

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

D. Garrison Hill, Circuit Court Judge

Case No. 2004-CP-02-1520

Ernest Pressley, #289489,

Respondent,

v.

State of South Carolina,

Petitioner.

APPENDIX

Volume 2 of 3

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AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 A NO, INSIDE THE ORIGINAL C.S.C. KIT IS A ENVELOPE FOR THE HAIRS.

2 Q TO WHERE? WE KNOW THAT SHE TOOK 'EM 'CAUSE SHE TESTIFIED.

3 RIGHT?

4 A I DIDN'T HEAR HER.

5 Q OKAY.

6 MS. BRISBIN: THIS WITNESS CAN'T TESTIFY TO WHAT HAPPENED TO THE
7 HAIR. SHE'S ALREADY STATED THAT SHE DOESN'T TEST HAIR. THAT'S ANOTHER
8 DIVISION OF SLED.

9 THE COURT: ASKED AND ANSWERED. GO AHEAD.

10 Q SO ON THESE CHAINS OF CUSTODY WHERE IT HAS WHERE EVERYTHING
11 WENT, FROM WHO TO WHO, FROM A TO BE TO C, OKAY?

12 A IT'S FOLLOWING THIS POUCH. THAT'S WHAT THOSE CHAIN IN CUSTODYS
13 ARE FOR.

14 Q WHERE IS THE CHAIN OF CUSTODY FOR THE REST OF THE EVIDENCE?

15 A I DON'T HAVE THOSE. I DON'T UTILIZE THAT PART OF THE EVIDENCE.

16 Q OKAY. ALL RIGHT. AND P. S UNDERWEAR DID YOU GET THAT?

17 A YES, I DID.

18 Q AND WHAT - TELL THE JURY, PLEASE, THE RESULTS OF YOUR TESTING OF
19 HER UNDERWEAR.

20 A I DID NOT TEST HER UNDERWEAR.

21 Q WELL, THAT'S GOOD. WHY DIDN'T YOU TEST HER UNDERWEAR?

22 A BECAUSE OUR POLICY IS YOU WORK FROM THE INSIDE OUT. YOU START
23 WITH THE VAGINAL SWABS AND ANY SUSPECTED SEMEN, AND IF THERE'S SEMEN
24 FOUND ON THESE ITEMS, THAT'S WHERE YOU WOULD STOP.

25 Q OKAY. SO YOU JUST IGNORED POTENTIALLY AN IMPORTANT PIECE OF

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 EVIDENCE TO EARNEST BY NOT EXAMINING HER UNDERWEAR. IS THAT TRUE?

2 A NO, I DID NOT IGNORE IT. THERE WAS SEMEN ON THE VAGINAL SWAB
3 WHICH IS COMING FROM THE INSIDE OF HER BODY AND ON THE SUSPECTED
4 SEMEN.

5 Q AND THAT SUSPECTED SEMEN SWAB, IF YOU'D LOOK AND TELL US WHERE
6 THAT WAS COLLECTED FROM.

7 A LET ME SEE IF IT'S INDICATED ON HERE OR NOT. SOMETIMES THEY DO NOT.

8 Q WELL, THEY'RE SUPPOSED TO. THE DIRECTIONS SAY TO INDICATE WHERE
9 THE SWAB IS COLLECTED FROM.

10 A NO, SHE DID NOT.

11 Q SO YOU DON'T KNOW WHERE THAT SUSPECTED SEMEN SWAB CAME FROM.

12 A NO.

13 Q BUT YOU KNEW THOSE UNDERPANTS CAME FROM P.

14 A NO, I DON'T.

15 Q YOU DON'T?

16 A NO. THEY WERE GIVEN TO US SAYING THEY BELONGED TO HER, JUST AS
17 THE SUSPECTED SEMEN SWAB WAS. I HAVE TO BASE THAT ON WHO'S BRINGIN'
18 THE EVIDENCE IN.

19 Q OKAY. THE BLOOD STANDARD FOR P. PACKET WAS DONE BY
20 MS. BROWN WHO TESTIFIED YESTERDAY. CORRECT?

21 A YES.

22 Q COULD YOU TELL THE JURY HOW THAT BLOOD STANDARD IS DONE. LET'S
23 SKIP THAT. MS. BROWN DID THAT ONE. YOU DID THE BLOOD STANDARD FOR
24 EARNEST.

25 A THAT'S CORRECT.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 Q COULD YOU TELL THE JURY, YOU SAID YOU POUR THE BLOOD ON A PIECE A
2 CLOTH.

3 A YES. GO AHEAD.

4 Q THEN YOU STICK THE CLOTH IN SOMETHIN'.

5 A THE CLOTH IS IN THE BIOLOGICAL HOOD ON A PIECE OF BENCH COAT
6 (PHONETIC) TO ABSORB - WELL, TO PROTECT THE HOOD FROM THE BLOOD.

7 Q WHAT'S A HOOD?

8 A IT'S ABOUT - IT'S A AREA THAT YOU - WE CALL IT A HOOD BECAUSE
9 THERE'S A PART AT THE TOP THAT'S COVERING THE AREA WHERE YOU PLACE
10 YOUR SAMPLES AND THAT AREA THERE ARE FILTERS IN THAT AREA THAT WHEN
11 YOU TURN ON THE HOOD IT PULLS UP ANY BIOLOGICAL MATERIAL THAT COULD
12 POSSIBLY HARM THE PERSON WHO WAS DOING THE TESTING. SO THAT'S WHY IT'S
13 CALLED A HOOD. IT'S A BIOLOGICAL HOOD. IT HAS A GLASS IN FRONT OF IT TO
14 PROTECT YOU ALSO.

15 Q OKAY. YOU PUT THE BLOOD IN THE HOOD OR ON THE HOOD?

16 A THERE'S A AREA INSIDE THE HOOD THAT YOU PUT DOWN WHITE SHEETING
17 OF BENCH COAT TO PROTECT THE HOOD FROM THE BLOOD THAT YOU'RE GONNA
18 PUT ON THE CLOTH.

19 Q UH-HUH.

20 A YOU - THE PIECE OF COTTON SHEETING YOU PLACE THE PERSON'S WHOSE
21 BLOOD IT IS, NAME ON THERE AND ALSO THE CASE AS TO APPLY TO SLED AND
22 THEN YOU POUR THE BLOOD ON THAT CLOTH.

23 Q AND THEN YOU STICK IT IN THE HOOD.

24 A IT'S ALREADY IN THE HOOD.

25 Q OKAY. AND HOW LONG - WHEN DID YOU STICK EARNEST'S BLOOD ON THE

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 RAG IN THE HOOD?

2 A 1-18-2002.

3 Q THEN WHEN DID YOU TAKE IT BACK OUT OF THE HOOD?

4 A THE LEAST AMOUNT OF TIME THAT I WOULD HAVE IT IN THE HOOD WOULD
5 BE TWO DAYS.

6 Q OKAY. WHEN DID YOU TAKE IT OUT OF THE HOOD?

7 A I DON'T KNOW EXACTLY HOW MANY DAYS AFTER THAT I TOOK IT -
8 BEFORE I TOOK IT OUT OF THE HOOD.

9 THE COURT: LET ME KNOW WHEN YOU GET TO A GOOD STOPPING POINT,
10 MR. ANDERSON.

11 MR. ANDERSON: JUDGE, I'M SORRY, BUT I MEAN TO GO A WHILE.

12 THE COURT: I UNDERSTAND BUT JUST - WE'RE GONNA STOP IN A FEW
13 MINUTES FOR LUNCH. SO LET ME KNOW WHEN YOU WANT TO STOP.

14 MR. ANDERSON: I UNDERSTAND, JUDGE.

15 Q ALL RIGHT, THE HOOD, HOW BIG IS THE HOOD?

16 A ABOUT 5 FEET LONG.

17 Q AND HOW WIDE?

18 A BY FEET ABOUT 2 FEET.

19 Q OKAY.

20 A 24 INCHES.

21 Q AND WHAT'S THE MOST NUMBER OF BLOOD STANDARD ON THE CLOTHS
22 THAT YOU CAN HAVE IN THE HOOD AT ANY GIVEN TIME?

23 A I DON'T KNOW. IT COULD BE 5.

24 Q THAT'S THE MOST YOU CAN GET IN.

25 A I DON'T KNOW HOW MANY YOU CAN GET IN THE HOOD AT ONE TIME.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

- 1 Q WHAT'S THE MOST YOU'VE EVER SEEN IN IT?
- 2 A I DON'T KNOW. I HAVE NEVER COUNTED THEM.
- 3 Q WHY NOT?
- 4 A WHY WOULD I?
- 5 Q WELL, IT'S KINDA IMPORTANT TO EARNEST. YOU'RE DOING THESE
- 6 ANALYSES ON THESE THINGS AND—
- 7 A THERE'S NO REASON TO COUNT THEM. MY BLOOD THAT I PUT IN THE HOOD
- 8 WHAT IT HAS ON IT THE PERSON'S NAME AND THEIR CASE NUMBER WHEN I POUR
- 9 THE BLOOD ON THAT CLOTH TO DEFINITELY MAKE SURE YOU DON'T HAVE ANY
- 10 MIX-UP AS TO WHOSE BLOOD YOU'RE USING.
- 11 Q OKAY. AND IT SAT IN THERE FOR YOU DON'T KNOW HOW LONG AND YOU
- 12 DON'T KNOW HOW MANY OTHER SIMILAR THINGS. IS THAT CORRECT?
- 13 A YES, I DON'T KNOW - I KNOW IT WAS AT LEAST 2 DAYS.
- 14 Q OKAY. AND HOW MANY OTHER PEOPLE HAVE ACCESS TO THE HOOD?
- 15 A WE HAVE 15 ANALYSTS. SO 15 PEOPLE GO AND COME USIN' THAT
- 16 PARTICULAR HOOD.
- 17 Q ALL RIGHT. LET ME—
- 18 MR. ANDERSON: CAN I GET INTO ONE OTHER THING, JUDGE?
- 19 THE COURT: HOW LONG DO YOU THINK IT WILL TAKE?
- 20 MR. ANDERSON: JUST A FEW MINUTES.
- 21 THE COURT: YES, SIR.
- 22 Q YOU TESTIFIED EARLIER THAT YOU TESTED FOR SEMEN OFF OF THOSE TWO
- 23 SWABS, THE SWAB THAT YOU DON'T KNOW WHERE IT CAME FROM AND THEN THE
- 24 VAGINAL SWAB. CORRECT? YOU TESTED FOR SEMEN ON BOTH OF THOSE.
- 25 A I TESTED FOR SEMEN ON THE VAGINAL SWAB, THE ORAL SWAB, THE

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 RECTAL SWAB AND A SUSPECTED SEMEN SWAB.

2 Q OKAY. WHAT DATE DID YOU DO THAT?

3 A 10-29-2001.

4 Q SO ABOUT 3 AND A HALF MONTHS AFTER IT CAME TO SLED YOU DID THAT
5 TEST?

6 A YES.

7 Q AND YOU SAID THAT THERE'S A CARD THAT COMES OUT THAT SHOWS
8 SEMEN?

9 A IT'S CALLED AN ABICARD (PHONETIC) THAT YOU UTILIZE TO CHECK FOR
10 THE PRESENCE OF IT.

11 Q COULD WE SEE THAT? COULD WE SEE THAT CARD.

12 A ONCE I DO THE TEST, ANOTHER ANALYST COMES BEHIND AND CHECK TO
13 SEE IF THE EVIDENCE IS - IF IT'S TRULY POSITIVE FOR SEMEN. THAT PERSON SIGNS
14 OFF ON IT, AND THEN THE CARD IS DISCARDED.

15 Q OKAY. IS THAT PERSON IN COURT TODAY?

16 A NO.

17 Q AND SO THE CARD IS GONE?

18 A YES. IT WOULDN'T LAST UNTIL NOW ANYWAY.

19 Q YOU GOT A PICTURE OF THE CARD?

20 A NO, I DO NOT HAVE A PICTURE. THAT'S WHY ANOTHER ANALYST SIGNS
21 BEHIND ME.

22 Q OKAY. WHO IS THE ANALYST?

23 A IT WOULD BE BETHANY CROOKS.

24 Q WHEN DID SHE SIGN OFF ON IT?

25 A THE DAY THAT I DO IT. IT HAS TO BE CHECKED WITHIN A 10-MINUTE TIME

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 SPAN.

2 Q 10 MINUTES?

3 A YES.

4 Q WHY IS THAT?

5 A THAT'S THE PROTOCOL.

6 Q HOW LONG DOES IT TAKE FOR THE RESULTS TO FADE OFF THE CARD?

7 A I DON'T KNOW. I DON'T KEEP THEM THAT LONG.

8 Q ALL RIGHT.

9 MR. ANDERSON: JUDGE, THIS IS AS GOOD A TIME AS ANY.

10 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'LL BREAK FOR
11 LUNCH NOW. THERE ARE SOME MATTERS THAT ARE SET FOR 2 O'CLOCK THAT
12 ARE UNRELATED TO THIS CASE. SO I WON'T BE ABLE TO START WITH YOU FOLKS
13 UNTIL ABOUT 2:30. SO I NEED YOU IN THE JURY ROOM AT 2:30. DON'T DISCUSS THE
14 CASE. YOU'RE ON YOUR OWN FOR LUNCH. THANK YOU. (THE FOLLOWING
15 OCCURRED IN THE ABSENCE OF THE JURY.) OKAY. DURING THE BREAK YOU'RE
16 NOT PERMITTED TO DISCUSS YOUR TESTIMONY WITH ANY OF THE LAWYERS.
17 OKAY?

18 A YES, SIR.

19 THE COURT: THANK YOU VERY MUCH YOU MAY STEP DOWN. WE'RE IN
20 RECESS TILL 2. (THERE WAS A LUNCH RECESS.) OKAY, I NEED YOU BACK ON THE
21 STAND. ALL RIGHT. DEFENSE READY FOR THE JURY?

22 MR. ANDERSON: YES, YOUR HONOR.

23 THE COURT: STATE?

24 MS. BRISBIN: YES, YOUR HONOR.

25 (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.)

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

- 1 THE COURT: ALL RIGHT YOU MAY CONTINUE, MR. ANDERSON.
- 2 MR. ANDERSON: THANK YOU, YOUR HONOR.
- 3 Q MS. GALLMAN, THE LAST THING WE WERE TALKING ABOUT WAS THE
- 4 SEMEN TEST THAT YOU DID. IS THAT CORRECT?
- 5 A AS FAR AS I CAN REMEMBER.
- 6 Q OKAY. WHAT WAS THE AMOUNT OF SEMEN ON THE VAGINAL SWAB?
- 7 A THE TEST THAT I CONDUCTED ONLY LETS YOU KNOW IF THERE IS SEMEN
- 8 PRESENT, NOT THE QUANTITY.
- 9 Q COULD YOU TELL WHAT THE QUANTITY WAS?
- 10 A WHEN I CONDUCTED THE TEST FOR THE PRESENCE OF SEMEN, IT CAME UP
- 11 POSITIVE. IT WAS NOT A WEAK RESULT. IT CAME UP POSITIVE STRONG.
- 12 Q IS YOUR ANSWER NO YOU DON'T KNOW, YOU CAN'T TELL OR YOU COULD
- 13 TELL AND THERE WAS A LOT?
- 14 A THE TEST I CONDUCTED IT LETS YOU KNOW IF IT'S POSITIVE OF SEMEN OR
- 15 NOT. SO NO I COULD NOT THE TOTAL QUANTITY OF SEMEN THAT IS THERE. SO,
- 16 NO, I COULD NOT ESTABLISH THE QUANTITY.
- 17 Q OKAY. NOW WHEN YOU TESTIFIED EARLIER YOU SAID THE TEST FOR THE
- 18 PRESENCE OF SEMEN THE RESULT WAS 2 LINES?
- 19 A YES.
- 20 Q WHILE WE'RE ON THIS FORM YOUR PAGE LOOKS LIKE 14, COULD YOU
- 21 LOOK AT PAGE 14 OF YOUR REPORT.
- 22 A OKAY.
- 23 Q WHAT DO YOU HAVE AS THE SYMBOL FOR THE PRESENCE OF SEMEN?
- 24 A A POSITIVE SIGN.
- 25 Q OKAY. YOU'VE GOT TWO EQUAL SIGNS WHICH IS WHAT YOU SAID A

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 POSITIVE FOR SEMEN WAS.

2 A NO, THE POSITIVE SIGN IS A PLUS SIGN.

3 Q OKAY. WHEN YOU TESTIFIED EARLIER YOU SAID WHEN YOU DO THE TEST
4 FOR SEMEN—

5 A YES.

6 Q —THE POSITIVE RESULT IS 2 LINES I THOUGHT YOU SAID.

7 A ON THE CARD, BUT WHEN YOU DOCUMENT YOUR RESULTS YOU PUT A PLUS
8 SIGN.

9 Q OKAY.

10 A FOR POSITIVE AND TWO LINES NEGATIVE.

11 Q SO IT'S OPPOSITE WHEN YOU WRITE IT DOWN?

12 A NO. THEY'RE TWO DIFFERENT THINGS.

13 Q ALL RIGHT. WELL, ON THE CARD YOU USE, WHY DON'T YOU HAVE IT SAY
14 POSITIVE FOR POSITIVE?

15 A THE CARDS ARE DESIGNED WITH 2 LINES. ONE LINE IS A CONTROL LINE
16 AND IF IT'S POSITIVE FOR SEMEN, THEN THE OTHER LINE WILL APPEAR. THE FIRST
17 LINE IS A CONTROL LINE TO LET YOU KNOW—

18 Q OKAY.

19 A —THAT THE CARD'S WORKIN' PROPERLY.

20 Q OKAY. NOW ABOVE THAT YOU HAVE OUR CASE NUMBER IS 8434.

21 A YES.

22 Q WHAT'S THAT UP ABOVE THERE? 197152431.71.10.

23 A THAT'S ANOTHER CASE NUMBER.

24 Q OKAY. WHY WOULD THAT OTHER CASE NUMBER BE ON A.B.A. CARD
25 RESULT SHEET IN THIS CASE?

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

- 1 A 'CAUSE I DID ALL THOSE THE SAME DAY.
- 2 Q OKAY.
- 3 A I LABEL EACH CARD THAT I'M USING TO DO THE RESULT ON AND ALSO I
- 4 PUT THE CASE NUMBERS ON MY RESULT SHEET.
- 5 Q YOU TESTIFIED EARLIER AND I'M PROBABLY JUST MISSIN' IT. OKAY? YOU
- 6 SAID THAT SOMEBODY YOUR SUPERVISOR OR SOMEBODY HAD TO COME BY AND
- 7 APPROVE IT?
- 8 A ANOTHER ANALYST.
- 9 Q WHERE IS THAT?
- 10 A SEE REVIEWER UP IN THE RIGHT-HAND CORNER.
- 11 Q OKAY. AND THAT'S ALL THEY HAVE TO DO IS JUST WRITE THEIR INITIALS
- 12 THERE?
- 13 A THEY HAVE TO CHECK THE CARDS AND CHECK MY RESULTS SHEET AND
- 14 THEN PUT THEIR INITIALS ON THERE.
- 15 Q OKAY. YOU DON'T THINK IT WOULD BE A GOOD IDEA IN THE FUTURE TO
- 16 KEEP THOSE CARDS?
- 17 A AFTER A WHILE THE LINES FADE AWAY, AND THIS IS WHY WE DO IT THAT
- 18 THE PERSON, SOMEONE REVIEW YOUR RESULTS.
- 19 Q SO YOU DON'T THINK YOU NEED TO KEEP THOSE CARDS?
- 20 A NOT IF SOMEONE IS REVIEWING YOUR RESULTS.
- 21 Q OKAY. WELL, DID EARNST GET TO REVIEW THE CARDS?
- 22 A NO.
- 23 Q DID I GET TO REVIEW THE CARD?
- 24 A NO, BUT THERE IS STILL SOME SAMPLE REMAINING SO YOU CAN RETEST
- 25 'EM IF YOU WANT.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 Q OKAY. THE NEXT SHEET IS PAGE 15. WHAT IS THAT?

2 A THIS SHEET IS WHEN I BEGAN MY EXTRACTION OF THE DNA. YOU HAVE TO
3 DOCUMENT WHAT REAGENTS YOU USE, WHAT SOLUTIONS YOU USE IN YOUR
4 EXTRACTIONS.

5 Q OKAY. DO YOU KNOW WHAT ALL THOSE REAGENTS ARE?

6 A YES.

7 Q OKAY. AND IT'S 2 COLUMNS OF REAGENTS. SO YOU USED ALL THOSE
8 REAGENTS IN THESE TESTS?

9 A NO, I DID NOT.

10 Q WELL, WHAT OTHER REAGENTS DID YOU USE?

11 A THE ONES THAT HAVE NUMBERS BY THEM.

12 Q OKAY. THEN AT THE BOTTOM YOU HAVE HANDWRITTEN NOTES. DID YOU
13 WRITE THOSE NOTES?

14 A YES.

15 Q WHEN DID YOU WRITE THOSE NOTES?

16 A I WROTE AFTER I DID THE EXTRACTION. IF YOU LOOK IN THE SECOND
17 COLUMN YOU'LL SEE SOME THAT SAY QUANTA (PHONETIC) BLOCK SPOTTING.
18 WELL, IN ORDER TO QUANTIFY HOW MUCH DNA YOU HAVE WE HAVE TO USE
19 WHAT'S TERMED A QUANTA BLOCK AND I'M SAYING THAT ON THE SLOT BLOCK
20 WHICH IS THE QUANTA BLOCK THERE WAS NO VISIBLE DNA. SO I DID THE
21 EXTRACTION USING MORE CUTTING OFF THE SWAB.

22 Q WHICH ONE WAS THAT? WHICH CUTTING WAS THAT FROM WHEN YOU
23 LOOK AT THAT?

24 A ITEM 1.7.

25 Q OKAY. SO THE FIRST TIME YOU DID IT THERE WAS NOTHING AND YOU HAD

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 TO REDO IT.

2 A YEAH, I REDID IT.

3 Q AND 1.7 IS THE VAGINAL SWAB.

4 A THAT'S CORRECT.

5 Q OKAY. AND WHAT WAS THE DATE YOU DID THAT?

6 A ALL OF THIS WAS BEGAN ON FEBRUARY THE 27TH. IT TAKES

7 APPROXIMATELY A WEEK TO DO THIS PART OF THE TEST.

8 Q AND ARE YOU WORKIN' ON IT STEADY OR DO YOU WORK ON IT A LITTLE
9 WHILE AND SET IT ASIDE AND COME BACK TO IT?

10 A WELL, THERE'S INCUBATING TIMES LIKE THE EXTRACTION IS OVERNIGHT
11 AND THEN THERE'S GAPS IN IT, BUT I'M CONTINUOUSLY WORKIN' ON IT BASED ON
12 THE PROTOCOL.

13 Q HOW MANY OTHER CASES ARE YOU CONTINUOUSLY WORKIN' ON AT THE
14 SAME TIME THAT YOU'RE WORKIN' ON EARNEST'S CASE?

15 A OKAY. WHEN I'M DOING ONE PARTICULAR CASE, THOSE ARE THE
16 SAMPLES THAT I HAVE IN FRONT OF ME AT THE TIME. I PUT THOSE SAMPLES AWAY
17 AND GET ANOTHER CASE.

18 Q SO HOW MANY CASES WERE YOU WORKIN' ON BACK IN FEBRUARY 2002?

19 A I DO NOT KNOW.

20 Q ABOUT HOW MANY?

21 A I DON'T KNOW.

22 Q MORE THAN 10?

23 A I DON'T KNOW HOW MANY. I CAN'T SAY IT WAS 10 OR 20 'CAUSE I DON'T
24 KNOW.

25 Q ALL RIGHT. HOW MANY YOU WORKIN' ON RIGHT NOW?

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

- 1 A I HAVE I BELIEVE 5 CASES THAT I HAVE IN DIFFERENT STAGES.
- 2 Q OKAY. IF YOU WOULD, LOOK AT PAGE 16. PAGE 16 IS 2 COLUMNS.
- 3 A YES.
- 4 Q THIS LOOKS LIKE IT'S OUR CASE HERE.
- 5 A YES.
- 6 Q WHAT'S THIS OTHER COLUMN?
- 7 A WE HAVE TO TAKE PROFICIENCIES EVERY 180 DAYS, AND THOSE ARE THE
- 8 SAMPLES FROM MY PROFICIENCY.
- 9 Q WHAT DOES THAT MEAN?
- 10 A WHICH PART?
- 11 Q WELL, YOU GOT A DIFFERENT CASE NUMBER. LO2572211.
- 12 A YES, WHEN THE PROFICIENCIES ARE SUBMITTED THEY ARE GIVEN A CASE
- 13 NUMBER, BUT ALL THOSE SAMPLES ARE FROM A SET OF PROFICIENCY SAMPLES
- 14 THAT WE HAVE TO TAKE EVERY 180 DAYS. THAT'S WHAT THAT CASE NUMBER IS.
- 15 Q WHY ARE THEY ON THE SAME SHEET AS EARNEST'S?
- 16 A 'CAUSE I DID THE SLOT BLOCK AT THE SAME TIME.
- 17 Q OKAY. IF YOU WOULD LOOK AT THE NEXT PAGE 17. WHAT IS THAT?
- 18 A WHAT IS WHAT? WHAT IS THIS PAGE OR—
- 19 Q PAGE 17. SHOW US.
- 20 A PAGE 17 IS A P.C.R. WORKSHEET. THIS IS THE PAGE WHERE YOU PUT ALL
- 21 THE SAMPLES THAT ARE GONNA GO IN THE THERMACYCLE.
- 22 Q SO ALL THESE SAMPLES WENT IN AT THE SAME TIME?
- 23 A YES, THEY HAVE THEIR OWN TUBES.
- 24 Q ALL RIGHT. SO THAT'S 1, 2, 3, 4, 5, 6, 7, 8, 9 THINGS THAT WERE NOT
- 25 EARNEST'S GO IN THERE.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 A YES. 3 OF THEM - ONE'S THE REAGENT BLANK THAT MEANS THAT THE
2 SOLUTIONS THAT I USE IS JUST PUT IN THE TUBE WITH NO DNA OR ANYTHING THE
3 MIXTURE I DON'T HAVE ANY CONTAMINATION, AND THE NEGATIVE CONTROL IS
4 THE SAME FOR ANOTHER SET OF REAGENTS. AND IN 99478 IS A CONTROL TO MAKE
5 SURE THAT THE APPLICATION WENT PROPERLY.

6 Q OKAY.

7 A AND THE OTHER SAMPLES ARE STILL MY PROFICIENCY EXAMPLES.

8 Q SO THE NEXT PAGE LOOKS LIKE THE SAME THING?

9 A THAT'S WHERE I REDID THE 1.7 SAMPLE.

10 Q SO WHAT YOU'RE SAYING IS WHEN YOU DID IT THIS TIME NOTHIN' CAME
11 UP?

12 A ON THE SLOT BLOCK THERE WAS NO - THERE WAS NOTHING EVIDENT ON
13 THE SLOT BLOCK SO I RE-EXTRACTED THE DNA.

14 Q AND WHAT'S THE SLOT BLOCK?

15 A IT QUANTITIZE AND TELLS YOU WHAT QUANTITY OF DNA YOU HAVE.

16 Q OKAY. SO THEN WHEN YOU RUN IT THE SECOND TIME, WHAT QUANTITY OF
17 DNA DID YOU HAVE IN THIS CASE?

18 A I CUT MORE OF THE SWAB AND IT GAVE ME - IT SHOWED THE DNA.

19 Q WELL, WHAT DO THOSE NUMBERS MEAN UP THERE?

20 A WHICH NUMBERS?

21 Q RIGHT OVER HERE.

22 A OKAY. T.E. STANDS FOR TRIS E.D.T.A. WHICH IS A SOLUTION AND THAT'S
23 HOW MUCH QUANTITY OF T.E. I WOULD'VE PUT IN AND MASTER MIX IS PRIMERS,
24 DIFFERENT THINGS THAT HAVE TO GO IN THE SOLUTION, AND THEN THE D.N.A. IS
25 WHAT VOLUME AS IN MICROMETERS OF HOW MANY - HOW MUCH VOLUME OF

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 DNA I PUT IN; NOT QUANTITY.

2 Q WOULD YOU KNOW WHAT'S IN THE MASTER MIX?

3 A YES.

4 Q WHAT'S IN IT?

5 A PRIMERS. TAQ.

6 Q WHAT'S ARE THE PRIMERS?

7 A THAT'S WHY I DIDN'T ANSWER AT FIRST.

8 Q OKAY.

9 A I KNEW YOU'D - PRIMERS ARE LENGTH OF DNA THAT YOU USE TO
10 AMPLIFY THE DNA THAT'S IN THE TUBE.

11 Q OKAY.

12 A AND TAQ IS ENZYME.

13 Q OKAY. AND WHAT ELSE?

14 A BUFFERS.

15 Q OKAY. WHAT ON THIS SHEET SHOWS THAT THE FIRST TIME YOU RAN 1.7
16 THE VAGINAL SWAB YOU FOUND NOTHING AND THE ONE THIS SHEET SHOWS THE
17 SECOND TIME YOU RAN IT YOU FOUND SOMETHING.

18 A IT WOULDN'T BE ON THIS SHEET. IT'S WHEN I DID THE SLOT BLOCK THAT I
19 DIDN'T GET ANY RESULTS.

20 Q IS IT ON ANY OF THE SHEETS THAT YOU HAVE? THAT YOU JUST
21 DESCRIBED?

22 A ON THE SLOT BLOCK SHEET.

23 Q WHAT PAGE IS THAT?

24 A 16.

25 Q THIS WAS DONE ON 2-27.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

- 1 A YES.
- 2 Q YOU DIDN'T DO YOUR TEST TILL 3-4-
- 3 A NO, ONCE, LIKE I SAID, I HAVE DIFFERENT CASES THAT ARE IN DIFFERENT
- 4 STAGES.
- 5 Q YES, MA'AM.
- 6 A THIS COULD GO INTO THE FREEZER UNTIL I COULD GET BACK TO IT.
- 7 Q ALL RIGHT. WHAT ITEMS DID YOU MISS? YOU SAID THE FIRST TIME YOU
- 8 RAN - AND THE DATE ON THIS IS 3-4. PAGE 17 SAYS ON 3-4.
- 9 A OKAY.
- 10 Q AND SO YOU DIDN'T FIND ANYTHING. DID YOU RUN IT AGAIN OR-
- 11 A NO, YOU'RE MISUNDERSTANDING.
- 12 Q YES, MA'AM.
- 13 A THE SLOT BLOCK AND THE AMPLIFICATION ARE TWO DIFFERENT THINGS.
- 14 Q OKAY.
- 15 A THE SLOT BLOCK IS WHERE YOU QUANTIZE YOUR DNA. THE
- 16 AMPLIFICATION IS AFTER YOU QUANTIZE YOU KNOW HOW MUCH DNA YOU HAVE
- 17 THERE. THEN YOU KNOW HOW MUCH TO USE IN THE AMPLIFICATION.
- 18 Q SO WHAT IS THIS SHEET FOR?
- 19 A THAT'S FOR THE AMPLIFICATION.
- 20 Q SO YOU DO THE SLOT BLOCK BEFORE OR AFTER THIS?
- 21 A WELL, YOU HAVE TO DO THE SLOT BLOCK BEFORE THAT SO YOU CAN
- 22 KNOW HOW MUCH DNA TO PUT IN YOUR AMPLIFICATION.
- 23 Q AND THAT'S WHAT THIS IS.
- 24 A YES.
- 25 Q WELL - AND I'M SORRY - THIS IS PAGE 16. WHAT I DON'T UNDERSTAND IS

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 I ASKED YOU DO YOU HAVE A DOCUMENT THAT SHOWS THAT THE FIRST TIME YOU
2 RAN IT AND YOU DIDN'T FIND ANY DNA; THE SECOND TIME YOU RAN IT YOU DID
3 FIND DNA. DO YOU HAVE SOMETHING THAT SHOWS THAT?

4 A OKAY. I EXTRACTED THE DNA AND I DID THE SLOT BLOCK.

5 Q RIGHT.

6 A OKAY. THE FIRST SLOT BLOCK DID NOT SHOW ME ANY DNA.

7 Q OKAY.

8 A I RE - LET ME READ MY NOTES.

9 Q PAGE 16 IS THE SLOT BLOCK. RIGHT?

10 A OKAY. THIS IS WHAT I HAD DOWN AT THE BOTTOM OF MY SHEET. UNDER
11 MY REAGENT WORKSHEET PAGE 15.

12 Q YES, MA'AM.

13 A IT SAYS ITEMS 1.4, 2.1, 1.7 AND 1.10 EXTRACTED. ITEM 1.7M RE-
14 PRECIPITATED AND WE SUSPEND IT IN 25 MICRO LITERS TO DO THE AMP. NOTHING
15 SHOWING ON SLOT BLOCK.

16 Q OKAY.

17 A SO I - RE-PRECIPITATION MEAN THAT I BROUGHT THE VOLUME DOWN
18 INSTEAD OF BEIN' IN 100 MICRO LITERS, I BROUGHT IT DOWN TO 25 MICRO LITERS
19 TO BE ABLE TO CONCENTRATE THE DNA. I MADE ANOTHER CUTTING FROM THAT
20 STOCK AND ADDED THOSE TWO TOGETHER AND THEN PRECIPITATED.

21 Q ALL RIGHT. DID THAT ANSWER MY QUESTION AS TO WHAT DOCUMENT
22 YOU HAVE TO SHOW THAT - WHAT YOU JUST SAID?

23 A I DIDN'T AMPLIFY IT ALONG WITH THE OTHER SAMPLES IN THE BEGINNING.

24 Q OKAY.

25 A I WENT BACK INTO THAT AFTERWARDS.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 Q ALL RIGHT. THEN ON PAGE 18 WHO IS PRESTON JOHNSON?

2 A THAT'S THE INDIVIDUAL IN THAT PARTICULAR CASE.

3 Q OKAY. AND THAT'S - SO THE SECOND TIME YOU WENT IN THERE IT WAS -
4 THERE WAS OTHER STUFF IN THERE TOO.

5 A THE THERMOCYCLER IS A INSTRUMENT THAT'S APPROXIMATELY THIS
6 LARGE AND IT HAS SLOTS IN IT THAT YOU PLACE YOUR TUBES IN IT AND ALL YOUR
7 TUBES ARE LABELED.

8 Q OKAY.

9 A AS TO WHAT'S IN THAT PARTICULAR TUBE.

10 Q AND THE FIRST TIME THAT YOU DID IT WAS ON 3-4. IS THAT CORRECT?

11 A THAT'S WHEN I RAN THE SAMPLES, THE STANDARD FROM HIS H. THE
12 STANDARD FROM MR. PRESSLEY AND THE DNA THAT WAS EXTRACTED FROM THE
13 SUSPECTED SEMEN, AND THEN ON THE 29TH OF MARCH, THAT'S WHEN I DID THE
14 DNA THAT WAS EXTRACTED FROM THE VAGINAL SWAB.

15 Q OKAY. NOW LET ME ASK YOU THIS: ON THE TOP RIGHT IT HAS P.C.R. DATE
16 3-29.

17 A THAT'S CORRECT.

18 Q AND THEN C.E. DATE 3-30-02.

19 A NO.

20 Q THAT'S WRONG?

21 A WHICH PAGE ARE YOU ON?

22 Q I'M SORRY. PAGE 18.

23 A OKAY.

24 Q THAT'S CROSSED OFF.

25 A YES.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 Q AND WHAT'S WRITTEN IN ITS PLACE?

2 A 4-25-02.

3 Q WHOSE INITIALS ARE ABOVE THAT UNDERNEATH THE CHANGE?

4 A MINE.

5 Q WHAT ARE THOSE? THAT'S THE L.G.?

6 A YES.

7 Q OKAY. SO WHAT DOES THAT MEAN?

8 A THAT MEANS THAT ON 3-29-2002 I DID THE AMPLIFICATION. I PLANNED TO
9 ON THAT SAME - ON THE NEXT DAY TO PUT IT ON THE C.E. ON THE INSTRUMENT. I
10 WAS NOT ABLE TO DO THAT. I WAS NOT ABLE TO RUN THOSE SAMPLES UNTIL 4-25-
11 2002.

12 Q SO WHY DOES THE COMPUTER SAY 3-30-02? IF YOU DIDN'T ACTUALLY DO
13 IT.

14 A THE COMPUTER DOESN'T SAY THAT. I GENERATED THE INFORMATION
15 THAT'S ON THIS FORM. MY PLANS WERE THAT ON THE NEXT DAY ON THE 30TH TO
16 PUT THE SAMPLES ON THE C.E. WHEN I GENERATED THIS FORM. BUT I WAS NOT
17 ABLE TO DO THAT. I WAS NOT ABLE TO GET BACK TO THE SAMPLES UNTIL THE 25TH
18 OF APRIL.

19 Q A MONTH LATER BASICALLY.

20 A YES.

21 Q SO YOU CREATED THE FORM AND YOU JUST PUT THE WRONG DATE IN
22 THERE AND YOU WENT BACK AND CHANGED IT.

23 A IT WAS NOT THE WRONG DATE. MY INTENTIONS WERE TO RUN THE
24 SAMPLES THE NEXT DAY.

25 Q SO YOU PRINTED THE FORM OUT AHEAD OF TIME?

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 A YOU PRINT OUT THE FORM WHEN YOU GET YOUR SAMPLES TOGETHER TO
2 GO INTO THE THERMACYCLER.

3 Q OKAY. AND WHAT IS THAT - WHAT ARE THOSE HANDWRITTEN NOTES AT
4 THE BOTTOM OF PAGE 18?

5 A WHICH PART?

6 Q THE HANDWRITTEN - I'M SORRY - RIGHT HERE.

7 A MINUS A RE-INJECTIONS ON 4-29 FOR PROFILER.

8 Q WHAT DOES THAT MEAN?

9 A THAT MEANS THAT THE SAMPLES HAD TO BE REANALYZED ON THE C.E.

10 Q ALL THOSE SAMPLES ON THAT PAGE?

11 A YES.

12 Q WHY WAS THAT?

13 A THE RUN WAS NOT GOOD SO I HAD TO RE-INJECT THEM.

14 Q SO THE FIRST TIME YOU RUN IT ON THE C.E. IT'S NOT GOOD. WHAT DOES
15 THAT MEAN?

16 A THE INSTRUMENT CRASHED. IT STOPPED.

17 Q WHAT INSTRUMENT IS THAT?

18 A THE C.E.

19 Q AND WHAT IS THAT AGAIN?

20 A CAPILLARY ELECTROPHORESIS.

21 Q AND WHAT DOES THAT MACHINE DO?

22 A THAT PIECE OF EQUIPMENT IS WHAT YOU PUT YOUR SAMPLES INTO THIS
23 PIECE OF EQUIPMENT AND IT - WHEN IT RUNS, IT SHOWS YOU WHAT THE DNA
24 PROFILE FOR A CERTAIN SAMPLE IS.

25 Q HOW DOES IT DO THAT?

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

- 1 A THIS IS A -- IT INVOLVES ELECTROPHORESIS OR CURRENT IS RUNNING
2 THROUGH THE INSTRUMENT.
- 3 Q YES, MA'AM.
- 4 A DNA HAS A CHARGE ON IT AND IT PICKS UP THAT PARTICULAR CHARGE.
- 5 Q OKAY. IS THAT WHAT LEADS TO THESE COMPUTER PRINTOUTS?
- 6 A YES.
- 7 Q DO YOU HAVE THE SHEETS THAT WERE GENERATED THE FIRST TIME YOU
8 RAN IT AND THE COMPUTER CRASHED?
- 9 A NO, I DIDN'T PRINT THOSE OUT?
- 10 Q AND WHY NOT?
- 11 A BECAUSE I DIDN'T NEED THEM AS A PART OF MY RESULTS FOR THE CASE.
- 12 Q OKAY. WELL, DO YOU THINK EARNEST MIGHT WANT TO SEE THOSE;
13 MAYBE I'D WANT TO SEE THOSE; MAYBE THE SOLICITOR'S OFFICE?
- 14 A NO, BECAUSE THEY WOULDN'T TELL YOU ANYTHING BECAUSE THE
15 SAMPLES - BECAUSE IT CRASHED.
- 16 Q IT WOULD TELL US THAT THE MACHINE MESSED UP, WOULDN'T IT?
17 MA'AM?
- 18 A IT COULD BUT--
- 19 Q BUT WHAT?
- 20 A NEVER MIND. THAT'S OKAY.
- 21 Q OKAY. SO IF I HADN'T ASKED YOU THAT RIGHT NOW, THEN THE JURY
22 WOULD NEVER HAVE KNOWN THAT THE MACHINE CRASHED THE FIRST TIME YOU
23 TRIED TO RUN EARNEST'S DNA. IS THAT CORRECT?
- 24 A THE FIRST TIME I RAN THE SAMPLES FROM THE VAGINAL SWAB, NO.
- 25 Q AND THE MACHINE MESSED UP THE FIRST TIME YOU RAN THE VAGINAL

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 SWAB THROUGH THE OTHER MACHINE BECAUSE YOU DIDN'T GET ANY READING.
2 RIGHT?

3 A NO.

4 Q YOU DIDN'T?

5 A YOU HAVE IT. WHAT YOU'RE SAYING IS NOT RIGHT.

6 Q OKAY. WELL, WHAT IS RIGHT?

7 A OKAY. THE FIRST TIME I DID IT I DID AN EXTRACTION ON THE SAMPLES. I
8 DID NOT GET ON THE SLOT BLOCK WHERE YOU CAN VISUALIZE THE QUANTITY OF
9 DNA THAT YOU HAVE A GOOD RESULTS FROM THAT. SO I HAD TO REDO IT, RE-
10 PRECIPITATE IT. I MOVED ON TO THE NEXT STEP WHICH IS GOING THROUGH THE
11 THERMACYCLER AND AMPLIFYING THE DNA. THEN IT GOES ON THE C.E. TO
12 GENERATE THE DNA PROFILE. THAT PARTICULAR RUN WAS NOT A GOOD RUN
13 THROUGH THE INSTRUMENT. SO I - THE SAME SAMPLES I DID NOTHING TO THOSE
14 SAMPLES. I JUST STARTED THE INSTRUMENT BACK UP AGAIN.

15 Q AND YOU JUST THREW OUT THOSE PRINTOUTS?

16 A I DIDN'T EVEN PRINT 'EM OUT. YOU VISUALIZE IT ON THE COMPUTER.

17 Q OKAY. ALL RIGHT. THE NEXT PAGE IS PAGE 19. WHAT IS - WHAT IS THAT?

18 A ONCE YOU ANALYZE YOUR DNA YOU HAVE TO GO THROUGH AND LOOK AT
19 EACH AREA OF YOUR DNA. THIS IS JUST PART OF THE ANALYSIS.

20 Q DID YOU LOOK AT EACH AREA OF THE DNA?

21 A OF THE 13 SITES THAT WE LOOK AT, YES, I DID.

22 Q AND I THINK THAT WE GOT INTO THIS BEFORE, BUT YOU NEVER LOOKED AT
23 THE DNA; YOU LOOKED AT THE COMPUTER PRINTOUT OF THE DNA. RIGHT?

24 A YOU LOOK AT - OKAY, YES.

25 Q OKAY. ALL RIGHT. THEN PAGE 20. AT THE BOTTOM OF THAT FORM IT SAYS

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 NOT FOR USE IN DIAGNOSTIC PROCEDURES, AND THEN ALL THE NEXT BUNCH OF
2 PAGES SAID THE SAME THING. WHAT DOES THAT MEAN?

3 A NOT TO BE USED FOR CLINICAL TYPING OF DNA

4 Q WHY IS THAT?

5 A THAT'S WHAT A.B.I. WHEN THEY WROTE THEIR SOFTWARE REQUIRED A
6 RESTRICTION ON THEIR SOFTWARE.

7 Q NOT TO BE USED IN DIAGNOSTIC PROCEDURES. YOU'RE NOT ALLOWED TO
8 USE IT IN DIAGNOSTIC PROCEDURES?

9 A NOT THIS PARTICULAR SOFTWARE.

10 Q DO YOU KNOW WHY?

11 A IT WAS GENERATED TO BE USED FOR FORENSIC TESTING. THE DIAGNOSTIC
12 SOFTWARE IS DIFFERENT FROM THIS ONE.

13 Q ISN'T IT TRUE THAT THE REASON IT CAN'T BE USED IN DIAGNOSTIC
14 PROCEDURES BECAUSE IF IT'S USED IN DIAGNOSTIC PROCEDURES LIFE OR DEATH
15 COULD HANG IN THE BALANCE? OF THE INTERPRETATIONS THAT THE PROGRAM
16 MAKES?

17 A MY UNDERSTANDING IS THAT IT WAS DESIGNED FOR FORENSIC ANALYSIS
18 AND NOT FOR DIAGNOSTIC. SO THEY CHANGE - THERE ARE SOME VARIATIONS IN
19 IT.

20 Q OKAY. DO YOU NOT KNOW THE ANSWER TO MY QUESTION?

21 A THIS IS WHAT I WAS TOLD AS TO THE REASON WHY.

22 Q OKAY. IS THAT BECAUSE DIAGNOSTIC STUFF COULD INVOLVED LIFE OR
23 DEATH?

24 A DIAGNOSTIC ANALYSIS INVOLVES LOOKING AT PARTICULAR GENES FOR
25 DIFFERENT DISEASES, AND THIS IS NOT AS INVOLVED AS THE SOFTWARE THAT'S

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 USED FOR DIAGNOSTICS.

2 Q OKAY. NOW IN 2 PAGES, PAGE 22 STARTS THESE COMPUTER FORMS. IS
3 THIS EVERYTHING THE COMPUTER - IS THIS THE C.E.? THIS IS WHAT THE C.E.
4 PRINTS OUT?

5 A THE C.E. SENDS INFORMATION TO THE COMPUTER AND THEN THE DATA IS
6 ANALYZED AND YOU GENERATE THE ELECTROPHRAGRAM WHICH THESE SHEETS
7 ARE.

8 Q OKAY. AND WHY IS IT THAT THESE SOME OF THESE BUMPS ARE MARKED
9 AND SOME OF THE BUMPS ARE NOT MARKED?

10 A WHERE?

11 Q LET'S SEE, ON PAGE 22 ALL THESE BUMPS IN HERE, NONE OF THOSE ARE
12 MARKED.

13 A THEY'RE BASELINE.

14 Q ON PAGE 23 LOOK AT THAT LITTLE BUMP RIGHT THERE.

15 A BASELINE.

16 Q WHAT IS BASELINE?

17 A THAT MEANS WHEN THE INFORMATION IS COMIN' ACROSS THE C.E. IF
18 THERE COULD BE IN THE SOLUTION SOME EXCESSIVE SALTS OR WHATEVER IT
19 COULD CAUSE A BUMP IN THE BASELINE.

20 Q WELL, LOOK AT THE ONE ON PAGE 23 RIGHT NEXT TO THIS NUMBER 23.
21 THAT LOOKS LIKE MORE THAN A BUMP.

22 A THAT'S A STUTTER (PHONETIC) BAND.

23 Q WHAT'S THAT?

24 A IT HAPPENS LIKE WHAT I SAID WHEN YOU HAVE - WHERE THERE'S A
25 EXCESS SALT OR SOMETHING IN THE SOLUTION THAT'S CAUSING THE

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 POLYMERASE SWITCHES THE ENZYME TO STOP AT A CERTAIN POINT AND THEN IT
2 GOES ON.

3 Q HOW CAN YOU TELL IF IT'S A WHAT YOU SAID OR SUPPOSED TO BE A DNA
4 THING? HOW CAN YOU TELL?

5 A I'VE BEEN TRAINED TO DO THIS.

6 Q ISN'T IT TRUE THAT UNLESS - IT'S NOT YOU; IT'S THE COMPUTER, AND IF
7 THE COMPUTER PUT A MARK ON IT YOU COULD JUST AS EASILY GET BACK TO A
8 PEAK OF DNA IF YOU'RE LOOKIN' AT IT VERSUS WHATEVER YOU CALLED IT.

9 A WELL, THEN WHAT WE WOULD DO IS YOU WOULD LOOK AT HOW HIGH
10 THAT PEAK IS AND WHAT PERCENT DIFFERENCE IT IS IN THAT PEAK AND THE NEXT
11 PEAK NEXT TO IT. ALL OF THIS YOU'RE TRAINED TO DO IT BEFORE YOU START
12 ANALYZING SAMPLES ON YOUR OWN.

13 Q OKAY. THAT IS THE DANGER OF THE COMPUTER. ALL RIGHT. LOOK ON
14 PAGE 39, PLEASE. LOOK HOW SMALL THOSE BUMPS ARE FOR 10 TO 12.

15 A YES.

16 Q THAT'S SMALLER THAN THOSE THINGS THAT YOU SAID ARE SALT.

17 A BUT IF YOU'LL LOOK AT THE NUMBERS THAT ARE UNDER THEM--

18 Q UH-HUH.

19 A OKAY, THEN THAT'S HOW HIGH THAT PEAK IS. WHEN - WHEN THE
20 INFORMATION IS - THE HEIGHT OF THAT PARTICULAR PEAK IS BEIN' AFFECTED BY
21 THE -- YOU SEE THE X FOR THE FEMALE? ARE YOU STILL ON PAGE THIRTY--

22 Q YES, MA'AM.

23 A OKAY. IF YOU LOOK AT THE X FOR THE FEMALE, YOU SEE HOW TALL THAT
24 PEAK IS?

25 Q YES, MA'AM.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 A OKAY. THE HEIGHT OF THOSE PARTICULAR PEAKS ARE LOWERED
2 BECAUSE OF THE HEIGHT OF THAT X. WHEN THE COMPUTER LOOKS AT THAT
3 PARTICULAR SAMPLE, LOOK AT THAT DNA—

4 Q UH-HUH.

5 A —IT'S TRYIN' TO GAUGE THAT X AND HAVE IT ALL FIT INTO A CERTAIN
6 RANGE SO WE CAN BE ABLE TO VISUALIZE THEM, AND THEN THAT'S WHY THOSE
7 PEAKS LOOK SO SMALL.

8 Q THEN YOU'RE SAYING THE COMPUTER IS TRYIN' TO GET IT TO FIT INTO A
9 RANGE SO WE CAN SEE IT?

10 A YEAH, TO PUT IT IN ONE ARE SO IT CAN ALL FIT HERE ON THE PAPER. BUT IF
11 YOU LOOK UNDER THOSE PARTICULAR PEAKS, YOU CAN SEE HOW HIGH THOSE
12 PEAKS ACTUALLY SHOULD BE. CAUSE THE NUMBERS ARE THERE.

13 Q ARE THOSE PEAKS SUPPOSED TO BE HIGHER THAN THEY'RE SHOWN HERE?

14 A NO. THAT'S WHY THE NUMBERS ARE THERE SO YOU CAN SEE HOW HIGH
15 THOSE PEAKS SHOULD BE.

16 Q OKAY. PAGE 48 THOSE LINES THERE ARE THOSE THOSE SALT THING?

17 A 48?

18 Q YES, MA'AM.

19 A ALL OF THAT IS BASELINE.

20 Q THOSE ARE STRAIGHT LINES. ALL THE OTHER BASELINES LOOK LIKE
21 BUMPS. WHY DOES IT HAVE STRAIGHT LINES?

22 A SALT'S GIVIN' YOU SPIKES AND THE BASELINE WILL RISE UP.

23 Q LOOK ON—

24 A ALL OF THIS IS TAUGHT TO YOU WHEN YOU'RE TRAINED TO INTERPRET THE
25 ELECTROPHROGRAMS.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 Q LOOK ON PAGE 49. LOOK AT THAT STRAIGHT UP LINE. IS THAT THE
2 BASELINE?

3 A 49? THAT'S A SPIKE. IT'S SPIKING IN ALL THE COLORS.

4 Q OKAY. YOU TESTIFIED TO MS. BRISBIN THAT EARNEST'S DNA MATCHES.

5 A YES.

6 Q HOW DO YOU SAY THAT?

7 A I LOOK AT THE DNA PROFILE THAT WAS DEVELOPED FROM ITEM 1.7, THE
8 VAGINAL SWAB--

9 Q UH-HUH.

10 A I ANALYZED AND LOOK AT THE SAMPLE AND SEE IF THERE'S ANY ONE OF
11 THOSE PARTICULAR DNA AREAS THAT HE CAN BE EXCLUDED AS THE DONOR OF
12 THAT SEMEN.

13 Q ALL RIGHT. WHAT--

14 A THERE IS NOT ONE.

15 Q WHAT DO YOU MEAN THE DNA AREAS?

16 A WE LOOK AT 13 DIFFERENT SITES ON YOUR CHROMOSOME ON YOUR DNA
17 AND I LOOK AT EACH ONE OF THOSE AREAS TO SEE IF HE CAN BE EXCLUDED AS
18 THE DONOR.

19 Q OKAY. WHAT 13 AREAS, DO YOU JUST CHOOSE 13 AREAS OF THE DNA OR
20 DO YOU GO TO THE SAME 13 AREAS EVERY TIME OR HOW DOES THAT WORK?

21 A IT'S THE SAME 13 EVERY TIME..

22 Q WHAT 13 AREAS ARE YOU LOOKIN' AT?

23 A IF YOU LOOK AT MY REPORT IN THE TOP COLUMN YOU WILL SEE WHERE IT
24 SAYS WHAT AREAS THEY ARE.

25 Q THOSE NUMBERS?

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

- 1 A LOOK. YOU SEE DS13958.
- 2 Q YES, MA'AM.
- 3 A THAT'S AN AREA.
- 4 Q WHAT AREA IS THAT?
- 5 A THAT'S ON THE THIRD CHROMOSOME AND POSITION 1358.
- 6 Q OKAY. AND YOU LOOK AT THAT AREA.
- 7 A YES.
- 8 Q AND THERE'S 13 PLACES YOU LOOK. ON YOUR CHART THERE'S TEN AREAS.
- 9 A THERE'S 9 THERE.
- 10 Q NINE?
- 11 A YOU EXCLUDE THE AMELOGENTIN (PHONETIC) THE SEX CHROMOSOME.
- 12 Q OKAY. SO YOU GOT 9. THE OTHER 4, WHERE ARE THEY?
- 13 A ON THE NEXT PAGE.
- 14 Q IS THAT THE CO-FILER (PHONETIC)?
- 15 A YES.
- 16 Q OKAY. WHAT DOES THAT MEAN? THERE WASN'T ENOUGH ROOM ON THE
- 17 CHART SO YOU HAD TO HAVE A—
- 18 A NO, THEY'RE TWO SEPARATE TUBES BUT THEY'RE ALSO DIFFERENT SITES.
- 19 Q OKAY. AND WHAT DOES THAT MEAN? WHAT DOES YOUR CHART MEAN?
- 20 A THE CHART GIVES THE INFORMATION THAT WAS GENERATED FROM THE
- 21 ELECTROPHAROGRAM.
- 22 Q DID YOU PREPARE THIS CHART, DID YOU GO AND RESEARCH AND DO THE
- 23 CHART OR DID THE COMPUTER DO THIS CHART?
- 24 A I DO THE CHART.
- 25 Q YOU DID?

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 A YES.

2 Q HOW DID YOU DO THIS CHART?

3 A THE INFORMATION THAT WAS GENERATED ON THE ELECTROPHAROGRAM I
4 THEN BASICALLY PUT IT IN THE CHART.

5 Q HOW DID YOU DO IT? IS THE CHART ALREADY MADE IN YOUR PROGRAM
6 AND YOU FILL IN THE NUMBERS?

7 A YES. I HAVE A I GUESS YOU CALL IT A VANILLA REPORT.

8 Q SORRY.

9 A THERE'S NO INFORMATION IN THE CHART ON THE COMPUTER AND I PUT IT
10 IN.

11 Q ALL RIGHT. SO YOU LOOK AT THE SAME 13 AREAS EVERY TIME.

12 A YES.

13 Q AND WHAT DO THE NUMBERS MEAN? YOU HAVE NUMBERS 15, 16, 17, 20.

14 A THAT MEANS THAT AT THAT PARTICULAR -- OKAY, LIKE I EXPLAINED, YOU
15 GET PART OF YOUR DNA FROM YOUR MOTHER AND PART FROM YOUR FATHER. SO
16 ONE OF THOSE NUMBERS BEING CONTRIBUTED BY YOUR MOTHER AND ONE BY
17 YOUR FATHER AND WHEN YOU LOOK AT YOU SAY IT'S 16 AND 17, IT'S 16 REPEATS
18 OF THE SAME SEQUENCE OF DNA AND THEN 17 REPEATS OF THE SAME SEQUENCE
19 OF DNA.

20 Q WHAT DOES THAT MEAN?

21 A THAT MEANS IF YOU HAVE A PIECE OF DNA, LIKE FOR INSTANCE, TRAINS.
22 YOU HAVE CARS AND YOU GET REPEATS OF THE SAME CARS, IT'S LIKE THAT.

23 Q WHAT DOES THE NUMBER 16 MEAN?

24 A THAT YOU HAVE 16 CARS.

25 Q AND YOU COULD TELL THAT BY THIS COMPUTER THING?

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 A YES.

2 Q HOW DO YOU DO THAT?

3 A I LEARNED TO DO IT. I'VE BEEN TRAINED TO DO THAT.

4 Q I MEAN HOW DO YOU CORRELATE WHAT'S ON THE COMPUTER PRINTOUT
5 TO 16?

6 A WHEN YOU LOOK AT THE ELECTROPHAROGRAM UNDER THAT PARTICULAR
7 PEAK YOU'LL SEE A NUMBER.

8 Q UH-HUH.

9 A AND YOU'LL SEE A 15, A 16 OR A 17 AT THE D3.

10 Q UH-HUH.

11 A AND THAT'S WHERE THOSE NUMBERS ARE COMING FROM.

12 Q SO THAT COMES FROM THE COMPUTER AGAIN.

13 A IT ORIGINATES WITH THE DNA.

14 Q WHICH YOU NEVER ACTUALLY SEE.

15 A YOU CAN'T SEE THE GENES.

16 Q WELL, THEN HOW DOES THE COMPUTER PRINT IT OUT?

17 A BECAUSE WHEN YOU PERFORM THE CAPILLARY ELECTROPHORESIS ON
18 THAT PARTICULAR DNA THE CURRENT CAUSES CERTAIN PIECES OF DNA TO
19 MIGRATE AT A DIFFERENT RATE AND THAT PARTICULAR - THAT'S THE WAY YOU
20 CAN TELL.

21 Q ALL RIGHT. I'M SORRY. SAY THAT AGAIN, PLEASE.

22 A I KNOW IT'S HARD 'CAUSE ALL I HAVE IN MY HANDS ARE CHARTS. BUT
23 WHEN YOU - WHEN THE DNA IS PUT ON THE C.E. THE TUBE WITH THE DNA IN IT, A
24 CURRENT THAT COMES THROUGH - A TUBE ON THE INSTRUMENT GOES INTO THAT
25 - SORRY - EXCUSE ME. A CAPILLARY GOES INSIDE THAT TUBE AND A CURRENT

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 IS SUPPLIED AND THEN THE DNA WILL MIGRATE TO THAT CAPILLARY AND BASED
2 ON THE SIZE OF THAT DNA IS HOW FAST IT WOULD MIGRATE AND THAT'S HOW
3 YOU COULD TELL WHAT SIZE -- HOW MANY CARS YOU HAVE.

4 Q BASED ON THE SIZE OF THE DNA.

5 A YES, 'CAUSE IT'S BASED ON LENGTH. 16 CARS, 17 CARS.

6 Q OKAY.

7 A CERTAIN LENGTH OF TRAIN.

8 Q WHAT IF THE CAR'S CLOSER TO THE MIDDLE WHEN THE THING GOES IN
9 THERE, THEN IT'S NOT GONNA TAKE AS LONG TO GET THERE.

10 A IT DOESN'T WORK LIKE THAT. IT HAS A CERTAIN MOLARITY. IT'S GONNA
11 MIGRATE AT A CERTAIN RATE.

12 Q OKAY. AND THE COMPUTER SUPPOSEDLY CALCULATES THE RATE?

13 A NO, IT PICKS IT UP AND THEN THE INFORMATION IS FED INTO THE
14 COMPUTER.

15 Q AND THAT'S IT. THAT'S HOW IT COMES UP WITH IT.

16 A YES.

17 Q OKAY. AND WHAT -- TELL ME WHAT PAGE 58 IS, PLEASE.

18 A THAT'S THE STATISTICS RESULTS.

19 Q AND WHAT IS THAT? WHAT IS ALL THAT? F.G.A.

20 A F.G.A IS A SITE ON THE DNA.

21 Q MA'AM?

22 A F.G.A. IS A SITE ON THE DNA.

23 Q ALL RIGHT. IF YOU COULD DO THE TOP ONE. F.G.A. THEN IT HAS ALLELE

24 21. WHAT DOES THAT MEAN?

25 A ALLELE 21.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 Q WHAT DOES THAT MEAN?

2 A IT MEANS THAT AT THAT PARTICULAR SITE THE ALLELES THAT ARE FOUND
3 THERE ARE 21 AND 25. ALL PEAKS THAT WERE FOUND AT THAT PARTICULAR SITE
4 ON THE DNA.

5 Q OKAY.

6 A AT THAT PARTICULAR SITE ON THE DNA THERE WERE 21 CARS AND 25
7 CARS.

8 Q AT THE PLACE F.G.A.?

9 A YES.

10 Q AND THEN YOU HAVE ALL THESE NUMBERS. WHAT DOES ALL THAT MEAN
11 IN THIS CASE?

12 A EACH ONE OF THOSE ALLELES ARE CALCULATED SEPARATELY.

13 Q UH-HUH.

14 A AS TO FREQUENCY OF SEEDN' THAT PARTICULAR ALLELE.

15 Q OKAY. AND THEN WHAT IS THE STUFF AT THE BOTTOM MEAN?
16 FREQUENCY. WHAT DOES ALL THAT MEAN?

17 A MEAN THE--

18 Q THE FREQUENCY.

19 A DIFFERENT DATA BASES THAT THE NUMBERS ARE PLUGGED INTO.

20 Q STRIKE THAT, PLEASE. LOOK ON YOUR REPORT. NEW DATA RESULTS.

21 A WHICH PAGE ARE YOU ON?

22 Q I'M SORRY. YOUR REPORT HERE.

23 A OKAY.

24 Q WOULD YOU TELL THE JURY WHAT YOUR RESULTS WERE. WHAT DOES
25 THAT SAY?

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 A THE FIRST PARAGRAPH?

2 Q YOU CAN READ 'EM BOTH, BUT YOU CAN DO 'EM ONE AT A TIME.

3 A OKAY. THE DNA PROFILE DEVELOPED FROM THE SEMEN ON ITEM 1.7
4 MATCHES EARNEST PRESSLEY. DNA PROFILE OF RANDOMLY SELECTING AN
5 UNRELATED INDIVIDUAL HAVING A DNA PROFILE MATCHING ITEM 1.7 IS ONE IN
6 139.

7 Q OKAY. WHAT DOES THAT MEAN?

8 A IT MEANS THAT THE SEMEN THAT WAS FOUND ON ITEM 1.7 THE DNA
9 PROFILE THAT WAS DEVELOPED FROM THE SEMEN FOUND ON ITEM 1.7 MATCHES
10 THE DNA PROFILE OF EARNEST PRESSLEY. ONCE YOU ESTABLISH THAT YOU HAVE
11 A MATCH, THE NEXT STEP IS TO LOOK AT THE FREQUENCY OF THAT PARTICULAR
12 EVENT. IN THIS PARTICULAR CASE OUT OF THE 13 I WAS ABLE TO USE 2 OF THE
13 LOCI OR 2 OF THE AREAS ON THE DNA AND THEN I USED THOSE TO GENERATE
14 THAT PARTICULAR FREQUENCY.

15 Q YOU USED TWO OF THE LOCI

16 A 2 OF THE AREAS ON THE DNA OUT OF THE 13 IN MY FREQUENCY
17 CALCULATION.

18 Q WHY DID YOU USE 2?

19 A BECAUSE BASED ON OUR POLICY, THAT YOU HAVE TO LOOK AT EACH ONE
20 OF THE AREAS AND SEE WHAT THE DIFFERENCE IS IN THOSE AREAS AND
21 WHETHER THEY CAN BE USED IN THE FREQUENCY, AND BASED ON OUR POLICY
22 ONLY 2 OUT OF THE 13 COULD BE USED IN THE FREQUENCY CALCULATION, BUT
23 THERE WAS NOTHING THERE TO DO IT THAT WOULD DEEM AN EXCLUSION. IT WAS
24 STILL A MATCH.

25 Q SO YOU'RE SAYING IT'S BASED ON ALL THIS, THAT IT'S A ONE IN ONE 39 IT

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 COULD BE. SO ONE OUT OF EVERY 139 PEOPLE BASED ON THIS WOULD HAVE THE
2 SAME DNA AS YOU SAY EARNEST HAS.

3 A WOULD HAVE THE SAME DNA PROFILE AS THOSE 2 AREAS.

4 Q OKAY. SO YOU JUST WALK AROUND AND THERE'S EVERY 139 PEOPLE YOU
5 MEET ONE OF 'EM'S GONNA MATCH.

6 A NOT NECESSARILY.

7 Q ALL RIGHT. IS THAT NOT WHAT YOU JUST SAID?

8 A THE FREQUENCY OF THE EVENT IS THAT YOU WOULD SEE SOMEONE WITH
9 THAT PARTICULAR PROFILE LIKE THOSE TWO AREAS AT A 139 - BUT THE 140TH
10 PERSON MIGHT NOT HAVE THAT PARTICULAR PROFILE.

11 Q ALL RIGHT. NOW THE NEXT PARAGRAPH, READ THE NEXT ONE, PLEASE.

12 A THE DNA PROFILE DEVELOPED FROM ITEM 1.10 IS A MIXTURE. P. H.

13 H. EARNEST PRESSLEY CANNOT BE EXCLUDED AS DONORS TO THIS
14 MIXTURE. THE PROBABILITY OF RANDOMLY SELECTING AN UNRELATED
15 INDIVIDUAL WHO WOULD CONTRIBUTE TO THIS MIXTURE IS ONE IN 3500.

16 Q ALL RIGHT. WHAT DOES THAT MEAN?

17 A THAT MEANS THAT ITEM NUMBER 1.10 IS A MIXTURE OF P. H.
18 AND EARNEST PRESSLEY. BASED ON OUR PROTOCOL OR OUR POLICY WHEN
19 YOU'RE CALCULATING THAT'S THE FIRST THING YOU DO. YOU SEE IF THESE
20 PEOPLE CAN BE EXCLUDED FROM THIS MIXTURE. THE NEXT STEP IS AT WHAT
21 FREQUENCY WOULD YOU SEE THE PARTICULAR DNA PROFILE.

22 Q WHY DO YOU CALL THAT A MIXTURE THERE?

23 A BECAUSE IT'S OUTSIDE HER BODY. IT WOULD BE THE SAME IF I FOUND
24 SEMEN ON HER - ON HER SHORTS OR JACKET. AND THE AMOUNT OF DNA THAT
25 WAS THERE FROM ONE PARTICULAR DONOR WAS EVEN TO THE OTHER THEN I

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 WOULD HAVE TO DEEM IT A MIXTURE.

2 Q AND THIS IS THE SEMEN THAT YOU DON'T KNOW WHERE IT WAS FOUND.

3 CORRECT?

4 A NO, I DON'T KNOW WHERE IT WAS FOUND.

5 Q SO HOW DO YOU KNOW IT'S A MIXTURE?

6 A BECAUSE P. H. DNA PROFILE IS MIXED WITH EARNEST
7 PRESSLEY'S.

8 Q AND HOW DO YOU KNOW THAT?

9 A BECAUSE I ANALYZED THE RESULTS FROM THE DNA THAT WAS FOUND ON
10 THE SUSPECTED SEMEN SWAB.

11 Q IN YOUR CHART YOU HAVE IT BROKEN DOWN 1.10F, 1.10M. I SEE THAT'S
12 FEMALE OR MALE.

13 A THAT'S CORRECT.

14 Q YOU DID THE SAME THING FOR 1.7.

15 A YES.

16 Q SO ARE YOU NOT ABLE TO SEPARATE THE 1.10 MALE FROM—

17 A ON OCCASIONS YOU'RE NOT ABLE TO.

18 Q SO IN THIS CASE YOU JUST WEREN'T ABLE TO DO THAT.

19 A THERE'S 2 PARTS TO THE PROCEDURE AND MANY TIMES YOU'RE NOT ABLE
20 TO SEPARATE THE TWO. YOU ATTEMPT TO SEPARATE THEM BUT ON OCCASIONS
21 YOU CAN'T.

22 Q DID YOU TRY TO DO IT IN THIS CASE?

23 A YES.

24 Q YOU DID?

25 A YES.

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 Q DO YOU HAVE THE DOCUMENTATION TO SHOW THAT?

2 A SHOW WHAT?

3 Q THAT YOU TRIED TO SEPARATE IT.

4 A THAT'S PROTOCOL.

5 Q WELL, CAN YOU SHOW ME WHERE YOU TRIED TO SEPARATE IN YOUR
6 REPORT?

7 A I REALLY DON'T UNDERSTAND WHAT YOU WANT. COULD YOU EXPLAIN IT
8 FURTHER FOR ME.

9 Q UP ABOVE YOU'RE SAYING THAT THE VAGINAL SWAB WAS A MIXTURE,
10 YET YOU CAN SAY ONE IN ONE 39. OKAY. DOWN BELOW YOU'RE SAYING THAT
11 THE SUSPECTED SEMEN SAMPLE THAT YOU DON'T KNOW WHERE THAT CAME
12 FROM IS A MIXTURE, SO YOU'RE SAYING ONE IN 3500.

13 A BECAUSE IT'S COMING FROM THE OUTSIDE OF HER BODY. I DON'T KNOW
14 WHERE IT CAME FROM. SO THE RESULTS ARE GIVEN IN THE MIXTURE STATEMENT.

15 Q AND THE MIXTURE STATEMENT IS WORSE FOR EARNEST THAN THE
16 REGULAR STATEMENT. ISN'T THAT TRUE?

17 A NOT TO ME. BOTH OF 'EM MATCHED.

18 Q WELL, ONE OF 'EM SAYS ONE IN ONE 39 AND ONE OF 'EM SAYS ONE IN 3500.

19 A WELL, THE ONE IN 139 IS FREQUENCY OF LOOKING AT TWO SITES ON THE
20 DNA. IT'S STILL A MATCH.

21 Q WHAT DID YOU DO TO TRY TO SEPARATE ONE TEN?

22 A I FOLLOWED THE PROTOCOL.

23 Q WHAT IS THAT?

24 A WHEN YOU MAKE CUTTINGS OF THE SWAB YOU PUT IT IN A SOLUTION AND
25 THE FIRST SOLUTION IS CALLED THE FEMALE FRACTION. THAT'S WHERE CELLS

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 ARE - EPITHELIAL CELLS THEY BREAK OPEN EASILY. SPERM HEADS DON'T. SO
2 YOU DO - YOU LET THAT INCUBATE FOR A WHILE. YOU REMOVE THAT
3 PARTICULAR SOLUTION AND THE SWAB IS STILL IN THE TUBE. YOU ADD ANOTHER
4 SOLUTION WHICH CONTAINS AN EXTRA SOLUTION, EXTRA REAGENT THAT
5 BREAKS OPEN SPERM HEADS.

6 Q AND—

7 A THEN YOU END UP WITH 2 TUBES. THE FEMALE FRACTION AND THE MALE
8 FRACTION.

9 Q DID YOU DO THAT IN THIS CASE?

10 A I ALWAYS DO IT.

11 Q AND YOU WERE NOT ABLE TO ANALYZE THE ONE TEN MALE?

12 A I WAS NOT ABLE TO TOTALLY REMOVE HER DNA FROM HIS SAMPLE.

13 Q AND YOU DON'T KNOW WHY?

14 A ON OCCASION IT HAPPENS WHERE YOU'RE NOT ABLE TO TOTALLY
15 REMOVE ALL OF THE FEMALE FROM THE MALE ESPECIALLY WHEN YOU HAVE A
16 LOW AMOUNT OF MALE DNA.

17 Q AND THERE WAS A LOW AMOUNT OF MALE DNA IN THE SUSPECTED SEMEN
18 SWAB?

19 A YES. IN THE SUSPECTED SEMEN AND IN THE VAGINAL SWAB.

20 Q THERE WAS A LOW AMOUNT OF BOTH.

21 A YES, FOR DNA.

22 Q ALL RIGHT. LET ME ASK YOU THIS: IS IT SAFE TO SAY THAT ALL OF THESE
23 CALCULATIONS AND ALL THIS STUFF IS DEPENDENT UPON THE COMPUTER
24 WORKING PROPERLY?

25 A IT'S DEPENDENT UPON THE COMPUTER AND ON MYSELF WORKING

AGENT GALLMAN - CROSS-EXAMINATION BY M. ANDERSON

1 PROPERLY IN THAT - THAT'S WHY WE INITIATE CONTROLS. THERE ARE CERTAIN
2 CONTROLS THAT HAVE TO PASS THE TEST IN ORDER FOR YOU TO EVEN UTILIZE
3 ANY OF THE DATA THAT'S GENERATED.

4 Q WHO WORKS ON THE C.E. COMPUTER? WHO'S IN CHARGE OF
5 MAINTAINING THAT?

6 A WHEN YOU'RE DOING THE RUN IN YOU'RE IN CHARGE OF IT. WE HAVE
7 PEOPLE COME IN AND DO A GENERAL MAINTENANCE, BUT YOU'RE IN CHARGE OF
8 IT. WE ARE TRAINED TO RECOGNIZE PROBLEMS WHEN THEY ARISE WITH THE
9 INSTRUMENT.

10 Q LET ME JUST GET ONE THING CLEAR. THE TWO THAT YOU DID WAS ONE
11 TEN WHICH IS THE SEMEN SWAB THAT YOU DON'T KNOW WHERE IT CAME FROM,
12 THAT'S ONE IN 3500. THE 1.7 IS THE VAGINAL SWAB WHICH YOU KNOW EXACTLY
13 WHERE THAT CAME FROM AND THAT'S ONE IN ONE 39.

14 A THE 1.7 WHICH IS THE VAGINAL SWAB COMING FROM THE INSIDE OF HER
15 BODY—

16 Q UH-HUH.

17 A —THAT'S WHY THAT STATISTIC IS DONE IN THAT MANNER. WITH THE 1.10
18 WHICH IS FROM THE OUTSIDE OF HER BODY, WE APPLY A MIXTURE STATEMENT TO
19 THAT.

20 Q ALL RIGHT. THANKS. NO FURTHER QUESTIONS.

21 THE COURT: REDIRECT?

22 MS. BRISBIN: THANK YOU, YOUR HONOR.

23 REDIRECT EXAMINATION

24 BY MS. BRISBIN

25 Q DO YOU HAVE CERTAIN PROCEDURES AND PROTOCOLS TO FOLLOW FOR

AGENT GALLMAN - REDIRECT EXAMINATION BY MS. BRISBIN

1 YOUR DNA ANALYSIS?

2 A YES, WE DO.

3 Q DID YOU FOLLOW ALL OF THOSE PROCEDURES AND PROTOCOLS
4 CORRECTLY IN THIS CASE?

5 A YES.

6 Q ARE THESE PROTOCOLS AND PROCEDURES PART OF AN ACCREDITATION
7 PROGRAM?

8 A YES, THEY ARE.

9 Q IS THE SLED DNA - PRESENT DNA LAB ACCREDITED?

10 A YES, IT IS.

11 Q AND DO YOU HAVE QUALITY CONTROL CHECKS AND BALANCES?

12 A YES.

13 Q AND HAVE THEY BEEN FOLLOWED?

14 A YES.

15 Q WHEN YOU SAY THE MACHINE CRASHED, DO YOU MEAN IT JUST SHUT
16 DOWN COMPLETELY AND WOULDN'T GIVE A RESULTS?

17 A IT PAUSED AND THE SAMPLES COULDN'T RUN THROUGH COMPLETELY.

18 Q OKAY.

19 A SO I HAD TO REDO THEM.

20 Q SO IT DIDN'T GIVE YOU SOMEBODY ELSE'S DNA RESULTS, DID IT?

21 A NO. THERE'S NOTHING THAT CAN CHANGE THE DNA PROFILE. IT'S JUST
22 THAT IT DIDN'T CARRY IT TO COMPLETION. SO I HAVE TO START THINGS OVER.

23 Q OKAY. HOW MANY SITES DID YOU SAY YOU CAN TEST ACCORDING TO
24 YOUR PROTOCOL?

25 A WE TEST 13 PLUS THE AMOLIGEN WHICH IS THE SEX CHROMOSOME.

AGENT GALLMAN - REDIRECT EXAMINATION BY MS. BRISBIN

1 Q OKAY. AND IN THE VAGINAL, THE CASE OF THE VAGINAL SWAB, YOU
2 TESTED HOW MANY?

3 A I TESTED 13.

4 Q OKAY. BUT YOU ONLY RECORDED THE RESULTS OF TWO?

5 A YES.

6 Q AND WHY IS THAT?

7 A BASED ON MY PROTOCOL, ONCE YOU LOOK AT THE DATA THE 2 I WAS ABLE
8 TO USE IN THE CALCULATION THEY WERE SEPARATED AS IN FOR EXAMPLE MS.

9 H. DNA PROFILE AT THAT ONE SITE IS 20/26 AND MR. PRESSLEY IS 21/25. SO
10 THEY'RE TOTALLY SEPARATED. SO I COULD USE THAT IN MY CALCULATION.

11 Q ALL RIGHT. THAT DOESN'T MAKE ANY SENSE TO ME. LET ME ASK IT
12 AGAIN.

13 A WHAT I'M SAYING IS THAT--

14 Q LET ME ASK IT A DIFFERENT WAY. OKAY. THE FACT THAT YOU ONLY -
15 YOU SAID YOU DIDN'T TEST FOR ALL 13.

16 A THAT'S CORRECT.

17 Q DID ALL 13 OF THOSE - WHEN YOU TEST YOU GET A LITTLE BLIP ON THE
18 GRAPH. IS THAT RIGHT?

19 A PEAKS. YES.

20 Q OKAY. I'M GONNA CALL 'EM LITTLE BLIPS. WHEN YOU GET THOSE - GOT
21 THOSE LITTLE 13 BLIPS, DID THOSE LITTLE 13 BLIPS FOR P. H. DNA
22 LINE UP ON THE GRAPH WITH 13 LITTLE BLIPS FROM MR. PRESSLEY'S DNA?

23 A YES. THEY WERE ALL ON THERE.

24 Q WHAT DOES THAT MEAN?

25 A THAT MEANS THAT HIS DNA WAS MIXED WITH HER DNA.

AGENT GALLMAN - REDIRECT EXAMINATION BY MS. BRISBIN

- 1 Q DOES IT MEAN - I'M TALKIN' ABOUT THE VAGINAL SWAB NOW. DOES
2 THAT MEAN THAT HIS DNA MATCHED WITH HER DNA ON ALL 13 OF THOSE SITES?
- 3 A NO, NOT ON ALL 13. NOT MATCHED WITH HIS - NOT MATCHED WITH HERS.
- 4 Q YOU JUST CAN'T SAY IT MATCHED WITH IT 'CAUSE YOU DIDN'T HAVE
5 ENOUGH?
- 6 A WELL, HIS DNA PROFILE MATCHED HIS STANDARD AND HERS MATCH HER
7 STANDARD, BUT THEY WERE MIXED TOGETHER.
- 8 Q OKAY. WHEN YOU COMPARED HIS DNA PROFILE TO HER DNA PROFILE YOU
9 LOOKED AT 13 SITES. CORRECT?
- 10 A YES.
- 11 Q OKAY. DID THOSE 13 SITES OF HIS DNA PROFILE LINE UP WITH THE 13 SITES
12 OF HER DNA PROFILE?
- 13 A YES, THEY WERE ON THE ELECTROPHARAGRAM.
- 14 Q OKAY. I'M NOT ASKING THE QUESTION CORRECTLY. I APOLOGIZE. DID
15 THE 13 SITES OF - FROM THE SUSPECT KIT LINE UP WITH THE 13 SITES OF THE
16 SEMEN SAMPLE?
- 17 A YES.
- 18 Q AND WHAT DOES THAT MEAN?
- 19 A THAT MEANS THAT THE SEMEN THAT WAS FOUND ON THE VAGINAL SWAB
20 MATCHED MR. PRESSLEY.
- 21 Q IN ALL 13 SITES?
- 22 A YES. THERE WAS NOTHING THERE TO EXCLUDE HIM AS BEING THE DONOR.
- 23 Q OKAY. AND THE REASON YOU ONLY LIMITED YOUR STATISTICS TO THE 2
24 OUT OF THE 13 SITES WAS WHAT?
- 25 A THOSE WERE THE TWO SITES THAT I WAS ABLE TO TOTALLY ABLE TO

AGENT GALLMAN - REDIRECT EXAMINATION BY MS. BRISBIN

1 SEPARATE THEM. FOR EXAMPLE, IF MS. PRESSLEY (SIC) HAS 16 CARS AND 17 CARS,
2 ONE FROM HER MOTHER AND ONE FROM HER FATHER AND MR. PRESSLEY HAS 15
3 CARS AND 17 CARS, THAT MEANS THAT BOTH OF THEM HAVE 17 CARS. SO THAT
4 COULD NOT BE USED IN THE STATISTICS.

5 Q WOULD THAT HAVE SOMETHING TO DO WITH THE VICTIM AND THE
6 DEFENDANT BEING RELATED POSSIBLY?

7 A IT JUST MEANS THAT THEY SHARE THAT ALLELE.

8 Q IT MEANS THAT THEIR DNA IS SO SIMILAR THAT YOU CAN'T SEPARATE ALL
9 13 SITES OUT. IS THAT WHAT YOU'RE SAYING?

10 A AT DIFFERENT AREAS, YES.

11 Q OKAY. I THINK I UNDERSTAND. GET TO THE BOTTOM LINE. ARE YOU
12 CONFIDENT THAT IT'S YOUR OPINION THAT THE DNA THAT CAME FROM THE
13 SEMEN IN THE VAGINAL SWAB MATCHED THE DNA FROM THE BLOOD OF THIS
14 DEFENDANT MR. PRESSLEY?

15 A YES, I AM.

16 Q THANK YOU.

17 THE COURT: RECROSS?

18 MR. ANDERSON: NO THANK YOU, JUDGE.

19 THE COURT: THANK YOU, MA'AM. YOU MAY STEP DOWN. IS SHE FREE TO
20 GO?

21 MS. BRISBIN: YES, SIR.

22 THE COURT: ANY OBJECTION TO THE WITNESS LEAVING?

23 MR. ANDERSON: NO, THANK YOU, JUDGE.

24 THE COURT: THANK YOU, MA'AM. YOU'RE FREE TO GO. LADIES AND
25 GENTLEMEN, WE'LL TAKE A BREAK, ABOUT 15 MINUTES AND GET YOU BACK OUT

1 HERE. DON'T DISCUSS THE CASE. (THE FOLLOWING OCCURRED IN THE ABSENCE
2 OF THE JURY.) COURT'S IN RECESS FOR 15 MINUTES. (THERE WAS A BRIEF
3 RECESS.) IS THE STATE GOING TO REST?

4 MS. BRISBIN: YES, YOUR HONOR.

5 THE COURT: ALL RIGHT. MR. PRESSLEY, GIVE ME YOUR ATTENTION,
6 PLEASE. I HAVE TO GO OVER SOME THINGS WITH YOU NOW. I HAVE TO DO THIS
7 WITH EVERYONE WHO'S ON TRIAL, AND YOU WERE PLACED UNDER OATH
8 EARLIER. SO YOU'RE STILL UNDER OATH. YOU UNDERSTAND THAT?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: WE'VE REACHED THE STAGE OF THE TRIAL WHERE THE STATE
11 HAS RESTED, AND THE NEXT THING THAT WOULD HAPPEN IS THAT YOU WOULD BE
12 GIVEN AN OPPORTUNITY TO HAVE YOUR ATTORNEY CALL WITNESSES AND
13 PRESENT EVIDENCE IN YOUR CASE. YOU UNDERSTAND WHERE WE ARE?

14 THE DEFENDANT: YES, SIR.

15 THE COURT: NOW, MR. PRESSLEY, IN THAT REGARD YOU MAY CHOOSE TO
16 TESTIFY IF YOU WISH TO TESTIFY OR YOU MAY CHOOSE NOT TO TESTIFY IF YOU
17 WISH NOT TO TESTIFY. YOU UNDERSTAND THAT?

18 THE DEFENDANT: YES, SIR.

19 THE COURT: IN A CRIMINAL COURT LIKE THIS NO ONE CAN FORCE YOU TO
20 TESTIFY. YOU HAVE AN ABSOLUTE RIGHT TO REMAIN SILENT, AND IF YOU CHOOSE
21 TO REMAIN SILENT AND NOT TESTIFY, I WILL TELL THE JURY THEY CANNOT HOLD
22 YOUR SILENCE AGAINST YOU IN ANY WAY AT ALL, THAT THEY CAN'T DISCUSS IT
23 IN THEIR DELIBERATIONS AND THAT IT'S NOT TO ENTER THEIR MIND IN MAKING
24 THE DECISION OF WHETHER YOU'RE GUILTY OR NOT GUILTY. YOU UNDERSTAND?

25 THE DEFENDANT: (NODDED YES.)

1 THE COURT: YOU HAVE TO ANSWER OUT LOUD.

2 THE DEFENDANT: YES.

3 THE COURT: ALL RIGHT. THANK YOU. NOW, MR. PRESSLEY, THIS DECISION
4 ABOUT WHETHER YOU TESTIFY OR NOT, THAT'S YOURS AND YOURS ALONE. DO
5 YOU UNDERSTAND THAT?

6 THE DEFENDANT: YES.

7 THE COURT: YOU MAY CONFER WITH YOUR ATTORNEY, FAMILY MEMBERS,
8 FRIENDS, ANYONE WHOSE OPINION YOU VALUE, BUT ULTIMATELY IT'S YOUR CALL
9 TO MAKE, AND YOU DECIDE WHETHER YOU WISH TO TESTIFY OR NOT. DO YOU
10 UNDERSTAND THAT?

11 THE DEFENDANT: YES.

12 THE COURT: DOES HE HAVE A PRIOR CRIMINAL RECORD?

13 MS. BRISBIN: ONLY FRAUDULENT CHECKS. WE COULD ONLY USE THAT
14 FOR IMPEACHMENT PURPOSES.

15 THE COURT: YOU COULD OR COULD NOT?

16 MS. BRISBIN: WE COULD. THERE ARE SEVERAL OF THOSE. I MEAN THERE'S
17 15 AT ONE TIME AND THEN ONE AT ANOTHER TIME I BELIEVE IF I REMEMBER
18 CORRECTLY.

19 THE COURT: WERE THOSE WITHIN 10 YEARS?

20 MS. BRISBIN: YES, SIR.

21 THE COURT: ALL RIGHT. DO YOU ALL HAVE A POSITION ON THAT?

22 MR. ANDERSON: JUDGE, I REALLY DON'T CARE EITHER WAY. IT DOESN'T
23 MATTER IF THEY IMPEACH HIM OR NOT WITH THOSE.

24 THE COURT: ALL RIGHT. MR. PRESSLEY, DO YOU UNDERSTAND THAT IF
25 YOU TAKE THE WITNESS STAND THAT THE GENERAL RULE IS THAT THE STATE CAN

1 ASK YOU ABOUT WHETHER YOU'VE BEEN CONVICTED OF ANY CRIMES INVOLVING
2 IMPRISONMENT, POTENTIAL IMPRISONMENT OF MORE THAN A YEAR OR CRIMES
3 THAT INVOLVE DISHONESTY OR FALSE STATEMENT REGARDLESS OF THE
4 POSSIBLE PUNISHMENT. YOU UNDERSTAND THAT?

5 THE DEFENDANT: YES.

6 THE COURT: THEY CAN ONLY ASK YOU ABOUT OFFENSES THAT OCCURRED
7 WITHIN THE PREVIOUS 10-YEAR PERIOD EXCEPT IN EXCEPTIONAL
8 CIRCUMSTANCES AND THEY HAVE TO GIVE NOTICE IF THEY INTEND TO USE
9 ANYTHING OLDER THAN 10 YEARS. ALSO YOU HAVE A RIGHT TO HAVE ME REVIEW
10 THE MATTER AND DECIDE WHETHER THE COURT WILL ALLOW THE INTRODUCTION
11 OF THAT EVIDENCE, AND IN ORDER FOR ME TO DO THAT I WOULD HAVE TO
12 DETERMINE THAT THE PREJUDICIAL VALUE OF THAT DID NOT OUTWEIGH THE
13 PROBATIVE -- THE PREJUDICIAL EFFECT DID NOT OUTWEIGH THE PROBATIVE
14 VALUE. YOU UNDERSTAND ALL THAT?

15 THE DEFENDANT: YES, SIR.

16 THE COURT: ALSO, MR. PRESSLEY, IF THEY DO GET TO ASK YOU ABOUT
17 ANY PRIOR CRIMINAL RECORD I WILL INSTRUCT THE JURY THAT THEY CAN ONLY
18 CONSIDER THAT ON THE ISSUE OF YOUR CREDIBILITY OR BELIEVABILITY AND FOR
19 NO OTHER PURPOSE. YOU UNDERSTAND THAT?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: ALL RIGHT. NOW WHATEVER DECISION YOU HAVE MADE
22 ABOUT WHETHER YOU TESTIFY OR NOT, IS THAT YOUR OWN DECISION MADE OF
23 YOUR OWN FREE WILL? OR HAVE YOU DECIDED? YOU DON'T HAVE TO TELL ME
24 WHAT YOUR DECISION IS.

25 MR. ANDERSON: JUDGE, HE'S LOOKIN' AT ME LIKE HE WANTS TO ASK ME A

1 QUESTION. COULD I INQUIRE?

2 THE COURT: YOU'RE WELCOME TO TALK TO HIM. WHATEVER YOUR
3 DECISION IS IS IT YOUR OWN DECISION MADE OF YOUR OWN FREE WILL?

4 THE DEFENDANT: YES, SIR, I WILL.

5 THE COURT: I'M SORRY?

6 THE DEFENDANT: YES, I WILL.

7 THE COURT: AND DO YOU UNDERSTAND WHATEVER YOUR DECISION IS
8 YOU CAN CHANGE YOUR MIND IF YOU WISH AT ANY TIME UNTIL YOU ACTUALLY
9 COME UP HERE AND TESTIFY?

10 THE DEFENDANT: YES.

11 THE COURT: ALL RIGHT. DO YOU NEED SOME TIME TO TALK TO HIM?

12 MR. ANDERSON: NO, SIR.

13 THE COURT: ALL RIGHT.

14 MR. ANDERSON: JUDGE, IT IS OUR INTENTION FOR HIM TO TESTIFY AND IT
15 WILL BE RELATIVELY SHORT. AND I WAS JUST WONDERING WHAT YOUR PLANS
16 ARE.

17 THE COURT: WE'LL FINISH THE EVIDENCE AND WE'LL BREAK FOR THE
18 DAY. THAT'S WHAT MY INTENTIONS ARE.

19 MR. ANDERSON: OKAY. THANK YOU, JUDGE.

20 THE COURT: OKAY.

21 MR. ANDERSON: I DO NEED TO MAKE MY MOTIONS AND I DON'T KNOW
22 WHEN TO DO IT.

23 THE COURT: GO AHEAD AND MAKE 'EM NOW.

24 MR. ANDERSON: YOUR HONOR, WE RESPECTFULLY MOVE FOR A DIRECTED
25 VERDICT. WHEN YOU TAKE ALL THE EVIDENCE IN THE LIGHT MOST FAVORABLE

1 TO THE STATE, THERE ARE NUMEROUS INCONSISTENCIES IN THE EVIDENCE. THE
2 DNA EVIDENCE WAS CONFUSING TO SAY THE LEAST. THE DNA EVIDENCE WAS
3 SUSPECT. THERE WERE SOME ISSUES WITH THE CHAIN. THE ABSENCE OF THE
4 MALE NURSE. VARIOUS THINGS THAT THE ALLEGED VICTIM TESTIFIED TO. THE
5 POLICE OFFICER'S RECOLLECTIONS WERE FAULTY IN MANY AREAS. WHEN YOU
6 TAKE ALL THAT EVEN IN A LIGHT MOST FAVORABLE TO THE STATE, I THINK THERE
7 ARE PROBLEMS WITH THE STATE'S CASE SUCH THAT THIS COURT SHOULD DIRECT
8 A VERDICT OF NOT GUILTY.

9 THE COURT: THANK YOU. THERE IS EVIDENCE WHICH COVERS ALL THE
10 ESSENTIAL ELEMENTS OF THE ALLEGED OFFENSE AND IT'S A JURY ISSUE.
11 MOTION'S RESPECTFULLY DENIED.

12 MR. ANDERSON: THANK YOU, YOUR HONOR.

13 THE COURT: READY FOR THE JURY, MR. ANDERSON?

14 MR. ANDERSON: YES, SIR.

15 THE COURT: READY, MS. BRISBIN?

16 MS. BRISBIN: YES, YOUR HONOR.

17 THE COURT: BRING THE JURY. (THE FOLLOWING OCCURRED IN THE
18 PRESENCE OF THE JURY.) LADIES AND GENTLEMEN, WHILE YOU WERE OUT THE
19 DEFENSE -- I'M SORRY. THE STATE INDICATED THAT THAT WAS THEIR LAST
20 WITNESS. SO THEY WENT AHEAD AND ADVISED ME THAT THE STATE RESTS. AND
21 WE WENT THROUGH SOME LEGAL ISSUES. THE NEXT THING THAT IS GOING TO
22 HAPPEN IS THAT THE DEFENSE IS GIVEN AN OPPORTUNITY TO PRESENT EVIDENCE
23 FOR YOUR CONSIDERATION. NOW THIS DOESN'T CHANGE THE BURDEN OF PROOF.
24 THE BURDEN OF PROOF REMAINS ENTIRELY UPON THE STATE TO PROVE EVERY
25 ESSENTIAL ELEMENT OF THE OFFENSE CHARGED BEYOND A REASONABLE DOUBT.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 HOWEVER, THE DEFENSE IS ALLOWED TO PRESENT EVIDENCE FOR YOU TO
2 CONSIDER IN MAKING YOUR DECISION OF WHETHER THE STATE HAS MET ITS
3 BURDEN OF PROOF OR FAILED TO MEET IT'S BURDEN OF PROOF. AND I RECOGNIZE
4 MR. ANDERSON TO CALL ANY WITNESSES FOR THAT PURPOSE.

5 MR. ANDERSON: YOUR HONOR, THANK YOU. WE WOULD CALL THE
6 DEFENDANT.

7 THE COURT: COME AROUND, PLEASE, SIR.

8 EARNEST PRESSLEY, BEING DULY SWORN, TESTIFIES

9 AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. ANDERSON

12 Q EARNEST, YOU'RE SOFT-SPOKEN. YOU NEED TO SPEAK UP SO I CAN HEAR
13 YOU AND EVERYBODY THAT NEEDS TO HEAR YOU CAN HEAR YOU. OKAY?

14 A OKAY.

15 Q YOU ARE EARNEST PRESSLEY AND YOU'RE THE DEFENDANT IN THIS CASE.
16 CORRECT?

17 A YES, SIR.

18 Q EARNEST, HAVE YOU EVER BEEN CHARGED -- CONVICTED OF A CRIME
19 LIKE THIS?

20 A NO, SIR.

21 Q YOU HEARD ALL THAT DISCUSSION ABOUT DNA EVIDENCE.

22 A YES, SIR.

23 Q DID YOU UNDERSTAND IT?

24 A NOT REALLY. SOME OF IT. NOT REALLY.

25 Q DO YOU AGREE WITH WHAT SHE SAID?

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 A NO, I DON'T.

2 Q OKAY. LET'S TALK FIRST ABOUT THE DAY IN QUESTION. THEY TESTIFIED
3 EARLIER THAT YOU WERE THERE ALONE WITH THE KIDS?

4 A YES, SIR.

5 Q ALL RIGHT. HOW DID THAT COME ABOUT?

6 A WELL, MY WIFE WAS AT WORK, AND AFTER I CAME IN I HAD TO KEEP 'EM,
7 YOU KNOW, TILL SHE GOT OFF THE NEXT MORNIN' AND I HAD TO GO TO WORK.

8 Q ALL RIGHT. WELL, GO BACK IN TIME. HOW DID THE KIDS COME TO BE AT
9 YOUR HOUSE?

10 A WELL, I DON'T THINK THEY HAD NOWHERE REALLY TO GO BUT MY WIFE.
11 SHE WAS TRYIN' TO, YOU KNOW, GIVE 'EM SOMEWHERE TO GO. SO WE WAS
12 KEEPIN' WITH US. THE DAUGHTERS.

13 Q YOU NEED TO TELL THE JURY. YOU DON'T NEED TO TELL ME. YOU NEED TO
14 TELL THEM. OKAY?

15 A OKAY.

16 Q ALL RIGHT. SO DO YOU KNOW WHAT TIME THE KIDS CAME OVER TO YOUR
17 HOUSE?

18 A NO, I DON'T.

19 Q WHEN YOU CAME HOME FROM WORK ON THE 12TH WERE THE KIDS THERE?

20 A YES, SIR.

21 Q OKAY. WAS THAT THURSDAY?

22 A IT WAS ON A THURSDAY.

23 Q OKAY. AND ABOUT WHAT TIME DID YOU COME HOME FROM WORK?

24 A I GOT HOME THURSDAY I THINK IT WAS ABOUT 4:30.

25 Q OKAY. AND, AGAIN, YOU DON'T NEED TO TELL ME. YOU TELL THEM.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 OKAY?

2 A I UNDERSTAND.

3 Q ALL RIGHT. YOU CAME HOME AT ABOUT 4:30.

4 A 4:30.

5 Q AND THE KIDS WERE THERE.

6 A THEY WAS THERE.

7 Q WAS YOUR WIFE THERE?

8 A NO, SIR.

9 Q OKAY. SO WHAT HAPPENED THAT NIGHT? ANYTHING HAPPEN?

10 A THE ONLY THING THAT HAPPENED ABOUT 8 O'CLOCK I TOLD 'EM TO COME
11 INSIDE, YOU KNOW, SO WE CAN GO TO BED, YOU KNOW, AND THE COME IN THE
12 HOUSE, AND ABOUT 12 O'CLOCK I WOKE UP. THEY WERE TRYIN' TO PUT MAKEUP
13 ON MY SON'S FACE. SO I TOLD THEM THEY HAD TO GO TO BED OR THEY GONNA
14 HAVE TO GO HOME. SO SHE GOT MAD WITH ME. AND AFTER I WENT BACK TO
15 SLEEP AT 12 O'CLOCK, 2 O'CLOCK SHE WAS STILL LAYIN' ON THE COUCH LOOKIN'
16 AT TV. AND I TOLD HER, I TAPPED HER ON THE SHOULDER I SAID GET UP AND GO
17 ON TO BED. SO I CUT OFF THE TV AND THE LIGHT. AND I WENT BACK TO BED. SO
18 THE NEXT MORNIN' I GOT UP, I WENT TO WORK, I CAME BACK HOME AND THE
19 POLICE WAS IN THE YARD.

20 Q LET ME ASK YOU THIS: IT'S HARD TO HEAR YOU WITH YOUR HAND THERE.

21 A OKAY.

22 Q KEEP YOUR HAND DOWN BY YOUR SIDE.

23 A I GOTCHU.

24 Q I KNOW YOU TALK WITH YOUR HANDS BUT KEEP 'EM DOWN BY YOUR SIDE.

25 A I GOTCHU.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 Q ABOUT WHAT TIME DID YOU COME HOME FROM WORK ON THE 13TH?

2 A 5 O'CLOCK.

3 Q OKAY. AND WHEN YOU CAME HOME ON THE 13TH WHO ALL WAS AT THE
4 HOUSE?

5 A P. S. - ON THURSDAY?

6 Q NO, ON FRIDAY.

7 A ON FRIDAY, P. S. HER MOM, MY 2 KIDS AND MY WIFE.

8 Q ANYBODY ELSE THERE?

9 A AND THE POLICE.

10 Q OKAY. DID YOU KNOW WHY THE POLICE WERE THERE?

11 A NO, NOT WHEN I FIRST GOT THERE.

12 Q OKAY. I KNOW YOUR NERVOUS BUT KEEP YOUR HAND DOWN BY YOUR
13 SIDE.

14 A OKAY.

15 Q WHEN YOU GOT HOME ALL THOSE PEOPLE WERE THERE.

16 A YES, SIR.

17 Q AND, AGAIN, YOU NEED TO TALK TO THE JURY.

18 A OKAY.

19 Q WERE YOU ALLOWED IN YOUR HOUSE?

20 A NO, SIR. THEY STOPPED ME AT THE DOOR. THAT'S HOW I KNOW
21 SOMETHIN' WAS WRONG.

22 Q AND DID THEY TALK TO YOU?

23 A THEY WOULDN'T EVEN TALK TO ME TILL I GOT IN THE HOUSE. THEY JUST
24 TOLD ME THEY WAS CHECKIN' ON SOMETHIN'.

25 Q OKAY. SO DID YOU EVER GET IN THE HOUSE?

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 A AFTER THEY CAME - AFTER THEY CAME OUT THE HOUSE, THEN THE
2 POLICE TOOK ME IN THE HOUSE AND TALKED TO ME.

3 Q I MEAN AFTER THEY IS WHO?

4 A AFTER NORA AND HER DAUGHTERS, HER TWO DAUGHTERS.

5 Q THEY LEFT?

6 A YES, SIR, THEY LEFT.

7 Q WHO DID THEY LEAVE WITH?

8 A THE POLICE.

9 Q ALL RIGHT. DO YOU KNOW WHERE THEY WENT?

10 A NO, SIR.

11 Q ALL RIGHT. HOW DO YOU KNOW THEY LEFT?

12 A 'CAUSE I WAS RIGHT THERE AND THEY MADE ME GO AROUND THE BACK
13 OF THE HOUSE UNTIL THEY CAME OUT THE HOUSE AND LEAVE.

14 Q WAS THAT WHAT THEY SAID, THAT THEY WOULD MAKE YOU WAIT UNTIL
15 THEY LEFT?

16 A THEY MADE ME WAIT ON THE OUTSIDE UNTIL THEY LEFT.

17 Q ALL RIGHT. DID YOU UNDERSTAND YOU WERE WAITING ON THEM OR
18 WHAT?

19 A YES, SIR, HE TOLD ME THAT.

20 Q ALL RIGHT. SO THEN YOU WENT IN THE HOUSE.

21 A YES, SIR, HE TOOK ME IN THE HOUSE.

22 Q DID YOU TALK WITH THE POLICE OFFICER?

23 A YES, SIR.

24 Q DID YOU TALK TO OFFICER DERRICK?

25 A OFFICER DERRICK AND I THINK IT WAS ONE MORE WITH HIM.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 Q AND DID YOU TELL THEM BASICALLY WHAT YOU JUST TOLD THE JURY?

2 A I TOLD THEM EVERYTHING.

3 Q AND WHAT WAS EVERYTHING? WHAT WAS THERE TO TELL THEM?

4 A THE SAME PART I SAID ABOUT AT 12 O'CLOCK THEY WERE STILL UP PUTTIN'
5 MAKEUP ON MY LITTLE BOY'S FACE AND THEN I TOLD 'EM TO GO TO BED. SO I
6 WENT BACK OUT FIGURED THEY WAS GONNA GO ON, AND THEN AT 2 O'CLOCK I
7 WOKE UP. HER DAUGHTER WAS ON THE COUCH AND MY DAUGHTER AND HER
8 OTHER DAUGHTER WAS IN THE ROOM. SO I TOLD HER WOKE UP; I TAPPED HER ON
9 THE SHOULDER AND TOLD HER TO GO AHEAD ON BACK WITH THEM AND GO TO
10 BED. I CUT THE TV OFF AND I WENT BACK IN MY ROOM.

11 Q WHEN YOU WENT OFF TO WORK THE NEXT MORNING WAS EVERYBODY
12 STILL ASLEEP?

13 A YES, SIR.

14 Q AFTER YOU TOLD THE POLICE OFFICER THAT, WHAT HAPPENED?

15 A ONLY THING HE HANDED ME RIGHT THERE ON THAT - YOU KNOW,
16 EVERYTHING I SAID ON A SHEET OF PAPER -

17 Q RIGHT.

18 A --AND JUST TOLD ME HE WAS GONNA GO TO THE HOSPITAL TO CHECK HER
19 OUT 'CAUSE SHE HAD TOLD HIM WHAT SHE - THEY TOLD ME SOMETHIN'
20 DIFFERENT, BUT I FORGOT WHAT IT WAS, BUT IT WASN'T THAT.

21 Q ALL RIGHT. DID YOU TALK TO OFFICER DERRICK ABOUT EVIDENCE?

22 A YES, SIR, THEY GOT THE BED - THEY GOT THE SPREAD THAT SHE WAS
23 LAYIN' UNDER. THEY GOT THE 2 PILLOWS OFF THE COUCH WHICH WE NEVER DID
24 GET THEM BACK, AND THEY GOT MY BOXER SHORTS AND I THINK THAT WAS IT.

25 Q OKAY. AND THEY DIDN'T ARREST YOU THEN.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

- 1 A NO, SIR.
- 2 Q AND YOU WEREN'T ARRESTED FOR ALMOST - FOR—
- 3 A 4 OR 5 MONTHS.
- 4 Q AND YOU WERE ARRESTED IN NOVEMBER?
- 5 A I CAN'T REMEMBER. I KNOW IT WAS 4 OR 5 MONTHS THOUGH.
- 6 Q OKAY. THERE WAS NO QUESTION THAT WHEN YOU CAME HOME FROM
- 7 WORK ON THURSDAY EVERYBODY WAS THERE. THERE'S NO QUESTION ABOUT
- 8 THAT.
- 9 A ON THURSDAY. YEAH, EVERYBODY WAS THERE.
- 10 Q OKAY. LET ME SHOW YOU THIS. LET ME SHOW YOU WHAT'S BEEN
- 11 MARKED AS DEFENDANT'S #1. OKAY?
- 12 A OKAY.
- 13 Q WHILE THIS IS NOT TO SCALE, DOES THIS POSTER BOARD FAIRLY AND
- 14 ACCURATELY REPRESENT THE BASIC LAYOUT OF THE MOBILE HOME?
- 15 A YES, SIR.
- 16 Q IS IT A SINGLE-WIDE MOBILE HOME?
- 17 A YES, SIR.
- 18 Q AND IS THAT THE FRONT DOOR RIGHT THERE?
- 19 A THAT'S THE FRONT DOOR.
- 20 Q OKAY
- 21 MR. ANDERSON: YOUR HONOR, I WOULD OFFER THIS INTO EVIDENCE.
- 22 THE COURT: ANY OBJECTION?
- 23 MS. BRISBIN: NO, YOUR HONOR.
- 24 THE COURT: THANK YOU. MARK IT INTO EVIDENCE. AT THE END OF THE
- 25 TRIAL WE NEED A SMALLER VERSION.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 MR. ANDERSON: OKAY. (DEFENDANT'S EXHIBIT #1 RECEIVED IN
2 EVIDENCE.)

3 Q WHAT'S THIS?

4 A THE COUCH THAT SHE WAS LAYIN' ON.

5 Q OKAY. AND WHERE WAS THE TV?

6 A THE TV WAS IN THE LIVIN' ROOM.

7 Q ALL RIGHT. LET ME GET YOU TO STEP DOWN HERE. NOW IF YOU COULD
8 STAND TO THE SIDE WHERE EVERYBODY COULD SEE. SHOW US ABOUT WHERE
9 THE TV WAS.

10 A IT WAS RIGHT HERE.

11 Q OKAY. IS THIS A BIG ROOM?

12 A NO, IT'S NOT REALLY BIG.

13 Q OKAY. THIS IS THE KITCHEN THAT OPENS INTO THE LIVIN' ROOM?

14 A YEAH, IT OPENS UP INTO THE LIVIN' ROOM.

15 Q OKAY.

16 A THAT'S THE COUCH AND MY DAUGHTER'S ROOM IS RIGHT HERE AND
17 RIGHT THAT FIRST ROOM RIGHT THERE RIGHT BESIDE THE COUCH ALMOST.

18 Q OKAY. AND THEN THE END ROOM IS WHAT?

19 A THAT ROOM WAS D. MY SON.

20 Q DO YOU KNOW WHERE THE KIDS SLEPT THAT NIGHT, THE NIGHT OF THE
21 12TH?

22 A IN THIS ROOM RIGHT HERE.

23 Q ALL OF 'EM?

24 A WELL, D. SLEPT IN HIS ROOM.

25 Q OKAY. WHO SLEPT IN THE GIRL'S ROOM?

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 A WHEN I WOKE UP THAT NEXT MORNIN' SHE WAS STILL ON THE COUCH
2 THEN. J. AND S. WERE IN THIS ROOM HERE.

3 Q OKAY. SO HOW FAR IS IT FROM THIS COUCH TO THE GIRLS' ROOM?

4 A APPROXIMATELY FROM HERE TO THAT THING RIGHT THERE WHERE SHE IS.

5 Q THE PODIUM?

6 A PODIUM.

7 Q OKAY. LET ME GET YOU TO - LET ME ASK YOU THIS: AS YOU LOOK
8 AROUND THIS COURTROOM, WE WERE TALKIN' ABOUT THIS YESTERDAY, ABOUT
9 HOW BIG - SHOW THE JURY ABOUT HOW BIG THE WHOLE SINGLE-WIDE MOBILE
10 HOME IS IF YOU COULD USING THIS COURTROOM.

11 A IT MIGHT BE OVER THERE TO THAT WALL.

12 Q OKAY. AS FAR AS LENGTH.

13 A YEAH.

14 Q AND ABOUT HOW WIDE IS THIS MOBILE HOME?

15 A I KNOW THE OUTSIDE IS 14. ABOUT FROM HERE TO THE BACK OF THAT
16 CHAIR.

17 Q SO IT WAS BACK TO THAT CHAIR PROBABLY. DO IT OVER HERE. SO IT'S
18 ABOUT FROM THAT COUNTER TO ABOUT HERE WITH THE WIDTH?

19 A YES, SIR.

20 Q SO IF - USIN' THIS DIAGRAM IF THAT WAS THE BEDROOM WHERE YOU
21 WERE - AND YOU DIDN'T - COULD YOU SHOW THE JURY YOUR BEDROOM.

22 A OH. RIGHT THERE.

23 Q OKAY. ALL RIGHT. JUST PUT IT BACK DOWN. USING THIS DIAGRAM AND
24 USING THAT END AS THE BEDROOM. OKAY?

25 A COMIN' BACK.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

- 1 Q COMIN' BACK THIS WAY. ABOUT WHERE WOULD THE COUCH BE?
- 2 A PROBABLY RIGHT WHERE THEM 2 CHAIRS PROBABLY.
- 3 Q OKAY. AND THEN WHERE WOULD THE DOOR BE TO THE GIRLS' BEDROOM?
- 4 A PROBABLY WHERE THAT - OH, NO, I'M GOIN' BACK THIS WAY. RIGHT BY
- 5 WHERE THAT BOX AT RIGHT THERE. A LITTLE BIT FARTHER THAN THAT BOX.
- 6 Q NOW THAT'S GONNA CUT OFF - THESE LAST 3 ROOMS ARE GONNA BE
- 7 PRETTY SMALL.
- 8 A YEAH, THAT'S WHY I SAID IT MIGHTA BEEN A LITTLE FARTHER.
- 9 Q OKAY. WELL, THINK HOW MUCH FURTHER.
- 10 A 2 MORE ROOMS AND THAT BEDROOM. PROBABLY HAVE TO GO OUT THAT
- 11 DOOR A LITTLE BIT.
- 12 Q OKAY. HOW FAR?
- 13 A PROBABLY ABOUT 12 FEET.
- 14 Q 12 FEET. OKAY.
- 15 A ABOUT 12 IN HERE.
- 16 Q OKAY. SO KEEPING THAT IN MIND, GO BACK TO WHERE YOU SAY THE
- 17 COUCH WOULD BE APPROXIMATELY.
- 18 A RIGHT HERE.
- 19 Q OKAY. THE COUCH IS THERE. SHOW THE JURY ABOUT WHERE THE DOOR
- 20 TO THE GIRLS' ROOM WOULD BE.
- 21 A PRETTY CLOSE TO WHERE YOU STANDIN' AT. COME OUT THIS WAY A
- 22 LITTLE BIT.
- 23 Q WELL, SHOW THEM. YOU GO THERE.
- 24 A YEAH.
- 25 Q OKAY. ABOUT HOW MUCH FURTHER TO THE DOOR TO DION'S ROOM?

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 A ABOUT 12 FEET OUT THAT DOOR.

2 Q OKAY. THE DOOR TO HIS ROOM?

3 A YEAH.

4 Q SO THEN HIS ROOM'S ANOTHER -

5 A THERE'S A BATHROOM BETWEEN J. ROOM AND HIS.

6 Q OKAY. WELL, NEVER MIND THAT. IF THIS IS THE DOOR TO THE GIRLS'
7 ROOM, HOW WIDE IS THE GIRLS' ROOM?

8 A HOW WIDE IS THE ROOM? THIS DOOR WAS-

9 THE COURT: LADIES AND GENTLEMEN, PLEASE, STEP IN THE JURY ROOM.
10 DON'T DISCUSS THE CASE. (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE
11 JURY.) MR. ANDERSON?

12 MR. ANDERSON: YES, SIR.

13 THE COURT: I'M SURE YOU'RE OBLIVIOUS TO THIS AND I'M NOT TAKING
14 SIDES IN THIS ISSUE, BUT I DON'T SEE ANY NEED TO WALK HIM WITHIN 3 FEET OF
15 THAT PURPORTED VICTIM TIME AFTER TIME.

16 MR. ANDERSON: I'M SORRY, JUDGE. OKAY. WE CAN DO IT OVER THERE.
17 I'M SORRY.

18 THE COURT: I JUST - I'M NOT COMFORTABLE WITH THAT AT ALL. I'VE
19 NEVER SEEN IT DONE IN A COURTROOM, AND I JUST DON'T WANT IT DONE
20 ANYMORE. SHE'S SITTING ALL THE WAY OVER ON THE OPPOSITE SIDE OF THE
21 COURTROOM AWAY FROM THE BENCH AND ALL OF Y'ALL ARE DISCUSSING THIS
22 RIGHT OVER THERE BESIDE HER. I JUST DON'T SEE ANY NEED FOR IT. WE'LL BE AT
23 EASE FOR A FEW MINUTES. YOU CAN'T DISCUSS YOUR TESTIMONY WITH YOUR
24 LAWYER. (THERE WAS A BRIEF RECESS.) (THE FOLLOWING OCCURRED IN THE
25 PRESENCE OF THE JURY.) ALL RIGHT. YOU MAY CONTINUE, MR. ANDERSON.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 MR. ANDERSON: THANK YOU, JUDGE.

2 Q EARNEST LET'S FINISH UP USIN' WITH THIS. OKAY?

3 A OKAY.

4 Q HOW FAR WOULD IT BE FROM THIS COUCH TO THE DOOR TO D. ROOM?
5 ABOUT.

6 A FROM WHERE YOU STANDIN' AT TO PROBABLY THAT WALL THAT'S GOIN'
7 CROSSWAYS BACK THERE.

8 Q OKAY. YOU CAN TAKE YOUR SEAT NOW. OKAY? TO GO TO SLEEP MY WIFE
9 HAS TO HAVE A BOX FAN. YOU KNOW WHAT THAT IS?

10 A OH, YEAH.

11 Q MAKES A LOTTA NOISE. DID Y'ALL HAVE ANY FANS IN YOUR SINGLE-WIDE
12 MOBILE HOME?

13 A I'LL SAY ELECTRIC HEAT.

14 Q OKAY. WAS THERE ANY NOISE IN THAT HOUSE—

15 A NO, NOTHIN' BUT THE TV.

16 Q OKAY. WAS THERE ANY CONTINUAL NOISE THAT OTHER THAN THE TV
17 WHICH WAS OFF?

18 A NO, SIR.

19 Q OKAY. WERE THE DOORS TO THE BEDROOMS OPEN OR CLOSED?

20 A THEY WAS OPEN.

21 Q DO THEY NORMALLY STAY OPEN OR ARE THEY NORMALLY CLOSED?

22 A THEY MOSTLY STAY OPEN.

23 Q OKAY. AND WHO LIVES NEXT DOOR?

24 A OH, MY MOTHER-IN-LAW.

25 Q AND WHO HELPS OUT WITH THE KIDS FROM TIME TO TIME?

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

- 1 A MY MOTHER-IN-LAW DO.
- 2 Q AND THE LADY SITTING BEHIND OUR TABLE, WHO'S THAT?
- 3 A MY WIFE.
- 4 Q OKAY. SO IT'S HER MOTHER?
- 5 A HER MOTHER.
- 6 Q OKAY. AND DO THE KIDS ALL KNOW YOUR WIFE'S MOTHER, THEIR
- 7 GRANDMOTHER?
- 8 A YES.
- 9 Q AND DO P. HER SISTER KNOW HER AS WELL?
- 10 A YES.
- 11 Q DO THEY KNOW HOW TO GET TO HER HOUSE?
- 12 A YES, SIR.
- 13 Q HAVE THEY EVER BEEN TO HER HOUSE?
- 14 A YES, SIR.
- 15 Q OKAY. NOW AT SOME POINT DID THE POLICE SOME 4 OR 5 MONTHS LATER
- 16 DID THE POLICE COME AND ARREST YOU?
- 17 A YES, SIR.
- 18 Q WAS THAT OFFICER DERRICK?
- 19 A YES, SIR.
- 20 Q AND DID YOU AGREE TO GO TO THE HOSPITAL AND GIVE A BLOOD
- 21 SAMPLE?
- 22 A YES, SIR. AFTER HE LOCKED ME UP I TOLD HIM TO WAIT TILL I GET OUT
- 23 AND THEN I GO BUT THEY TALKED ME INTO GOIN' YOU KNOW. GOIN' THAT
- 24 EVENIN'.
- 25 Q OKAY. AND YOU COOPERATED WITH LAW ENFORCEMENT AND YOU

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 TALKED TO 'EM.

2 A YES, SIR.

3 Q AND YOU GAVE 'EM THE EVIDENCE FROM YOUR HOUSE; YOU GAVE 'EM
4 THE BLANKET AND YOUR SHORTS.

5 A YES, SIR.

6 Q OKAY. WHEN YOU MET WITH THE NURSE AT THE HOSPITAL, DID YOU, THE
7 NURSE AND THE POLICE OFFICER GO ANYWHERE?

8 A WENT IN THE ROOM. THAT'S ALL.

9 Q THE 3 OF YOU?

10 A YEAH.

11 Q OKAY. ANYBODY ELSE?

12 A NO, SIR.

13 Q OKAY. AND WHAT ALL SAMPLES DID YOU GIVE THIS NURSE?

14 A WELL, HE TOOK BLOOD AND HE TOOK HAIR FROM BOTH SPOTS.

15 Q ALL RIGHT. WELL, WHAT ARE BOTH SPOTS?

16 A OUT OF MY HEAD AND BELOW.

17 Q IN YOUR PRIVATE AREA?

18 A THERE YOU GO.

19 Q OKAY. ANY QUESTION ABOUT THAT?

20 A NO, SIR.

21 Q OKAY. AND WHAT DID THE NURSE DO WITH ALL THAT STUFF?

22 A SEEM LIKE SHE PUT IT IN A BOX. THAT'S WHY I DON'T UNDERSTAND WHY
23 SHE AIN'T GOT THE - THEY AIN'T GOT THE HAIR HEAD.

24 Q WELL, NOW WAS THE NURSE A MAN OR A WOMAN?

25 A A MAN.

EARNEST PRESSLEY - DIRECT EXAMINATION BY MR. ANDERSON

1 Q OKAY. AND YOU AGREED TO ALL THAT.

2 A YES, SIR.

3 Q OKAY. LET ME ASK YOU THIS: DO YOU KNOW WHAT P. HER
4 SISTER AND HER MOTHER DID AT YOUR HOUSE FROM 7:30 WHEN YOU WENT TO
5 WORK TILL ABOUT 4 O'CLOCK WHEN THE POLICE GOT THERE?

6 A I SHO' DON'T.

7 Q OKAY. NOW LET ME ASK YOU THIS: AND THIS IS THE ULTIMATE QUESTION.
8 I NEED YOU TO LOOK AT THE JURY AND ANSWER THIS QUESTION.

9 A OKAY.

10 Q ARE YOU GUILTY OF THIS CHARGE?

11 A I'M NOT GUILTY. I'M NOT GUILTY. I'M NOT GUILTY.

12 Q ANY QUESTION?

13 A NO QUESITON.

14 Q OKAY. PLEASE, ANSWER ANY QUESTIONS THAT THE PROSECUTOR MIGHT
15 ASK YOU.

16 THE COURT: CROSS-EXAMINATION.

17 CROSS-EXAMINATION

18 BY MS. BRISBIN

19 Q MR. PRESSLEY, ARE YOU THE SAME EARNEST PRESSLEY WHO WAS
20 CONVICTED OF 15 COUNTS OF FRAUDULENT CHECKS IN 1998?

21 A YES, MA'AM, I HAD OPENED MY OWN LOGGIN' BUSINESS.

22 Q ARE YOU THE SAME EARNEST PRESSLEY WHO WAS CONVICTED AGAIN OF
23 FRAUDULENT CHECK IN 1999?

24 A YES, SIR, I HAD MY OWN LOGGIN' BUSINESS THEN.

25 Q YOU HAD YOUR OWN WHAT?

EARNEST PRESSLEY - CROSS-EXAMINATION BY MS. BRISBIN

1 A LOGGIN' BUSINESS.

2 Q LOGGING BUSINESS. OKAY. NOW YOU ADMIT P. H.

3 THE COURT: HOLD ON JUST A SECOND.

4 I NEED TO GIVE AN INSTRUCTION.

5 Y'ALL NEED TO TAKE HER OUT? TAKE HER OUT THAT DOOR.

6 LADIES AND GENTLEMEN OF THE JURY, GIVE ME YOUR ATTENTION,

7 PLEASE.

8 I NEED TO GIVE YOU AN INSTRUCTION. THIS IS CALLED A LIMITING.

9 INSTRUCTION.

10 WITH REGARD TO EVIDENCE RELATED TO ANY ALLEGED PRIOR CRIMINAL
11 RECORD OF THIS DEFENDANT, THIS EVIDENCE WAS ADMITTED FOR A LIMITED
12 PURPOSE, AND I CHARGE YOU, LADIES AND GENTLEMEN, THAT YOU MUST NOT
13 CONSIDER THIS EVIDENCE FOR ANY PURPOSE EXCEPT THE LIMITED PURPOSE FOR
14 WHICH IT WAS ADMITTED.

15 THIS EVIDENCE WAS ADMITTED INTO THE RECORD IN THIS CASE AND MAY
16 BE CONSIDERED BY YOU IF YOU CONCLUDE IT TRUE ONLY FOR THE PURPOSE OF
17 EVALUATING THE CREDIBILITY OR BELIEVABILITY OF THE TESTIMONY PRESENTED
18 BY THIS WITNESS AND FOR NO OTHER PURPOSE. YOU CANNOT AND YOU MUST
19 NOT CONSIDER A PRIOR CRIMINAL RECORD AS ANY EVIDENCE OF GUILT ON ANY
20 CHARGE FOR WHICH THE DEFENDANT IS NOW BEING TRIED. IF YOU DECIDE TO
21 CONSIDER THIS EVIDENCE ON THE ISSUE OF HIS CREDIBILITY OR BELIEVABILITY,
22 YOU MAY GIVE IT SUCH WEIGHT, THIS EVIDENCE SUCH WEIGHT AS YOU
23 DETERMINE IT SHOULD RECEIVE, BUT ONLY ON THE ISSUE OF HIS CREDIBILITY.

24 NOW WITH REGARD TO THIS MATTER, SINCE THE RECORD DOES NOT
25 PREVIOUSLY HAVE ANYTHING ABOUT IT, I SPECIFICALLY HAVE REVIEWED THIS

EARNEST PRESSLEY - CROSS-EXAMINATION BY MS. BRISBIN

1 AND THE 403 ANALYSIS REQUIRED UNDER THE RULE, I FIND APPLICABLE AND MET.
2 SO THE COURT HAS CONSIDERED THE REQUIREMENTS FOR THE INTRODUCTION
3 AND THE 403 REQUIREMENTS WERE MET AS WELL AS THE OTHER REQUIREMENTS
4 OF THE - NOT RULE 403 BUT THE RULE RELATED TO THE ADMISSIBILITY OF
5 EVIDENCE ABOUT A PRIOR CRIMINAL RECORD. ALL RIGHT. YOU MAY CONTINUE.

6 MS. BRISBIN: THANK YOU, YOUR HONOR.

7 Q NOW YOU ADMIT P. H. SPENT THE NIGHT AT YOUR
8 HOUSE ON JULY 12TH OF 2001.

9 A YES, MA'AM.

10 Q AND YOU ADMIT SHE SLEPT IN THE LIVING ROOM ON THE COUCH ALONE.

11 A YES, MA'AM.

12 Q AND THE ONLY OTHER PEOPLE HOME WERE CHILDREN.

13 A YES, MA'AM. AND ME.

14 Q AND YOU.

15 A YES.

16 Q AND THE CHILDREN - THE OTHER CHILDREN ALL SLEPT IN THE BEDROOM.

17 A YES, MA'AM.

18 Q AND THE BEDROOM - HOW MANY BEDROOMS ACTUALLY OPEN - HAVE
19 THE DOOR OPENING ONTO THE LIVING ROOM.

20 A RIGHT.

21 Q YOU HAVE TO GO DOWN THE HALL.

22 A YOU HAVE TO GO RIGHT DOWN THERE. IT'S NOT FAR. JUST NEXT DOOR TO
23 THE COUCH.

24 Q OKAY. AND THE TV WAS ON.

25 A YES, MA'AM.

EARNEST PRESSLEY - CROSS-EXAMINATION BY MS. BRISBIN

1 Q AND YOU ADMIT YOU WENT INTO THE LIVING ROOM SOMEWHERE AROUND
2 2 A.M., AND AT THAT TIME P. WAS ASLEEP ON THE COUCH.

3 A YES, MA'AM.

4 Q NOBODY ELSE IN THE ROOM.

5 A YES, MA'AM.

6 Q SO SHE WAS ASLEEP ON THE COUCH.

7 A YES, MA'AM. WITH THE TV ON AND THE LIGHTS.

8 Q AND YOU SAY YOU TOLD HER TO GO INTO THE BEDROOM, GET UP AND GO
9 INTO THE BEDROOM.

10 A YES, MA'AM, 'CAUSE I WAS GONNA CUT THE TV AND THE LIGHTS OFF.

11 Q OKAY. AND DID SHE DO THAT?

12 A I CUT THE TV AND THE LIGHTS OFF AND I JUST WENT ON BACK AND SHE
13 WAS STILL THERE THE NEXT MORNIN'.

14 Q SO YOU NEVER MADE HER GO IN THE OTHER ROOM.

15 A NO, MA'AM.

16 Q IN FACT, IT WAS YOUR IDEA FOR HER TO SLEEP IN THE LIVIN' ROOM IN THE
17 FIRST PLACE, WASN'T IT?

18 A NO, MA'AM, IT WASN'T.

19 Q NOW THE REASON YOU WERE ARRESTED - NOT ARRESTED UNTIL
20 NOVEMBER, THE REASON NOVEMBER WAS WHEN YOU WERE ARRESTED IS
21 BECAUSE THAT'S WHEN THEY FOUND SEMEN - FOUND THAT THERE WAS SEMEN
22 ON THE VAGINAL SWABS. ISN'T THAT CORRECT?

23 A SAY THAT AGAIN.

24 Q THE REASON YOU WERE ARRESTED IN NOVEMBER IS BECAUSE THAT'S
25 WHEN THE SLED LAB FOUND SEMEN ON THE CLOTH FROM P. VAGINA.

EARNEST PRESSLEY - CROSS-EXAMINATION BY MS. BRISBIN

1 IS THAT CORRECT?

2 A YES, MA'AM. THAT WAS 5 MONTHS LATER.

3 Q NOW YOU ADMIT THERE WERE NO OTHER ADULT MALES IN YOUR HOUSE
4 THAT NIGHT.

5 A THAT NIGHT. I DON'T KNOW ABOUT THAT DAY. THAT NIGHT.

6 Q OKAY. SO THE ONLY PERSON THAT SEMEN COULD'VE COME FROM THAT
7 NIGHT WAS A 9-YEAR-OLD - YOUR 9-YEAR-OLD SON. RIGHT? THAT'S NOT RIGHT?

8 A THAT'S THE ONLY ONE THAT - THE ONLY GUY THAT WAS THERE WITH ME.
9 I DON'T--

10 Q THAT NIGHT.

11 A --KNOW WHAT HAPPENED - YES, MA'AM. I DON'T KNOW WHAT
12 HAPPENED THAT DAY.

13 Q YOU KNOW FROM THE TIME YOU GOT HOME AT WHAT'D YOU SAY, 8
14 O'CLOCK?

15 A NO, MA'AM, I GOT HOME AT 5 O'CLOCK THAT DAY.

16 Q OKAY. FROM THE TIME YOU GOT HOME ABOUT 5 O'CLOCK UNTIL THAT
17 NEXT MORNING WHEN YOU WENT TO WORK, THE ONLY MALE WHO COULD'VE
18 PROVIDED SEMEN IN THAT HOUSE WAS YOUR 9-YEAR-OLD SON. IS THAT
19 CORRECT? OTHER THAN YOU.

20 A THAT'S THE ONLY GUY - THAT'S THE ONLY CHILD THAT WAS THERE WITH
21 ME.

22 Q THE ONLY MALE.

23 A THERE YOU GO.

24 Q OKAY. CAN YOU EXPLAIN HOW SEMEN MATCHING YOUR DNA GOT INTO
25 THE VAGINA OF P. H.

EARNEST PRESSLEY - REDIRECT EXAMINATION BY MR. ANDERSON

1 A I CAN'T EXPLAIN THAT. I COULDN'T EVEN EXPLAIN THE HAIR THAT THEY
2 GOT.

3 Q CAN YOU EXPLAIN THE FRESH BRUISES AROUND P. H.
4 VAGINA THAT NIGHT?

5 A NO, MA'AM. I THOUGHT THE RESULTS SAID IT WASN'T NONE.
6 THE COURT: HE SAID THE RESULTS OF THAT IT WASN'T NONE. REDIRECT.
7 MR. ANDERSON: JUST BRIEFLY.

8 REDIRECT EXAMINATION

9 BY MR. ANDERSON

10 Q EARNEST, THOSE FRAUDULENT CHECKS, HOW DID THEY COME ABOUT?

11 A WHEN I WENT IN MY OWN LOGGIN' BUSINESS, I HAD, YOU KNOW, I HAD
12 JUST STARTED AND I HAD PEOPLE HOLDIN' CHECKS FROM ME, YOU KNOW, TRYIN'
13 TO GET STARTED. RIGHT? AND I GOT SO FAR BEHIND I JUST REALLY COULDN'T
14 KEEP UP WITH 'EM YOU KNOW TRYIN' TO HAUL WOOD AND IT WAS RAININ' YOU
15 KNOW AND THAT WAS JUST MY FAULT ON THAT.

16 Q OKAY.

17 A BUT I WAS TRYIN'.

18 Q DID YOU PLEAD GUILTY TO THAT?

19 A YES, SIR.

20 Q OKAY. AND MS. BRISBIN ASKED YOU WHAT TIME YOU CAME HOME AND
21 YOU SAID 5 O'CLOCK. WHICH NIGHT DID YOU COME HOME AT 5 O'CLOCK?

22 A THAT DAY I GOT LOCKED UP.

23 Q BACK TO THE JULY 11TH - STRIKE THAT. JULY 12TH OR JULY 13TH? WHAT
24 TIME DID YOU GET HOME ON THE 12TH?

25 A SEEM LIKE IT WAS 4:30 OR 5.

EARNEST PRESSLEY - REDIRECT EXAMINATION BY MR. ANDERSON

1 Q OKAY. AND WHAT TIME DID YOU GET HOME ON THE 13TH? THE DAY THE
2 POLICE WERE AT YOUR HOUSE.

3 A 5 O'CLOCK.

4 Q OKAY. AND SHE ASKED YOU IF YOU COULD EXPLAIN THE DNA STUFF. CAN
5 YOU EXPLAIN THE DNA STUFF?

6 A CAN'T EXPLAIN IT?

7 Q ARE YOU GUILTY OF THIS CRIME?

8 A I'M NOT GUILTY. I'M NOT GUILTY. I'M NOT GUILTY.

9 Q WHY DID YOU SAY IT 3 TIMES?

10 A 'CAUSE I'M NOT.

11 Q OKAY. DO YOU KNOW WHO DID IT?

12 A NO.

13 Q DO YOU KNOW IF ANYBODY DID IT?

14 A NO. I DON'T UNDERSTAND MYSELF.

15 Q OKAY. BUT YOU DIDN'T DO IT.

16 A SHO' DIDN'T.

17 Q THAT'S ALL THE QUESTIONS I HAVE.

18 THE COURT: RECROSS?

19 MS. BRISBIN: NOTHIN' FURTHER, YOUR HONOR.

20 THE COURT: THANK YOU, SIR. YOU MAY STEP DOWN.

21 MR. ANDERSON: YOUR HONOR, THE DEFENSE RESTS.

22 THE COURT: ALL RIGHT. IS THERE ANY REPLY TESTIMONY? YOU NEED
23 ANY ADDITIONAL TIME?

24 MS. BRISBIN: NO, YOUR HONOR.

25 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, THE EVIDENCE IS ALL

1 IN NOW.

2 YOU HAVE ALL THE EVIDENCE YOU'RE GOING TO HAVE TO DECIDE THE
3 CASE, AND THERE ARE TWO STAGES THAT REMAIN IN THE TRIAL: THE CLOSING
4 ARGUMENTS AND THE CHARGE.

5 NOW AFTER 4 O'CLOCK WE ARE UNDER INSTRUCTIONS FROM THE CHIEF
6 JUSTICE THAT WE DON'T GO INTO THOSE LAST TWO STAGES UNLESS THERE'S
7 EXCEPTIONAL CIRCUMSTANCES AND WHAT THEY MEAN BY EXCEPTIONAL
8 CIRCUMSTANCES ARE NOT PRESENT HERE.

9 SO WHAT I'M GOING TO DO IS LET YOU FOLKS GO HOME; BRING YOU BACK
10 IN THE MORNING AND YOU'LL HEAR THE CLOSING ARGUMENTS OF THE LAWYERS
11 AND THEN YOU'LL HEAR ME TELL YOU THE LAW.

12 I NEVER KNOW HOW LONG LAWYERS ARE GOING TO TALK. I'M GOING TO
13 TALK TO YOU ABOUT 24 MINUTES UNLESS SOMETHING CHANGES BETWEEN NOW
14 AND IN THE MORNING. I KNOW YESTERDAY OR EARLY THIS MORNING I TOLD YOU
15 THAT I THOUGHT YOU MIGHT GET THE CASE TODAY, BUT I WAS WRONG. I PROMISE
16 YOU PEOPLE THAT WE WORKED REAL HARD. WE JUST HAD SOME ISSUES COME UP
17 THAT I DID NOT KNOW WERE COMING UP AND WE HAD TO WORK THROUGH. SO
18 YOU WILL GET THE CASE TOMORROW AND IF IT'S - WHAT WE'LL DO IS WE'LL
19 ORDER YOUR LUNCH IN. IF YOU'RE STILL DELIBERATING OR HAVE THE CASE
20 AROUND LUNCH TIME WE'LL BRING YOUR FOOD IN TO YOU, AND YOU SHOULD GET
21 THE CASE IN THE MORNING UNLESS SOMETHING EXTRAORDINARY HAPPENS.
22 WHAT ELSE Y'ALL GOT SCHEDULED FOR ME IN THE MORNING? Y'ALL HAVE
23 ANYTHING FOR ME IN THE MORNING? OKAY. 9:30 SUIT Y'ALL?

24 MS. BRISBIN: YES, YOUR HONOR.

25 THE COURT: LADIES AND GENTLEMEN, IF YOU WOULD, PLEASE, BE IN THE

1 JURY ROOM AT 9:30 IN THE MORNING AND WE'LL GO STRAIGHT INTO THE CLOSING
2 ARGUMENTS AND THEN THE CHARGE.

3 WE'RE GONNA STAY HERE AND WORK ON SOME THINGS SO WE'LL TRY TO
4 HAVE EVERYTHING EXACTLY READY FOR YOU WHEN YOU COME IN.

5 THANK YOU.

6 I NEED TO TELL Y' ALL SOMETHING.

7 I'VE TOLD Y' ALL THIS BEFORE AND IT WON'T TAKE 20 SECONDS.

8 I DON'T KNOW IF THERE'S MEDIA COVERAGE OF THIS TRIAL OR NOT, BUT I
9 WANT TO REMIND YOU TO STAY AWAY FROM ANY LOCAL MEDIA.

10 I TOLD YOU IF YOU WERE EXPOSED TO MEDIA COVERAGE, JUST GET AWAY
11 FROM IT.

12 I THINK IT'S A GOOD IDEA NOT TO READ THE LOCAL NEWSPAPERS UNTIL
13 THIS TRIAL IS OVER.

14 SO DON'T READ THE AUGUSTA PAPER OR THE AIKEN PAPER TODAY OR
15 TOMORROW. JUST STAY AWAY FROM THAT UNTIL THE TRIAL IS OVER. Y' ALL CAN
16 SAVE THEM AND READ THEM LATER. ALL RIGHT? AND YOU REMEMBER THE
17 OTHER ADMONITION ABOUT NOT DISCUSSING THE CASE WITH ANYBODY. ALL
18 RIGHT. YOU'RE FREE TO GO. THANK YOU. (THE FOLLOWING OCCURRED IN THE
19 ABSENCE OF THE JURY.) OKAY. WHAT I'D LIKE FOR THE ATTORNEYS TO DO IS TO
20 STAY HERE UNTIL I GIVE YOU A DRAFT COPY OF THE CHARGE. I'LL GIVE YOU A
21 CHANCE TO MAKE YOUR MOTIONS AND REVIEW THOSE PROPOSED CHARGES AND
22 I'D LIKE FOR YOU TO TALK TO ME ABOUT THAT BEFORE YOU LEAVE TODAY. I
23 THINK THEY'VE GOT A GUILTY PLEA THEY WANT ME TO DO ON ANOTHER CASE. IF
24 YOU WANT YOUR CLIENT TO STAY HERE, MR. ANDERSON, I'LL HAVE THEM KEEP
25 HIM HERE. IF THOSE FOLKS WANT TO COME BACK IN THE COURTROOM THEY MAY

1 COME BACK IN OR THEY MAY GO. WHATEVER YOU CHOOSE. BUT I DO WANT THE
2 LAWYERS TO STAY. GO AHEAD AND MAKE YOUR MOTIONS.

3 MR. ANDERSON: COULD I DO THAT?

4 THE COURT: YES.

5 MR. ANDERSON: ALL RIGHT. YOUR HONOR, NOW AT THE CLOSE OF ALL
6 THE EVIDENCE I RENEW MY MOTION FOR A DIRECTED VERDICT BASED ON THE
7 SAME GROUNDS NOW WITH THE ADDITIONAL GROUND ALSO THAT MY CLIENT
8 TESTIFIED CONVINCINGLY THAT HE DID NOT DO IT AND WHEN YOU TAKE ALL THE
9 EVIDENCE THAT'S BEEN PRESENTED IN A LIGHT MOST FAVORABLE TO THE STATE,
10 REMEMBERIN' ALL THE STUFF I SAID BEFORE, THE ADDITION OF HIS TESTIMONY, I
11 THINK THAT THIS COURT SHOULD DIRECT A VERDICT OF NOT GUILTY. THANK YOU.

12 THE COURT: ALL RIGHT. THANK YOU. THERE WERE JURY ISSUES IN THE
13 TRIAL AND THE COURT RESPECTFULLY DENIES THE MOTIONS.

14 MR. ANDERSON: THANK YOU, YOUR HONOR. (THE FOLLOWING OCCURRED
15 THE NEXT DAY.)

16 THE COURT: DID YOU ALL HAVE ANY ISSUES?

17 MR. ANDERSON: JUDGE, I JUST WANTED TO PUT ON THE RECORD MY
18 REQUEST ON THE JURY CHARGE.

19 THE COURT: ALL RIGHT.

20 MR. ANDERSON: I KNOW YOU TOLD US WHAT YOU WERE GONNA DO. I
21 WOULD JUST ASK THAT YOU ADD IN THE MANNING HESITATE TO ACT LANGUAGE
22 AND THAT YOU DO THE -- YOU PUT IN THE LANGUAGE ABOUT CIRCUMSTANTIAL
23 EVIDENCE THAT EACH AND EVERY ELEMENT PROVEN BY CIRCUMSTANTIAL
24 EVIDENCE MUST BE PROVEN BEYOND A REASONABLE DOUBT AND THE STUFF
25 THAT'S FOUND IN IRVIN'S REQUEST TO CHARGE AND--

1 THE COURT: YOU MEAN THE LANGUAGE ABOUT POINTING CONCLUSIVELY
2 TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF ANY OTHER REASONABLE
3 HYPOTHESIS AND ALL THAT STUFF?

4 MR. ANDERSON: THANK YOU, YOUR HONOR.

5 THE COURT: NOT THE MORAL CERTAINTY LANGUAGE.

6 MR. ANDERSON: RIGHT. NO, SIR.

7 THE COURT: OKAY.

8 MR. ANDERSON: THANK YOU, JUDGE.

9 THE COURT: I'M NOT GONNA CHARGE THAT. I THINK THE CONCEPTS ARE
10 ADEQUATELY COVERED. I WON'T STOP YOU FROM ARGUING THE LAW AS IT
11 EXISTS. I KNOW THAT AS FAR AS REASONABLE DOUBT GOES, THERE IS THAT
12 MANNING CASE ABOUT A REASONABLE PERSON HESITATING TO ACT. QUITE
13 FRANKLY I JUST DON'T CHARGE THAT BECAUSE THOUGH I RECOGNIZE THAT THE
14 PEOPLE WHO WROTE THAT ARE FAR SMARTER THAN I AM AND IT'S MY FAULT FOR
15 NOT UNDERSTANDING IT, I DON'T UNDERSTAND IT. 'CAUSE I TOLD YOU ALL
16 YESTERDAY, I KNOW PEOPLE THAT I CONSIDER REASONABLE THAT HESITATE TO
17 ACT OVER WHETHER THEY BUY A COKE OR A PEPSI, AND I JUST DON'T THINK THAT
18 THAT LANGUAGE IS AS CLEAR AS THE LANGUAGE THAT I'VE GOT IN THE CHARGE.

19 MR. ANDERSON: THANK YOU, JUDGE.

20 THE COURT: ALL RIGHT.

21 MR. ANDERSON: THAT'S ALL WE HAVE.

22 THE COURT: OKAY. THEY HERE YET? OKAY. THEY'RE HERE? OKAY. I GOT
23 ALL THE JURY NOW. YOU WANNA OPEN AND CLOSE, MS. BRISBIN? YOU WANNA
24 OPEN AND CLOSE?

25 MS. BRISBIN: NO, YOUR HONOR.

1 THE COURT: YOU WANNA INSIST SHE OPEN ON THE LAW?

2 MR. ANDERSON: NO, YOUR HONOR.

3 THE COURT: BRING THE JURY.

4 (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.)

5 ALL RIGHT. GOOD MORNING, LADIES AND GENTLEMEN.

6 AS I TOLD YOU YESTERDAY, THERE ARE TWO STAGES THAT REMAIN IN THE
7 TRIAL: THE CLOSING ARGUMENTS AND THE CHARGE.

8 THE WAY THAT THIS WILL WORK IS THE DEFENSE ATTORNEY WILL MAKE
9 THE FIRST CLOSING ARGUMENT TO YOU, AND AFTER HE IS FINISHED THEN THE
10 STATE'S ATTORNEY WILL MAKE THE FINAL SUMMATION TO YOU, AND AT THAT
11 POINT AND I ALWAYS TAKE A BRIEF RECESS - USUALLY IT'S VERY BRIEF, AND
12 THEN I BRING YOU OUT AND GIVE YOU THE LAW.

13 AS I TOLD YOU YESTERDAY, THE LAW'S GONNA TAKE ABOUT 24 MINUTES
14 FOR ME TO TELL YOU. NOW WE'LL SEE HOW TIME PROGRESSES. SOMETIMES I DO
15 TAKE A BREAK BETWEEN THE TWO ARGUMENTS, DEPENDING UPON HOW LONG
16 THE ATTORNEYS TALK TO YOU. IF WE'RE RUNNING UP CLOSER TO THE LUNCH
17 HOUR, I MAY GO AHEAD AND TAKE YOUR LUNCH ORDERS BECAUSE GENERALLY
18 WE DON'T LIKE TO SEND THOSE IN BETWEEN 12 AND 1 BECAUSE THAT'S THE RUSH
19 TIME AND IT TAKES LONGER TO DO IT. SO WE'LL PLAY IT BY EAR, BUT THAT'S
20 WHAT WE'RE LOOKING AT. I INVITE YOUR CLOSE ATTENTION TO BOTH CLOSING
21 ARGUMENTS. MR. ANDERSON, YOU'RE RECOGNIZED.

22 MR. ANDERSON: THE FLU'S GOIN' AROUND, LADIES AND GENTLEMEN. MY
23 WIFE'S GOT SOMETHIN'. SHE'S BEEN SICK 3 DAYS AND SHE FINALLY WENT TO THE
24 DOCTOR THIS MORNING. AND IT'S A FLUE-LIKE THING. AND WHAT I'VE DONE AND
25 I GOT THE RESEARCH IN HERE. YOU'RE JUST GONNA HAVE TO TRUST ME ON IT. I

1 DID THE RESEARCH ON SOME COMPUTERS, AND YOU KNOW THE PROGRAM I USED
2 SAID IT'S NOT FOR DIAGNOSTIC PURPOSES. BUT WHAT I'VE DONE IS REALLY
3 GONNA BE A GREAT THING. I'VE CREATED THIS CURE FOR THE FLU BUG. AND
4 LIKE I SAID, JUST TRUST ME ON THE RESEARCH AND THE ACCURACY OF THAT
5 RESEARCH, THE ACCURACY OF MY TESTING AND GO ON THE FACT THAT IT'S NOT
6 FOR DIAGNOSTIC PURPOSES. TRUST ME THAT IT'S ALL RIGHT HERE, ALL THE
7 EVIDENCE YOU NEED RIGHT THERE TO PROVE THAT THIS PILL'S GOOD AND IT
8 WON'T HURT YOU, AND YOU TAKE IT AND IT'LL CURE THE FLU.

9 NOW YOU DON'T KNOW ME, YOU DON'T KNOW IF I AM TRUSTWORTHY OR
10 NOT, BUT IT'S RIGHT THERE.

11 IF YOU TAKE THE PILL THEN FIND EARNEST GUILTY, IF YOU WOULDN'T
12 TAKE THE PILL, THAT'S REASONABLE DOUBT.

13 AND THAT'S THE DNA EVIDENCE. MS. GALLMAN SAID TRUST ME. JUST
14 TRUST ME. I DID ALL THE RESEARCH. I DID IT ON THE COMPUTER. THE COMPUTER
15 PRINTS OUT THIS STUFF THAT'S NOT FOR DIAGNOSTIC PURPOSES, BUT TRUST ME.
16 NOW SHE SEEMS LIKE AN AWFUL NICE LADY. SHE SEEMS SMART. BUT I MEAN
17 HOW CAN YOU TRUST WHAT SHE TOLD YOU. SHE DIDN'T UNDERSTAND WHAT SHE
18 TOLD YOU. ESSENTIALLY WHAT SHE TOLD YOU WAS SHE DID ALL THIS STUFF; SHE
19 PUT IT IN THE COMPUTER, AND THE COMPUTER TOLD HER THAT THERE'S A ONE IN
20 39 CHANCE THAT IT COULD'VE BEEN SOMEBODY ELSE. ONE IN ONE 39. AND THEN
21 BECAUSE SHE DECIDES TO USE A DIFFERENT FORMULA ONE IN 3500 THAT IT
22 COULD'VE BEEN SOMEBODY ELSE BETWEEN THE TWO OF 'EM. AND THE EVIDENCE
23 IS AROUND HERE - I SHOULDA ASKED MS. SMOKEY EARLIER. AND WE'LL TALK
24 ABOUT THE EVIDENCE AS WE GO. BUT THAT'S - IT'S A BIG LEAP OF FAITH FOR
25 YOU TO TAKE THAT PILL. AND REALLY EARNEST PRESSLEY'S FREEDOM HANGS IN

1 THE BALANCE ON TAKIN' THAT PILL.

2 I WOULDN'T TAKE THE PILL.

3 AND WE HAD TWO FULL DAYS OF TESTIMONY WHICH IS A LOTTA
4 TESTIMONY.

5 AND I DON'T KNOW WHETHER YOU NOTICED BUT I WOULD TAKE MY
6 NOTEPAD WITH ME, AND WHEN SOMEBODY SAID SOMETHIN' THAT HELPED MY
7 CLIENT, I'D TRY TO WRITE IT DOWN.

8 AND I CAN'T REMEMBER ALL OF IT. AND THEN I TOOK MY NOTEPAD AND
9 ALL THE PAPERWORK HOME LAST NIGHT AND I TRIED TO WRITE IT DOWN BY
10 CATEGORIES. ALL THE THINGS THAT HELPED EARNEST. IT REALLY COMES DOWN
11 TO THIS - AND I'M GONNA BORE YOU WITH ALL THE THINGS THAT HELP EARNEST
12 BECAUSE I CAN'T KEEP QUIET ON ALL THAT STUFF 'CAUSE IT'S A LOTTA STUFF.
13 BUT Y'ALL WERE HERE THE WHOLE TIME. YOU HEARD EVERYTHING. AND YOU'RE
14 SITTING THERE LISTENIN' AND YOU PROBABLY PICKED UP A LOT MORE THAN I PICK
15 UP AND MS. BRISBIN PICKS UP 'CAUSE WE'RE ALSO DOING STUFF. WE'RE THINKIN'
16 ABOUT OTHER THINGS, BUT WHAT IT COMES DOWN TO IS IF YOU HAVE FAITH IN
17 THIS DNA THAT MS. GALLMAN COULDN'T EVEN EXPLAIN, AND THE SYSTEM IS
18 GONNA HAVE BLIND FAITH IN THE DNA AND IF A DNA EXPERT COMES IN AND
19 SAYS I CAN'T EXCLUDE HIM AND IT'S A ONE IN 39 CHANCE THAT SOMEBODY ELSE
20 AND ALL THAT STUFF, WHAT ARE WE DOIN' HERE? IF ALL THEY NEED TO DO IS
21 PRESENT THE DNA EXPERT, WHY EVEN HAVE A TRIAL?

22 NOW AT THE END OF MS. BRISBIN AND I TALKIN', THE JUDGE IS GONNA
23 TELL YOU THE LAW. AND YOU LISTEN TO WHAT THE JUDGE TELLS YOU. HE IS NOT
24 GOING TO TELL YOU THAT IF YOU BELIEVE MS. GALLMAN FIND HIM GUILTY. HE IS
25 NOT GOING TO TELL YOU THAT DNA EVIDENCE IS PERFECT HANDED DOWN FROM

1 GOD LIKE THE TEN COMMANDMENTS.

2 HE'S NOT GONNA TELL YOU THAT. IF IT WAS PERFECT, WHAT ARE WE
3 DOIN' HERE?

4 NOW AT THE BEGINNING OF THE TRIAL THE JUDGE HAS TOLD YOU AND I
5 TOLD YOU THAT HE'S PRESUMED INNOCENT. EARNEST IS PRESUMED INNOCENT
6 AND HE REMAINS INNOCENT UNLESS AND UNTIL THEY PROVE HIM GUILTY
7 BEYOND A REASONABLE DOUBT. THAT MEANS RIGHT NOW WE HAVE TO HAVE A
8 TOTALLY OPEN MIND BECAUSE THE TRIAL'S NOT OVER YET. HE'S STILL
9 PRESUMED INNOCENT.

10 NOW HOW 'BOUT THE EASY WAY OUT IS TO SAY WHY WOULD THIS NICE
11 YOUNG LADY SAY THIS. WHY IN THE WORLD WOULD SHE SAY IT? AND THAT'S A
12 COMPELLING ARGUMENT. AND IF I WAS THE PROSECUTOR I'D PROBABLY MAKE
13 THAT ARGUMENT. I'D PROBABLY MAKE TWO ARGUMENTS. I'D PROBABLY SAY
14 WHY WOULD THIS NICE YOUNG LADY SAY THIS. AND I'D SAY DNA. AND I'D
15 PROBABLY HAVE A BUNCH A OTHER TALK BUT MOSTLY I'D FOCUS ON THOSE TWO
16 THINGS. BUT WHEN YOU HAVE THE BURDEN OF PROOF AND THE PRESUMPTION OF
17 INNOCENCE, THAT DOESN'T CUT IT.

18 NOW I WISH I COULD TELL YOU WHY SHE SAID WHAT SHE SAID. I WISH
19 EARNEST COULD TELL YOU WHY SHE SAID WHAT SHE SAID. HE DOESN'T KNOW, I
20 DON'T KNOW. BUT GUESS WHAT. WE DON'T HAVE TO TELL YOU THAT. WE DON'T
21 HAVE A BURDEN OF PROOF. THAT'S NOT UP TO US TO TELL YOU WHY SHE'D SAY
22 IT. YOU'VE GOT TWO GENERAL CATEGORIES OF EVIDENCE IN THIS CASE. YOU'VE
23 GOT THE TESTIMONIAL EVIDENCE AND THEN YOU GOT MS. GALLMAN. AND LET'S
24 FACE IT. THE TESTIMONIAL EVIDENCE AIN'T GREAT. AND DON'T FALL FOR THE
25 EASY WAY OUT AND SAY WHY WOULD SHE TELL THIS. WHAT I'M GONNA ASK YOU

1 TO DO IS TO LOOK AT WHAT WAS TOLD AND WHAT WAS NOT TOLD.

2 LOOK AT WHAT WAS DONE AND WHAT WAS NOT DONE.

3 LOOK AT WHAT WAS PRESENTED AND WHAT WAS NOT PRESENTED AND
4 STRICTLY APPLY THE BURDEN OF PROOF THAT THE JUDGE TOLD YOU EXISTS. WE
5 DON'T HAVE TO PROVE ANYTHING. EARNEST IS NOT GONNA HAVE TO PROVE
6 ANYTHING. THEY'VE GOT TO PROVE EVERYTHING. EVERYTHING. SO, PLEASE,
7 DON'T FALL PREY TO THE EASY OUT AND SAY WHY WOULD THIS GIRL SAY THIS.
8 ALL RIGHT.

9 SO WHAT I'M GONNA DO NOW IS BORE YOU WITH MY NOTES ON EACH
10 CATEGORY.

11 THE DNA EVIDENCE.

12 REMEMBER THIS: MS. GALLMAN IS AN AGENT FOR SLED. SHE'S AGENT
13 GALLMAN. SHE TESTIFIED THAT THESE PACKAGES HADN'T BEEN TAMPERED WITH
14 WHEN SHE GOT 'EM. BUT THEN WE DID FIND OUT THAT PUBIC HAIR, HEAD HAIR
15 HAD BEEN TAKEN OUT OF BOTH PACKAGES AND REPACKAGED.

16 NOW YOU HEARD TESTIMONY FROM NURSE WHYTE. YOU HEARD
17 TESTIMONY FROM EARNEST PRESSLEY. YOU HEARD TESTIMONY FROM OFFICER
18 DERRICK ABOUT HEAD HAIR AND THAT EARNEST'S BACK WAS TO HIM DURIN'
19 ANOTHER PART OF THAT EXAMINATION. BUT IT'S OBVIOUS THAT EARNEST AND
20 P. HAD PUBIC HAIR SAMPLES SENT TO SLED. WHERE ARE THEY? MS.
21 GALLMAN SAID THAT THEY CAN DO ANALYSES ON THE HAIR AND SEE IF PUBIC
22 HAIR FROM EARNEST MATCHES PUBIC HAIR FOUND ON P. WHERE DID
23 THAT STUFF GO. WHERE IS THAT EVIDENCE? WHAT DID THEY DO WITH IT? I CAN'T
24 TELL YOU. I DON'T KNOW. I DON'T WORK FOR SLED. ALL I KNOW IS IT WASN'T
25 HERE AND NOBODY HERE KNEW WHERE IT WENT. WHY DIDN'T THEY DO THAT

1 TEST? I CAN TELL YOU THIS: FOR ME - AND I'M SIMPLEMINDED BUT I GUESS I'M
2 MEDIUM SMART - IF YOU SHOW ME MICROSCOPIC PICTURES OF HAIRS. SHOW ME
3 THE PICTURES TAKEN BY THE MICROSCOPE, I CAN TELL YOU IF THOSE HAIRS LOOK
4 THE SAME. PROBABLY. I DON'T KNOW. I'VE NEVER DONE IT. BUT THAT'S
5 SOMETHIN' I CAN SEE. SHOW ME SOMETHING. BUT THAT EVIDENCE AIN'T HERE.
6 WHERE IS IT? AND THEY HAVE THE BURDEN OF PROOF. THAT'S THEIR WITNESS.
7 THAT'S SOUTH CAROLINA LAW ENFORCEMENT DIVISION. WHERE'S THE
8 EVIDENCE? IT WAS COLLECTED. DID THE EVIDENCE HELP EARNEST? I DON'T
9 KNOW. DOESN'T HE HAVE A RIGHT TO KNOW? DON'T YOU HAVE A RIGHT TO
10 KNOW? I'D LIKE TO KNOW.

11 THEY TOLD YOU THAT THEY COLLECTED HER UNDERWEAR.

12 THEY DIDN'T EVEN ANALYZE THE UNDERWEAR, AND THAT'S - THAT'S IN
13 HERE. NO ANALYSIS PERFORMED.

14 DID THAT EVIDENCE HELP EARNEST?

15 WOULD IT HAVE HELPED EARNEST IF THEY HAD DONE THE ANALYSIS ON
16 THE UNDERWEAR?

17 I DON'T KNOW. I DON'T WORK FOR SLED. THAT'S THEIR WITNESS. I
18 THOUGHT IT WAS VERY INTERESTING THAT THEY DIDN'T TEST ANYTHING IN
19 P. PACKET EXCEPT FOR THE PRESENCE OF SEMEN. SHE DIDN'T KEEP
20 ANY OF THOSE TESTS. THEY TESTED SEMEN FOUND FROM THEY DIDN'T KNOW
21 WHERE. SEMEN FOUND IN THE VAGINAL SWAB. THEY DIDN'T KEEP THE RESULTS
22 OF THAT TEST. AND THEN THEY DIDN'T DO ANYTHING. SHE SET IT ASIDE IN HER
23 BIN SHE SAID. FOR MONTHS. AND THEN AFTER EARNEST VOLUNTARILY GIVES A
24 SAMPLE OF HIS BLOOD, THEN THEY RUN BOTH TESTS SIMULTANEOUSLY. THERE'D
25 BE A LOT MORE CREDIBILITY, AND I STILL DON'T UNDERSTAND THE DNA STUFF,

1 AND I STILL DON'T UNDER - I DON'T THINK SHE UNDERSTANDS IT EITHER.

2 BUT TO ME IT WOULD HAVE A LOT MORE CREDIBILITY IF MS. GALLMAN
3 HAD RUN P. DNA STUFF, AND I ASKED HER ABOUT THIS.

4 RUN P. DNA STUFF. IT'S DONE. THEY LATER RUN HIS. IT'S DONE.
5 AND THEN LATER COMPARE 'EM.

6 BUT SHE DIDN'T DO THAT. SHE WAITED UNTIL SHE HAD EARNEST'S AND
7 SHE RAN 'EM TOGETHER, AND THEN SHE TOLD YOU THE PROCESS TO DO IT.

8 SHE POURS BLOOD ON A CLOTH, PUTS IT INTO THE HOOD WITH ANY
9 NUMBER OF OTHER CLOTHS. SHE DOESN'T KNOW HOW LONG SHE LEFT IT IN
10 THERE. SHE DOESN'T KNOW WHEN SHE TOOK IT OUT.

11 THERE'S 15 OTHER PEOPLE THAT HAVE ACCESS TO THE HOOD. AND AS
12 MANY AS 10 OTHER SAMPLES IN THE HOOD.

13 I NEVER REALLY UNDERSTOOD EXACTLY WHAT A HOOD IS.

14 THEN SHE RUNS THE TEST THE FIRST TIME AND THERE'S NO DNA FOUND.
15 THEN SHE HAS TO RUN IT AGAIN. THEN SHE PUTS IT IN THE C.E. AND THE C.E.
16 CRASHES, AND THEN SHE HAS TO DO IT AGAIN. THEN THE COMPUTER, AND I MADE
17 DARN SURE THAT THAT WAS CLEAR, THE COMPUTER PRINTS OUT ALL THIS STUFF.
18 AND THEN SHE LOOKS AT THE COMPUTER PRINTOUTS. THEN SHE TELLS YOU
19 WHAT SHE TOLD YOU. I JUST CAN'T PUT MY FAITH IN THAT. THAT'S THE PILL IN
20 MY DRAWER. I THOUGHT IT WAS VERY INTERESTING AT THE BEGINNING OF THIS
21 WHOLE PROCESS THERE WAS A GENTLEMAN RIGHT BACK IN HERE, AND I CAN'T
22 REMEMBER HIS NAME, BUT HE STOOD UP AND THE JUDGE SAID YOU'RE 55 YEARS
23 OLD. AND HE SAID NO I WAS BORN IN 1965. '64, '65, '66, SOMEWHERE IN THERE.
24 YOU'RE 55? HE GOES NO, SIR. WELL, THE COMPUTER-GENERATED JURY FORM
25 SAYS YOU'RE 55 YEARS OLD. WELL, THAT'S RIGHT HERE. NOW I DON'T LIKE

1 COMPUTERS ANYWAY, AND I'M BEHIND THE TIMES. I'D MUCH RATHER READ A
2 BOOK.

3 BUT I ASKED MS. GALLMAN, AGENT GALLMAN DID YOU GO UNDER THE
4 MICROSCOPE AND LOOK AT THIS STUFF.

5 NO.

6 BUT SHE SAYS TRUST ME.

7 AND I THOUGHT IT WAS PRETTY FUNNY.

8 SHE SAID I'M CONFIDENT. WHEN THEY QUESTIONED HER AGAIN, I'M
9 CONFIDENT IN THESE RESULTS.

10 DID SHE LOOK CONFIDENT WHEN I WAS ASKIN' HER QUESTIONS? SHE
11 DIDN'T SEEM CONFIDENT TO ME.

12 NOT FOR DIAGNOSTIC. I HAD THAT CIRCLED. EVERY PAGE, NOT FOR
13 DIAGNOSTIC.

14 WHY IS THAT?

15 SHE DIDN'T KNOW.

16 NOT FOR DIAGNOSTIC. DIAGNOSTIC IS GONNA HAVE TO BE MORE PRECISE
17 THAN FOR RESEARCH, AND WHEN YOU FOLLOW THE ADVICE OF A DOCTOR THAT
18 DID AN EXPERIMENT WITH COMPUTER SOFTWARE THAT SAYS NOT FOR
19 DIAGNOSTIC, WOULD YOU TAKE A PILL THAT WAS DEVELOPED THROUGH
20 TECHNOLOGY THAT WAS NOT FOR DIAGNOSTIC? THE OTHER THING I THOUGHT
21 WAS INTERESTING AND I TRIED TO POINT IT OUT SHE'S GOT THESE FORMS FROM
22 THE COMPUTER THAT ARE SO IMPORTANT. SHE'S GOT HANDWRITTEN NOTES HERE
23 NOW. AND AT ONE POINT IT SAID THE C.E. AND I STILL DON'T KNOW EXACTLY
24 WHAT THE C.E. THING IS, WAS SUPPOSED TO BE ON 3-30, AND IT WAS RIGHT THERE
25 ON THE FORM ON THE TOP RIGHT, IT SAID 3-30, SHE CROSSED IT OFF AND WROTE 4-

1 25. AND I SAID WHY WAS THAT.

2 SHE SAID WELL I WAS GONNA RUN THE TEST ON 3:30 BUT THEN I COULDN'T
3 DO IT THE NEXT DAY BUT IT WAS ALREADY PRINTED OUT IN THE COMPUTER, SO I
4 CHANGED THE DATE ABOUT A MONTH LATER. I WROTE IT IN THERE.

5 THIS IS HIS FREEDOM, AND THAT'S WHAT SHE DOES? THAT'S THE BIG
6 POINTS ON THE DNA STUFF. AND YOU'RE GONNA HAVE A LOT OF THIS STUFF IN
7 EVIDENCE AND YOU CAN SEE IT. ONE IN ONE 39, ONE IN 3500. SHE SAID ONE IN 3500
8 'CAUSE SHE CHOSE TO DO A DIFFERENT FORMULA FOR A MIXTURE FORMULA
9 AND THAT MIXTURE FORMULA SAID ONE IN 3500 IT COULD BE A DIFFERENT --
10 SOMEBODY ELSE. SHE COULDN'T REALLY EXPLAIN WHY SHE USED THAT OTHER
11 FORMULA. THAT FORMULA COMES OUT OFF THE COMPUTER. ALL THAT SAME
12 STUFF THAT I'VE BEEN HARPIN' ON APPLIES.

13 IF YOU TAKE THE PILL, BELIEVE IT. IF YOU WOULDN'T TAKE THE PILL,
14 QUESTION IT.

15 TO ME THAT'S A FLAW IN THE BURDEN OF PROOF. AND THAT IS THEIR
16 MOST CONVINCING EVIDENCE. DNA. EVERYBODY HEARS ABOUT DNA. I'VE
17 HEARD ABOUT DNA. I'VE NEVER SEEN IT EXPLAINED. I FIGURED DNA WOULD BE
18 A LOT MORE PRECISE THAN THAT. I FIGURED THERE'D BE A SCIENTIST LOOKIN' AT
19 STUFF WHO COULD SAY I SAW IT AND THIS IS WHAT IT WAS. HERE ARE PICTURES
20 OF IT. THAT WOULD BE CONVINCING. NOW WHAT SHE DID MIGHT BE CONVINCING
21 FOR EXCLUDING OTHER PEOPLE, BUT IS IT CONVINCING ENOUGH TO BE FIRMLY
22 CONVINCED THAT HE'S GUILTY.

23 THE JUDGE IS GONNA TELL YOU AND I TOLD YOU AT THE BEGINNING OF
24 THE TRIAL THAT REASONABLE DOUBT IS THE BURDEN OF PROOF. AND THAT
25 REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE

1 PERSON TO HESITATE TO ACT. AND JUDGE KEESLEY DOESN'T CHARGE THAT
2 CHARGE. SOME JUDGES CHARGE THAT CHARGE; OTHER JUDGES CHARGE FIRMLY
3 CONVINCED. JUDGE KEESLEY SAYS FIRMLY CONVINCED. REASONABLE DOUBT IS
4 THE KIND OF DOUBT THAT THE STATE CARRIES THAT PROOF IF YOU'RE FIRMLY
5 CONVINCED OF SOMEBODY'S GUILT.

6 ARE YOU FIRMLY CONVINCED OF THE ACCURACY OF THOSE DNA TESTS?
7 I'M NOT FIRMLY CONVINCED.

8 IF YOU TAKE THE PILL, YOU'RE FIRMLY CONVINCED.

9 MY NEXT PAGE THAT I'VE WRITTEN DOWN IS THE POLICE. THE FIRST
10 OFFICER ON THE SCENE WAS ELWEL. ELWEL WASN'T HERE. WHAT DID HE HAVE
11 TO SAY? I DON'T KNOW. WOULD HE HAVE HAD TO SAY HELP US, HURT US? I
12 DON'T KNOW. HE'S NOT HERE. HE DIDN'T TESTIFY. HE WORKS FOR AIKEN
13 COUNTY. HE'S NOT HERE. OFFICER DERRICK TESTIFIED THAT HE GOT TO THE
14 HOUSE AROUND 4 P.M. SHORTLY AFTER ELWEL GOT THERE. 4 P.M. AND THAT YOU
15 HEARD AND YOU'LL SEE ON THE HOSPITAL RECORDS IF YOU CHOOSE TO LOOK AT
16 'EM -- AND ALL THIS IS GOING BACK WITH YOU AND YOU CAN LOOK AT IT. SHE
17 CHECKED INTO THE HOSPITAL AT 5:25. WHAT IN THE WORLD DID THEY DO AT
18 EARNEST'S HOUSE FROM 7:30 IN THE MORNING TILL 4 O'CLOCK WHEN THE POLICE
19 CAME? THAT'S 8 AND A HALF HOURS.

20 I MEAN IF SOMETHIN' HAPPENED TO ONE OF NIECES, AM I GONNA WAIT
21 AROUND FOR 8 AND A HALF HOURS TO EITHER TAKE HER TO THE DOCTOR OR
22 CALL THE POLICE? I ASKED MY WIFE IF SHAD SOME NIECES AND SOMEBODY SAID
23 SOMETHIN' HAPPENED TO ONE OF 'EM, WHAT WOULD YOU DO FIRST? AND I WAS
24 THINKIN' SHE'D SAY TAKE 'EM TO THE HOSPITAL. SHE SAID CALL THE POLICE.
25 BUT EITHER WAY, WOULD YOU WAIT 8 AND A HALF HOURS? WHAT WERE THEY

1 DOIN' AT EARNEST'S HOUSE FOR 8 AND A HALF HOURS? I DON'T KNOW. I DON'T
2 HAVE TO TELL YOU WHAT THEY WERE DOIN'. I DON'T HAVE A CLUE.

3 OFFICER DERRICK TESTIFIED THAT THEY TOOK CUSHIONS, THE BLANKET,
4 THE DEFENDANT'S SHORT. THE CUSHION FROM THE SOFA, THE BLANKET AND THE
5 DEFENDANT'S SHORTS. WHERE ARE THEY? THEY OBVIOUSLY TOOK 'EM FOR
6 EVIDENCE. WHERE ARE THEY? DID YOU HEAR ANY TESTIMONY ABOUT THOSE?
7 DID THEY DO SOMETHIN' WITH 'EM? WOULD THAT EVIDENCE HAVE HELPED
8 EARNEST? I DON'T KNOW. THEY TOOK 'EM.

9 IT WAS VERY INTERESTING WHEN OFFICER DERRICK WAS GOING
10 THROUGH HIS REPORT WITH ME 'CAUSE HE SAID THAT HE TALKED TO P. |
11 AND WHILE HE WAS TALKIN' WITH HER, SHE CHANGED HER STORY. AND THEN HE
12 TALKED TO EARNEST. I SAID WAIT A MINUTE; LOOK AT YOUR REPORT; READ THE
13 FIRST PARAGRAPH. TALKED TO P. | SHE SAID IT HAPPENED AT 6 P.M. THE
14 DAY BEFORE. AND I SAID READ THE NEXT 4 WORDS. AND WHAT DID HE DO? DID
15 HE DO EVERYTHING IN THE WORLD HE COULD TO AVOID READIN' THOSE NEXT
16 WORDS?

17 MAYBE I MADE A BIGGER DEAL OUT OF IT THAN IT WAS BUT TO ME IT
18 LOOKED LIKE HE WAS AVOIDIN' THOSE NEXT WORDS, AND THE NEXT WORDS
19 WERE I THEN SPOKE WITH MR. PRESSLEY. AND WHEN YOU HEARD EARNEST
20 TESTIFY IT REALLY DID MAKE SENSE. EARNEST TOLD YOU HE CAME HOME;
21 EVERYBODY WAS THERE. THE POLICE WOULDN'T LET HIM IN THE HOUSE. THEY
22 WERE IN THERE WITH P. | THEY TOOK THEM OUT THE BACK
23 DOOR AND LET EARNEST IN. SO OBVIOUSLY THEY TALKED TO P. | TOOK
24 HER TO THE HOSPITAL; TALKED TO EARNEST; TOOK THE CUSHIONS AND THE
25 BLANKET AND HIS SHORTS; AND THEN THEY REALIZED THAT WHAT SHE WAS

1 SAYIN' WAS CRAZY.

2 THERE WERE 4 KIDS IN THE HOUSE. THIS HAPPENED AT 6 P.M. THE DAY
3 BEFORE.

4 THAT SOUNDS CRAZY.

5 SO THEY GO BACK AND SAY THAT SOUNDS CRAZY, AND THEN SHE SAYS
6 WELL IT WAS LATE LAST NIGHT. WELL, THEY'RE STILL NOT SURE. OFFICER
7 DERRICK'S STILL NOT SURE BECAUSE THEY WAITED 4 AND A HALF MONTHS TO
8 ARREST EARNEST. AND THE ONLY THING DIFFERENT IN THAT 4 AND A HALF
9 MONTHS IS THIS DNA EVIDENCE WHICH I HARPED ON FOR 20 MINUTES. 4 AND A
10 HALF MONTHS OF WAITING, THERE'S REASONABLE DOUBT. THAT'S HESITATING
11 TO ACT RIGHT THERE.

12 ALSO HE ADMITTED THAT THERE NO SIGNS OF INJURY ON P.]
13 THAT'S BASICALLY WHAT I GOT FROM THE POLICE.

14 THOSE ARE THE BIG POINTS.

15 NEXT I'VE P.] PAGE. FIRST SHE TOLD THE POLICE 6 P.M. THE
16 DAY BEFORE. THEN SHE CHANGED HER STORY AFTER THE POLICE TOLD HER
17 WHAT EARNEST SAID. DO YOU BELIEVE THAT SHE DOESN'T KNOW HOW TO TELL
18 TIME? OR DO YOU BELIEVE THAT'S SOMETHIN' THAT THEY'RE SAYIN' NOW TO
19 EXPLAIN WHY SHE SAID IT HAPPENED AT 6 P.M. THE DAY BEFORE? BECAUSE SHE
20 KNEW HOW BAD A MISTAKE THAT WAS. NOW I KNOW MS. BRISBIN WOULDN'T
21 TELL THIS PERSON TO LIE. I KNOW THAT. BUT SHE KNEW HOW IMPORTANT IT WAS
22 THAT SHE SAID 6 P.M. THE DAY BEFORE. OBVIOUSLY IT'S IMPORTANT. THE POLICE
23 OFFICER HAD PROBLEMS WITH IT. THAT'S A BIG PROBLEM. SO RATHER THAN --
24 WELL, I DON'T KNOW. BUT WHEN I WAS QUESTIONIN' HER ABOUT TIME, SHE
25 KNEW THAT SUPPERTIME WAS ABOUT 7. SO WHAT SHE'S SAYIN' IS THAT SHE

1 BELIEVES THIS HAPPENED BEFORE SUPPERTIME THE DAY BEFORE?

2 WELL, THAT'S A BIG PROBLEM. IT'S A BIG PROBLEM.

3 AND EARNEST TOLD YOU NOTHIN' HAPPENED WITH THEM.

4 WHAT'S INTERESTING IS THEY GOT OVER THERE AROUND 10 O'CLOCK ON
5 THE 12TH. EARNEST CAME HOME 4:30, 5 O'CLOCK.

6 THEY WERE ALONE WITH P. THE PERSON WHO SUPPOSEDLY CAN'T
7 TELL TIME BEIN' THE BABYSITTER FOR THESE KIDS.

8 THEY'RE HOME ALONE FOR THOSE HOURS. THEN EARNEST LEAVES FOR
9 WORK AT 7:30 THE NEXT MORNING AND THEY'RE HOME ALONE AND THEN
10 THEY'RE ALL OVER AT EARNEST'S HOUSE FOR 8 AND A HALF HOURS. THAT'S A
11 PROBLEM.

12 WHAT WAS GOIN' ON DURING THOSE HOURS? I DON'T KNOW. AND I
13 DON'T HAVE TO KNOW.

14 IT'S NOT UP TO US TO TELL YOU. BUT THAT'S A PROBLEM YOU NEED TO
15 CONSIDER.

16 SHE TOLD YOU THAT SHE WAS NOT HAVING HER CYCLE. DR. GRANT TOLD
17 YOU SHE WAS. DR. GRANT TOLD YOU THAT SHE HAD A FEMININE NAPKIN IN HER
18 UNDERWEAR. SHE SAID SHE WAS NOT HAVIN' HER CYCLE.

19 SHE DID NOT TELL THE POLICE, NOR DID SHE TELL THE NURSE THAT
20 EARNEST PUT HIS HAND ON HER MOUTH, THREATENED HER AND HELD HER DOWN.
21 SHE TOLD YOU THAT IN COURT. SHE DIDN'T TELL THE POLICE OR THE DOCTOR OR
22 THE NURSE STAFF.

23 AND, AGAIN, NEITHER THE DOCTOR NOR THE NURSE NOR THE POLICE SAW
24 ANY SIGNS OF INJURY. AND ON THE FORM, ON THE HOSPITAL FORM IT HAS
25 COERCION. FISTS, THREATS. BUT NONE OF THAT.

1 NURSE WHYTE TOLD YOU THAT'S 'CAUSE SHE SAID NONE OF THAT
2 HAPPENED. THAT'S IMPORTANT.

3 I THOUGHT IT WAS REAL INTERESTING THAT HER SISTER SAID SHE DID
4 WAKE HER UP, BUT SHE WASN'T CRYING. SHE WASN'T CRYING. I SAID HOW
5 COULD YOU -- I SAID HOW IF YOUR SISTER WAS UPSET TRYING TO WAKE YOU UP
6 HOW COULD YOU GO BACK TO SLEEP. SHE WASN'T UPSET. SHE WASN'T CRYING.
7 THAT'S IMPORTANT. THAT'S IMPORTANT STUFF.

8 AND, AGAIN, THIS ISN'T -- NONE OF THESE THINGS ARE ME ARGUING. THIS
9 IS ALL STUFF THAT WAS SAID UNDER OATH. HER SISTER WENT BACK TO SLEEP
10 BECAUSE SHE WASN'T CONCERNED BECAUSE NOTHIN' HAD HAPPENED. HER
11 SISTER WASN'T UPSET.

12 P. YOU FROM THE STAND THAT SHE WAS HOLLERING AND
13 SCREAMING EARNEST DID THIS TO ME.

14 AND I SHOWED YOU THIS CHART, THIS DIAGRAM OF THE HOUSE. THE
15 COUCH. THE GIRLS' AND D. ROOM. SHE'S HOLLERING AND SCREAMING IN A
16 SINGLE-WIDE MOBILE HOME, AND I ASKED EARNEST TO SHOW ABOUT WHERE THE
17 COUCH WAS. THE COUCH WAS ABOUT HERE, AND THE DOOR WAS ABOUT WHERE
18 THAT IS -- PODIUM IS TO THE GIRLS' ROOM. AND THE OTHER DOOR IS A LITTLE BIT
19 BEHIND MR. WHITTLE THERE. IN A SINGLE-WIDE MOBILE HOME IF THAT GIRL'S
20 HOLLERING AND SCREAMING ONE OF THOSE CHILDREN'S GONNA HEAR IT AND
21 COME OUT AND SAY WHAT'S GOIN' ON. AND THAT DIDN'T HAPPEN. IF THERE WAS
22 HOLLERIN' AND SCREAMIN' GOIN' ON SOMEBODY'D A HEARD IT. AND THERE WAS
23 HOLLERIN' AND SCREAMIN' GOIN' ON 'CAUSE EARNEST DID NOT DO THIS AND
24 EARNEST TOLD YOU HE DIDN'T DO THIS.

25 NOW AGAIN IT'S TEMPTING TO SAY WHY WOULD SHE LIE ABOUT IT. AND IF

1 I WAS THE PROSECUTOR I'D SAY THAT 20 TIMES. AND YOU LOOK AT HER, SHE'S AN
2 ATTRACTIVE YOUNG LADY. WHY WOULD SHE LIE? THAT'S NOT MY JOB TO TELL
3 YOU WHY SHE LIED. I DON'T KNOW WHY SHE LIED. I DON'T KNOW WHY SHE LIED.
4 BUT I DIDN'T PUT THESE WORDS IN HER MOUTH. SHE SAID 'EM. AND THEY DON'T
5 ADD UP. AND IT'S A COPOUT IF THAT'S THE BEST ARGUMENT THAT CAN BE MADE:
6 WHY WOULD SHE LIE.

7 AT THE HOSPITAL, THE HOSPITAL FORM HAS THAT SHE WAS QUIET AND
8 CALM. THAT'S ON THE FORM. THAT WAS TESTIFIED TO. AGAIN, SHE WAS THE
9 BABYSITTER OF THE KIDS.

10 AND THE LAST THING I WROTE DOWN FOR HER WAS GRANNY'S NEXT
11 DOOR. EARNEST'S MOTHER-IN-LAW, HIS WIFE'S MOTHER WAS RIGHT NEXT DOOR.
12 AND SHE HELPED LOOK AFTER THE KIDS. AND THE KIDS HAD BEEN OVER THERE.
13 AND GRANNY'S BEEN OVER TO EARNEST'S HOUSE. THE KIDS KNEW WHERE SHE
14 WAS. GRANNY'S RIGHT NEXT DOOR. IF THIS HAD HAPPENED WHY WOULDN'T SHE
15 HAVE JUST RUN OUT THE DOOR AND RUN TO GRANNY'S? I DON'T KNOW. BUT
16 THAT DIDN'T HAPPEN. EARNEST DIDN'T DO THIS. HE TOLD YOU HE DIDN'T DO
17 THIS. I DON'T KNOW WHY THIS WAS ALL STARTED.

18 MY NEXT PAGE IS THE DOCTOR. WHERE DID THE SEMEN SWAB COME
19 FROM? I DON'T KNOW. THE NURSE: WHERE DID THE SEMEN SWAB COME FROM? I
20 DON'T KNOW. SLED: WHERE DID THE SEMEN SWAB COME FROM? I DON'T KNOW.
21 THAT'S IMPORTANT. ON THIS PAPERWORK IF YOU LOOK AT IT, THE SEMEN SWAB
22 IS 1.10. AGAIN, P. NO SIGNS OF INJURY; QUIET AND CALM. AND, AGAIN, I
23 GOT UNDERLINED - WELL, WRITTEN HERE: TOOK PUBIC HAIR SAMPLES.

24 NOW I'VE GOT EARNEST. EARNEST COOPERATED. HE AGREED TO GIVE HIS
25 BLOOD. HE AGREED TO GIVE HIS HAIR SAMPLES. HE TALKED TO THE POLICE TWO

1 TIMES AND DID YOU CATCH WHAT OFFICER DERRICK SAID ON THE STAND? RIGHT
2 THERE ON THAT STAND HE SAID TALKED TO 'EM A SECOND TIME AND HIS STORY
3 DIDN'T CHANGE.

4 NOW I'M JUST GOIN' OUT ON A LIMB HERE, BUT IS IT POSSIBLE THAT HIS
5 STORY DIDN'T CHANGE BECAUSE HE WAS TELLIN' THE TRUTH? EARNEST THE
6 PERSON WHO IS IN CONTROL OF NONE OF THE EVIDENCE EXCEPT FOR THE
7 CUSHIONS, HIS SHORTS AND THE BLANKET WHICH HE GAVE TO THE POLICE. HE'S
8 IN CONTROL OF HIS BLOOD, HIS PUBIC HAIR AND HIS HEAD HAIR WHICH HE GAVE
9 TO THE POLICE. AFTER THAT, IT'S ALL UP TO THE STATE. IT'S ALL UP TO WHAT
10 THEY WANNA DO WITH THE EVIDENCE. HE GAVE THEM EVERYTHING HE COULD.
11 AND IF HE HAD DONE THIS HORRIBLE THING THAT THEY SAID HE DID, WHY WOULD
12 HE VOLUNTARILY GIVE HIS BLOOD, HIS PUBIC HAIR AND HIS HEAD HAIR, THE
13 CUSHIONS TO THE SOFA, THE BLANKET AND HIS SHORT? AND THERE'S NO
14 QUESTION THAT HE VOLUNTARILY GAVE THAT STUFF.

15 NOW THE POLICE PROBABLY COULD'VE TOOK THE CUSHIONS AND THE
16 BLANKET THAT DAY WHEN THEY WERE THERE, BUT THEY DIDN'T HAVE TO. AND
17 OF ALL THAT EVIDENCE, THE ONLY THING WE EVER HEAR ABOUT AGAIN IS THE
18 BLOOD. THAT'S GOTTA BE (INAUDIBLE) HE TESTIFIED THAT HE DENIED IT, THAT
19 HE HAD NO SIMILAR RECORD, NOTHIN' LIKE THIS ON HIS RECORD. AND THEY
20 BRING UP SOME FRAUDULENT CHECKS. THAT'S THE WORST THING THEY CAN SAY
21 ABOUT HIM IS HE BOUNCED SOME CHECKS WHEN HE WAS RUNNIN' THE LOGGIN'
22 BUSINESS. AND HE'S 36 YEARS OLD AND THE WORST THING HE'S DONE IS HE'S
23 BOUNCED SOME CHECKS. AND HE TOLD YOU HE PLED GUILTY TO THAT.

24 AND THEN THE LAST THING I WRITE FOR EARNEST IS THE SIZE OF THE
25 MOBILE HOME, HOLLERIN' AND SCREAMIN'; AND HE DID TESTIFY THAT ALL THE

1 BEDROOM DOORS ARE OPEN; THERE'S NO NOISE IN THE HOUSE.

2 THE TV WAS ON BUT HE TOLD HER TO TURN THE TV OFF. I THINK HE
3 TURNED THE TV OFF THE SECOND TIME. THAT'S MY NOTES.

4 IT'S A COPOUT FOR THEM TO SAY IF SOMETHIN' HAPPENED WHY WOULD
5 SHE LIE. LOOK AT THE DNA EVIDENCE. THAT'S A COPOUT.

6 THEY'VE GOT THE BURDEN OF PROOF. THEY NEED TO DO BETTER THAN
7 THAT. THAT'S A COPOUT.

8 EARNEST IS STILL PRESUMED INNOCENT. HE SITS HERE PRESUMED
9 INNOCENT.

10 THE JUDGE SAID SOMETHIN' ABOUT CLOAK OF INNOCENCE. STRIKE THAT.
11 THE JUDGE WILL SAY SOMETHIN' ABOUT A CLOAK OF INNOCENCE.

12 HE HAS NO BURDEN OF PROOF. THEY DO. THEY'VE GOTTA PROVE IT
13 BEYOND A REASONABLE DOUBT.

14 WITH ALL THESE THINGS I'VE BROUGHT UP, THE PROBLEM WITH THE DNA
15 EVIDENCE, THERE'S NO WAY YOU CAN BE FIRMLY CONVINCED THAT HE'S GUILTY
16 ANY MORE THAN ANYBODY WOULD BE FIRMLY CONVINCED THAT THEY SHOULD
17 TAKE THIS PILL THAT I'VE DEVELOPED TO CURE THE FLU. TOO MANY PROBLEMS
18 WITH THIS CASE. THEY DIDN'T CARRY THEIR BURDEN OF PROOF. YOU'RE NOT
19 TELLIN' ANYBODY ANYTHING. THAT'S NOT YOUR JOB. YOUR JOB ISN'T TO SEND A
20 MESSAGE; YOUR JOB ISN'T TO TELL ANYBODY ANYTHING. YOUR JOB IS TO DO
21 WHAT THE JUDGE TOLD YOU, AND IT'S NOT A PLEASANT JOB. DO WHAT THE JUDGE
22 TOLD YOU. TAKE THE FACTS THAT YOU'VE HEARD, APPLY THE LAW THAT THE
23 JUDGE GIVES YOU; APPLY THE BURDEN OF PROOF. REMEMBER THE PRESUMPTION
24 OF INNOCENCE. AND THEN REACH A VERDICT. THANK YOU.

25 THE COURT: THANK YOU, MR. ANDERSON. MS. BRISBIN, YOU'RE

1 RECOGNIZED FOR YOUR CLOSING ARGUMENT.

2 MS. BRISBIN: MAY IT PLEASE THE COURT?

3 THE COURT: YES.

4 MS. BRISBIN: MR. ANDERSON.

5 LADIES AND GENTLEMEN OF THE JURY, THE JUDGE IS GONNA EXPLAIN THE
6 LAW TO YOU IN A FEW MINUTES, BUT I JUST WANT TO GO OVER IT VERY BRIEFLY
7 SO YOU'LL KNOW WHAT YOU'RE LOOKING FOR.

8 MR. PRESSLEY IS CHARGED WITH CRIMINAL SEXUAL CONDUCT WITH A
9 MINOR IN THE SECOND DEGREE. CRIMINAL SEXUAL CONDUCT IN THE SECOND
10 DEGREE INCLUDES, AMONG OTHER THINGS, SEXUAL INTERCOURSE WITH A
11 PERSON WHO IS AT LEAST 14 YEARS OF AGE BUT LESS THAN 16 YEARS OF AGE
12 WHEN THE SUSPECT IS OLDER THAN THE VICTIM. YOU HEARD TESTIMONY THAT
13 P. H. WAS 15 YEARS OLD AT THE TIME AND THAT EARNEST PRESSLEY
14 - P. H. 15 YEARS OLD AT THE TIME AND EARNEST PRESSLEY
15 WAS 35 YEARS OLD AT THE TIME. SO THERE'S NO QUESTION HE WAS OLDER AND
16 SHE WAS UNDER THE LEGAL AGE OF CONSENT. CONSENT IS NOT AN ISSUE IN THIS
17 CASE. EVEN IF SHE WANTED TO HAVE SEXUAL INTERCOURSE WITH THIS MAN, HE
18 IS GUILTY IF HE HAD SEX WITH A 15-YEAR-OLD. PERIOD. END OF STORY.

19 NOW THE NEXT QUESTION IS, OF COURSE, DID HE HAVE SEXUAL
20 INTERCOURSE WITH P. HAZLEY (SIC) AND WE'LL GET TO THAT - THE
21 EVIDENCE ON THAT IN A MINUTE. BUT FIRST OF ALL I WANT TO TALK ABOUT THE
22 CONSENT ISSUE A LITTLE BIT EVEN THOUGH IT'S NOT AN ISSUE IN THIS CASE. THE
23 EVIDENCE IS CLEAR THAT THIS WAS NOT CONSENSUAL SEX. P. TESTIFIED
24 THAT HE HELD HIS HAND OVER HER MOUTH SO THAT SHE COULDN'T SCREAM.

25 NOW MR. ANDERSON HAS SAID OH SHE SAID SHE WAS SCREAMING; WHY

1 DIDN'T ANYBODY HEAR IT. WELL, NOBODY HEARD IT BECAUSE HE WAS HOLDING
2 HIS HAND OVER HER MOUTH.

3 WHAT'S THE OTHER EVIDENCE THAT IT WAS FORCIBLE SEX? THERE WAS
4 BLEEDING IN THE VAGINA. DR. GRANT SAID HE CAN'T TELL YOU IF IT WAS
5 BLEEDING THAT STARTED BEFORE OR AFTER THE SEXUAL ASSAULT. THERE'S NO
6 WAY HE CAN KNOW THAT. P. TOLD YOU IT STARTED AFTERWARDS. SHE
7 HAD BLOOD ON HER SHORTS. YOU'LL SEE THAT IN THE HOSPITAL REPORT. THAT
8 BLOOD CAME FROM SOMEWHERE. IT WAS NOT TIME FOR HER MENSTRUAL
9 PERIOD. THAT'S ALSO DOCUMENTED IN THE MEDICAL REPORT. WE CAN'T SAY
10 FOR SURE WHY SHE HAD BLOOD IN HER VAGINA. BUT SHE TOLD YOU THAT IT
11 STARTED AFTER SHE WAS SEXUALLY ASSAULTED.

12 DR. GRANT TOLD YOU THAT SHE HAD FRESH BRUISES JUST BELOW HER
13 VAGINA. AND HE TOLD YOU HE KNEW THEY WERE FRESH BRUISES BECAUSE HE
14 COULD TELL FROM THE COLOR OF A BRUISE WHETHER IT'S FRESH OR NOT. AND
15 HE TOLD YOU THAT IN HIS OPINION FRESH BRUISES JUST BELOW THE VAGINA, HE
16 CALLED IT THE POSTERIOR FOURCHETTE. THAT MEANS THE AREA JUST BELOW
17 THE VAGINA. IN HIS MEDICAL OPINION THOSE FRESH BRUISES WERE CONSISTENT
18 WITH FORCIBLE SEXUAL ASSAULT, AND IT HAD TO HAVE BEEN RECENT.

19 YOU'VE HEARD A LOT ABOUT REASONABLE DOUBT, AND YOU'RE GONNA
20 HEAR MORE ABOUT IT FROM THE JUDGE IN A FEW MINUTES. AND THERE'S NO
21 QUESTION THAT THE STATE HAS PROVED OUR CASE BEYOND A REASONABLE
22 DOUBT. SO WHAT DOES BEYOND A REASONABLE DOUBT MEAN? THE JUDGE WILL
23 TELL YOU, AND YOU LISTEN TO HIM, BUT I BELIEVE HE WILL TELL YOU THAT IT
24 DOES NOT MEAN THAT YOU HAVE TO HAVE PROOF BEYOND ABSOLUTELY ANY
25 DOUBT WHATSOEVER IN YOUR MIND. IT SIMPLY MEANS YOU MUST BE FIRMLY

1 CONVINCED THAT EARNEST PRESSLEY IS GUILTY.

2 THE STATE OF SOUTH CAROLINA ALSO HAS A LAW THAT SAYS
3 CORROBORATION IS NOT REQUIRED WITH --CORROBORATION OF THE TESTIMONY
4 OF THE VICTIM IN A CRIMINAL SEXUAL CONDUCT CASE IS NOT REQUIRED. IN
5 OTHER WORDS, AND I BELIEVE THE JUDGE WILL TELL YOU THIS: IF YOU BELIEVE
6 THE VICTIM'S TESTIMONY, YOU DON'T HAVE TO HAVE ANY OTHER EVIDENCE IF
7 YOU ARE FIRMLY CONVINCED THAT SHE'S TELLING THE TRUTH.

8 BUT YOU HAVE A LOT OF CORROBORATING EVIDENCE IN THIS CASE. YOU
9 HAVE THE FRESH BRUISING BELOW THE VAGINA. YOU HAVE THE DOCTOR'S
10 OPINION THAT THAT IS CONSISTENT WITH A RECENT FORCIBLE SEXUAL ASSAULT.
11 YOU HAVE SEMEN FOUND IN THE VAGINA, THE VAGINAL SWABS WERE TAKEN
12 FROM INSIDE THE VAGINA. THE OTHER SWAB THAT HAD SEMEN SAID SUSPECTED
13 SEMEN, AND DR. GRANT EXPLAINED TO YOU WHERE THAT CAME FROM. HE SAID
14 WE ONLY TAKE SWABS THAT ARE LABELED SUSPECTED SEMEN FROM THE
15 EXTERNAL GENITALS.

16 SO YOU'VE GOT SWABS FROM INSIDE THE VAGINA AND YOU'VE GOT
17 SWABS FROM THE EXTERNAL GENITALIA BOTH OF WHICH HAVE SEMEN.

18 YOU HAVE BLEEDING WHICH MAY OR MAY NOT HAVE BEEN CAUSED BY
19 THE SEXUAL ASSAULT, BUT YOU HAVE P. TESTIMONY THAT IT STARTED
20 AFTER THE SEXUAL ASSAULT. THEN YOU HAVE BLOOD ON HER SHORTS AT THE
21 HOSPITAL AS WELL AS IN HER VAGINA ON EXAMINATION.

22 WE'LL GET TO THE DNA IN A LITTLE BIT.

23 BUT FIRST OF ALL, LET'S TALK ABOUT SOME OF THE OTHER EVIDENCE OR
24 SOME OF THE OTHER TESTIMONY. P. S. BOTH TESTIFIED
25 THAT EARNEST PRESSLEY INSISTED THAT P. SLEEP IN THE LIVING ROOM

1 BY HERSELF AND THAT THE OTHER CHILDREN SLEEP IN THE BEDROOMS. EARNEST
2 PRESSLEY ADMITTED TO YOU THAT P. SLEEPING ALONE IN THE
3 LIVING ROOM ON THE COUCH. SHE WAS ASLEEP WITH THE COVERS PULLED UP
4 AROUND HER AND HE CAME IN AT 2 O'CLOCK TO WAKE HER UP TO TELL HER TO
5 GO TO BED.

6 NOW WHY WOULD HE COME IN AT 2 A.M. TO WAKE HER UP TO TELL HER TO
7 GO TO BED?

8 AND WHY WOULD SHE HAVE COVERS IF SHE WASN'T TOLD THAT'S WHERE
9 SHE WAS SLEEPING? IT WAS JULY. IT CERTAINLY WASN'T COLD.

10 S. TOLD YOU THAT SHE REMEMBERS BEING AWAKENED DURING
11 THE NIGHT, BUT THAT SHE'S SUCH A SOUND SLEEPER THAT SHE JUST WENT ON
12 BACK TO SLEEP. SHE WASN'T FULLY AWAKE. SHE WAS GROGGY. SHE JUST BLEW
13 HER OFF AND WENT BACK TO SLEEP.

14 YOU ARE THE SOLE JUDGES OF THE CREDIBILITY OF THE WITNESSES.

15 AND WE DO NEED TO TALK ABOUT MOTIVE TO LIE. DO TEENAGERS
16 SOMETIMES LIE? SURE THEY DO. TEENAGERS SOMETIMES LIE FOR THE SAME
17 REASONS ADULTS SOMETIMES LIE. EITHER TO GET OUT OF TROUBLE OR TO GET
18 SOMETHING THEY WANT. SHE WASN'T IN ANY TROUBLE UNLESS YOU COUNT
19 PUTTING MAKEUP ON A 9-YEAR-OLD BOY A BIG DEAL. HE TOLD HER TO GO TO BED
20 AT MIDNIGHT. WOULD SHE BE ANGRY ENOUGH ABOUT THAT TO MAKE UP A STORY
21 LIKE THIS? SHE TOLD YOU SHE WASN'T ANGRY WITH HIM. HE WAS HER
22 GODMOTHER'S HUSBAND AND HER MOTHER'S COUSIN, AND SHE THOUGHT HE
23 WAS A NICE MAN. SHE HAD NO MOTIVE TO MAKE UP A STORY LIKE THIS.

24 WHAT DID SHE HAVE TO GAIN FROM IT? YOU SAW HER DEMEANOR ON THE
25 WITNESS STAND. TALK ABOUT CREDIBILITY? DID SHE LOOK LIKE SHE WAS

1 ENJOYING THIS? SHE TOLD YOU THAT SHE ATTEMPTED SUICIDE IN AUGUST. SHE
2 WAS ADMITTED TO AURORA THE PSYCHIATRIC UNIT AT THE HOSPITAL FOR A
3 WEEK FOR TAKING AN OVERDOSE OF PILLS. SHE TOLD YOU WHY SHE TOOK THAT
4 OVERDOSES OF PILLS. BECAUSE SHE COULDN'T COPE WITH WHAT HAD HAPPENED
5 TO HER IN JULY. SHE WAS HAVING FLASHBACKS. SHE WAS RELIVING THAT OVER
6 AND OVER IN HER HEAD.

7 NOW OFFICER DERRICK SAID THAT SHE SAID IT HAPPENED AT 6 O'CLOCK
8 P. AND HER SISTER TESTIFIED THAT P. CAN'T TELL TIME TO THIS
9 DAY. SHE HAS LEARNING DISABILITIES. SHE'S A SPECIAL ED STUDENT. SHE HAS
10 DIFFICULTY READING. SHE HAS A REAL PROBLEM WITH NUMBERS. SHE CAN
11 LOOK AT THAT CLOCK. SHE CAN'T TELL YOU WHAT TIME IT IS.

12 DO YOU THINK SHE MIGHT'VE BEEN A LITTLE CONFUSED AS WELL EVEN AS
13 A LEARNING DISABLED 15-YEAR-OLD. SHE WAS AT THE HOSPITAL. SHE'D JUST
14 BEEN RAPED. SHE'S GETTING READY TO HAVE A SEXUAL ASSAULT EXAMINATION
15 DONE WHERE THEY PULL OUT PUBIC HAIRS AND SWAB HER VAGINA AND RECTUM.
16 YOU THINK SHE MIGHT'VE BEEN A LITTLE CONFUSED WHEN HE ASKED HER WHAT
17 TIME IT HAPPENED?

18 YOU THINK MAYBE WHEN HE SAID WHEN DID YOU SAY IT HAPPENED, SHE
19 SAID 6 O'CLOCK BECAUSE THAT'S WHEN SHE TOLD EVERYBODY, 6 O'CLOCK THE
20 NEXT MORNING. AND THEN HE ASKED HER AGAIN IN THE SAME CONVERSATION
21 LATER, WAS IT DARK, AND SHE SAID YES. WAS IT NIGHT. THIS WAS NOT ANOTHER
22 CONVERSATION. THE INCIDENT REPORT THAT OFFICER DERRICK COMPLETED ON
23 THE DATE OF THE INCIDENT. IT SAYS THAT HE TALKED TO P. AT THE
24 HOSPITAL THE FIRST TIME. SHE WAS ALREADY IN ROUTE TO THE HOSPITAL WHEN
25 HE ARRIVED. INVESTIGATOR ELWEL FROM THE SHERIFF'S DEPARTMENT HAD

1 SENT HER TO THE HOSPITAL BEFORE OFFICER DERRICK ARRIVED. IT WAS NOT
2 INVESTIGATOR ELWEL'S JURISDICTION. HE DIDN'T DO ANYTHING ELSE. THAT'S
3 WHY HE'S NOT HERE.

4 AND WHY THE TIME DELAY? STEPHANIE AND P. BOTH TESTIFIED
5 THAT THEY TOLD - THAT P. EVERYBODY FIRST THING IN THE
6 MORNING AND THAT THEY CALLED THE POLICE ABOUT 10 OR 11 O'CLOCK AFTER
7 THE DEFENDANT'S WIFE GOT HOME FROM TAKING THE CHILD - FROM GOING TO
8 WORK ALL NIGHT AND THEN TAKING THE CHILD TO THE DOCTOR BECAUSE THEY
9 DIDN'T HAVE A PHONE. THEY HAD TO USE HER CELL PHONE. THEY ALSO TALKED
10 ABOUT DURING THE TRIAL WHY DIDN'T THEY CALL - SHE CALL 911 DURING THE
11 NIGHT EVEN THOUGH THE PHONE WAS DISCONNECTED. WELL, IF YOU PICKED UP
12 A PHONE AND DIDN'T HEAR A DIAL TONE WOULD YOU TRY TO CALL 911? AND
13 YOU'RE NOT A 15-YEAR-OLD WHO'S LEARNING DISABLED.

14 DO YOU THINK IT MIGHT NOT HAVE OCCURRED TO YOU TO GO NEXT DOOR
15 AT 2 O'CLOCK IN THE MORNING AFTER YOU'VE BEEN RAPED? SHE TOLD AS SOON
16 AS SHE HAD SOMEONE TO TELL WHO WAS AWAKE AND WOULD LISTEN.

17 AND AS FAR AS THE TIME DELAY, TIME DELAY IS NOT GOING TO CHANGE
18 WHOSE DNA SHOWS UP IN THAT SEMEN.

19 BUT ASIDE FROM THAT, OFFICER DERRICK EXPLAINED THE TIME DELAY.
20 THE PROCEDURE FOR AIKEN COUNTY SHERIFF'S DEPARTMENT IS THEY SEND OUT A
21 DEPUTY INITIALLY. AIKEN COUNTY SHERIFF'S OFFICE GOT THE INITIAL CALL.
22 THEY SENT A DEPUTY TO THE HOUSE. THAT PROBABLY WAS 11 OR 12 O'CLOCK. IT
23 TOOK 'EM A WHILE TO GET THERE. IT'S WAY OUT. TOOK 'EM A WHILE TO FIGURE
24 OUT - TOOK THE DEPUTY A WHILE TO FIGURE OUT HE NEEDED TO GET AN
25 INVESTIGATOR INVOLVED WHICH IS THE PROCEDURE THEY FOLLOWED WHEN

1 THERE'S A SEXUAL ASSAULT. BY THE TIME HE GOT INVESTIGATOR ELWEL
2 INVOLVED, SEVERAL HOURS HAD GONE BY. THEN ELWEL FIGURES OUT IT'S NOT
3 HIS JURISDICTION IN THE FIRST PLACE. BURNETTOWN HAS TO COME OUT, AND
4 FINALLY OFFICER DERRICK GETS THERE. BY THE TIME HE GETS THERE SHE'S
5 ALREADY GOING TO THE EMERGENCY ROOM.

6 EVEN IF YOU IGNORE THE DNA EVIDENCE, WHERE DID THE SEMEN COME
7 FROM? THERE'S NO QUESTION THERE WAS SEMEN ON THE VAGINAL SWAB AND
8 ON THE SUSPECTED SEMEN SWAB FROM THE EXTERNAL GENITALS. S.
9 AND P. BOTH TESTIFIED THEY WERE THERE AT THE PRESSLEY HOUSE
10 FROM ABOUT 10 O'CLOCK THE PREVIOUS MORNING ALL DAY LONG PLAYIN'
11 OUTSIDE WITH THE OTHER KIDS AND MR. PRESSLEY SAID HE GOT HOME ABOUT 5
12 O'CLOCK, AND HE ADMITTED THERE WAS NO OTHER MALE IN THAT HOME AFTER
13 HE GOT HOME ALL NIGHT LONG EXCEPT HIS 9-YEAR-OLD SON. YOU THINK THE
14 SEMEN CAME FROM A 9-YEAR-OLD BOY? P. TESTIFIED SHE'S NEVER HAD
15 SEX WITH ANYONE ELSE. THERE WAS BLEEDING AFTER THE SEXUAL ASSAULT.
16 THERE'S NO EVIDENCE OF ANY OTHER MALE IN THE PICTURE.

17 NOW MR. ANDERSON HAD SPENT A LOT OF TIME CROSS EXAMINING THE
18 EXPERT WITNESS FROM THE SLED LAB, AND NO DOUBT YOU DIDN'T UNDERSTAND
19 HALF OF WHAT SHE SAID. I DIDN'T. BUT YOU DON'T HAVE TO UNDERSTAND THE
20 MINUTE DETAILS OF DNA ANALYSIS. SHE TOLD YOU THAT THE SEMEN ON THE
21 VAGINAL SWABS FROM P. H. MATCHED DNA FROM EARNEST
22 PRESSLEY'S BLOOD. SHE TESTIFIED UNDER OATH SHE WORKS FOR AN
23 ACCREDITED LABORATORY THAT DOES FORENSIC DNA ANALYSIS. SHE
24 FOLLOWED EVERY PROCEDURE. SHE FOLLOWED EVERY POLICY. SHE
25 DOCUMENTED EVERYTHING. SHE EVEN DOCUMENTED THAT THE MACHINE

1 CRASHED.

2 NOW WHAT DOES IT MEAN WHEN A MACHINE CRASHES OR WHEN YOUR
3 COMPUTER CRASHES? DOES IT SPOUT OUT SOMEBODY ELSE'S DNA? THAT'S
4 IMPOSSIBLE. IT JUST SHUTS DOWN. AND YOU HAVE TO START IT UP - START
5 OVER. THAT'S WHAT SHE DID. THEY HAVE QUALITY CONTROL CHECKS. THIS IS
6 NOT THE PILL THAT MR. ANDERSON WAS TALKING ABOUT. HE'S NOT TRAINED AS
7 AN EXPERT IN PHARMACEUTICAL RESEARCH. HE DOESN'T WORK FOR AN
8 ACCREDITED PHARMACEUTICAL LABORATORY. AND I WOULDN'T TAKE THIS PILL
9 EITHER. BUT SHE WORKS FOR AN ACCREDITED LAB THAT DOES FORENSIC DNA
10 ANALYSIS. SHE FOLLOWED ALL THE PROCEDURES. THE COMPUTER PRINTOUT
11 SHOWED THAT THE DNA FROM MR. PRESSLEY'S BLOOD MATCHED THE SEMEN - I
12 THINK I SAID THAT WRONG EARLIER. MATCHED THE SEMEN FROM THE VAGINAL
13 SWABS TAKEN FROM P. H.

14 NOW DO YOU REALLY THINK THAT P. H. A 15-YEAR-OLD GIRL
15 WITH LEARNING DISABILITIES SO SEVERE SHE CAN BARELY READ AND CAN'T
16 TELL THE TIME OF DAY COULD DEVELOP A PLAN TO FRAME THIS MAN SO
17 BEAUTIFULLY? LET'S SEE NOW, I'M MAD BECAUSE HE MADE ME GO TO BED AT
18 MIDNIGHT. SO I'M GOING TO SHOW HIM. I'LL SAY - FIRST I'LL WAKE S.
19 UP AND TELL HER HE RAPED ME. AND THAT DOESN'T WORK. SO S.
20 WON'T WAKE UP. SO I'LL WAIT TILL THE NEXT MORNING; THEN I'LL TELL
21 EVERYBODY HE RAPED ME, AND THEN THEY'LL HAVE TO TAKE ME TO THE
22 HOSPITAL AND FIND SEMEN, AND I'LL JUST HOPE THAT SEMEN HAS DNA THAT
23 MATCHES EARNEST PRESSLEY. AND LO AND BEHOLD IT DOES. IS THAT
24 BELIEVABLE? THE EVIDENCE IN THIS CASE IS OVERWHELMING. JUST USE YOUR
25 GOOD COMMON SENSE. EARNEST PRESSLEY IS GUILTY.

1 THE COURT: THANK YOU, SOLICITOR.

2 ALL RIGHT. LADIES AND GENTLEMEN, AS I TOLD YOU, WE'LL TAKE A BRIEF
3 RECESS AND THEN I'LL BRING YOU OUT HERE AND GIVE YOU THE CHARGE ON THE
4 LAW. DON'T DISCUSS THE CASE.

5 (THE FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.)

6 WE'LL BE AT EASE FOR A FEW MINUTES.

7 (THERE WAS A BRIEF RECESS.)

8 BE SEATED. THANK YOU. DURING THE CHARGE, EVERYONE NEEDS TO
9 STAY STILL AND STAY QUIET. ANYONE WHO NEEDS TO LEAVE, NEEDS TO LEAVE
10 NOW. ANYONE WHO NEEDS TO BE IN, NEEDS TO BE IN NOW. ABSENT AN
11 EMERGENCY, DON'T MOVE AROUND; DON'T SAY ANYTHING; DON'T BE TALKING;
12 DON'T DO ANYTHING TO DISTRACT THE JURY. BRING THE JURY.

13 (THE FOLLOWING OCCURRED IN THE PRESENCE OF THE JURY.)

14 MEMBERS OF THE JURY, ALL THE EVIDENCE HAS BEEN PRESENTED.
15 YOU'VE HEARD THE ARGUMENTS OF COUNSEL. NOW IT'S TIME FOR ME TO
16 INSTRUCT YOU ON THE LAW THAT APPLIES TO THE CASE AND BRIEFLY GO OVER
17 THE PROCEDURES YOU WOULD USE IN ARRIVING AT YOUR VERDICT. I WANT TO
18 THANK YOU FOR THE MANNER IN WHICH YOU'VE CONDUCTED YOURSELVES AND
19 ASK YOU TO, PLEASE, CONTINUE TO PAY CLOSE ATTENTION DURING THIS NEXT
20 STAGE.

21 NOW FIRST YOU MUST UNDERSTAND THESE BASIC GROUND RULES. YOU
22 THE JURY MEMBERS ARE THE SOLE JUDGES OF THE FACTS. YOU DECIDE ALL THE
23 ISSUES OF FACT. YOU ALONE DETERMINE THE TRUTH OF THE EVIDENCE; ITS
24 EFFECT; ITS VALUE AND ITS WEIGHT. YOU ALONE JUDGE THE CREDIBILITY OF
25 WITNESSES, IN OTHER WORDS, WHETHER OR NOT A WITNESS - A WITNESS'

1 TESTIMONY IS BELIEVABLE.

2 NOW IN THAT REGARD YOU MAY BELIEVE ALL THAT A WITNESS SAID OR
3 NONE OF IT. YOU MAY BELIEVE PART OF WHAT A WITNESS SAID AND NOT BELIEVE
4 THE BALANCE. YOU MAY BELIEVE ONE WITNESS AGAINST MANY OR MANY
5 AGAINST ONE. YOU MAY CONSIDER ANY INTEREST, BIAS OR PREJUDICE THAT YOU
6 FEEL THAT A WITNESS HAS IN THE CASE. YOU MAY CONSIDER THE DEMEANOR
7 AND THE APPEARANCE OF THE WITNESS ON THE WITNESS STAND AND THE
8 OPPORTUNITY FOR KNOWLEDGE THAT THE WITNESS HAD. YOU MAY CONSIDER
9 WHETHER A WITNESS IS BEING CONSISTENT OR INCONSISTENT. YOU MAY
10 CONSIDER THE LACK OF EVIDENCE PRESENTED BY THE STATE. BUT YOU'RE NOT
11 TO EXERCISE THESE CONSIDERATIONS ARBITRARILY. WHAT I WANT YOU TO DO IS
12 USE YOUR COMMON SENSE. USE YOUR SENSE OF LOGIC AND REASON AND YOUR
13 GOOD JUDGMENT.

14 NOW DURING THE TRIAL OF THIS CASE TESTIMONY HAS BEEN PRESENTED
15 BY PERSONS DESIGNATED AS EXPERT WITNESSES. THE RULES OF EVIDENCE
16 ALLOW FOR SOMEONE BY VIRTUE OF EDUCATION, TRAINING AND EXPERIENCE TO
17 RENDER OPINIONS AS AN EXPERT WITNESS.

18 NOW YOU MAY ACCEPT OR REJECT THE OPINIONS OF AN EXPERT WITNESS
19 JUST AS YOU MAY ANY OTHER WITNESS IN WHOLE OR IN PART. I NEED TO
20 EXPLAIN TO YOU THAT IT'S NOT PROPER FOR ME TO GIVE YOU A CHARGE ON THE
21 FACTS OF THE CASE. I CAN'T DISCUSS THE FACTS WITH YOU. I'M NOT EVEN
22 PERMITTED TO CONVEY TO YOU AN IMPRESSION AS TO WHAT PERSONAL
23 OPINIONS, IF ANY, I MAY DEVELOP ABOUT THE FACTS OF THE CASE AS IT GOES
24 ALONG. SO IF DURING ANY STAGE OF THIS TRIAL YOU DEVELOP AN IMPRESSION
25 THAT I'VE GOT A PERSONAL OPINION ABOUT THE FACTS, YOU MUST REMOVE THAT

1 TOTALLY FROM YOUR MINDS. YOU'RE THE SOLE JUDGES OF THE FACTS.

2 IT'S ALSO MY JOB TO TELL YOU WHAT THE LAW IS THAT APPLIES TO THIS
3 CASE, AND UNDER YOUR OATH YOU HAVE TO ACCEPT AND APPLY THE LAW AS I
4 GIVE IT TO YOU. THAT MEANS IF YOU'VE GOT CONFLICTING IDEAS ABOUT WHAT
5 THE LAW IS OR WHAT IT SHOULD BE, YOU MUST ABANDON THOSE. I GIVE YOU THE
6 LAW; YOU APPLY IT TO THE FACTS AS YOU DETERMINE THEM TO BE, AND IN THAT
7 WAY YOU'LL REACH YOUR VERDICT. IT'S MY JOB TO DECIDE WHAT EVIDENCE IS
8 ADMISSIBLE. IF I'VE RULED SOMETHING INADMISSIBLE OR TOLD YOU TO
9 DISREGARD SOMETHING, YOU'RE NOT TO CONSIDER THOSE THINGS IN ARRIVING
10 AT YOUR VERDICT. YOU'RE TO BASE YOUR VERDICT ON THE COMPETENT
11 EVIDENCE BEFORE. YOU'RE TO CONSIDER THE TESTIMONY OF THE WITNESSES;
12 ANY STIPULATIONS OF COUNSEL AND ANY EXHIBITS ADMITTED IN THE TRIAL.

13 NOW I NEED TO REMIND YOU AT THIS POINT THAT WITH REGARD TO ANY
14 ALLEGED PRIOR CRIMINAL RECORD OF THIS DEFENDANT THAT THE EVIDENCE
15 WAS ADMITTED FOR A LIMITED PURPOSE, AND I REMIND YOU THAT YOU CANNOT
16 CONSIDER THAT EVIDENCE FOR ANY PURPOSE EXCEPT THE LIMITED PURPOSE FOR
17 WHICH IT WAS ADMITTED. THAT EVIDENCE WAS ADMITTED INTO THE RECORD OF
18 THIS CASE AND MAY BE CONSIDERED BY YOU IF YOU DEEM IT TRUE ONLY FOR THE
19 PURPOSE OF EVALUATING THE CREDIBILITY OR THE BELIEVABILITY OF THE
20 TESTIMONY PRESENTED BY THE DEFENDANT AND FOR NO OTHER PURPOSE. YOU
21 CANNOT AND YOU MUST NOT CONSIDER A PRIOR CRIMINAL RECORD AS ANY
22 EVIDENCE OF GUILT ON THE CHARGE FOR WHICH THE DEFENDANT IS NOW BEING
23 TRIED. IF YOU DETERMINE TO CONSIDER THIS EVIDENCE ON THE ISSUE OF HIS
24 CREDIBILITY, YOU MAY GIVE IT SUCH WEIGHT AS YOU DETERMINE IT SHOULD
25 RECEIVE, BUT ONLY ON THE ISSUE OF CREDIBILITY.

1 I ALSO NEED TO EXPLAIN TO YOU THAT THERE ARE TWO TYPES OF
2 EVIDENCE THAT ARE GENERALLY PRESENTED DURING A TRIAL: DIRECT
3 EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

4 NOW DIRECT EVIDENCE IS EVIDENCE OF DIRECT PERCEPTION INCLUDING
5 THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL
6 KNOWLEDGE OF A FACT SUCH AS AN EYEWITNESS.

7 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN. IT'S PROOF OF A
8 CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF SOME
9 FACT IN ISSUE.

10 THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR
11 THE VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE; NOR
12 IS A GREATER DEGREE OF PROOF REQUIRED OF CIRCUMSTANTIAL EVIDENCE
13 THAN OF DIRECT EVIDENCE.

14 WHAT YOU NEED TO DO IS TO WEIGH ALL THE EVIDENCE IN THE CASE, AND
15 AFTER WEIGHING ALL THE EVIDENCE IF YOU'RE NOT CONVINCED OF THE GUILT
16 OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND HIM NOT
17 GUILTY.

18 THE DEFENDANT IN THIS CASE MR. PRESSLEY IS PRESUMED TO BE
19 INNOCENT. THIS IS NO MERE LEGAL THEORY. IT IS A FUNDAMENTAL AND
20 SUBSTANTIAL RIGHT TO WHICH EVERYONE IS ENTITLED. IT'S BEEN DESCRIBED AS
21 BEING LIKE A ROBE OF RIGHTEOUSNESS THAT'S PLACED AROUND AN ACCUSED
22 AND REMAINS WITH HIM THROUGH EVERY STAGE OF THE TRIAL. IT CONTINUES TO
23 EXIST AFTER YOU GO BACK TO YOUR JURY ROOM TO DELIBERATE SO THAT HE IS
24 PROTECTED. HE IS PRESUMED TO BE INNOCENT UNLESS AND UNTIL YOU THE JURY
25 DETERMINE THAT THE STATE HAS PROVEN HIM GUILTY BEYOND A REASONABLE

1 DOUBT. A DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE; HE'S NOT
2 REQUIRED TO PROVE ANYTHING AT ALL. THE BURDEN'S ON THE STATE TO PROVE
3 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, AND IT'S
4 REQUIRED THAT EVERY ESSENTIAL ELEMENT OF AN OFFENSE BE PROVEN BY THE
5 STATE BEYOND A REASONABLE DOUBT.

6 NOW THAT DOESN'T MEAN THAT THE STATE HAS TO PROVE THE GUILT OF
7 THE DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT. THE
8 APPROPRIATE STANDARD IS PROOF BEYOND A REASONABLE DOUBT.

9 SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL COURT, AND IF YOU
10 HAVE, YOU KNOW THAT THE BURDEN OF PROOF IN CIVIL COURT REQUIRES THAT
11 THE PARTY WITH THE BURDEN HAS TO ESTABLISH THAT SOMETHING IS MORE
12 LIKELY THAN NOT, THAT IT'S PROBABLE. WE CALL THAT THE GREATER WEIGHT
13 OR PREPONDERANCE OF THE EVIDENCE, BUT IN A CRIMINAL COURT SETTING LIKE
14 WE'RE IN TODAY, THE STANDARD IS MUCH HIGHER AND THE PROOF MUST BE
15 MUCH STRONGER THAN WHAT WE REQUIRE IN CIVIL COURT. THE BURDEN OF
16 PROOF IN A CRIMINAL CASE AS I'VE TOLD YOU REPEATEDLY IS PROOF BEYOND A
17 REASONABLE DOUBT.

18 SO WHAT DO WE MEAN BY THAT? PROOF BEYOND A REASONABLE DOUBT
19 IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.
20 THERE ARE A FEW THINGS IN THE WORLD THAT WE KNOW WITH ABSOLUTE
21 CERTAINTY. AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT
22 OVERCOMES EVERY POSSIBLE DOUBT. IF BASED ON YOUR CONSIDERATION OF
23 THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF
24 THE CRIME CHARGED, THEN YOU MUST FIND HIM GUILTY OF THAT CRIME. IF, ON
25 THE OTHER HAND, YOU THINK THAT THERE IS A REAL POSSIBILITY THAT HE IS NOT

1 GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT
2 GUILTY.

3 NOW THERE IS NO OBLIGATION ON THE PART OF MR. PRESSLEY TO RAISE
4 ANY DOUBT OR ANY OTHER POSSIBILITY. HE'S PRESUMED TO BE INNOCENT, AND
5 THE STATE HAS THE ENTIRE BURDEN OF PROOF AND HAS TO PROVE TO YOU THAT
6 THE DEFENDANT IS GUILTY OF THE OFFENSE CHARGED TO THE EXCLUSION OF ANY
7 OTHER REAL POSSIBILITY.

8 I ALSO HAVE TO EXPLAIN TO YOU, LADIES AND GENTLEMEN, THAT WITH
9 REGARD TO ANY ALLEGED STATEMENTS MADE TO POLICE OFFICERS BY THE
10 DEFENDANT THAT BEFORE YOU MAY CONSIDER THOSE STATEMENTS IN ANY WAY
11 AGAINST THE DEFENDANT, CERTAIN ISSUES HAVE TO BE EVALUATED BY YOU. IN
12 ORDER FOR YOU TO CONSIDER A STATEMENT AS HAVING BEEN MADE BY THIS
13 DEFENDANT WHILE IN POLICE CUSTODY OR AFTER HIS FREEDOM OF LIBERTY HAS
14 BEEN DEPRIVED IN ANY SUBSTANTIAL WAY BY A POLICE OFFICER YOU MUST
15 DETERMINE THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT 4
16 ESSENTIAL THINGS.

17 FIRST YOU HAVE TO BE SATISFIED THAT THE STATE HAS PROVEN BEYOND
18 A REASONABLE DOUBT THAT THE DEFENDANT MADE THE STATEMENT IN
19 QUESTION. IF HE DID NOT, THEN, OBVIOUSLY, YOU DISREGARD IT AND YOU GO NO
20 FURTHER IN THIS INQUIRY ABOUT THE STATEMENT.

21 THE SECOND NECESSARY THING THAT THE STATE HAS TO PROVE IS THAT
22 THE DEFENDANT WAS PROPERLY WARNED OF HIS CONSTITUTIONAL RIGHTS PRIOR
23 TO QUESTIONING AND GIVING OF THE STATEMENT. WHEN AN INDIVIDUAL IS
24 TAKEN INTO CUSTODY OR OTHERWISE DEPRIVED OF HIS FREEDOM OF ACTION IN
25 ANY SIGNIFICANT WAY BY A POLICE OR LAW ENFORCEMENT OFFICER, HE MUST

1 BE WARNED OF HIS CONSTITUTIONAL RIGHTS BEFORE ANY CUSTODIAL
2 INTERROGATION OR CUSTODIAL QUESTION. AND THESE RIGHTS ARE THAT HE HAS
3 THE RIGHT TO REMAIN SILENT, THAT ANY STATEMENT THAT HE DOES MAKE CAN
4 AND WILL BE USED AGAINST HIM IN A COURT OF LAW, THAT HE HAS THE RIGHT TO
5 SELECT AN ATTORNEY OF HIS CHOICE, BUT IF HE DOES NOT HAVE THE MONEY OR
6 RESOURCES TO EMPLOY A LAWYER, THAT THE COURT WILL APPOINT A LAWYER
7 FOR HIM TO REPRESENT HIM WITH EXPENSE OR COST IF HE SO DESIRES. THAT HE
8 HAS THE RIGHT TO CONSULT WITH AN ATTORNEY BEFORE ANSWERING ANY
9 QUESTIONS OR MAKING ANY STATEMENTS, AND THAT HE HAS A RIGHT TO HAVE A
10 LAWYER PRESENT WITH HIM AT ALL TIMES DURING ALL INTERVIEWS AND ALL
11 INTERROGATIONS AND THAT HE MAY STOP ANSWERING QUESTIONS AT ANY TIME
12 OR ASK FOR AN ATTORNEY AT ANY TIME.

13 NOW IF YOU SHOULD DECIDE THAT THESE CONSTITUTIONAL WARNINGS
14 WERE NOT GIVEN TO THE DEFENDANT PRIOR TO INTERROGATION BY THE POLICE
15 AND THE TAKING OF THE STATEMENT THAT'S ALLEGED OR THAT THE DEFENDANT
16 WAS NOT AFFORDED THE OPPORTUNITY TO EXERCISE THOSE RIGHTS, THEN YOU
17 SHOULD COMPLETELY DISREGARD THE STATEMENT AND YOU CANNOT CONSIDER
18 THE STATEMENT AS EVIDENCE IN ANY MANNER WHATSOEVER AGAINST THE
19 DEFENDANT. IF YOU FIND, HOWEVER, THAT THE DEFENDANT DID MAKE A
20 STATEMENT, AND IF YOU'RE CONVINCED THAT THESE CONSTITUTIONAL
21 WARNINGS WHICH ARE TYPICALLY CALLED MIRANDA WARNINGS WERE, IN FACT,
22 GIVEN TO THE DEFENDANT AND THAT HE WAS AFFORDED AN OPPORTUNITY TO
23 EXERCISE THOSE CONSTITUTIONAL RIGHTS, YOU MUST THEN CONSIDER THE THIRD
24 REQUIREMENT, AND THAT IS THAT THE DEFENDANT MUST KNOWINGLY AND
25 INTELLIGENTLY HAVE WAIVED HIS CONSTITUTIONAL RIGHTS. THE STATE HAS TO

1 PROVE TO YOU BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
2 KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHTS IN ORDER FOR YOU TO
3 CONSIDER ANY STATEMENTS RESULTING FROM THE QUESTIONING. AND THE
4 FINAL REQUIREMENT IS THAT THE STATEMENT IN QUESTION MUST'VE BEEN GIVEN
5 VOLUNTARILY BY THE DEFENDANT. THE STATE HAS TO PROVE BEYOND A
6 REASONABLE DOUBT THAT THE STATEMENT WAS THE EXPRESSION OF THE
7 DEFENDANT'S OWN FREE WILL AND THAT HE WAS NOT IMPROPERLY INFLUENCED
8 OR INDUCED BY COMPULSION, DURESS, FEAR, FORCE OR BY A PROMISE OF
9 REWARD, HOPE OF REWARD, PROMISE OF LENIENCY, THINGS OF THAT NATURE. IF
10 THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE
11 STATEMENT WAS GIVEN FREELY AND VOLUNTARILY, THEN YOU MAY NOT
12 CONSIDER IT.

13 NOW WITH REGARD TO ANY ALLEGED STATEMENT GIVEN BY THIS
14 DEFENDANT GIVEN IN POLICE CUSTODY AFTER HIS FREEDOM OF LIBERTY HAS
15 BEEN DEPRIVED IN ANY SIGNIFICANT WAY BY THE POLICE, I INSTRUCT YOU THAT
16 THE STATE HAS TO PROVE EVERY ESSENTIAL ELEMENT THAT I'VE JUST GONE
17 OVER WITH YOU, AND THAT PROOF MUST BE BEYOND A REASONABLE DOUBT
18 BEFORE YOU MAY CONSIDER THE ALLEGED STATEMENT AS EVIDENCE IN THE
19 CASE IN ANY WAY AGAINST THE DEFENDANT.

20 ALL RIGHT. LET'S TURN TO THE SPECIFIC CHARGE THAT'S MADE AGAINST
21 MR. PRESSLEY. MR. PRESSLEY IS CHARGED IN THIS INDICTMENT WITH CRIMINAL
22 SEXUAL CONDUCT WITH A MINOR IN THE SECOND DEGREE. THE INDICTMENT
23 ALLEGES THAT ON OR ABOUT JULY THE 12TH 2001 EARNEST PRESSLEY DID IN AIKEN
24 COUNTY COMMIT THE CRIME OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN
25 THE SECOND DEGREE IN THAT HE COMMITTED A SEXUAL BATTERY, SPECIFICALLY,

1 SEXUAL INTERCOURSE UPON P. A. H. A MINOR WHO WAS 15 YEARS OF
2 AGE AT THE TIME OF THE INCIDENT, AND THAT THE DEFENDANT WAS OLDER THAN
3 MS. PRESSLEY (SIC). THIS IS ALLEGED TO BE IN VIOLATION OF A CODE SECTION
4 CITED IN THE INDICTMENT. I CAUTION YOU AGAIN AS I DID AT THE OUTSET OF THE
5 TRIAL THAT AN INDICTMENT IS NOT EVIDENCE. IT HAS NO EVIDENTIARY VALUE.

6 SO I NEED TO EXPLAIN TO YOU THIS LAW RELATED TO CRIMINAL SEXUAL
7 CONDUCT WITH A MINOR IN THE SECOND DEGREE. A PERSON IS GUILTY OF
8 CRIMINAL SEXUAL CONDUCT IN THE SECOND DEGREE IF HE ENGAGES IN SEXUAL
9 BATTERY WITH A VICTIM WHO IS AT LEAST 14 YEARS OF AGE BUT LESS THAN 16
10 YEARS OF AGE AND THE ACTOR IS OLDER THAN THE VICTIM. OKAY? SEXUAL
11 BATTERY OF A VICTIM AT LEAST 14 YEARS OF AGE BUT LESS THAN 16 YEARS OF
12 AGE AND THE ACTOR IS OLDER THAN THE VICTIM.

13 SO IN ORDER FOR THE STATE TO PROVE THE DEFENDANT GUILTY OF THIS
14 OFFENSE, THE STATE HAS TO PROVE TO YOU BEYOND A REASONABLE DOUBT THE
15 FOLLOWING ELEMENTS: FIRST, THAT THE INCIDENT IN QUESTION OCCURRED IN
16 AIKEN COUNTY, SOUTH CAROLINA ON OR ABOUT THE DATE ALLEGED IN THE
17 INDICTMENT. SECOND, THAT THE DEFENDANT ENGAGED IN SEXUAL BATTERY
18 WITH P. H.

19 NOW THIS TERM SEXUAL BATTERY IS A DEFINED TERM. IT'S DEFINED IN
20 THE STATUTE. AND IT INCLUDES SEXUAL INTERCOURSE OR ANY INTRUSION
21 HOWEVER SLIGHT OF ANY PART OF A PERSON'S BODY INTO THE GENITAL
22 OPENINGS OF ANOTHER PERSON'S BODY EXCEPT WHEN SUCH INTRUSION IS
23 ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC
24 PURPOSES.

25 THE THIRD ESSENTIAL THING THE STATE HAS TO PROVE IS P.

1 A. H.] WAS AT LEAST 14 YEARS OF AGE BUT LESS THAN 16 YEARS OF AGE AT
2 THE TIME OF THE INCIDENT.

3 AND FINALLY THE STATE HAS TO PROVE TO YOU THAT EARNEST PRESSLEY
4 WAS OLDER THAN P.] A. H.] AT THE TIME.

5 NOW, LADIES AND GENTLEMEN, THE LAW PROVIDES THAT THE TESTIMONY
6 OF A VICTIM IN A CASE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR DOES NOT
7 REQUIRE CORROBORATION, AND A JURY MAY CONVICT SOMEONE OF CRIMINAL
8 SEXUAL CONDUCT BASED ONLY ON THE TESTIMONY OF A VICTIM IF THAT
9 TESTIMONY PROVES ALL THE ESSENTIAL ELEMENTS OF THE OFFENSE BEYOND A
10 REASONABLE DOUBT.

11 NOW WHAT I MEAN BY THE TERM CORROBORATING EVIDENCE IS
12 EVIDENCE THAT SUPPORTS THE TESTIMONY OF THE PURPORTED VICTIM. IT'S UP
13 TO YOU TO REVIEW ALL THE EVIDENCE IN THE CASE AND GIVE IT SUCH WEIGHT, IF
14 ANY, THAT YOU DECIDE IT SHOULD RECEIVE.

15 AND FINALLY, LADIES AND GENTLEMEN, I NEED TO EXPLAIN TO YOU THAT
16 THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT ARISING IN THE
17 WHOLE CASE OR ARISING IN ANY DEFENSES ASSERTED. IF UPON ANY ISSUE OF
18 FACT ESSENTIAL TO A CONVICTION YOU HAVE A REASONABLE DOUBT AS TO HOW
19 THAT ISSUE SHOULD BE RESOLVED, YOU MUST RESOLVE THAT DOUBT IN FAVOR
20 OR THE DEFENDANT. IF UPON REVIEWING THE WHOLE CASE YOU HAVE A
21 REASONABLE DOUBT AS TO WHETHER THE STATE HAS PROVEN THE DEFENDANT
22 GUILTY, THEN MR. PRESSLEY IS ENTITLED TO THAT DOUBT AND A VERDICT OF NOT
23 GUILTY. ON THE OTHER HAND, IF UPON REVIEWING THE WHOLE CASE YOU FIND
24 THAT THE STATE HAS PROVEN ALL THE ESSENTIAL ELEMENTS OF THE CRIME
25 CHARGED AGAINST THIS DEFENDANT BEYOND A REASONABLE DOUBT, IT'S

1 EQUALLY YOUR DUTY TO FIND HIM GUILTY. THAT'S THE LAW.

2 NOW, LADIES AND GENTLEMEN, WHEN YOU GO BACK TO YOUR JURY ROOM
3 TO DECIDE THIS CASE YOU'RE GOING TO HAVE WITH YOU THE EXHIBITS THAT
4 HAVE BEEN ADMITTED IN THE TRIAL AND YOU'RE GOING TO HAVE THE
5 INDICTMENT.

6 NOW ON ONE SIDE OF THE INDICTMENT IS THE CHARGE THAT I'VE READ TO
7 YOU NOW TWICE, AND ON THE OTHER SIDE WHICH I CALL THE BACK OF THE
8 INDICTMENT, YOU WILL SEE THAT THERE IS A SECTION WHERE THERE'S A BOLD
9 PRINT FOR VERDICT. THAT'S WHERE YOU TELL US YOUR DECISION UNDERNEATH
10 THAT SECTION OR IN THAT SECTION.

11 YOU HAVE TWO POSSIBLE FORMS OF VERDICT IN THIS CASE. I'M NOT
12 TRYING TO SUGGEST ANYTHING TO YOU BY THE ORDER IN WHICH I STATE THESE. I
13 HAVE TO SAY ONE FIRST AND ONE SECOND. THE FIRST POSSIBLE FORM OF
14 VERDICT IS THAT YOU MAY FIND THE DEFENDANT NOT GUILTY. THE SECOND
15 POSSIBLE FORM OF VERDICT IS THAT YOU MAY FIND THE DEFENDANT GUILTY. MR.
16 FOREMAN, PART OF YOUR JOB IS TO RECORD THE VERDICT FOR ME. JUST FIND
17 THIS SECTION DOWN HERE AND THE THREE LINES YOU JUST WRITE THE DECISION
18 OF THE JURY WHETHER IT'S NOT GUILTY OR GUILTY. WRITE THE DECISION OF THE
19 JURY IN THAT SPACE. AND THEN THE BOTTOM LINE YOU WILL SEE IS FOR YOUR
20 SIGNATURE AND BELOW THAT A PLACE TO DATE IT. SO WHATEVER THE JURY
21 DECIDES, SIGN IT AND DATE IT.

22 NOW, LADIES AND GENTLEMEN, HOW YOU GO ABOUT YOUR
23 DELIBERATIONS AND TAKING YOUR VOTES IS ALL IN YOUR DISCRETION SUBJECT
24 TO THIS REQUIREMENT: YOUR VERDICT HAS TO BE UNANIMOUS. ALL 12 OF YOU
25 MUST AGREE IN ORDER FOR THE FOREMAN TO RECORD YOUR VERDICT. YOU

1 CANNOT DO ANYTHING TO CHANGE THE REQUIREMENT THAT YOUR VERDICT BE
2 UNANIMOUS, AND WHEN YOU COME BACK INTO THE COURTROOM AND YOUR
3 VERDICT IS PUBLISHED OR PRESENTED, YOU CAN BE ASKED INDIVIDUALLY ABOUT
4 WHETHER THAT WAS YOUR VERDICT AND WHETHER IT IS STILL YOUR VERDICT.
5 SO DO NOT CHANGE IN ANY WAY THE REQUIREMENT OF UNANIMITY. ALL 12 OF
6 YOU HAVE TO AGREE. WHEN YOU'VE REACHED YOUR VERDICT, KNOCK ON THE
7 DOOR. THE BAILIFF WILL RESPOND TO YOUR KNOCK. THEY ALSO HAVE A
8 LIGHTING SYSTEM HERE IN AIKEN THAT THEY WILL EXPLAIN TO YOU, BUT I TELL
9 YOU TO KNOCK ON THE DOOR IN CASE ONE OF THE LIGHT BULBS BURNS OUT.

10 NOW, FOLKS, I'VE TOLD YOU OVER AND AGAIN NOT TO DISCUSS THE CASE
11 UNTIL I TELL YOU TO. WELL, BELIEVE IT OR NOT IT'S NOT QUITE TIME.

12 THE LAW SAYS THAT I HAVE TO LET THE ATTORNEYS POINT OUT TO ME
13 ANYTHING THAT I MAY HAVE TOLD YOU WRONG. THAT'S JUST COMMON SENSE.
14 WE DON'T WANT YOU BACK THERE DELIBERATING WITH THE WRONG LAW. SO IF
15 I'VE SAID SOMETHING WRONG, I GIVE THEM A CHANCE TO POINT IT OUT TO ME. IF
16 I AGREE WITH THEM, I BRING YOU BACK OUT HERE AND I CLARIFY. IF I'M
17 SATISFIED WITH WHAT I'VE TOLD YOU, THEN WHAT I WILL DO IS I WILL SEND INTO
18 THE JURY ROOM THE VERDICT FORM, THE INDICTMENT IN THIS CASE, THE
19 EXHIBITS AND THE TWO ALTERNATES WILL BE BROUGHT OUT. THAT'S THE SIGNAL
20 THAT YOU'RE LOOKING FOR. WHEN THESE DOCUMENTS THESE EXHIBITS COME
21 INTO THE JURY ROOM WITH YOU, THE TWO ALTERNATES ARE BROUGHT OUT AND
22 THE DOOR IS CLOSED, YOU START TALKING ABOUT THE CASE. YOU DON'T NEED
23 TO WAIT ANY LONGER. BUT DON'T TALK ABOUT THE CASE UNTIL THAT HAPPENS.
24 THANK YOU VERY MUCH FOR YOUR ATTENTION. YOU MAY RETIRE TO YOUR JURY
25 ROOM. THE TWO ALTERNATES NEED TO GO IN AT THIS POINT.

1 (THE JURY RETIRED TO THE JURY ROOM AT 11:09 A.M.) (THE FOLLOWING
2 OCCURRED IN THE ABSENCE OF THE JURY.) ALL RIGHT. PLEASE, STATE FOR THE
3 RECORD ANY EXCEPTIONS, ADDITIONS OR OBJECTIONS TO THE CHARGE. FROM
4 THE STATE?

5 MS. BRISBIN: YES, YOUR HONOR. I'M SORRY I DIDN'T NOTICE THIS
6 YESTERDAY. ON PAGE 9 UNDER RECAP OF INDICTMENT, IT IS THE SAME THING I'VE
7 BEEN DOING THROUGHOUT THE THING. YOU CALLED HER MS. PRESSLEY.

8 THE COURT: OKAY. IS IT WRITTEN PRESSLEY OR I SAID PRESSLEY?

9 MS. BRISBIN: BOTH.

10 THE COURT: OKAY. I SEE IT NOW. MY PAGES ARE DIFFERENT THAN
11 YOURS. I SEE. OKAY. FROM THE DEFENSE?

12 MR. ANDERSON: JUDGE, I KNOW YOU'VE ALREADY RULED. I JUST THINK I
13 NEED TO ASK ON THE RECORD. WOULD YOU DO THE HESITATE TO ACT AND THEN
14 THE LENGTHY CIRCUMSTANTIAL EVIDENCE LANGUAGE FROM--

15 THE COURT: FROM IRVIN'S CHARGE BOOK.

16 MR. ANDERSON: YES, SIR.

17 THE COURT: BRING THE JURY BACK IN, PLEASE. (THE JURY RETURNED TO
18 THE OPEN COURTROOM AT 11:11 A.M.) (THE FOLLOWING OCCURRED IN THE
19 PRESENCE OF THE JURY.) OKAY. LADIES AND GENTLEMEN, APPARENTLY WHEN I
20 WAS READING TO YOU WHAT I CALL THE RECAP OF THE INDICTMENT, I WAS
21 READING TO YOU THAT THE INDICTMENT ALLEGES THAT MR. PRESSLEY WAS
22 OLDER THAN MS. H. BUT I SAID MS. PRESSLEY. OKAY? I SAID P. -- OR
23 ACTUALLY I SAID MS. PRESSLEY. I DIDN'T SAY HER FIRST NAME. I SHOULDA SAID
24 MS. H. OKAY? I DON'T KNOW IF ANY OF YOU CAUGHT THAT WHEN I SAID IT
25 OR NOT, BUT IN ANY EVENT THE INDICTMENT, YOU WILL HAVE THE INDICTMENT.

1 IT ALLEGES P. A. H. OKAY? I'M GONNA SEND YOU BACK INTO THE
2 JURY ROOM, AND JUST A FEW MINUTES WE'LL SEND THE PAPERS IN AND BRING
3 THE ALTERNATE BACK. THANK YOU. (THE JURY RETIRED TO THE JURY ROOM AT
4 11:13 A.M.) (FOLLOWING OCCURRED IN THE ABSENCE OF THE JURY.) ALL RIGHT.
5 THE MOTIONS BY THE DEFENSE ARE NOTED AND DENIED. IS THERE OTHER - ARE
6 THERE ANY OTHER EXCEPTIONS, ADDITIONS, OBJECTIONS TO THE CHARGE? FROM
7 THE STATE?

8 MS. BRISBIN: NO, YOUR HONOR.

9 THE COURT: DEFENSE?

10 MR. ANDERSON: NO THANK YOU, JUDGE.

11 THE COURT: ALL RIGHT. WELL, REGARDLESS OF THE OUTCOME OF THE
12 CASE, IT'S OBVIOUS THAT BOTH SIDE HAVE DONE A LOT OF WORK. YOU DID AN
13 EXCELLENT JOB OF REPRESENTING YOUR RESPECTIVE POSITIONS AND I
14 APPRECIATE THE WAY THAT ALL OF YOU, NOT JUST THE ATTORNEYS, BUT
15 EVERYBODY HAS SHOWN RESPECT FOR THE COURT. IT'S BEEN A PLEASURE BEING
16 WITH YOU FOLKS IN WHAT IS OBVIOUSLY THE TYPE OF CASE THAT'S PROBABLY
17 THE MOST EMOTIONAL TYPE OF CASE THAT WE DEAL WITH. I THINK THEY'RE FAR
18 MORE EMOTIONAL THAN MURDER CASES. SO I THANK YOU FOR THE WAY YOU'VE
19 CONDUCTED YOURSELVES. WE'LL PUT IT IN THE HANDS OF THE JURY AND SEE
20 WHAT THEY DECIDE. CHECK THE EXHIBITS, PLEASE, AND WHEN YOU'RE
21 SATISFIED, LET THE BAILIFF KNOW. BAILIFF, WHEN THEY GIVE YOU THOSE PAPERS
22 AND DOCUMENTS, TAKE 'EM IN THERE AND BRING THE ALTERNATES OUT.

23 (THE ALTERNATES WERE DISMISSED BY THE COURT.) (THE FOLLOWING
24 OCCURRED SOMETIME LATER.) ALL RIGHT. LADIES AND GENTLEMEN, I'VE BEEN
25 INFORMED THE JURY HAS A VERDICT. I HAVE NO WAY OF KNOWING WHAT THE

1 JURY'S DECIDED. I SAY THIS IN EVERY CASE. PLEASE, DO NOT SHOW ANY SIGNS
2 OF APPROVAL OR DISAPPROVAL WITH THE VERDICT. STAY STILL; STAY QUIET.
3 DON'T SHAKE YOUR HEAD IN AGREEMENT OR DISAGREEMENT. IF YOU DON'T
4 FEEL YOU CAN CONTROL YOUR EMOTIONS, YOU NEED TO LEAVE NOW. STAY
5 STILL; STAY QUIET, AND OBVIOUSLY THE DEFENDANT'S GOTTA STAY IN THE
6 COURTROOM. BRING THE JURY. (THE JURY RETURNED TO THE OPEN COURTROOM
7 AT 11:59 TO RENDER ITS VERDICT.) JUST HAVE A SEAT. ALL RIGHT. MADAM
8 CLERK.

9 THE CLERK: MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, HAVE
10 YOU REACHED A UNANIMOUS VERDICT?

11 THE FOREMAN: WE HAVE.

12 THE CLERK: PASS IT FORWARD BY THE BAILIFF, PLEASE.

13 THE COURT: ALL RIGHT. MADAM CLERK, PUBLISH THE VERDICT, PLEASE.

14 THE CLERK: YOUR HONOR, WE HAVE CASE 2002-GS-02-340 STATE OF SOUTH
15 CAROLINA -VS- EARNEST PRESSLEY INDICTMENT FOR CRIMINAL SEXUAL
16 CONDUCT WITH A MINOR IN THE SECOND DEGREE. THE VERDICT OF THE PETIT
17 JURY: GUILTY. SIGNED BY THE FOREPERSON, JOSEPH BENDS, DECEMBER 13TH 2002.
18 MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, IF THIS IS YOUR VERDICT,
19 PLEASE, INDICATE SO BY THE RAISING OF YOUR RIGHT HAND. ALL HANDS ARE
20 RAISED, YOUR HONOR.

21 THE COURT: THANK YOU. ARE THERE ANY MATTERS TO TAKE UP PRIOR TO
22 THE JURY BEING DISCHARGED FROM THE STATE?

23 MS. BRISBIN: NO, YOUR HONOR.

24 THE COURT: DEFENSE?

25 MR. ANDERSON: NO THANK YOU, JUDGE.

1 THE COURT: THANK YOU VERY MUCH. LADIES AND GENTLEMEN, THAT'S
2 GOING TO CONCLUDE YOUR JURY SERVICE. THERE ARE SOME LEGAL MATTERS
3 THAT I HAVE TO ADDRESS OUTSIDE YOUR PRESENCE BRIEFLY. IF YOU WANNA
4 COME BACK IN WHEN I SENTENCE MR. PRESSLEY YOU'RE WELCOME TO DO SO.
5 BUT YOU NEED TO GO INTO THE JURY ROOM. THE CLERK WILL MEET YOU BACK
6 THERE AND GIVE YOU THE CHECKS AND THE SLIPS AND I'LL BRING YOU BACK OUT
7 HERE IF YOU WANNA COME OUT HERE TO SEE THE SENTENCE. OKAY? THANK
8 YOU. (THE JURY WAS DISMISSED.) YOU HAVE THE SENTENCE SHEET? ONE
9 HOUSEKEEPING MATTER. THE DRAWING ON A LARGE BOARD WAS ENTERED INTO
10 EVIDENCE AND I INDICATED AT THE TIME IT WAS ENTERED A SMALLER COPY OF
11 THAT NEEDED TO BE PROVIDED AND MAINTAINED IN THE RECORD. THAT'S BEEN
12 PROVIDED TO ME. BOTH SIDES ARE IN AGREEMENT, EXHIBIT ONE FOR THE
13 DEFENSE?

14 MR. ANDERSON: YES, SIR, JUDGE.

15 THE COURT: STATE AGREE TO THAT?

16 MS. BRISBIN: YES, YOUR HONOR.

17 THE COURT: THIS WILL BE SUBSTITUTED AND WE'LL GIVE THIS BOARD
18 BACK TO MR. ANDERSON, PLEASE. MOTIONS.

19 MR. ANDERSON: JUDGE, I DON'T WANT TO LEAVE ONE OUT. COULD I HAVE
20 A COUPLE MINUTES?

21 THE COURT: SURE.

22 MR. ANDERSON: RIGHT BEFORE SENTENCING MAYBE.

23 THE COURT: YOU CAN HAVE A COUPLE MINUTES WHILE SHE'S PREPARING
24 THE VERDICT FORM AND—

25 MR. ANDERSON: THANK YOU, JUDGE.

1 THE COURT: BUT YOU HAVE TO MAKE YOUR MOTIONS BECAUSE I HAVE TO
2 RULE ON 'EM AND DECIDE WHETHER I AM GONNA SENTENCE HIM OR NOT.

3 MR. ANDERSON: I UNDERSTAND, JUDGE. (THE FOLLOWING OCCURRED
4 SOMETIME LATER.)

5 THE COURT: MOTIONS.

6 MR. ANDERSON: YOUR HONOR, I'D RESPECTFULLY MOVE FOR A NEW
7 TRIAL AND ASK THAT THE COURT SET ASIDE THIS VERDICT. YOUR HONOR, I
8 BELIEVE THE VERDICT IS CONTRARY TO THE EVIDENCE WHICH WAS PRESENTED. I
9 THINK WHEN ALL THE EVIDENCE IS CONSIDERED, THE STATE HAS FAILED TO
10 PROVE HIM GUILTY BEYOND A REASONABLE DOUBT. FURTHERMORE, PURSUANT
11 TO THE OBJECTIONS AND EXCEPTIONS THAT WERE RAISED DURIN' THE TRIAL, THE
12 ABSENCE OF A GREAT DEAL OF EVIDENCE. SLED'S FAILURE TO CONDUCT A FULL
13 INVESTIGATION IN THIS MATTER, THE APPARENT UNRELIABILITY OF THE DNA
14 EXPERT'S TESTIMONY, AND THE OTHER FACTUAL CONTRADICTIONS THAT WERE IN
15 THE STATE'S CASE, WE'D ASK THAT THE COURT SET ASIDE THE VERDICT AND
16 GRANT EARNEST PRESSLEY A NEW TRIAL.

17 THE COURT: ALL RIGHT. THE MOTIONS ARE RESPECTFULLY DENIED.

18 MR. ANDERSON: THANK YOU, YOUR HONOR.

19 THE COURT: ALL RIGHT, BRING THE JURY BACK IN.

20 MR. ANDERSON: YOU NEED HIM UP HERE, JUDGE?

21 THE COURT: I'LL CALL FOR HIM IN JUST A MINUTE.

22 MS. BRISBIN: YOUR HONOR, THE VICTIM WOULD LIKE TO ADDRESS THE
23 COURT AT THE APPROPRIATE TIME.

24 THE COURT: ALL RIGHT. IS THERE ANYTHING THAT THE STATE HAS IN
25 ADDITION REGARDING SENTENCING?

1 MS. BRISBIN: THE VICTIM WOULD LIKE TO ADDRESS THE COURT AT THE
2 APPROPRIATE TIME. OTHER THAN THAT, NOTHING ELSE.

3 THE COURT: MS. H. WANTS TO ADDRESS THE COURT?

4 MS. BRISBIN: YES, SIR.

5 THE COURT: YOU NEED TO COME OVER HERE TO THE SIDE, PLEASE,
6 MA'AM.

7 MS. H. I WOULD TO TELL EVERYONE THAT I APPRECIATE Y'ALL
8 HELPING ME. I APPRECIATE IT A LOT. IT MADE A DIFFERENCE IN MY LIFE. NOW
9 THAT EVERYTHING IS DONE AND TOOK CARE OF, I REALLY APPRECIATE YOUR
10 HELP.

11 THE COURT: THANK YOU, MA'AM. YOU'RE A FINE YOUNG LADY.

12 MS. H. AND I WANT HIM PUT TO JAIL BECAUSE IT'S NOT RIGHT FOR
13 NOBODY TO GET AWAY WITH SOMETHING LIKE THAT.

14 THE COURT: THANK YOU, MA'AM. ALL RIGHT. ANYTHING ELSE FROM THE
15 STATE?

16 MS. BRISBIN: NO, YOUR HONOR.

17 THE COURT: DO YOU HAVE ANYTHING FROM THE DEFENSE ON
18 SENTENCING, MR. ANDERSON?

19 MR. ANDERSON: JUDGE, YOU WERE HERE FOR THE WHOLE TRIAL. WE HAD
20 SOME PROBLEMS WITH A LOTTA EVIDENCE AND THE LACK OF EVIDENCE, BUT THE
21 JURY HAS SPOKEN ON THAT. JUDGE, WE'VE BEEN CONVICTED OF A HEINOUS
22 CRIME, SO I DON'T KNOW IF IT - WELL, I MEAN IT - WE'D ASK FOR MERCY; WE'D
23 BEG FOR MERCY, YOUR HONOR. THE SEXUALLY VIOLENT PREDATOR ACT HAS A
24 CHILLING EFFECT ON CASES - RESOLVING CASES OF THIS NATURE. I THINK IT'S A
25 SHAME THIS CASE HAD TO GO TO TRIAL, THAT EVERYBODY WAS PUT THROUGH

1 THIS TRIAL. IT WAS NOT PLEASANT FOR ANYBODY.

2 EARNEST DOES HAVE A WIFE WITH 3 KIDS. HE'S HERE TODAY. HIS
3 FATHER'S WITH HIM.

4 AGAIN, I KNOW THE JURY HAS SPOKEN BUT WE WOULD ASK FOR MERCY.
5 THE MOST HE COULD GET IS 20 YEARS. AND AS THE COURT KNOWS, THAT'S 85
6 PERCENT. AND THAT'S A LONG TIME. HE'S 36 RIGHT NOW. HE WOULD LIKE TO BE
7 ABLE TO SEE HIS KIDS BEFORE THEY'RE GROWN, JUDGE. AND THERE'S NO OTHER
8 HISTORY OF ANYTHING LIKE THIS IN EARNEST'S PAST. HE'S NEVER BEEN
9 CONVICTED OR CHARGED WITH ANY CRIME OF THIS NATURE, AND, YOU KNOW, HE
10 DID NOT WANT TO PUT HIS WIFE IN THE MIDDLE OF EVERYTHING IN THIS TRIAL.
11 HE DID NOT WANNA PUT HIS KIDS IN THE MIDDLE OF THIS FOR THIS TRIAL, AND I
12 THINK HE SHOULD BE COMMENDED FOR THAT. AND WE'D JUST ASK THE COURT
13 TO SHOW - I KNOW THE COURT HAS TO GIVE HIM A SUBSTANTIAL AMOUNT OF
14 TIME. I DIDN'T PHRASE THAT RIGHT. I KNOW THE COURT'S NOT GIVIN' HIM TIME. I
15 KNOW THE COURT HAS TO PASS DOWN A VERY SEVERE SENTENCE, BUT WE'D JUST
16 ASK THE COURT NOT TO GIVE HIM THE MAXIMUM SENTENCE. AND WE'D ASK FOR
17 YOUR - SOME AMOUNT OF LENIENCY, YOUR HONOR. THANK YOU, SIR.

18 THE COURT: ANYTHING YOU WANT TO TELL ME, MR. PRESSLEY?

19 THE DEFENDANT: NO, SIR.

20 THE COURT: HOW MUCH TIME DOES HE HAVE?

21 THE OFFICER: 7 DAYS.

22 THE COURT: THAT'S BOTH SINCE THE TRIAL AND BEFORE THE TRIAL?

23 THE OFFICER: ALL TOGETHER.

24 THE COURT: MR. PRESSLEY, IF YOU DESIRE TO FILE ANY APPEAL FROM
25 THIS PROCEEDING, YOU MUST DO SO IN WRITING AND IT MUST BE DONE

1 PROMPTLY. THERE'S A VERY SHORT TIMEFRAME DURING WHICH AN APPEAL MAY
2 BE FILED FROM A CRIMINAL CASE. SO IF YOU WANT AN APPEAL PURSUED IN YOUR
3 CASE, YOU MUST NOTIFY MR. ANDERSON SO THAT HE CAN FILE THE PAPERWORK
4 TO TRIGGER THE APPEAL. YOU UNDERSTAND?

5 THE DEFENDANT: (NODDED YES.)

6 THE COURT: YOU HAVE TO SAY IT OUT LOUD.

7 THE DEFENDANT: YES, SIR.

8 THE COURT: THANK YOU.

9 CUFF HIM.

10 OKAY. MR. PRESSLEY, I'VE TAKEN INTO CONSIDERATION WHAT YOUR
11 ATTORNEY SAID. THE MAXIMUM POSSIBLE PUNISHMENT ON THIS CHARGE IS 20
12 YEARS, AND THAT THIS IS A TRUTH-IN-SENTENCING OFFENSE WHICH MEANS THAT
13 ANY TIME YOU SERVE YOU CANNOT BE RELEASED FROM PRISON SOONER THAN 85
14 PERCENT OF THAT TIME DAY FOR DAY. YOU HAVE TO EARN THE 15 PERCENT IN
15 ORDER TO BE RELEASED IN 85 PERCENT. OTHERWISE, YOU HAVE TO DO THE FULL
16 AMOUNT OF THE TIME.

17 I'VE ALSO TAKEN INTO CONSIDERATION THAT ON THESE TYPES OF
18 OFFENSES YOU WILL HAVE TO REGISTER AS A SEX OFFENDER FOR THE REST OF
19 YOUR LIFE, THAT YOU WILL BE SUBJECTED TO BEING POSSIBLY TREATED AS A
20 SEXUALLY VIOLENT PREDATOR AND HELD IN AN INVOLUNTARY COMMITMENT ON
21 A CIVIL PROCEDURE AFTER YOU GET OUT OF PRISON WHICH ALSO COULD BE FOR
22 THE REST OF YOUR LIFE.

23 I'VE TAKEN INTO CONSIDERATION THAT THIS IS A STRIKE UNDER THE 2
24 STRIKES YOU'RE OUT LAW. SO IT IS A MOST SERIOUS OFFENSE CLASSIFIED BY THE
25 LEGISLATURE. AND I'VE ALSO TAKEN INTO CONSIDERATION THAT WITH THE

1 TRUTH-IN-SENTENCING TYPES OF OFFENSES, WHEN YOU COME OUT, YOU
2 AUTOMATICALLY COME OUT ON SUPERVISION FOR 2 YEARS AND THAT YOU CAN
3 WIND UP DOING DOUBLE THE AMOUNT OF THE SENTENCE IF YOU CONTINUE TO
4 VIOLATE THE TERMS OF YOUR SUPERVISION.

5 NOW HAVING SAID ALL THAT I WILL TELL YOU WHAT I SAID WHEN I
6 SENTENCED THE MAN YESTERDAY.

7 I LEARNED A LONG TIME THAT THE LESS I SAY, THE BETTER, AND I, LIKE
8 ANYONE ELSE IN THESE SITUATIONS, AM TEMPTED TO SAY A LOTTA THINGS. AND I
9 USUALLY DO SAY SOME THINGS.

10 THE FIRST THING I WANNA SAY TO YOU IS THAT IT WAS A VERY STARK
11 DIFFERENCE IN THE LEVEL OF EMOTION DISPLAYED BY MS. H. THE VICTIM IN
12 HER GOING THROUGH THIS TRIAL AND YOU GOING THROUGH THIS TRIAL WHEN
13 YOU TOOK THE STAND. OF COURSE, YOU'RE AN ADULT; SHE'S NOT. BUT I WAS
14 JUST STRUCK BY THE DEPTH OF EMOTION THAT SHE APPARENTLY IS WRESTLING
15 WITH. SHE IMPRESSES ME AS BEING AN EXTREMELY FINE YOUNG LADY WHO HAS
16 HAD HER SOUL RENT, AND THERE'S HOPE FOR HER THAT SHE WILL BECAUSE OF
17 HER ATTITUDE AND BECAUSE OF THE TYPE PERSON SHE SEEMS TO BE THAT SHE
18 WILL CONTINUE TO SURVIVE AND DO WELL. BUT IT'S NO THANKS TO YOU.

19 AND JUXTAPOSED AGAINST THAT IS YOUR TAKING THE STAND AND FOR
20 SOME REASON DECIDING THAT IF YOU SAY IT 3 TIMES LIKE SOME MAGICAL
21 INCANTATION, THE JURY WOULD BELIEVE IT. THEY DIDN'T BELIEVE IT. I DON'T
22 BELIEVE IT. AND WHAT I'M TEMPTED TO DO IS JUST READ THE SENTENCE 3 TIMES.
23 BUT I'M NOT GONNA MOCK YOU.

24 THE SENTENCE OF THE COURT IS THAT YOU BE COMMITTED TO THE SOUTH
25 CAROLINA DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 20 YEARS, PLUS PAY

1 THE COST AND ASSESSMENTS. CREDIT 7 DAYS IN JAIL. I'M RECOMMENDING SEX
2 OFFENDER COUNSELING AS A CONDITION OF ANY SUPERVISED RELEASE ON
3 COMMUNITY SUPERVISION. RECOMMENDING DURING THAT PERIOD THAT YOU
4 HAVE NO CONTACT WITH THE VICTIM. THE \$103 SURCHARGE HAS TO BE PAID
5 WITHIN 6 MONTHS OF YOUR RELEASE FROM ACTUAL INCARCERATION IN PRISON.
6 GOOD LUCK TO YOU, SIR.

7 ENDOFTRANSCRIPT.....
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CERTIFICATE

I, THE UNDERSIGNED, SMOKEY PERRY, OFFICIAL AND CERTIFIED COURT
REPORTER FOR THE 11TH JUDICIAL CIRCUIT AND FOR THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND ACCURATE
TRANSCRIPT OF RECORD TO THE BEST OF MY ABILITY AND SKILL.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR
INTEREST TO ANY PARTY HERETO.

Smokey Perry
3-20-03

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EARNEST PRESSLEY,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

TARA S. TAGGART
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**CASES**

<u>State v. Carter</u> , 344 S.C. 419, 544 S.E.2d 835 (2001)	4
<u>State v. Williams</u> , 301 S.C. 369, 392 S.E.2d 181 (1990)	4

STATEMENT OF ISSUE ON APPEAL

Whether evidence should have been suppressed where there was a missing link in the chain of custody.

STATEMENT OF THE CASE

Appellant was indicted by the Aiken County grand jury during its March 2002 term for criminal sexual conduct with a minor in the second degree.

Appellant was tried before the Honorable William P. Keesley and a jury beginning December 10, 2002. The jury found appellant guilty and Judge Keesley sentenced him to twenty years in prison.

ARGUMENT

Evidence should have been suppressed where there was a missing link in the chain of custody.

Appellant was charged with sexually assaulting P. H. Ms. H. was fifteen years old at the time of the allegations and is learning disabled. ROA p. 43, lines 20 – 25. Appellant is related to Ms. H.'s father. ROA p. 44, lines 7 – 8. In addition to Ms. H.'s somewhat ambiguous testimony, the state presented DNA evidence based on blood that was drawn from appellant. The state failed to present the testimony of the person who actually drew the blood. ROA p. 138, lines 19 – 20.

Where there is a weak link in a chain of custody, it is a question of fact for the jury to weigh the credibility of the witnesses. Where, however, there is a missing link, the issue is one of admissibility. State v. Carter, 344 S.C. 419, 544 S.E.2d 835 (2001). Although proof of the chain of custody "need not negate all possibility of tampering," the state must show that the chain is complete. State v. Carter, 344 S.C. 419, 544 S.E.2d 835 (2001); State v. Williams, 301 S.C. 369, 392 S.E.2d 181 (1990). Here, the chain of custody was missing the critical link of the person who drew appellant's blood.

Accordingly, the trial judge erred in admitting DNA evidence because of the faulty chain of custody.

CONCLUSION

Appellant's conviction and sentence should be reversed.

Respectfully submitted,



Tara S. Taggart
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

January 20, 2004

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EARNEST PRESSLEY,

APPELLANT

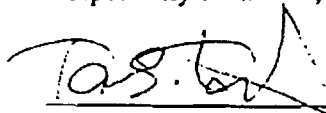
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Earnest Pressley states:

1. She is an Assistant Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on December 13, 2002, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial or other relief.
3. She has, pursuant to Anders v. California, 386 U.S. 738 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Earnest Pressley.

Respectfully submitted,



Tara S. Taggart
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

January 20, 2004



Tara S. Taggart
Assistant Appellate Defender

S. C. Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, SC 29201
(803) 734-1330
Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County
William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

EARNEST PRESSLEY,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire this 20th day of January, 2004.

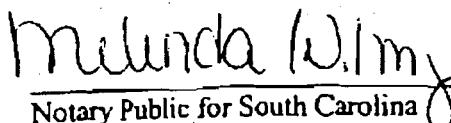
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant and Record on Appeal in the above referenced case has been served upon Earnest Pressley, #289489 at Broad River Correctional Institution this 20th day of January, 2004.



Tara S. Taggart
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of January, 2004.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: November 16, 2008.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Earnest Pressley, Appellant.

Appeal From Aiken County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2004-UP-569
Submitted November 1, 2004 – Filed November 15, 2004

APPEAL DISMISSED

Assistant Appellate Defender Tara S. Taggart, Office of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry D. McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, all of Columbia; Solicitor Barbara R. Morgan, of Aiken, for Respondent.

PER CURIAM: Earnest Pressley was convicted of second-degree criminal sexual conduct with a minor. He was sentenced to twenty years imprisonment. Pressley appeals.

Pursuant to Anders v. California, 386 U.S. 738 (1967), counsel for Pressley attached to the final brief a petition to be relieved as counsel, stating she had reviewed the record and concluded Pressley's appeal is without legal merit sufficient to warrant a new trial. Pressley did not file a separate pro se response.

After a thorough review of the record pursuant to Anders and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.¹

KITTREDGE, BEATTY, JJ., and CURETON, AJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

**RECEIVED**

DEC 17 2004

*Close***The South Carolina Court of Appeals****ATTORNEY GENERALS
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December 16, 2004

REMITTITURThe Honorable Liz Godard
109 Park Ave
PO Box 583
Aiken, SC 29802-0583Re: The State v. Pressley, Earnest
2002-GS-02-00340

Dear Mrs. Godard:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

Handwritten signature of Kenneth A. Richstad.
CLERK

KAR/mf

cc: Assistant Appellate Defender Tara S. Taggart
Mr. Earnest Pressley, #289489
Attorney General Henry D. McMaster
Chief Deputy Attorney General John W. McIntosh
Assistant Deputy Attorney General Salley W. Elliott
Barbara R. Morgan, Esquire

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of AIKEN)EARNEST PRESSLEY, #289489)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

WILLIAM WHITE (WARDEN))04-cr-02-1520
02-GS-02-340

Filed 11/22/2004

CCCP & G.S. - Aiken County

Deputy Clerk Time

APPLICATION FOR

Trial Judge: William AndersonTrial Atty.: Andy AndersonCourt Reporter: Smiley King

POST-CONVICTION REVIEW

Petitioner Solicitor
General Sessions Atty. Gen.
Appointed Atty.**INSTRUCTIONS B READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- Place of detention BROAD RIVER CORRECTIONAL INSTITUTION-4460 RIVER ROAD, COLUMBIA, SOUTH CAROLINA-29210.
- Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS -FOR THE COUNTY OF (AIKEN), SOUTH CAROLINA-29802.
- Name(s) of co-defendant(s) (if any) N/A
- The indictment number or numbers (if known) upon which the offenses for which sentence was imposed:
(a) 2002-GS-02-340 (CSC/MINOR-2nd)

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

NOV 22 2004

Liz Godard
CCCP & G.S. - Aiken County, S.C.
Smiley King

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) DECEMBER 13, 2002 (TWENTY (20) YEAR PRISON TERM)
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DENIED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) TRIAL COUNSEL INEFFECTIVE IN NOT MOVING BEFORE THE
- (b) TRIAL COURT TO SUPPRESS BLOOD TEST AND VIDEO TAPE;
- (c) INEFFECTIVE IN NOT OBJECTING TO THE REASONABLE DOUBT CHARGE.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) APPLICANT'S TRIAL COUNSEL INEFFECTIVE BEFORE AND DURING
- (b) APPLICANT'S TRIAL; APPLICANT DENIED DUE PROCESS OF LAW
- (c) IN VIOLATION OF APPLICANT'S 5th, 6th, AND 14th AMENDMENT RIGHTS.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes® to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. N/A _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NONE

NONE

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) "PCR" AFFORDS THE APPLICANT THE FIRST OPPORTUNITY TO
 - (b) ALLEGE INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL; SUCH
 - (c) ALLEGATION CANNOT BE RAISED ON DIRECT APPEAL.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? YES
 - (c) your sentencing? YES
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. ATTORNEY-P. ANDREW ANDERSON
POST OFFICE BOX # 7897 . N. AUGUSTA, S.C. 29841
 - ii. ATTORNEY- TARA S. TAGGART
1205 PENDLETON STREET, ROOM# 306, COLUMBIA, S.C. 29201
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. ATTORNEY- ANDERSON (TRIAL)
 - ii. ATTORNEY- TAGGART (DIRECT APPEAL)
 - iii. _____

19. State clearly the relief you seek in filing this application:

CONVICTION AND SENTENCE "REVERSED"; REMAND FOR NEW TRIAL.

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of _____)

VERIFICATION

I, EARNEST PRESSLEY, # 289489, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Earnest Pressley
EARNEST PRESSLEY, # 289489

SWORN to and subscribed before me this 2nd
day of June, 2009.

[Signature] (L.S.)
Notary Public

My Commission Expires: 3-15-06

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, EARNEST PRESSLEY, # 289489, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Earnest Pressley
EARNEST PRESSLEY, # 289489

SWORN or affirmed to and subscribed before me this

22nd day of June, 2004.

[Signature]
Notary Public

My Commission Expires: 3-13-06

ISSUE #1

APPLICANT'S TRIAL COUNSEL INEFFECTIVE IN
NOT OBJECTING TO THE CIRCUIT COURT'S
PREJUDICIAL "REASONABLE DOUBT CHARGE "-
WHICH DENIED APPLICANT DUE PROCESS OF
LAW AND PREJUDICED THE APPLICANT AS A
DIRECT RESULT:

ISSUE #1

APPLICANT'S TRIAL COUNSEL INEFFECTIVE IN
NOT OBJECTING TO THE CIRCUIT COURT'S
PREJUDICIAL "REASONABLE DOUBT CHARGE "
-WHICH DENIED APPLICANT DUE PROCESS OF
LAW AND PREJUDICED THE APPLICANT AS A
DIRECT RESULT:

PREJUDICIAL
REASONABLE DOUBT
CHARGE

THE APPLICANT ASSERTS TRIAL COUNSEL WAS INEFFECTIVE IN NOT OBJECTING TO THE CIRCUIT COURT'S PREJUDICIAL AND ERRONEOUS "REASONABLE DOUBT INSTRUCTION ".

AT THE CONCLUSION OF APPLICANT'S TRIAL, AND BEFORE THE CIRCUIT COURT'S JURY CHARGE, APPLICANT'S TRIAL COUNSEL REQUESTED THE CIRCUIT COURT TO CHARGE THE "REASONABLE DOUBT " CHARGE PURSUANT TO THE CASE OF- STATE V. MANNING, 409 S.E. 2d 372 (S.C. 1991); THE CIRCUIT COURT REFUSED THE REQUEST TO CHARGE AND SUCH REFUSAL PREJUDICED THE APPLICANT, AND DENIED APPLICANT DUE PROCESS OF LAW. THE FOLLOWING EXCHANGE TOOK PLACE BETWEEN APPLICANT'S TRIAL COUNSEL AND THE CIRCUIT COURT, IS AS FOLLOWS:

THE COURT: DID YOU ALL HAVE ANY ISSUES:

MR. ANDERSON: JUDGE, I JUST WANTED TO PUT ON THE RECORD MY REQUEST ON THE JURY CHARGE.

THE COURT: ALL RIGHT.

MR. ANDERSON: I KNOW YOU TOLD US WHAT YOU WERE GONNA DO. I WOULD JUST ASK THAT YOU ADD IN THE MANNING HESITATE TO ACT LANGUAGE AND THAT YOU DO THE ---YOU PUT IN THE LANGUAGE ABOUT CIRCUMSTANTIAL EVIDENCE THAT EACH AND EVERY ELEMENT PROVEN BY CIRCUMSTANTIAL EVIDENCE MUST BE PROVEN BEYOND A REASONABLE DOUBT AND THE STUFF THAT'S FOUND IN IRVIN'S REQUEST TO CHARGE AND ---

THE COURT: YOU MEAN THE LANGUAGE ABOUT POINTING CONCLUSIVELY TO THE GUILT OF THE ACCUSED TO THE EXCLUSION OF ANY OTHER REASONABLE HYPOTHESIS AND ALL THAT STUFF?

MR. ANDERSON: THANK YOU, YOUR HONOR.

THE COURT: NOT THE MORAL CERTAINTY LANGUAGE.

MR. ANDERSON: RIGHT. NO, SIR.

THE COURT: OKAY.

MR. ANDERSON: THANK YOU, JUDGE.

THE COURT: "I'M NOT GONNA CHARGE THAT ". I THINK THE CONCEPTS ARE ADEQUATELY COVERED. I WON'T STOP YOU FROM ARGUING THE LAW AS IT EXISTS. I KNOW THAT AS FAR AS REASONABLE DOUBT GOES, THERE IS THAT " MANNING " CASE ABOUT A REASONABLE PERSON HESITATING TO ACT. QUITE FRANKLY I JUST DON'T CHARGE THAT BECAUSE THOUGH I RECOGNIZE THAT THE PEOPLE WHO WROTE THAT ARE FAR SMARTER THAN I AM AND IT'S MY FAULT FOR NOT UNDERSTANDING IT, I DON'T UNDERSTAND IT. 'CAUSE I TOLD YOU ALL YESTERDAY, I KNOW PEOPLE THAT I CONSIDER REASONABLE THAT HESITATE TO ACT OVER WHETHER THEY BUY A COKE OR A PEPSI, AND I JUST DON'T THINK THAT- THAT LANGUAGE IS AS CLEAR AS THE LANGUAGE THAT I'VE GOT IN THE CHARGE. SEE TRIAL TRANSCRIPT PAGE # 318, LINES 15-THRU-TRIAL PAGE #319, LINES 1-18:

THIS INSTANT ACT BY THE CIRCUIT COURT IS CLEAR CIRCUIT COURT ERROR, AND APPLICANT'S TRIAL COUNSEL WAS BLATANTLY INEFFECTIVE IN NOT OBJECTING TO THE CIRCUIT COURT GIVING OF ITS OWN PERSONAL REASONABLE DOUBT CHARGE. SUCH A PERSONAL REASONABLE DOUBT CHARGE BY THE CIRCUIT COURT WENT TOTALLY AGAINST LEGISLATIVE INTENT, AND PREJUDICED THE APPLICANT AS A DIRECT RESULT OF TRIAL COUNSEL'S INEFFECTIVENESS IN NOT OBJECTING. TRIAL COUNSEL WAS INEFFECTIVE. STRICKLAND V. WASHINGTON, 104 S. CT. 2052 (1984); ALSO SEE, MARTINEZ V. STATE, 403 S.E. 2d 113 (1991):

THE SOUTH CAROLINA STATE SUPREME COURT HAS RULED IN THE CASE OF

STATE V. MANNING, 409 S. E. 2d 373 (S.C. 1991), "A TRIAL COURT, WHEN DEFINING REASONABLE DOUBT FOR A JURY, SHOULD GIVE NO FURTHER INSTRUCTION THAN THAT "REASONABLE DOUBT" IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT ": HOWEVER, THE APPLICANT'S TRIAL COUNSEL WAS INEFFECTIVE IN NOT OBJECTING TO CIRCUIT COURT'S DILUTION OF THE REASONABLE DOUBT CHARGE IN THE CASE OF THE APPLICANT. THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT SAFEGUARDS AGAINST DILUTION OF THE PRINCIPLE THAT GUILT IS TO BE ESTABLISHED BY PROBATIVE EVIDENCE AND BEYOND A REASONABLE DOUBT. TAYLOR V. KENTUCKY, 436 U.S. 478, 98 S. CT. 1930, 1935 (1978). AN INSTRUCTION IS DEFECTIVE IF A REASONABLE JUROR COULD INTERPRET IT TO ALLOW A FINDING OF GUILT BASED ON A DEGREE OF PROOF BELOW THAT REQUIRED BY THE DUE PROCESS CLAUSE. CAGE V. LOUISIANA, 111 S. CT. 328 (1990). SUCH AN INSTRUCTION "COULD MISLEAD THE JURY INTO FINDING NO REASONABLE DOUBT WHEN IN FACT THERE WAS SOME. " HOLLAND V. UNITED STATES, 348 U.S. 121, 75 S. CT. 127, 138 (1954).

FURTHERMORE, WITHOUT OBJECTIONS, THE CIRCUIT COURT FURTHER PREJUDICED AND DILUTED THE REASONABLE CHARGE IN APPLICANT'S CASE BY OMITTING THE REAL POSSIBILITY LANGUAGE, WHICH HAS BEEN APPROVED AND ADOPTED BY SOUTH CAROLINA COURTS. IT WAS CIRCUIT COURT ERROR FOR THE CIRCUIT COURT TO OMIT THE REAL POSSIBILITY LANGUAGE IN THE CIRCUIT COURT'S REASONABLE DOUBT INSTRUCTION. IN CONJUNCTION WITH THE CIRCUIT COURT ERROR IN REFUSING TO CHARGE THE "HESITATE TO ACT " LANGUAGE, THE CIRCUIT COURT COMPOUNDED ERROR UPON ERROR BY NOT INSTRUCTING, IN THE LEAST, THE FOLLOWING

"REAL POSSIBILITY " LANGUAGE.

I IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

THIS CHARGE (REAL POSSIBILITY) IS SUBSTANTIALLY THE TEXT OF A PROPOSED JURY INSTRUCTION DEVELOPED BY THE FEDERAL JUDICIAL CENTER, AND APPROVED AND ADOPTED BY THE SOUTH CAROLINA COURT SYSTEM. IT FURTHER CITED WITH APPROVAL IN "JUSTICE GINSBERGS "CONCURRING OPINION IN VICTOR V. NEBRASKA, 114 S. CT. 1239 (1994), AND THE SOUTH CAROLINA SUPREME COURT CASE- STATE V. DARBY, 477 S.E.2D 710 (S.C. 1996)--(ASSOCIATE-JUSTICE MOORE, FOR THE COURT). SOME COURTS HAVE EXPRESSLY APPROVED THIS CHARGE AS THE DEFINITION OF REASONABLE DOUBT TO BE GIVEN WITHIN THEIR JURISDICTIONS. UNITED STATES V. CONWAY, 73 F. 3d 975 (10th CIR. 1995); ALSO, UNITED STATES V. WILLIAMS, 20 F. 3d 125 (5th CIR. 1994).

FURTHER, STATE V. MANNING, 409 S.E. 2d 372 (S.C. 1991), DOES NOT

MANDATE THAT ONLY THE "HESITATE TO ACT" LANGUAGE BE USED. HOWEVER, IN THE INSTANT CASE OF THE APPLICANT, THE REQUIRED HESITATE TO ACT LANGUAGE WAS INTENTIONALLY NOT USED BY THE CIRCUIT COURT, AS WELL AS THE "REAL POSSIBILITY" LANGUAGE BEING INTENTIONALLY OMITTED BY THE CIRCUIT COURT. DARBY, SUPRA., (FOOTNOTE #2). APPLICANT'S TRIAL COUNSEL WAS INEFFECTIVE IN NOT OBJECTING TO THE CIRCUIT COURT'S FAULTY REASONABLE DOUBT CHARGE; IT WAS FOR THE JURY TO DECIDE WHETHER THERE WAS THE KIND OF REASONABLE DOUBT THAT EXISTED-WHICH WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. FURTHERMORE, IT WAS WITHIN THE JURY'S PROVINCE TO DECIDE WHETHER A REAL POSSIBILITY EXISTED THAT THE APPLICANT WAS NOT GUILTY, AND IF SO, THE APPLICANT WOULD HAVE BEEN GIVEN THE BENEFIT OF THE DOUBT, AS SO INSTRUCTED.

THE APPLICANT CONTENDS DUE TO TRIAL COUNSEL'S INEFFECTIVENESS, THE CIRCUIT COURT DEVIATED FROM ESTABLISHED LAW AND INTERJECTED PERSONAL FEELINGS INTO THE REASONABLE DOUBT CHARGE; SUCH INTERJECTION DENIED THE APPLICANT DUE PROCESS OF LAW, AND TOTALLY DILUTED THE ESTABLISHED REASONABLE DOUBT CHARGE(S) IN MANNING, DARBY, AND NEBRASKA, SUPRAS., APPLICANT'S TRIAL COUNSEL WAS INEFFECTIVE, AND TRIAL COUNSEL'S REPRESENTATION PREJUDICED THE APPLICANT. STRICKLAND V. WASHINGTON, 104 S. CT. 2052 (1984); CURTIS V. STATE, 407 S.E. 2d 643 (1991); ALSO SEE, CARTER V. STATE, 392 S.E. 2d 184 (1990).

WHEREFORE, THE APPLICANT ASSERTS THAT THE DEFECTIVE ASPECTS OF

THE CIRCUIT COURT'S CHARGE ON REASONABLE DOUBT DILUTED SAID CHARGE BY THE OMISSION OF REQUIRED LANGUAGE, THAT A REASONABLE JUROR COULD HAVE INTERPRETED THE CHARGE AS A WHOLE TO ALLOW A FINDING OF GUILT BASED ON THE PERSONAL FEELINGS OF THE CIRCUIT COURT (TRANSCRIPT PAGE# 319, LINES 9-18), AND BASED ON A DEGREE OF PROOF BELOW THAT WHICH IS REQUIRED BY THE DUE PROCESS CLAUSE. SUCH AN OMISSION OF THE "HESITATE TO ACT" LANGUAGE, AND THE OMISSION OF THE "REAL POSSIBILITY " LANGUAGE CANNOT BE DEEMED HARMLESS ERROR. THE REQUIRED LANGUAGE MUST BE CHARGED IN THE CHARGE OF REASONABLE DOUBT. THE CIRCUIT COURT WAS IN ERROR, AND TRIAL COUNSEL WAS INEFFECTIVE. MARTINEZ V. STATE, 403 S. E. 2d 113 (1991); BUTLER V. STATE, 334 S.E. 2d 813 (1985).

ISSUE #2

APPLICANT'S TRIAL COUNSEL INEFFECTIVE
IN NOT MOVING BEFORE THE CIRCUIT COURT
TO HAVE BLOOD SAMPLES SUPPRESSED- SINCE
BLOOD SAMPLES WERE A RESULT OF
INTIMIDATION AND FEAR BY POLICE-UPON
APPLICANT:

ISSUE #2

APPLICANT'S TRIAL COUNSEL INEFFECTIVE
IN NOT MOVING BEFORE THE CIRCUIT COURT
TO HAVE BLOOD SAMPLES SUPPRESSED- SINCE
BLOOD SAMPLES WERE A DIRECT RESULT OF
INTIMIDATION AND FEAR BY POLICE UPON
APPLICANT:

APPLICANT CONTENDS AT TRIAL -TRIAL COUNSEL WAS INEFFECTIVE IN NOT MOVING BEFORE THE CIRCUIT COURT TO HAVE BLOOD SAMPLES SUPPRESSED, BECAUSE SAID BLOOD SAMPLES WERE A DIRECT RESULT OF INTIMIDATION AND FEAR BY POLICE UPON APPLICANT.

BEFORE TRIAL OF APPLICANT, APPLICANT HAD AGREED TO GIVE A DNA-BLOOD SAMPLE AFTER APPLICANT WAS RELEASED ON BOND. HOWEVER, AFTER BEING INTERROGATED BY POLICE, A DIFFERENT POLICE OFFICER BEGUN TO ACT HOSTILE TOWARDS THE APPLICANT CONCERNING THE BLOOD SAMPLES BEING GIVEN IMMEDIATELY, INSTEAD OF APPLICANT WAITING TO BE RELEASED ON BOND. THROUGH THE FEAR OF INTIMIDATION, APPLICANT BROKE THE PRIOR AGREEMENT AND SURRENDERED TO THE DNA-BLOOD SAMPLES BEFORE BEING RELEASED ON BOND. SEE TRIAL TRANSCRIPT PAGE #170, LINE 15-THRU-TRIAL PAGE #173, LINE 1-9. TRIAL COUNSEL WAS

INEFFECTIVE IN NOT MOVING BEFORE THE CIRCUIT COURT FOR A SUPPRESSION HEARING. TRIAL COUNSEL WAS INEFFECTIVE. SEE, KIMMELMAN V. MORRISON, 106 S. CT. 2574 (1986); BOZEMAN V. STATE, 414 S.E. 2d 144 (S.C. 1992).

HOWEVER, APPLICANT DOES SUBMIT THAT TRIAL COUNSEL ASKED THE CIRCUIT COURT TO "EXCLUDE" APPLICANT'S BLOOD SAMPLE FROM EVIDENCE SINCE THE BLOOD SAMPLES WERE A DIRECT RESULT OF INTIMIDATION. SEE TRIAL TRANSCRIPT PAGE #173, LINE 2-9. THE APPLICANT FURTHER CONTENDS TRIAL COUNSEL NEITHER OBJECTED, NOR MOVED BEFORE THE CIRCUIT COURT FOR A SUPPRESSION HEARING TO HAVE BLOOD SAMPLES SUPPRESSED, SINCE FEAR AND INTIMIDATION WAS INVOLVED IN THE SURRENDERING OF THE BLOOD SAMPLES INVOLUNTARILY; THIS ACTION BY TRIAL COUNSEL FELL BELOW PROFESSIONAL STANDARDS EXPECTED OF TRIAL ATTORNEY'S DURING CRIMINAL PROCEEDINGS. TRIAL COUNSEL WAS INEFFECTIVE. WHITLEY V. BLAIR, 802 F. 2d 1487 (1986).

FURTHERMORE, HAD TRIAL COUNSEL MOVED FOR A SUPPRESSION HEARING, THEN THE CIRCUIT COURT WOULD HAVE BEEN ABLE TO ISSUE A RULING, AND THEREFORE IF THE CIRCUIT COURT'S RULING WOULD HAVE BEEN ADVERSE TO THE APPLICANT, AT THAT JUNCTURE THE APPLICANT WOULD HAVE BEEN ABLE TO SEEK PROPER APPELLATE REVIEW BY THE APPELLATE COURT. THE APPLICANT ASSERTS-APPLICANT WAS NO DOUBT, DENIED DUE PROCESS OF LAW, AND TRIAL COUNSEL WAS INEFFECTIVE IN NOT MOVING BEFORE THE CIRCUIT COURT FOR THE WARRANTED SUPPRESSION HEARING.

McMANN V. RICHARDSON, 90 S. CT. 1441 (1970):

THE APPLICANT FURTHER ASSERTS TRIAL COUNSEL'S REPRESENTATION FELL BELOW AN OBJECTIVE STANDARD OF REASONABLENESS; HAD IT NOT BEEN FOR TRIAL COUNSEL'S ERROR'S OF INEFFECTIVENESS, THE OUTCOME OF APPLICANT'S TRIAL WOULD HAVE BEEN DIFFERENT, OVERALL. TRIAL COUNSEL WAS BLATANTLY INEFFECTIVE. RICHARDSON V. STATE, 426 S.E. 2d 795 (1993).

WHEREFORE, DUE TO TRIAL COUNSEL'S INEFFECTIVENESS, APPLICANT ASKS THIS HONORABLE COURT TO "REVERSE AND REMAND" !!

SO SHALL THE APPLICANT PRAY,

s/ Ernest Pressley
 EARNEST PRESSLEY, # 289489
 BROAD RIVER CORRECTIONAL INST.
 4460 BROAD RIVER ROAD
 COLUMBIA, SOUTH CAROLINA-29210

SWORN TO AND SUBSCRIBED BEFORE ME
 ON THIS 2nd DAY OF June - 2004:

[Signature] (L.S.)
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES: 3-13-06

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF AIKEN)

04-CP-02-1520

Earnest Pressley, # 289489,)

Applicant,)

v.)

RETURN

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed November 22, 2004, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was indicted at the March 2002 term of the Aiken County Grand Jury for criminal sexual conduct with a minor, second degree. He was represented by P. Andrew Anderson, Esquire. On December 13, 2002, the Applicant proceeded to trial after which he was found guilty of criminal sexual conduct with a minor, second degree. He was sentenced by the Honorable William P. Keesley to confinement for a period of twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. He was represented by Tara S. Taggart, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Pressley, Op. No.04-UP-569 (S.C. Ct. App. filed November 15, 2004).

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's appellate records.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Denied due process.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Butler, 286 at 441, 334 S.E.2d at 813. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 at 441, 334 S.E.2d at 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 446 U.S. at 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, *citing* Strickland, 446 U.S. at 668. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant further alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an

application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The State therefore requests that this Court convene an evidentiary hearing on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

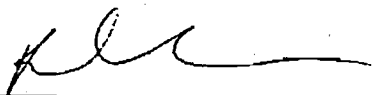
WHEREFORE, having made its Return, the State requests that a hearing be held.

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

PAULA S. MAGARGLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

6/9, 2005.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	FIRST AMENDED APPLICATION
ERNEST PRESSLEY, #289489,	)	FOR POST-CONVICTION RELIEF
Applicant,	)	
	)	
v.	)	
	)	Case No. 04-CP-02-1520
STATE OF SOUTH CAROLINA,	)	
Respondent	)	

This amended application is filed in order to ensure that the issues (and potential issues) known to applicant's counsel on a good faith basis are properly before this Court. This application includes all grounds for relief known to applicant's counsel at present.

1. Applicant is detained at the Broad River Correctional Institute 4460 Broad River Road - Columbia, South Carolina 20910.

2. He was convicted and sentenced in the Aiken County Court of General Sessions.

3. Applicant had no co-defendants.

4. Application was indicted as follows:

Criminal sexual conduct with a minor in the second degree, 2002-G.S.-02-340

Applicant was convicted of this charge on December 13, 2002.

5. On December 13, 2002 the applicant was sentenced to 20 years for:

Criminal sexual conduct with a minor in the second degree .

6. A finding of guilty was made after a plea of not guilty.

7. Yes, the applicant appealed from the judgment of conviction and sentence.

1. (a) The Courts to which applicant appealed:

- i. The South Carolina Court of Appeals;
- (b) The result in each such Court to which you appealed:
 - i. Pursuant to Anders v. California, 386 U. S. 738 (1967) counsel for applicant filed a final brief and petition to be relieved as counsel. Applicant did not file a separate pro se response. The appeal was dismissed and the counsel's petition to be relieved was granted by unpublished opinion filed November 15, 2004.
- (c) The date of each such result:
 - i. The appeal was dismissed and the counsel's petition to be relieved was granted by unpublished opinion filed November 15, 2004.
- (d) Citations of any written opinions or orders entered pursuant to such results:
 - i. State. v Ernest Pressley, unpublished opinion #2004-UP-569.

9. Not applicable.

10. & 11. GROUNDS FOR RELIEF WITH SUPPORTING FACTS

10(a) & 11(a) On original application for post-conviction relief are withdrawn.

10(a) Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina Law because counsel failed to retain a DNA expert to assist counsel either in the trial as an expert, or as consultant to allow him to properly cross examine the State's DNA expert and to allow him to properly refute the testimony of the DNA expert. The result of this omission ultimately resulted in admission of evidence in the Court without sufficient guarantee that the underlying science and methodology was reliable.

11(a) The ground for relief states the relevant facts. The testimony of the State's expert was unreliable. A DNA expert would have allowed proper cross examination of that expert and would have provided direct testimony to refute the State's position. Counsel's conduct was both unreasonable and prejudicial. Strickland v. Washington, 466 U. S. 668 (1984).

10(b) Applicant was denied the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina Law because trial counsel did not move to have the alleged victim examined by an independent examiner. The alleged victim was a minor child who had been found to be incompetent to stand trial in a separate matter. That finding was based upon an evaluation performed in June, 2002 when the examiner found her to be incompetent to proceed to trial at that time, which was five (5) months prior to the trial in this case. The purpose of this forensic evaluation was to evaluate the minor child's ability to stand trial for alleged criminal acts of her own. Due to this evaluation the alleged criminal acts against the victim were dismissed. Trial counsel in this case should have sought an independent exam and should have moved for an in camera hearing to determine her competency to be a witness..

11(b) The ground for relief states the relevant facts. In the interest of Michael H., 602 S.E. 2nd 729 (S.C., 2004).

12. & 13. Applicant appealed directly to the South Carolina Court of Appeals. Applicant has not previously filed an application for post-conviction relief except for the original PCR application filed November 22, 2004.

14. & 15. The grounds set forth in the petition and this amended petition have not been previously presented to this or any other Court.

16. These grounds rely on additional facts outside the record which were not presented to any previous Court. 10(a) and 10(b) were not presented to the Court because of ineffective assistance of counsel and can only be addressed in a PCR forum.
17. Applicant was represented by an attorney at trial, sentencing and appeal.
18. (a) The names and address of each attorney who represented applicant:
 - i. P. Andrew Anderson
Attorney at Law
225 Chesterfield Street, NW
Aiken, South Carolina 29801

Represented applicant at trial and sentencing.
 - ii. Tara S. Taggart
Attorney at Law
1205 Pendleton Street - Room 306
Columbia, SC 29201

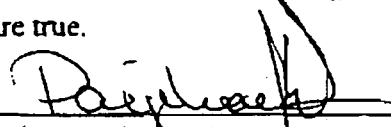
Represented applicant on appeal.
19. Applicant seeks the vacation of his conviction and sentence.
20. Applicant is not under any sentence from any other Court that has not been challenged.

STATE OF SOUTH CAROLINA)

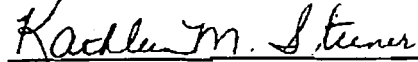
) VERIFICATION

COUNTY OF AIKEN)

I, Paige Weeks Johnson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attached in this application; and that the matters and allegations therein set forth are true.


Paige Weeks Johnson

SWORN to and subscribed before me
this 18th day of January, 2006.



Notary for South Carolina

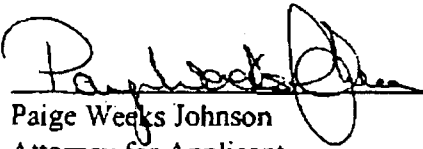
My Commission Expires: 4-18-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	
	)	CERTIFICATE OF MAILING
ERNEST PRESSLEY, #289489,	)	
Applicant,	)	
	)	
ii.	)	
	)	Case No. 04-CP-02-1520
STATE OF SOUTH CAROLINA,	)	
Respondent	)	

I do hereby certify that I have served the Amended Application for Post-Conviction Relief, in the above referenced case, on the attorney for the Respondent by depositing copy of same in the United States Mail, first class, postage prepaid, addressed as follows:

Paula S. Magargle
 Assistant Deputy Attorney General
 Office of the General Attorney
 P. O. Box 11549
 Columbia, SC 29211

This ^{19th} 17th day of January, 2006, in Aiken, South Carolina.


 Paige Weeks Johnson
 Attorney for Applicant

P. O. Box 2619

Aiken, SC 29802-2619

Phone: 803-649-5338

Fax: 803-641-4517

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF AIKEN

3
4
5 ERNEST PRESSLEY)

6 APPLICANT,)

7 V.)

8 STATE)
9 _____)

TRANSCRIPT OF RECORD

04-CP-02-1520

10 FEBRUARY 26, 2008

11 AIKEN, SOUTH CAROLINA

12
13 B E F O R E:

14 THE HONORABLE D. GARRISON HILL, JUDGE.

15
16 A P P E A R A N C E S:

17 JAMES E. WHITTLE, JR., ESQUIRE

18 PAIGE W. JOHNSON, ESQUIRE

ATTORNEYS FOR THE APPLICANT

19 LANCE S. BOOZER, ESQUIRE

20 ATTORNEY FOR THE STATE

ORIGINAL

21
22
23
24
25 STACY L. SHEPARD
CIRCUIT COURT REPORTER

1	I N D E X				
2	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
3	Ronald Ostrowski				
4	By Mr. Whittle	5		55	
	By Mr. Boozer		46		56
5	Paul Andrew Anderson				
6	By Mr. Whittle	58		78	
	By Mr. Boozer		70		79
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
Applicant's 1-A	SLED Documents		21
Applicant's 1-B	SLED Documents		21
Applicant's 2	SLED Report		26
Applicant's 3	SLED Report		26
Applicant's 4	SLED Report		26
Applicant's 5	SLED Document		33
Applicant's 6	SLED Document		46
Applicant's 7	Forensic Evaluation		62
Applicant's 8	Curriculum Vitae		80

1 (The following proceedings were held on
2 February 26, 2008.)

3 **THE COURT:** I understand Mr. Anderson is still
4 occupied in family court; is that right?

5 **MR. BOOZER:** Yes, sir, Your Honor.

6 **THE COURT:** We're just going to have to go
7 ahead and proceed.

8 Yes, sir.

9 **MR. WHITTLE:** Please the Court, Your Honor.
10 We're before you in the matter of Ernest Pressley
11 versus the State of South Carolina, case number
12 04-CP-02-1520. My name is James Whittle. I'm a law
13 partner with Paige Johnson. Paige Johnson was
14 appointed to represent Mr. Pressley in this matter.
15 And if it please the Court, I will aid her in that
16 representation.

17 **THE COURT:** Okay. Yes, sir.

18 **MR. WHITTLE:** We are prepared to go forward and
19 we'd call as our first witness Doctor Ronald
20 Ostrowski.

21 **THE COURT:** All right. This is case number
22 04-CP-02-1520. Yes, sir, your first witness can
23 come forward.

24 + + + +

25 - - - -

1 RONALD OSTROWSKI,
2 having been duly sworn, testified as follows:

3 THE CLERK: Please take a seat in the witness
4 box and state your full name for the Court.

5 THE WITNESS: My name is Ronald Ostrowski,
6 O-S-T-R-O-W-S-K-I.

7 DIRECT EXAMINATION

8 BY MR. WHITTLE:

9 Q Doctor Ostrowski, what do you do for a living?

10 A I've retired now three years as a university
11 professor. I was a professor at UNCC for 34 years.

12 Q What was your field of expertise at that
13 university?

14 A Genetics in general and population genetics and
15 DNA profiling in particular.

16 Q Have you prepared a curriculum vitae that is
17 accurate through today?

18 A Yes, it is.

19 Q And I would ask you if this is the curriculum
20 vitae that you have prepared?

21 A Yes, sir.

22 MR. WHITTLE: Your Honor, we've shown a copy to
23 counsel for the State and we would ask to pass that
24 up to you so that you would have it as we go through
25 it.

1 **THE COURT:** All right. Are you offering it
2 into evidence?

3 **MR. WHITTLE:** Your Honor, I think it would be
4 easier for you to have it as I go through his
5 qualifications. I'm simply offering it for your
6 ease.

7 **THE COURT:** All right.

8 **BY MR. WHITTLE:**

9 **Q** Doctor Ostrowski, what is your educational
10 background?

11 **A** I have a bachelors degree in biology with a
12 minor in chemistry, a masters degree in biology with
13 a dissertation in population genetics and a Ph.D. in
14 biology with a dissertation in molecular genetics.

15 **Q** Would you explain to us in lay terms what a
16 masters in population genetics means?

17 **A** As in law where you have subspecialties, tax
18 law, criminal law, et cetera, geneticists have the
19 same kinds of subspecialties. And two of them,
20 these in particular, are -- the molecular genetics
21 is self-explanatory, I think that's the laboratory
22 work, white lab coats, test tubes, et cetera. And
23 population genetics is strictly a mathematical
24 science. In a forensic situation, once it's a
25 so-called match, the next question is a population

1 genetics question, how many other people on the face
2 of the earth would also match the evidence.

3 Q Could you explain to us what your degree, your
4 doctorate, in developmental molecular genetics
5 means?

6 A It was involved with analyzing DNA synthesis in
7 a cellular situation.

8 Q And would that have been the first time when
9 you started dealing with the testing of DNA?

10 A Yes, sir, that was 1968.

11 Q And have you been involved in that since that
12 time?

13 A Yes, sir.

14 Q Have you been -- what is your professional
15 experience? Where have you worked?

16 A I was a -- until three years ago, I was a
17 professor in the biology department at the
18 University of North Carolina Charlotte where I
19 taught genetics, genetics labs, medical genetics and
20 DNA profiling.

21 Q For what period of time did you teach those
22 subjects?

23 A Well, genetics since '71, the profiling courses
24 and medical genetics courses came along later,
25 profiling for the last 15 years and medical genetics

1 for the last 20 years.

2 Q Have you recently retired from that occupation?

3 A Yes, sir.

4 Q And following your retirement, have you been
5 engaged in subcontracting for expert testimony
6 regarding DNA matters?

7 A Yes, sir. I've continued doing that since I
8 was a professor.

9 Q Attached to your curriculum vitae have you
10 listed the various cases that you have been involved
11 in over the years that relate to DNA testing?

12 A Yes, sir.

13 Q Do you have an idea of how many cases those
14 are?

15 A It's about 400 cases.

16 Q What states have you testified?

17 A South Carolina, North Carolina, Alabama,
18 Illinois, Missouri and Ohio.

19 Q Have you testified in federal court?

20 A I have not testified in federal court.

21 Q Have you been hired as a consultant in matters
22 that were in federal court?

23 A Yes, sir.

24 Q Also attached to your curriculum vitae are
25 their various publications and presentations that

1 you have made over the years that relate to DNA
2 testing?

3 A Yes, sir.

4 Q Is that accurate through today?

5 A Yes, sir.

6 Q Doctor Ostrowski, are you an expert in the
7 field of genetics?

8 A I have been qualified as such, yes.

9 MR. WHITTLE: Your Honor, we would offer him as
10 an expert in the field of genetics and would elicit
11 testimony from him regarding the DNA matter in this
12 case.

13 THE COURT: Any voir dire or --

14 MR. BOOZER: No, sir, Your Honor. The State
15 will stipulate that he is so qualified.

16 THE COURT: Okay. I certainly find he's
17 qualified as well.

18 BY MR. WHITTLE:

19 Q Doctor Ostrowski, when did you first start
20 working with DNA?

21 A 1968.

22 Q And have you been working with forensic DNA
23 matters since that time?

24 A Since '93, I believe, '93 or '94.

25 Q Doctor Ostrowski, most of us in this room are

1 afraid of what you're about to say because most of
2 us in this room don't understand it. Could you give
3 us an overview in a lay manner explaining to us the
4 process in how we arrive at the documents that we're
5 about to review?

6 A I will attempt that, yes, sir.

7 **MR. WHITTLE:** Your Honor, if he could, he is a
8 college professor and feels more comfortable on his
9 feet in the presence of an easel, if that would be
10 okay with the Court, may he come down and do that?

11 **THE COURT:** Certainly.

12 (Witness leaves the witness stand.)

13 **THE WITNESS:** Your Honor, what I'd like to do
14 is give you a brief overview of the technology,
15 including some terms which are especially germane to
16 this particular case. And if I may give you the
17 same caveat I give my students, if you ever have a
18 question, stop me and say I don't understand that, I
19 need more detail. So please feel free to do that.
20 Thank you.

21 Let me first present a brief overview of the
22 DNA molecule itself because, again, that's an issue
23 here in this case. DNA consists of a molecule, in
24 chemical terms, called a double helix, that's jargon
25 for a spiral staircase, unspiral or spiral

1 staircase, then you have a step ladder. The rungs
2 on the stepladder are made of what are called
3 nitrogenous bases. It's a molecule with nitrogen in
4 them. And there are four. And they go by their
5 acronyms, A, T, G and C.

6 Whenever there's an A in the DNA molecule,
7 there's a T directly across. They're said to be
8 complimentary to each other. Wherever there is a G
9 is a C directly across. And, again, for the record,
10 these are acronyms for adenine, guanine, cytosine,
11 thymine.

12 So what I'm going to present here is a small
13 molecule to make a point. And the order of gene
14 molecule is, in fact, what's known as our genetic
15 code. So as you can see, everywhere there's an A,
16 there's a T directly across and where there's a C,
17 there's a G. Each one of these is called a base
18 pair. When we put this in context, each cell in our
19 body has three billion, with a B, base pairs. Here,
20 we have eight base pairs just for discussion.

21 In this case, the SLED laboratory analyzed 13
22 genes in total.

23 BY MR. WHITTLE:

24 Q How do we know that? How do we know there were
25 13 that were analyzed?

1 **A** Because of their -- from their record, reports.
2 Some labs there's 16 today. They were using 13 at
3 that time.

4 **THE COURT:** What is the difference between a
5 gene and a base pair?

6 **THE WITNESS:** The base pair, that's a base
7 pair, a base pair and a base pair (indicating). So
8 the genes we're going to be talking about here are
9 about 200 base pairs at length.

10 **THE COURT:** Now, is that a unit of measurement
11 that is standard or is that just the unit of 200
12 that SLED used?

13 **THE WITNESS:** Genes come in various sizes.
14 These -- as I have memorized this number, but
15 they're about on average 250 base pairs long.

16 **THE COURT:** All right.

17 **THE WITNESS:** What makes these particular 13
18 genes ideal for analysis and identification is that
19 tucked inside the gene are repeats of base pairs.
20 What I mean by that is, for instance, let me draw a
21 box here which would represent a four base sequence
22 of A, T, G, C. So to continue, I'm not going to put
23 the base pairs everywhere, just the rungs on the
24 ladder.

25 So, for instance, here's our DNA molecule, the

1 step ladder without the bases drawn in, this box
2 would represent A, G, T, C and this box will
3 represent A, G, C, T. And so what you'll see in
4 testimony and in literature, these are called short,
5 only four bases, tandem, you find them stacked next
6 to each other, repeats, or for short, STR's.

7 And so this particular piece of DNA here has
8 two repeats. This one has three repeats. Let me
9 draw just one more just for discussion sake. This
10 one has four repeats.

11 So the analogy I'd like to use regarding these
12 is a mom and pop restaurant. You go to mom and pop
13 restaurant and you get the blue plate special. You
14 get mashed potatoes and some gravy and a piece of
15 beef. And then there's side orders that you can
16 order from. Now, the list may be 10 items long,
17 peas, carrots, okra, et cetera, but you only get
18 two, don't ask for anymore than two. In nature, if
19 this is a gene, for our discussion sake, there are
20 three forms of the gene, three different forms based
21 on the amount of these STR's, these short tandem
22 repeats.

23 Even on our hypothetical situation here, there
24 are three out there in nature, one with two repeats,
25 three repeats and four repeats. We just get two,

1 one from mom, one from dad. So if a person were to
2 get this piece of DNA from mom and that one from
3 dad, we would say they have a genotype of two,
4 three. And, hopefully, these numbers will make more
5 sense when we actually look at the evidence.

6 If a person were to get, say, this one from mom
7 and that one from dad, we'd say they'd have a
8 genotype of three, four. If they happen to get a
9 three from mom and a three from dad, their genotype
10 would be three, three. So you can see all of the
11 various combinations of these.

12 The 13 genes that were looked at by SLED at
13 this time have on the average about seven or eight
14 different combinations. So as you can see, there's
15 all kinds of combinations to this which leads to the
16 statistical question, okay.

17 Now, the two terms you have to appreciate is if
18 the two genes are different, one from mom, one from
19 dad, you are said to be heterozygous. As in a
20 previous case, a two, three or a three, four
21 genotype would be heterozygous. If the example I
22 gave were a 3K from mom and a 3K from dad, you are
23 said to be homozygous. These are Latin terms
24 meaning same or different.

25 Now, another term you have to appreciate, this

1 gene that I've just typed up in nature has three
2 different forms, a two, a three and a four, and so
3 the word allele. The word allele means literally
4 alternate form. So here we'd say the alleles are
5 two and three, three and four and homozygous three.

6 So the terms we need to grasp from here are
7 heterozygous and homozygous and the fact that the
8 genotypes are made of alleles.

9 Now, in this technology that's used is
10 something that's called, the acronym is PCR, not to
11 be confused with what we're doing today, that's an
12 acronym for polymerase chain reaction. In all my
13 years as a geneticist, nothing has changed the field
14 like this technology. It allows the laboratory
15 person to make millions of copies of a particular
16 gene in a test tube.

17 And so here's a cell, this squiggly line
18 represents the DNA inside the nucleus. And the DNA
19 in a nucleus is the same whether it's from a sperm
20 cell or a blood cell or a saliva cell, skin cell, et
21 cetera. And the sections that you can see of these
22 genes have names like D3 or VWA. So the 13 genes
23 analyzed by SLED are given names such as these.

24 Now, with the PCR, what's going to happen is
25 only these genes, only these 13 genes are

1 replicated. Remember we've got three billion base
2 pairs. These 13 genes represent only about 6,000 of
3 those three billion base pairs. So it's a needle in
4 a hay stack situation. Enzymes come in and they
5 adjust these genes, replicate themselves millions of
6 times. That's why you can have, perhaps in a sexual
7 assault case, a small amount of semen where ten
8 years ago there would be no evidence, today you can
9 make these genes replicate into this evidence.

10 And the way that works is here's our DNA
11 molecule, our step ladder again. In the test tube,
12 the DNA molecule opens and things called primers,
13 which are purchased commercially, attach here at
14 this end and attach there. They are simply
15 complimentary pieces of DNA. There's a T and an A
16 here and there's an A and a T here and the primer.

17 Furthermore, the primer has a fluorescing
18 molecule attached to it because sooner or later you
19 have to be able to see the DNA. You can't see DNA
20 with a naked eye. So these fluorescing molecules
21 allow the DNA to be visualized.

22 So this primer causes this piece of DNA to
23 replicate in that direction. And this primer causes
24 the DNA to replicate in that direction. So when we
25 start out with one gene replicated of the allele, we

1 now have two, two become four, four become eight, et
2 cetera. So this is done in a thing called thermal
3 cyclor. It's computer generated. We set it up and
4 it automatically raises and lowers temperatures and
5 allows this process to go on.

6 **THE COURT:** Now, wait a minute. Let me ask you
7 one question. The allele in your step ladder
8 example and you've got the primer going in different
9 directions, which you mentioned the allele, and I'm
10 trying to figure out the allele, which you said
11 means ultimate form, but I'm not sure how the allele
12 fits into that.

13 **THE WITNESS:** Going back, let's say this is the
14 one with the two repeats.

15 **THE COURT:** All right.

16 **THE WITNESS:** And so this would then open,
17 including these repeats get replicated, so we now
18 get two fatefully replicated versions of that. And
19 then these go on to replicate again and again and
20 again and again, each time a fluorescing molecule
21 gets attached to the new repeat piece of DNA because
22 remember we have to find these later.

23 **THE COURT:** So they're going to -- they're only
24 going to do the test on the -- on which base pairs?
25 That's what I'm trying to figure out. What base

1 pairs are they going to do the test on? Just the
2 ones that are --

3 **THE WITNESS:** Just these. In other words, all
4 this DNA out here does not get replicated. It's
5 just that the base pairs that make up those 13 genes
6 are being studied. And keep in mind each gene has
7 two alleles, right, one from mom, one from dad.
8 These two D3's, these two VWA's, et cetera.

9 **THE COURT:** All right.

10 **THE WITNESS:** So those are some of the basics
11 of DNA structure and the PCR technology. Hopefully,
12 it sounds like people are learning, yes. Don't be
13 afraid.

14 So now a quick overview of the laboratory
15 technology. Here's a cell or cells contain DNA. In
16 this particular case, there were four samples taken,
17 a known sample from Mr. Pressley, a known sample
18 from Ms. H. a vaginal swab, which is called one
19 point seven in the evidence, and a swab that's
20 called suspected semen, which is given a number one
21 point ten, so four samples. So this technology is
22 done separately for each one of these four samples.

23 Let's assume this is Mr. Pressley's known from
24 him. The DNA is first extracted, that's a fancy
25 word for saying cells are broken open and DNA is

1 left out. Our PCR technology goes on and makes
2 literally a million copies of these 13 genes. So we
3 now have DNA representing 13, those 13 genes. Still
4 not saying anything. Attorneys always want to say
5 when do I see the DNA. You haven't seen it yet.

6 This replicated DNA is now put into a capillary
7 tube. It's a fancy word for a thin soda straw,
8 which is literally about 12 inches long. And it has
9 a gel like material in it. So the DNA is literally
10 injected in here, all this replicated DNA, this
11 xeroxed DNA, if you will.

12 Now, DNA has an overall negative charge. So
13 the DNA is placed in the capillary tube at the
14 negative end. Electricity is turned on. The gel
15 conducts electricity. And the DNA will move through
16 the gel just the way two magnets come together. In
17 other words, a negatively charged DNA is going to
18 move toward the positive pole. And it's going to
19 move according to charge obviously. It's also going
20 to move according to size. More specifically,
21 allele number two is going to move through here
22 faster than allele number three because number three
23 has four more base pairs. So three is a larger
24 molecule, if you will, than two.

25 So as these molecules are moving through the

1 gel, they move by an element in the computer that
2 gets excited by that fluorescing molecule that was
3 tied on each of these, so that's why the fluorescing
4 molecule is there. So the computer with the
5 software reads what molecules are moving through,
6 and as you'll see when we actually look at the
7 evidence, there are blue fluorescing molecules,
8 green fluorescing molecules and yellow fluorescing,
9 three different colors. Still not seeing any DNA.

10 The computer then generates what is called an
11 electropherogram. So you'll see, when we look at
12 the evidence, you'll see spikes along this line.
13 These spikes or peaks, if you will, represent two
14 alleles in this particular gene, two alleles in that
15 gene, et cetera.

16 Now, what we have for everyone are copies of
17 the electropherograms, 1-A, 1-B, et cetera.

18 BY MR. WHITTLE:

19 Q Are you ready to move to that?

20 A Yes, sir.

21 MR. WHITTLE: Please the Court, Your Honor,
22 these are documents which we received from copying
23 trial counsel's file. These are documents that came
24 from the DNA testing that was done by SLED. And we
25 are identifying these as Applicant's 1-A and

1 Applicant's 1-B, if that is acceptable. And I will
2 distribute copies to everyone in the courtroom.

3 **THE COURT:** Is there any objection to this 1-A
4 or 1-B?

5 **MR. BOOZER:** No objection, Your Honor.

6 **MR. WHITTLE:** Your Honor, we would ask that
7 these be marked and accepted as Applicant's 1-A and
8 1-B. These are documents from the SLED DNA testing.

9 **THE COURT:** All right. There's no objection,
10 so they're in evidence.

11 (Applicant's Exhibit Numbers 1-A and 1-B,
12 SLED documents, admitted into evidence.)

13 **BY MR. WHITTLE:**

14 **Q** All right. Tell us about these.

15 **A** You've all been given four electropherograms.
16 We'll first focus on the two where it says at the
17 bottom Pressley known and Pressley known. And to
18 get you oriented, first of all, one that simply says
19 Pressley known on it is from a commercially
20 purchased kit called profiler, P-R-O-F-I-L-E-R,
21 profiler. The second one that says Pressley known
22 profiler, that's a second commercially purchased
23 kit.

24 Looking at the electropherogram that only says
25 Pressley known to get you oriented again, please

1 note the obvious spikes along those, that represents
2 the alleles and where they went in the gel.
3 Secondly, note on the top line where it says 11
4 blue, that means those on that line had no
5 fluorescing dyes attached. The next one is 11 green
6 and 11 yellow respectfully. I've handwritten in D3,
7 VWA, FGA; et cetera, that's the identification of
8 the 13 -- each of the 13 different genes.

9 **THE COURT:** What's the red?

10 **THE WITNESS:** The red is called control. That
11 same pattern should be there all the time giving
12 credibility to the results above.

13 So, again, now to use your newfound
14 information, in the far left-hand corner, D3, you
15 see two spikes, one has the 15 box below it, one has
16 a 17 box below it. The 15 says that there were 15
17 repeats inside that piece of DNA. And the 17 says
18 that there were 17 repeats inside that allele.

19 So it would be said then that Mr. Pressley's
20 known profile for the D3 gene is heterozygous 15,
21 17.

22 **BY MR. WHITTLE:**

23 **Q** Heterozygous meaning two?

24 **A** Two different alleles, one with 15 repeats, one
25 with 17 repeats.

1 **Q** The one from the mother is different than the
2 one from the father?

3 **A** Exactly. And just to flush out the story, the
4 next one is VWA, he is heterozygous 16, 17. FGA, he
5 is heterozygous 21, 25 and so on.

6 And on the second line with the green, the X
7 and the Y clearly says this is DNA from a male.
8 It's called a gender gene.

9 So, again, to bring your attention to your
10 information base, he is heterozygous at D3, at VWA,
11 FGA, et cetera. If you look down at D13, the last
12 line, he is homozygous 13, therefore, just one peak.
13 His 13 from mom went to the same place as his 13
14 from dad, so the evidence -- the profile simply
15 shows a 13. And, again, the next one to the right,
16 D7, he is homozygous 12.

17 **Q** What's the significance of differentiating
18 homozygous from heterozygous at this point?

19 **A** Just to introduce everyone to those terms and
20 the tutorial version of it because that will be an
21 issue when we actually look at the evidence.

22 And, again, if you turn to the next page, the
23 Pressley known profiler, another form of controlled
24 D3 is done again upper left-hand corner and
25 obviously should be the same results as the D3 on

1 the previous one. D7 on the right-hand corner again
2 is a control and should be the same as in the
3 previous kit. And then one, two, three, four new
4 genes are D16, TH01, TPOX and CSF. So then these
5 two electropherograms represent the known for
6 Mr. Pressley. This was either taken from a saliva
7 swab or a small amount of blood.

8 THE COURT: What are the larger numbers in the
9 box underneath? Is that germane to what we're
10 doing?

11 THE WITNESS: Yes, it is. I was going to get
12 to that later, but we can reach that right now.

13 THE COURT: Whenever you want to. I was just
14 curious.

15 THE WITNESS: Say again, sir.

16 THE COURT: Whenever you want to bring it up.
17 I'm not trying to --

18 THE WITNESS: I think it may make more sense --

19 THE COURT: That's fine.

20 THE WITNESS: It's a unit of measurement for
21 now. The next two items --

22 BY MR. WHITTLE:

23 Q Which we've marked as 1-B.

24 A The next two items represent the

25 electropherogram from the known of Ms. [H.] And

1 again, as you can see, I've hand marked in D3, VWA,
2 et cetera. She is heterozygous at 16, 17 at D3,
3 heterozygous 15, 17 of VWA, et cetera. And as you
4 can see, she is homozygous 10 at D7. And again, I
5 just point this out based on the information I have.
6 And if you look at the gender gene, there's just one
7 peak there, that means female, it's to a female. Of
8 course, it's X under that. It's the middle of the
9 green line all the way at the end, single peak with
10 green, that clearly says this is from a female.

11 So those are the knowns from the two
12 individuals involved in this case. And I'll turn
13 your attention to we've got blowups of these.

14 Q Let me stop you for just a moment.

15 MR. WHITTLE: Included in your material will be
16 what we will call our Applicant's Number 2, which is
17 the front page of the SLED Law Enforcement Division
18 Forensic Services laboratory report that was
19 prepared in this case and was given to the
20 Solicitor's office and given to Mr. Anderson as part
21 of discovery. And, Your Honor, we would hand up to
22 you the three page document. We've got blowups so
23 that if accepted, the three page document will
24 become Applicant's 2, 3 and 4. And I think everyone
25 has a copy.

1 **THE COURT:** So you're entering these as 2, 3
2 and 4; is that right?

3 **MR. WHITTLE:** Yes, sir.

4 **THE COURT:** Is there any objection?

5 **MR. BOOZER:** No objection, Your Honor.

6 **THE COURT:** Okay. Thank you. They're in
7 evidence.

8 (Applicant's Exhibit Numbers 2 through 4,
9 SLED reports, admitted into evidence.)

10 **BY MR. WHITTLE:**

11 **Q** Doctor Ostrowski, these are the three pages of
12 the report prepared by the individual at SLED who
13 did the DNA testing in this case; is that accurate?

14 **A** Yes, sir.

15 **Q** Please bring your attention to what we've now
16 called 2, which will be the first page of that
17 report, and tell us the significance of the items
18 analyzed on that report.

19 **A** Just to get us oriented, it's dated June 14th,
20 '02. It has a case number and it has Mr. Pressley's
21 name listed and Ms. H. name listed. Down here
22 what this says is items analyzed. If you just look
23 at the electropherogram from the blood standard from
24 Ms. H. it's called one point four. This is one
25 point four on the evidence.

1 Q Now, a blood standard would be something
2 actually taken from her that we're certain came from
3 her, a blood sample?

4 A Yes, sir. Most like you done when a rape kit
5 was done. It's usually a small tube of blood,
6 finger stick and a small tube of blood is taken. So
7 a blood standard from Ms. [H.] one point four; a
8 blood standard from Mr. Pressley identified as two
9 point one; and then again from the rape kit, a
10 vaginal swab, one point seven; and what SLED refers
11 to as suspected semen, one point ten.

12 Q The numbers that were given were just given by
13 SLED. Those numbers play no part in what you're
14 talking about?

15 A No, sir -- yes, sir, those are in-house
16 identification numbers for SLED.

17 Q All right.

18 A And my style is always to bring people in by
19 repeating, repeating, repeating. It says here, DNA
20 profiles were developed from all the items above
21 using short tandem repeat. That's the repeats of
22 the box, if you will. PCR, DNA analysis. And then
23 it states that results are shown on the next page.

24 Q The next page, which is listed on the exhibit
25 as page two of three is our Applicant's Number 3,

1 please explain that to us.

2 A These boxes literally represent the results
3 found on electropherograms. Just to get you
4 oriented, along this column here is D3. And please
5 note, I've been calling it D3, the official name is
6 D3S1358. In the business shorthand, it's simply D3.
7 So D3, VWA, FGA, D8, D21, et cetera.

8 Going down this column here, the first items
9 are from Ms. H. one point four; from
10 Mr. Pressley, two point one; and then one point
11 seven. And one point seven appears twice and note
12 that there's an F behind the first one, an M behind
13 the second one.

14 When the DNA swab is taken from a vaginal
15 vault, on that -- if there's semen there, on that
16 swab will be the female's vaginal cells and DNA from
17 any semen or slash sperm that's in the vagina.
18 There's a technology called differential extraction
19 where chemically a laboratory person can separate
20 the female cells from the male cells because you
21 want to be able to analyze the female DNA separately
22 from the male DNA. So they are referred to as F and
23 M respectfully, female fraction, male fraction. And
24 the same is done for item one point ten female
25 fraction, male fraction.

1 Q Doctor Ostrowski, under the column called
2 items, if I count properly, that's one, two, three,
3 four, five, six, seven, eight, nine, ten, we were
4 talking about 13 earlier. Does that go to --

5 A The remainder will appear on page three.

6 Q So we're not leaving anything out?

7 A No, sir.

8 Q Okay.

9 A One of the important reasons for demonstrating
10 this is the following: In Ms. Gallman's testimony,
11 she said that only identical twins have identical
12 DNA. That's a true statement when you look at 100
13 percent of the DNA. In a forensic context, at best,
14 it's misleading because as you can see, there are
15 three billion base pairs, but they're only looking
16 at 6,000 of those base pairs.

17 And the court, furthermore, negates that
18 statement in that, remember, first, the molecular,
19 that's the test tube stuff, and then population
20 genetics, how they got to this place, but this line
21 here says the DNA profile developed from the semen
22 found on item one point seven matches Ernest
23 Pressley, period. The probability of randomly
24 selecting an unrelated individual, in other words, a
25 family member, might be apt to have just randomly

1 alone the same profile for these 13 genes. So
2 unrelated individuals can have very high incidents
3 of also having this pattern and then --

4 Q Let me make certain I understand. When she
5 uses the word unrelated individual, she's talking
6 about kinship?

7 A Kinship.

8 Q In other words, if somebody from the family was
9 tested, that may change what was said in that
10 sentence?

11 A Brothers, fathers, cousins, males in this case.
12 And then further on it goes to say having a DNA
13 profile matching item one point seven is one in 139.
14 It says that. If we go out in the State of South
15 Carolina and if we were able to march all, at this
16 point, one point nine million males in the state
17 past us, about 11,000 of them would have this
18 particular DNA profile the same as Mr. Pressley's.

19 Q You're using that one in 139 as if it is
20 correct. We later on learn that that is not
21 accurate based upon the testing?

22 A Yes, sir. If I forget to mention that, I'm
23 sure you'll remind me.

24 The other issue here, just to make a point for
25 all you nongeneticists who are afraid of this stuff,

1 we share a lot of genes whether we're related or
2 not. As you can see, that gene D3, they both, H.
3 and Pressley, both have 17. At VWA, they both have
4 17. At D8, they have the exact same profile,
5 heterozygous 12, 14. At D21, they're different. At
6 D18, they share 16. At D5, they share an eight. So
7 my point is even though these are two unrelated
8 individuals, they share a good number of genes and
9 so it's -- you can now understand why all you can do
10 is give a statistical estimate of how many other
11 people may match this and it turns out to be, again,
12 one in 139 will get that label. But that's the
13 issue I wanted to raise about that.

14 Your item four is simply the second page -- the
15 third page of that report that has to do with the
16 cofiler results. And, again, here's our friend D3
17 again. D16, they both share a nine. TPOX, they
18 both share a nine, et cetera. So these three pages
19 then represent the boiler plate DNA report that was
20 issued by the SLED lab.

21 Now, in Ms. Gallman's testimony, she said on
22 pages 223, 228 --

23 Q Let me stop you just a moment.

24 MR. WHITTLE: Your Honor, we have tabbed the
25 transcript so you can go to the pages that he makes

1 reference to.

2 **THE COURT:** Okay. Thank you.

3 **THE WITNESS:** On pages 223, 228, 232 and 230,

4 Ms. Gallman testified that there's nothing to

5 exclude -- nothing to exclude Mr. Pressley. That is

6 not accurate. And here's why: We'll take D3 as an

7 example. Again, this is from that 1-A item. We

8 know that Mr. Pressley from the known is

9 heterozygous 15, 17, that's a known from that

10 electropherogram that we first saw. We know that --

11 **Q** Could you make reference to which chart and

12 where you are on the chart?

13 **A** This is item, I believe, you marked 1-A, the

14 first electropherogram that everyone was given.

15 That's the known electropherogram. And from that,

16 that's a standard, he is heterozygous 15, 17. She

17 is heterozygous 16, 17. Now, what this

18 electropherogram says, we can do these one at a

19 time, this is D3.

20 **Q** Let me make certain that we've got this in now.

21 This one is which one?

22 **A** This is one point 7M profiler. These are the

23 knowns.

24 **Q** So we don't have those before them. Let's get

25 that right, okay.

1 **MR. WHITTLE:** Let's call this Applicant's 5.
2 And, again, Your Honor, this will be from the files
3 of the SLED tester.

4 **THE COURT:** Is there any objection?

5 **MR. BOOZER:** No objection, Your Honor.

6 (Applicant's Exhibit Number 5, SLED
7 document, admitted into evidence.)

8 **THE WITNESS:** One point seven M profiler
9 represents the evidence from the vaginal swab,
10 that's one point seven. And just discussion sake,
11 we'll begin with detail analysis of the D3 gene.
12 This is what's called a mixed sample. As you can
13 see, there's a peak representing allele 15, a peak
14 representing allele 16 and a peak representing
15 allele 17. Mixed sample because this says there's
16 at least two people's DNA in that sample. That's
17 all you can say. It could be two. It could be
18 three.

19 Now, what Ms. Gallman has said is this does not
20 -- by entrance, this does not exclude him because
21 what they are saying -- she is saying, here's his
22 15, here's his 15, and here's her 16 and 17. And,
23 also, what the inference is since he's heterozygous
24 15 and 17, they're saying his 17 peak is here and
25 it's basically covered over by her 17. They both go

1 to the same place. So by SLED's analysis, they
2 would say this represents two peaks, one -- a 17 for
3 Ms. H. and a 17 for Mr. Pressley, her 16 and his
4 15.

5 Now, if you use this interpretation alone, he
6 cannot be excluded. However, what was not brought
7 out in the trial was that there were two other
8 legitimate interpretations of these results both
9 excluding Mr. Pressley. They look like this, here's
10 one. And, again, we're going to stipulate, if I may
11 use that word since I'm not an attorney, we're going
12 to stipulate since this came from her vagina, that's
13 most likely her 16 and 17. We know where this came
14 from.

15 A second interpretation is that that's her 16
16 and 17, but this represents a homozygous 15
17 situation, so the male contributor to this is
18 homozygous 15.

19 BY MR. WHITTLE:

20 Q Do we know, based upon your earlier analysis,
21 that Mr. Pressley is not a homozygous 15?

22 A This interpretation, which is as legitimate as
23 that interpretation, excludes him. Yet another
24 interpretation is here's her 16, 17 and 15. There's
25 a 16 covered by her 16 giving a genotype of 15, 16,

1 which is also excluding Mr. Pressley.

2 Q Mr. Pressley is not a 15, 16?

3 A No, sir. He's a 15, 17. So there are three
4 legitimate explanations -- interpretations of this,
5 two out of three exclude him.

6 Q So when she said there's nothing to exclude,
7 there's a relatively simple analysis in two other
8 circumstances which would exclude him?

9 A And that's just at that place.

10 Q All right. We are going back to Applicant's 3.

11 A There's a mixed simple at VWA, the same thing,
12 two to three interpretations exclude him. This is
13 one that they use. You can also, as interpretation
14 is excluded here, here they have the same genotype,
15 here he can be excluded, excluded, excluded and
16 excluded here. And the interesting thing here is
17 she is ten, he is 12, homozygous ten, he's
18 homozygous 12. They find a ten. An exclusion
19 argument can be made here that the real perpetrator
20 is homozygous ten because, remember, people can have
21 the same genotype for these things as you can see.

22 Q Let me stop you just a moment. Looking on
23 Applicant's 3, looking at one point 7M, the line you
24 just referred to, and reading the material contained
25 at the bottom of the chart, can you explain to us

1 what RFU between 75 and 149 means and why that's
2 significant on the line 1 just illustrated?

3 A Yes, sir. Your Honor, as promised earlier,
4 we'll get to the second box in that. Again, if you
5 -- probably the easiest way to do it is with our --
6 the known handout that you have.

7 THE COURT: Before we get to that, can I ask a
8 question?

9 MR. WHITTLE: Certainly.

10 THE COURT: You wrote on what is Exhibit 5, D3
11 where you've shown --

12 THE WITNESS: Yes, sir.

13 THE COURT: And that's a mixed sample.

14 THE WITNESS: Yes, sir.

15 THE COURT: From one point 7M on Exhibit 4.

16 THE WITNESS: Yes, sir.

17 THE COURT: Why, on previous things we've
18 looked at that are marked D3, are there only two
19 peaks?

20 THE WITNESS: And that's the point. When you
21 look at a standard, as we did with the first two
22 handouts, remember we had to give --

23 THE COURT: Those are just the knowns.

24 THE WITNESS: Those are the knowns. So in a
25 normal circumstance, you would have two peaks

1 meaning heterozygous or one peak meaning homozygous.
2 And so we see three peaks, the best you can say it's
3 at least two people, could be three.

4 **THE COURT:** Could be more.

5 **THE WITNESS:** Yes, sir.

6 And now back to your original question. We're
7 at Pressley known, the first handout, the 1-A, for
8 D3. So you can see there's peak 15 and peak 17
9 referring to the number of repeats. Below that in
10 the boxes are 2,436 under 15 and 23, 22 below 17.

11 **THE COURT:** Okay.

12 **THE WITNESS:** That is a unit of measurement
13 called an RFU. It's an acronym for relative
14 fluorescing unit. Remember when the PCR technology
15 went on, glowing molecules were attached to the
16 primers, blue, green and yellow? As this DNA passes
17 through the capillary tube and excites the computer,
18 the computer recognizes how much fluorescing there
19 is and places a unit on it. And so the unit of
20 measurement, the size of the 15 is 2436 RFU's and
21 the second one is 2322 RFU's. You can see the RFU's
22 measurements are located to the far right-hand side
23 of that line.

24 **THE COURT:** Is that a constant?

25 **THE WITNESS:** Excellent question. No, it's

1 not. It's dependent upon how successful you were at
2 PCR'ing these individuals because notice at the next
3 one, VWA, under 16 is only 1900 and change, and
4 under 17 is 1598. So, again, different amounts of
5 RFU's, different success in making these replicate
6 themselves millions of times.

7 Well, when you read SLED's protocol relative to
8 RFU's, this document's entitled South Carolina Law
9 Enforcement Division Forensic Services Laboratory
10 Protocol Manual. It's a how to document. When you
11 look at under the issue of RFU's, and this is a
12 direct quote, this is under item five point three
13 point one point one entitled Allele Peaks, a direct
14 quote, Alleles at or above 150 RFU's can be
15 interpreted for match purposes, comma, can be used
16 for frequency estimates, comma, and appear on charts
17 included in the final reports. It's this
18 (indicating).

19 Next paragraph down, Validation studies have
20 indicated that the level of stochastic (ph), that's
21 a fancy word for things that can go wrong,
22 stochastic effects significantly increases at or
23 below 150 RFU's, period. As a result of these
24 studies, comma, alleles occurring in the 75 to 149
25 RFU range are interpreted with caution. So that is

1 a direct quote out of their protocol manual.

2 So the molecular genetics was done, the lab
3 coat stuff, testing stuff. Now it's time to assign
4 a match probability number. The two that Ms.
5 Gailman used are FGA.

6 BY MR. WHITTLE:

7 Q Column three?

8 A Yes, sir, column three. FGA and CSF.

9 Q And you're making reference to Applicant's
10 Number 3 and Applicant's Number 4?

11 A Yes, sir. Back to item 5 again, when you look
12 at the gene FGA, you see mix in our mixed sample 20,
13 21, 25 and 26 as seen here on the report. 20 and 26
14 are consistent with Ms. ~~H.~~ } from her known and 21
15 and 25 are in parentheses because they are in RFU
16 range below 150. In fact, their computer says that
17 allele 21 has an RFU value of 78 and 25 has an RFU
18 value of 114.

19 Q What's the significance of that and what you
20 just read from their own manual?

21 A Well, their own manual says that you want
22 readings to be above 150 RFU 's. These are below
23 150 and they say you have to interpret them, one,
24 with caution, which their lab says go ahead and
25 interpret them, and, secondly, even when they

1 interpret them with caution, there are still several
2 other interpretations of that which exclude
3 Mr. Pressley.

4 Q And she chose two genes where the RFU's were
5 below the standard?

6 A Yes, sir, in both FGA and CSF.

7 THE COURT: Is that standard for the RFU's
8 consistent with the industry standards?

9 THE WITNESS: Yes, sir. It has -- to be
10 totally candid, this is 1990 -- 2002, machines have
11 gotten better and some labs have a standard now down
12 at a hundred and some even have it 75. I think SLED
13 is still at 150, though.

14 BY MR. WHITTLE:

15 Q Where did you want to go from here?

16 A Well, I think in way of summary, we can expand
17 if you like through cross or direct. So we've done
18 the molecular in the population genetics. In
19 summary, the statement about only identical twins
20 have identical DNA is at best misleading, simply not
21 so in a forensic situation. These two folks share a
22 lot of genes in common at ever -- literally at every
23 locus, other interpretations -- every other gene, at
24 every gene, whether it be from the vaginal swab or
25 what they're calling suspected semen, every gene has

1 an interpretation that excludes Mr. Pressley.

2 If you go -- and if you say one of the
3 interpretations is where he's included, the numbers
4 do not apply to a related individual, a related
5 individual, a male family member might have this
6 same caution, no other, from what I've read, no
7 other males haven't been tested including apparently
8 a boyfriend that was involved. And, secondly, if
9 there is one in 139, if that's the probability of
10 randomly selecting someone in the State of South
11 Carolina alone, not including North Carolina to the
12 north and Georgia down below, there's over 11,000
13 other males that would match this particular
14 evidence.

15 Q Let's call this Applicant's Number 6. Is this
16 a document that we obtained from the State from the
17 testing that was done by SLED?

18 A Yes, sir.

19 Q And what is this, please?

20 A This sheet represents, attached to the reports
21 that we've been looking at, this is the population
22 genetic calculations. And as you can see, what it
23 says is they analyzed FGA, we just talked about
24 that, and CSF. These are alleles that were found
25 there that they're attributing to Mr. Pressley.

1 And what DNA doesn't tell you, what the DNA
2 results among other things doesn't tell you is the
3 race of a person. So in South Carolina, SLED has
4 based their data bases, their frequencies of how
5 often these genes occur on the Caucasian population,
6 black population and Hispanics, which were divided
7 into southeastern Hispanic and southwestern
8 Hispanic. And you'll notice that on their report,
9 they said that there's a one in 139 chance that this
10 person be randomly picked out of population.

11 What they do is they give the number for
12 southwestern Hispanics. And to me, that's simply,
13 as a scientist, that's bad housekeeping, bad record
14 keeping. I observed Mr. Pressley. He looks like an
15 African-American male to me. And they don't give
16 the number for a black person. They give it for a
17 Hispanic person.

18 Q The number that went on the final report was
19 not for a black individual, but was for a Hispanic
20 allegedly from southwestern part on the United
21 States?

22 A Yes, sir. They get it right on the second
23 report, the one for the suspected semen. They give
24 you one in 3500 and that's the number that comes up.
25 So all I can say is that they're not doing -- this

1 is simply bad bookkeeping because they've got it
2 right here and they've got it wrong there.

3 Q Have you had the opportunity to review the
4 transcript?

5 A Yes, sir.

6 Q Have you reviewed it in depth on numerous
7 occasions?

8 A Numerous.

9 Q Was Ms. Gallman a statistician?

10 A She says she is not.

11 Q Why is that important?

12 A Well, as you can see, once there's a so-called
13 match, it then comes down to population genetics
14 slash statistics. It's a tool used by population
15 geneticists.

16 Q Is she a geneticist?

17 A I've seen her C.V., she's not a geneticist.

18 Q Is that important?

19 A I would think so if you're analyzing genetic
20 information.

21 Q Can you do this sort of work without being a
22 geneticist?

23 A You can do the laboratory part of it. If --
24 when you read -- she was asked by Mr. Anderson about
25 how they tested for the semen and she said, Well, we

1 have a Q-tip, it's in the vagina. I take the Q-tip.
2 I cut off the tip, drop it in a, basically, a test
3 tube of clean water called saline. I have a reading
4 stick like a pregnancy test, I stick it in. And if
5 I see two bands, it means it's semen.

6 I don't think you need to be a geneticist to do
7 that. She is a technician, that's what she does.

8 Q Would being a geneticist help you understand
9 and explain what happened?

10 A I would hope so.

11 Q Does it indicate that she's a member of any
12 professional society or is certified or qualified on
13 a national basis?

14 A As I remember, she's not a member of the
15 American Academy of Forensic Scientists, which is
16 the flagship group of people who does this. I think
17 she does have -- as I remember, I think she is a
18 medical technologist. She has a degree in medical
19 technology where she's certified and that's
20 basically a technician's position.

21 Q Doctor, is it simply inaccurate for her to have
22 stated on numerous occasions in the transcript that
23 there was nothing to exclude Mr. Pressley?

24 A Yes, that's inaccurate.

25 MR. WHITTLE: Your Honor, could I have just one

1 moment?

2 **THE COURT:** Certainly.

3 (Pause.)

4 **BY MR. WHITTLE:**

5 **Q** Doctor Ostrowski, how long can sperm survive in
6 vaginal cavity?

7 **A** The answer that's given most often to that in
8 testimony in this state and other states is two to
9 three days. But one of the hallmark pieces of
10 research on this published in the American Journal
11 of Medical Association is up to ten days. The point
12 is it will last in a vagina for up to three, four,
13 five, six days.

14 **Q** So is time an essential element in a case like
15 this?

16 **A** Yes, it is. There's -- yes, semen was found in
17 her vagina and, yes, semen was found on her body,
18 but given her hygiene habits or, to us, her unknown
19 hygiene habits, that semen could have been there a
20 day, two, three days before the alleged incident.

21 **MR. WHITTLE:** Your Honor, that's all we would
22 have on direct. I would ask to make certain that we
23 have in 1-A, 1-B, 2, 3, 4, 5 and 6. And I would ask
24 that the ones in your hand be given to the clerk so
25 she can mark them as exhibits without objection.

1 **THE COURT:** Okay. So they're all in evidence
2 without objection.

3 **MR. WHITTLE:** Thank you, Your Honor.

4 (Applicant's Exhibit Number 6, SLED
5 Document, admitted into evidence.)

6 **THE COURT:** Cross-examination.

7 **MR. BOOZER:** Please the Court, Your Honor.

8 **THE COURT:** Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. BOOZER:

11 **Q** Doctor Ostrowski, you were retained by
12 Mr. Whittle to review the transcript in this matter
13 and what else?

14 **A** And the evidence.

15 **Q** And the evidence?

16 **A** Yes, sir.

17 **Q** Now, you never had the ability or actually
18 performed any DNA analysis on any of the evidence in
19 the case; is that correct?

20 **A** Did not, no, sir.

21 **Q** So you never touched any swabs that were taken
22 by SLED?

23 **A** No, sir.

24 **Q** Never examined any underwear, undergarments
25 taken by SLED?

1 A No, sir.

2 Q Okay. You were talking about ways of excluding
3 Mr. Pressley from this case as being his matching
4 DNA and you kept referring to interpretations?

5 A Yes, sir.

6 Q What do you mean by interpretations? What --
7 could you tell us what that means?

8 A Well, one of the challenges of science in
9 general, talking about forensic science, one of the
10 challenges in science is you collect data and you
11 need to interpret the data and you need to interpret
12 and consider all of your data, not just pick and
13 choose those things that might fit your particular
14 hypothesis that you're working on. So what I mean
15 by interpretation is there are legitimate
16 interpretations of this evidence -- of the evidence.

17 Q But by interpretations, these would be things
18 that she's not necessarily required to do, they're
19 just ways that she could interpret the findings; is
20 that correct?

21 A She's absolutely required to do this. I mean,
22 if you're going to do the science, you have to
23 present all of the evidence and all of its
24 ramifications, but she didn't.

25 Q So then should it then be labeled, and I may be

1 just getting in semantics then, requirements rather
2 than interpretation of this?

3 A I didn't understand your question.

4 Q I'm just concerned, you termed it an
5 interpretation, an interpretation of this. It's not
6 an exact finding or is it?

7 A The exact findings are the ones I outlined here.
8 The only question is which one is real. And since
9 this is an unknown, you really don't know.

10 Q Now, looking back at -- and I'm not sure what
11 -- exactly which page we're on or what we labeled it
12 as exhibit, as results, and I think it's the one
13 where we discussed the one in 139.

14 MR. BOOZER: May I approach the witness, Your
15 Honor?

16 THE COURT: Sure.

17 BY MR. BOOZER:

18 Q And you can probably more quickly point to this
19 than I can. This one. Could you talk a little bit
20 about the one in 3500? What does that relate to?

21 A That second paragraph relates to evidential
22 items one point ten F and one point ten M. Again, M
23 is the male fraction from the semen. And, again, as
24 you can see, mixed samples all across the board with
25 the same possible interpretations, multiple

1 interpretations for each gene. When the statistics
2 were done and the population genetics were done,
3 they used more loci and their rationale was, we're
4 using more genes because this one came from inside,
5 as I understand her testimony, this one came from
6 inside her body, she called it an intimate sample as
7 I remember, and this came from outside her body. So
8 she then used more genes. And the more supposed
9 matches there are, that number changes obviously.
10 It's still -- with that number, there's still about
11 6,000 males in South Carolina alone that would match
12 that evidence.

13 Q Six thousand out of about how many; do you
14 know?

15 A Of the one point nine, if we're assuming half
16 the population is male.

17 Q That's fairly a small number; is that correct,
18 out of one point nine million?

19 A Oh, no, it's a huge number. With this
20 technology, they took the numbers that says you're
21 the only person on the face of the earth since Adam
22 and Eve that would have this particular pattern.
23 Now these numbers in the context of this technology
24 are really small.

25 Q Now, in Ms. Gallman's report, in SLED's report,

1 and these numbers, and help me understand because a
2 lot of it does go over my head, is there anything
3 not excluding him? Are there matches on there of
4 Mr. Pressley?

5 A Well, we're getting into interpretations. If
6 you look at these two here, 21 and 25, that's
7 consistent with him. First of all, these are below
8 their own protocol for 150 RFU's. And, secondly,
9 given these four alleles that are here, there are
10 multiple possibilities for the genotype here. Yes,
11 this is one of them in there, but there are other
12 possibilities and that point was not made during the
13 trial.

14 Q How many of these findings below the RFU are on
15 here?

16 A The ones in the parentheses. So that one, that
17 one, that one. And by the way, she doesn't -- why
18 she doesn't use this one, because there's only one
19 of them.

20 Q Now, compared to all those with the RFU's that
21 are below -- was it the 150 standard that you had?

22 A Yes.

23 Q How many are there that is actually matching to
24 Mr. Pressley? And that may not be a correct
25 question. I may not be asking --

1 A I'm sure it's a legitimate question. Ask it
2 again, please.

3 Q And let me try to rephrase it. These that are
4 not in parentheses, what is the significance of the
5 ones that are not in parentheses?

6 A First of all, means they're above 150 in RFU
7 value.

8 Q And are those numbers not in parentheses that
9 are above the 150 RFU value, are those numbers that
10 match Mr. Pressley?

11 A Yes, sir. This one here, here's a 15 which is
12 consistent with him. And they are assuming that his
13 17 is hidden under her 17, so they're making an
14 assumption themselves interpreting something. My
15 argument is that that could be, but another
16 legitimate interpretation is that's her and that
17 represents the real perpetrator, to make an
18 argument, who's homozygous 15 or a second argument
19 that the real perpetrator is 15, 16, which also
20 excludes him which is hidden by her 16.

21 Q And these are, again, all what you call
22 interpretations?

23 A Just like hers. She just chose to interpret
24 one that fit in her hypotheses.

25 Q So are you telling me that she is absolutely

1 wrong in her -- in the way that she did this report?
2 Are you telling me that there are other
3 interpretations?

4 A I'm saying she's absolutely wrong from a
5 science point of view in that she didn't do all the
6 data and do all the possible interpretation, that's
7 required for good science.

8 Q But what is actually in the report is that
9 wrong?

10 A Yes.

11 Q Those findings are absolutely a hundred percent
12 wrong?

13 A Yes. No where does she -- from her testimony,
14 I believe she takes a form and types all these in
15 based on the electropherogram. So, no, these are
16 found on electropherogram, I'm not saying that's
17 wrong. This is accurate. What I'm saying is
18 there's more than one legitimate interpretation at
19 every gene and that should have been brought out in
20 all fairness to the balance of the evidence.

21 Q And that's the way you interpret it today?

22 A Myself or any other geneticist would interpret
23 it that way. And by the way, if I may, if I was
24 assisting you, I would have told you the same story
25 before this trial started.

1 Q And, obviously, you've testified in quite a few
2 cases as an expert, correct?

3 A I have.

4 Q Have you testified on both the defense's behalf
5 and the prosecution's behalf?

6 A Only on the defense side. The prosecution has
7 their own witnesses.

8 Q So you've only testified on defense's behalf?

9 A Yes, sir.

10 Q So your job is to poke holes in the State's
11 case?

12 A No. My job is to explain the evidence to the
13 attorney I'm working with and to the jury I'm asked
14 to testify. It's not a matter of poking holes, sir.
15 It's a matter of interpreting the evidence
16 correctly.

17 Q Certainly. Being a lawyer, that was just my
18 interpretation. Are you usually able to find, in
19 your experience in coming into court and testifying
20 as an expert witness, are you usually able to find
21 some flaws in maybe the way a DNA analysis was done?

22 A Most of the time, and I've done over 400 cases,
23 most of the times I see the evidence and I say to
24 the attorney on the phone, are they offering a plea,
25 because if they are, take it. The evidence is

1 clean. It's straightforward.

2 No other -- for instance, what I mean by that,
3 say in the male fraction, they found just his, not a
4 mixed sample, but just his alleles, we wouldn't be
5 here today.

6 Q And in those many numerous cases that you've
7 testified in, are you able to conclude
8 interpretations that maybe the prosecution's witness
9 did not conclude or find?

10 A That's usually, I -- and, again, for context,
11 I'm quoting an attorney I worked with years ago. He
12 said, I'd like -- Will you testify? I said, Yes, I
13 will. He says, Can you say anything and add
14 substantially to the case? And if I can't, I don't
15 testify. As I say, if the evidence is what it is, I
16 tell the attorney I'm working for, I'd be your worst
17 enemy on the witness stand because I'd go along with
18 what the prosecution is saying.

19 Q Now, would it be fair to say that you don't
20 know Agent Gallman other than what's in the
21 transcript?

22 A I've met her. We have sat at opposite tables
23 on a number of occasions.

24 Q You've never had the opportunity to work with
25 her or know what her procedures or routines are?

1 A No, sir.

2 Q You've never seen her perform any DNA analysis?

3 A No, I've not witnessed her working in the
4 laboratory.

5 MR. BOOZER: Okay. Court's indulgence, Your
6 Honor.

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. BOOZER: No further questions, Your Honor.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION

12 BY MR. WHITTLE:

13 Q Doctor Ostrowski, was it absolutely wrong for
14 Ms. Gailman to say there was nothing to exclude
15 Mr. Pressley when she said that numerous occasions
16 at trial?

17 A Yes, it is.

18 Q Was there anything left for you to be able to
19 test? If we had wanted to test, are there any
20 samples left?

21 A I'm not sure if they kept any sample, no.

22 Q The issue of the statistical 11,000 or the
23 statistical 6,000, doesn't actually matter if you go
24 into the other interpretations that could exclude
25 Mr. Pressley; is that true?

1 **A** If there's an exclusion, there's no statistics
2 because exclusion is 100 percent and there's no need
3 for statistics.

4 **MR. WHITTLE:** Thank you. Please answer any
5 questions that the Judge may have.

6 **MR. BOOZER:** May I ask one more question, Your
7 Honor?

8 **THE COURT:** Yes.

9 RECROSS-EXAMINATION

10 BY MR. BOOZER:

11 **Q** And I may have, again, not been listening just
12 a minute ago, and I apologize, but you cannot
13 exclude Mr. Pressley from this positively?

14 **A** I can exclude him in more situations I can
15 include him.

16 **Q** You can exclude him based on your
17 interpretation; is that correct?

18 **A** On the legitimate genetic interpretation that
19 any geneticist would do, he would be excluded two
20 out of three interpretations.

21 **MR. BOOZER:** Thank you. No further questions.

22 **THE COURT:** One point seven M?

23 **THE WITNESS:** Yes, sir.

24 **THE COURT:** What would explain the discrepancy
25 between the ten and 12 for the male? You said that

1 was an instance that could show Mr. Pressley could
2 be excluded all together; isn't that right?

3 **THE WITNESS:** From both of these samples, yes,
4 sir.

5 **THE COURT:** Which samples are you talking
6 about?

7 **THE WITNESS:** One point seven M male fraction
8 and one point ten M male fraction.

9 **THE COURT:** Okay. What other explanations
10 could there be for that one point seven M sample and
11 the one point ten M sample, or item rather, I guess
12 I should say, on the D7 being a homozygous ten?

13 **THE WITNESS:** Two possible explanations,
14 legitimate explanations. Her known is homozygous
15 ten, his known is homozygous 12. One possible
16 legitimate explanation in favor of the prosecution
17 is that's her DNA that didn't separate out nicely.
18 The second one is that's -- we get the perpetrator's
19 DNA, he's homozygous ten. So there's two
20 explanations here, one of the two excludes him. And
21 all I'm saying is that to be absolutely fair in
22 science and to be correct in science, you have to
23 give all the possible interpretations for the
24 evidence. You can't just pick and choose.

25 **THE COURT:** How common is that to happen, that

1 that be her DNA?

2 **THE WITNESS:** As exciting and good as this
3 technology is, it's not perfect. 2009, it's still
4 not perfect. When the differential extraction is
5 done, female here, male there, it doesn't always
6 work that way. You simply don't -- sometimes you'll
7 get -- I've seen cases where you just get the female
8 in both the female fraction and the male fraction.
9 The male doesn't even show up even though there's
10 semen there. The technology is not perfect, and
11 that's not the laboratory technician's fault, that's
12 just the technology.

13 **THE COURT:** Okay. Thank you very much.

14 **MR. WHITTLE:** Your Honor, we would intend to
15 call Mr. Anderson as our second witness.

16 **THE COURT:** All right. Yes, sir.

17 **PAUL ANDREW ANDERSON,**
18 having been duly sworn, testified as follows:

19 **THE WITNESS:** I'm Paul Andrew Anderson. I go
20 by Andy Anderson.

21 **DIRECT EXAMINATION**

22 **BY MR. WHITTLE:**

23 **Q** Mr. Anderson, you and I know one another.
24 Would you feel comfortable if I refer to you as
25 Andy?

1 A That's fine, yeah. I don't feel comfortable up
2 here at all, so.

3 Q As I was asking that question, I was thinking
4 that, poor choice of words.

5 You've now had the opportunity to see,
6 approximately, an hour and a half testimony
7 regarding the DNA work that was done in this case.
8 What's your feeling having seen that?

9 A I've got a lot of thoughts running through my
10 head. I mean, I certainly would have liked to have
11 had the doctor on our team on this case. I feel
12 like the DNA is what killed us in the trial. And I
13 don't know. I mean, I don't understand it great,
14 obviously. I think -- I would love to know if there
15 was any way to figure out if there is an overlapping
16 or not with those -- the common ones. I don't know.
17 I don't know. It was very interesting to hear him
18 talk. He did a lot better job than Ms. Gallman did
19 at explaining DNA I'll say that.

20 Q Did you feel that it hurt you when she
21 consistently maintained there was nothing to exclude
22 him?

23 A Sure it hurt us, yeah, obviously.

24 Q Do you feel that it would have made or could
25 have made a significant difference if you had had

1 the testimony of Doctor Ostrowski or any other
2 professional to indicate that indeed that's not
3 accurate?

4 A It would not have hurt. It probably would have
5 helped. It wouldn't have hurt I know that.

6 Q As a practical matter, were you hamstrung in
7 your ability to obtain an expert?

8 A Well, that's something -- yes. I really liked
9 Ernest. A friend of the family asked me to
10 represent Ernest. The Ernest family didn't have
11 much money. They gave me, for this kind of case, a
12 very small fee and they couldn't afford a trial fee.
13 We couldn't afford a polygraph fee. We couldn't
14 afford any other fees. And we were hamstrung
15 financially, yes. And I'd just finished a death
16 penalty case in Edgefield where I had unlimited
17 budget and had experts and it was great. It was
18 exciting to have that ability. We didn't have that
19 ability in our case.

20 Q If you had been appointed or if there had been
21 a determination made that he was indigent and you
22 later were appointed such that you could have sought
23 funds for an expert, do you feel that could have
24 helped you?

25 A Well, it would have and that's probably the

1 thing I feel worst about is that -- I mean, I wish
2 that we would have been able to do that and I might
3 have been able to do it. I, honestly, at the time,
4 it never entered my mind that I could go to court
5 and get a free expert and that's the thing I feel
6 worst about because I worked hard on the case and it
7 would have been great to have this doctor working
8 with us. I mean, if it comes up again, I will call
9 him and see if he'd work with us. I don't know if
10 we can afford him. And if we couldn't, maybe I
11 would approach the court to get him appointed.

12 Q Other than the DNA, what was the other most
13 damaging part of testimony?

14 A Well, the little girl says he did it, but I
15 thought the little girl was a terrible witness. I
16 don't know -- I don't remember talking to any of the
17 jurors, but just my instincts, I mean I thought we
18 were winning until the DNA. I don't know. It might
19 have just been me being cocky, but I thought the
20 girl was a terrible witness. So I didn't think
21 Ernest did a great job testifying, but I know he was
22 nervous.

23 Q Did the Solicitor's office give you a forensic
24 examination of the victim prior to trial?

25 A I got some stuff from the Solicitor where the

1 girl had been found incompetent in a DJJ case.

2 Q I would hand up to you a document that is five
3 pages long. And I would ask you to please review it
4 and then I will ask you questions.

5 A This is what we got.

6 Q Do you remember receiving that prior to trial?

7 A Yes.

8 MR. WHITTLE: Your Honor, we would offer this
9 into evidence as Applicant's Number 7. And I would
10 hand up a copy to the Court so that you can review
11 as we go through it. I understand without
12 objection.

13 THE COURT: All right. This is exhibit number
14 what?

15 MR. WHITTLE: 7, Your Honor.

16 THE COURT: It's in evidence.

17 (Applicant's Exhibit Number 7, forensic
18 evaluation, admitted into evidence.)

19 BY MR. WHITTLE:

20 Q Mr. Anderson, are you familiar with the
21 Department of Juvenile Justice in the prosecution of
22 juveniles?

23 A Yes, sir.

24 Q If there is a question regarding competence of
25 a juvenile regarding their mental health, are they

1 evaluated by the Department of Disabilities and
2 Special Needs?

3 A See, I've never had one that was thusly
4 evaluated, so I assume, yes. I don't know.

5 Q Was the victim in this case, approximately, 16
6 and a half years old and evaluated pursuant to this
7 report?

8 A Pursuant to this report, yes.

9 Q And when you reached the psychological test
10 results on page three of the four page document,
11 does that indicate that her full scale IQ in
12 September of '99 was 52 and her full scale IQ in
13 October of '99 was 57?

14 A Yes.

15 Q In conclusion, did they find that she is
16 incompetent to proceed to trial at this time?

17 A Yes.

18 Q And is this document dated June 13, 2002?

19 A Yes.

20 Q I hand up to you a copy of the case, which is
21 In Re: Michael H. cited at 360 S.C. 540, a decision
22 rendered September 16, 2002 and ask you to please
23 review that. And I understand it's a lengthy case,
24 tell me...

25 A Are you looking for the -- note two?

1 Q Yes, sir.

2 A Okay. I'm familiar with that.

3 Q Were you familiar with that case prior to the
4 trial of this case?

5 A You know, I can't say for sure that I was, but,
6 you know, I think I had to be because I've certainly
7 moved for that in other cases or, at least, thought
8 about that in other cases.

9 MR. WHITTLE: Your Honor, we'd hand up a copy
10 of the case to the Court.

11 THE WITNESS: And what we're talking about is
12 having the alleged victim evaluated, essentially,
13 correct?

14 BY MR. WHITTLE:

15 Q Under footnote two, does it state that the
16 trial court has authority to order a child
17 complainant in a sexual assault prosecution to
18 submit to a psychological examination, but only on
19 showing of compelling need?

20 A It says that.

21 Q Do you feel that the document provided to you
22 by the Solicitor regarding her incompetence to stand
23 trial and the other information contained in that
24 report would have substantiated a compelling need if
25 you had chose to do that?

1 **A** I don't -- I mean, I -- I don't know. You can
2 certainly make a very strong argument. If -- if you
3 sought to do that, if you thought that was
4 appropriate, I think you could make a very strong
5 argument, obviously.

6 **Q** Would you agree with me that this case
7 basically came down to her testimony, her
8 believability, and the DNA?

9 **A** You know, I thought it came also down to the --
10 law enforcement left some holes. So I think there
11 were some absences from the evidence, too, that were
12 important. But, yeah, I mean I know -- obviously
13 you're getting at the fact that we should have
14 challenged her competency and I guess it was a trial
15 tactic not to. I thought she was a terrible
16 witness. There were inconsistencies in her
17 statements, so we didn't go there. And, I mean, I
18 can't say if that was a mistake or not, but we
19 didn't go there and we could have gone there.

20 **Q** Do you agree with me that the standard for
21 competence to stand trial and the standard for
22 competence to be a witness are two different things?

23 **A** Yes.

24 **Q** Do you agree with me that competence issue is
25 controlled by 601(a) South Carolina Rules of

1 Evidence?

2 A Well, I trust you, but I don't know, that
3 sounds about right.

4 Q To be perfectly honest, I had to look in the
5 book.

6 A Okay.

7 Q Is it your understanding that for a witness to
8 be competent to testify, that witness must, number
9 one, know the difference between right and wrong;
10 number two, knows that it's right to tell the truth;
11 number three, knows it is wrong to tell a lie;
12 number four, will tell the truth that he or she
13 testifies; and, number five, fears punishment?

14 A That sounds right.

15 Q Were any of those questions asked of this
16 witness, this child witness, in this case out of the
17 presence of the jury to determine her competence to
18 testify?

19 A I don't think so. I don't think we did any in
20 camera stuff with her.

21 Q Was there any eyewitness to the alleged
22 assault?

23 A No. And, see, that was another thing that I
24 thought helped us was the girl said she was
25 screaming and it was a very small mobile home and

1 there were other kids in the mobile home and nobody
2 heard any screaming. So I would have thought that
3 if she'd been screaming, somebody would have come
4 out and then become an eyewitness. There were no
5 witnesses. So it was her word against Ernest's
6 word.

7 **Q** Was there an issue regarding time in this case?

8 **A** She got the time wrong. She first said it
9 happened, gosh, I want to say in the daytime and
10 then later she changed it to some eight and a half
11 hours later.

12 **Q** Based upon her disability and, in fact, in the
13 State's closing, was it pretty much admitted that
14 she could not tell time?

15 **A** You know, I never got the transcript. That
16 does sound familiar, but I remember them trying to
17 make some -- I remember the State trying to say she
18 couldn't tell time and I remember arguing that that
19 was not credible, but I don't remember exactly, so
20 I'm not comfortable answering.

21 **Q** How did the time issue relate to the whole
22 case?

23 **A** As I recall, the one -- she first said it
24 happened in the daytime like at four o'clock. Then
25 she said it happened at 2:00 in the morning. So to

1 me, the time, it was silly. You don't need to be
2 able to tell time to say whether it's daytime or
3 nighttime is what I recall.

4 MR. WHITTLE: Your Honor, if I could have one
5 minute?

6 THE COURT: Yes, sir, take your time.

7 (Pause.)

8 BY MR. WHITTLE:

9 Q Mr. Anderson, we're going to be talking about a
10 case called Frazier versus South Carolina in just a
11 minute. That is cited at 410 S.E.2d 572, that's a
12 1991 case. It is a PCR case where one of the issues
13 was should the trial counsel have obtained a DNA
14 expert. And they say that the individual in that
15 case, I want to make certain I use the right phrase,
16 vigorously cross-examined the State's DNA expert and
17 attacked the accuracy of the evidence. Did you try
18 to do that as best you could?

19 A I did. And I guess until I heard the doctor
20 today, I thought I did a pretty decent job, but I
21 wish I had known what I learned this evening -- or
22 this afternoon that some of that crossover stuff,
23 you know, that the 17 that was in common could have
24 been two 17's or it could have just been one 17,
25 that would have made a good -- now, I don't know if

1 the jury would have understood it, but, yeah, I mean
2 that -- I know more today than I knew then.

3 Q Obviously, you did the best you could with what
4 you had?

5 A I feel like I did.

6 Q Had you had Doctor Ostrowski or another expert,
7 could you have done better?

8 A Yes. Obviously, yes.

9 Q The PCR case law makes you take another step
10 and that step is was he prejudiced by that. Do you
11 feel, as the individual that was most intimately
12 involved in all of this, that had Doctor Ostrowski
13 or someone like him testified, there could have been
14 a different result?

15 A I mean, I'm under oath. I think Ms. Gallman
16 did a terrible job in that she works for the State
17 of South Carolina, that's -- I mean, she did a
18 terrible job. The doctor today was much more
19 eloquent. I don't see how he couldn't have helped.
20 I think I can say under oath -- I mean, I can't say
21 we were prejudiced, but I think there's a very good
22 chance there might could have been a different
23 result.

24 Q Were you the only court official concerned
25 about Ms. Gallman's testimony and her expertise?

1 A No. Judge Keesley stopped the
2 cross-examination, and, again, I thought I was doing
3 good or thought I was doing a good job
4 cross-examining her, and he basically said, Ms.
5 Galiman, if you don't get it together, I'm going to
6 exclude the DNA. And Ernest and I were very excited
7 about that because we really did feel like that was
8 the key to their case because I really felt like we
9 had poked a lot of holes in the State's case, you
10 know, leading up to the DNA. And then they took a
11 break and when we came back, she tied it up good
12 enough for Judge Keesley and he let it in.

13 MR. WHITTLE: Pages 231, 232 and 235, Your
14 Honor, I would just simply ask you to make reference
15 to the transcript with regard to the trial judge's
16 problems with the testimony of the expert.

17 That's all I have. Thank you, Andy.

18 THE COURT: Mr. Boozer.

19 MR. BOOZER: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. BOOZER:

22 Q Mr. Anderson, do you know about how many times
23 you met with Mr. Pressley prior to this trial?

24 A A bunch. I mean, more than -- I'd have to say
25 more than ten times. I can't say the exact number.

1 We met a bunch of times.

2 Q Were you provided with the State's evidence in
3 the case?

4 A I was.

5 Q Did you review this with Mr. Pressley prior to
6 the trial?

7 A I did.

8 Q What was your main defense in this case? What
9 was Mr. Pressley's main defense?

10 A He didn't do it.

11 Q Was his defense that he wasn't there?

12 A No.

13 Q He maintained that he was in the trailer when
14 it occurred?

15 A He was in the trailer. I think he was in --
16 well, you know, that's assuming something happened.
17 We didn't believe anything happened that day or that
18 night, but he was there, she was there, there were
19 other kids there.

20 Q Based on your recollection of the facts of the
21 case, do you recall how many males were in the
22 trailer at the time?

23 A I want to say "D." was there and he was, I
24 think, ten. And I think everything else -- everyone
25 else was girls because there was something about

1 Ernest came out of his room because the girls were
2 picking on, I think his name was "D." I think he
3 said the girls were putting make-up on him and I
4 think that was the only boy. I mean, I could be
5 wrong.

6 Q Okay. You've heard Doctor Ostrowski's
7 testimony today. Do you feel that you were able to
8 vigorously cross-examine Ms. Galiman at the trial at
9 that time?

10 A At the time. And, honestly, up till hearing
11 what he said today, I thought the answer was -- for
12 not having an expert, I thought that I did a pretty
13 good job with her. And I know with what he said
14 today, which you brought out on cross, it could be
15 Ernest's DNA or it could be, you know, not Ernest's
16 DNA and I didn't understand the stuff well enough to
17 ask that question. And to me, that was my biggest
18 shortcoming was not being able to ask her that
19 question. The questions you just asked him I should
20 have asked her.

21 Q But at the time with what you had, you weren't
22 able to do that; is that correct?

23 A I was not, no.

24 Q Do you feel that based on your
25 cross-examination and in your preparation for the

1 case, you were able to bring out some
2 inconsistencies or maybe put into the jury's mind
3 some doubt in her testimony?

4 A Honest to goodness, her testimony went on and
5 on. I don't think anybody in the courtroom
6 understood her testimony, I mean, the jury, the
7 judge, prosecutor, me, people watching, the
8 bailiffs, I don't think anybody -- I mean, it was
9 terrible. Her testimony was terrible.

10 Q Would it be fair to say that, in your opinion
11 being involved in the case, that it was difficult
12 for her to get across that the DNA matched?

13 A It was honestly difficult for her to get
14 anything across. I think that was the one thing she
15 could say, she said it matched. And then I kept
16 trying to say, well how do you know it matched. And
17 then she would try to explain it and she couldn't
18 explain it.

19 Q Doctor Ostrowski had some testimony earlier
20 that said she's really not qualified to be a
21 statistician. Do you recall objecting to her being
22 qualified as such to testifying to the actual
23 statistics of the findings or of the DNA analysis?

24 A I don't recall.

25 Q If the record reflects that, you would not

1 disagree with that?

2 A No.

3 MR. BOOZER: And, Your Honor, forgive me, I'm
4 not able to exactly point to that page number. If I
5 may have a couple seconds, I can probably point the
6 Court to that.

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. WHITTLE: Your Honor, I think it's probably
10 on 206.

11 MR. BOOZER: 207, Your Honor, at the top of
12 207.

13 BY MR. BOOZER:

14 Q Were you provided with medical records in this
15 case, Mr. Anderson?

16 A Yes, sir.

17 Q Do you recall what some of those findings were
18 of those medical records? And maybe I should be
19 more pinpoint in my question.

20 A Please.

21 Q From, I guess, her evaluation as to evidence of
22 abuse?

23 A You know, as I recall, see, the police report
24 said, no visible signs of injury. And I remember
25 that being one of the things I argued was that there

1 were no physical injuries on the child. And if she
2 was being, you know, raped, violently raped, and
3 she's screaming and stuff, there would have been
4 some injuries. But then I -- I remember she had a
5 feminine pad and I remember being kind of concerned
6 about that because the child said she wasn't
7 menstruating and then why did she have that feminine
8 pad. There were a bunch of holes in the case and a
9 bunch of inconsistencies in the case.

10 Q Do you recall Doctor Grant's testimony? I
11 think he was an ER physician that performed an exam
12 on Ms. H.

13 A Vaguely. I remember him testifying.

14 Q That there was some bruising and blood found, I
15 guess, in the vaginal region of Ms. H.

16 A (No response.)

17 Q Would you defer to the record if it's --

18 A Yeah. I mean, if he said it, he said it.

19 MR. BOOZER: And this would be beginning, just
20 for the Court, on page 76 of the transcript in
21 Doctor Grant's testimony.

22 Q Mr. Anderson, did you see any reason at the
23 time of the trial to challenge the competency of the
24 victim as being competent to testify?

25 A I did not.

1 Q Did you feel in cross-examining her, that you
2 were able to communicate with her?

3 A Yeah. I mean, decently, yes, sir.

4 Q And that she was able to communicate with the
5 court?

6 A Yes, sir. It wasn't always the best testimony.
7 Again, it was -- I thought she didn't do a very good
8 job.

9 Q Would it be fair to say that it was part of
10 your strategy to have her testify because you
11 thought she was such a poor witness?

12 A I mean, I think it was trial strategy to not
13 make a big deal about the competency.

14 Q Was there ever a plea offer prior to this
15 trial?

16 A There was a plea offer. And that's what I wish
17 we could do today is in light of this new
18 information from the doctor, you know, I wish we
19 could work this thing out because if the Court
20 doesn't grant this, the defense -- or, you know, the
21 applicant's going to appeal. If he does grant it,
22 y'all are going to appeal. And I wish we could get
23 together and work out a plea in this case better
24 than the 20 years that he got. But, yeah, we had an
25 offer of 15, then it went down to ten and that was

1 -- I thought ten was a fair offer and I wish we
2 could do something like that today.

3 Q Was it Mr. Pressley's decision to not accept
4 that plea offer?

5 A It was.

6 Q Was it his decision to go to trial?

7 A It was.

8 Q Did you feel that, at the time, you were
9 prepared for trial?

10 A We worked very hard on the case. We were
11 prepared as we could be with what we had. It would
12 have been great to have a DNA expert, obviously. We
13 didn't have one, so we were as prepared as we could
14 be.

15 Q I think you were asked earlier if you felt that
16 he was prejudiced after you heard Doctor Ostrowski's
17 testimony today. Do you feel, at that time that you
18 were going to trial knowing everything that you had
19 available to you at that time, that you were able to
20 competently defend your client?

21 A I mean, I kind of hemmed and hawed when
22 Mr. Whittle asked me a similar question. I mean, I
23 think so. It would have been great to have a DNA
24 expert. It would have been better. I was prepared
25 as I could be with what we had. Was I as prepared

1 as if I had had the doctor on our side? No. Would
2 it have made a difference? I don't know. It
3 wouldn't have hurt.

4 Q It's probably been some time since you've
5 gotten to review the transcript. We didn't get you
6 a copy of it. There's about 50 pages of your
7 cross-examination of Ms. Gallman. Would you agree
8 that's a fairly lengthy cross-examination?

9 A It was long. I remember it being long. And,
10 again, I mean, I really thought I did a pretty good
11 job of cross-examining her at the time. There's a
12 few more questions I could have asked if I would
13 have had a DNA expert obviously.

14 MR. BOOZER: No further questions, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. WHITTLE:

17 Q Andy, did it hurt that she never admitted there
18 could have been somebody other than Ernest that gave
19 the DNA?

20 A Could you repeat that?

21 Q Did it hurt that she never admitted there could
22 have been somebody else that gave the DNA other than
23 Ernest?

24 A I mean, I think that obviously hurts.

25 Q If there had been an in camera proceeding

1 regarding the victim's competence and if the judge
2 had ruled her incompetent, was there anyone else to
3 testify to the facts of the case?

4 **A** I guess the answer would be I don't know. I
5 don't know what -- I don't know what would have
6 happened if they would have found her incompetent.
7 I don't know how it would have proceeded. So I --
8 there was no eyewitness.

9 **MR. WHITTLE:** Thank you.

10 **THE COURT:** Any recross?

11 **MR. BOOZER:** One last question.

12 RECROSS-EXAMINATION

13 **BY MR. BOOZER:**

14 **Q** I may have already asked this, Mr. Anderson.
15 Do you feel that you were able to discredit Ms.
16 Gallman in the eyes of the jury, in the eyes of the
17 judge, in the eyes of maybe even the prosecutor in
18 this case?

19 **A** I honestly don't think I had to discredit her.
20 She did a terrible job. I mean, I don't know if I
21 discredited her, if she discredited herself. She
22 did not do a good job and I think my
23 cross-examination pointed that out. I think her
24 direct testimony pointed that out. I don't know
25 that I can take credit for that. I mean, she was

1 terrible.

2 **MR. BOOZER:** No further questions, Your Honor.

3 **THE COURT:** Thank you. You may step down.

4 **MR. WHITTLE:** Your Honor, I would like to make
5 certain that we have seven exhibits in, the seventh
6 being the report regarding the victim's competence.
7 And earlier I had indicated that we did not want the
8 C.V. to be part of the record, but I think it should
9 be part of the record and I would ask that it be
10 marked as Applicant's 8. And we would have no
11 additional testimony at this time.

12 **THE COURT:** Okay. Does the State wish to
13 present any evidence?

14 (Applicant's Exhibit Number 8, curriculum
15 vitae, admitted into evidence.)

16 **MR. BOOZER:** No, sir, Your Honor.

17 **THE COURT:** All right. I'll be glad to hear
18 any argument. Mr. Whittle.

19 **MR. WHITTLE:** Your Honor, this is obviously a
20 technical case. When we first started, I was aware
21 of Frazier and I'm aware of another case that came
22 out of this courtroom called Counsel dealing with
23 the ability to cross-examine an expert without
24 having an expert.

25 We went through, approximately, an hour and a

1 half of Doctor Ostrowski testifying about what
2 happened here. I don't think anyone could doubt
3 that his testimony would have aided the fact finder
4 of the jury in this matter reach a decision,
5 especially when you take that into consideration the
6 victim had within five months, six months of this
7 been declared incompetent and her IQ was said to be
8 in the lower 50 range, when you take into account
9 that the sole evidence against Mr. Pressley was the
10 DNA and that Ms. Gallman repeatedly stated that he
11 could not be excluded and you take into
12 consideration the unfortunate circumstance of the
13 victim's mental status. Number one, the hurdle is
14 was there ineffective representation? I would
15 submit to the Court that that has been shown.

16 Number two, was he prejudiced? I would submit
17 to the Court that based upon the specific testimony
18 of Doctor Ostrowski and the contents of the report
19 before you, if a jury had known those things or if
20 the trial judge had found her incompetent, all of
21 those things certainly would have worked to his
22 favor.

23 None of us ever know what a jury's thinking.
24 None of us ever know if there would have been an
25 absolute change. We don't know that.

1 But I can't think of a circumstance with a
2 contrast between the testimony of the State's
3 witness who said absolutely it's him and the
4 testimony of Doctor Ostrowski who said you can't --
5 you absolutely can't say it is absolutely him,
6 that's two diametrically opposed things. Then you
7 weigh out their education, expertise, articulation
8 and the way they testified. You sat here and saw
9 it. And I appreciate your interest. I know that it
10 was boring. This is about the fifth, sixth time
11 I've heard it and I still don't understand it. But
12 I do understand that what the jury heard was not
13 both sides of the story.

14 The simple answer is to say, gee whiz, James,
15 you're missing the point. Yet again you don't like
16 what the law is. The law in State versus Frazier or
17 Frazier versus State specifically says if you
18 vigorously cross-examine, then that's okey-dokey,
19 you don't need an expert.

20 Judge, I could vigorously cross-examine all I
21 want on a topic where I have insufficient
22 information and it doesn't matter. In Frazier,
23 there is no testimony that an expert testified at
24 the PCR hearing as to specifically what was wrong.
25 In this case, you have that on this record. And,

1 thankfully, that is because the judge who appointed
2 us allowed us to have an expert in this case. So
3 Frazier is not controlling.

4 Frazier says, vigorous cross-examination.
5 That's differentiated for two reasons, number one,
6 we now know, based upon the testimony of Doctor
7 Ostrowski, what was wrong at trial and this record
8 shows that. And, number two, vigorous
9 cross-examination in and of itself. Unfortunately,
10 you've seen vigorous cross-examination that didn't
11 mean much. I know Andy Anderson. I know he did the
12 very best he could, but I know he could have done
13 better if he'd of had that expert.

14 Your Honor, we would ask you to at least allow
15 us to submit proposed orders. It's a complicated
16 matter. I won't remember everything I should have
17 said. When I sit down, I'll think of something
18 else.

19 But, in essence, Frazier's not controlling. I
20 think this is maybe the first situation where a DNA
21 expert has testified at the PCR hearing so that
22 there is a record showing specifically what was
23 wrong and establishing the points of prejudice.
24 That's how we would differentiate it and we would
25 ask you to allow him a new trial. Thank you, Your

1 Honor.

2 **THE COURT:** Thank you. And I certainly didn't
3 find the doctor's presentation boring. I found it
4 very interesting. However, I'm afraid I exposed my
5 ignorance on it being encumbered as I am with a
6 English degree myself. So I appreciate his patience
7 with us.

8 **MR. WHITTLE:** As so am I, sir. My
9 undergraduate degree is English, too.

10 **THE COURT:** Okay. Yes, sir, Mr. Boozer.

11 **MR. BOOZER:** Thank you, Your Honor, if it
12 pleases the Court. And I would concur with the
13 Court and with Mr. Whittle that there is a reason
14 that I was a political science major and not in
15 science or chemistry as I really was lost at some of
16 this. Doctor Ostrowski did a terrific job of
17 explaining this in laymen's terms at some points.

18 Your Honor, first, I would submit that we have
19 to look at this six years ago when this applicant
20 went to trial, that's what Mr. Anderson had to work
21 with at that time. It'd be great to have -- to be
22 able to retry every case six years later after new
23 things come to light, however, that's just simply
24 not the case here.

25 The State submits that Mr. Anderson did, and

1 what is really in the Strickland and Cherry
2 standard, what is regarded as reasonableness under
3 professional norms and that was Mr. Anderson went
4 and he vigorously cross-examined a witness that
5 appeared to be, at least in the court's eyes and
6 from the transcript eyes, an incompetent witness on
7 the subject that they were testifying to.

8 Judge, the State would also submit that Frazier
9 versus State is controlling in this matter. And
10 this is one of those cases that is directly on point
11 with what we have here today that Mr. Anderson was
12 presented with a DNA expert on behalf of the State.
13 He wasn't required to go out and find his own
14 expert. I think it's difficult to sit here and say
15 that in every DNA case, that every defense has to go
16 out and get their own expert to refute the State's
17 expert. And based on Doctor Ostrowski's testimony
18 today, most of SLED's agents can't testify to DNA
19 based on they're not qualified as genetics or
20 statisticians is what he was saying earlier.

21 The State simply submits that Mr. Anderson
22 absolutely vigorously cross-examined Ms. Gallman,
23 more than 50 pages of the transcript reflects that
24 cross-examination. The State submits that no
25 prejudice was shown. I think that he brought out

1 inconsistencies, was able to bring out, at least in
2 the judge's eyes and hopefully in the jury's eyes,
3 that she was simply not a credible witness and was
4 able to bring out this confusing testimony that she
5 was bringing to the court that day.

6 Your Honor, with regard to the competency of
7 the witness, Mr. Anderson again testified, and I
8 would simply state he was not ineffective in this
9 regard either, that she may have been held
10 incompetent to stand trial, but again, as it's
11 already been stated, that's a completely different
12 standard than being able to testify as a witness.

13 And there seemed to be no communication
14 problems on reflection on the transcript.
15 Mr. Anderson was able to adequately communicate with
16 her. And he felt that part of his trial strategy
17 was having her testify, that she was a bad witness,
18 that maybe this would be good for him. Her
19 testimony was that she was screaming, that she was
20 in the trailer, no one could hear her. This was
21 part of Mr. Anderson's trial strategy.

22 Your Honor, the State would simply submit that
23 the applicant has failed to show that at the time
24 Mr. Anderson and Mr. Pressley proceeded to trial,
25 that Mr. Anderson was, one, deficient in his

1 representation, or that, two, prejudice can be
2 shown.

3 A lot of what we heard today has been some
4 points where, and I was a little bit confused on it,
5 but Doctor Ostrowski did state that maybe he could
6 be excluded on a couple of these variables, but
7 there were things in there that did include
8 Mr. Pressley as well, if I understood that
9 correctly. And I think that they were based on,
10 what he termed, interpretations. I'm not sure that
11 that really goes to an absolute standard that should
12 be followed.

13 Judge, for these reasons, the State would
14 submit that this application should be denied.

15 **THE COURT:** All right. Thank you, sir.

16 Mr. Whittle, how does the situation here differ
17 from a fingerprint case? I mean, I've heard DNA
18 described as a genetic fingerprint. If I've got a
19 fingerprint expert coming in and I'm the defense
20 lawyer, Mr. Boozer says that Frazier versus State,
21 and you acknowledge to some extent, doesn't require
22 me to go out and hire my own fingerprint expert, if
23 I'm able to point out the lack of credibility of his
24 testimony or attack the weight of it. So how is
25 that different?

1 **MR. WHITTLE:** Your Honor, you make my argument.
2 Presently contempt -- today, the issue of fingerprint
3 and the accuracy of fingerprint is being attacked
4 all over this country and being done successfully.
5 Things that we have accepted, and very obviously
6 blindly accepted, based upon the work of folks like
7 Doctor Ostrowski and folks like Mr. Anderson are now
8 being overturned. In this state, our South Carolina
9 Supreme Court refused to allow footprint impression
10 evidence because of testimony they received in a
11 case such as this.

12 What I am saying is it has to be on a case by
13 case basis with, and please don't misunderstand me,
14 I'm not asking for any sort of order that's going to
15 be thrown all over the state and everybody's going
16 to say I get a free DNA expert every single time, in
17 some situations, you've got overwhelming evidence,
18 you don't need DNA.

19 I just had a death penalty case where I had him
20 appointed. The DNA in the death penalty case was of
21 little significance. It would have been a red
22 herring for me, frankly, in that case. It didn't
23 matter. In this case, it matters. At the very
24 least, somebody ought to move, the judge ought to
25 hear the evidence and the judge ought to make the