fighting, and as I literally was fighting, I was taking my
25 wrist right here and actually gashing him in his face.

1 Q: Right.

2 A: And somehow, I don't know how, he got ahold of my hand
3 right here and bit a chunk out of my hand.

4 Now, you -- you've said that a couple of times that he bit a
5 chunk out of your hand. Did you have to go to the hospital?

6 A: Well, not a chunk, but he bit my hand pretty good.

7 Q: Okay. Well, did you have to go to the hospital for that?

8 A: No, I have -- I didn't have to go to the hospital because
9 the EMS had came there and they looked it, swabbed it, did
10 everything, and asked me did I have a technical [sic] shot; I
11 said, yes. They asked me -- then they asked me did he
12 physically harm me or did he rape me or anything; I said no.
13 They asked me did I wanted to go to the hospital; I told them
14 no, my hand was okay. All I really too much did was just ask
15 them can I just speak to a detective or something.

16 Q: Okay. And let me hand you what's been marked as State's
17 Exhibit 4 and let me ask you if you recognize what that
18 picture is?

19 A: Uh-huh, (affirmative response).

20 Q: That's you?

21 A: Yes.

22 Q: Does that picture portray the injury to your hand?

23 A: No, that doesn't show the injury to my hand.

24 Q: And you're holding your hand out in the picture?

25 A: Yeah, I'm holding the hand out in the picture, but I

1 can't see it. I can't see it on this picture.

2 Q: Yes, ma'am; I can't either.

3 A: But he bit the back, not the front, so, I don't know why
4 they wanted me to take a picture with my hands toward the
5 front.

6 Q: I don't either. All right. Now, it's my understanding
7 that you saw him about three months after that; is that
8 correct?

9 A: No, my boyfriend seen him a couple of months after that.
10 Yes, and he admitted to doing it to my boyfriend.

11 Q: Now, I'm asking about seeing him at the Third Avenue
12 Grill?

13 A: I didn't see him at no Third Avenue Grill.

14 Q: Okay. Now, what you're talking about is a different
15 incident, a different date, when your boyfriend saw Mr. Myers?

16 A: Yes, because him and my boyfriend know each other and
17 this is my boyfriend that I had got in a relationship with
18 lately, not when this incident happened.

19 Q: Okay. So, Mr. Myers sees your current boyfriend?

20 A: He sees, yeah, he sees my current boyfriend that I've
21 been dating for the last year and a half. He seen him and due
22 to him seeing him -- me in the car with him, he make a note to
23 want to talk to my boyfriend about this incident, and then
24 when he talked to my boyfriend about this incident, he admit
25 to my boyfriend that he did it and he apologized. He said he

1 was high off of crack. He said he been going through a lot,
2 he been -- didn't have his mind right at that moment in time
3 and things like that, but that still don't give you the right
4 to do things like to people.

5 Q: Right. So, in that incident where he talks to your
6 boyfriend, he apologized for ---

7 A: He told my boyfriend to tell me he apologized.

8 Q: Okay. He told your boyfriend that he apologized for --
9 for what he did?

10 A: Yes.

11 Q: All right. Now, do you have a case pending with the
12 solicitor's office?

13 A: No, I do not.

14 MS. WALTER: Objection, Your Honor, may we approach?

15 THE COURT: Y'all come on over here.

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

18 BY MR. GALMORE:

19 Q: Ms. Funderburke, would it be fair to say that you don't
20 really want to be here today?

21 A: No, I really do not.

22 Q: All right. Ms. Funderburke, I don't have any further
23 questions for you.

24 A: Yes, sir.

25 THE COURT: Counsel, could y'all come up here for a

1 second.

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

4 THE COURT: Go ahead, Mr. Galmore.

5 BY MR. GALMORE:

6 Q: Ms. Funderburke, I want to ask you again if you have any
7 cases pending currently with the solicitor's office in Horry
8 County?

9 A: I have one case and it was a shoplifting case that I had
10 and it's currently -- I don't have it. It's currently -- I
11 currently got to go to court, but I don't have to go through
12 Horry County.

13 THE COURT: She responded that it's currently pending.

14 A: Yeah.

15 Q: So, as you're -- as you're here today and testifying in
16 this case, but you also have a case of your own pending in
17 court?

18 A: Yes.

19 Q: Thank you, ma'am, no further questions.

20 A: You welcome.

21 REDIRECT EXAMINATION OF SHAREDIA FUNDERBURKE BY MS. WALTER:

22 Q: Ms. Funderburke, in the times that we have spoken, have I
23 ever talked to you about any pending matter?

24 A: No.

25 Q: Have I ever promised you anything if you came to testify

1 other than you would never have to deal with me again?

2 A: No, ma'am.

3 Q: Good. Is your testimony here based in all -- at all,
4 excuse me, on the fact that you have a pending matter?

5 A: No.

6 Q: Are you telling the truth here today?

7 A: Yes, I am.

8 Q: Let me just go back over a few things related to the
9 actual assault. When the defendant first came at you
10 physically, can you describe for me what he did?

11 A: When he first came at me physically, he grabbed me from
12 the back, grabbed me by my neck and literally like kinda
13 turned me around and start dragging me towards the
14 construction -- like the -- back where the construction --
15 back where the trailers at behind the construction -- behind
16 the construction building. Now, I can't really recall exactly
17 how my shirt got ripped, but my shirt got ripped and my pants
18 got ripped. I don't know if it got ripped from him dragging
19 me in the rocks when we was fighting and going back and
20 tussling in the rocks. I can't really recall exactly how my
21 shirt or anything got ripped, but that's how he basically was
22 trying to get me. He grabbed me from the back, tried to drag
23 me towards the back towards where the trailers was at.
24 Somehow we tripped up and he ended up on top of me and that's
25 when I fought for myself.

1 Q: Now, you said he grabbed you from behind. So, and it
2 looked like you were indicating that he put his arm around
3 your neck?

4 A: Yes.

5 Q: When he dragged you, can you estimate -- if you can point
6 to something in the courtroom or if you know how a distance,
7 how far did he drag you to where you eventually ended up?

8 A: He dragged me from, say from the corner right here ---

9 Q: The front of the jury box?

10 A: Yeah, from the corner of the jury box, that's the pave of
11 the road right there.

12 Q: Okay.

13 A: And he dragged me probably at least about to right here
14 (indicating); right there.

15 Q: Right, about here?

16 A: Yes, ma'am.

17 Q: So, almost the entire length of the jury box?

18 A: Yes, ma'am.

19 Q: You were struggling with him that entire time?

20 A: Yes, ma'am.

21 Q: And once you fell to the ground, you said you were
22 tussling, can you tell us a little bit more about what he was
23 doing to you?

24 A: Basically, once he got me towards the ground, he fell in
25 on top of me, fall on top of me. He was basically trying to

1 get me back there; I wouldn't go back there. I put all my
2 weight on the ground. Of course, I'm a heavy girl, and he's
3 -- is kinda skinny. So, I put all my weight on the ground.
4 He was steady trying to grab me, pull me back there. All I
5 can just remember is him just being on top of me and me just
6 upper cutting him and then, before you know it, the guy came.
7 It all happened so quick. The guy came and ran down the road
8 and start yelling, and he left, but I was just trying to fight
9 for myself. That's it. I can't really recall it exactly how
10 it happened, wish I can.

11 Q: I have nothing further, Ms. Funderburke. Thank you so
12 much.

13 A: Yes, ma'am.

14 THE COURT: Any other questions, Mr. Galmore?

15 MR. GALMORE: Very briefly, Your Honor.

16 RE CROSS EXAMINATION OF SHAREDIA FUNDERBURKE BY MR. GALMORE:

17 Q: Ms. Funderburke, you testified that he tore your shirt
18 and I think you also testified that the shirt that you have on
19 in this photograph is not the shirt that you started the day
20 with; is that correct?

21 A: Yes, that's not the same shirt.

22 Q: So, this photo -- the shirt in this photograph is not the
23 shirt you had on?

24 A: No, that's not the shirt I had on.

25 Q: This is not the shirt that was torn?

1 A: No.

2 Q: Okay. Do you know what happened to the shirt that was
3 torn?

4 A: I actually took the shirt -- actually took the --
5 actually the shirt that I have on right there ---

6 Q: Uh-huh, (affirmative response).

7 A: --- that shirt that I have on that he tore is under that
8 shirt.

9 Q: Okay.

10 A: Basically my chest been out, and the police officer
11 didn't want me to stand up like that with my chest hanging
12 out.

13 Q: Okay.

14 A: So, he didn't completely rip the whole shirt off of me,
15 but he was tearing my shirt off, where you could see my
16 cleavage.

17 Q: Did you happen to give that shirt to the police -- to the
18 police officers?

19 A: No, honest and truthfully, I have not.

20 Q: Did they ask to get that shirt from you?

21 A: No, I think they was more concerned about my safety.

22 Q: Right, I understand that. Do you happen to have that
23 shirt now?

24 A: No.

25 Q: All right. You also testified that you're bigger than

1 him and you said he was kinda skinny?

2 A: Yeah, I'm a little bigger than him.

3 Q: Okay. So, back in 2012, you were bigger than him also?

4 A: Yeah, he the same size now. We both -- I'm the same size
5 that I was on the picture and he's the same size as he is now,
6 but he's a man, too.

7 Q: All right. Yes, ma'am. Thank you. No further
8 questions.

9 A: You welcome.

10 THE COURT: Anything else?

11 MS. WALTER: No, Your Honor.

12 THE COURT: Do you wish the witness to be excused?

13 MS. WALTER: Yes, please, Your Honor.

14 THE COURT: Any objection?

15 MR. GALMORE: No, sir.

16 THE COURT: All right, ma'am, you are released and you
17 may go if you so choose.

18 A: Okay. Thank you.

19 THE COURT: Thank you, ma'am.

20 BY THE COURT:

21 THE COURT: All right, ladies and gentlemen of the jury,
22 we're going to break for lunch at this point in time. I'm
23 gonna ask that you be back in your jury room at 2 o'clock. Be
24 back in your jury room at 2 o'clock. Please remember don't
25 talk about the case. Don't allow anybody to talk to you about

1 the matter and I'll see you back at 2 o'clock.

2 Everyone else remain seated while the jury retires
3 please.

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

6 THE COURT: All right. Anything before we break for
7 lunch?

8 MS. WALTER: Your Honor, just to -- I want the Court to
9 know. Our witness is coming from Georgia and, again, just
10 because of the uncertainty of whether we were going to trial
11 or not, he actually missed his bus this morning. He's taking
12 a seven-hour bus ride tomorrow morning. He's got the ticket.
13 He'll be in at 11:15 tomorrow morning into the bus station and
14 he'll be brought right here.

15 THE COURT: Okay.

16 MS. WALTER: But I do have still six witnesses that I can
17 call in the meantime. I have SLED people coming in this
18 afternoon.

19 THE COURT: Okay.

20 MS. WALTER: I'm gonna call them as soon as we get back
21 from lunch, but just to let Your Honor know that there might
22 be a little gap tomorrow morning.

23 THE COURT: Okay. All right. Thank you, ma'am.

24 MS. WALTER: Thank you.

25 THE COURT: All right. We'll be at ease until 2 o'clock

1 then.

2 Thank you.

3 *****OFF THE RECORD*****

4 (On the Record.)

5 BY THE COURT:

6 THE COURT: All right, Solicitor, the state ready?

7 MS. WALTER: Yes, we are, Your Honor.

8 THE COURT: All right. Defense?

9 MR. GALMORE: Yes, sir.

10 THE COURT: Very good. Ask the jury to come in please.

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

12 THE COURT: All right, Solicitor, your next witness,
13 please, ma'am.

14 MS. ANDREW: Your Honor, the state calls Doris Yarbrough.

15 THE COURT: All right, Ms. Yarbrough, if you'd come
16 forward and be sworn, please.

17 CLERK: Please raise your right hand and place your left
18 hand on the Bible.

19 DORIS YARBROUGH, HAVING BEEN DULY
20 SWORN TESTIFIES AS FOLLOWS:

21 MS YARBROUGH: My name is Doris Yarbrough, Y-A-R-B-R-O-U-
22 G-H.

23 THE COURT: You may proceed, ma'am.

24 DIRECT EXAMINATION OF DORIS YARBROUGH BY MS. ANDREW:

25 Q: Ms. Yarbrough, with whom are you employed?

1 A: I'm employed with the South Carolina Law Enforcement
2 Division commonly known as SLED.

3 Q: All right. And what do you do at SLED?

4 A: I'm a forensic technician in the Evidence Control
5 Department.

6 Q: And as -- how long have you been with SLED?

7 A: Almost 10 years.

8 Q: Okay. And so it's safe to say that you working with SLED
9 back in May of 2012?

10 A: Yes, I was.

11 Q: And what were your duties back in May of 2012?

12 A: To receive, package, transfer, and store evidence in our
13 secure storage area.

14 Q: Do you recall -- actually, Court's indulgence for a
15 moment.

16 I'm gonna show you what's been marked as State's Exhibit
17 Number 12 for identification purposes.

18 MS. ANDREW: may I approach, Your Honor?

19 THE COURT: Yes, ma'am.

20 BY MS. ANDREW:

21 Q: Can you tell me what this form is?

22 A: This is an electronic chain of custody.

23 Q: Okay. What does that form -- what information can you
24 get from that form?

25 A: Once evidence has been logged into our system, it's given

1 a unique lab number and it's tracked by each person that
2 handles it throughout the lab.

3 Q: Okay. And is that form kept in the ordinary course of
4 business by SLED?

5 A: Yes, it is.

6 Q: Is that copy a true and accurate representation of the
7 form itself?

8 A: Yes, it is.

9 MS. ANDREW: Your Honor, the state moves to enter Exhibit
10 Number 12 into evidence?

11 THE COURT: Any objection?

12 MR. GALMORE: No, sir.

13 THE COURT: It's into evidence without objection.

14 STAAE'S EXHIBIT NUMBER 12

15 ADMITTED INTO EVIDENCE

16 BY MS. ANDREW:

17 Q: Can you tell me if you received any evidence in this
18 case?

19 A: I did.

20 Q: Okay. Do you recall when that was?

21 A: Per the chain of custody, I received evidence on two
22 different occasions.

23 Q: Okay. Can you tell me about the first occasion?

24 A: On 6/20 of 2012, I received Items 1 and 2.

25 Q: Okay. Can you identify what Items 1 and 2 were?

1 A: Item 1 was a buccal swab described as a victim's
2 standard, buccal swab to Sharedia Shavonne Funderburke. And,
3 Item 2 is a sealed envelope containing a swab described as two
4 swabs from the victim's hands, swabs obtained from area the
5 suspect bit the victim on the hand.

6 Q: Okay. And just for clarification, can you tell me what
7 you're referring to in order to answer these questions?

8 A: I'm referring to the chain of custody.

9 Q: The form that I just showed you?

10 A: Correct.

11 Q: Okay. After -- what happened to the evidence after you
12 took it in at SLED?

13 A: Once it's logged in, it gets a unique lab number where a
14 bar coded label, which we refer to as a lab number for each
15 item. It's then in my custody. And, once I've taken custody
16 of it, I scan it to our secure evidence room and it's scanned
17 electronically to the location that it's going to and that's
18 where it remains until it's requested for analysis.

19 Q: Okay. Can you tell what happened to this evidence after
20 it was ---

21 A: It was placed on our DNA intake storage shelf, which is
22 in our secure evidence room on the day that it was received,
23 and then on 5/29 of 2013, it was requested by our forensic
24 scientist, Andrea Simmons.

25 Q: Okay. And at some point when he was requested by the

1 forensic scientist, presumably that was so they could analyze
2 it.

3 A: Yes.

4 Q: At some point, did you return that evidence back to the
5 Myrtle Beach Police Department?

6 A: I did not return it; someone else did in the same
7 department that I work. When it's returned to the Evidence
8 Control Department, it gets placed or put in a evidence return
9 storage area, which again is secure, and then when it's -- the
10 agency comes in -- when they bring in other evidence, they
11 always take evidence that's ready to go back, and it's pulled
12 by whoever is available and returned to them at that time.

13 Q: Okay. Can you tell me by looking at State's Exhibit
14 Number 12 if that evidence was returned to Myrtle Beach?

15 A: Yes, it was.

16 Q: And you said you received evidence on two separate
17 occasions?

18 A: I did.

19 Q: Can you tell us about the second occasion?

20 A: On the second occasion, I received Item Number 3 and that
21 was on March 8th of 2017, and it was received from Melinda
22 Shadoan of the Myrtle Beach Police Department.

23 Q: And can you tell what Item Number 3 was?

24 A: Item Number 3 was a buccal swab described as two DNA
25 standard buccal swabs to Tony Nevail Myers.

1 Q: And after you received that item, what did you do with
2 it?

3 A: It again was placed in storage until it was requested for
4 analysis.

5 Q: Thank you. I have no further questions. Please answer
6 Mr. Galmore's questions.

7 THE COURT: Cross examination?

8 CROSS EXAMINATION OF DORIS YARBROUGH BY MR. GALMORE:

9 Q: Ms. Yarbrough, would it be fair to say that you are the
10 person that receives evidence from the local police
11 departments into the SLED laboratory?

12 A: That is correct.

13 Q: You're like the initial intake person?

14 A: Yes, sir.

15 Q: Okay. And as that initial intake person, you are
16 responsible for giving each item of evidence a SLED Lab
17 Number?

18 A: Our electronic system does that.

19 Q: All right. But that would be done -- you would be the
20 person ---

21 A: When it's logged in.

22 Q: --- that works with the electronic system to give each
23 case a number. All right. And then from there, the evidence
24 is stored until a tech -- a, a forensic scientist needs to
25 pull the evidence for testing; is that correct?

1 A: Correct.

2 Q: Now, in this case, I understand you collected this
3 evidence, you initially received evidence on June 20th of
4 2012; is that correct?

5 A: That's correct.

6 Q: Do you need the report? I'm sorry.

7 A: I have a -- my, my copy.

8 Q: Yes, ma'am. And that evidence was initially returned
9 back to the Myrtle Beach Police Department; is that correct?

10 A: That's correct.

11 Q: Okay. And when was that initial evidence returned to the
12 Myrtle Beach Police Department?

13 A: On 11 -- November the 26th of 2013.

14 Q: And we're talking about the victim's standard and the
15 buccal swabs for Ms. Funderburke; is that correct?

16 A: Correct.

17 Q: All right. Now those items were sent back to SLED at
18 some point, the buccal swab and the victim's standard,
19 correct?

20 A: Correct.

21 Q: And when were they returned to your laboratory?

22 A: They were returned on March the 8th of 2017.

23 Q: All right. Now, when they were returned on March the
24 8th, 2017, they came with a third piece of evidence; is that
25 correct?

1 A: That's correct.

2 Q: And what was that third piece of evidence?

3 A: That third piece of evidence was the buccal swab
4 described as two DNA standard buccal swabs to Tony Nevail
5 Myers.

6 Q: Okay. So, the first two samples were sent to SLED and
7 were maintained for about five months and then returned?

8 A: Correct.

9 Q: Were those first two samples tested while they were at
10 the SLED lab?

11 A: It appears so.

12 Q: Okay. And who would have been the person responsible for
13 testing those?

14 A: The person that I gave them to was Andrea Simmons.

15 Q: All right. Now, so those two were tested in 2012 and
16 sent back to the Myrtle Beach Police Department and then in
17 2017, those two pieces are returned to SLED along with the
18 third sample?

19 A: Correct.

20 Q: And those items are then logged into the SLED laboratory
21 and you logged those in?

22 A: Yes, sir.

23 Q: Okay. Now, on that second visit, were those items tested
24 by a SLED forensic scientist?

25 A: It looks like only one of them went to the DNA Department

1 and that would have been Paul Meeh.

2 Q: Okay. And which item was that that was tested by Mr.
3 Meeh?

4 A: Item Number 3.

5 Q: Okay. And that would be the sample for Tony Myers?

6 A: Correct.

7 Q: All right. Now, while these samples were in your
8 custody, were they tampered with in any way?

9 A: No, sir.

10 Q: Okay. Thank you, Ms. Yarbrough, no further questions.

11 THE COURT: Any cross examination?

12 MS. ANDREW: Nothing from the state, Your Honor.

13 THE COURT: Do you wish this witness to be excused?

14 MS. ANDREW: Yes, Your Honor.

15 THE COURT: Any objection?

16 MR. GALMORE: No, sir.

17 THE COURT: All right, ma'am, you're released from your
18 subpoena and you may go back to your regular duties.

19 All right, Solicitor, your next witness, please?

20 MS. WALTER: Your Honor, the State calls Andrea Simmons.

21 THE COURT: Okay. Please come around to be sworn, ma'am.

22 CLERK: Please raise your right hand and place your left
23 hand on the Bible.

24 ANDREA SIMMONS, HAVING BEEN DULY

25 SWORN TESTIFIES AS FOLLOWS:

1 MS. SIMMONS: My name is Andrea Simmons, S-I-M-M-O-N-S.

2 THE COURT: Go ahead, Solicitor.

3 MS. WALTER: Thank you, Your Honor.

4 DIRECT EXAMINATION OF ANDREA SIMMONS BY MS. WALTER:

5 Q: Good afternoon, Ms. Simmons?

6 A: Good afternoon.

7 Q: By who are you employed?

8 A: I'm employed by the State Law Enforcement Division
9 commonly known as SLED.

10 Q: What is your current assignment there?

11 A: Currently, I'm a DNA analyst in the DNA Database
12 Department, but at the time of this case, I was a forensic
13 serologist in the DNA Casework Department.

14 Q: I should have asked this first. How long have you worked
15 for SLED in total?

16 A: Approximately six years.

17 Q: How long did you work as a forensic serologist?

18 A: Approximately two years.

19 Q: Can you tell us about your educational background and any
20 special training that you got to become a forensic serologist
21 and then we'll talk about what that actually means?

22 A: Sure. I majored in biological sciences at Clemson
23 University. I have a bachelor's degree and I'm currently
24 working on my master's degree at Clemson for biology as well.
25 I took two graduate level classes in DNA and serology while

1 working at SLED. I also underwent an in-house training
2 program through SLED, where I was both competency and
3 proficiency tested.

4 Q: Is it safe to say that you passed both the competency and
5 proficiency testing?

6 A: Yes.

7 Q: And do you have periodic testing to insure that you are
8 maintaining the standards that are required of you?

9 A: Yes, SLED requires proficiency testing.

10 Q: Now, let's say, what does a forensic serologist do?

11 A: A forensic serologist identifies body fluids on items of
12 evidence that are collected from local agencies across the
13 state and then submitted to SLED.

14 Q: What types of body fluids would you be able to identify?

15 A: We are able to identify things such as blood, semen, and
16 saliva.

17 Q: Specifically as it relates to saliva, how do you identify
18 whether there is saliva in something that you're examining?

19 A: There's actually a chemical test that we are able to do.
20 We take a small sample from the item, in this case it was a
21 swab, and we extract the body fluid from that swab and then we
22 place a small sample of that extract onto a card that reads a
23 lot like a pregnancy test where one line means, you know, one
24 lines means a negative result, two lines mean a positive
25 result.

1 Q: And have you testified as an expert in the area forensic
2 serology in the past?

3 A: Yes, I have.

4 Q: Approximately how many times?

5 A: Approximately five times.

6 Q: Of those five times, have any of those times that you
7 have been qualified as an expert in forensic serology been in
8 General Sessions Court?

9 A: Yes.

10 Q: How many?

11 A: Five.

12 MS. WALTER: Your Honor, at this time the state would
13 offer Ms. Simmons as an expert in forensic serology?

14 THE COURT: All right. Mr. Galtmore, do you wish to voir
15 dire the witness as to her qualifications or challenge the
16 offer?

17 MR. GALTMORE: No, sir.

18 THE COURT: All right. Very good. She is qualified to
19 give her opinion. You may proceed.

20 MS. WALTER: May I approach?

21 THE COURT: Yes, ma'am.

22 BY MS. WALTER:

23 Q: I am approaching you with State's 8 and 9. Can you tell
24 me if you recognize those items?

25 A: I do.

1 Q: What do you recognize them to be?

2 A: They are items, SLED Items 1 and 2, the buccal swabs from
3 Sharedia Funderburke, and the swab, Item 2, is the swabs from
4 the victim's hands.

5 Q: And do they both contain that SLED barcode that Ms.
6 Yarbrough was talking about?

7 A: They do.

8 Q: And the SLED lab number L12-07335?

9 A: They do.

10 Q: And as you look at them, are you able to tell that you
11 ever handled those items?

12 A: Yes, I can tell from my initials and the date from when I
13 opened and sealed the evidence.

14 Q: Now, when you first received -- first of all, when did
15 you first receive those two items?

16 A: I first received -- I don't have a chain of custody.

17 Q: Okay.

18 A: Thank you. I first received ---

19 Q: For the record, I believe that's Exhibit 12 that was just
20 given to you.

21 THE COURT: Is that correct, Ma'am? Ma'am, is that ---

22 A: 12.

23 THE COURT: Thank you.

24 A: I first received these items from Dodie Yarbrough on May
25 29th, 2013.

1 BY MS. WALTER:

2 Q: And when you say Dodie Yarbrough, that's Doris Yarbrough?

3 A: Doris, right.

4 Q: That's fine. When you receive items, you do -- what do
5 you do when you first receive them to insure the integrity of
6 the evidence?

7 A: I check to make sure that it has the SLED lab number
8 barcode on it. I also make sure that the packaging is sealed
9 up and that the appropriate labels and initials have been put
10 on it.

11 Q: If any of those things were missing, say the plastic was
12 open, what would you do?

13 A: I would take it back to Evidence Control.

14 Q: So, you wouldn't perform any further tests on it at that
15 point?

16 A: No.

17 Q: When you received Items 1 and 2, which are State's 8 and
18 9, did you do that check to insure the integrity of the
19 evidence?

20 A: Yes, I did.

21 Q: Everything was in order?

22 A: Yes.

23 Q: What did you do next?

24 A: I would've then opened the packaging and taken cuttings
25 from each of the -- well, I first would have taken Item 2,

1 which were the swabs from the victim's hand, and tested that.

2 We always test the evidence separately from the standards.

3 Q: And why is that?

4 A: To prevent cross contamination.

5 Q: Okay. So, what did you do with Item 2, which were the
6 swabs from the victim's hand?

7 A: I took a small cutting from them, like I said earlier,
8 and extracted the body fluid and ran it on our card test.

9 Q: And based on that, were you able to draw any conclusions?

10 A: Yes, saliva was indicated on Item 2.

11 Q: And that was the swab from the victim's hand?

12 A: Yes.

13 MS. WALTER: May I approach, Your Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. WALTER:

16 Q: I am handing you State's Exhibit 13.

17 A: Yes.

18 Q: Do you recognize that?

19 A: Yes, this appears to be a copy of my report.

20 Q: And does that report contain the conclusions that you
21 were able to draw in this case?

22 A: It does.

23 Q: And it's a fair and accurate copy of the original?

24 A: Yes.

25 MS. WALTER: Your Honor, I would ask that that exhibit be

1 admitted into evidence.

2 THE COURT: Any objection?

3 MR. GALMORE: No, sir.

4 THE COURT: It's into evidence without objection. You
5 may proceed.

6 MS. WALTER: Thank you.

7 STATE'S EXHIBIT NUMBER 13

8 ADMITTED INTO EVIDENCE

9 BY MS. WALTER:

10 Q: After you were able to identify the presence of saliva in
11 the swabs from the victim's hand, what did you do with that
12 evidence?

13 A: I then cut a small piece from that swab and put it in a
14 tube and labeled it, and sent it to Paul Meeh.

15 Q: What, if anything, did you do with Item 1, which was the
16 victim's standards?

17 A: Item 1, I would've cut separately and also put in a tube
18 and sent it to Paul Meeh as well.

19 Q: Now, you say that you cut them separately, do you, at any
20 time, have Item 1 and Item 2 open on your workspace at the
21 same time?

22 A: No, I do not.

23 Q: So, you dealt with Item 2 first and got the -- the
24 presumptive test for saliva, correct?

25 A: That's correct.

1 Q: After you did that and you got the cutting that you
2 forwarded it to Mr. Meeh, what did you do with the actual --
3 the rest of Item 2?

4 A: I then sealed it up into the heat-sealed pouch and I put
5 my initials and the date on the heat-sealed pouch so that it
6 could be sent to the next analyst.

7 Q: Okay. And after sealing Item Number 2, you turned to
8 Item Number 1 which was the victim's standards?

9 A: That's correct.

10 Q: And after you did the cutting from Item Number 1, did you
11 follow that same procedure of sealing it and initialing it?

12 A: I did.

13 Q: And would anyone have had any access to these items while
14 they were in your custody and you were performing your tests?

15 A: No, this lab is a secured location.

16 MS. WALTER: No further questions at this time, Your
17 Honor.

18 THE COURT: Cross examination?

19 CROSS EXAMINATION OF ANDREA SIMMONS BY MR. GALMORE:

20 Q: Ms. Simmons, you received items, I think we're calling
21 them -- you received State's Exhibits 9 and 8 as part of your
22 duties working for SLED, that's correct?

23 A: That's correct.

24 Q: Okay. And then you were able to test first the, the, the
25 standard from the hand, and then secondly the known standard

1 from Ms. Funderburke?

2 A: Yes, I tested the swabs from the hand and ---

3 Q: Okay.

4 A: --- I sent the buccal swabs, cuttings from the buccal
5 swabs, for DNA analysis.

6 Q: Okay. So, your job was to determine that there was
7 saliva in the sample.---

8 A: That's correct.

9 Q: --- and then send it off for further testing?

10 A: Yes.

11 Q: You did not identify who that saliva might've belonged
12 to?

13 A: No, I didn't.

14 Q: All right. No further questions.

15 THE COURT: Anything on that, ma'am?

16 MS. WALTER: No, Your Honor.

17 THE COURT: All right. You wish the witness to be
18 excused?

19 MS. WALTER: Yes, please, Your Honor.

20 THE COURT: Any objection?

21 MR. GALMORE: No, sir.

22 THE COURT: All right, ma'am, you are released from your
23 subpoena, you may go back to your regular duties.

24 MS. WALTER: The state next calls Paul Meeh.

25 THE COURT: All right. Please come around to be sworn,

1 sir.

2 CLERK: Please raise your right hand and place your left
3 hand on the Bible.

4 PAUL MEEH HAVING BEEN DULY SWORN

5 TESTIFIES AS FOLLOWS:

6 CLERK: State your full name, please.

7 MR. MEEH: My name is Paul Meeh, and that's M-E-E-H.

8 THE COURT: Go ahead, ma'am.

9 MS. WALTER: Thank you, Your Honor.

10 DIRECT EXAMINATION OF PAUL MEEH BY MS. WALTER:

11 Q: Good afternoon, Mr. Meeh?

12 A: Good afternoon.

13 Q: Is it Mr. Meeh, is that appropriate for you?

14 A: That's fine.

15 Q: Where do you work?

16 A: I also work at SLED, which is the South Carolina Law
17 Enforcement Division.

18 Q: What is your position there?

19 A: I'm a DNA scientist and I'm a forensic scientist in the
20 DNA Department.

21 Q: How long have you been with SLED total?

22 A: Ten years now.

23 Q: How long have you worked as a forensic DNA analyst?

24 A: Well, the in-house training is a year and a half. So,
25 8.5 years, approximately.

1 Q: And during that time, how many samples would you say
2 you've tested?

3 A: Thousands.

4 Q: Have you -- can you tell us what type of education and
5 training you received to become a forensic DNA analyst?

6 A: Yes, I got my bachelor's degree in 2001 from the
7 University of South Carolina, that was in biology, and I got
8 my master's degree in 2003, that was in biomedical science,
9 but it was more like a molecular biology background. Then I
10 was -- actually I was doing three years of PhD work and I was
11 about to graduate PhD but got hired away by SLED, so I did not
12 complete that. And then I did a year and a half, like I said,
13 of in-house training at SLED under another analyst, another
14 DNA scientist until I was myself a scientist.

15 Q: And you heard Ms. Simmons testify, you do also undergo
16 proficiency testing?

17 A: Yes, we do twice-a-year proficiency testing, and then I
18 had to have competency testing to get to the other point, the
19 forensic scientist stage.

20 Q: Have you always passed your competency and proficiency
21 exams?

22 A: Always, yes.

23 Q: Have you testified before as an expert in the area of
24 forensic DNA analysis?

25 A: Yes, many times.

1 Q: Can you approximate?

2 A: About 35 times, probably.

3 Q: Of those 35 times, have any of them been in General
4 Sessions Court?

5 A: Yes, all except for two.

6 MS. WALTER: Your Honor, at this time, I would ask that
7 Mr. Meeh be recognized as an expert in the area of forensic
8 DNA analysis?

9 THE COURT: Do you wish to voir dire the witness or
10 challenge his qualifications?

11 MR. GALMORE: No, sir.

12 THE COURT: All right. He is qualified to give his
13 opinion. You may proceed.

14 MS. WALTER: Thank you, Your Honor.

15 BY MS. WALTER:

16 Q: Let's get to the nitty gritty now. As a forensic DNA
17 analyst, what is it that you do?

18 A: Well, I generate DNA profiles, which are like
19 fingerprints. Each person has an individual DNA profile,
20 except for identical twins. They are the only two people that
21 would have close to the same DNA. So, what we do is we test
22 small portions of that and it generates a profile that are
23 numbers, and we put those into a chart and we see if someone
24 matches or doesn't match, if they can be include or excluded
25 from that profile.

1 Q: I'm just gonna ask you to slow down just a smidge for Ms.
2 Dixie.

3 A: Uh-huh, (affirmative response).

4 Q: And so you said that you input the numbers into the chart
5 and then how would -- how do you make the comparison, you just
6 compare the charts from a known standard example?

7 A: Correct. So, all we're measuring is the length of a
8 little segment, it's called a short tandem repeat and when
9 those links match or they don't match, and so someone can be
10 included into a profile or excluded from the profile based on
11 those lengths.

12 Q: And this may seem self-evident, but if they're included,
13 that means that they are the potential DNA contributor?

14 A: Correct. So, that's the second part of my job. Not only
15 do I have to say if someone could have contributed to an item,
16 I have to say how sure we are that they could've contributed
17 to that item. And so that's the two parts, correct.

18 Q: And then the converse, if someone is excluded, that's
19 your way of saying they could not have been a contributor to
20 this sample?

21 A: Correct.

22 Q: Did you -- Your Honor, I'm approaching with 8, 9, 10, and
23 12.

24 THE COURT: All right, ma'am.

25 Q: Directing your attention to this matter, SLED Lab Number

1 L12-07335, did you receive items of evidence and cuttings from
2 Ms. Simmons in this case?

3 A: I did.

4 Q: So, can you tell us when you first received evidence and
5 what that was?

6 A: On 6/3/13 I received Item 1, which was the victim's
7 standard in this case. And then let me see if that was the
8 same day. Yes, on 6/3/13, I also received Item 2, which was a
9 swab from a hand, the victim's hand, and then I had also
10 received something later, but I don't know if you want me to
11 ---

12 Q: We'll get to that in just a minute. So, that was on
13 6/3/13. So, when you receive items of evidence, what kind of
14 checking do you do prior to actually performing any sort of
15 analysis?

16 A: Well, the first thing I do is make sure that the pouch is
17 sealed, because it's not in my best interest to test anything
18 that, that could've been gotten into by someone. So, I make
19 sure that it's sealed, signed, dated, and in this case it was.

20 Q: So, you didn't notice any irregularities with either Item
21 1 or Item 2?

22 A: No, I wouldn't have proceeded with testing if I had.

23 Q: And then what do you do to proceed with your testing?

24 A: Well, in this case, I just take the items that Ann had
25 forwarded to me and I isolate the DNA, which is just breaking

1 up the cells and then I amplify the DNA, which is just make a
2 bunch of copies of it, and then we have instrumentation to
3 where we measure those little bits of DNA that I was talking
4 about, and I generate those profiles, which get put into a
5 chart for later comparison, and then I seal up the evidence
6 and send it back to our Evidence Control.

7 Q: And are you able to tell from looking at Item 1 and Item
8 2, which is State's 8 and 9, after that initial analysis, did
9 you ever handle those two items again?

10 A: I did not. I never received these items back. I
11 wouldn't be able to tell if I had received them from this,
12 because the only time I do anything with it is when I open it
13 and close it, but from the chain of custody, I never received
14 these items back.

15 Q: So, you never received them again after you returned
16 them, and you never opened them because -- and how are you
17 telling us that you know you never opened them?

18 A: Because I can see the packaging. My initials are in
19 green there and the date, and that's the only time that I
20 opened it was on 9/25/13.

21 Q: And had you opened it again or if anyone else from your
22 section opened it, it would be marked on there somehow?

23 A: Correct.

24 Q: And I'm sorry, after you processed those two samples, you
25 returned those items to the secured location?

1 A: Correct.

2 MS. WALTER: If I may approach, Your Honor?

3 THE COURT: Yes, ma'am.

4 BY MS. WALTER:

5 Q: I'm showing you State's Exhibit 14. Do you recognize
6 State's Exhibit 14?

7 A: Yes, I do. It's a copy of my initial report in this
8 case.

9 Q: And is it a fair and accurate copy of your original
10 report?

11 A: Yes, it is.

12 MS. WALTER: Your Honor, I would ask that this exhibit be
13 admitted?

14 THE COURT: Any objection?

15 MR. GALMORE: No, sir, no objection.

16 THE COURT: All right. State's 14 is into -- in evidence
17 without objection.

18 STATE'S EXHIBIT NUMBER 14

19 ADMITTED INTO EVIDENCE

20 BY MS. WALTER:

21 Q: And you have a copy of your report?

22 A: I do. Yes, I do.

23 Q: Can you tell us what you were able -- what conclusions
24 you were able to draw in this initial testing?

25 A: Yeah, I got a result from Item 2, which it was a DNA

1 profile, but it was a mixture of at least three individuals.
2 I'll read that result now and then explain it. The DNA
3 profile developed from Item 2 is a mixture of at least three
4 individuals. The DNA profile with the major contributor to
5 this mixture is from an unidentified individual and has been
6 entered into the State DNA Index System. DNA attributable to
7 the victim is also present in this mixture. The partial DNA
8 profile of the second minor contributor to this mixture is
9 insufficient for reliable interpretation. So, what that means
10 is that we've had some -- we have a mixture of DNA from three
11 different individuals, but I can tell that one person has
12 donated more DNA than the other people, and I'm able to tell
13 at that point that it's not the victim because I have the
14 victim's standard to compare it to then. And so, I have to
15 pick out those major contributor alleles right then, I, you
16 know, you can't do it later at some other date, and then I put
17 then into a database.

18 Q: And you just used a word, alleles, what do you mean when
19 you say alleles?

20 A: Alleles are those measurements that I'm making. The
21 length of those little DNA portions called short tandem
22 repeats are the alleles. So, you get half from your mother
23 and half from your father. So, sometime you can have an 11
24 and a 12. Let's say if you got an 11 from your mother and a
25 12 from your father, or you could have an 11 individually if

1 you got an 11 from your mother and 11 from your father.

2 Q: Okay. Now, you told us that there was a partial DNA
3 profile, the second minor contributor. What does it -- and
4 that was insufficient for reliable interpretation; what does
5 that mean?

6 A: That means there's just not enough DNA there for me to
7 tell what -- who the second contributor was gonna be. So, I
8 wouldn't be able to calculate a statistic. So, as I said
9 before, the second part of my job is to say how sure I am that
10 somebody could've contributed to this mixture or that somebody
11 is the major contributor to this mixture.

12 Q: So, do you have to have a certain amount or certain level
13 of DNA, and I may not have used the right words, before you
14 can make those one of those inclusion and exclusions?

15 A: That's right; you do.

16 Q: Did you at a later date receive State's Exhibit 10?

17 A: Yes, I did. On 3/9/17, I received item 3, State's
18 Exhibit 10, which is the buccal swab from Tony Nevail Myers.

19 Q: And now actually let me back up for a minute. Between --
20 between September when you -- I think was the date when you
21 sealed Items 1 and 2, and then receiving Item Number 3, which
22 is the defendant's standards on March 9th of 2017, were you
23 able to generate any investigative leads based on your initial
24 analysis of Items 1 and 2?

25 A: Yeah, it appears we did get an investigative lead. The

1 major contributor matched a person in our State DNA Index
2 System and we get notified that, you know, you're gonna need a
3 standard, and it goes up to the agency, too. I guess in this
4 case, Myrtle Beach Police Department would be notified that we
5 need a standard to compare to that major contributor in that
6 DNA mixture.

7 Q: So, you forwarded that information to Myrtle Beach Police
8 Department?

9 A: I did not personally, it would be a different department,
10 but I was also notified.

11 Q: And so then at a later date, March 9th of 2017, you
12 received the defendant's DNA standard?

13 A: Correct.

14 Q: What process -- what process did you go through when you
15 received that?

16 A: So, we already had the mixture that we generated before;
17 we don't have to retest any of that. We just need to compare
18 this person to that mixture. And so I isolate DNA from that,
19 amplify it and make those same measurements, and then compare
20 it retroactively to that DNA profile. So, the results sound
21 sort of the same, but it'll have -- now we say how sure we are
22 that this person could've contributed. So, the DNA profile
23 developed from Item 2, that was the swab from the hand, is a
24 mixture of at least three individuals. The partial DNA
25 profile of the major contributor to this mixture matches the

1 DNA profile of Tony Myers. The probability of randomly
2 selecting an unrelated individual having a DNA profile
3 matching the major contributor to this item is approximately 1
4 in 330 billion. DNA attributable to the victim is also
5 present in this mixture. The partial DNA profile of the
6 second minor contributor to this mixture is insufficient for
7 reliable interpretation.

8 Q: And on your report, which I'll show you a copy of in a
9 minute, you bolded sort of what was different in your two
10 results?

11 A: Correct. So, we just bold the supplemental -- that
12 statistical statement I just made is bolded on the second
13 report.

14 MS. WALTER: May I approach, Your Honor?

15 THE COURT: Yes, ma'am.

16 BY MS. WALTER:

17 Q: I'm showing you what's been marked as State's Exhibit 15.
18 If you can just look at that and tell me if that's a fair and
19 accurate copy of your report?

20 A: Yes, it is.

21 MS. WALTER: Your Honor, I'd ask that that exhibit be
22 admitted into evidence.

23 THE COURT: Any objection?

24 MR. GALMORE: No, sir.

25 THE COURT: It's in evidence without objection.

1 STATE'S EXHIBIT NUMBER 15

2 ADMITTED INTO EVIDENCE

3 THE COURT: You may proceed.

4 BY MS. WALTER:

5 Q: And you have a copy of this report?

6 A: Yes, I do.

7 Q: So, when you say to us that the DNA profile of the major
8 contributor matches the DNA profile of the defendant, Tony
9 Myers, what does that 1 in 330 billion mean?

10 A: That's a conservative measure of how confident -- how far
11 you'd have to go to test random people to find another person
12 that matched that, the major contributor. So, you'd have to
13 test 330 billion more samples before you'd expect to randomly
14 come across another person and that's a large number. So,
15 that's almost an identity; it's a very strong statistical
16 match.

17 Q: When you were performing your analysis of Item Number 3,
18 did you ever have Item Number 1 and Item Number 2?

19 A: No, I never received Item Number 1 and 2 back.

20 Q: And do you do anything to protect against cross
21 contamination? That may be what we were just speaking of.

22 A: Yeah, of course, I mean we take all measures we can. And
23 in this example in this case, it -- the items that I had
24 initially, it wouldn't -- I still would've protected against
25 it, but because we called it a -- oh, goodness gracious -- an

1 intimate sample because it was taken from her hand. So,
2 anything we would've -- we would have had a chain of custody
3 of that swab all the way from the victim's body to me. So, I
4 would expect to find her DNA on there. So, having her
5 standard and Item Number 2 together, the swab from the hand,
6 wouldn't have mattered in this case. But, I did, you know,
7 keep them from mixing of course.

8 Q: And then Item Number 1 and Number 2 were never present in
9 your work area with Item Number 3?

10 A: Correct, it would be completely impossible to contaminate
11 in this case from Item Number 3 because they weren't even open
12 at the same time or even in the laboratory really at the same
13 time.

14 MS. WALTER: I have nothing further at this time, Your
15 Honor.

16 THE COURT: Cross examination?

17 CROSS EXAMINATION OF PAUL MEEH BY MR. GALMORE:

18 Q: Agent Meeh, let me see if I understand this. You tested
19 Items 1 and 2, which would be the buccal swab from Ms.
20 Funderburke and the swab of the -- of Ms. Funderburke's hand,
21 those were tested December 19th of 2013; is that correct?

22 A: That's when the report was generated, yes, sir.

23 Q: All right. That's when the report was generated. Okay.
24 And thereafter, those items were sent back to the Myrtle Beach
25 Police Department?

1 A: Yes, sir.

2 Q: Now, 2017 this sample from Tony Myers was sent to SLED?

3 A: Yes, sir.

4 Q: First things first. Did you attempt to retest the Items
5 1 and 2 that were tested back in 2013?

6 A: No, sir; no retesting.

7 Q: No. All right. I'm not an expert on DNA. Do these
8 items decay over time?

9 A: If they're not stored properly, DNA degrade, yes.

10 Q: Do you have any information regarding the storage
11 procedures at the Myrtle Beach Police Department?

12 A: No, I don't.

13 Q: Would it be possible for you to test Items Number 1 and 2
14 at this point?

15 A: Our lab has a policy against retesting. I, I believe
16 that we could. I don't see any reason as just from a
17 scientific standpoint, you could -- it could be cut again and
18 retested. I'm not -- but, the profile I generated initially
19 wouldn't change. You'd still have to compare any further
20 comparisons to that initial profile and to the second one.

21 Q: All right. Now, when you made the first round of tests
22 back in 2013, on the hand sample, I think your statement was
23 the profile developed from Item 2 was a mixture of at least
24 three individuals; is that correct?

25 A: Yes, sir.

1 Q: And one person in that was Ms. Funderburke?

2 A: Yes.

3 Q: Okay. And then in 2017, you determined that the second
4 person in that three-person mixture is Tony Myers?

5 A: That is somewhat accurate. Initially, I found a major
6 contributor to the three-person mixture that was -- I expected
7 Ms. Funderburke to be there because, like I said, it's an
8 intimate sample. So, whenever I identified the major
9 contributor, I had to put that into -- I didn't know to whom
10 that belonged. It was obviously a different person, but I had
11 no way of telling to whom that belonged and I couldn't compare
12 it because I didn't have any other standards.

13 Q: Well, let me ask you about Ms. Funderburke's sample for
14 example. Could you tell us if the Item Number 2 that was
15 tested, the swab from the victim's hand, could you tell us --
16 you could tell us that part of that was Ms. Funderburke's DNA,
17 correct?

18 A: Correct.

19 Q: Could you tell us if that DNA came from blood, saliva, or
20 semen?

21 A: No, I could not.

22 Q: Okay. Now, regarding the testing of the Mr. Myers'
23 sample -- well, let me go back to sample Number 2, the sample
24 on the victim's hand, you say you have a major contributor ---

25 A: Yes.

1 Q: Can you tell us if that major contributor was from blood,
2 saliva, or semen?

3 A: No, I cannot.

4 Q: All right. Now, you also have a third person, a second
5 contributor. Could you tell us if that person's contribution
6 came from blood, saliva, or semen?

7 A: No, I cannot.

8 Q: Now, you indicated that the partial DNA profile for the
9 second minor contributor is insufficient for reliable
10 interpretation?

11 A: Correct.

12 Q: What does that mean?

13 A: There just wasn't enough DNA from that contributor to
14 tell. I could never compare it; no matter how long I tried or
15 if I wanted to, I couldn't compare it.

16 Q: How much DNA do you need to make a comparison?

17 A: Well, it depends. In this example, we had enough to
18 generate a major contributor, so, I was able to compare there.
19 Obviously, Ms. Funderburke had donated enough just from the
20 swabbing her skin to give enough. It's a -- it's a sensitive
21 test. It's a very sensitive test. So, maybe a hundred cells,
22 200, 300 cells is enough to generate a DNA profile that you
23 could compare, very few.

24 Q: How many DNA cells did you have on this second minor
25 contributor?

1 A: That would be very few. I wouldn't be able to estimate
2 because whenever we quantify our DNA, we -- it doesn't
3 separate it into different people. That's the entire point of
4 generating the DNA profile. Because it's gonna be a mixture
5 of people. So, I can't tell how many cells worth of DNA I got
6 just from individual contributors.

7 Q: So, you can't tell us how much you need to make an
8 interpretation and you can't tell us how much you actually
9 had?

10 A: No, that's incorrect.

11 Q: Okay.

12 A: To make an interpretation, I gave you a minimum bound,
13 which was approximately a hundred cells, I would say it would
14 be interpretable. Now, as far as the number of cells from
15 each individual contributor in this case, that's impossible to
16 determine because I could estimate it based on the heights of
17 the peaks in the -- in the electropherogram, but I could never
18 give an exact number of cells worth of DNA that were given by
19 each person.

20 Q: So, when you went back for your second round of testing
21 in 2017, you still were not able to tell us who that second
22 contributor is; is that correct?

23 A: There was no further testing. Once I generated the chart
24 with the mixture profile, it doesn't get retested again. That
25 -- that third contributor would never be able to be compared

1 regardless of what standards I got.

2 Q: So, right now today, can you pull those samples from the
3 Myrtle Beach Police Department and tell us who that third
4 person is?

5 A: No.

6 Q: Thank you, sir, no further questions.

7 THE COURT: Redirect?

8 MS. WALTER: Just very briefly.

9 REDIRECT EXAMINATION OF PAUL MEEH BY MS. WALTER:

10 Q: Counsel asked you if you ever retested Items Number 1 and
11 2. Would there be any reason to retest items that you had
12 already tested?

13 A: No, not in this case. We generated a perfectly good
14 profile for comparison. We tested it and sent it off and got
15 a good result. I can't imagine a reason to retest it.

16 Q: And I think you actually corrected him, he said when you
17 did your second round of testing, but you did one round of
18 testing on each item, correct?

19 A: Correct.

20 Q: It was just at two separate times?

21 A: That's correct.

22 Q: And then counsel was asking whether you could tell
23 whether the DNA was from blood, saliva, or semen. Does your
24 DNA differ depending on where the cells come from?

25 A: No, it doesn't. It's the same throughout your body.

1 Like I said, it's in every cell in your body, except for red
2 blood cells. And for an example in this case, if Ms.
3 Funderburke, you were able to get -- I was able to generate a
4 good enough profile to see that she was there just from the
5 swab touching her hand. I mean, imagine how few cells I just
6 donated to that tissue there, which I'll take because that's
7 not a good, but you can imagine that, I'm not donating many
8 cells to that. And she wasn't even the major contributor in
9 this example; the major contributor was -- has to donate many,
10 many more cells than she did. So, I'm not sure -- I can't
11 give you a number, I can give you ratios. I can tell you that
12 someone donated more than her and she -- the swab came
13 directly from her body if that makes sense. Scientifically,
14 it's just -- it makes sense intuitively, I'm just not sure how
15 to express it scientifically I guess.

16 Q: I think you've done fine. Thank you.

17 I have no further questions at this time, Your Honor.

18 THE COURT: Anything on those questions, Mr. Galmore?

19 MR. GALMORE: No, sir, I think I've made my point.

20 THE COURT: All right. Very good.

21 Do you wish the witness to be excused, Solicitor?

22 MS. WALTER: Yes, please, Your Honor.

23 THE COURT: Any objection?

24 MR. GALMORE: No, sir. All right, sir, you're released
25 from your subpoena, you may go back to your regular duties.

1 Thank you.

2 MR. MEEH: Thank you, Your Honor.

3 THE COURT: Make sure you've got all the exhibits.

4 All right. Solicitor, who would your next witness be?

5 MS. ANDREW: Your Honor, the state calls Lynn Grayden-
6 Labiak.

7 THE COURT: Please come around, ma'am, to be sworn.

8 CLERK: Please raise your right hand and place your left
9 hand on the Bible.

10 LYNN GRAYDEN-LABIAK, HAVING BEEN
11 SWORN TESTIFIES AS FOLLOWS:

12 MS. GRAYDEN-LABIAK: Lynn Grayden Labiak; Lynn, L-Y-N-N,
13 Grayden, G-R-A-Y-D-E-N- Labiak, L-A-B-I-A-K.

14 THE COURT: Go ahead, Solicitor.

15 DIRECT EXAMINATION OF LYNN GRAYDEN-LABIAK BY MS. ANDREW:

16 Q: Officer Grayden-Labiak?

17 A: I'm not an officer, but Lynn is fine.

18 Q: Lynn, okay; thank you. Lynn, can you tell me where
19 you're employed?

20 A: I'm employed with the City of Myrtle Beach Police
21 Department.

22 Q: Okay. And what do you currently do there?

23 A: My title is property and evidence technician.

24 Q: And how long have you been employed with the City of
25 Myrtle Beach?

1 A: Coming up on six years.

2 Q: Have -- have you always been the property and evidence
3 technician?

4 A: Yes.

5 Q: Okay. So, you were the property and evidence technician
6 back in 2012?

7 A: Correct..

8 Q: Okay. And can you tell me what your duties are as the
9 property and evidence technician?

10 A: Certainly. I'm essentially the intake person. All --
11 all property and evidence that is brought to the police
12 department comes to the evidence room. I take it in along
13 with -- there's three other of us; there's a total of four of
14 us. We take it in, we process it, we give it a home, a
15 storage. We make sure it's stored properly, and it will
16 remain in our room until it needs to be signed out by others
17 for various reasons, for court or, or SLED, but that -- that's
18 what I do. I give it a home. I give it a label. That is a
19 designated storage area in our room.

20 Q: And did you have occasion to intake evidence in this
21 case?

22 A: Yes, ma'am.

23 Q: Okay. Do you recall what that was?

24 A: May I refer to my notes?

25 Q: Yes, just refer to your notes and then just turn it back

1 over?

2 A: I took in, let me see, I believe five pieces. I took in
3 five pieces of evidence related to this case.

4 Q: Okay. Was one of those pieces of evidence the swab from
5 the victim's hand?

6 A: Correct.

7 Q: Okay. Was another piece of that evidence the victim's
8 buccal swab?

9 A: Buccal swab, correct.

10 Q: Okay. And I think you were present when Officer Humes
11 testified earlier that he placed those items into a secured
12 storage ---

13 A: Correct.

14 Q: --- locker in evidence.

15 A: Uh-huh, (affirmative response).

16 Q: Okay. So, after he locked those items in that evidence
17 locker, what did you do after that?

18 A: What our normal process is, if -- if we are not available
19 and they are not physically handed, the evidence isn't
20 physically handed to us, they are secured in secure lockers.
21 We in turn take the one set of keys in the entire department
22 and we will go around to the all the evidence lockers and open
23 the lockers, take the evidence into our possession and process
24 it in our room.

25 Q: Okay. So, you took it out and logged it into the

1 property and evidence section?

2 A: Correct.

3 Q: Okay. After you did that, did you take that evidence --
4 then take that evidence anywhere else?

5 A: Yes.

6 Q: Okay. Where did you take it?

7 A: Those two pieces that you're discussing, I transported to
8 SLED.

9 Q: Okay. Do you recall who you gave them to at SLED?

10 A: Doris Yarbrough.

11 Q: Okay. Who you saw testify earlier?

12 A: Correct.

13 Q: Okay. After that, did you have any further involvement
14 with the evidence in this case?

15 A: No.

16 Q: I have no further questions. Please answer any questions.
17 Mr. Galmore has for you.

18 THE COURT: Cross examination?

19 CROSS EXAMINATION OF LYNN GRAYDEN-LABIAK BY MR. GALMORE:

20 Q: Yes, ma'am, Ms. Grayden-Labiak. You did not collect any
21 of these swabs or samples, did you?

22 A: Correct.

23 Q: Okay. You're not a crime scene technician?

24 A: No, I am not.

25 Q: All right. When you received these samples in the

1 property and evidence locker, you do not tamper with them in
2 any way?

3 A: Correct.

4 Q: So, those are the samples that you received as you
5 received them?

6 A: Correct.

7 Q: All right. So, if you receive a sample that as it turns
8 out, has a mixture of three persons' DNA in it, you had no
9 part in taking that sample?

10 A: I would have no idea about that, correct.

11 Q: All right. Are these lockers refrigerated, because this
12 is like blood and semen and stuff?

13 A: We have lockers that are refrigerated and we have lockers
14 that are not.

15 Q: Okay. Was this evidence stored in a refrigerated locker
16 or a regular locker?

17 A: I -- it's been quite a while. I do not remember, but I
18 would assume no, there would be no need to. It's a climate
19 controlled environment.

20 Q: Okay. Okay. No further questions, ma'am; thank you.

21 THE COURT: Anything further?

22 MS. ANDREW: Nothing from the state.

23 THE COURT: All right. Do you wish the witness to be
24 excused?

25 MS. ANDREW: Yes, Your Honor.

1 THE COURT: Any objection?

2 MR. GALMORE: No, sir.

3 THE COURT: All right, ma'am. You're released from your
4 subpoena, you may go back to your regular duties.

5 MS. GRAYDEN-LABIAK: Thank you, sir.

6 THE COURT: All right.

7 Next witness?

8 MS. ANDREW: Your Honor, the state calls Malinda Shadoan.

9 THE COURT: All right. Please come around and be sworn,
10 ma'am.

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

13 MALINDA SUE SHADOAN, HAVING BEEN
14 SWORN TESTIFIES AS FOLLOWS:

15 MS. SHADOAN: Malinda Sue Shadoan; M-A-L-I-N-D-A, last
16 name, S, as in Sam, H-A-D, as in David, O-A-N as in Nancy.

17 THE COURT: Go ahead.

18 DIRECT EXAMINATION OF MALINDA SUE SHADOAN BY MS. ANDREW:

19 Q: Ms. Shadoan, where are you employed?

20 A: The City of Myrtle Beach Police Department.

21 Q: How long have you been employed there?

22 A: It'll be 10 years in July.

23 Q: Okay. What do you do there?

24 A: I'm another property and evidence technician.

25 Q: Were you a property and evidence technician back in 2012?

1 A: I was.

2 Q: Okay. Did you have occasion to become involved in this
3 case?

4 A: Yes.

5 Q: Okay. And just for clarification, your duties are
6 essentially the same as Lynn's duties, to intake evidence?

7 A: Correct.

8 Q: Okay. So, what did you do in this case?

9 A: I had taken in two pieces of evidence and I took three
10 pieces to SLED the second time that they had gone.

11 Q: Okay. So, when you say you took in two pieces of
12 evidence, what two pieces are you referring to?

13 A: Can I refer to my notes?

14 Q: Yes.

15 A: Thank you. One was the Miranda Rights form and the other
16 one was a DNA buccal swab for Tony Nevail Myers.

17 Q: Okay. Do you recall when you took those two items into
18 evidence?

19 A: I can look. The Miranda Rights form was taken in on
20 January 19th of 2016 at 10:30 in the morning, and the DNA
21 buccal swab for Tony Nevail Myers was taken in by me on
22 February 20th of 2017 at 14:32 hours.

23 Q: Okay. And what other two items of evidence did you take
24 in or did you receive possession of?

25 A: Those were the only two, but I had custody of those being

1 within the office, all seven pieces that were in this case.

2 Q: Okay. And what did you do with those two items of
3 evidence; did you take them anywhere?

4 A: I took one to SLED.

5 Q: Okay.

6 A: With the other two that initially went prior.

7 Q: Okay. When you say you took one to SLED, was that the
8 defendant's buccal swab, the suspect in this case?

9 A: It was, that's the one that came in at a later date,
10 years later and then I took all three pieces back to SLED.

11 Q: Okay. When you say all three pieces, do you mean the
12 swab from the victim's hand and the victim's buccal swab?

13 A: Yes.

14 Q: Okay. And how did the Myrtle Beach Police Department --
15 the last testimony we heard was that these items were taken to
16 SLED. Did someone go and pick those items back up from SLED
17 and take them back to the Myrtle Beach Police Department?

18 A: Yes, that was me.

19 Q: Okay. So, do you recall when you did that?

20 A: I can look. The victim's standard and the victim's hand
21 swab both came back on November 26th, 2013 at 12:59 in the
22 afternoon.

23 Q: Okay. So, did you personally pick those items up from
24 SLED and drive them back to the Myrtle Beach Police
25 Department?

1 A: I did.

2 Q: When you arrived at Myrtle Beach Police Department, what
3 did you do with those items?

4 A: I housed them back in the location that we first put it
5 inside. It would just be a unique number and unique bin
6 number that we would assign it to, so that's exactly where it
7 went back to.

8 Q: Okay. So, those items had been sent to SLED for
9 preliminary testing and, after that, you got a buccal swab
10 from the defendant?

11 A: Correct.

12 Q: And then you took all three items back to SLED at some
13 point?

14 A: Yes.

15 Q: Can you tell me when you did that?

16 A: That went -- all three pieces went on March 8th, 2017 at
17 11:56 in the morning.

18 Q: Okay. Did you have any further involvement with this
19 case?

20 A: I just brought them back on April 6th of 2017.

21 Q: No further questions for this witness.

22 A: Thank you.

23 THE COURT: Cross examination?

24 CROSS EXAMINATION OF MALINDA SUE SHADOAN BY MR. GALMORE:

25 Q: Yes, ma'am, so, if I understand correctly, you did not

1 collect any of the DNA samples directly from the individuals?

2 A: No, that wouldn't be in my job description.

3 Q: Right, you're not a crime scene technician?

4 A: No, sir.

5 Q: You're the property and evidence custodian?

6 A: Correct.

7 Q: Sort of like on T.V., you're the person that stands

8 behind the cage?

9 A: Pretty much. We're the guardian over all of the property

10 and evidence that comes in.

11 Q: Okay. So, as far as this hand sample, that was some

12 other officer that actually swabbed the hand?

13 A: Correct.

14 Q: And then that officer turns it in to you ---

15 A: Yes.

16 Q: --- in property and evidence?

17 A: Correct.

18 Q: Okay. And as far as the sample regarding Ms.

19 Funderburke, someone -- some other officer swabs her cheek; is

20 that correct?

21 A: Well, that's part of their protocol as far as I'm aware,

22 yes.

23 Q: Right, but that's not you?

24 A: Not me at all.

25 Q: You're the person that receives that Q-tip and holds it

1 in evidence until it can be sent for testing?

2 A: Behind the cage, yes.

3 Q: Okay. Yes. And same for Mr. Myers' sample, you did not
4 take Mr. Myers' sample?

5 A: No.

6 Q: Okay. You received it from the officer that did take his
7 sample?

8 A: I did.

9 Q: And you've maintained it in evidence until it was sent
10 for further testing?

11 A: Right, and I was the one that took it there.

12 Q: Okay. You -- you were the person that took it?

13 A: Yes.

14 Q: When you had these samples of evidence in your custody,
15 did you tamper with them in any way?

16 A: Absolutely not.

17 Q: Okay. I don't suppose you would have. So, now you took
18 these three samples to SLED back in 2017?

19 A: Yes.

20 Q: Okay. And you're not responsible for any testing that
21 SLED does or doesn't do once it's up there, right?

22 A: No, I leave and go back to my local department.

23 Q: And then somebody calls you and tells you when to come
24 pick up those samples?

25 A: Usually, yes, yes.

1 Q: So, if those samples were not tested, you're not
2 responsible for that?

3 A: No, and I wouldn't know otherwise.

4 Q: All right. Thank you, ma'am. No further questions.

5 A: Thank you.

6 THE COURT: Any other questions?

7 MS. ANDREW: No, Your Honor.

8 THE COURT: All right. Do you wish the witness to be
9 excused?

10 MS. ANDREW: Yes, Your Honor.

11 THE COURT: Any objection?

12 MR. GALMORE: No, sir.

13 THE COURT: All right, ma'am, you're released from your
14 subpoena, you may go back to your regular duties.

15 BY THE COURT:

16 All right. Mr. Foreman, ladies and gentlemen, we're
17 gonna take a quick break for about five minutes or so. Go to
18 your jury room. Don't talk about the case and we'll call you
19 back out shortly. Thank you.

20 (REPORTER'S NOTE: Jury exits courtroom.)

21 THE COURT: All right. We'll take a short break. Thank
22 you very much.

23 (RECESS.)

24 *****OFF THE RECORD*****

25 (On the Record.)

1 THE COURT: Okay. All right. So, is the state ready
2 then for the jury to come in?

3 MS. WALTER: Yes.

4 THE COURT: Defense?

5 MR. GALMORE: Yes, sir.

6 THE COURT: All right. Ask the jury to come in, please.

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

8 THE COURT: All right, Solicitor, your next witness
9 please?

10 MS. ANDREW: Your Honor, the state calls Corporal Michael
11 Quinn.

12 THE COURT: All right. Please come around to be sworn,
13 sir.

14 CLERK: Please raise your right hand and place your left
15 hand on the Bible.

16 MICHAEL QUINN, HAVING BEEN SWORN
17 TESTIFIES AS FOLLOWS:

18 CLERK: State your name and spell your last name?

19 MR. QUINN: Michael Quinn, Q-U-I-N-N.

20 THE COURT: Go ahead.

21 DIRECT EXAMINATION OF MICHAEL QUINN BY MS. ANDREW:

22 Q: Corporal Quinn, where are you employed?

23 A: City of Myrtle Beach Police Department.

24 Q: How long have you been employed there?

25 A: Thirteen years.

1 Q: Okay. And what are your current duties there?

2 A: Currently, I'm a sergeant in the patrol division and at
3 the time of the incident, I was a detective in the violent
4 crimes unit.

5 Q: Sergeant Quinn, did you have an occasion to become
6 involved in the case that we're here about today?

7 A: Yes, ma'am.

8 Q: And what was your involvement?

9 A: I helped provide a digital composite sketch of the
10 suspect.

11 Q: Could you explain to the jury what that is?

12 A: Yes, ma'am. We had a program that we used, it was called
13 Identi-Kit. And if we needed -- we didn't have a photo of the
14 suspect and we wanted to develop a composite sketch, like if
15 someone were to actually draw it, we had a computer system.
16 So, we sit down with our victim and we would start with a
17 series of questions to establish a baseline face to go with.
18 So, we'd ask them were they male, were they white, were they
19 black, was their nose large, did they have a round head, a lot
20 of questions, and it establishes one face based on those
21 questions. And then from there, I would then turn and show
22 the victim the picture, and I would start from the top and say
23 okay, what would you change about the hair, what would you
24 change about the forehead, what would you change about the
25 nose, the eyes, mouth, chin, and those kind of things until we

1 developed a picture where they would say -- we would not
2 release it or accept it to be used in the investigation unless
3 they said they were 90 percent positive or better or they said
4 yes, that's him or her.

5 Q: And in this case, did you meet with the victim, Sharedia
6 Funderburke?

7 A: Yes, ma'am.

8 Q: And did you go through that process with her?

9 A: Yes, ma'am.

10 MS. ANDREW: Court's indulgence?

11 THE COURT: Yes, ma'am.

12 MS. ANDREW: May I approach, Your Honor?

13 THE COURT: Yes, ma'am.

14 BY MS. ANDREW:

15 Q: I'm gonna show you what's been marked for identification
16 purposes as State's Exhibit Number 16; can you tell me what
17 that is?

18 A: That is the digital composite photo that I came up with.

19 Q: Okay. Is that a fair and accurate representation of the
20 photo you came up with with Sharedia Funderburke using the
21 program you described to the jury?

22 A: Yes, ma'am.

23 MS. ANDREW: Your Honor, the state moves to introduce
24 evidence, Exhibit Number 16 into evidence and publish to the
25 jury?

1 THE COURT: Any objection?

2 MR. GALMORE: No, sir.

3 THE COURT: All right. It's into evidence without
4 objection.

5 STATE'S EXHIBIT NUMBER 16

6 ADMITTED INTO EVIDENCE

7 BY MS. ANDREW:

8 Q: I'm gonna show you what's been marked as State's Exhibit
9 Number 17; can you tell me what this item is?

10 A: Yes, ma'am, that's the BOLO poster that was created for
11 distribution. We send it out in an email to my boss and then
12 he decides where it goes from there and we release it from
13 there.

14 Q: Okay. And when you say BOLO, what does that mean?

15 A: Be on the lookout.

16 Q: So, a be-on-the-lookout, this is something that you
17 distribute to people to be on the lookout for this suspect ---

18 A: Yes, ma'am.

19 Q: --- Who is wanted in a crime?

20 A: Yes, ma'am.

21 Q: Okay. And is this, State's Exhibit Number 17, a fair and
22 accurate representation of the BOLO that you described?

23 A: Yes, ma'am.

24 MS. ANDREW: Your Honor, the state seeks to introduce --
25 moves to introduce State's Exhibit Number 17 into evidence and

1 publish to the jury.

2 THE COURT: Any objection?

3 MR. GALMORE: No, sir.

4 THE COURT: It's into evidence without objection. You
5 may proceed.

6 STATE'S EXHIBIT NUMBER 17

7 ADMITTED INTO EVIDENCE

8 BY MS. ANDREW:

9 Q: Sergeant Quinn, did you have any further involvement with
10 this case other than generating this composite sketch?

11 A: No, ma'am.

12 Q: Okay. No further questions. Please answer any questions
13 Mr. Galmore has.

14 THE COURT: Cross examination?

15 CROSS EXAMINATION OF MICHAEL QUINN BY MR. GALMORE:

16 Q: Sergeant Quinn, did you collect the DNA that has been
17 testified about in this case?

18 A: No, sir.

19 Q: No, all right. And you -- you're not responsible for
20 testing any of that DNA?

21 A: No, sir.

22 Q: All right. Did you collect any of the physical evidence
23 that was collected in this case?

24 A: No, sir.

25 Q: Were there any videos that were collected in this case,

1 like surveillance videos?

2 A: No, not to my knowledge.

3 Q: Did you patrol out on May 27th of 2012 looking for a
4 suspect that matched that BOLO description?

5 A: No, sir.

6 Q: So, your only role in this case was to help develop that
7 picture?

8 A: Yes, sir.

9 Q: Thank you, sir, no further questions.

10 THE COURT: Anything else?

11 MS. ANDREW: No, Your Honor.

12 THE COURT: You wish the witness to be excused?

13 MS. ANDREW: Yes, Your Honor.

14 THE COURT: Any objection?

15 MR. GALMORE: No, sir.

16 THE COURT: All right, sir, you're released from your
17 subpoena; you may go back to your regular duties. Thank you.

18 BY THE COURT:

19 THE COURT: All right, Solicitor, other than the one
20 witness you informed the Court about, are there any other
21 witnesses on behalf of the state?

22 MS. WALTER: No, Your Honor.

23 THE COURT: All right. Very good. All right, ladies
24 and gentlemen, it's a little unusual, but the last witness
25 that the state has has moved to another state and it's

1 obviously necessary to get their cooperation to return and
2 they are not returning to the State of South Carolina till
3 tomorrow. So, with that, what I'm going to have you to do is
4 I'm gonna excuse you until 1 o'clock tomorrow. That will give
5 the time for the person to travel to get here and to be
6 prepared to testify. Now, when we start at 1 o'clock, we're
7 gonna continue on until we are done. So, I mean we are gonna
8 do the witness, if there's any other evidence, I don't know if
9 there is but if there's any other evidence, we'll do that.
10 Then we will go, after a short break, because there's always
11 after the evidentiary portion, I have to take up some matters
12 of law with the attorneys. We'll deal with that in a short
13 period of time. Then we'll go directly into the closing
14 arguments, then I will give you the charge of the law and then
15 I'm gonna give you the case for your deliberations and
16 unanimous decision. So, that's gonna proceed from that.
17 We're not gonna, you know, take any, other than short breaks,
18 from the time that we start until whenever it is that we
19 finish. So, I guess I'm telling you that is so make sure you
20 eat lunch before you get here at 1 o'clock, because we're not
21 stopping for lunch; we're gonna start at 1:00 and continue on.
22 So, make sure that y'all get something or you're good to go
23 when you get here at 1 o'clock.

24 Please remember, don't talk about the case, don't allow
25 anybody to talk to you about it. You go home, you see your

1 husband, wife, boyfriend, girlfriend, person down the street,
2 you can't talk to them about the case. If they happen to know
3 you're on a case, that's all that they can know. Now, after
4 it's over with and you've reached your unanimous decision, you
5 can tell them anything you want to or nothing at all. That's
6 your decision, but until you reach your unanimous decision,
7 you can't talk about it with anybody. And again, remember,
8 you're not researchers, you're not investigators, can't look
9 up anything. You make your decision solely and completely on
10 the facts and the evidence you hear here in the courtroom and
11 from no other source.

12 So, with that, I will see you tomorrow at 1 o'clock.
13 Thank you very much.

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

16 THE COURT: All right. Solicitor, anything we need to
17 talk about at this present time?

18 MS. WALTER: Not from the state, Your Honor; thank you.

19 THE COURT: From the defense?

20 MR. GALMORE: No, sir.

21 THE COURT: All right. Very good. Just so that we can
22 anticipate what we can maybe shorten the time that we are out
23 or the jury is out regarding the verdict form in this
24 particular matter, other than the charge itself, Mr. Galmore,
25 are you going to be asking the Court to consider submitting to

1 the jury any other charge besides the one for which the
2 defendant was indicted?

3 MR. GALMORE: No, sir; I'm not.

4 THE COURT: All right. So, and I think this since we're
5 doing this, TIA, I'm gonna ask you directly, you are not
6 asking the Court to consider assault and battery in the first
7 degree as a lessor included offense of assault with intent to
8 commit criminal sexual conduct third degree since the Supreme
9 Court has held, even though the elements are not the same, it
10 is a lessor included charge?

11 MR. GALMORE: Well, Your Honor, the testimony that --
12 that I -- that I heard seems to be that it was either within
13 intent to commit criminal sexual conduct or I suppose it
14 could've have been an assault without any intent element at
15 all. In that case ---

16 THE COURT: I tell you what, you think about that.

17 MR. GALMORE: Yes, sir.

18 THE COURT: All right. And I'll -- I'll hear you
19 tomorrow.

20 MR. GALMORE: Yes, sir.

21 THE COURT: All right. I felt an obligation to bring
22 that to your attention, especially since it's a trial in an
23 absence and there is a case that, again, though the elements
24 aren't the same and that's usually what's required for a
25 lessor included offense. Our Court has held assault and

1 battery first is a lessor included. All right?

2 MR. GALMORE: Yes, sir.

3 THE COURT: Thank you very much.

4 (RECESS.)

5 END OF DAY TWO

6 *****OFF THE RECORD*****

7 DAY THREE - MARCH 1, 2018

8 (On the Record.)

9 BY THE COURT:

10 THE COURT: All right. Mr. Galmore, you -- I asked you
11 to look at the issue and you have relayed to my clerk that you
12 wanted assault and battery first and simple assault and
13 battery charged; is that correct?

14 MR. GALMORE: Yes, sir. I was just looking at the logic
15 and understanding that assault and battery first is a lessor
16 included offense of assault with intent to commit criminal
17 sexual conduct in the third degree, and the jury could, based
18 on the evidence they have heard, conclude that there was no
19 sexual battery and in that case I think he would be found
20 guilty of assault and battery first degree. Likewise, the
21 jury could infer or conclude that there was no force or
22 coercion, there were no circumstances of aggravation, I think
23 there's been testimony from Ms. Funderburke that she was not
24 mentally defective or mentally incapacitated or physically
25 helpless and under those circumstances, the jury may find that

1 the appropriate charge is a simple assault and battery.

2 THE COURT: All right. And, Solicitor, I understand that
3 you object in total. You do not believe that assault and
4 battery first should be presented to the jury; is that
5 correct?

6 MS. WALTER: And, Your Honor, I've thinking about this
7 for a little bit now. My understanding from what Your Honor
8 said yesterday and I did look up the case, but forgot
9 something. I did read the case where in 1999 the Court said
10 that ABHAN was a lessor included offense of assault with
11 intent to commit CSC, but ---

12 THE COURT: Go ahead. Continue.

13 MS. WALTER: --- my understanding is that the Omnibus
14 Crime Act in 2010 changed ABHAN and so my question is just
15 that that might throw into question whether or not the
16 statutory ABHAN is a lessor included offense of assault with
17 intent to commit CSC. And my understanding from what Your
18 Honor said yesterday, if I follow the logic, was if ABHAN is a
19 lessor included offense of assault with intent to commit CSC
20 and A&B first is a lessor included offense of ABHAN, then a
21 charge on A&B first would be appropriate. And my initial
22 email to your law clerk was that if that -- if I was -- I
23 didn't -- I don't think, write it up this way, but if I was
24 correct about that logical flow, then I would say that it
25 would be proper to charge on ABHAN as well because otherwise

1 it seemed like we were skipping a step. If the logic is that
2 A&B first is being charged because it's a lessor included of
3 lessor included, then I think you have to give that middle
4 step.

5 THE COURT: All right.

6 MS. WALTER: But I do still have the question of the date
7 of the case was 1999 and the revision to ABHAN was in 2010.

8 THE COURT: Yes, ma'am. The problem I have is the
9 standard has always been the elements had to be included. If
10 you're gonna have a lessor included, the elements had to be
11 included in the greater crime for there to be a lessor
12 included. That was just completely thrown out with that
13 decision because there was no way that assault and battery
14 high and aggravated nature, the elements for that crime were
15 the same as for the criminal sexual conduct. They just don't
16 line up at all. So, the Appellant Court has gone off on some
17 line of reasoning that they're gonna have that for whatever
18 reason and established that as law in the State of South
19 Carolina even though it deviates from the previous reasoning
20 that the elements had to be included in the greater crime.
21 Unless and until they come out with a case that says
22 otherwise, I'm going to follow that. So ---

23 MS. WALTER: If I may, Your Honor, I think I just read
24 the case more narrowly as a very specific ruling that in 1999
25 as the law stood, even though -- and I too thought it was odd

1 -- they said even though the elements aren't the same or
2 aren't contained in the greater offense, the way it stood
3 then, ABHAN was a lessor included offense of assault with
4 intent to commit CSC. But, I'm not sure that it was meant to
5 be so expansive that that elements test is gone.

6 THE COURT: Well, I don't know if it is or not, but they
7 have created an exception and until the Supreme Court
8 uncreates that exception, then I'm going to include it.

9 MS. WALTER: Okay. Then I go to my argument that if that
10 is ---

11 THE COURT: Hold on a second?

12 MS. WALTER: Yes, sir.

13 THE COURT: All right. So, after the amendment in 2011,
14 State v. Galmore -- not Galmore -- *Gilmore*, G-I-L-M-O-R-E
15 719 S.E.2d 688, they still allowed it to be assault and
16 battery high and aggravated nature is a lessor included
17 offense of criminal sexual conduct.

18 MS. WALTER: Okay. Then in that case, Your Honor, I
19 would go back to what my original argument was, that if the --
20 if the sort of logical flow is we start with assault with
21 intent to commit CSC and ABHAN is a lessor included of that
22 and A&B is a lessor included of that and simple assault is a
23 lessor included of that, I think we need each step in that
24 ladder. I don't think it's appropriate to jump a rung on that
25 ladder.

1 THE COURT: All right. So, let's look at after June 2nd
2 2010, assault and battery high and aggravated nature. Now,
3 I'll tell you, I don't think there's any question that the
4 facts of this case fit almost hand in glove of the definition
5 of assault and battery first degree. If you look at what
6 assault and battery first degree is, you can fit the facts of
7 this case perfectly under the crime of assault and battery
8 first degree. So, let's look at assault and battery high and
9 aggravated nature.

10 MR. GALMORE: Your Honor?

11 THE COURT: Yes, sir.

12 MR. GALMORE: I know you're looking at the law, but
13 before we get there, the current assault and battery high and
14 aggravated nature carries a 20-year penalty. So, that
15 enhances the penalty on this offense and I think that is
16 constitutionally impermissible.

17 THE COURT: Okay. All right. Assault and battery high
18 and aggravated nature, it's great bodily injury or the act as
19 accomplished by means likely to produce death or great bodily
20 injury. Those facts aren't in this case. They just don't
21 exist in this case. Okay? So, I'm not going to include
22 assault and battery high and aggravated nature based upon
23 that, and I think Mr. Galmore's point is well taken. The
24 punishment for assault and battery high and aggravated nature
25 is basically double the crime for which he was indicted, so,

1 obviously I can't charge that to the jury anyway. So, what
2 I'm -- I also do not find that the facts of this case comport
3 with any possible decision by the jury for simple assault and
4 battery. Those, from the testimony presented there's no
5 possibility that the jury could find him guilty of simple
6 assault and battery. That's just -- that's my rationale for
7 not including that. So ---

8 MR. GALMORE: Yes, sir. Thank you, sir.

9 THE COURT: What I'm going to do is charge the jury
10 attempted criminal sexual conduct third degree and then with a
11 note that if obviously they find him guilty that's the end of
12 it; if they find him not guilty, then they proceed on to the
13 charge of assault and battery first degree. So, I'll present
14 those to the jury. And we'll talk about the charge in just a
15 minute when we get done with that witness. Is the witness
16 here and prepared to testify?

17 MS. ANDREW: He is, Your Honor.

18 THE COURT: All right. The state ready then for the jury
19 to come in?

20 MS. ANDREW: Yes, Your Honor.

21 THE COURT: Defense?

22 MR. GALMORE: Yes, sir.

23 THE COURT: Ask the jury to come in please.

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

25 THE COURT: All right. Solicitor, you ready with your

1 last witness?

2 MS. ANDREW: Yes, Your Honor.

3 THE COURT: All right. Call the witness, please.

4 MS. ANDREW: Your Honor, the state calls Garth Lee Wood.

5 THE COURT: All right, sir, please come around and meet
6 the clerk right here at the corner of the bench and be sworn.

7 CLERK: Please raise your right hand and place your left
8 hand on the Bible.

9 GARTH LEE WOOD, HAVING BEEN SWORN
10 TESTIFIES AS FOLLOWS:

11 CLERK: Please state your first name and spell your last
12 name.

13 MR. WOOD: Garth Wood, W-O-O-D.

14 THE COURT: Go ahead, Solicitor.

15 DIRECT EXAMINATION OF GARTH LEE WOOD BY MS. ANDREW:

16 Q: Good afternoon, Mr. Wood. Where do you live currently?

17 A: Atlanta, Georgia.

18 Q: You traveled a long way today?

19 A: Yes, ma'am.

20 Q: How long have you lived in Atlanta, Georgia?

21 A: Since 2015.

22 Q: Where did you live prior to that?

23 A: Georgetown and Myrtle Beach, South Carolina. I was
24 staying at Dwite's Place at the time, Sea Haven.

25 Q: Okay. So, do you recall if you were staying there in May

1 of 2012?

2 A: Yes, ma'am.

3 Q: And can you tell the jury kind of where that is in Myrtle
4 Beach, Dwite's Place?

5 A: It's near the Food Lion off of 501 like parallel to it
6 like on one of those side roads.

7 Q: Okay. And do you recall a day in May of 2012 when you
8 happened upon Sharedia Funderburke?

9 A: Yes, ma'am.

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

11 A: I was walking to the Food Lion, and whenever I was
12 walking I heard someone yelling for help. And I looked and
13 she was like running from this guy who had her by her shirt.
14 And whenever he seen me, like he ran, and she started running
15 towards me and she was like help me, I need to use your phone.
16 So, I let her use my phone to call the police or whatever.
17 Then the police got there and he asked me and her like
18 questions, and then he took her like in his car or whatever
19 and asked her questions, and then after that she just thanked
20 me and everything.

21 Q: Okay. And I'm just gonna break that down a little bit.

22 Okay? So, you said you were walking to Food Lion that day and
23 you saw Sharedia and who else?

24 A: I don't know that man, but it was a guy that like had her
25 by her shirt like. He was like tall, black like.

1 Q: Had you ever seen Sharedia before that day?

2 A: No, ma'am.

3 Q: Okay. You had never seen -- I'm gonna tell you that was
4 the defendant, Tony Myers -- had you ever seen him that day?

5 A: No, ma'am.

6 Q: When you saw them, were they in any kind of altercation?

7 A: Yes, ma'am, like he was grabbing by her shirt, like her
8 shirt was like stretched and like torn a little bit and she
9 was roughed up.

10 Q: And you said she was calling for help?

11 A: Yes, ma'am, and she was crying like hysterically.

12 Q: Okay. Did -- and you said you stayed with her until the
13 police arrived?

14 A: Yes, ma'am, even after that.

15 Q: Even after that. And why did you decide to stay after
16 that?

17 A: Because I have a heart.

18 Q: And what was -- what was her demeanor like when you were
19 with her after that?

20 A: She was like thankful that I came because she has kids I
21 think or something.

22 Q: Okay. And ---

23 A: Like she was worried about her life.

24 Q: --- so you just happened upon them that day?

25 A: Yes, ma'am.

1 Q: And, Mr. Wood, just for the jury's information, you've
2 had your own share of scrapes with the law in the past?

3 A: Yes, ma'am.

4 Q: But that had nothing to do with what happened on the day
5 that you saw Sharedia?

6 A: No, ma'am.

7 Q: Please answer any questions Mr. Galmore has.

8 THE COURT: All right. Cross examination?

9 CROSS EXAMINATION OF GARTH LEE WOOD BY MR. GALMORE:

10 Q: All right, Mr. Wood, tell us a little bit about yourself;
11 how old are you, sir?

12 A: Twenty-six.

13 Q: Okay. Are you married or single?

14 A: I'm single.

15 Q: Okay. And you said you live in Atlanta and you've lived
16 there since 2015?

17 A: Yes, sir.

18 Q: Are you working?

19 A: Under the table.

20 Q: Okay. Fair enough. When you were here in Myrtle Beach
21 back in 2012, were you working back then?

22 A: Not at the time.

23 Q: Okay. And I believe you said you were at the White's
24 Place?

25 A: Sea Haven.

1 Q: Okay. So, that's the same place; that's not two
2 different places?

3 A: I mean, it's around the same road. Like there's -- it's
4 on a different road, but you have to like go down that road
5 and then like make a right towards Food Lion and then it was
6 like right there on that other road.

7 Q: Well, let me just clarify, are you saying the, T-H-E
8 White's Place?

9 A: Dwite, D-W-I-T-E.

10 Q: What is Dwite's Place?

11 A: That's like a place where he helps people like a month or
12 anywhere from a month to like five months maybe at the most.
13 It's very temporary.

14 Q: It's just a temporary thing?

15 A: Yeah, something like that.

16 Q: A shelter?

17 A: Yeah.

18 Q: Okay. And Sea Haven is ---

19 A: But it's more for families, I guess.

20 Q: So, it would be fair to say you were living at Sea Haven
21 and Dwite's Place when all of this occurred back in 2012?

22 A: Yes, sir.

23 Q: All right. You're not -- are you currently living in a
24 shelter?

25 A: No, sir.

1 Q: No, okay. So, you're kind of on your feet now?

2 A: Yes, sir.

3 Q: All right. Very good. Now, this was May 27th of 2012,
4 the bike week weekend and I know bike week is kind of hectic.
5 Basically, were you drinking at the time of this incident?

6 A: No, sir; I don't drink alcohol.

7 Q: All right. Were you able to tell whether or not Ms.
8 Funderburke might have been under the influence?

9 A: No, she wasn't.

10 Q: She wasn't, okay. Now, when you showed up, I think you
11 said the altercation was already taking place, already in
12 progress, right?

13 A: Yes, sir.

14 Q: Okay. Well, how much time were you in the presence of
15 the defendant?

16 A: I mean, I just walked up and I seen it and I like started
17 like walking towards her to save her, but he ran, so, I didn't
18 even need to save her because he ran.

19 Q: Okay. So, from you walking up to him running, what are
20 we talking, 15 seconds maybe?

21 A: Somewhere around there.

22 Q: Okay. Now, I don't want to put words in your mouth; so,
23 if it's a different estimate, let us know.

24 A: I mean, it was somewhere around there.

25 Q: Okay. So, it would be fair to say that you saw this

1 person for about 15 seconds?

2 A: Uh-huh, (affirmative response).

3 THE COURT: Was that a yes?

4 A: Yes, sir.

5 THE COURT: Thank you.

6 BY MR. GALMORE:

7 Q: And you gave the police a tape recorded statement about
8 what you observed?

9 A: Yes, sir.

10 Q: And you gave the police a written statement about what
11 you observed?

12 A: Yes, sir.

13 Q: All right. Now, I believe you indicated that you were
14 not specific on what was being said; does that sound correct?

15 A: No, I said -- I mean, I heard her yelling for help.

16 Q: Right.

17 A: And that's all like she was just begging for help and I
18 stopped like, that's all I heard.

19 Q: Beyond that, you don't remember any specific details of
20 what the people were saying to one another?

21 A: Hu-huh, (negative response).

22 THE COURT: Was that a no?

23 A: No.

24 THE COURT: The reason is the court reporter has to take
25 down your answers, so please use yes or no, all right?

1 A: I apologize.

2 THE COURT: That's all right. Not a problem.

3 BY MR. GALMORE:

4 Q: And I believe you told the police that you really didn't
5 get to see his face; is that correct?

6 A: No, I didn't, but I know what I saw.

7 Q: Okay. And you told the police that you probably could
8 not identify him again; is that correct?

9 A: Yes, sir.

10 Q: All right. Now, after this 15-second period, you
11 remained with Ms. Funderburke and waited for the police to
12 arrive?

13 A: Yes, sir, even afterwards.

14 Q: And even afterwards because you gave them a statement, a
15 written statement and a tape recorded statement?

16 A: Yes, sir.

17 Q: All right. Did you have an opportunity to find out where
18 Ms. Funderburke was coming from?

19 A: Okay. All I know is that it was like the end of Campbell
20 Road, that's all, and I think it's like a dead end or
21 something, but it was like right there.

22 Q: Okay.

23 A: I think she said she was walking or he was walking her
24 somewhere and whenever, she thought he was cool or something,
25 and like he was helping her or something like that, and then

1 he turned into that and did what he did like ---

2 Q: You didn't walk the path, walk back the path that she
3 said she was coming from, did you?

4 A: Hu-huh, (negative response), no.

5 Q: Okay. Did you talk to anybody at the Carolina Breeze
6 Apartments?

7 A: No, I don't even know where that is.

8 Q: All right. Would it be fair to say it's not your job to
9 talk to people at the Carolina Breeze Apartments?

10 A: Huh-huh, (negative response).

11 Q: Because you're not a police officer, right?

12 A: No.

13 Q: No further questions, Mr. Wood. Thank you.

14 A: Thank you.

15 THE COURT: Anything else, Solicitor?

16 MS. ANDREW: No, Your Honor.

17 THE COURT: All right, sir, you may step down and you are
18 released from your subpoena. Thank you.

19 BY THE COURT:

20 Any further witnesses from the state?

21 MS. WALTER: No, Your Honor, the state rests.

22 THE COURT: All right. Very good. All right. Y'all
23 come up and talk to me for just one second.

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

1 THE COURT: All right, ladies and gentlemen, I told you
2 yesterday when I excused you that there was -- when the state
3 ended its evidentiary presentation, there's a matter of law
4 and a legal discussion that I have to take up with the
5 attorneys at that time. It happens in every single General
6 Sessions or criminal case. This is the point when I need to
7 do that.

8 Expect that when we come back in we will go into the
9 closing arguments and then charge on the law and then I'll
10 submit the case to you for your deliberations and unanimous
11 decision. We will go through the -- I'll go through the
12 process with the attorneys that I need to. We'll do that as
13 expeditiously as possible and I'll call you out as quick as I
14 can. All right?

15 So, if you'd go to the jury room, please.

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

18 MOTIONS:

19 THE COURT: Mr. Galmore, motions on behalf of defense?

20 MR. GALMORE: Yes, Your Honor. I would make a motion for
21 a directed verdict on the charge of assault with intent to
22 commit criminal sexual conduct. It's my belief that, looking
23 at the evidence in the light most favorable to the state, this
24 evidence does not -- it arises only to a mere suspicion of
25 guilt and nothing -- nothing more. What the state has

1 presented is a DNA match, which is not quite a DNA match as we
2 look at the evidence. The evidence indicates that Mr. Myers
3 was a contributor. The evidence also indicates that there's a
4 third party, who was a contributor to this DNA sample. So,
5 it's not conclusive.

6 Your Honor, there's also a statement by Ms. Funderburke,
7 but that statement does not exist in a vacuum. You know, when
8 you look at the case, the totality of the evidence here,
9 there's simply no corroboration of her statement. We just
10 heard from a witness, Mr. Wood. He was the first person on
11 scene and he testified when he got there, things were already
12 in progress. So, he can testify about what he observed, but
13 he didn't have any information about what lead up to that.

14 Your Honor, we have her statement, but we don't have any
15 corroboration of it. For example, there's an allegation that
16 the shirt was torn. We don't have a shirt in evidence.
17 There's testimony that the shirt is under the shirt, it's in
18 the picture in evidence, but the shirt itself is not available
19 for the jury to look at and determine for themselves if it was
20 in fact torn. Your Honor, we have a picture of some underwear
21 that were torn; those underwear are not in evidence. I can't
22 say rightly one way or the other if the tear to the underwear
23 is a new tear or an old tear, if it existed prior to this
24 incident.

25 The fact is, when we look at her statement, she has

1 credibility problems and there's no corroboration to go with
2 it. And for that reason, I submit that the, the evidence she
3 has given us only makes an implication of guilt or mere
4 suspicion of guilt and nothing further. We'd ask you to
5 consider dismissing this case at this time.

6 THE COURT: All right. Thank you.

7 Response by the state?

8 MS. WALTER: Thank you, Your Honor. There is certainly
9 more than a mere suspicion here that the defendant committed
10 assault with intent to commit a criminal sexual conduct.
11 Indeed, there is substantial evidence even beyond Ms.
12 Funderburke's statement to that effect. But let us look at
13 the evidence as a whole. As they were walking, as the victim
14 and the defendant were walking from one place to another, he
15 started saying you're sexy, I want some of that, hey, can I
16 pay you for it, indicating to her that he wanted to have sex
17 with her. And she's like, no, you got to work for that; I'm
18 not that way; I don't do that. And so what does he do? He
19 puts an arm around her neck, drags her the length of the jury
20 box behind some abandoned trailer, tries to pull her pants
21 off, rips her shirt, all while saying I'm gonna get some of
22 that, I'm gonna get what I want. And it was so clear to Ms.
23 Funderburke what was happening that she didn't just yell help
24 or oh no, he's going to assault me; it was rape. She knew
25 that that's what he wanted to do and she screamed rape, help,

1 stop, and she fought him off.

2 Now, to call the DNA match questionable is somewhat
3 ironic, because in so many cases, if we don't have DNA, then
4 that's the be-all end-all of the case and if only we had DNA
5 it would be a slam dunk for the prosecution. Here we do have
6 DNA and Your Honor heard Mr. Meeh's testimony that the major
7 contributor, not just a contributor, but the major contributor
8 was the defendant. He was a bigger contributor than the
9 person whose skin was swabbed. And the fact that his DNA is
10 there, corroborates Ms. Funderburke's testimony that he bit
11 her hand and there is certainly corroboration of Ms.
12 Funderburke's testimony with the 911 call. Her story changed
13 very little. The only thing I believe that would
14 contradictory is that today I think she's blocked out the fact
15 that maybe it started benignly enough, but it's clear that at
16 some point it turned sinister and evil and it turned into an
17 attempt to rape her. So, there is corroboration of Ms.
18 Funderburke's testimony. There is also corroboration through
19 Mr. Wood's testimony. He came upon them. Thankfully, he
20 stopped because we know that three cars didn't, but he
21 stopped, he saw the defendant trying to hold her back, he
22 heard her yelling for help, he recognized how upset she was
23 when she was finally able to escape and he helped her call the
24 police. So, the state's position is that there is substantial
25 evidence for the jury to convict the defendant of assault with

1 intent to commit CSC.

2 THE COURT: All right. Thank you. All right. So,
3 basically while ruling on a motion for a directed verdict, the
4 Court's concerned with the existence or non-existence of
5 evidence, not with weighing it or judging credibility or
6 believability. The defendant would be entitled to a directed
7 verdict when the state fails to produce evidence of the
8 offense charged or if the evidence merely raises a suspicion
9 that the accused is guilty. I am not required to find that
10 the evidence infers guilt to the exclusion of any other
11 reasonable hypothesis. The Court views the evidence and all
12 the reasonable inferences therefrom in the light most
13 favorable to the non-moving party, and that here obviously
14 would be the state.

15 I find, in this particular matter, that there is direct
16 evidence and substantial circumstantial evidence reasonably
17 tending to prove the guilt of the accused, and I find that it
18 should be submitted to the jury. I'm looking at, in
19 connection with that, the definition of attempt, which I
20 intend to charge to the jury, but basically intending, you
21 know, intending the result which actually occurs, not
22 accidentally or involuntarily shown by conduct. Attempt is an
23 effort to accomplish a crime which does not succeed. Attempt
24 includes a specific intent to do a particular criminal act
25 along with an act falling short of the act intended. If you

1 look at the definition of third degree criminal sexual conduct
2 as it is written, it is clear that there was definitely, from
3 the facts presented -- and again, I'm not judging who to
4 believe or again, credibility or believability -- the evidence
5 is there that would support a conviction for third degree
6 criminal sexual conduct and I'll respectfully decline to grant
7 the motion for a directed verdict.

8 Further motions on behalf of the defense?

9 MR. GALMORE: No, sir.

10 CHARGE CONFERENCE:

11 THE COURT: All right. Let's go over the Court's
12 intention as far as the charge and then y'all can tell me if
13 there's anything else you want me to add or subtract from my
14 intention.

15 Obviously, we're gonna talk to the jury about what we
16 always talk to them about in every single case, That being
17 their responsibilities, looking at the facts, credibility,
18 believability of -- of witnesses, finding direct and
19 circumstantial evidence to them. I will include the portion
20 of circumstantial evidence that all the circumstances must be
21 consistent with each other and, when taken together, point
22 conclusively to the guilt of the accused beyond a reasonable
23 doubt.

24 The usual charge about expert witnesses since we
25 qualified witnesses to give their opinion, that in and of

1 itself doesn't give them any special status, they judge all
2 the witnesses the same.

3 Regarding credibility and believability, re-charge or
4 again re-emphasize what I told the jury about the defendant
5 not appearing that that's not a factor for them to consider in
6 any fashion in their deliberations or their questions
7 regarding their decision in this matter, and they can't talk
8 about it or use it in that decision making.

9 Again, the usual information we charge to them about the
10 presumption of innocence and reasonable doubt, the kind of
11 doubt that would cause a reasonable person to hesitate to act.

12 I do intend to charge to them intent that in order to
13 establish criminal liability, criminal intent is required.
14 Criminal intent must be proven by the state beyond a
15 reasonable doubt. It's a matter to be garnered from the
16 circumstances surrounding the situation. It's a mental state,
17 conscious wrong-doing. It's up to the jury to determine what
18 the defendant intended to do based on the circumstances shown
19 to have existed, again being proved to them beyond a
20 reasonable doubt.

21 Attempt, I think I basically just went over what I said
22 about attempt. That's what I intend to charge the jury. I
23 will define to them and make it clear that you combine the
24 definition of attempt with third degree criminal sexual
25 conduct, and I'm going to leave out the second part of the

1 third degree criminal sexual conduct as to subcategories 1 and
2 2. I will leave out 2 because that's talking about the
3 defendant knew or had reason to know that the victim was
4 mentally defective, incapacitated, physically helpless. So,
5 I'm not going to charge that since that is not the facts of
6 this particular case.

7 I'll tell them that in their consideration of the
8 evidence, if it is their unanimous decision that the state has
9 not proven the defendant guilty beyond a reasonable doubt of
10 that crime, that they must consider assault and battery first
11 degree. And, I will charge assault and battery first degree
12 as it's set forth in the statute to them, and also the short
13 charge about greater and lesser offenses, if you have a
14 reasonable doubt as to whether the defendant is guilty of a
15 greater or lesser offense, it's your duty to resolve that
16 doubt in favor of the defendant and find him guilty of the
17 lesser offense if that's their view of the evidence and it has
18 been proven to them beyond a reasonable doubt.

19 The verdict form is pretty straightforward. The caption
20 of the case. The first one is attempted criminal sexual
21 conduct. On the charge of attempted criminal sexual conduct
22 in the third degree, we, the jury, by unanimous consent find
23 the defendant -- you got two choices, not guilty or guilty.
24 And, there's a large note at the bottom, if you find the
25 defendant guilty, knock on the door, notify the bailiff. If

1 you find the defendant not guilty, proceed to Charge 2.
2 Charge 2 is assault and battery in the first degree. Again on
3 the charge of assault and battery in the first degree, we, the
4 jury, by unanimous consent, find the defendant not guilty or
5 guilty, and then if they're considering that. Note to knock
6 on the door and notify the bailiff when they've reached a
7 verdict. And I always conclude talking with them about it
8 being a unanimous verdict. Everybody has to agree.

9 So, that's my intention as to the charge. Any
10 exceptions, deletions, or additions requested by the state?

11 MS. WALTER: No, Your Honor.

12 THE COURT: From the defense?

13 MR. GALMORE: No, sir.

14 THE COURT: All right. What we'll do is we'll take a
15 short break for about five minutes. Y'all can get organized.
16 What we'll do when we call the jury in, Mr. Galmore, I will
17 ask you what's the position of the defense. You can tell me
18 the defense rests and then I'll go in and we'll tell them that
19 now we're gonna go into the closing arguments and the charge
20 on the law. Okay?

21 MR. GALMORE: Yes, sir.

22 THE COURT: All right. Thank y'all. Five minutes.
23 Thank you.

24 **(RECESS.)**

25

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

1 **(On the Record.)**

2 BY THE COURT:

3 THE COURT: All right. Is the state ready for the jury
4 to come in?

5 MS. WALTER: Yes, Your Honor.

6 THE COURT: All right.

7 Defense?

8 MR. GALMORE: Yes, sir.

9 THE COURT: Ask the jury to come in, please.

10 THE COURT: Obviously, the state is making a full and
11 complete argument in their --

12 MS. WALTER: Yes, Your Honor.

13 THE COURT: --- closing.

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

15 THE COURT: All right. Mr. Galmore, the position of the
16 defense?

17 MR. GALMORE: The defense rests, Your Honor.

18 THE COURT: All right. Very good.

19 All right. At this point in time, ladies and gentlemen,
20 you have heard all the evidence. We have concluded the
21 evidentiary portion of this particular case. There will be no
22 more evidence presented in this matter. What we're gonna
23 proceed into now are the closing arguments of the attorneys.

24 As I told you at the very beginning, closing arguments,
25 they're not evidence, can't be considered by you as evidence

1 but they're important. They're each side's summation to you
2 of what they believe the evidence has shown to you and the
3 conclusions that they would suggest to you that you should
4 draw from that inference, remembering of course, that you are
5 the judges of the facts of this particular case.

6 Now, when we get done with the closing arguments, I will
7 give you the law that you will apply to the facts and evidence
8 you've heard in this case and then I'll submit the case to you
9 for your deliberations, your unanimous decision regarding the
10 charge brought against the defendant in this matter.

11 So, with that, Solicitor?

12 MS. WALTER: Thank you, Your Honor.

13 CLOSING BY WALTER:

14 MS. WALTER: May 27th, 2012 started as a day like any
15 other for Sharedia Funderburke, but it didn't end that way.
16 And the terror of that day, was apparent in the 911 call and
17 it was apparent when she took that stand nearly six years
18 later and cried almost the entire time. That terror was real
19 and it was caused by the defendant.

20 Now, when you first began this trial, the Judge told you
21 that the defendant was charged with assault with intent to
22 commit criminal sexual conduct. That's a real long way of
23 saying he tried to rape her. In a few moments, the Judge will
24 tell you that if you can't reach a verdict on that, then you
25 can also consider something called assault and battery in the

1 first degree, and he'll read you the elements and you're gonna
2 think to yourself, while they sound really similar. What's
3 the difference? But, there is a significant difference,
4 because assault and battery in the first degree just means
5 that the defendant wanted to just touch Sharedia's genitals in
6 lewd manner, just touch it; that's all, just want to touch it.
7 But ask yourself, based on everything that she said, do you
8 think that's what he intended? After listening to everything
9 that he said to her, do you think he just wanted to touch it
10 or do you think he was trying to rape her?

11 Let's go back over what happened that day. Sharedia was
12 at her grandmother's house. Yes, it was bike week -- I'm
13 still not sure why that's relevant in this case, because
14 there's nothing about bike week in the facts of this case
15 other than the timing -- and she decided that she was going to
16 go to a friend's house. So, she steps outside, she sees an
17 acquaintance. I think she said it's the husband of a friend
18 of hers and the defendant. She had never met the defendant
19 before. They chat for a little bit. Although, she was clear
20 to say, I had never met him before, he was just sort of
21 present while we were talking. And then she's like, I'm off,
22 I'm gonna go walk to my friend's house. And on the stand, she
23 didn't remember that they had begun to walk together.

24 In the 911 call, she certainly knew that and I would
25 submit to you that everything that happened after overshadowed

1 that benign beginning, the way the defendant was trying to
2 lure her in. So, they're walking from one place to another
3 and the defendant is like, ooh, you're sexy; ooh, you have a
4 nice butt; I want to sleep with you. That sweet talk doesn't
5 work. Well, let me pay you; let me pay you to have sex with
6 me. I'm not that way; I don't do that. So, when the
7 defendant realized that he could not get what he wanted
8 without force, what did he do? Grabbed her around the neck
9 and dragged her, kicking, screaming for help, this far until
10 he got her behind a construction trailer trying to rip her
11 pants off, ripping her shirt, trying to rape her. That was
12 clear to her. He was trying to rape her. I'm gonna get what
13 I want; I'm gonna take it. And Sharedia fought for her life.
14 She screamed rape, help, stop. She's punching him. And he
15 made what turned out to be the fatal mistake; he bit her hand.
16 Because were it not for that bite, we would not be here today
17 and Sharedia would have suffered that terror with no closure.
18 The defendant would've gotten away with what he did that day,
19 but she did. She was jabbing at him and he bit her.

20 As she laid on the ground with him on top of her
21 continuing to try to rape her, with Sharedia screaming rape,
22 stop, help, she saw three cars go by and do nothing,
23 increasing the terror. Imagine what she must've been going
24 through at that moment fighting for her life and seeing people
25 who could not be bothered to stop and help her. And

1 thankfully, Garth Wood happened to be walking by, happened by.
2 And as he said, I have a heart. I stopped. Hey, what are you
3 doing, and he was there for Sharedia when she needed him. It
4 was Garth's presence that caused the defendant to finally stop
5 trying to rape Sharedia. And Garth gave Sharedia the phone so
6 that she could call 911. And you heard that 911 call and the
7 detail with which Sharedia explained what happened. And I
8 even asked her because there were some minor inconsistencies
9 in what she testified to yesterday and the 911 call, but I
10 said that was almost six years ago and it was right after the
11 event. Is it fair to say her memory was better then? Because
12 I guarantee you she's been trying to put this behind her,
13 trying to get over it, trying to put it in her past only to
14 have me drag her back into court to testify about it. And
15 that's why I asked her that question, did I promise you
16 anything if you came in and testified other than I will never
17 bother you again? Because she didn't want to have to come in
18 here and relive what she went through, but she did it so that
19 she can get justice.

20 So, you have that 911 call. You can hear the terror, the
21 fear in her voice. He tried to rape me. He tried to rape me.
22 He bit me. And then we have the DNA. Now, in his opening,
23 Mr. Galtore talked about questionable science or sketchy
24 science. There is nothing questionable or sketchy about DNA.
25 You heard the testimony of Mr. Meeh, who but for being

1 employed by SLED would have a doctorate right now. There were
2 three contributors to the DNA on Sharedia's hand where the
3 defendant bit her. And who was the major, major contributor,
4 meaning he contributed absolutely the most DNA to that spot?
5 The defendant. Sharedia, whose hand was actually swabbed
6 contributed less DNA than the defendant did. And that third
7 person, that second minor contributor, there wasn't even
8 enough DNA there to make it relevant. He couldn't even draw a
9 conclusion. So, don't let Mr. Galmore use that as a red
10 herring to throw you off the fact that it was the defendant
11 who that attacked Sharedia Funderburke. It was the defendant
12 that caused her to fight for her life. It was the defendant
13 that bit her hand, left his saliva and, in doing so, gave you
14 everything that you're gonna need to convict him. Remember
15 what Mr. Meeh said, there is a 1 in 330 billion chance that
16 the defendant is not the one that did that, 1 in 330 billion
17 chance. That is beyond a reasonable doubt. There should be
18 no doubt in your mind at this point that the defendant
19 assaulted Sharedia Funderburke with one intent in mind and
20 that was to get what he had been trying to get since he
21 started walking with her. He wanted to rape her and, but for
22 her fighting for her life and but for Garth Wood stopping to
23 help her, he probably would have. But luckily, he didn't.

24 Ladies and gentlemen, you have everything you need.
25 There is more than enough evidence at this point with

1 Sharedia's testimony, with the 911 call, with Garth Wood's
2 testimony and with the DNA, to convict this defendant of
3 assault with intent to commit criminal sexual conduct, not
4 assault and battery first, assault with intent to commit
5 criminal sexual conduct beyond a reasonable doubt. Find him
6 guilty.

7 THE COURT: Mr. Galmore?

8 CLOSING BY GALMORE:

9 MR. GALMORE: Thank you, ladies and gentlemen, for your
10 jury service. I know that it's difficult to come off of your
11 jobs and other obligations and come have to sit at the
12 courthouse and listen to testimony and evidence for days, but
13 we appreciate it. The reason why we appreciate it is because
14 you are the people that make this system work. You keep us
15 honest, not just me, not just the solicitor or the Judge, all
16 of us, the police officers. Your job as jurors is to tell us
17 whether we've done our job as attorneys, judges, or in this
18 case, police officers.

19 When I talked to you yesterday in the opening statement,
20 I said that this was about roles and responsibilities and
21 everyone had a responsibility, and that the Myrtle Beach
22 Police Department did not fulfil their responsibility. So,
23 let me tell you what I mean.

24 You saw several witnesses from this witness stand, a few
25 of them were police officers. One of the officers said, yeah,

1 I was just the crime scene technician. One officer said,
2 well, my job was to do this composite sketch for a BOLO. I
3 didn't have anything to do with that. The next officer said
4 my job was to collect the evidence and drive it to Columbia.
5 I didn't have anything to do with that part or this part or
6 the other part of the case, and that's where the problem comes
7 in. My question is, who is supposed to be in charge of this
8 case? Which officer is supposed to tell the other officers to
9 collect evidence? We have an issue about a shirt. We've been
10 told that the shirt was torn. We haven't seen a shirt. What
11 we've seen is a picture of Ms. Funderburke in a different
12 shirt and the statement was, well, the shirt that was torn is
13 under that shirt. My question is, why is the shirt that was
14 torn, if in fact it was torn, not in evidence today? You see
15 how they put all this in nice plastic bags with the people's
16 initials on it. You can do the same thing with a t-shirt.
17 Excuse me, ma'am, I need you to hand us that shirt so that we
18 can put it in evidence for future use, put it in a plastic
19 bag, bring it to the courthouse, and show it to you. But as
20 this case exists at this moment, there is no torn shirt. No
21 witness showed us the shirt. And if you notice procedurally
22 with the 911 tape, we had to kind of had to go through it
23 first in order to be introduced to you.

24 With these DNA swabs, the witness had to testify about
25 the swabs before they could be presented to you. The t-shirt

1 is simply not here. So, the basis of he tried to rape me; he
2 tore my shirt. We don't have a shirt and we don't have a
3 policeman saying get that shirt.

4 Now, we've been told that all of this happened somewhere
5 around Lumber Street and we've been given crime scene photos,
6 two whole crime scene photos. And before I send a person to
7 prison, I would ask for slightly more evidence. Now, the
8 reason why this is important is because we heard that Ms.
9 Funderburke was dragged the length of the jury box behind some
10 containers where Mr. Myers attempted a sexual assault. Well,
11 I don't see any drag marks. You'll have these photos in the
12 back. This one is not gonna help any more than this one, but
13 there are no drag marks. This is the evidence they gave you.
14 So, what they want you to do is fill in the blanks, fill in
15 the gaps. Basically, they want you to do their job for them.

16 And like I told you yesterday, your job is not to go
17 investigate. Your job is not to say let's figure out what
18 happened. Your job is to say State of South Carolina either
19 you did or you did not carry your burden of proof. Burden of
20 proof means that you must be firmly convinced of the guilt of
21 the accused or, on the other hand, is there a real possibility
22 that this is the wrong man. That's what the state has to
23 prove to you. They have to prove to you. You have to walk
24 out of here firmly convinced of this man's guilt. I am not.

25 I think if the lead detective testified -- I think we had

1 Officer Aiesi, who was a patrol officer, now a detective, but
2 was not the lead detective on this case. That's about as
3 close as we came to an actual policeman testifying about this
4 case. I think if she were in charge or you heard mention of
5 Sergeant Bertang or whoever was in charge, had they said let's
6 go over to the Carolina Breeze Apartments where both he and
7 her were at and asked the people over there what was going on.
8 It's real simple. Was he drinking at the apartments? Was she
9 drinking? Were they drinking together? Was he hitting on
10 her? Was she receptive? Was she turning him down? Was she
11 hitting on him? I asked her, who was out there? Buck and Nia
12 and she corrected me. She said no, it was Keisha. Okay.
13 Somebody go ask Keisha what was going on five minutes before
14 this happened. Were they hugged up in a corner or was she
15 rejecting him?

16 That's why I said the police haven't done their job. And
17 from the witness stand, you would've heard the testimony that
18 said, yeah, I wasn't supposed to. My part was only to do
19 BOLO. My part was only to drive this evidence from point A to
20 point B. Nobody's job was to try to investigate this case.

21 So, what did they bring us? They brought us Ms.
22 Funderburke's statement. Let's talk about that. The Judge
23 will tell you that credibility is an issue for you, as a
24 juror, to determine for each and every witness. Credibility
25 is a fancy way of saying believability. Do you believe what

1 she had to say? Do you believe some of what she had to say,
2 but not all of it? What parts of what she had to say need to
3 be corroborated? Do we have corroboration of what she had to
4 say? I can tell you that we have problems with Ms.
5 Funderburke's credibility. She said she didn't want to be
6 here, and I understand the solicitor, oh, she's traumatized.
7 Six years later, she's still traumatized; that's why she's
8 doesn't want to be here. Well, the fact is she's got other
9 stuff going on; she didn't want to be here. She said that on
10 the witness stand.

11 We know Ms. Funderburke has had trouble with the law.
12 She admitted that she had previously been arrested for
13 resisting arrest, that's resisting a police officer. And,
14 after questioning, she admitted that she currently has charges
15 pending in the solicitor's office. That calls into question
16 credibility because it calls into question her bias. Said
17 another way, do you have motive? Do you have reason to lie?
18 Do you have reason to want a particular outcome in this case?
19 Yes, I want him to be convicted so that then I can turn around
20 and say, Solicitor, did I do a good job? Can you drop my
21 shoplifting charge?

22 Now, there's some of you who are gonna say, oh, I believe
23 her, skip all that. For those of you who believe, well, maybe
24 her testimony is in doubt, maybe we need to have some
25 corroboration. Let's see what we have. They gave us pictures

1 of the scene and I've shown you those. Those pictures don't
2 show any blood. They don't show anything on the ground of
3 evidentiary value. They don't show drag marks. They don't
4 show this shirt that we're supposed to be looking at. And as
5 far as this picture of these underwear, I don't know if that
6 was torn last week, last month or six years ago. They've
7 shown us this injury. This is the injury. We've got a
8 picture ---

9 MS. WALTER: Objection, Your Honor, that was not in
10 testimony.

11 THE COURT: I'm gonna allow it in the argument. You may
12 continue, Mr. Galmore.

13 MR. GALMORE: Well, the problem with this picture is that
14 it doesn't actually show an injury. You'll have it in the
15 back. You can look at it as much as you like. But, the
16 bottom line is Ms. Funderburke said that she bit him or he bit
17 her on the front of her hand, not the back. So, really you're
18 wondering why we have this picture at all but this is what
19 they gave us. This is the evidence they presented to you and
20 now they want you to return a verdict based on this lack of
21 evidence.

22 Now, you can't see an injury in this photo. I heard some
23 testimony about a injury. I heard EMS wasn't called -- excuse
24 me -- EMS was called, responded, and she did not seek further
25 treatment. The problem with EMS, they would've taken some

1 pictures of this alleged injury, they would've given us a
2 written report at least to say the ambulance responded to the
3 scene at 15:20 hours and stayed on scene for 20 minutes. EMS
4 will give you, at the minimum, a record. So, as far as
5 documentation of this injury, you have a picture that's not
6 the injury and we don't have any medical records. She did not
7 go to the hospital and that's important because a doctor, a
8 nurse, a nurse practitioner, would've done the same thing that
9 a paramedic would have done. Looked at that injury, maybe
10 taken a picture of it, described it in their medical report
11 and, at the very least, given us some type of diagnosis or
12 treatment, checked it to make sure she didn't have tetanus,
13 checked her for sexually transmitted diseases, could've
14 checked her for anything but none of that was done. Instead,
15 what we have is a picture that's not even the injury.

16 Now, into this the State has brought you Agent Meeh, or
17 whatever his name is, from SLED. Now, the testimony was the
18 important part is in bold, and you'll have this report in the
19 back also. This is a report from the South Carolina Law
20 Enforcement Division, known as SLED, it's our state police.
21 And this report says the DNA profile developed from Item 2,
22 that's the hand swab, is a mixture of at least three
23 individuals. There's no way around that, ladies and
24 gentlemen, three individuals. We can identify two, Ms.
25 Funderburke, Mr. Myers. As far as this third person, I have

1 two problems with it. First, no one attempted to figure out
2 who this third guy is. Second, when I asked about it, oh, no,
3 we can't do that. First of all, he's the expert, and he's
4 determined that we cannot identify this third person. Well,
5 let's get into that in a little more detail. I think the
6 statement was the mixture is insufficient for reliable
7 interpretation. How much DNA do you need to make an
8 interpretation? Well, it depends on the case. In this case,
9 how much DNA do you need? Oh, perhaps 100 to 300 cells. How
10 much DNA did you have for that third person? Don't know. So,
11 then I took it in a different direction. Can you tell us
12 whether the Sharedia Funderburke sample is from skin or
13 saliva? No, I can't. Can you tell us whether the Tony Myers
14 sample is from skin or saliva? No, I can't. Can you tell us
15 whether that third person whether that came from skin or
16 saliva? No, I can't. The state has simply concluded that Mr.
17 Myers was the person that bit her and that that sample is all
18 that we need to know. Before I send someone to prison, I'd
19 like to know who that extra person is and what that extra
20 person's role was in all of this.

21 So, Mr. Myers is charged with assault with intent to
22 commit criminal sexual conduct. And, I submit to you that he
23 is not guilty of that offense. One of the things that the
24 Judge will talk to you about is called intent. In every
25 crime, whether it's murder, literally, you have to have the

1 intent, meaning you as jurors are tasked with trying to
2 discern what was in Tony Myers' mind at the time. You can't
3 do that in this case. We know what Ms. Funderburke believes.
4 We know what Ms. Walter believes. But as far as Mr. Myers,
5 the information that we have is he was drunk. I think she
6 said that he smelled of alcohol. She said his eyes were
7 glossy. I think she said he was up for days or it looked like
8 he had been up for days. She said at some point, he
9 apologized to her. So, I don't know if his intent was to
10 commit a rape. That's the question that you have been asked
11 to decide. We have testimony, but that testimony comes with a
12 question mark. We have this DNA evidence, but that evidence
13 comes with an extra person. And against all of that, we have
14 to figure out what he was planning on doing.

15 Ladies and gentlemen, I submit to you that Mr. Myers is
16 not guilty of assault with intent to commit criminal sexual
17 conduct. I submit to you that he's not guilty, period. If,
18 in your wisdom as jurors, you look at the evidence and you
19 decide the case and you decide that he is guilty, then there
20 is an option called assault and battery in the first degree.
21 It doesn't call into question this element of sexual component
22 that may or may not be there. It's an assault and battery and
23 it would seem to fit the facts of this case, in your wisdom.

24 I thank you once again for your attention. The Judge
25 will give you some final instructions and then it will be your

1 turn to deliberate on this case. I asked each of you to keep
2 an open mind and I continue to ask you to keep an open mind.

3 Again, thank you, and I ask you to find Tony Myers not
4 guilty.

5 CHARGE TO JURY:

6 THE COURT: All right, ladies and gentlemen, it's now my
7 duty and responsibility to give you the law that you will
8 apply to the facts and evidence that you've heard in this
9 particular case. I told you at the very beginning that you're
10 the judges of the facts and I would not indicate to you in any
11 way what I thought the facts of this case were and I think
12 I've stuck with that. If you came into this -- into this case
13 as jurors with any preconceived ideas of what the law is or
14 what it ought to be, what it should be, what you hoped it
15 would be, you'll disregard it. You'll take the law as I now
16 give it to you and apply it to the facts and evidence you've
17 heard in this case.

18 Besides being the judges of the facts or with being the
19 judges of the facts, I told you one of your jobs and duties
20 and responsibilities was to judge the credibility and that is
21 the believability of the witnesses that came before you and
22 testified in this particular matter. In looking at
23 credibility and believability of a witness, you can look at
24 the -- and believe one witness against several, several
25 against one, you can believe a portion of what a witness says,

1 disregard the remaining portion of it. If you've got a good
2 sound reason for doing so, you can disregard it in its
3 entirety, the testimony of a particular witness.

4 Now, you look at whether or not the witnesses exhibited
5 to you any kind of interest, motive, bias, prejudice that he
6 might have in giving you their testimony. Obviously, you
7 consider the opportunity for knowledge, how did they come
8 about that information that they gave you from the witness
9 stand.

10 It's your job to look at the witnesses and the testimony
11 and the evidence and to find that evidence that you find to be
12 credible and believable in this particular case. You don't
13 have any friends to reward, you don't have any enemies to
14 punish, your verdict can't be the result of any kind of
15 passion, prejudice, or sympathy. It's an examination of the
16 facts and the evidence that were presented to you.

17 Two types of evidence presented in virtually every single
18 case that's tried, called direct and circumstantial evidence.
19 Direct evidence, that's the kind of evidence that comes from
20 someone who claims to have actual knowledge of a fact; what
21 they saw, what they heard, what took place in their presence.
22 You also have circumstantial evidence. That's a chain of
23 facts indicating the existence of a fact. The law doesn't
24 make any distinction between the two but, to the extent that
25 the State of South Carolina relies on circumstantial evidence,

1 all of the circumstances have to be consistent with each other
2 and when taken together point conclusively to the guilt of the
3 accused of the crime for which he has been charged. If the
4 circumstances merely portray a defendant's behavior as
5 suspicious, that proof has failed. As with all things, the
6 state has the burden of proving the defendant guilty beyond a
7 reasonable doubt. So, everything we're talking about, the
8 state has that burden on that particular matter, to prove it
9 to you beyond a reasonable doubt.

10 I qualified a witness in this case to give their opinion,
11 sometimes called an expert witnesses. Normally, we don't
12 allow witnesses to give you their opinion, what they think.
13 But some witnesses by their expertise, their training, their
14 education in a particular field, we'll allow them to give
15 their opinion, and that doesn't give them any kind of special
16 status. You look at all the witnesses the same. You judge
17 all the witnesses' credibility and believability the same by
18 the standard that I've previously talked to you about.

19 And I talked about this at the very beginning, also. The
20 defendant did not appear. I told you then and I'm telling you
21 now, that is not a factor for you to consider in this
22 particular matter in any shape, manner, or form. You may not
23 talk about it, you may not use it mentally, to make a decision
24 in this matter. Every defendant charged with a crime, by our
25 state constitution, by the Constitution of the United States

1 of America, is presumed innocent of that crime. And the fact
2 that they do not appear in a particular criminal proceeding,
3 cannot be used against them in any way. The state has the
4 burden of proof of proving the defendant guilty beyond a
5 reasonable doubt. The defendant in any criminal case has
6 nothing to show to you, nothing to prove to you. It's the
7 state's job, the state's duty, the state's responsibility to
8 prove the defendant guilty beyond a reasonable doubt. That
9 presumption of innocence, we liken it to a robe of
10 righteousness. It's placed on the shoulders of the defendant
11 when they are charged, it stays on the shoulders of the
12 defendant throughout the entirety of the matter, and it stays
13 there unless and until the state, by the evidence it presents
14 to you, can rip that robe of righteousness from the shoulders
15 of the defendant proving the defendant's guilt beyond a
16 reasonable doubt. This is not just some legal theory or legal
17 phrase. It's a substantial right to which every American,
18 which every defendant is entitled unless you are satisfied of
19 the defendant's guilty beyond a reasonable doubt.

20 Reasonable doubt, the kind of doubt that would cause an
21 ordinary, reasonable person to hesitate to act. Proof beyond
22 a reasonable doubt is proof that leaves you firmly convinced
23 of the defendant's guilt. Now, there are very few things we
24 can know with absolute certainty and the law doesn't require
25 the State of South Carolina to give you that kind of proof.

1 But, what is required is based upon the evidence presented to
2 you, if you are firmly convinced of the guilt of the defendant
3 beyond a reasonable doubt of the crime charged based on that
4 evidence, you must find the defendant guilty. On the other
5 hand, based upon the evidence presented to you, if you are not
6 firmly convinced the defendant is guilty of the crime charged,
7 you must give the defendant the benefit of the doubt and find
8 him not guilty.

9 In order to establish criminal liability in any case,
10 criminal intent is required. Criminal intent must be proved
11 by the state beyond a reasonable doubt. It's always a matter
12 that you, the jury, must determine from the circumstances of
13 the case. It's a mental state. It's up to you to determine
14 what the defendant intended to do based upon the facts and
15 circumstances shown to have existed from the facts and
16 evidence. And again, it has to be proved to you beyond a
17 reasonable doubt.

18 Now, the defendant is charged with assault with intent to
19 commit criminal sexual conduct. So, in defining that, and
20 we'll talk about the criminal sexual conduct third degree and
21 I'll define that to you. But first, attempt, what does
22 attempt mean? An attempt is an effort to accomplish a crime
23 which does not succeed. An attempt includes a specific intent
24 to do a particular criminal act along with an act, something
25 they did, falling short of what they intended to do. Specific

1 intent means the defendant intended to complete the act
2 comprising the underlying offense. The state has to show more
3 than mere preparation. There has to be some overt act
4 committed in the effort to commit the crime. It is not
5 accidentally or involuntarily. Intent may be shown by the
6 acts and conduct of the defendant and any other circumstances
7 from which you could reasonably infer intent. Therefore, to
8 prove attempt, the state must prove that the defendant had the
9 specific intent to commit the underlying offense accompanied
10 by some overt act that would further that particular crime.

11 So, what's the crime? Third degree criminal sexual
12 conduct. The state has to prove beyond a reasonable doubt, so
13 you put attempt with this definition, attempted to do this,
14 intended to do this. The state must prove beyond a reasonable
15 doubt that the defendant engaged in a sexual battery with the
16 victim. A sexual battery is sexual intercourse, cunnilingus,
17 fellatio, anal intercourse, any intrusion, however slight, of
18 any part of the person's body or object into the genital or
19 anal openings of another person. If you find that a sexual
20 battery did occur, you must find or must then decide whether
21 the state has proven beyond a reasonable doubt that the
22 defendant used force or coercion without any aggravating
23 circumstance to accomplish the battery. Using force or
24 coercion means to make the victim follow a prescribed or
25 dictated course, to inflict or impose, to force one's will on

1 another.

2 Now, if you find that the state has not proven to you
3 beyond a reasonable doubt that the defendant is guilty of the
4 crime of assault with intent to commit criminal sexual conduct
5 third degree, you must consider what the law says is a lessor
6 included offense. And what is that? Assault and battery in
7 the first degree. A person commits the offense of assault and
8 battery in the first degree if the person unlawfully injures
9 another person and the act either involves non-consensual
10 touching of the private parts of an adult, either under or
11 above the clothing, with lewd and lascivious intent, or it
12 occurred during the commission of a robbery, burglary,
13 kidnapping, or theft. Private parts mean the genital area or
14 buttocks of a male or female or the breasts of a female. And
15 the person could also commit the offense of assault and
16 battery in the first degree if the person unlawfully offers or
17 attempts to injure another person with the present ability to
18 do so and the act is either accomplished by means likely to
19 produce death or great bodily injury or, again, occurred
20 during the commission of a robbery, burglary, kidnapping, or
21 theft.

22 Now, if you've got a reasonable doubt as to whether the
23 defendant is guilty beyond a reasonable doubt of the greater
24 or the lessor offense, it's your duty to resolve that doubt in
25 favor of the defendant and find him guilty of the lessor

1 offense if that's your view of the evidence and, again, it's
2 been proven to you beyond a reasonable doubt. Everything
3 we've talked about, the state, by the facts and evidence
4 they've shown to you in this trial, has had to have prove that
5 to you beyond a reasonable doubt, again, the state's duty,
6 job, and responsibility. That's the law. That's the law that
7 you're gonna apply to the facts and evidence you've heard in
8 this case.

9 Verdict form is straightforward. You have the caption of
10 the case. Criminal sexual conduct in the third degree. On
11 the charge of criminal sexual conduct in the third degree, we,
12 the jury, by unanimous consent, find the defendant -- you got
13 two choices, you've got to put one before the other, don't
14 assign anything to that, not guilty or guilty. If you find
15 the defendant guilty of attempted sexual conduct, that's the
16 end of the case, you knock on the door, you let the bailiff
17 know you've reached the unanimous verdict. If you find the
18 defendant, by unanimous verdict, not guilty of attempted
19 criminal sexual conduct in the third degree, then you proceed
20 to assault and battery first degree. On the charge of assault
21 and battery in the first degree, we, the jury, by unanimous
22 consent, find the defendant -- again, two choices, not guilty
23 or guilty.

24 So, Mr. Foreman, whatever verdict form is used by the
25 jury, there's a place for your signature. So, it's not guilty

1 or guilty of criminal sexual conduct in the third degree. On
2 the second one, there's a place for your signature. On the
3 second one, assault and battery first degree, not guilty or
4 guilty, unanimous, a place for your signature, put today's
5 date, knock on the door and let the bailiff know that the jury
6 has reached a unanimous verdict.

7 Unanimous means exactly what you think it means, 12/0;
8 not 11/1, 10/2, any combination thereof. Mr. Foreman,
9 whatever block you check, you sign your name to, you are
10 telling the Court when the verdict is read by the clerk of
11 court's representative, that every single member of the jury
12 agrees that's their verdict. So, if called upon by the
13 clerk's representative to raise their right hand and affirm
14 that is their verdict when called in court, they may do so.

15 What I'm gonna ask that you do, Mr. Foreman, in just a
16 minute, is take your jury to the jury room. Now, the two
17 alternates, ladies, if you'll stay with us. You take the
18 other jurors to the jury room. Do not, do not begin your
19 deliberations until the bailiff hands to you the verdict forms
20 and the exhibits. At that point in time, you may commence
21 your deliberations.

22 Mr. Foreman, take your jury to the jury room, please.
23 (REPORTER'S NOTE: Jury exits courtroom. The following takes
24 place outside the presence of the jury.)

25 BY THE COURT:

1 THE COURT: As to the two alternates in this particular
2 case, is there any reason from the state that the Court should
3 not excuse them at this time?

4 MS. WALTER: No, Your Honor.

5 THE COURT: From the defense?

6 MR. GALMORE: No, sir.

7 THE COURT: Ladies, I want to tell you, I want to thank
8 you for your service. I can't tell you how many times we have
9 to substitute in an alternate. Somebody gets sick or, you
10 know, God forbid, sometimes they don't show back up again.
11 Whatever it is, it's something -- I'm not gonna say it happens
12 all the time, but it happens frequently enough that we need
13 alternates. That was your job, to step in the shoes of one of
14 those 12 members if they couldn't go forward. They're all
15 ready, willing, and able to go forward at this point in time,
16 so I'm able to excuse you from your jury service and excuse
17 you for the week. You're done. You've got an exemption for
18 three years from coming back to Circuit Court jury duty. So,
19 you don't have to see us for the next three years, but now if
20 your local city judge or magistrate or federal judge calls you
21 for jury duty, you do have to go see them.

22 So, with that, with my thanks, thank you very much; you
23 are now excused. If you just want to go back that way and go
24 around like you have been going. Okay?

25 JUROR: Thank you.

1 THE COURT: Thank you very much.

2 (REPORTER'S NOTE: Alternates exit courtroom.)

3 THE COURT: Exceptions, additions, deletions to the
4 charge from the state?

5 MS. WALTER: No, Your Honor.

6 THE COURT: From the defense?

7 MR. GALMORE: No, sir.

8 THE COURT: All right. First, counsel, I want to thank
9 y'all for the job y'all did in prosecuting and defending this
10 case. You did everything that the Court expected of you to do
11 in that regard and I appreciate that.

12 If you would please get with Madam Court Reporter, look
13 at all the exhibits and make sure we got the proper exhibits
14 going back to the jury, please. And with that, we'll be at
15 ease till the jury needs us.

16 (REPORTER'S NOTE: Counsel agrees to exhibits to be submitted
17 to jury. Exhibits submitted to jury and deliberations
18 commence at 2:28 P.M.)

19 (RECESS.)

20 *****OFF THE RECORD*****

21 COURT'S EXHIBIT NUMBER 1

22 MARKED FOR IDENTIFICATION

23 (On the Record.)

24 PLAYBACK OF TESTIMONY OF GARTH LEE WOOD:

25 THE COURT: You may be seated. Thank you. All right. I

1 understand that the jury wants to hear again the testimony of
2 Mr. Garth Lee Wood, who testified earlier.

3 And, Dixie, you ready to play that?

4 COURT REPORTER: I am, Judge.

5 THE COURT: All right. So, is the state ready for the
6 jury to come in?

7 MS. WALTER: Yes, Your Honor.

8 THE COURT: Defense?

9 MR. GALMORE: Yes, sir.

10 THE COURT: Ask the jury to come in, please.

11 (REPORTER'S NOTE: Jury enters courtroom @ 3:00 P.M.)

12 THE COURT: All right. Mr. Foreman, the -- I received a
13 note that the jury wishes the replaying of the testimony of
14 Mr. Garth Lee Wood; is that correct, sir?

15 MR. FOREMAN: Yes, we do.

16 THE COURT: All right, sir. With that, the -- please
17 understand we're here at your pleasure. You can certainly
18 here it from the beginning to the absolute end, but if the
19 jury as a whole determines at some point in time you want to
20 stop, that's your choice. All right?

21 Go ahead, Madam Court Reporter.

22 (REPORTER'S NOTE: Playback of Garth Lee Wood.)

23 THE COURT: Can y'all hear that?

24 JURY: No.

25 THE COURT: Okay. They can't hear it. So, we've got to

1 do something and I can hardly hear it.

2 COURT REPORTER: Judge, let me play it from the computer
3 and see if we can do that. I'm gonna have to download that
4 file first, Judge. I've already downloaded February and today
5 is the first of March and I haven't downloaded that file.

6 THE COURT: Okay. So, you need a little bit of time?

7 COURT REPORTER: About five minutes.

8 THE COURT: All right. So, Mr. Foreman, if you want to
9 go to your jury room, we'll make sure that you can hear it
10 before we call you back out. All right? Thank you.

11 (REPORTER'S NOTE: Jury exits courtroom.)

12 THE COURT: All right. Just let me know when y'all are
13 ready and let's just try and play a little bit.

14 COURT REPORTER: Okay.

15 THE COURT: Thank you, ma'am.

16 (REPORTER'S NOTE: Brief break in record to prepare playback.)

17 *****OFF THE RECORD*****

18 (On the Record.)

19 THE COURT: All right. Ask the jury to come in, please.

20 (REPORTER'S NOTE: Jury enters courtroom @ 3:10 P.M.)

21 THE COURT: All right. They tell me they've got it
22 fixed.

23 (REPORTER'S NOTE: Audio of testimony of Garth Lee Wood
24 contained herein on Page 200, Line 8 to Page 208, Line 17
25 played back in the presence of the jury.)

1 THE COURT: All right. Mr. Foreman, just take your jury
2 back to the jury room and continue deliberations then.

3 Thank you.

4 (REPORTER'S NOTE: Jury exits courtroom. Deliberate continue
5 at 3:23 P.M. The following takes place outside the presence
6 of the jury.)

7 THE COURT: All right, counsel, we'll be at ease until
8 they need us again.

9 Thank you very much.

10 **(RECESS.)**

11 *****OFF THE RECORD*****

12 COURT'S EXHIBIT NUMBER 2

13 MARKED FOR IDENTIFICATION

14 **(On the Record.)**

15 THE COURT: All right. Ask the jury to come in, please.

16 (REPORTER'S NOTE: Jury enters courtroom @ 4:10 P.M.)

17 RECHARGE TO JURY:

18 THE COURT: All right, ladies and gentlemen, based upon
19 your note, what I'm going to do is go over the specific law
20 regarding the charge. Now, the defendant has been charged
21 with the crime of assault with intent to commit criminal
22 sexual conduct third degree. So, I'm gonna talk about that
23 first and how you may or may not get to assault and battery in
24 the first degree. All right?

25 So, assault with intent to commit criminal sexual conduct

1 third degree. First, we talk about intent. Criminal intent,
2 that is a matter that has to be determined by you from the
3 facts and circumstances surrounding the situation. It's a
4 mental state. It's up to you to determine what the defendant
5 intended to do based on the circumstances shown to have
6 existed. And again, that has to be proved to you beyond a
7 reasonable doubt.

8 So, what's attempt? An attempt is an effort to
9 accomplish a crime which does not succeed. An attempt
10 includes a specific intent to do a particular criminal act.
11 It means that the defendant intended to complete the act but
12 was unable to do so. The state must show something more than
13 mere preparation. There has to be some overt act. The
14 defendant committed some overt act in attempting to commit the
15 crime. Intent means intending the result, not by accident or
16 involuntarily. That is shown by the acts and conduct of the
17 defendant and any other facts and circumstances from which you
18 could infer intent. So, the state has to prove that the
19 defendant had the specific intent to commit the crime of
20 assault with intent to commit criminal sexual conduct third
21 degree. So, he's charged with intent to commit the crime.
22 So, what is the crime that he attempted to commit? The crime
23 is called third degree criminal sexual conduct. All right?
24 What that is that the defendant engaged in a sexual battery
25 with the victim. And again, sexual battery is defined in the

1 law as sexual intercourse, cunnilingus, fellatio, anal
2 intercourse or any intrusion, however slight, of any part of a
3 person's body or object into the genital or anal openings of
4 another person. Again, he's charged with attempting the
5 intent to commit that crime.

6 If you find that he intended and attempted to commit the
7 crime, you have to find that the state proved beyond a
8 reasonable doubt also that the defendant used force or
9 coercion without any aggravating circumstances to accomplish
10 the sexual battery. Using force or coercion means the victim
11 followed -- to make the victim follow a prescribed, dictated
12 course. It means to inflict or impose, to force your will on
13 someone. Now, if you find the state hasn't proved that crime
14 to you beyond a reasonable doubt -- based on the facts and
15 circumstances presented, if the state to your collective
16 satisfaction has not proved that he's guilty of that crime
17 beyond a reasonable doubt, then and only then because you have
18 then found him not guilty of that crime, if they don't prove
19 to you beyond a reasonable doubt then you would have decided
20 collectively your decision not guilty unanimously, and then
21 you consider assault and battery first degree because the law
22 considers that to be lessor included or a crime within the
23 larger crime.

24 So, what's assault and battery first degree? A person
25 commits the offense of assault and battery in the first degree

1 if the person unlawfully injures another person and it either
2 involves nonconsensual touching of the private parts of an
3 adult, either under or above the clothing with lewd and
4 lascivious intent or it occurred during the commission of a
5 robbery, burglary, kidnapping or theft.

6 Private parts means the genital area or buttocks of a
7 male or female or the breasts of a female and you could also
8 commit the offense of assault and battery in the first degree
9 if the person offered or attempted to injure another person
10 and the act is accomplished by means likely to produce death
11 or great bodily injury or occurred during the commission of a
12 robbery, burglary, kidnapping or theft.

13 Talking about the greater crime or the lesser offense.
14 If you've got a reasonable doubt as to whether or not the
15 defendant is guilty of a greater or a lesser offense, it's
16 your duty to resolve that doubt in favor of the defendant and
17 find him guilty of the lesser offense. Again, if that's your
18 view of the evidence collectively and, again, it's been proven
19 to you beyond a reasonable doubt by the State of South
20 Carolina based upon the facts and evidence presented to you.

21 So, that's the two offenses. He's charged with one. You
22 have to decide did the state prove to us beyond a reasonable
23 doubt. If you decide no, then you go to assault and battery
24 in first degree. All right?

25 Thank you very much. Go back and resume your

1 deliberations.

2 (REPORTER'S NOTE: Jury exits courtroom @ 4:20 P.M. The
3 following takes place outside the presence of the jury.)

4 THE COURT: Anything from the state as to the re-charge?

5 MS. WALTER: No, Your Honor.

6 THE COURT: From the defense?

7 MR. GALMORE: No, sir.

8 THE COURT: All right. Again, we'll be at ease until the
9 jury needs us.

10 Thank you..

11 (RECESS.)

12 *****OFF THE RECORD*****

13 (On the Record.)

14 VERDICT OF JURY:

15 THE COURT: I understand that the jury has reached a
16 verdict. Is the state ready to receive it?

17 MS. WALTER: Yes, Your Honor.

18 THE COURT: Defense?

19 MR. GALMORE: Yes, sir.

20 THE COURT: Ask the jury to come in.

21 (REPORTER'S NOTE: Jury enters courtroom @ 5:50 P.M.)

22 THE COURT: All right. Mr. Foreman, has your jury
23 reached a unanimous verdict in this matter?

24 MR. FOREMAN: Yes, Your Honor.

25 THE COURT: All right. Very good. Could you hand the

1 verdict forms to the clerk's representative, please?

2 CLERK: Thank you.

3 THE COURT: You may publish the verdict.

4 CLERK: Indictment number 2016-GS-26-5748, the State of
5 South Carolina, County of Horry, versus Tony Nevail Myers. On
6 the charge of attempted criminal sexual conduct in the third
7 degree, we, the jury, by unanimous consent, find the defendant
8 not guilty. Signed by Tyler Hayes, Foreperson, dated March
9 1st, 2018.

10 On the charge of assault and battery in the first degree,
11 we, the jury, by unanimous consent, find the defendant guilty.
12 Signed by Tyler Hayes, Foreperson, dated March 1st, 2018.

13 Ladies and gentlemen of the jury, if this is your
14 verdict, so signify by raising your right hand.

15 THE COURT: All the jurors having affirmed the verdict by
16 the raising of their right hand, does the jury -- does the
17 state wish the jury polled?

18 MS. WALTER: No, Your Honor.

19 THE COURT: Does the defense?

20 MR. GALMORE: No, sir.

21 BY THE COURT:

22 THE COURT: All right. Very good.

23 All right, ladies and gentlemen, I want to thank you for
24 your service in this particular case. You did everything the
25 Court expected of you to well and truly deliberate and come to

1 a unanimous verdict in this matter. I want to thank you for
2 your service in this case. I will tell you how it will
3 proceed. The Court will hear some matters from the attorneys
4 and their arguments, the Court will impose a sentence, that
5 sentence will be sealed and will not be published. The bench
6 warrant will be issued for the defendant and then when he is
7 brought before the Court, then the sentence will then be
8 opened and read to him at that point in time.

9 So, with that, thank you for your service. You're
10 excused for the -- from jury service for the rest of the week.
11 You've earned an exemption for three years coming back to jury
12 service here in Circuit Court. You don't have to see us for
13 the next three years. Now, if your -- you live in the city
14 and the city judge or county and county magistrate or a
15 federal judge asks for you to go see them for jury duty, you
16 do have to go see them; you just don't have to see us. All
17 right?

18 Thank you very much. I appreciate it.

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

21 THE COURT: All right, Mr. Galmore, I'd be glad to hear
22 from you, sir.

23 MOTIONS:

24 MR. GALMORE: Yes, Your Honor, I would make a motion for
25 a new trial, and I would make a motion for an order in arrest

1 of judgment just based on the insufficiency of the indictment
2 and the insufficiency of the evidence presented. I think it
3 says a lot that the jury did -- in fact found Mr. Myers not
4 guilty on the more serious offense of assault with intent to
5 commit criminal sexual conduct. Just based on that, Your
6 Honor, and based on the jury's questions, they had some
7 confusion about the law. I would submit to you that this is
8 case is appropriate for an order in arrest of judgment and in
9 the alternative for a new trial.

10 THE COURT: All right, sir.

11 Any response from the state?

12 MS. WALTER: Your Honor, we would incorporate the
13 response to the motion for directed verdict. There was
14 certainly substantial evidence to support the assault and
15 battery first degree charge. We believe that the jury's
16 verdict should stand.

17 THE COURT: Thank you, ma'am.

18 All right. Regarding the motion for a new trial, in this
19 particular matter, I do find that there is competent evidence
20 in the record to sustain the jury's verdict and, with that, I
21 would respectfully decline to grant your motions for a new
22 trial or judgement in arrest of verdict.

23 Anything else from the defense?

24 MR. GALMORE: I don't know if now is the appropriate
25 time, I just wanted to give you a little bit of information

1 about Mr. Myers?

2 THE COURT: Yes, sir. What I was going to do, see if the
3 solicitor had a sentencing sheet.

4 MS. WALTER: Mr. Holford is printing it now.

5 THE COURT: All right. Very good. So, what I'll do when
6 y'all have that, I'll be glad to hear from the state and the
7 defense as to a sentence in this matter and, as I explained to
8 the jury, what we'll do is after I hear from you I'll impose a
9 sentence, we'll seal it up, and then whenever the bench
10 warrant is executed on Mr. Myers, we'll open it up and read
11 the sentence to him. And obviously, as you know, Mr. Galmore,
12 you still have the opportunity at that point in time then to
13 argue against whatever the sentence may be to ask the Court to
14 do something different. Okay?

15 MR. GALMORE: Yes, sir.

16 THE COURT: All right. So, we'll just be at ease then.
17 We'll just wait until y'all get the sentencing sheet.

18 (REPORTER'S NOTE: Brief break in record for preparation of
19 sentencing sheet.)

20 All right. Counsel, apparently the -- when the Clerk
21 read the docket number for the verdict, she read a wrong
22 number, but the indictment clearly says 2016-GS-26-2411. The
23 verdict form has 2016-GS-26-2411. Those are in agreement.
24 Apparently, the Clerk misspoke when she said the numbers. So,
25 the verdict in this matter by the jury in 2016-GS-26-2411 is

1 regarding attempted criminal sexual conduct third degree, not
2 guilty, and assault and battery first degree, guilty, and
3 that's reflected on the verdict forms that have the correct
4 number as set forth on the indictment. All right?

5 MS. WALTER: Yes, Your Honor.

6 THE COURT: Thank you.

7 MR. GALMORE: Thank you, sir.

8 MS. WALTER: May I approach, Your Honor?

9 THE COURT: It's all right. Not a problem.

10 Yes, ma'am, please.

11 SENTENCING:

12 THE COURT: All right. Let me hear from the state,
13 please, ma'am?

14 MS. WALTER: Thank you, Your Honor. The defendant has a
15 criminal history dating back to 2001, when he was convicted of
16 CDV first degree. In 2002, he was convicted of receiving
17 stolen goods. 2003, burg 2nd, nonviolent where he received a
18 YOA sentence. 2006, he violated his YOA parole and it was
19 revoked. He had simple possession of marijuana in 2009, 2010.
20 In 2011, he has a PWID cocaine base for which he received two
21 years. In 2012, he was convicted of a second CDV charge, and
22 then in 2014, his second receiving stolen goods charge. While
23 he was out on bond on this matter, he was arrested two other
24 times. Those are both possessory drug offenses.

25 Your Honor, I think while we respect the jury's verdict,

1 certainly we believe that the evidence was clear that the
2 defendant was attempting to rape Ms. Funderburke, based on
3 both his words and his actions. We are asking at this time,
4 based on his criminal history, based on the fact that he did
5 not appear for trial despite the fact that he knew that it was
6 being called to trial, based on his history, we are asking for
7 the maximum sentence of 10 years and we are also asking Your
8 Honor to place him on the sex offender registry because of the
9 intended result in this case. We believe that the sex
10 offender registry is appropriate.

11 THE COURT: All right. Thank you, ma'am.

12 All right, Mr. Galmore?

13 MR. GALMORE: Yes, Your Honor, just some information
14 about the case that was not introduced. When Mr. Myers was
15 arrested, he was Mirandized and gave a statement to the
16 officers. Basically, he said he did not remember this
17 incident but, generally speaking, he is not a rapist. Your
18 Honor, I think the testimony that was introduced showed that
19 Mr. Myers was drunk and high at the time of this alleged
20 offense. I had an opportunity to talk to Ms. Funderburke last
21 week at my office and she described him, she said that you
22 could roll him up like a cigarette and dip him in beer; that's
23 what he smelled like. She also said that his eyes were
24 glossy. He appeared to be high on drugs. She's seen that
25 look before, so she knew that this was probably a drug-related

1 incident. Your Honor, he does have pending charges. They are
2 both drug charges and I think that kinda puts things in
3 perspective here. Specifically, I would ask the Court to take
4 into account the jury's verdict that found him not guilty on
5 the assault with intent to commit criminal sexual conduct and,
6 for that reason, we'd ask the Court to make a specific finding
7 that a sex offender registry is not required in this case.
8 Your Honor has heard the evidence. Your Honor has also seen
9 the jury's verdict in that regard.

10 We would just ask you to take into account that this is
11 probably a young man that has some serious drug issues and
12 they, they got the best of him. We're thankful that no one
13 was hurt or harmed or injured in this case. We just ask for
14 any leniency you can allow.

15 Thank you.

16 THE COURT: Thank you, sir.

17 All right. The Court has issued its sentence in this
18 matter. I have placed the sentence in a sealed envelope that
19 sets forth the name of the case, the docket number, also it
20 obviously has my name as the Judge, the court reporter, the
21 solicitor, the defense attorney, trial date beginning and
22 ending today as far as the ending date, and we'll give this to
23 the clerk to place in the file and it will be opened at the
24 time that Mr. Myers is picked up based upon the previously
25 signed bench warrant that the Court issued.

1 As I understand that, Solicitor, that has been delivered
2 for processing; is that correct?

3 MS. WALTER: Yes, Your Honor..

4 THE COURT: All right. Very good. Thank y'all very
5 much.

6 (ADJOURNED @ 5:30 P.M.)
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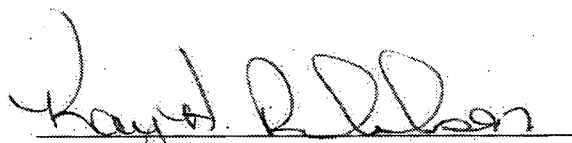
State v. Tony Nevail Myers - 2016-GS-26-02411
CERTIFICATE OF COURT REPORTER

259

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina v. Tony Nevail Myers, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on February 27 through March 1, 2018, as reported by Dixie C. Eubank.

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



Kay H. Richardson

Official Court Reporter

June 1, 2018.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2016-GS-26-02411

STATE OF SOUTH CAROLINA,)

Plaintiff,)

Transcript of Record

(Sentencing)

vs.)

March 13, 2018

TONY NEVAIL MYERS,)

Defendant.)

B E F O R E:

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

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

Mary-Ellen Walter, Esquire
Leigh Andrew, Esquire
Attorneys for Plaintiff

James C. Galmore, III, Esquire
Attorney for Defendant

TAKEN BY:

Dixie C. Eubank
Circuit Court Reporter

PREPARED BY:

Kay H. Richardson
Circuit Court Reporter

I N D E X

1 SENTENCE BY THE COURT:

2 CLERK: Please raise your right hand.

3 TONY NEVAIL MYERS, HAVING BEEN SWORN

4 TESTIFIES AS FOLLOWS:

5 THE COURT: Yes, Solicitor.

6 MS. WALTER: Your Honor, this is the State of South
7 Carolina versus Tony Nevail Myers. We are here for a
8 sentencing as Your Honor I'm sure recalls. The defendant was
9 convicted on March 1st in his absence of assault and battery
10 first degree and Your Honor sealed the sentence at that time.
11 He was picked up by the U.S. Marshall's Task Force the
12 following Tuesday and taken into custody and has remained
13 there since.

14 THE COURT: All right. Very good. At the conclusion of
15 the trial, the jury having found him guilty, the Court issued
16 a sentence at that point in time. The sentence was sealed at
17 that point in time by me. I will open the sentence at this
18 time.

19 2016-GS-26-2411, State of South Carolina, County of Horry
20 versus Tony Nevail Myers. The jury found him guilty of
21 assault and battery first degree. The sentence of the Court
22 was the defendant is committed to the State Department of
23 Corrections for a determinate term of nine years. He is given
24 credit for the time that he had already served. He will not
25 get credit for the time that -- I'll need to add this, that he

1 will not get credit for the time that he's been in jail for
2 the time that he was picked up by the Marshall's office
3 through today. What day was he picked up?

4 MS. WALTER: He would've -- I don't have my calendar. He
5 would have been picked up the Tuesday after the trial, I
6 believe, Your Honor.

7 THE COURT: Tuesday after March 1st.

8 MS. WALTER: So, I think that would've have been the 6th,
9 March 6th.

10 THE COURT: March 6th. So, he gets no credit for the
11 time from March 6th through today because he was a fugitive
12 from justice at that point in time and he gets no credit for
13 that time he was in jail.

14 I did not order the sex offender registry. I did
15 recommend the addictions treatment unit.

16 All right, Mr. Galmore, anything you'd like to bring to
17 the Court's attention at this time?

18 MOTION:

19 MR. GALMORE: Your Honor, I would make a motion to vacate
20 the sentence or in the alternative, to reduce the sentence.
21 Just having an opportunity to listen to the trial, to
22 participate in the trial, the jury spoke, they did not convict
23 him of the charge for which he was indicted. This was a
24 lesser included offense that he was convicted on.

25 Your Honor, just to give you a little bit of information

1 about Mr. Myers, he, he, he has a drug addiction problem. I
2 think you were able to figure that out just based on the
3 charges and -- and based on the circumstances of this case and
4 based on the other charges pending. He participated in the
5 Turning Point Rehab Program in Greenville County and he was
6 clean for four years. He lived in Greenville and he was away
7 from the beach and away from the drugs and the negative
8 influences. Once he came back to the beach that unfortunately
9 led back into the drug addiction.

10 Regarding Ms. Funderburke, Mr. Myers explained to me that
11 he did not know Ms. Funderburke prior to this day back in
12 2012, yes, back in 2012. He explained to me that basically
13 this was a sex act for cash. He was introduced to her by Mr.
14 McCray, who was a person listed in the discovery as one of the
15 people at the Carolina Breeze Apartments. He tells me that
16 they got into a scuffle over the cash and that's what -- what
17 happened.

18 I understand that -- I think actually the jury bought
19 into that because of their verdict. Mr. Myers tells me that
20 he's seen Ms. Funderburke in the community on several
21 occasions since this incident, basically for the purpose of
22 buying drugs. He has a drug addiction issue. He says that he
23 sees her in some of those places where he buys drugs, where
24 she's also there to buy drugs.

25 Your Honor, there was an issue about him attempting to

1 apologize to her at some point. He explained to me that he
2 knows her boyfriend. He spoke to the boyfriend. He tried to
3 convey his apologies to, to Ms. Funderburke for this entire
4 incident. Just based on that information and the Court heard
5 from the witnesses also, we would just ask you to consider
6 reducing his sentence in any way that you can.

7 THE COURT: The Court respectfully declines to reduce the
8 sentence as issued on March 1st, 2018 after the trial in this
9 matter, based upon the facts that were developed at trial and
10 again, the jury having found him guilty of assault and battery
11 in the first degree, the lesser included offense. I find the
12 sentence to be appropriate and the Court reaffirms in its
13 total, the sentence with the addition that he does not get
14 credit for the time from the time of his subsequent arrest by
15 the Marshall's office through today because he was a fugitive
16 from justice at that point in time.

17 Thank you very much.

18 MR. GALMORE: Yes, sir, thank you, sir.

19 (ADJOURNED.)
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the sentencing hearing held in the case of State of South Carolina v. Tony Nevail Myers, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on March 13, 2018, as reported by Dixie C. Eubank.

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



Kay H. Richardson

Official Court Reporter

June 1, 2018.

BAIL PROCEEDING FORM II

STATE OF SOUTH CAROLINA
COUNTY OF Horry

IN THE General Sessions

STATE OF SOUTH CAROLINA

ORDER SPECIFYING METHODS AND CONDITIONS OF RELEASE

Myers, Tony Nevail
NAME OF DEFENDANT

Offense Charged: Sex / Assault with intent to commit criminal sexual conduct - Third degree-(2015A2620601670)

At a bail proceeding conducted by the undersigned judge, for the defendant named above, it was determined by the court (check one or both):

- ☐ The release of the defendant on recognizance will not reasonably assure his appearance as required.
☐ The release of the defendant on recognizance will result in an unreasonable danger to the community.

This determination was based upon the following findings of fact: _____

Nature of Circumstances of Offense: Must Notify Court Immediately of Change of Address

[Considerations: Nature and Circumstances of the offense charged, the defendant's family ties, employment, financial resources, character and mental condition, the length of his residence in the community, his record of convictions, and any record of flight to avoid prosecution or failure to appear at other court proceedings.]

THEREFORE, IT IS HEREBY ORDERED:

1. That the above named defendant be released from custody on the condition that he will personally appear before the designated court at the place, date and time required to answer the charge made against him and do what shall be ordered by the court and not depart the State without the permission of the court and be of good behavior.

2. That the above named defendant be released from custody provided as follows (check all that apply):

CASH IN LIEU OF BOND

☐ The defendant, acknowledges himself to be indebted to the State of South Carolina in the sum of \$ _____ to secure his release from custody. Should the defendant fail to comply with all terms and conditions of this Order, this sum of money is subject to being forfeited to the State.

CASH PERCENTAGE IN LIEU OF BOND

☐ The defendant, acknowledging himself to be indebted to the State of South Carolina in the full amount of \$ _____, his release to be obtained by payment to the court of _____ % (not to exceed 10%) of the full amount of the bond, deposits \$ _____ to secure his release from custody. Should the defendant fail to perform the conditions of this Order, the full amount shall be levied on his real and personal property for the use of the state.

APPEARANCE RECOGNIZANCE WITH SURETY

☐ The defendant will provide good and sufficient surety approved by the court, in the form hereinafter set forth in this Order, acknowledging an indebtedness to the State in the amount of \$ _____

3. That the defendant shall appear at (check one):

☒ the term of COURT OF GENERAL SESSIONS beginning on May 06, 2016 at 8:30 o'clock, A.M.,
at General Sessions - PO Box 677/1301 2nd Avenue/Conway, SC 29528 / (843) 915-5080
and remain there throughout that term of court. If no disposition is made during that term, the defendant shall appear and remain throughout each succeeding term of court until final disposition is made of his case, unless otherwise ordered by the court.

☐ the session of ☐ MAGISTRATE COURT ☐ MUNICIPAL COURT beginning on _____ at _____ o'clock, _____
at _____
If no final disposition is made during that session, the defendant shall appear at such other times and places as ordered by the court.

Bond Amount(s): \$10,000.00 (CS) or \$10,000.00 (SB)

INITIALS OF DEFENDANT: YLM

4. That the defendant will notify the court promptly if he changes his address from the one contained in this order and he will comply with those conditions described hereinafter in the Order.

SIGNATURE OF JUDGE

DATE

ORIGINAL AND ONE COPY OF THIS FORM ARE TO BE COMPLETED IN EVERY BAIL PROCEEDING IN WHICH IT IS USED
Original Copy For The Trial Court - Copy For The Defendant

SCCA-51A (Revised 3/2012)

CERTIFIED COPY
JENNIFER N. ELLIS
CLERK OF COURT
HORRY COUNTY, SC

FILED
MAR-2 AM 11:36
HORRY COUNTY

ACKNOWLEDGEMENT BY DEFENDANT

I understand that if I violate any condition of this Order, a warrant for my arrest will be issued.

I understand and have been informed that I have a right and obligation to be present at trial and should I fail to attend the court, the trial will proceed in my absence.

It has been explained to me that if I fail to appear before the court as required, a warrant for my arrest will be issued.

ADDRESS Greenville, SC 29609 SIGNATURE OF DEFENDANT [Signature]
 CITY/STATE/ZIP [Redacted] TELEPHONE [Redacted] DATE _____
 SOCIAL SECURITY NUMBER [Redacted] DRIVER'S LICENSE OR ID NUMBER [Redacted] (SC) ATTORNEY REPRESENTING ACCUSED (IF KNOWN) _____

SPECIAL CONDITIONS OF RELEASE

- a. ☐ Placement in custody. The defendant is placed in the custody of: _____
 NAME OF PERSON OR ORGANIZATION _____
 ADDRESS _____ CITY/STATE _____ ZIP _____ TELEPHONE _____
 who agrees (1) to supervise the defendant as set forth by the court, (2) to use every effort to assure the appearance of the defendant at all scheduled hearings before the court, and (3) to notify the court immediately in the event the defendant violates any conditions of his release or disappears.
- b. ☐ Restrictions on Travel, Association or Residence. The defendant will comply with each of the following conditions: _____

- c. ☐ Part-time Release. The defendant will be released from custody from _____ o'clock, _____ AM/PM to _____ o'clock, _____ AM/PM
 on _____ DATE(S) _____ on condition that he return to the custody of _____ NAME OF PERSON OR ORGANIZATION _____
 at _____ LOCATION _____ as designated.
- d. ☐ Other conditions. The defendant will comply with the following other conditions of release: _____

APPEARANCE RECOGNIZANCE WITH SURETY

On the 27 day of 1, 2016, personally appeared before the undersigned judge the surety named below who acknowledged himself indebted to the State of South Carolina, in the sum of \$ 10,000, such sum to be levied on his real and personal property for the use of the State, should named defendant fail in performing the conditions of this Order.

The surety, being duly sworn, says that he is a resident and free holder within the State and is worth the sum acknowledged and underwritten herein, over all his debts and liabilities, and exclusive of property exempt from execution.

NAME OF SURETY BONDSMAN COMPANY Browder Bail Bonds TELEPHONE 843-318-9368 SIGNATURE OF SURETY BONDSMAN [Signature]
 ADDRESS OF SURETY BONDSMAN 401 Moss Pond Rd
 CITY/STATE/ZIP Myrtle Beach SC 29588 SIGNATURE OF JUDGE [Signature]
 NAME OF INSURANCE COMPANY Rocky Smoky Bend Casualty Co Inc DATE 1/27/16
 ADDRESS OF INSURANCE COMPANY 1910 Oriat Rd
 CITY/STATE/ZIP Tampa FL 33619

COURT INSTRUCTIONS: Upon Exoneration detach certificate of discharge and return to Roche Surety and Casualty Co., Inc.

Original Court Copy
Yellow: Insurance Co. Copy
White: Certificate of Discharge
Pink: Agent Copy

THIS DOCUMENT IS MULTICOLORED, PRINTED ON WATERMARKED PAPER, CONTAINS A VOID PARAGRAPHS AND MICRO PRINT BORDERS ON THE REVERSE AND PRINTING ON THE BACK

ROCHE SURETY AND CASUALTY CO., INC.
4107 N. Himes Avenue • 2nd Floor • Tampa, FL 33607
ROCHE (813) 623-5042 • (800) 789-3899 • Fax (813) 623-5939

POWER OF ATTORNEY

NOT VALID IF USED IN FEDERAL COURT

THIS POWER VOID IF NOT USED BY: 09/08/16 POWER NO. AB15-101178

KNOW ALL MEN BY THESE PRESENTS THAT ROCHE SURETY AND CASUALTY CO., INC., a corporation duly organized and existing under the laws of the State of Florida, and by the authority of the Resolution adopted by the Board of Directors at a meeting duly called and held on November 25, 1996, for said Resolution has not been amended or

by President Karl Bonds and by these presents does make, constitute and appoint Erlyne Avant Browder its Attorney-in-Fact for it and in its name, place and stead to execute, seal and deliver for and on its behalf and as its act and deed as surety, a bail bond only. Authority of such Attorney-in-Fact is limited to appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearance.

THIS Power of Attorney is for use with Bail Bonds only. Not valid if used in connection with Federal Immigration Bonds. This Power void if altered or erased, void if used with other powers of this Power, or any other surety company power, void if used to furnish bail in excess of the stated face amount of this Power, and can only be used once. Return Power only to ROCHE SURETY AND CASUALTY CO., INC. Provide that the authority of such Attorney-in-Fact to bind the Company shall not exceed the sum of:

***** NOT TO EXCEED FIFTEEN THOUSAND DOLLARS *****

When this Power of Attorney is filed with the bond and retained as a part of the court records. The said Attorney-in-Fact is hereby authorized to insert in this Power of Attorney the name of the person for whom bond has been given. IT IS UNLAWFUL TO PRINT THIS FORM WITHOUT WRITTEN CONSENT OF ROCHE SURETY AND CASUALTY CO., INC. HOME OFFICE

WHEREAS, WHEREAS, ROCHE SURETY AND CASUALTY CO., INC. has caused these presents to be signed by its duly authorized Attorney-in-Fact proper for the purpose

of the above and to be executed, signed this date: 1-27-16 State Executed: SS

Erlyne Avant Browder Date Executed: 1-27-16 State Executed: SS

Erlyne Avant Browder Race: B Sex: M OTB: 51

Erlyne Avant Browder County: Albany

Erlyne Avant Browder County: Albany

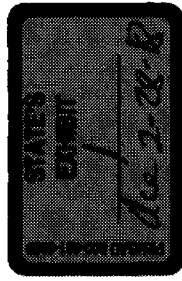
Erlyne Avant Browder County: Albany

Erlyne Avant Browder County: Albany



RENEE N. ELVIS
CLERK OF COURT
HOBBS COUNTY, SC

CERTIFIED COPY



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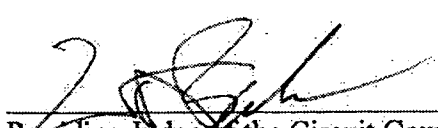
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF HORRY) INDICTMENT: 2016GS2602411
) 2017GS2602208
) WARRANT: 2015A2620601670
 STATE OF SOUTH CAROLINA) 2016A2620603278
)
 VS.) ARRAIGNMENT FINDINGS
)
 TONY NEVAIL MYERS)
)
DEFENDANT)

THIS MATTER comes before the Court on motion of Joshua D. Holford, on behalf of the Solicitor for the Fifteenth Judicial Circuit, to determine if the defendant intends to plead guilty or not guilty to the charges above-referenced, and to assist in scheduling a proposed trial date should the defendant wish to exercise his or her right to a trial. The defendant and his or her attorney, James Cullen Galmore, are present before the Court.

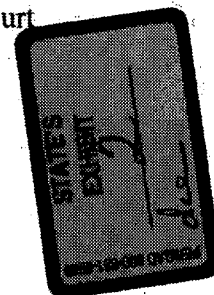
Based upon the inquiry of the Court and the representations of the defendant, defense counsel, and counsel for the state, the Court makes the following findings and conclusions:

1. That the defendant has been fully informed of the State's plea offer.
2. That the defendant has had adequate time to discuss the State's plea offer with defense counsel and that after careful consideration, the defendant has rejected the plea offer of the state.
3. That the defendant understands and acknowledges that the State has withdrawn its plea offer, and that the State will not re-offer the plea on some future date.
4. That the defendant and defense counsel have considered possible conflicts of interest and have determined that none are known at this time.
5. That there are no unusual or exceptional circumstances known to the defense or the State at this time that would cause unreasonable delay in the trial of this case.
6. That the State and the defense have indicated both parties intend to be ready for trial during the June, terms of Court.

THE ABOVE FINDINGS AND CONCLUSIONS are made this 17 day of April, 2017.


 Presiding Judge of the Circuit Court
 Fifteenth Judicial Circuit

Conway, South Carolina



ARRAIGNMENT CHECKLIST

TONY NEVAIL MYERS, you are represented by James Galmore.
 [Defendant's Name] [Defense Attorney]

You realize that you have been charged with:

Ass w/Intent CSC 3rd & Poss. Cocaine Base
 (Charge Description)

Warrant No. [2015A2620601670]
2016A2620603278

Has your lawyer advised you of the potential sentence you could receive on your charge or each of your charges?

Do you realize that as a matter of course you could be sentenced to 10 years?

Have you met with your attorney in his office?

When?

Has your attorney reviewed the discovery in your case with you?

Did your attorney talk to you about the sort of witnesses that could be called against you?

Are you also aware that you can call witnesses if you chose?

With all of that, having been informed of the evidence against you, having discussed the constitutional issues and having reviewed the discovery package and the plea offer, you are telling me, "I do not want a plea offer." You are saying "I had rather take my chances with a trial by jury."

You realize that if you are convicted you could get many more years than you are being offered.

You realize that the plea offer that you have now of 3 years will not be offered again. If you wish to plead guilty in the future, it will be for the original charge(s).

You also realize that this form, along with your arraignment form, will become a part of the record and that I or some other judge will be presented with these forms at the time of your trial.

Realizing this, you are telling this Court: "I specifically reject the offer of 3 and elect a trial." You are also telling this Court that you are ready to go to trial as early as next Monday or some term of court following.

You also realize that if you do not show up when your case is called for trial, that you can be tried in your absence and if you are convicted then your sentence will be sealed and opened when you are brought before this Court.

Mr. Attorney, do you have your client's current contact numbers?

You agree with your client's assessment of this case?

Then you will be ready for trial.

FILED
 HENRY COUNTY
 17 APR 17 PM 4:34
 CLERK OF COURT
 HENRY COUNTY, S.C.

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY:	HORRY
THE STATE OF SOUTH CAROLINA		INDICTMENT #:	2016GS2602411
-v-		WARRANT #:	2015A2620601670
Tony Nevail Myers		CASE #:	16H00563
☐		SUBPOENA FOR ☒ PERSON ☐ DOCUMENT(S) OR OBJECT(S)	
TO: TONY NEVAIL MYERS GREENVILLE, SC 29609			
☒ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.			
PLACE: Horry County Judicial Building 1301 Second Avenue Conway, SC 29526		COURTROOM GENERAL SESSIONS THIRD FLOOR	
		DATE AND TIME: FEBRUARY 26, 2018 THROUGH MARCH 2, 2018 @ 8:30 AM Each Day This Term of Court or Until Disposition of Case	
☐ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s).			
LIST DOCUMENT(S) or OBJECT(S): See special instructions on reverse side.			
PLEASE DO NOT BRING CELL PHONES, PAGERS, OR WEAPONS OF ANY TYPE (i.e. KNIVES) TO COURT.			
This subpoena shall remain in effect until you are granted leave by the court or by an officer acting on behalf of the court.			
CLERK OF COURT <i>Rene M. Ellis</i>		DATE	
(BY) DEPUTY CLERK		January 22, 2018	
This subpoena is issued upon application of the ☒ SOLICITOR ☐ DEFENDANT		ATTORNEY'S NAME AND ADDRESS OR DEFENDANT (IF PRO SE/SELF REPRESENTED) MARY-ELLEN WALTER , Senior Assistant Solicitor Fifteenth Judicial Circuit, Horry County Horry County Judicial Building 1301 Second Avenue Conway, SC 29526 (843) 915-8662 or (843) 915-5460	



PROOF OF SERVICE

SERVED	DATE January 22, 2018	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE MAIL	
SERVED BY (PRINT NAME) Magdalena Salemno	TITLE	
DECLARATION OF SERVER		
I certify that the foregoing information contained in the Proof of Service is true and correct.		
Executed on _____	DATE	SIGNATURE OF SERVER
		ADDRESS OF SERVER

ADDITIONAL INSTRUCTIONS:

Failure to appear in court pursuant to this subpoena constitutes contempt of court.

SPECIAL INSTRUCTIONS:

WITNESSES

K Aiesi Myrtle Beach Police Department

DET. KERNS

ARREST WARRANT NUMBER

2015A2620601670

CDR: 0255 16-03-0656, 0654

DOA: 1/18/2016

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

26 2016

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-26- 02411

CERTIFIED COPY

The State of South Carolina

County of Horry

RECEIVED
CLERK OF COURT
HORRY COUNTY, SC

16H00563

COURT OF GENERAL SESSIONS

MAY, 2016 TERM

THE STATE

vs.

Tony Nevail Myers
B/ M

Greenville, SC 29609
DOB: 1981
SSN:

ATTORNEY: James Cullen Galmore

Indictment for

ASSAULT WITH INTENT TO COMMIT CRIMINAL
SEXUAL CONDUCT, THIRD DEGREE

Jimmy A. Richardson, II, Solicitor

ORIGINAL

FILED
HORRY COUNTY

2016 JUN -2 PM 4:07

MELANIE HUGGINS-WARD
CLERK OF COURT
DATE FILED FROM

GRAND JURY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

INDICTMENT

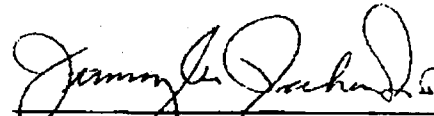
At a Court of General Sessions, convened on May 26, 2016, the Grand Jurors of Horry County present upon their oath:

ASSAULT WITH INTENT TO COMMIT
CRIMINAL SEXUAL CONDUCT, THIRD DEGREE

CDR: 0255 16-03-0656, 0654(1)(a)

That Tony Nevail Myers did in Horry County on or about May 27, 2012, assault Sharedia Funderburke with the intent to engage in sexual battery with Sharedia Funderburke by using force or coercion in the absence of aggravating circumstances, to wit: that Tony Nevail Myers did assault Sharedia Funderburke with the intent of committing Criminal Sexual Conduct in the Third Degree, all in violation of Sections 16-3-654(1)(a) and 16-3-656, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such made and provided.



JIMMY A. RICHARDSON, II
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY

FILED N. EDWARDS
CLERK OF COURT
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry
STATE VS.Tony Neval Myers

AKA:

Race: B Sex: M Age: 36DOB: 1981 SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Greenville, SC 29609DL#: [REDACTED] SID#: SC01252320*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery 1st degree (Up to 10 yrs)in violation of § 16-03-0600(C)(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS☐ Mandatory GPS(CSC §17-25-45)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: Walter, Mary-Ellen 103036 DefendantSC Bar# [REDACTED] Attorney for Defendant 8386 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 9 years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic

Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Sec by SCBPSPS

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5%)§ 14-1-211(A)(1) (Ctry. Surcharge) \$100 \$100.00§ 14-1-213(A)(2) (DUI Surcharge) \$100 \$§ 56-5-2995 (DUI Assessment) \$12 \$§ 56-1-286 (DUI Breath Test) \$25 \$Proviso 61.6 (Public Def/Probation) \$500 \$§ 14-1-212 (Law Enforce Funding) \$25 \$25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$§ 50-21-114 (DUI Breath Test Fee) \$50 \$§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$3% to County (if paid in installments) \$3.75TOTAL \$128.75 - \$40.00 = \$88.75Clerk of Court/ Deputy Clerk Renee N. EllisCourt Reporter: Dixie Eubank

SCCA/217 (07/2016)

INDICTMENT/CASE#: 2016GS2602411A/W#: 2015A2620601670Date of Offense: 5/27/2012S.C. Code § 16-03-0656, 0654(2)CDR Code #: 0255

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

(defendant's initials)

Recommendation by the State.

ATTEST: Walter, Mary-Ellen 103036 DefendantSC Bar# [REDACTED] Attorney for Defendant 8386 SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 9 years or ☐ under the Youthful Offender Act not to exceed _____ years

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SCCA/217 (07/2016)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ 25.00 beginning 4/1/2027

\$ _____ paid to Public Defender Fund

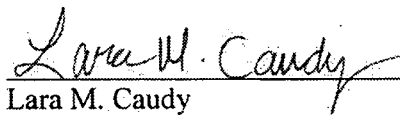
Other: _____

Defendant shall receive No Credit for the time from sentencing until
today's date of 3/13/18.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

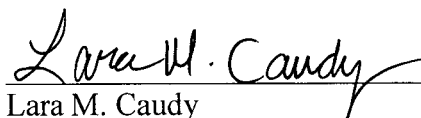
ATTORNEY FOR APPELLANT

This 31st day of October, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in cursive script, reading "Lara M. Caudy", is written over a horizontal line.

Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 31st day of October, 2018.