VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Brooks P. Goldsmith, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

ISAIAH GADSON, JR.

APPELLANT

APPELLATE CASE NO 2018-001041

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

W. JOSEPH MAYE
Assistant Attorney General
S.C. Bar No. 100851
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ISAAC McDUFFIE STONE
Fourteenth Judicial Circuit Solicitor

ATTORNEYS FOR RESPONDENT

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In the Court of General Sessions for the
State of South Carolina, County of Beaufort

Case No.: 2016GS0701548 thru
2016GS0701551

State of South Carolina,
Plaintiff(s),

vs.

Transcript of Record

Isaiah Gadson, Junior,
Defendant(s).

May 21-24, 2018
Beaufort, South Carolina

BEFORE:
The Honorable Brooks P. Goldsmith

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APPEARANCES

REPRESENTING THE STATE OF SOUTH CAROLINA:

Hunter Swanson, Assistant Solicitor
Kimberly Smith, Assistant Solicitor
14th Judicial Circuit Solicitor's Office
39 Sheridan Park Circle, Suite 2
Bluffton, SC 29910
843-255-5880

REPRESENTING THE DEFENDANT:

Trasi Campbell, Assistant Public Defender
Benjamin Tripp, Assistant Public Defender
1905 Duke Street
Beaufort, SC 29901
(843) 255-5000

PROCEEDINGS

THE BAILIFF: All of the jurors are present, Your Honor.

THE COURT: Okay. And, Solicitor, are you prepared to present indictments?

MS. SWANSON: Yes, sir, I'm sorry. And Your Honor has the originals, correct? The State calls the case of Isiah Gadson. These indictment numbers are 2016GS071548 for criminal sexual conduct in the first degree. 1549 for murder. 1550 for kidnapping. And 1551 for armed robbery.

THE COURT: And is the defense ready to proceed?

MS. CAMPBELL: Yes, sir.

THE COURT: Ladies and gentlemen, I'm going to ask the bailiff in the back of the room to let me know whether or not this is working. Can you hear me?

THE BAILIFF: Yes, sir, I can hear you.

THE COURT: Thank you. As you heard, ladies and gentlemen, we are about to begin the selection of a jury in the trial of the case of the State of South Carolina versus Isiah Gadson. Isiah Gadson as a defendant who is

THE COURT: Yes.

MS. CAMPBELL: Your Honor, for the purposes of this particular motion, Mr. Tripp of the Public Defender's Office will be handling the spoliation argument. And with that, I'll turn the motion over to him.

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

THE COURT: Sure.

MR. TRIPP: Our arguments proceed in two parts. The first part is explained in our motion there, that under Federal law at this point in time the Supreme Court has stated that the defendant didn't need to show bad faith in order to show a due process violation by way of spoliation. In this case I think the biggest consideration for that part is that Ms -- Johnny Weed was never once questioned in the original case in 1980. He was the first person arrested and he was released as soon as -- well, I don't think that there's any direct information as to when exactly he was released, but it appears that he was released very quickly. And, again, there is not a single record that shows that he was ever questioned

in this case by investigators.

Throughout the years the various sources have indicated an understanding of a widespread belief that Mr. Weed was responsible for this situation and it seems that the Beaufort County Sheriff's Office felt that way as well. And as I said at the very beginning of this, at the very end of the brief, of the memo, this was a generation ago. Times were different back then. And what happened back then doesn't bear on what's -- doesn't reflect on the attitude of the Beaufort County Sheriff's Office today.

But it's not fair for Mr. Gadson to have to face trial based on a case where, arguably, over half of the most supporting evidence is gone because sometime back over a decade ago the Sheriff's Office didn't want to investigate this case. That is bad faith when an administrative agency refuses to do its very job, its reason for existing out of some sort of personal connection to a person who might be harmed. I don't think that you can have a category of bad faith more serious that something would fall into.

The second argument, as explained in the

memo, is that the South Carolina Supreme Court, like a number of courts around the country, has not been happy -- take that back, doesn't appear to be satisfied with the rule in Youngblood. It has indicated the willingness to take the issue up if it's properly raised. But I think that under South Carolina law, considering that due process violations have never required a showing of bad faith. Due process violation denying -- resulting by way of denial a fair trial can result when somebody is denied counsel in a critical stage, can result when some kind of deficiency or error pervades the entire case.

This is a similar argument that Mr. Gadson will be denied a fair trial under due process because of an error that he has got nothing to do with. And that error is so strong because it pervades the entire case and applies to critical evidence.

Again, the evidence that has been lost, the vaginal swabs, would likely show whether his DNA was present inside her vagina at the time -- at the time of the original crime or if she had had sex with him prior to that day or

if some other explanation were provided as to why his DNA came up.

The photographs of the crime scene would provide irreplaceable insight into what happened in a situation where it's dark, there's very few -- there's only one witness who has ever been questioned and given a statement as to what happens, and she admits that she didn't exactly see -- she couldn't see all that well what happened.

And there's just a lot of pieces of evidence that make this a complicated case that could involve a number of motives, the drug use, the difference in age between Ms. Weed and Mr. Krulewicz, the involvement of her dad at the scene at the time that the police arrived. Her possession of a very large sum of money at that time for a 15 year old, and all of the inconsistencies in her accounts to the police. You can't have a reliable understanding of what happened that night.

When you look at all of this stuff so many questions are just naturally raised and you wonder which of the five or six possible scenarios that pop into your mind could have

been the right one. And there's no way Mr. Gadson could be convicted at this point with a reliable understanding of which one of those scenarios apply. That is a denial of due process, to put him on trial to defend himself in a case where a reliable understanding of what happened just can't be reached and has nothing to do with something that he's done.

Your Honor, I believe that I have stated succinctly, as clearly as possible, my arguments in the written brief, written memo. I am attempting to highlight kind of the portions that stick out the most in my mind but I'm happy to answer any questions and respond to anything from the State.

THE COURT: Thank you.

MS. SWANSON: Thank, Your Honor. First of all I did hand the court State V Breeze, which is a 2009 Court of Appeals case, which sites the Cheeseburg rule by the South Carolina Supreme Court in 2001. Still good law. And the burden is on the defense here to show that the evidence was either destroyed in bad faith or that the evidence would exculpate the defendant.

As you know from my memo, and probably just the conversations about the case, this is an identity case that was resolved. The defendant was ID'd by his semen on our rape victim's underwear and pants, where you would expect to find it.

In reading the Defense's motion and memo, it is equivalent to the ramblings of a conspiracy theorist. I mean, I think if you ask Mr. Tripp who shot JFK, I have no idea what he would say, or if we landed on the moon. I mean, the facts are just grossly mischaracterized here. I mean, there was a distraught father, Johnny Weed, Susan's father, who is now deceased who responded to the scene when Susan came home and said, Somebody has shot David and I was raped. The scene happened to be down the street from their residence. Her mother was waiting up for her because she was past curfew. And Johnny Weed ran down to see what was going on. He had a shotgun on him because he had just heard that someone shot his daughter's boyfriend.

There's no evidence to point to the fact that Johnny Weed did anything besides be a

little out of his mind when he learned that his 15 year old daughter had been raped. You know, Susan, when she was 15, was given a polygraph about this and no deceit was indicated. And I only mention that because Mr. Tripp mentioned that in his motion.

There's absolutely no evidence that anything was destroyed in bad faith. The two items that we are talking about is the rape kit that remained at SLED, per their protocol at the time, and then crime scene photos.

I do not know how crime scene photos could ever exculpate this defendant. Also a rape kit, when there's his semen found on the crouch of her underwear and crouch of her pants, is not going to exculpate him either. I mean, if anything I suppose that it could have been the boyfriend at the time; however, we have the victim's testimony that a rape took place and that the same man that killed her boyfriend at the time raped her. And we have DNA evidence of that. And we have a number of corroborating factors, which we can certainly get into.

But I would also like to mention that Mr. Tripp alludes to a pillowcase that was

destroyed, you know, and on it -- Judge, that is in evidence. We have that locked in the closet in the other courtroom. So, his facts are not even correct in his proposed motion.

At the time when Captain Bromage started looking at this case in 1999 he questioned SLED about the rape kit and he sent them an email. And I will make this a part of the record. If I could make this a Court's Exhibit and hand it up to Your Honor.

MS. SWANSON: He questioned SLED about the vaginal swabs. When they got the hit -- no, no, 2016, you are right. So, I'm sorry, I apologize, so in 2016 Captain Bromage, when there was the DNA hit -- and it is on both sides, Your Honor, if I may pass it up. Captain Bromage inquired --

THE COURT: Any objection?

MS. SWANSON: No objection.

THE COURT: Okay.

(Whereupon, Court's Exhibit No(s). 1 marked for identification and received in evidence.)

MS. CAMPBELL: He inquired as to what may have happened to the rape kit. Apparently at

some point in the '80s or '90s SLED was consolidating evidence. At that time there was no DNA, there was not that technology, so they were shifting things to microfilm. And evidence you know, I guess, of unsolved cases got destroyed. But you do have the response from SLED. It does not indicate and the defense has not shown that this was in any way some sort of coverup or conspiracy to frame Isiah Gadson who walked the streets for 36 years.

The only evidence that was retained by SLED in 1980 was that rape kit. The other evidence was sent back to the Beaufort County Sheriff's Office, including a number of things, you know, the victim's clothing, the deceased victim's shirt, cigarette butts, the pillowcase. More cigarette butts. Gum. Pubic hair that had been put onto slides but unfortunately because of the adherent that they used to put on the slides nothing could be done with them. A number of other things that were actually tested for possible touch DNA. Unfortunately after 36 years DNA can degenerate. And that is likely what happened.

We didn't get any touch DNA off of those items. However, the item that did have the mixture of bodily fluids from the victim and Isiah Gadson was what was preserved, did not degenerate, and did not change in nature. And our DNA expert will certainly be testifying to that.

So you know, I mean a lot of times defendants are charged and can be convicted on a witness' testimony alone with, you know, an eye witness, photo line-up. And the defense says, oh, those are unreliable and this and that. But here we have a victim's testimony, although she cannot identify the victim, he certainly matched the description at the time and his identity is through the DNA hit, through his semen.

So I don't think that dismissal is appropriate, obviously. Should the Court wish to hear from Captain Bromage or anyone else, if I need to address anything else, please ask me.

THE COURT: All right. Any reply?

MR. TRIPP: Yes, Your Honor. Your Honor, may I ask that my motion and memorandum be made a part of the record. If I can have it marked as an exhibit for the Court, I'm happy to do

that.

THE COURT: Do you have a clean copy to mark?

MR. TRIPP: I do not have a clean copy on me, but I can get one and have it for the court reporter soon after.

THE COURT: We can do that later then?

MR. TRIPP: Yes, sir. Yes, Your Honor.

(Whereupon, Court's Exhibit No(s). 2 marked for identification and received in evidence.)

MR. TRIPP: And I take responsibility for the statements I made in the brief about the pillowcase. I saw that and just learned that the pillowcase was in evidence. And I have actually got that marked out in my memo, just by way of explanation. This case has been difficult, if you can't tell, following particularly the evidence because it is in disarray. And Ms. Campbell and I and an investigator had the opportunity to go to the Beaufort County Sheriff's Office evidence locker and look at this stuff. It took a while and it was hard to sort through this stuff and make sense of it, so I took insufficient notes

about the pillowcase being there. So, that is my fault.

At the same time, I also understand that there were x-rays that were taken in this case at Beaufort Memorial Hospital that are now not here, so not only did I accidentally put something in that wasn't lost but I also left something out that was lost. And, again, it is my mistake, because it has been difficult hatcheting through what evidence is where in this case.

I will note too that there's autopsy photos that are missing, which I have explained in my memo how they would be helpful in the case and how they should be analyzed under the rubric of cases.

As for the Breeze case, that is prior to 2015. I think that it is a Court of Appeals case. The Reeves case that I discussed in my memo would be the latest and the most authoritative law on the issue from the State Supreme Court. And as for any kind of personal attack about me believing that it is a conspiracy theory, as I discussed in brief, you know, David Krulewicz's mom brought this up to

a Beaufort County Sheriff's officer, so I don't know if that means that she's crazy and outrageous too; I don't think so. Susan Weed was given a polygraph where officers asked her directly twice, "Are you lying about a black man shooting you? Are you lying about anything that happened that night? Are you lying about a black man shooting you? Do you know who the black man is?" To me that says that the Sheriff's officers didn't trust what she was telling them.

Your Honor, again, I have distilled everything that I possibly can. I know that there's a lot of evidence that goes with it, but that is just the nature of the situation that we are in. Everything that I could state I put as succinctly and concisely as I can in the brief. I just ask that you take as much time as you need to read that. Nothing I can say here orally will be more polished or better than what I have put in writing. It is a lot of information. And again, that is not Isiah Gadson's fault.

And I have had to wade through it and try and interpret it and it's taken a long time.

And, you know, Mark Twain said that it takes longer to write something shorter than it does write longer because you have to put in that much more work to boil stuff down. That is what I have tried to do, but that's not my fault, as scattered as this stuff has been. And it's certainly not Mr. Gadson's fault.

THE COURT: Thanks.

MS. SWANSON: Briefly, I would like to point out the fact that all of his argument is based on a third-party guilt argument which we had previously discussed in chambers and is not allowed by State V Mansfield. Those facts are just simply not borne out in reports that he attached to his motion, which I would refer the Court to. Because if you review these documents you will see that Johnny Weed was never a suspect and he never should have been a suspect.

But anyway, it does make me and cause me some pause because, as I pointed out in chambers, I just wanted to remind the defense about the third party guilt that actually the evidence would have to be more than a mere suspicion, that it would have to tend to

exculpate the defendant, and otherwise that evidence is not coming in. And I was -- we were reassured by the defense that that argument was not going to be made.

So, I am a little nervous about the fact that there's, you know, now ten pages of a motion that are relying on a third-party guilt argument at this point. I am not -- I mean, I think that Mr. Tripp was back in chambers when we discussed that.

Anyway, I would ask that the -- or submit to the Court that the defense has not met its burden in showing that anything was destroyed in bad faith or that the evidence would tend to exculpate the defendant. And I would further state, based on current case law, that our Supreme Court has recognized on multiple occasions that the State has no absolute duty to safeguard potential useful evidence that might vindicate a defendant. So, you know, this was prior to the evidence preservation act as well as any sort of forensic testing as far as DNA went. So, you know, that was not fully understood at the time. Thank you.

THE COURT: Thank you, Solicitor. I

understand your argument. I understand the defense's argument in this case, but the Court agrees with the position and argument of the State. And fleshing it out a little bit more, you know, I find that the failure to properly investigate a case does not in any way show bad faith on the part of law enforcement. There's no evidence that any of this ever -- that the missing evidence would have done anything to exculpate the defendant. For all of those reasons, the motion is denied.

Which brings us to which motion?

MS. CAMPBELL: The 404(b) motion, Your Honor.

THE COURT: 404, okay. And Ms. Swanson, I will be glad to hear from you first on that.

MS. CAMPBELL: Thank you, Your Honor. And I have provided everyone with my memo regarding this evidence and regarding the law and the analysis that the Court must take in looking at such evidence.

There are a number of similarities between the 1980 incident and sexual assault that Mr. Gadson is on trial for and the 1983 rape of Lori. At the time she was Lori Krug. And so

we are seeking to admit that evidence.

Your Honor, at this time I would like to make his certified conviction for ABHAN a part of the record just for pretrial purposes. I have that right here. This would be Court's Exhibit 2.

COURT REPORTER: Three.

(Whereupon, Court's Exhibit No(s). 3 marked for identification and received in evidence.)

MS. SWANSON: Back in 1983 he did plea nolle contendere to assault and battery of a high and aggravated nature for assaulting Lori Krug. So, essentially a no contest plea. What would have been proper would have been a guilty plea under Alford, honestly, but that's not what we have here. And so I do want to make this part of the record as far as pretrial and meeting the clear and convincing standard. Because I don't believe that that actual document is allowed under the rules of evidence pursuant to 410(2), but I do think that the conduct underlying the assault is, and for many reasons.

The first thing that the Court must do,

obviously, is see if the evidence tends to establish motive, intent, absence of mistake or accident, a common scheme or plan, or identity. I think the main thing that this tends to establish is the common scheme or plan. And there are a number of factors in the Wallace case that I relied on quite a bit in my memo and provided the Court and the defense with in looking at the sexual assaults.

So, the first is the age of the victims at the time of the assault. Both were young women. Physically they were tall, slender, young women. Their race was white. The relationship between the victim and the perpetrator, they were strangers. They were either isolated or he made sure that they became isolated. The location where the assault occurred. Both assaults were on dark, dirt roads in the northern Beaufort County in the Burton area.

The use of coercion or threats. He used the threat of a gun in both cases. Now, while Lori did not actually see the gun, she did believe him to have a gun. And he was reaching under his seat for what certainly could have

been a weapon of some sort as he's telling her he will blow her brains out if she does not succumb to the rape and take her clothes off.

He threatens them at the end and tells them both not to call the police. He also apologizes at the very end as well, which is bizarre. And then another thing that he does, in Lori's instance, he asks her at the time of the rape, does she enjoy it. Well, similarly, Susan, the 1980 victim, gets a call about five months after the fact from a man whose voice she recognizes as Isiah Gadson's who eventually asks her, Are you the one that was raped and did you enjoy it.

The type of sexual assault that took place. It began with oral sex, and in each instance he performed oral sex on the women prior to vaginally raping them. I think that there are a number of similarities here, Your Honor, that also help to prove motive, intent, and identity. You know, we have a defendant here who is a predator and obviously was able to, you know, perform under these violent, you know, under -- it is like, I mean, he gets off on violence. He kills David and then he's able

to get an erection immediately and rapes Susan.

Both incidents place him in the Burton area in the 1980s. He does give statements in the 1983 case where, you know, he tells law enforcement that he grew up on Glaze Drive which is 1.7 miles from our 1980 incident location which is now a subdivision. But I am prepared to proffer the testimony of Lori at this point, should the Court wish to hear.

Lori, if you can come up.

Thereupon,

LORI ANN KRUG LAWLESS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Lori, if you can state your name for the record please?

A Lori Ann Lawless.

Q And, Lori, back in '83, where were you living?

A I was living on Green Pond Park.

Q Okay. Is that off of Boundary Street here in Beaufort?

A Yes, it is, I believe that it's called

Green Lawn Drive now.

Q And it is over by the Bi Lo; is that right?

A It is in front of where the old KMart used to be where the liquor store is on the corner.

Q Okay. So, just right down the street from here?

A Yes. Yes.

Q Where were you working at the time?

A I was a Marine. I was --

MS. SWANSON: May it please the Court. Maybe I just missed it, but was the witness sworn in?

THE CLERK: Yes.

MS. CAMPBELL: Okay. Thank you.

A I was in the Marine Corps. I was stationed on Parris Island when it happened.

Q All right. And what were you doing for the Marine Corps?

A I worked in the S1 department. I was doing service record books.

Q Okay. Tell us about February 24th of 1983.

A I would walk in the mornings to get to my ride, and that particular morning I had woke up late

so I was already possibly going to miss my ride. I had left my residence and I was walking down Boundary Street towards Highway 280. I had one car had stopped and asked me if I wanted a ride and I turned him down. And then Mr. Gadson stopped and asked if I wanted a ride. And at that point I accepted because, like I said, I was running late and afraid that I would miss my ride. I got in the car and told him where I was going. I was on my way to the corner store on 280 is where I met my ride. And he said that he would take me there, but he didn't.

When we got near the store he turned on, I believe it was secondary 73. And I asked him where he was taking me and he said that he had to buy some marijuana from a friend. And I explained that I was going to be late and possibly miss my ride, but it didn't matter he kept driving. He asked me if I smoked and I told him, No. And then at that point he started questioning me as to whether or not I had ever had sex with a black man and I told him, No, that I was married, I had only had sex with my husband and we had been married for five years.

He took me down that secondary road.

It was dark. I don't know, probably I am guessing about a mile. And then he took a left-hand turn on to a wired dirt road and then we went past a trailer and then made a right-hand turn and it was desolate. There was a field there. He got out of the car for a moment. I seemed to recall that there was a structure of some sort. I assumed that he was going inside to purchase the marijuana.

When he got back in the car he locked the doors and started to force himself on me. And at that point I began to struggle. He told me if I didn't stop he was going to blow my brains out. And I believed him, so I stopped fighting him. He was reaching like under the front driver's seat of his car as if he was going to get something and I felt like when he threatened to blow my brains out there was probably a weapon there.

He told me to take my clothes off. He removed his trousers and he said, Take your clothes off or die. Take your pants off or die. So I removed my trousers and he began performing oral sex on me. He -- that lasted a couple of minutes and then he asked if I enjoyed it, did I like it. And then he got on top of me and vaginally penetrated me and raped me. That also lasted a

couple of minutes and he ejaculated inside of me and then he took his -- put his pants on.

And at that point I was afraid to move. I asked him if I could get dressed and he said, Yes. He -- he then told me he was sorry, he didn't know why he did that and offered to pay me. I think that it was $50. I told him that I didn't want his money, that I wasn't a prostitute. And he asked me if I was going to call the police or tell my husband. And at that point I was scared to death if I told him the truth that he would probably shoot me, so I told him, No. He began driving back secondary 73 towards where I wanted to go.

So, by then it was getting light and I started trying to pay as much attention to the inside of the car as I could in case I did survive I could identify him and the car. And he dropped me off on the secondary road at a welding shop or somewhere near that area. I truly expected him at that point to shoot me and be done with it but he didn't. He drove away. So I got his license plate and ran to the corner market on 280. It was -- where he dropped me wasn't far, so I ran the rest of the way and I called 911.

Q Okay. And so, did you meet with police

after that?

A Yes, I did.

Q And did you provide them with that license plate?

A I did.

Q Did you provide them with the description of your rapist?

A Yes.

Q What description did you give them?

A I told -- he was a black male in his mid 20s, maybe 25, 26. He was about 150 pounds, kind of short afro, long sideburns, moustache, he had scraggily facial hair. He was probably 5'9", 5'10". He was wearing a gold ring on his right-hand. He was wearing dark trousers and a blue wind breaker.

Q Do you remember if he was right-handed or left-handed?

A I wouldn't really be able to gauge that other than when he was reaching under the driver's seat of the car he was reaching with his right-hand.

Q Did you go for a sexual assault kit?

A Yes.

Q Where did you go?

A Beaufort -- the Naval Hospital. Beaufort Naval Hospital.

Q Okay. And you had the swabs taken and everything of that nature?

A Yes.

Q And while you were at the hospital were they able to -- was police able to locate a suspect?

A Yes, they brought in a line-up sheet.

Q A photo line-up?

A Yes. And I identified Mr. Gadson and I believe that it was on the way home the Sheriff gave me a ride to the hospital. They had taken me by my residence to pick up my husband and change of clothes. And on the way home they told me that they had arrested him.

Q Okay. And did you attend the plea or anything when it happened?

A Yes, I -- we were doing jury selection and getting prepared for trial when the plea was entered.

Q Okay. All right. Thank you, Lori. I don't have anything further at this point okay.

MS. CAMPBELL: May it please the Court.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Good afternoon.

A Good afternoon.

Q The Solicitor has called you Lori and you currently go by the last name Krug, or is there a different last name?

A It is a different last name.

Q What is that last name?

A Lawless.

Q Lawless?

A Yes, ma'am.

Q Okay. And that is Mrs. Lawless?

A Yes.

Q Mrs. Lawless, back on the date that the solicitor was asking you about, the night before you were trying to get to work that morning, you had been out drinking beer and tequila; is that correct?

A Yes.

Q Okay. And you got home quite late, like maybe a little before midnight?

A I don't recall the time.

Q Okay. And so, what time would you need to be at the country store to get to work?

A I believe 5:30, quarter to 6.

Q Okay. And you characterized that you were running late?

A I was running late that morning, yes,

ma'am.

Q Okay. Now, I was a little surprised when you said that you had been stopped by a car previous to, you are saying that when Mr. Gadson stopped to pick you up, that is information that was not given to law enforcement back in 1983; correct?

A I don't recall if I told them or not.

Q Okay. And so, would you -- so, one car stops, you turn them down?

A Yes, ma'am.

Q Another car stops, you take them up on the offer?

A Yes, ma'am.

Q And do you recall telling the physicians that, or characterizing as what you were doing as hitchhiking?

A No, I was not. I was walking, facing forward when both cars stopped.

Q Okay. Now, were you working at the Air Station or Parris Island?

A Parris Island.

Q Okay. What were you doing at Parris Island?

A I worked at women recruiting training command, I was part of their S1 shop. I was a

service records clerk.

Q Were you in -- were you a Marine?

A Yes, ma'am.

Q Okay. And your spouse, was he also a Marine?

A No, he was not.

Q Okay. And your spouse -- at this time you were 21 years old?

A Yes.

Q And you said that you had been married to your spouse since you were 16?

A Seventeen.

Q Okay. And your spouse was at home the morning that you left to go?

A He was.

Q Okay. Now, you never saw a gun, correct?

A I did not.

Q So, a weapon on you is not something that happened at all, correct?

A I did not see a gun. There was not.

Q Okay. So, there was no gun to your head --

A Correct.

Q -- or pointed at your chest or anything of that nature, correct?

A Correct.

Q Okay. And you have testified that Mr. Gadson drove down a road to a house, some sort of structure, and got out of the car; correct?

A Yes.

Q And during the period of time that Mr. Gadson got out of the car you were in the car alone, correct?

A Yes.

Q Wouldn't it be fair to say that at this point, having gone past the country store, having gone down a dark road that you had begun to fear --

A Absolutely.

Q -- that you perhaps were going to be assaulted?

A I was beginning to wonder what was going to happen to me, yes.

Q All right. And so, having that fear at that time, and Mr. Gadson being gone from the car, you did not get out of the car and go back down the road or hide somewhere away from him, correct?

A That had entered my mind and then he came -- I -- there wasn't time.

Q Okay. And as far as your -- hold on one second. That might be all I have. Was your husband

at the time -- was your husband ever interviewed or talked to by the police that you are aware of?

A I'm not sure. I don't recall.

Q And so by the time you got back to the general store -- is that what it was called?

A I think country store.

Q Country store. It was past time for your ride to pick you up?

A I believe that they were there waiting on me.

Q Oh, okay. Well now -- okay, so, who -- so, did you tell them what had just happened?

A Yes.

Q Okay. And are they the ones that took you to the hospital?

A No, we called the police.

Q Okay. So, what time did you get back to the general store then, or the country store?

A I'm not sure.

Q Okay. And do you recall whether or not you informed law enforcement at the time that this ride that you were going to catch was, in fact, at the country store?

A They were -- I believe that they all met there together.

Q And the name of the person that was giving you the ride?

A I have been trying to remember that myself. It's been 35 years, I'm sorry.

Q That is fine. That is all that I have. Thank you, Your Honor.

THE COURT: Redirect.

MS. SWANSON: No redirect, Your Honor.

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

MS. SWANSON: State next calls Captain Bob Bromage.

Thereupon,

BOB BROMAGE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Captain Bromage, by way of background, what began the case against Isiah Gadson or this cold case?

A In Sheriff Tanner's 1998 election campaign he had promised that we would start looking into cold cases, which unresolved murders and sexual assaults that occurred in Beaufort over a period --

I think that the oldest case went back to 1972 at the time.

Q Okay.

A So, we started working on those when he took office in January. This is one of the first cases that I got involved with and reviewed.

Q So, the 1980 case involving the sexual assault against Susan Weed, at the time, and then the murder of David Krulewicz?

A That's correct.

Q Okay. And so in conjunction with reviewing that case, did you come across a 1983 case that struck you as similar?

A I did. Once there was a national -- a match in the national DNA system called CODIS I got notification of that August 3rd of 2016. And the identity of Isiah Gadson Junior was on that document. And then I began a background investigation to see what else he may have been involved in.

Q Okay. So, you started looking at his criminal history?

A I did.

Q All right. And you began to review a case from 1983 involving him?

A I did. I looked at his criminal record and saw where he had been arrested for different things and pulled all of those files to try to see who we were dealing with at the time.

Q Okay. And in your review of that case file, did you review an interview that Isiah Gadson gave to law enforcement?

A I did.

Q Okay. And was he -- was there a Miranda form that he signed in that packet?

A (Pause.)

Q And I can help you.

A I don't have a copy of that right here, but I do have it in this transcribed interview.

MS. SWANSON: May I make this a Court's exhibit, please.

(Whereupon, Court's Exhibit No(s). 4 marked for identification and received in evidence.)

BY MS. SWANSON:

Q Okay, I'll show you Court's Exhibit 4. If this is from the 1983 case file, if this is a Miranda form that was signed by Mr. Gadson?

A It is.

Q Okay. And can you summarize what he told

investigators regarding his contact with Lori back in February of 1983?

A Just give me one second.

Q Sure. Do you remember -- did he tell investigators where he lived?

A He did. He did. He gave a P.O. Box [redacted] in Burton and behind the school bus maintenance shop and they asked specifically where that might be. Which is, again, Burton. And it is Glens Drive is the address.

Q Back in 1983, was that a pretty rural area?

A It was. It was when I got here in 1990.

Q Okay. And did he live close to his parents?

A Yes, I believe that most of his family lived on that road, or still do.

Q All right. ANd where was he working, do you recall?

A He said Browns Manufacturing Mobile Homes, which was off of Highway 21 in Beaufort.

Q All right. Which is Boundary Street?

A That's correct.

Q Okay. Which is where he picked Lori up?

A Right, Highway 21, correct, Boundary

Street.

Q Okay. And did he admit to picking her up?

A I'm going through it right now.

Q You are fine.

A There's a lot here.

Q I know.

A Yes. Said, saw a lady on the side of the road walking, I stopped and asked her if she wanted a ride. She said, yeah. And I asked her where she was going and she said -- and the detective interrupted. Somewhere behind Pizza Hut -- Joy Land or Pizza Hut, somewhere in that area.

Q Okay. And then, did he describe the way that she looked a little bit farther down?

A I would say she was white, slender, you know, I didn't pay no attention to the way that she looked.

Q Okay. And then he asked her -- did he ask her if she wanted a ride?

A He had indicated that, stopped and asked her if she wanted a ride.

Q All right. Did investigators ask him about having a gun?

A They did.

Q And what did he say?

A They asked, you got a gun or a knife. I keep a gun in the car, but I don't tote no weapon. And he acknowledged that it was an old .32 which was recovered by the detectives, .32 caliber.

Q All right. Regarding -- when asked, Did you try to have sex with her, by investigators, what was his response? And this would be on Page 10 about halfway down.

A "Did you try to have sex with her? Well, I asked the question. What question did you ask her Isiah? I asked her if she wanted to make some money you know. I put my hand on her you know."

Q And where did he say that he put his hand?

A Leg, between her legs.

Q Okay. In her pubic area?

A He acknowledged, right. Yes, pubic area.

Q And did he say that he did that over her clothing or underneath her clothing?

A Outside -- over the clothing.

Q Okay. So, he never admitted to sexually assaulting her?

A He did not.

Q Investigators asked him a number of times in a number of ways, Did you have intercourse with her, Did you blank her, and he just denied that;

right?

A Yes. No, sir. He answered, No, sir. Did you take her clothes off? Were her clothes off in the front seat of the car? He said, No, sir.

Q All right. Now, did you review the SLED laboratory report from this case?

A I looked -- in particular I looked for the .32 caliber to see if it had ever been evaluated at SLED.

Q Okay. And tell us about that.

A Well, a .32 caliber was identified as being used in the murder of David Krulewicz in 1980, January 5th. David Caldwell, who actually ended up being a profiler at SLED did the analysis as a firearms examiner back in 1983. So, apparently they flagged every gun that was a .32 caliber that was recovered in Beaufort County and sent to SLED for evaluation, and it was determined not to be the gun that killed David Krulewicz.

Q All right. So, although it was a similar make and model, it was not the actual murder weapon from the 1980 case?

A That is correct.

Q What about any chemical lab reports, do you recall looking at any of those?

A I do not recall looking at any of those. You talking about from the original 1983 case, David Krulewicz? I looked at their regular worksheet where they had analyzed the evidence upfront, but any subsequent I have not seen.

Q All right.

(Whereupon, Court's Exhibit No(s). 5 marked for identification and received in evidence.)

Q I will hand you the SLED lab report that was conducted by Chemist John Barron from the '83 case and just go over a couple of things from that. Was John Barron able to identify any sperm on the victim's clothing?

A Pair of panty hose, semen found. Please submit blood and saliva samples from the subject for semen typing and comparison. Nothing was found on the blue jeans. Spermatozoas was found on the medical specimens taken during the sexual assault examination.

Q Okay. And were there any pubic hairs that were consistent with those of Isiah Gadson's found in the victim's pubic --

MS. CAMPBELL: Your Honor, I object to that. Honestly, the science of that to begin

with is none. I mean it's been proven that the comparison of pubic hairs of an African-American man and a standard, you know, it is junk science. So, the fact that the solicitor wants to try to put that evidence in as proof of anything is almost offensive. And so you know, again, I don't mind that that document can be a part of her record but I will object to trying to say that there's some basis in science that a pubic hair that was found, you know, on Lori matches a pubic hair or is similar in characteristic to the pubic hair of this black man. I will object to that. Thank you.

MS. SWANSON: Your Honor, this is simply for pretrial purposes for the admissibility and to comply with the clear and convincing standard for the 1983 case. Chemist John Barron is coming to testify for the case-in-chief. You know, if this evidence gets allowed in I suppose that Ms. Campbell can cross-examine him on what junk science that is. But all that it's simply doing is corroborating the fact that Lori was sexually assaulted by a man who claimed that, Oh, no, he just touched

her over the pants.

And Your Honor, I have to show that there's evidence of this rape in order to offer it. I mean, we have got victim's testimony and corroborating scientific evidence, although they didn't have DNA back then, you know, sperm was found and it was found on her clothing.

THE COURT: Right, but what about the hair?

MS. SWANSON: Right. And hair that was submitted by Isiah Gadson was consistent with the pubic hair combings from the victim's rape kit. Can't say that it's him, but it's consistent and based on her testimony she was raped by this man. She identified him in a photo line-up. There's no reason that hair consistent with his should be in her pubic area, particularly if he's saying that he only touched her over the clothing.

THE COURT: Ms. Campbell, what do you say now?

MS. CAMPBELL: Again, Your Honor, I object. There's no scientific foundational basis at this point in 2018 to say that African-American or at that time black pubic

hairs are consistent with one another. It is just not science. It is just junk. And there's no scientist that would come in here today and testify that they could look at two pubic hairs purportedly from African-American men and say one of those hairs is consistent with the other one so . . .

THE COURT: The witness is saying that this is what the report at the time said.

MS. SWANSON: I am sorry?

THE COURT: The witness is saying that that was the analysis from the report.

MS. SWANSON: Right. That is in SLED's report from 1983, yes, that there were pubic hairs found in the combings that were not hers and were consistent with -- and the language in there is "consistent with" those submitted by Isiah Gadson.

Now, how he reached those conclusions, I mean, I can't tell you right this second but he is going to be here to testify. So, you know, if we need to have a hearing regarding that particular testimony or proffer that testimony, we can. But I mean, right now we are just doing the 404(b) analysis and I'm trying to

show that there's clear and convincing evidence that the defendant committed this 1983 sexual assault and then point out the similarities.

THE COURT: All right. Ms. Campbell, I'll overrule your objection. I'll allow it at this point.

MS. SWANSON: Okay, thank you.

BY MS. SWANSON:

Q So I think that we covered the semen that was found on the victim's clothing?

A Correct.

Q And pubic hair that was consistent with Isiah Gadson's from the combings from her rape kit. And if you can flip the page over, was there anything found on the car seat?

A Car seat was stained, semen found. SA please submit blood semen from victim for fluid type comparison.

Q Okay. So, there was semen found on the car seat as well. And was that the car that came back to the license plate number that Lori gave to police?

A That's correct.

Q Okay. And that car was searched, obviously, and processed?

A It was by detectives, correct.

Q All right. So, when you went through this 1983 case and you became intimately familiar with the 1980 case, what similarities did you see and note between the two?

A In both cases, the subject was identified as an African-American male. Both cases occurred in the Burton area. Within a couple of years of each other. The African-American male performed oral sex on both Susan Weed in 1980 and Lori Krug in 1983. The subject did not wear a condom, ejaculated in both victims. And was apologetic afterwards, offers them an apology.

And the fact that they found in his glove compartment back in '83 was a .32 caliber revolver that we expected to be used in the 1980 case. But it was eliminated in the analysis by SLED, but in any case it is a similar type gun.

Q What were the instant incident locations in each like?

A Remote. Where Susan Weed was -- where David Krulewicz was murdered, Susan Weed was sexually assaulted on Old Salem Road on a dirt path going through the woods. And Lori Krug indicated in her testimony and her statement that he drove into a

rural area where he would have some privacy, but also indicated some familiarity of the subject with that area.

Q Okay. And these incidences, these incidences, they both occurred in the hours of darkness?

A They did. One was around midnight with David Krulewicz and Susan Weed, and the other was 5:30/6 in the morning.

Q Anything else that the defendant said during or after the sexual assault that you found to be unique?

A Well, he asked Lori Krug during the sexual assault whether she liked it. Susan Weed got a phone call back in May of 1980 and she was asked if she liked it in that report itself. That was -- but it was just enough aggression to coerce them into sexual activity. He gained control and he acted like he was on a date.

Q Lori testified that he told her not to call police or tell her husband?

A That's correct.

Q What did Susan say he told her about this?

A Susan indicated that he said not to call the police. But he was also talking about a CB

being in the van telling her to wait until he left, indicating that he wanted to get out of there before she did anything, so he left.

Q Okay. And I believe that you testified already, but the sexual assault began with oral sex and then led to vaginal rape; is that right?

A That's correct.

Q Okay. All right.

MS. SWANSON: I have nothing further, at this time.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Detective Bromage, the solicitors had you look at the lab report from SLED from 1983. I'm going to have you look at what is Bates stamped Page 920 which is part of the record of the 1983 case, the sexual assault exam notes of the physician. And is it not true that the physician notes that there's no trauma noted at all for Lori Krug, correct?

A That is correct, no evidence of trauma. Vagina dry.

Q Correct. Detective Bromage, you started working on this case, the 1980 case, which is -- I'm going to call them 1980 and 1983 for this hearing.

You started working on this in '99, correct, the 1980 case?

A That's correct.

Q And you testified to the solicitor that you -- that the first time that you looked at Lori Krug's case from 1983 was in 2016?

A That's correct.

Q Okay. So, from '99 to 2016 you never looked at similar type crimes in the years around 1980, young white women sexually assaulted by young black men. You never looked at the Sheriff's Department files on those types of cases?

A Ms. Campbell, those files are separate. Those are in records management in microfilm. I would need to have someone identify it, have some suspicion that there may be something else to go back and find those dates. To throw a big net over every file that we have, no, some of the detectives were dead at the time and we have had a huge issue with that over the years. I interviewed the detective on this case before he died and there was only one suspect really in the report that he was looking at. As far as I know Isiah Gadson was never mentioned.

Q Okay. Thank you.

A You are welcome.

Q But the answer to my question is, no, you did not go back and go through the case files surrounding 1980 that dealt with similar type cases, correct?

A That's correct.

Q That is going to be your testimony; is that right?

A I never reviewed cases from 1980 around that time. I was never aware of any, no.

Q And the first time that you see the report from the 1983 case that lists Isiah Gadson as a suspect in David Krulewicz's murder, you are testifying that the first time that you saw that document was in 2016; is that correct?

A The 1983 case?

Q Right.

A The first time I saw the 1983 case was in 2016 during a background investigation of Isiah Gadson, that is correct.

Q All right. And the document to which I'm speaking is, I -- I mean, you -- is the report from SLED that says the gun from Isiah Gadson taken in the '83 case does not match the ballistics from the 1980 case, correct?

A That is correct. It was excluded, that is exactly right.

Q And to be clear, that report and the notes behind it list Isiah Gadson as a suspect in the murder of David Krulewicz, correct?

A You are going to have to show me that document.

Q Okay.

A I never heard Isiah Gadson's name until 2016 when we got the CODIS kickback. So, we are for the record on that.

Q Okay. Well, let me pull it up and I'll show it to you.

A Thank you.

Q I am going to approach, Your Honor. All right, I'm going to hand you the document from 1983 in the Lori Krug case. Would you tell us who is listed as the suspect in the murder of David Krulewicz in 1983?

A That is incorrect, what you are saying.

Q Okay.

A Right here it says, Subject, Isiah Gadson, victim, Lori Ann Krug. He is a suspect in the sexual assault. He is not a suspect in David Krulewicz. He was never brought up in the

investigation, it is clear.

Q So the examination that it's requesting is a comparison of the firearm that is taken from the suspect, Isiah Gadson, and you are comparing it to the case of David Krulewicz's murder?

A When the prosecutor asked me a question I believe every gun that was a .32 caliber that they recovered in the early '80s was sent up and compared to the projectiles taken from David Krulewicz in autopsy.

Q And you believe that because Caldwell told you that?

A I certainly do because he told me that, that's right, yes, I do.

Q All right. That is your testimony, all right.

A Specimen number K18, from what I understand, if that's correct, that was probably the 18th gun that was evaluated in this investigation in this case, the David Krulewicz and Susan Weed case. That is not the first gun.

Q Okay. In the investigation of the 1983 case, Isiah Gadson clearly is identified, he clearly is questioned by police, correct?

A Yes, ma'am.

Q Okay. In your review of of that file, he's also clearly listed as being 5 feet 11-inches tall, correct?

A Do you have a copy of that right there?

Q I have a copy of the entire report. You don't know that?

A I mean, mine is kind of out of order right now because I was flipping through it.

Q Okay. The page number is 881. I'll be happy to walk it up to you. That is listed as 5 feet 11-inches tall, correct?

A 5-foot 11, 150 pounds.

Q Yes. And the date of birth, do you have that on there?

A [redacted]

Q I won't make you do the math. How old was he in 1983?

A 1983, he would have been 31 years old.

Q Thank you. He stands 5'11", almost 6 feet tall?

A According to our booking report, but we are not taking a yard stick to him, so I'm not sure exactly how tall he was.

Q Okay. On Page 877 the description of the suspect of the man, the black man, from Lori Krug,

Page 877, is how tall?

A 5'10" to 6 feet, 140 to 150.

Q All right. And that matches the person that they talked to and interviewed and admitted to picking her up, correct?

A By all indications, yes.

Q Right. So, 1983, 30 something years old and he's standing, hovering right at 5'11", correct?

A According to the report, that is exact. The booking report says 5'11", that is right.

Q Okay.

MS. CAMPBELL: That is all that I have for you, Officer.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Just briefly. When did Isiah Gadson become a suspect to you?

A August 3rd, 2016.

Q And what made him a suspect?

A CODIS hit, which is combined DNA in the system to the unknown semen found in 1980 entered in 1980 in the murder of the David Krulewicz and sexual assault of Susan Weed.

Q In 1999 when you got the case, what did you ask to be done on it?

A DNA.

Q Were they able to come up with a profile in '99?

A No, they were not.

Q When did they come up with a profile?

A Come up with a profile, 2002 I believe, and entered in 2003. We entered David Krulewicz. The technology changed in 1999, they had a new technology that everyone was excited about in the cold cases.

Q You took a swab from Susan to eliminate or separate her DNA from the mixture that was found in the semen, right?

A That's correct.

Q Okay. And so the profile that is come up with is entered into the DNA database in 2003 and that is how we will refer it to. But -- and it's not until 13 years later, right, that there's a hit?

A 2016 Isiah Gadson gave a buccal swab, which is a saliva swab at the jail from his mouth and it went up to SLED and SLED did an examination on it and the analysis matched. When they entered it into the DNA database it matched our unknown profile.

Q Then Selena Nelson got a confirmatory

buccal swab?

A She did.

Q That went up to SLED?

A They did.

Q They analyzed that in 2016?

A They did, yes, with the statistical data at that point.

Q It was a match?

A It was a match.

Q Going back to '83 and your conversations with David Caldwell, the gun that was -- or the type of gun that was suspected to kill David Krulewicz was a.32 revolver?

A That's correct.

Q All right. So, whenever any .32 revolvers would come up, would those be sent off to SLED?

A They would. There's not a big record of that other than what SLED might have, but when you start labeling things in conversation with him, Item 20, the 20th pistol that was analyzed against the projectiles that came out of David Krulewicz's body, yes.

Q So you confirmed with him that multiple .32 caliber pistols were sent up there for analysis just to see if maybe there was a hit?

A Absolutely, that is what they were doing.

Q Because it was a cold case?

A At that point they really didn't have any direction that was clear, yes.

Q All right.

(Whereupon, Court's Exhibit No(s). 6 marked for identification and received in evidence.)

BY MS. SWANSON:

Q I am gong to hand you what has been marked as Court's Exhibit 6. What is that?

A Mug shot of Isiah Gadson when he was booked in the Beaufort County Sheriff's Department in 1983 on February 24th.

Q All right. Can you describe his facial hair?

A He has got a moustache, fairly trimmed up top hair.

Q Okay. All right. Well, it is a Court's exhibit, so we can show the Judge too. Can you hand that up to the Judge?

THE COURT: Thanks.

MS. SWANSON: All right. That is all that I have at this point. Thank you, Captain.

MS. CAMPBELL: I just have one other

thing.

THE COURT: Recross.

RE-CROSS EXAMINATION

BY MS. CAMPBELL:

Q Just to clarify one thing. Detective Bromage, having worked on this case since '99, do you need to look up in your records or can you independently tell us that, in fact, the height of the assailant in the 1980 case is described as being between 5'5" and 5'7".

A That sounds right. I think that it's written in our report. There is various reference to it in our report. Which is actually sitting right there. Yes, it is in that big file over there. But yes, that sounds right. I think so.

Q And to be clear, the way that that 5'5" to 5'7" is, you know, is a figure in the records is that Susan Weed reports that her assailant is a few inches shorter than she is, correct?

A That sounds accurate.

Q Perfect. And in the records of the 1980 case -- and we'll find it if we need to, but in the autopsy David is listed as being 6 feet tall, correct?

A That sounds accurate.

Q Okay. Perfect. And you obtained and/or the solicitor has obtained a photograph of David and Susan right before this happened, I guess around Christmas 1979; correct?

A That's correct.

Q And within the photograph, which I understand that the State intends to introduce later, Your Honor, Susan is several inches shorter than David; correct?

A I'm not going to say correct unless I'm looking at it. I do not have it in front of me. Susan is very very tall. Susan is very tall.

Q I have been provided a copy of the photograph, I can't put my hands on it right this second. David stands 6 feet tall and Susan is a couple of inches shorter than he is? You know the picture that I am talking about, don't you?

A I know the picture. I do.

Q Thank you. And to the best of your recollection she stands a few inches shorter than he is?

A She appears to be shorter than David Krulewicz, yes, if that's what you are asking.

Q Yes.

A Several inches, I couldn't tell you.

RECROSS EXAMINATION OF BOB BROMAGE BY MS. CAMPBELL

Q And her description of her assailant is that her assailant was a couple of inches shorter than she was at the time, correct?

A That is my recollection.

Q That is how Beaufort County Sheriff's Office comes up with 5'5" to 5'7", right?

A Right.

MS. CAMPBELL: That is all that I have.

MS. SWANSON: Just briefly.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q In your experience with criminal investigations, what is the better indicator of identity, a person who is raped in pitch black dark or a DNA profile established from semen on the crouch of a rape victim's clothing?

A I would have to lean towards the semen for sure as being a very strong indicator of identity.

Q Okay.

A I have seen many bad descriptions from victims that have been way off in my career, so it doesn't impress me either way.

Q So, as a law enforcement investigator, how long have you been with the Sheriff's Office?

A Twenty-eight years.

Q All right. So, through 28 years, once DNA was established, which we are saying happened in about 2002, DNA as we know it, STR. Short tandem repeat. Once that was established it became a tool, right, for you investigators?

A Right, DNA changed so much between '99 -- I would say 2000 it really started evolving. We sent all of our cases with potential DNA up there, sure. This was one of them.

Q You would not use it to point to a suspect but you would use it for elimination, correct?

A Yes, we have used it to eliminate suspects, yes, many times.

Q In fact. In 1995 -- sorry, in 2016, did you use DNA to exclude Isiah Gadson from a 1995 cold case?

A I did.

Q Okay. That is all that I have.

MS. CAMPBELL: I actually do have just one more. I promise I am done, Judge.

THE COURT: One.

RE-CROSS EXAMINATION

BY MS. CAMPBELL:

Q Okay. Before the advent of DNA, isn't it true that there were a number of suspects in this

case who were removed as suspects because they were too tall. They fit, but they were too tall and that was not pursued?

A Everybody in this case was eliminated by DNA when it identified Isiah Gadson, everybody. There were people calling from all over the community. There was a panic about this case, so there's probably 30 or 40 people listed as persons of interest in this with no real foundation behind it.

Q Exactly, so that is my point. There were a number of black men from 1980 to 1983 who were eliminated as suspects because they were too tall, correct?

A Again, I don't think that anybody was really eliminated as suspects. They did not have the forensic science that we have today. And quite frankly Susan was in the middle of the woods at night and couldn't identify her assailant. She has never wavered on that. She has never wavered on that, being able to positively identify the individual. She has never identified anybody in this case. DNA identified Isiah Gadson.

Q Again, I'm not talking about DNA. I'm trying to go back to the 1980 case. In the 1980

case, all they had was the description and they would get a suspect and if he was too tall he was removed as a suspect? Do I need to find the pages where that occurred?

A I think that you should because it's not ringing true to me.

MS. CAMPBELL: Then I might need a moment to do that. I certainly apologize but I have to pull it up on the computer. And that is all of the questions that I have then.

THE COURT: Unless somebody has it.

MS. CAMPBELL: Well, we will keep looking but we found one at least. So, let me approach. And this -- I'm sorry, there's no Bates stamp on this, but it's going to be a supplemental report dated September 1, 1980. And if you will just read that into the record please.

A The entire?

Q Please. It's just a paragraph, it is like four lines.

A That is fine.

Q Okay.

A "At approximately 1305 on this date this reporting officer received a call from Sergeant

Coppenger, Joseph Marine Corps recruit depo Parris Island South Carolina who related he had seen a composite drawing of the suspect involved in this case and he believes the drawing to be a likeness of a drill instructor he knows named Sergeant Norfly. Subject is a drill sergeant at PI and although Coppenger states that Sergeant Norfly is taller, 5'10" tall, than the suspect in this case, he says that the drawing is a close resemblance. Investigation to continue."

Q Okay. And was any investigation continued on that suspect?

A I don't believe so. There's a whole lot of them in there like that.

Q Thank you. That is the point that I am trying to get to.

A Absolutely.

Q A lot of individuals to the wayside based on not fitting the height requirement, correct?

A I can't say why he was put to the wayside. It says that although he's taller than the suspect, that the investigation continues. There's a lot of those in there.

MS. CAMPBELL: That is all that I have, thank you.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Just one follow-up. Other than -- okay, so, there were a lot of tips that came in from the composite drawing that were released to the media; is that right?

A That's correct.

Q So, other than vaguely matching a physical description when these names came in, was there other evidence that placed them in this area?

A Absolutely not.

Q Okay.

A At least according to the report. There was one other suspect that they focused in on and that went on for a period of time and that was it.

Q Okay. Oneill Banks was one person that you looked at heavily, correct?

A He murdered a woman within two years of this rape/sexual assault. He was worth looking at very hard and we did and we eliminated him through DNA.

Q Right. And none of those other suspects' DNA produced a CODIS hit?

A No.

MS. SWANSON: Okay. Thank you.

THE COURT: Thank you. You may step down.

MS. SWANSON: Thank you. Your Honor, at this time, that concludes the State's presentation for 404(b) purposes. I was not going to have the current victim testify at this time because we are really just talking about the admissibility of the 1983 victim. And so, I would rely on my written and filed memo regarding 404(b) evidence. But I believe that I have also stated the similarities and why it would be relevant, and certainly in an identity case, more probative than prejudicial. Clearly identity is an issue here so the State does seek to admit this in evidence. Thank you.

THE COURT: Let me ask you Ms. Campbell. The solicitor is relying in part on her memorandum submitted and filed. What I wanted to ask you is, is there any serious disagreement with the factual assertions made by the State in that memorandum as it relates to the -- to this case?

MS. CAMPBELL: Well, I didn't --

THE COURT: I haven't seen any, I just didn't know.

MS. CAMPBELL: I don't want to put a stamp of approval that I don't, you know, that I'm saying that what is stated is, factually, in this memorandum is in fact true.

THE COURT: Well, what I'm really talking about -- maybe this will help you. The allegations -- excuse me. The assertions in the memorandum as it relates to the 1980 event.

MS. SWANSON: Do we agree with what's in the police report and the victim's statement.

THE COURT: Which it looks like it comes from the police report.

MS. CAMPBELL: Well, I mean, I guess what you are asking me to agree to is to say that I believe the veracity of what was reported by Susan Weed in 1980. And I don't see how I can do that and represent Mr. Gadson. I mean, I can't vouch for her and say she's telling the truth.

THE COURT: No, no. I just wanted to know if there's any disagreement with these facts? Are the facts stated incorrectly?

MS. CAMPBELL: Yes.

THE COURT: Is this what was reported, I guess?

MS. CAMPBELL: To some extent, yes. I mean, I can't --

THE COURT: I shouldn't ask you do you agree with it. I guess I should have rephrased it by saying, is this what the victim reported?

MS. CAMPBELL: In a general manner, yes. This is what Susan Weed reported occurred on or about January 5th, 1980. This is what she reported to law enforcement, yes.

THE COURT: The reason that I'm asking is that we have been through the '83 statements.

MS. CAMPBELL: I understand.

THE COURT: And we are talking about similarities now.

MS. CAMPBELL: Correct.

THE COURT: Anyhow, I'll be glad to hear from you. I stopped you.

MS. CAMPBELL: Well, I mean, I know that the burden is on the State and at this point I will look at the Lawless case as well and sort of pinpoint, to be sure that I'm clear, when I first heard the solicitor said that she was using -- trying to put this evidence in for a common scheme or plan and then on the back-end I heard her say that she was also wanting to

use it for identity, to obtain an identity in the 1980 case or to substantiate identity in the 1980 case. And I would just like for clarification under 404(b) which of the exceptions I'm arguing toward, Your Honor, and then I'll proceed from there.

THE COURT: Okay. Solicitor.

MS. SWANSON: Your Honor, in my memo I stated that I'm primarily analyzing it under a common scheme or plan, which also goes to motive, intent and identity. And you know, at -- as far as I know, the defense is saying that this is an identity case. You know, certainly, you know, motive and common scheme, anything, you know, that would point to the defendant would be probative in an identity case. So I mean it -- there are -- you can request that the evidence be admitted under a number of, you know, Lyle factors. You know, I suppose that the Court doesn't need to be convinced by all of them. But, you know, only one is what the Court needs to be convinced of. But, you know, identity really goes a little bit more toward my more probative than prejudicial analysis.

THE COURT: All right. Thank you. Ms. Campbell.

MS. CAMPBELL: Thank you. Under the Wallace factors, Your Honor -- and I know the State laid it out in their motion for you, but I would submit to Your Honor that -- and while it's just guidance, the Wallace factors are just guidance, there's other factors that can be considered by the Court as well. But if you just take them in the order that they are given in the Wallace case, you have a 15 year old in 1980 -- I'll take it, 1980 and 1983. In 1980 you have a 15 year old. In 1983 you have a 21 year old. The relationship between the victim and the perpetrator -- and really, to be quite honest, the way that I see these cases is that they are traditionally not really like an identity kind of situation. This is someone who is close to both individuals and had a relationship with the individuals, as in the stepfather situation of the two minor children, things of that nature.

So, there's really no relationship coordinate between the parties in this case. So, the factor of relationship between the

victim and the perpetrator. Well, the manner in which Mr. Gadson comes in contact with Ms. Lori Krug Lawless in 1983 is quite voluntary. There is no aspect of violence, there's no aspect of force, threat, or coercion when the 21 year old woman who is walking down the highway, as she has testified to get to her ride to work, agrees to get into the car with Mr. Gadson.

Ultimately, as Your Honor has before you, that case pled out under circumstances that led, I would assume the prosecutors at that point, to determine that that was the best possible scenario to end the matter for all parties and they did. The location being similar. You know, that is where like the stepfather takes the child into the bathroom every time or, you know, takes them to the park each time. So, it is sort of an apples and oranges situation.

But if we are going to go down that road, then the location is vastly different. Susan and David were parked at Lover's Lane, which is frequented by many people on the -- in the evenings. And the location that Lori Krug

Lawless described was quite desolate and secluded. The Lover's Lane would be very different from that. There's no gun at all, seen, used, threatened in Lori Krug Loveless' case. And of course, the allegations that there was a gun used and pointed at Susan Weed in the 1980 case.

The type of sexual battery. Okay, so in 1983 then we are going to have to go with just what she's testified to, that the interaction sexually was not consensual because the record is void of evidence, other than her testimony, which was not sufficient in 1983 for the Court to move forward on criminal sexual conduct charges against Mr. Gadson.

They changed the charge to ABHAN and he pled, essentially, nolle contendre, no contest, to this. The doctor's report, what you do have, the testimony, is that there was no evidence of sexual trauma or injury at all and the usefulness of the SLED report also is null and void. The fact that semen is found, that could be from anywhere, any time.

And the whole thing, issue of the black African-American pubic hair, again, is all

consistent with consensual interaction. It doesn't absolutely point to a sexual assault. It didn't in 1983 and it shouldn't in 2018, which is what the State is asking you to do, is to make a determination that she's presented clear and convincing evidence to you that Isiah Gadson committed a sexual assault against Lori Krug Lawless and thus use that in the case to prop up her common scheme and plan, and then use it to also point the finger at Isiah as being the individual in the 1980 case, which couldn't get any closer to the use of propensity evidence.

I mean, if he was convicted of criminal sexual conduct. I mean, if there was a gun that had been put to her head, you know. But there's not. And with those gaping holes, and especially since there's no evidence that she had any physical trauma at all, to allow the State to take us down this frightening path of allowing propensity evidence into the case-in-chief is just -- well, it is very very troubling. So, of course, we object.

Additionally, and I'll close with this, Lori Krug Lawless testified that Isiah Gadson,

the man that you know, she got -- caught a ride from that day, left her alone in the car while he went up to this house where he was going to pick up some marijuana. And there was a period of time that he was not there. And that doesn't fit with the factual scenario of the Lover's Lane situation where there was never a moment that Susan Weed was not under the direction and control of an armed -- a black man as she described him.

And perhaps most importantly both pretrial, and I can't state -- the State can't be surprised that during the trial that it's paramount importance that Isiah Gadson in 1983, and there are records you know, other records as well, that he's, you know, standing close to 6 feet tall, the same height as David. And you know, the individual that is the perpetrator in the 1980 case is clearly and consistently described as being a few inches shorter than Susan Weed.

Lori Krug Lawless consistently described her assailant, the person that she caught the ride with, as being between 5'10" and 6 feet tall. There's a -- you know, there's a lot of

difference between 5'5" and 5'10" and 5'11". That is a tremendous difference. So, we would take the position that all of those things coupled together simply means the State fails to meet their burden of proof, and respectfully request that Your Honor disallow this evidence.

And then, even if -- the second prong, you know, even if you were to allow it, we would say to you, that any probative value is clearly -- the prejudicial effect of this to Mr. Gadson is irreparable. It can't -- it wouldn't serve the purpose of probative, it's so, so prejudicial to him. Thank you, Your Honor.

THE COURT: Thank you, Ms. Campbell. Anything in reply?

MS. SWANSON: Ms. Campbell talked about the relationship, you know, the fact that, oh, well that can only pertain to an uncle and a niece, there's nothing in the case law that says that. I do think that, you know, a man who prays on, you know, females who are isolated in remote areas, you know, of the same physical makeup is consistent.

She also asserted that there were no

threats or coercion in Ms. Krug's rape, however, you know, he did threaten the use of a gun. What else was he going to use to blow her brains out if she did not take off her clothing?

I did present the chemist's report simply to show that Mr. Gadson's rendition of events is not believeable. What he told law enforcement, that he simply touched her in the pubic area over the clothing but yet she goes -- you know, she reports to the police immediately. She goes for a rape kit immediately. And semen is found on her, as are pubic hairs that do not match hers. So, you know, I mean, if we are talking about -- and the only real difference that I heard Ms. Campbell point out is this height issue and we are talking about a few inches. Lori actually did say between 5'9" and 5'10" when she was on the stand, or around 5'9" or 5'10".

I mean, you know, while height may not be unique, DNA certainly is so, you know, I mean -- DNA matches him. The height reported by each victim may not.

THE COURT: I think that I know what I'm

going to do already, but let me ask this question, do we have more motions or matters to be taken up?

MS. CAMPBELL: I believe Judge -- we talked about how to deal with the CODIS hit, and we are going to refer to it as DNA database hit. Is that correct, Ms. Campbell?

MS. CAMPBELL: That's correct.

MS. SWANSON: Okay. I think that we discussed the investigative hearsay parameters. Rape shield, I believe that we discussed.

MS. CAMPBELL: Uh-huh. (Indicating affirmatively.)

MS. SWANSON: And then there's no statement that the State is seeking to introduce so we do not need a Denno hearing. I believe that this last 404(b) is going to cover it. I have not decided -- there's one photo in question. I have not decided if I'm going to try and use it. But this was the only one that Ms. Campbell was asserting that she would object to.

It is a photo of Mr. Gadson from about 1991. We have cropped out the orange jump suit and the cinder block wall in the background.

But it is the only photo that we have around that time in that case.

MS. CAMPBELL: From our perspective, I believe that the solicitor accurately stated what we discussed in chambers, but I would also add that I would certainly appreciate receiving from the State prior to their taking the stand, there's a number of lay witnesses who would be testifying, and I would appreciate a -- copies of any criminal records that those individuals might have. And we have looked at the exhibits together that the State intends to introduce, and obviously, you know, I would look at them again during trial prior to the introduction, but again, for the Court, we seem to be in agreement on all of those except for the ones that the solicitor mentioned, which was the jail house photo of Mr. Gadson from the early '90s, okay.

THE COURT: Okay.

MS. CAMPBELL: Thank you, Judge.

MS. SWANSON: And for the record, there are only two lay witnesses that had anything, as far as a criminal record goes. Nothing that is within the ten years required by Rule 609.

I will provide copies of those to Ms. Campbell at this time.

MS. CAMPBELL: I will say, I did have one other thing. In preparing for this case it was discovered that three, I think it's three, bullets were still at SLED and there was a promise that they were going to be delivered to Beaufort County. And so I would -- I would like, again, access to those. I have seen everything else in evidence. I have not seen those items because they were at SLED. As soon as those items are here, if the State could, you know, give me some time this afternoon maybe to look at those items I would really appreciate that.

THE COURT: I see people nodding.

MS. SWANSON: Yes, they are here, they are locked up in a closet next door, so we can do that this afternoon.

MS. CAMPBELL: Great, thank you.

THE COURT: Okay.

THE COURT: All right. On the State's motion to introduce this evidence, I'm going to grant the motion, agreeing with the argument made by the State. And part and parcel, I find

that the ages of the children, of the children -- of the females were 15 and 21. They were white females. As to relationship issue, they were strangers. But I don't see that that is in favor of the State. I do find, though, in favor of the State is the location where the assaults occurred, on secluded dirt roads in the Burton area. And I also find that there was coercion in both cases by way of a gun or threats of a gun. The type of sexual assault is in favor of the State, oral sex followed by vaginal penetration.

I further find that additional -- additionally apologies being made after both cases and in both cases both asked -- both females were asked if they enjoyed it. All of those, balancing the similarities with the dissimilarities, I find that the similarities far outweigh the dissimilarities. And I realize that it's prejudicial, but I find that the probative value does in fact outweigh its prejudicial effects.

Do we know which courtroom we are going to be in?

MS. SWANSON: We are going to be in

deliberations.

From time to time, ladies and gentlemen, you may see the attorneys ask if they could see me at a sidebar where we whisper things so that your -- the intent is so that you won't hear. The reason that we do that is not just to keep secrets from you or keep facts from you, but it's because most likely the attorneys want to discuss with me a matter of law and in doing that, though, I may be required to discuss with the attorneys the facts of the case. And as I have already told you, I'm prohibited from discussing the facts of the case in your presence. Because, one more time, you, ladies and gentlemen, are the sole judges of the facts of this case.

Having said all of that, ladies and gentlemen, we will now have opening statements from the attorneys, beginning with the solicitor.

OPENING STATEMENT BY THE STATE

MS. SWANSON: Thank you, Your Honor. May it please the Court. Susan Weed and her boyfriend, David Krulewicz, had no idea what evil lurked in the woods off of Old Salem Road.

The man, Isiah Gadson, that shattered her youth and took David's life at 18 years old. Back in 1980 the woods off of Old Salem were, you know, studded with flag oaks, draped in moss. It is now two sections of the Battery Point neighborhood, okay. That is where we are talking about. The road has changed. It used to be a dirt road. Not any more. Even the trajectory of the road has changed.

Back in 1980 those woods were a place where young adults, teen-agers would ride motor bikes, dirt bikes, horses. It went all the way to the creek's edge. And after dark, after the sunset, couples might go there to have a beer, to listen to music, maybe make out a little. So, not unusual for folks to be out there hanging out.

It was that picturesque place that turned ugly the night of January 5th, 1980 when Susan and David, short time before Susan's curfew, parked in a spot right off that road. Susan was just 15 years old when Isiah Gadson shot her boyfriend three times. The shots came through the passenger's side of the van, hitting him in the head, the neck, and the

upper right arm. She watched helplessly as David struggled to breath, gurgling up blood and she begged for her life.

A black man who she described as in his mid 20s, possibly a mustache, short afro, came to the side of the van and ordered her out at gun point, put the gun to her head. And the first thing he asked her to do is take down her pants. He tells her to get -- he tells her to get on her knees and perform oral sex on him.

This goes on for a few minutes and he tells her to get up. And he leads her about a hundred feet in front of the van to go rape her some more. Performs oral sex on her, not for very long, and then vaginally rapes her saying, Oh, that was too quick. He gets her up. Again walk behind her in the pitch black dark. Leads her back to the van. Tells her to get inside, give him the keys, and don't leave until I'm gone.

Susan runs home. She's late for curfew. Her mother is in the house waiting up for her, because Lord knows what happened. And they call the police. And she ends up going to the ER, gets a rape kit done, the police come, find

David shot three times.

A composite sketch of the murderer and rapist is released by the media. And there's a frenzy in the community, all right. I mean, there is a guy on the loose who is raping 15 year old women and murdering people. People are scared. The Sheriff's Office fielded a number of calls from people that thought they saw people that looked like the composite that could have fit the description.

The police looked at those people. They included them in line-ups for Susan to look at. Susan was never able to pick out her rapist. Because guess what? Isiah Gadson wasn't in any of those line-ups. And to their credit, law enforcement did not bow to the pressure in 1980. And there was a lot of pressure from the community. This initial investigation went on for about two and a half years. It was pretty steady from 1980 until 1983 with no realistic leads.

They didn't make a bad case based on a description of a black man with no other evidence, they waited. And I'm pretty sure that David's family and Susan believed that

this day would never come. And to say that it's been a long time coming is an understatement. Because this case was not solved until 36 years after the fact.

Before we get to that, I do want to say that, in prosecuting a 36-year-old case, between law enforcement and the State, we had faced many challenges. A 1980 case file is not exactly like what you would have these days. DNA didn't exist. Things went missing. So, there are challenges that you are going to hear about. But you are also going to hear about what stuck around and what pinpoints Isiah Gadson as the murderer and rapist.

The case is reopened in the late '90s with the dawning of the 21st century. And Captain Bob Bromage was assigned from the cold case team to start reviewing cold case murders and rapes. In 1999, DNA was just coming out, okay. There was a thing -- there was an analysis or kit, or what is called RSLP. It is not the DNA that we have today. It requires more material to get a profile. All right. But the technology was improving. And so Captain Bromage was instrumental in getting these items

of evidence that had been preserved up to SLED and have them tested. And he had them retested when technology improved.

And finally, in 2003, what do we have? We have Susan's clothing that was taken on the night of her rape by Dr. Fontana at the Beaufort Memorial ER. We have semen stains on the crotch of her underwear, as well as the crotch of her pants. The profile was established and it was a mixture between a female minor contributor and a male major contributor.

Susan's DNA was taken and it was separated from the male DNA because, of course, her bodily fluids were mixed in from that rape. And the male major contributor profile was established. That was in 2003. It was still another 13 years until there was a hit in the DNA database. And swabs were taken from Isiah Gadson, from his mouth. A profile was established. And they matched.

Isiah Gadson's semen is on the crotch of Susan Weed's clothing from 1980. So, when that match came up in 2016, Captain Bromage began to dig even further, dig further into Isiah

Gadson's history. And he found a 1983 rape case that had some eerie similarities. You are going to hear from that victim too. Lori was a slim young 21 year old marine who was late for work and trying to -- you know, he offered her a ride and she took it because she was late. She was trying to get to Parris Island. She was walking a long way.

Well, he didn't take her to her meet-up spot to her ride, he took her down a dark dirt road that was isolated and he raped her. He began with oral sex and then he raped her vaginally. He threatened to blow her brains out if she did not succumb to him.

Now, the burden is on the State to prove this case to you, okay. I bear the burden. I present that testimony through witnesses and evidence that I introduce. And I must prove to you that Isiah Gadson committed the four crimes that he's indicted for beyond a reasonable doubt. And that is murder. Criminal sexual conduct, first degree, which is in layman's term, aggravated rape. Kidnapping, which means restricting someone's movement for any period of time. It is not necessarily being tied up.

And armed robbery. A larceny at gun point.

Isiah took $50 from Susan Weed the night of the crime when he had a gun pointing on her. You may wonder what beyond a reasonable doubt means. That means that the evidence should leave you firmly convinced of the Defendant's guilt, all right. Firmly convinced. And Judge Goldsmith is going to go over all of the law, all of the elements of the law that you have taken an oath to uphold at the end of this case, after we give closing statements.

So, what I ask of you as you listen to the testimony, is to please remember that this is no witch hunt, this is not conspiracy theory. If we wanted to get Isiah Gadson, would that not have happened before he walked the streets for 36 years. This is no frame-up, this was him leaving his semen on a rape victim's clothing and finally the technology caught up with him. This case could have been shoved in a closet a long time ago and shut away, but it wasn't.

And while justice may be late, it is here. Isiah Gadson is guilty of these heinous crimes. And at the end of the evidence I'm going to ask

you to find him guilty and speak the truth and speak the truth of the victims that are here to talk to you today.

THE COURT: Thank you, Ms. Swanson. Ms. Campbell.

OPENING STATEMENT BY THE DEFENSE

MS. CAMPBELL: Good morning. My name is Trasi Campbell. I introduced myself to you yesterday. And we are going to be together for a couple of days. And I can tell you that. There's some things that I won't be able to tell you or to discuss with you and leak to you, because I wouldn't be a very good defense attorney, I wouldn't be doing a very good job if I gave away everything right now. Because I would be telling the State of South Carolina what I'm going to do.

So, what I'm going to ask you to do is to stick with me because we are going to get there, witness by witness, piece of evidence by piece of evidence, to the conclusion where you will be able to say, confidently, that the State has failed to meet their burden of proof of guilt beyond a reasonable doubt.

Now, you are going to journey back in time

to the 1970s in Beaufort County, the Lowcountry, South Carolina. We had in '74 just lost the Vietnam War. We had all just come through Richard Nixon and Watergate. We had had a couple of years of Ford, and then Jimmy Carter. And then in 1980 we ushered in the Ronald Reagan era.

In the late 1970s in Beaufort County the sheriff of Beaufort County was a fellow by the name of Morgan McCutchin. High Sheriff of the lowcountry. And it may not be easy for us to get to the truth, but we are going to try.

You will find that Morgan McCutchin and the Beaufort County Sheriff's Office basically closed this case in 1983. They lost or destroyed critical pieces of evidence that I need to defend anyone, but today, to defend Isiah Gadson against these charges. I don't have them. You don't have them. This is critical in how you view the State's case.

What is missing? Why is it missing? Are questions that you will necessarily have to ask yourselves once you begin to deliberate. I'll tell you the one piece of evidence that has remained unchanged is that Susan Weed, when she

reported in January 1980 that someone had shot out the windows of the van and raped her, that the person who did that was a black man who stood a few inches shorter than she was.

The Sheriff's Department put out a BOLO, be on the look out, for a black man standing 5 feet 5 to 5 feet 7 inches, based upon her height of about 5'9". You will hear evidence that David was about 6 feet tall. I believe that the State is going to show you a photograph of David and Susan together.

And you will hear evidence that Isiah Gadson, in his 20s, in the 1970s, is standing 6 feet tall. Not 5'5", 6 feet tall. You can't make yourself shorter.

Now, at some point we are going to hear all of those intricacies of a -- of DNA databases now in our society, of what -- how all of the science is, plugging it into this computer, having it spit out these numbers, and how all of that takes place. But again, those items are changeable, they are fallible. You cannot change how tall you are.

And I would say to you, as you journey together, each of you individually and each of

you as you hear the witnesses in this case, to remember a couple of things Martin Luther King Junior said, "Injustice anywhere" what? We all ought to know the rest of that statement. "Is a threat to justice everywhere."

Shakespeare said, when he was writing Hamlet something about there is something rotten in the State of Denmark. I think that you might, by the end of this case, say that about the state of Beaufort County Sheriff's Office in 1980.

Justice will not take the man or the woman who you say is not guilty. She should be blind. You are the individuals selected to find the facts in this case. And so you would say to yourselves, Well, Your Honor, how do I do that? What are the tools that I have? The tools that you need in your tool box are part of your everyday life. Every day you judge the credibility of people. Those individuals you interact with, you say to yourself, what -- can I, do I believe what this person is telling me? Can I -- you judge their mannerisms. You judge their hesitancies. You judge their bias. You judge their prejudice. And you factor all of

that in to make a determination about whether or not you can rely on what this individual is telling you as being truthful, essentially.

I will tell you also, you will hear from, as best as can be done, the quite elderly but still with us and able to testify, a doctor who performed a sexual assault examination on Susan Weed in 1980. And in his reports he will tell you that he located 5 to 50 non-motile sperm in the vaginal cavity. And that was within an hour of this alleged sexual assault taking place. And I believe that he will also tell you, as an expert, as a doctor, that if you have ejaculate you are going to have millions of sperm that should be motile.

So these are things that can't get lost. These are things that don't change. And these are the factors, again, as we go through each witness, that you will be taking notes on, that you will be factoring in, and how does this piece fit with that piece of the evidence.

Now, the State, you know, if your back is against the wall, you know, you are going to try to pull in what we call, oh, propensity evidence. That is what Lori Krug's situation

is. They want to tell you that because in 1983, Isiah Gadson, a black man accused by a white woman of having unconsensual sexual intercourse. He pled no contest. They pled it down to an assault and battery.

They want to tell you because that happened this happened. And I will tell you that what you may find when you listen to Lori Krug testify is that when she returned to the location where she was to be picked up, that is when the allegations came forth, when those individuals were there waiting for her, then she said, I was raped.

But again, law enforcement, the Solicitor's office, everyone involved in the case decided, maybe not, maybe not. And the case was resolved. And you cannot use that as the State would have you want to use it. So, at the end of the case, you will ask yourselves, how did Bob Bromage handle this evidence from '99 to 2018? How many times did Bob Bromage handle this evidence? What did he do with this evidence?

I believe that you will hear testimony that Bob Bromage has been disciplined by the

Sheriff's Department for failing to handle investigations properly in the past. And you will use that to judge his credibility.

Remember this as I close, the presumption of innocence in this courtroom, in the rock-solid foundation that we stand on here today for every single man, every single woman, no matter who you are, is the same. It should be the same. I believe that it is the same. And that is, you are presumed innocent.

And the Judge may tell you at the close of this case that that presumption of innocence is a cloak, a robe that every person wears. And that cannot be taken off of Isiah Gadson's shoulders or your shoulders or your shoulders, ever. In your mind, in your thoughts, not until, in your deliberation, should you all unanimously in agreement say I'm firmly convinced, I have no hesitation whatsoever, I have no reasonable doubts, therefore I'm going to strip this coat off of this man and find him guilty.

This is not just artful language, this is the foundation of our lives, of our country. I depend on it everyday. You may not realize it,

but you depend on it every day. And today Isiah Gadson requires the protection. Another day, another man or another woman will require the protection or the presumption of innocence and the proof of guilt beyond a reasonable doubt.

Stay with me. We are going to get there. Thank you.

THE COURT: Thank you, Ms. Campbell. You may call your first witness.

MS. SWANSON: Thank you, Your Honor. The State calls Sonny Bessinger.

Thereupon,

SONNY BESSINGER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q All right. I'm going to call you Sonny, is that all right?

A That is fine.

Q Okay, let me move this here. (Pause.) Sonny, where were you living in 1980?

A What is known as [redacted] Old Salem Road today.

Q Old Salem Road?

A Yes, ma'am.

Q Okay. And whose residence is that?

A That belonged to my parents, Janet and Earl Bessinger.

Q All right. How old were you back in 1980?

A Twenty-five years old.

Q And can you tell us about the neighborhood over in Old Salem?

A It was just a few people lived on the road, the Cowarts, the Kenleys, the Cooks, the Flowers, (phonetic) and the rest of it was farm land.

Q Okay. Was the road dirt or paved?

A It was all dirt.

Q All right. And what were the woods like over off of Old Salem?

A They were like you said, trees, old oak trees, dirt roads, fields, open fields. Kind of Lowcountry-ish.

Q Okay. And were there any trails back there?

A Many, numerous.

Q All right. And what did people do on those trails?

A Well, myself and my friends we would ride

motorcycles. Go back there camping, people camp back there. They take their lovers back there. It was all kinds of things went on back there, drinking, partying.

Q All right. I'm going to ask you to speak up just a little.

A Okay.

Q All right. Thank you, sir. All right. So, it was a place where young people would go?

A Well, young, middle-aged.

Q Pretty much everyone?

A Yes, ma'am.

Q Okay. Did you know Susan Weed?

A No, ma'am, I did not.

Q All right. And did you know of the Weeds?

A I knew of them. I didn't know them personally.

Q Okay. And at the time you were about 10 years older than Susan, right?

A I guess. I mean.

Q If she was 15 --

A Yes, if she was I was ten years older.

Q So, you never hung out with them or anything like that?

A No, ma'am.

Q Do you know Isiah Gadson at all?

A I do not.

Q Okay. And going back to January 5th of 1980, what were you doing that night around midnight?

A I was coming home from being in town, was headed to my house going home.

Q Okay. And I'm going to put up -- Ms. Campbell, I'm just going to use this one.

I'm going to put up this map from that period of time. And Your Honor I would ask that the witness be allowed to come down.

THE COURT: Sure.

BY MS. SWANSON:

Q Sonny, I will ask you to stand on that side, if you don't mind. Just to get our bearings, can you point out the Salem Point neighborhood?

A This is the Salem Point neighborhood here (indicating). It was the only neighborhood at the time.

Q Where was your house located?

A My house was located down here close to Pasco Road. Carlos lived next door to the Bessingers, Kenley's and then . . .

Q Okay. Is this where Battery Point is now?

A Yes, in this area. It's all Battery Point right now. This over in here is still fields or wooded areas.

Q All right. So, this -- if you get farther down, that leads to the creek and marsh; is that right?

A Correct. It goes all the way back to whatever creek it is off of Battery Creek.

Q All right. So, show us how you were coming down the road, which road you were coming down that night.

A I came off of 170, I cut down or came down Salem Point past old Tramere Chevrolet. I come down, it makes a real sharp curve, came around the curve, come down here. All of this was paved down here and then it turned into dirt road. And then I turned there, down to my house here.

Q And what did you see that night around midnight? And how did you know that it was around midnight?

A Because at that time everything closed at 12:00. They had the blue law in effect, everything closed and everyone heads home.

Q And you were heading home from the bar at midnight and you know it was midnight?

A Yes.

Q Tell us what you saw.

A I saw a van parked in the woods, and just a little ways up it looked like a car. To me it looked like it was backed up in there. I went on home and never thought anything about it.

Q All right. You can go have a seat. Did you talk to anyone about what you saw?

A Yes, ma'am. The next day I seen a lot of law enforcement cars going up and down the road and sometime that morning the DNR guy stopped by and was asking questions if we heard anything or seen anything. And that is why I mentioned I had seen a van and a car parked up in the woods. And then he told me what had happened before he asked me if I did see anything, he told me what had happened and I didn't know anything about it until he told me that.

Q All right. And did you tell the police what you saw?

A I went -- I think that was on a Saturday or Sunday he came, and the next day I went and reported it, what I thought I seen.

Q All right. And do you remember giving a written statement?

A Yes, I do.

Q Okay. And do you remember whether or not you mentioned the van in that written statement?

A I may not have. I didn't apparently when it was done I didn't. But I had seen the van, I was just more concerned with the car I guess. Because when I had left out of there earlier that evening I seen the van parked on the side of the road.

Q Okay. When Captain Bromage interviewed you in 2016 do you remember telling him about the van then?

A Yes. In fact, we went out there and we tried to figure out about where it was at the time. It had changed. The neighborhood is definitely different now. And I told him where I thought I seen the van and where I thought I seen the car.

Q Let me ask you a question. Has that changed at all between then and now?

A No.

Q From 1980 to now?

A Oh, definitely it's changed.

Q No, I mean where you saw -- your rendition of where you saw everything?

A Oh, no, no, it hasn't changed.

Q All right.

MS. SWANSON: I have nothing further at

this time. Sonny, if you will please answer questions that Ms. Campbell may have.

THE WITNESS: I'll be glad to.

THE COURT: Cross examination.

MS. CAMPBELL: May it please the Court.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Mr. Bessinger, you just testified that the DNR guy came by your house, right?

A Yes, ma'am.

Q And he had a conversation with you where it was made clear to you what had happened a night or two earlier down the road, correct?

A The night -- it was the day after the night it happened.

Q Okay. Well, you understood that someone had been killed, correct?

A Once he told me, yes, ma'am.

Q Perfect, okay. So, understanding that the police are investigating a murder, right?

A Yes, ma'am.

Q Okay. And the importance of that, right?

A Yes, ma'am.

Q Okay. They asked you to remember at that time everything you can remember about what you saw

that night, right?

A They asked me had I seen anything that evening or heard anything.

Q Correct. And not only do they ask you that, you tell them what you saw that night, right?

A Yes, ma'am.

Q Okay. And also you write down what you saw that night, right?

A I did.

Q Okay. May I approach?

THE COURT: Certainly.

BY MS. CAMPBELL:

Q You recognize the signature at the bottom of that piece of paper?

A That is mine.

Q That is your signature, correct?

A That is my signature.

Q Okay. And recognizing that they are investigating a murder, you have been asked to give a written statement?

A No, ma'am, I voluntarily went and gave it.

Q Perfect, you voluntered to give the statement. Nowhere in your statement at the time do you say, I saw a van parked along the side of the road; right?

A Apparently I didn't.

Q Right.

A I didn't. Not on this statement I didn't. But I did see a van.

Q Okay. I'm getting to that. Okay. So, no. In 1980, knowing the importance of this case, that someone is dead, they want to know everything that you saw, you did not put in your statement that you saw a van on the road; correct?

A Correct.

Q Okay. Now, let's come to 2018, this detective here, Bob Bromage, he comes to you and he says, I'm getting ready for this trial, right?

A Yes, ma'am.

Q Yeah. And when he does that, he -- y'all talk about the case, correct?

A I told him what I knew.

Q All right. And then you say, Oh yeah, I saw a van that night back in 1980; changed your story, didn't you?

A I don't know that I changed it. I just didn't fill it in completely.

Q The van is not in your written statement, right?

A Correct.

Q Okay. You changed the story, you added the van recently; correct?

A Yes, I guess so, if that's what you think.

Q Just a second.

(Pause.)

MS. CAMPBELL: May it please the Court, I do have a matter of law that I would like to take up at this time relative to this witness.

THE COURT: Yes, ma'am. Ladies and gentlemen, I'll ask you to step in the jury room if you would for a few minutes. I need to discuss a matter of law with the attorneys. Please do not discuss the case at this time.

(The jury exits the courtroom at 10:43 a.m.)

THE BAILIFF: The jury is clear, Your Honor.

THE COURT: Ms. Campbell.

MS. CAMPBELL: May it please the Court, I'm going to revisit the issue relative to Mr. Bessinger's prior criminal record at this time.

THE COURT: All right.

MS. CAMPBELL: Mr. Bessinger -- and I'm directing the Court again to 608(c) at this

CROSS EXAMINATION CONTINUED

BY MS. CAMPBELL:

Q Mr. Bessinger, in 1980 what sort of work were you doing?

A I worked with the telephone company here in Beaufort.

Q And you lived down the road from what has been called sort of the Lover's Lane area?

A Yes, ma'am.

Q Okay. And the neighbors that live in the Lover's Lane area, the Weed family also lived in that area; correct?

A Not where I was. They were in the subdivision part.

Q Okay. So, on the map that the solicitor showed you, where is your house again?

A Here (indicating)

Q And the Weed family is over here, right?

A Yes.

Q Right down here?

A I guess. They live in Salem Point.

Q Right, in the Salem Point neighborhood down here?

A Yes.

Q In this general area down here, correct?

CROSS EXAMINATION CONTINUED OF SONNY BESSINGER BY MS. CAMPBELL

A Yes.

Q And when you testified with the solicitor about being familiar with individuals in the Larson family, can you tell us how you knew the Larson family?

A I don't remember saying anything about the Larson family. I never met the Larsons until I was out of my little thing that I had to go to and I was looking for a job.

MS. SWANSON: Your Honor, I would object. I did not ask the witness anything about the Larson family. I believe that was something that Ms. Campbell wanted to get into with the witness.

THE COURT: Proceed.

MS. CAMPBELL: Thank you, Your Honor.

BY MS. CAMPBELL:

Q And so at some point after whatever little thing that you just testified that you got into, you became familiar with the Larson family at that point; is that what you are saying?

A All I did was -- Mr. Larson, they had a moving company and I was looking for a job at the time.

Q And that moving company, would that have

been Carolina Moving and Storage?

A I think so. I'm not sure what the name of it was.

Q And are you aware or were you familiar in the '80s that Carolina Moving and Storage was owned by Johnny Weed, Susan Weed's father?

A Not particularly, no, ma'am.

MS. CAMPBELL: That is all that I have.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Sonny, when you talked to law enforcement about the two cars that you saw, were you telling the truth?

A I was.

Q And are you telling the truth here today?

A I am.

Q Do you have any reason to want to lie about this?

A None whatsoever.

Q What kind of car were you driving when you saw the van and the other car?

A I drove a 1980 Toyota Celica.

Q Was it a large car or a small car?

A It was a compact car.

Q And then the other car that you saw

besides the van, was that a large or a small car?

A It was hard to tell. It looked to me like it was a larger model car.

Q Larger than the one that you were driving?

A Than I was driving, yes, ma'am.

Q When did you start working for the moving company?

A I never did work for the moving company.

Q Okay. You were just looking for a job?

A Yes, ma'am.

Q Okay. Got you.

MS. SWANSON: All right. Thank you. Nothing further.

MS. CAMPBELL: Nothing further.

THE COURT: Thank you. You may step down. You may call your next witness.

MS. SWANSON: The State calls Gerry Wagner.

Thereupon,

GERRY WAGNER

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Good morning, Mr. Wagner.

A Good morning.

Q You go by Gerry, is that right?

A Yes, ma'am.

Q All right. And, Gerry, tell us where you worked back in 1980?

A 1980, I worked for Beaufort County Sheriff's Department. Morgan McCutchin was the Sheriff. And I was in charge of the detective division, then the detective division.

Q Okay. And how long did you work for the Beaufort County Sheriff's Office?

A From 1966 to 1987.

Q Okay. And so back in 1980 you were supervising investigations; right?

A Correct.

Q Okay. And who all was involved in the investigation into the death of David Krulewicz and the rape of Susan Weed?

A Everyone within my detective division at that time, which was approximately nine or ten individuals.

Q All right. And if you can just move the microphone a little bit closer to you.

All right. So, basically, everyone that was under your supervision?

A Correct.

Q And why was that?

A It was a high profile case. It was a high profile case considered at that time. And you had a suspected murder, rape, and robbery all combined at one time.

Q Okay. Was the information about the possible suspect given to the media?

A Yes.

Q Okay. And was there a wanted poster given out, a composite drawing?

A To the best of my recollection now, yes.

Q I am going to hand you what's been marked as State's Exhibit 1 and ask you if you recognize that as the composite from the 1980 case file?

A Yes.

MS. SWANSON: State would move 1 into evidence at this time.

MS. CAMPBELL: No objection.

THE COURT: Motion is granted.

MS. SWANSON: All right.

(Whereupon, State's Exhibit No(s). 1 marked for identification and received in evidence.)

BY MS. SWANSON:

Q All right. And so, in supervising the investigators you would review their reports, right?

A Yes.

Q Go out to any major crime scenes?

A Yes.

Q Also you were dealing with the media, right?

A Yes.

Q At that time. Okay. And so did you go out to the Old Salem Road crime scene?

A I did, but it was not at the time of the incident actually reported. I think that it was later the following day. The incident happened, if I recall, on the 5th of January. I can't remember the exact time, but it was either late at night or in the early morning hours and I went out, probably, later that morning, say 10 or 11ish.

Q So, like the following Sunday morning?

A Correct.

Q When they were processing the scene?

A Correct.

Q Okay. And that scene, it was off Old Salem Road; right?

A Yes.

Q Is that within Beaufort County?

A Yes, it is. And, yes, it was.

Q Do you recall if the van was still there when you got to the crime scene?

A I do not.

Q Okay. I am going to throw out some names of investigators that worked on this case. DP Courtney?

A Yes.

Q Faith Hesling?

A Yes.

Q Floyd Wiley?

A Yes.

Q RL Houston?

A Sergeant, yes.

Q Sergeant. Are they still alive, or are they deceased now?

A No, ma'am, they are all deceased.

Q Okay. And, in fact, Sheriff McCutchin is deceased too; right?

A Correct.

Q Okay. How long was Sheriff McCutchin the Sheriff?

A Eight years. I worked for him for four. Yes, he was re-elected. He was in his second four-year term.

Q Okay. Was he the Sheriff when you left Beaufort County?

A Yes, ma'am.

Q Okay.

All right. In your review of those reports, of the people that you supervised who were out at the scene and collecting evidence, did you come across two spent rounds that were collected? Did you come across any mention of two spent rounds that were collected?

A At what point?

Q From the left side door of the van.

A Are you asking whether I was there and collected them?

Q No, if in the review of the investigation.

A Correct.

Q Okay. So, there were two spent rounds that were recovered from door of the van?

A Yes.

Q Okay.

All right. I'm going to hand you what has been marked as State's 2 and ask you if you can identify what these are based on the description that is listed, who recovered it, and from what investigation?

A The evidence was found, left side of '76 Dodge van of victim. The time and date of recovery was the 6th day of January, 1980, at 10:30 in the morning. The victim was, at that time, Krulewicz and Weed. The evidence was recovered by Sergeant Houston. Sergeant Houston turned it over to PGJ, which that was Patricia James my evidence custodian secretary, on the 8th of January at 8:20 of '80. And Pat James eventually delivered it to SLED on the 9th of January 1980 at 12:15.

Q Okay. Thank you.

MS. SWANSON: At this time, the State would move 2 into evidence.

MS. CAMPBELL: No objection.

THE COURT: Motion is granted.

(Whereupon, State's Exhibit No(s). 2 marked for identification and received in evidence.)

BY MS. SWANSON:

Q Now, did you do any SLED forensic requests in 1980?

A Yes, ma'am.

Q Okay. Tell us about those. Do you recall what you were asking to be tested?

A Everything that was collected at the crime

scene was sent to SLED. And later on, if I'm not mistaken, went to the FBI. Clothing, the firearms.

Q Okay. So, the victim's clothing, the rape kit?

A Correct.

Q Some cigarette butts?

A Correct.

Q Okay. What kind of cigarette butts were they, do you recall?

A Kools.

Q Okay. And of course there wasn't DNA testing then, but you were looking for anything that you could get off of them; right?

A That's correct. Evidence was just collected.

Q Okay. And those were items that were collected from the crime scene and from the victim at the hospital, right?

A That is correct.

Q Okay. And do you recall the description of the suspect that was released to the media?

A Do I recall?

Q Yes, sir. I can -- do you have your report up there or no?

A No, ma'am.

Q Okay. All right. I'm going to hand you your press release as well as the wanted poster. If you can refer to both of those and tell us what information was out there regarding the physical description of the rapist and murderer.

A Yes, at that time, the victim, Susan Weed, described the subject as a black male, 5'7" to 5'9", approximately 170 pounds. That was released as a press release.

Q Any mention about a small afro or other hair, hairstyle?

A Not in this report.

Q If you can just refer to the bottom.

A I am sorry. It was approximately 25 years of age, 6'5", 6'7" height average, small afro.

Q Okay. Thank you. Now, there was a little bit of discrepancy in height between these two, right?

A Yes.

Q So, that may not have been a sure thing, right, the description of height?

A No. Based on my experience that would not give you.

Q Okay. And you are talking about your experience in speaking with eye witnesses?

A As a detective, yes, ma'am.

Q Now, in your review of the 1980 case file was Susan Weed, the victim, ever shown any photo line-ups?

A Yes.

Q All right. Multiple photo line-ups?

A Yes.

Q And was she ever able to definitively point to her rapist and David's murderer?

A To the best of my knowledge and recollection now, no.

Q And was suspect Isaiah Gadson ever a suspect at that time?

A I don't recall. But if I may in a question just previous to that one, I think that Ms. Weed did pick out one time, said that this most resembles.

Q Right.

A There was one layout on a photo line-up where, if my recollection is right, that she did indicate, This most resembles the suspect.

Q Right, she could point out people that resembled the suspect or features on them that may resemble the suspect, but she never said, That is him?

A Correct.

Q Okay. You worked for Sheriff McCutchin and were you ever aware of evidence that was destroyed on purpose or to hide anything in this case?

A No, ma'am, not on my watch.

Q Okay. All right. Any conspiracy to frame anyone or cover up an investigation of someone?

A No, ma'am.

Q All right.

MS. SWANSON: I have nothing further at this time.

THE COURT: Cross examination.

MS. CAMPBELL: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q So Mr. Wagner, the solicitor has gone over some of the reports from 1980 with you. And I'm going to do the same.

A Yes, ma'am.

Q All right. So, in a report which I'll pass up to you that one of your officers issued on January 23rd, 1981, if you could look at the orange highlighted portion of that report and tell the jury what is reported at that time, the highlighted

portion?

A The highlighted orange says she picked out number four and stated he looks like the man who assaulted her and shot her boyfriend, David Krulewicz. And then the subject number four was identified as a Manning Tredway or Tredway Manning.

Q Correct, thank you. Additionally, if you want to just take a moment to read the yellow highlighted portion to yourself and then I'm going to ask you a question or two about that, okay?

A Yes, ma'am.

Q All right. Have you had an opportunity to review that?

A Yes, ma'am.

Q All right. So the suspect that Susan Weed picked out in 1981, subject number four, was listed as being 6 feet 1 inches tall, correct?

A Correct.

Q And your investigation held that the suspect that you were looking for was between 5 feet 5-inches tall and 5 feet 7 inches tall, correct?

A No.

Q What the --

A 5'5" to 5'9", according to the press release was 5'9".

Q I'm aware that, yes, that the two press releases have different heights.

A Yes, ma'am.

Q This report reflects the height of the suspect as being what?

A 5'5" to 5'7".

Q Thank you. So, in 1981 5'5" to 5'7" is still being reflected in your reports, correct?

A Correct.

Q And this individual who Susan Weed picks out in a photo line-up, number four, is dismissed because he's too tall, correct?

A What do you mean "dismissed"?

Q He's no longer a suspect, correct?

A You are talking about Mr. Manning?

Q Right, correct.

A Correct, yes, ma'am.

Q Thank you.

A Yes, ma'am.

Q All right. Now, I am going to hand you a -- I believe that the solicitor didn't introduce this, but I want to make sure that you have had an opportunity to review it. This is the Sheriff's Office press release relative to this case, correct?

A Yes, ma'am.

Q The height indicated there is 5'5" to 5'7", correct?

A Correct.

Q Now, the reason that the height is 5'5" to 5'7"", or as interpreted on another document, maybe up to 5'9" is because consistently you were given information from Susan Weed that the suspect in her case was shorter than she was, correct?

A Yes, information either to me or detectives I assigned to the case, yes, ma'am.

Q Additionally, information from her in her reports, is that the person was, the black male was clean shaven, no mustache, no facial hair, correct?

A That's correct.

Q All right. Now, you, in your reports, you state that the van, both passenger and driver windows are completely shattered out, correct?

A Yes, ma'am.

Q Someone took photographs of the shattered out windows, correct?

A Yes.

Q Those photos have been lost, correct?

A I have no knowledge.

Q The last time you worked on this case, to your knowledge they existed in 1983, correct?

A Correct.

Q Right. When you brought in some sort of FBI profiler to help you work on this case, correct?

A Correct.

Q Okay. And you -- you sought their help and you discussed with them all of the evidence that you had at the time?

A Correct.

Q So, it is your testimony that after you left this case, if they are not here it has nothing to do with you; right?

A Correct.

Q Okay. Perfect. Now, these recovered two -- Officer Houston is his name?

A Yes, Robert Houston.

Q Houston, Robert Houston, reported that he recovered two spent cartridges from the crime scene?

A Correct.

Q Okay. So let's make sure that we have got all of that correct. So, you have got three recovered, what we would call projectiles?

A Correct.

Q From the body of David?

A Correct, correct.

Q Correct?

A Correct.

Q And then your officers recovered two projectiles from the side of the van, the driver's side of the van; correct?

A Correct.

Q Okay. And the photographs would also have been taken to show the locations of those projectiles in the side of the van, correct?

A Correct.

Q All right. And the two spent cartridges would have been photographed as well, correct?

A Correct.

Q Now, in your experience as a law enforcement officer for many years, the importance of spent cartridges can be quite significant in matching a firearm to a crime scene, correct?

A Very much so, yes.

Q So, again, just break it down real tight here, but guns can leave a mark on a cartridge, an identified gun matching a cartridge; correct?

A Correct.

Q Okay. To the best of your knowledge when you left this case the cartridges were still in evidence, correct?

A Correct.

Q You had nothing to do with the cartridges disappearing, correct?

A No, I did not.

Q All right. Now, you are also aware that photographs were taken of the autopsy of David, correct?

A That's correct.

Q You yourself have seen them, correct?

A Yes.

Q Okay. And the photographs from the autopsy would have depicted the condition of the entrance wounds to his body, correct?

A Correct.

Q And part of the significance of that, again in your experience as a law enforcement officer, is to be able to determine distance, signs on an entrance wound can help investigators understand and SLED understand how far someone may have been from another person when a shot was fired, correct?

A That's correct.

Q All right. So, additionally, not just the distance between the individuals but trajectory, whether a shot came from down or from up, front or back; correct?

A That's correct.

Q Okay. And those pieces of evidence, on your watch, did not disappear; correct?

A No.

Q All right. Now, you took many, many statements from individuals in the community at the time, right; your officers did?

A Yes, ma'am.

Q And many of those individuals were reporting that there were a particular black man that seemed to fit the description at the time and they wanted him investigated, correct?

A That is correct.

Q Okay. And so, in pursuing that you presented a number of photo line-ups to Susan Weed, right?

A Correct.

Q Okay. And in -- and you actually also did an in-person line-up of some individuals at one of the penitentiaries, correct?

A That's correct.

Q Isn't it true that in the photo line-ups and in the in-person line-up, Susan did in fact chose individuals that she felt most resembled the suspect; correct?

A That's correct.

Q But if the person were too tall, then that person were put to the side; is that correct?

A That's correct.

Q All right. At some point -- well let me back up a little bit. The night that this happened, you had an officer show up down there at the scene and he wrote a report, correct, the first officer on the scene?

A Yes, Deputy Courtney, I believe.

Q And Deputy Courtney came upon a van, correct?

A Yes.

Q A blue car, correct?

A Yes.

Q Johnny Weed, correct?

A Yes.

Q And Susan Weed, correct?

A Yes.

Q And the deceased, David?

A Yes.

Q At the time Johnny Weed was armed with a shotgun, correct?

A Yes.

Q Okay. And your officer had to fight with

Johnny to remove the shotgun from his hands, correct?

A Yes.

Q And Johnny Weed was arrested that night, correct?

A Yes.

Q He was released later on that night, correct?

A Yes, charged with disorderly conduct.

Q Right. Did you or any of your officers perform any sort of search at the Weed home to determine the location of any other firearms?

A No.

Q Okay. At the time you were working for Morgan McCutchin, correct?

A Correct.

Q He was your Sheriff?

A Correct.

Q At some point in your investigation one of the citizens who lived in the area found a pillowcase that they believed was -- had blood all over it, correct?

A I have no knowledge.

Q Okay. If it's in evidence and your officer secured it, could we assume then that it was

turned in? Would you like me to locate the report for you?

A If you say that it was turned in. Like I say, I have no knowledge.

Q Let me see if I can find it for you and then we will make sure that you know what we are talking about.

(Pause.)

Q On January 9th, 1980, James Durham turned something in to the Sheriff's Department that he found walking down the road in the area of the crime scene, correct?

A Correct.

Q And that item was?

A A pillowcase.

Q That appeared to have blood stains all over it, correct?

A Appeared to be blood stains, yes.

Q To the best of your knowledge has that pillowcase ever been submitted to any law enforcement agency in this case to determine the origin of the blood?

A No knowledge unless it was submitted to SLED or the FBI.

Q Okay. Now, this investigation

essentially -- tell me again when you left the Sheriff's Department.

A 1986.

Q Essentially this investigation shut down in 1983?

A No, ma'am.

Q Okay. Do you have a report or some information that you can help me with after 1983 that I can reference?

A I reference that based upon the policy basically of Sheriff McCutchin and in my profile expertise, especially any time that there is a major felony type case, murder, rape, homicide, that is an ongoing continuing case. And this particular case was such until the day I retired.

Q I guess what I'm saying is, if I can't find any reports after 1983, can you tell me there was one issued after 1983?

A No, I cannot.

Q While you were on watch there?

A No, I cannot.

Q Okay. Now, was it your policy under Sheriff McCutchin to send every firearm that was located during this period of time up to SLED to try to compare it to items from this case? Do you

remember doing that at all?

A I do not remember. But if I may, as a policy, any time firearms are recovered from any particular crime scene or turned in by a citizen they were automatically sent to SLED for comparison to any outstanding case involving a firearm.

Q All right. Right. Thank you. Do you know -- is there anywhere in your reports from 1980 how you and your officers found out that there had been a shooting in this location? I'm looking for a record of the call that came in about this and how it came in. Do you have that, or know where we could find that?

A The only information that I have to that is on the original Beaufort County Sheriff's Department incident report.

Q So, independently you have no recollection, right?

A To my knowledge, no.

Q And if I can't refresh your recollection with any reports, then you would have no further recollection at all how you got notified that this was taking place; right?

A Unfortunately, no.

Q Okay. Now, at some point in your

investigation you and your officers feared, perhaps, that you were not getting the truth from Susan; correct?

MS. SWANSON: Your Honor, I would object to this. Can we approach?

THE COURT: Certainly. If you would like to stand up, ladies and gentlemen, and stretch while I talk to the attorneys.

(Off-the-record discussion held.)

BY MS. CAMPBELL:

Q Thank you for your patience. Again, at some point in your investigation, you and your officers, did you begin to fear that Susan was not giving you the truth in this case?

A I did not myself, no. As to the independent opinions of the other officers, I have no knowledge.

Q Okay. And because if there were doubts that you were getting the truth or having concerns about your investigation, you know, how -- you might have to resolve those doubts for yourself if you had them, correct?

A Correct. If rumors or reliable information would have been brought to our attention, we would have certainly went in a

different direction or different directions.

Q And to say that you were overrun by contradictory information or rumors, that would be a fair statement; correct?

A That would be a fair statement, and that would not be unusual.

Q Right.

(Pause.)

BY MS. CAMPBELL:

Q Very quickly. At the scene, would you characterize it as a Lover's Lane area frequented by couples seeking some privacy? I mean, was that sort of a known thing back then?

A Essentially that particular area, Lover's Lane, crash out, mostly, yes, ma'am.

Q So, you might encounter vehicles in that area on any given evening, you know, in Beaufort County in 1980, correct?

A Certainly, any given evening, weekend, yes, ma'am.

Q Okay. So it wouldn't be unusual to see vehicles in the area at the quote, unquote, Lover's Lane, right?

A No.

Q Okay. And so in 1980 and in the years

that you worked on this case, was there at any point that you took a statement or written statement from Susan Weed's father?

A No, I had spoken to Mr. Weed and Mrs. Weed.

Q Did you take a written statement from either one of them?

A No, ma'am.

MS. CAMPBELL: That is all that I have.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Gerry, when you spoke to Johnny Weed, did you ever consider him a suspect in this case?

A I did not, no.

Q And going back to when Ms. Campbell asked you about picking someone out of a line-up who Susan said looks most like him, and we were talking about Manning Tredway and I believe that she had you read from that report. He actually lived in Sumter, right?

A As I recall from the statement, yes, ma'am.

Q And she claimed that he had been dismissed because he was too tall, but had there been any corroborating evidence, anything that put him in the

area, anything like DNA, would he have been investigated as a --

MS. CAMPBELL: Objection. She is leading the witness.

THE COURT: Hold on, there's an objection.

MS. CAMPBELL: I mean, I have let her go far with this, but she needs to ask a question. She is leading the witness repeatedly. Objection.

BY MS. SWANSON:

Q If there had been corroborating evidence, would he have been investigated as a suspect?

A Correct.

Q If anyone had been able to place him in the area, would he have been investigated?

MS. CAMPBELL: Objection, again, Your Honor.

THE COURT: Overruled, go ahead.

BY MS. SWANSON:

Q If anyone had been able to place him in the area, would he have been investigated as a suspect?

A Correct.

Q If any forensics identified him, would he have been investigated as a suspect?

A Correct.

Q Ms. Campbell also asked you about what she was referring to as cartridges, which I believe came from the Coroner's report. I just want to make sure that we are clear because I think that there were some things that were mischaracterized?

MS. CAMPBELL: Objection, Your Honor, you know, the solicitor is just going on and on and on. She needs to ask a question instead of talking about how I asked my questions.

THE COURT: Sustained. Go ahead.

MS. CAMPBELL: Thank you.

BY MS. SWANSON:

Q Do you recall sending all of the projectiles to SLED that were found?

A To the best of my knowledge all evidence in this case was sent to SLED, yes, ma'am.

Q All right. So, I'm going to hand you the request for laboratory analysis that was actually done by you and if you can tell us what date that was done on? It is at the top.

A Yes, it was sent to the SLED on the 9th day of January, approximately 12:30, which would be p.m.

Q January 9th, and that would have been

after the scene was processed, right?

A Correct.

Q So, items seven and eight, what does that include?

A It says, Bag containing one vial containing two spent rounds, maybe 38 caliber. Number eight, one plastic bag containing three vials FA80-2 vial mark number one, number two, number three. Number one from the head, number two from the neck, number three from arm of murder victim Krulewicz.

Q Okay. So, there were two sets of projectiles that were turned in?

A Correct.

Q One of which came from the victim's body?

A Correct.

Q And one has been entered as State's Exhibit 2?

A That's correct.

Q All right. And what is the number on the top left corner?

A Number seven.

Q Okay. And to your knowledge, that is all of the ballistics that were collected in this case and sent off to SLED, right?

A Correct.

Q Okay. There were -- let me ask you this: In your experience as a law enforcement officer is there a difference between, you know, what a shotgun might leave and what a revolver might leave?

A Most definitely.

Q Did you all --

MS. CAMPBELL: I'm going to object to the solicitor going into ballistics testimony referencing -- this officer, he's certainly not been qualified as a ballistics expert. Objection.

MS. SWANSON: Your Honor, I believe -- I don't think that he can definitively say what is what. We are not talking about identifying tool marks, but in his experience in shooting firearms.

THE COURT: Overruled. I'll allow it.

BY MS. SWANSON:

Q And so, in looking at this case did you and the other investigators ever believe that there was evidence of a shotgun?

A No.

Q What did you believe that there was evidence of?

A Small caliber in the area of possibly .25/.32, caliber. Thirty-eight would be a little bit large.

Q Okay.

MS. SWANSON: Thank you.

RECROSS EXAMINATION

BY MS. CAMPBELL:

Q In reference to the type of weapon that you may have been looking for, what you had on the scene that night was a shotgun, correct?

A As a result of disorderly conduct with Mr. Weed and the deputy, yes, ma'am.

Q You had a shotgun?

A Yes.

Q Thank you. Now, you did not look for another weapon that night on Johnny Weed or at his house or anywhere else relating to him, correct?

A No.

MS. CAMPBELL: That is all that I have.

MS. SWANSON: Nothing further.

THE COURT: Thank you. You may step down.

MS. SWANSON: I would ask that Mr. Wagner to be allowed to be excused if he so wishes.

THE COURT: Any objection?

(No response.)

THE COURT: Thank you, sir. You may be excused from your subpoena. Another witness before lunch?

MS. SWANSON: Yes, please. The State calls Susan Neal.

Thereupon,

SUSAN NEAL

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Susan, if you can please state and spell your name for the record?

A Susan Neal, N-E-A-L.

Q Back in 1980, were you Susan Weed?

A Yes.

Q How old were you in 1980?

A Fifteen, about to turn 16.

Q All right. Tell us a little bit about what your life was like in 1980. Where did you go to school, your hobbies, who were you dating.

A I went to Beaufort Academy, I was in the 10th grade and we -- I was involved in horseback riding and dirt bike riding and cheerleading in school. And I dated -- I was dating David Krulewicz

then.

Q Okay. And how long had you and David been dating?

A Probably about October before then, so that would be 1979, October, uh-huh.

Q All right. And did you get along with David's family.

A Yes.

Q And did he get along with yourself?

A Yes.

Q And your families had met, right? Or he had met your family?

A Yes, correct, yeah.

Q Okay. And at the time where were you living?

A In Salem Point, Plantation Drive in Salem Point.

Q All right. And that was with your parents?

A Yes, and my sister.

Q And how old was your sister?

A She is almost four years older.

Q So, what grade were you in?

A The tenth.

Q What grade was your sister in?

A Well, she was 19 -- she graduated in '78, so she was already out of school.

Q Okay.

A Right.

Q Was she working?

A Yes, she was.

Q Okay. Was she working for your parents' company?

A Yes, at the moving company, uh-huh.

Q All right. Where did David live?

A Coosaw Island at the end of Sam's Point Road, way out there in Coosaw Island.

Q All right. And what did he do for work?

A He worked at Rutlands Heating and Air, I believe. Yes.

Q All right. Let's go back to January 5th of 1980, and how did that evening start?

A David came by around 7:15 that night to pick me up and we came inside and chatted with my parents for a little while and then we left and drove to the bowling alley and met up with some friends and we shot pool there at the bowling alley. They did, you know, foosball machines and things like that. We were there for maybe an hour or two and then we went to Lady's Island to -- some friends

were having a party out there, but really there was only three or four people there but -- and we hung out there for a little while. And then David got sick. He was -- he started like he was going to get sick, so he went outside the house and puked and I went out after him to see if he was okay. And then he got -- he started feeling better and then we left there shortly after that.

Q Okay. This was 1980 and you guys were in high school, right, teenagers?

A Uh-huh. (Indicating affirmatively.)

Q Was anyone smoking marijuana or drinking beer?

A No, there was no marijuana at all. That I knew -- you mean at the party?

Q Right. At the party, you know, anyone -- were they have partaking in that?

A No.

Q Or drinking beer?

A There might have been someone drinking beer, yes.

Q Okay. Did you smoke any marijuana that night?

A No.

Q All right. What did David pick you up in

that night?

A His van. I don't know what year it was. But it was gray/silvery van.

Q Okay. I'll show you what is marked as State's 3B. Can you describe what is in this picture?

A This is David's van.

Q That is how you remember seeing it?

A Uh-huh. (Indicating affirmatively.)

Q Okay. Permission to enter into evidence State's 3 and permission to publish?

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 3 marked for identification and received in evidence.)

BY MS. SWANSON:

Q All right. So, we are looking at David's van here. And that is what he picked you up in that night?

A Yes.

Q Okay. And Susan, I'm going to ask for you to tell us what is in these two pictures, State's 4 and State's 5. Start with State's 4.

A That is a picture of David and I, I think

at Christmastime. And then that is my high school senior picture.

Q Okay. Thank you. And that is a fair and accurate reflection of how you guys appeared at that time?

A Yes. I bought him that sweater.

MS. SWANSON: The State would move 4 and 5 into evidence and move to publish.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 4 marked for identification and received in evidence.)

(Whereupon, State's Exhibit No(s). 5 marked for identification and received in evidence.)

MS. SWANSON: Judge, the other monitor is not working.

(Pause.)

MS. SWANSON: Okay. So, we will cap this and I'll publish to the jury, myself. All right. So, State's 3.

BY MS. SWANSON:

Q And then State's 4 and 5. And Susan, you said that the picture taken of you and David was around Christmastime?

A Yes, I think so. My mom took the picture.

Q Okay. So, he picks you up in his van and y'all end up going to a party on Lady's Island?

A Yes.

Q What did you do after the party on Lady's Island?

A We drove down Highway 21 or Boundary Street and I stopped at Burger King to get something to eat at the drive-through window and we parked in the Burger King parking lot and we both ate something and then David got sick again and he just got out of the van and went in front of the van in the parking lot and just puked again. And then he got back in the car and started feeling okay. And I was mad because he had been puking two or three times recently, beforehand, you know, even that week and he wouldn't go to the doctor being stubborn or whatnot and I was kind of upset about it.

Anyway, then we left there and it was probably around 11ish, around that time, and then we started heading -- we were driving around heading in the vicinity of my house. And we turned on to -- we went down Parris Island Gateway, down that way, and was Sky City down there, which is kind of like a KMart is today. We pulled in the parking lot. Of

course it was closed being 11:00 at night and we parked in the parking lot and chatted a little bit more about him getting sick and whatnot. And I looked at my watch and it was 11:30 and I told him that we better be heading home, because I had to be home by 12.

Q So you had a 12:00 curfew?

A Right.

Q And you guys started moving closer to where you lived?

A Right.

Q So where did you end up just a few minutes before your curfew?

A Off of Old Salem Road into a little cut-off road. We pulled right off of the edge of Old Salem Road, the dirt road that was near my house.

Q Okay. And Susan, I am going to actually bring you down to take a look at this map, okay?

A Okay.

Q If you can, stand here and point out for me where you live.

A Around in here. Right in here.

Q That is the Salem Point neighborhood?

A Right.

Q What road did you go down to park in the cut?

A The dirt road, this.

Q Old Salem?

A Yes. That is where we parked. And off of that dirt road there was another little, you know, area off of there that we took a right into.

Q Right, and the creek and marsh would have been in front of you?

A Right. That is all water, uh-huh.

Q All right. You can go and take the stand.

Now, when you say "a cut," it was not a full dirt road?

A No, it was a cleared-off area where, you know, the van barely could pull into. There was thick bushes and trees and it didn't continue onto a road. It just kind of stopped, you know, it didn't go any further. It was just a place where you could pull into and sit with a vehicle.

Q All right. I'll show you State's Exhibit 6. I know this is old and difficult to see. Can you describe what is in that picture?

A That is the area that we turned off of the main dirt road into this little area that didn't have much trees or whatnot, just barely enough to

get the van in there and, like I said, there was thick brush and trees on each side.

Q So, heavily wooded other than the little area where you could park?

A Right.

Q Is this an accurate depiction of where you were?

A Yes.

MS. SWANSON: The State would move Exhibit 6 into evidence, and permission to publish?

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 6 marked for identification and received in evidence.)

BY MS. SWANSON:

Q When you parked there, did you leave the van on; did David turn it off?

A He turned the van off and we were just sitting up in the front seat with the dome light on. We probably -- he smoked a cigarette I'm sure and then he -- we went to the back of the van to sit down because he was still feeling nauseous, and we were sitting back there for a little while. And I noticed a car going by in the back windows because

in the van he had back windows, had some kind of a picture or something over them so I could look out and see out, no one could see in.

And so we were just sitting back there and I just noticed a car going right back, I mean, because like I said, this road that we pulled off onto was only maybe 5 feet off of the main road so when a car went by I could see it when it went by. And I just looked down at my watch and said, We better get going because at that point it was a quarter to 12.

Q Okay. When you said that you see the car go by, did you see the highlights or the actual car?

A Well, I saw mostly the headlights because -- I wasn't looking for any reason to recognize the car. I mean it was a car with headlights on.

Q And how dark was it out there?

A It was pitch black dark. It was near midnight so it was pretty dark.

Q No street lights or anything like that?

A No, there are no street lights on that road until you get down, you know, a half mile the other way where the Bessingers lived.

Q And were the headlights to the van on?

A No, the only thing that was on was the dome light right where we were sitting in the front seat.

Q Okay. So, around 11:45 did you guys move from the back of the van?

A Yep. We, like I said, I needed to be home and we were, you know, a couple of minutes from the house so we got up and went back to the front seats and were getting ready to leave and getting ready to go, you know. I think that maybe the radio wasn't on or anything, we didn't have it cranked up. So, we were just sitting there getting ready to go.

Q Okay. So when you say that you moved to the front seats, who sat where?

A I was in the passenger's seat and he was in the driver's seat.

Q Okay. And what is the next thing that you remember happening?

A Well, then I heard a loud bang and the glass shattered right beside me here, and I could feel the glass coming on me. ANd then I smelled gunpowder and then, you know, obviously several more shots rang. And then I freaked out and jumped behind my seat in the van realizing what was happening. And then just started screaming and

begging him not to shoot me.

Q Okay. And when you said you felt the pressure of the glass shattering, was that from the passenger side window?

A Yes, yes. It was right there.

Q Right.

A Right there, you know. And then my seat was moved back a little ways, and his was more forward and mine was more back. So, I guess that just barely left me out of the line of fire and then -- and got David.

Q Okay. So, what was David doing at this point?

A Well, he was hunched over and, you know, shot. I didn't hear him say anything. He didn't say anything or I didn't hear him say anything, you know, and I was just screaming and begging, you know, not to shoot me.

Q What happened after that; did you hear the person?

A Not yet. Well, when I was screaming and begging him not to shoot me then I just knew that I was getting ready to get shot. And then at that point I was just thinking, you know, what it was going to feel like to be shot and I could just see,

you know, my life flashing before my eyes. And I could just remember myself when I was five or six swinging in my backyard and stuff, and I just knew that I was getting ready to die right then, you know. No question.

And so then I kept saying, I'll give you money, whatever, just please don't shoot me. And so he just said, Okay, open the door. And so it is a sliding van -- you know, it had a sliding door on the side of the van and so -- and it had no windows, of course. And I opened it up and he had a gun to my head. And I was still sitting in the van. I gave him the money and just, just kept asking him to please not shoot me.

Q And what hand did he have the gun in?

A His right hand to my head.

Q And how did -- to the back of your head or --

A It was more on the side.

Q Okay. After he took the money -- and how much money did he take from you?

A I had $50, and the only reason that I remember that was because I had went to Savannah shopping that day. My mother had given me money to go shopping with and I had it folded up in my purse

to give it back or what have you, to give it back to her and it was in my purse.

Q After he took the money from you, what did he ask you to do?

A He asked me to get out of the van and then take my pants off and get on my knees and then he asked me to perform oral sex on him, which I did. And he had the gun to my head then, at the same time. And so I did what he asked to do. And he was -- and I was just, you know, he told me, he said, Don't bite me and then he said -- I asked him, Am I doing okay and then he said, Yes and then he said, No, you are not doing okay right now, don't tempt me or I'll shoot you, I will kill you. And so -- and I did that.

And he said, Well, let's go down the van and so he made me walk in front of him. And he told me to go down in front -- walk in front of the van and get on the ground and I was just so afraid that he was going to shoot me. And I kept asking him are you -- please don't shoot me. And I said, Are we -- and he said, Get on the ground. And I said, On the bare ground? And he said, Yes. And he put his jacket on the ground for me and then we laid down -- or I laid down on the ground and he pulled

one of my pants legs off and he performed oral sex on me.

And then he had intercourse, vaginal intercourse with me and ejaculated. And then he got up and lifted his pants up and so I did the same. And I just kept trying to talk to him and tell him, you know, please don't shoot me, you know and whatnot. And I was just trying to keep calm, remain calm throughout as to not tempt him to shoot me.

Q Okay. When he was raping you vaginally, what were you doing?

A Playing and just -- I kept staring up at the sky trying to just, you know, hoped that it would be over really soon. And then he said -- he said he came too quickly, he said that he wished that he hadn't done that, cum so quickly or whatever.

Q All right. After he ejaculates and pulls his pants back up, what does he do at that point?

A Well, I was just trying to, like I say, talk nicely to him so and just be, you know, so he wouldn't get aggravated and try to -- and shoot me. And so I asked him if he had a cigarette and he said, Yes, and he threw me a pack of cigarettes. And then I smoked a cigarette and then he went to

light a cigarette and then he stood back and he said, Oh, you have done seen my face now because I guess the lighter or whatever may have lit up his face more but . . .

Q Did he ever make any other efforts to conceal his face?

A Yes, of course. He walked -- like I said, he made me walk in front of him the whole night or hold his hand in front of his face or turn away and, you know, so I couldn't see him.

Q Did he eventually lead you back to the van?

A Uh-huh. (Indicating affirmatively.) So, we walked back up to the van and we were walking up -- and the light was still on in the van, David was hunched over and he was jerking. David was like jerking and shaking, you know. And then the guy said, Well, he's not dead. And then he asked if that was my boyfriend and I told him, No, that was not my boyfriend because I feared if I told him the truth that he might kill me. So I said, No, he's not my boyfriend, don't worry about it. And he said, Well, I only had to kill him to get to you. And then, like I said, he asked if David had a CB radio in there because there were antennas up on the

sides of the van and I said, I don't think so, no. And then he told me to get inside the van and throw him the keys or -- and then to stay in the van until I left, until he was gone.

Q So, he apol -- did he apologize to you for killing David?

A He said, I'm sorry what I did to your friend. And then he asked if that was my boyfriend. I said, No. And he said, I'm sorry I did that, I had to do that to get to you.

Q Okay. After he appears to have left, what are you trying to do?

A Well, I looked at David to see -- I tried to feel for his heart beat to see if he is still alive or -- like I say, he had not made a sound. You know, I hoped that he died immediately, you know, without suffering. So I tried to see if he had a pulse or a heart beat or what have you. I couldn't tell. And his eyes were barely opened, they were slanted. So I don't think that he was dead. They were not obviously, and then I went to the back of the van to look out to see if I could see him around anywhere. From what I could see out there I did not so I went back up to David and I was trying to drag him out of the seat so I could get in

the van and drive us home and call the police. And I couldn't drag him out, he was too heavy.

So that is when I decided to just start running towards my home. So I got out of the van and started running towards home. But when I got out of the van and started running home there were -- I saw headlights coming -- you know, I was fixing to make the turn, you know, it wasn't -- I could see, you know, obviously lights coming around the curve and so I jumped into the ditch on the side to hide until the car went by. And I didn't look at the car. I kept my head down and hidden. And then continued to run home and ran in the house and mom was waiting up for me. And dad was in the bed and mom was waiting up. And then I started screaming and crying, you know, running inside telling her what happened.

Q All right. So, you told your mom -- did you tell your dad what happened as well, at that point?

A Yes, I am just -- yes. Everybody freaked out and Deborah my sister was gone at a friend's house that night so it was just mom there and dad in the bed. And when I was late. You know, at that time it must have been 12:15 or so, I was late

coming in, so I ran in and started screaming that, you know, that David had been shot and that I was raped. And then, you know, everything went chaotic. Mom and dad -- mom and I stayed there and she was trying to calm me down.

And then dad ran out of the house to go see what was going on. He ran to the scene to see if he saw the killer or what, you know, he didn't know if he was still there or what have you. He just -- all he knew is that I came running in screaming and crying. And then mother and I, I guess she must have called the police because I didn't. And then we went down there right after that. Right -- all at the same time.

Q Okay. And then after you went down there, did you speak with officers at that point?

A I'm sure I did. I told them what happened, you know. I don't remember how many were there or their names or anything, I just remember telling them what happened and then they told me to go to the hospital.

Q Did you give them a description of your rapist?

A Yes, right then and there I told them that he was a black male, you know, short afro, and that

was about it. And then . . .

Q About how old do you --

A Oh, in his early 20s is what I said, yes. Or somewhere in the mid, you know, mid 20s, from what I could, you know, make out what -- it is kind of hard -- you know, the first thing that comes ut of your mouth, you know, you just try to figure out what he looked like, you know, just to give them any type of description to go find him and what not so --

Q Do you remember what kind of cigarettes he was smoking?

A Well, yes, the pack that he handed me was a Kool pack of cigarettes. You could -- I mean, I smoked back then. I didn't smoke Kools back then. I think that we smoked Winstons or whatnot. But a Kool brand, I could make that out to see. And the pack. He handed me the pack, you know. It wasn't one cigarette, obviously, it was the whole pack.

Q Do you remember at all what the gun looked like; large, small?

A I just remember it being like a pistol sized. I don't know that much about guns but, you know, it was held in his right-hand and you know, to my head. So, it had to have been maybe four or

5 inches, I'm not sure you know.

Q So not a shotgun?

A No, not that big.

Q Let me ask you this: Did he appear to be alone?

A Oh, yes. There was no one else around there that I saw or heard.

Q Okay. So, you never heard any other voices?

A No.

Q Besides the man that raped and murdered David?

A Right.

Q Raped you and murdered David. Never saw any other movement in the woods?

A No, huh-uh.

Q Never heard any bushes rustling?

A No.

Q When you got to the Beaufort Memorial Hospital, did you go to the ER?

A Yes.

Q And who did you — what doctor did you see?

A Dr. Fontana.

Q Okay. And did he perform a rape kit on

you?

A Yes, he examined me. It was the first time I had ever been examined by a doctor and after all of that to have just happened, you know, of course I'm highly upset and scared and worried and didn't know whether David was dead or alive at that point. And I was crying you know, crying and everything but Dr. Fontana calmed me down and helped, you know, was very nice to me. And he, you know, he did whatever -- you know, whatever he did, you know, down there, get the sample or whatnot of the sperm.

Q And do you remember what you were wearing that night, Susan?

A Uh-huh. I do. Some things don't ever leave your mind. But they were light blue corduroy pants and a flannel, I think that it was dark and light blue checkered flannel top.

Q Do you remember what your underwear, what color your underwear were?

A No.

Q Okay. Did you leave all of your clothing, your pants, underwear, at the hospital with Dr. Fontana?

A Yes, they made me leave it all there. And

then he -- I believe that he gave me a pill to -- so that to prevent pregnancy as well.

Q And when you ran home after having been raped, you didn't make any stops between the location and your house?

A No, no, I ran as hard as I could.

Q Did you change clothes or anything like that at the house when you got there?

A No, we like I said, when I ran in I was screaming, carrying on. And then mother and I went straight to the -- back down there, you know, to see what was going on, if the cops were there or what have you.

Q Right.

A And then they told me to go to the hospital and that is where we went.

Q Okay. Do you recall anything unusual happening in May of 1980?

A Well, yes, the phone rang. We were up -- well, my sister and I were at the house. I'm not sure what time of day it was. I'm sure that the statement says. The phone rang, I answered the phone. I was in my bedroom. And the person said -- he asked for my dad and I told him that he was not there. And he said, He's still in Columbia. And I

said, No, he should be home anytime. And I started to get scared of who this might be on the phone. And then he asked -- they asked if Buster and Joe still worked at the moving company, and they were long time employees of my dad. Buster is still living, Joe is not. I told him, Yes, they are still employed there. And then he said, Do you -- what do you do. And I said, I don't do anything there. And he said, No, you never did do nothing.

And then he asked if I was the one that was raped and I said, Yes, and he said, Well, did you enjoy it. And I said, What in the hell do you mean, and I hung up the phone. And I believe that that phone call was from the same person that raped me.

Q Did you recognize the voice?

A At first I did not. But at that -- I'm so paranoid of anything, you know, only five months after that, I just knew that he was going to come back and get me and kill me because I was the only witness, so I -- you know, and then as I'm listening on the phone I'm trying real hard to hear, you know, to make out his voice. And there was people screaming on his end and kids or something on the other end and it was hard to make out, but I believe

that it was him.

Q Did you attend David's funeral?

A Yes, of course.

Q Who did you sit with?

A We sat with the family underneath the family tent that they -- you know how they have the seats there at funerals. And we all sat there and cried together.

Q Now, through the course of the investigation, did the police ever show you any line-ups?

A Yes, many.

Q Many line-ups?

A Yes. On paper, and then we went upstate, I believe, somewhere to look at a live line-up.

Q So, you were involved in looking at pictures of people that were possible suspects?

A Yes, they even came to my school one day and it was urgent that they needed to show me or something, you know, pictures. So, they came to my school and I went to the principal's office and looked at photos there.

Q All right. And did you ever see in any of those photos, were you ever able to say, That is the person that murdered David and raped me?

A No, I never did.

Q Were you able to point out certain characteristics that reminded you of your rapist?

A Yes. Of course, I just remember the short afro hair and his body type size or, you know. Nothing really stood out on him that, you know, tattoos or missing teeth or, you know, something like -- of that nature that I would be able to pinpoint down. But none of the pictures. And I would say, Yes, he looks similar to this just to give -- you know, hoping that that would help the police find him if they knew more, you know, if I could bring out similarities or what have you with the people that I saw in those pictures.

Q Okay. And the police actually talked to you about the composite, which has been entered as State's 1, and were there certain things that looked a little different to you in the composite? Do you recall telling police --

A Well, the close afro, or maybe even the nose was too big or the eyes. I can't remember exactly what I said. Did I write a statement about that somewhere? I mean, that was 38 years ago.

Q It is okay Susan. But did you point out some things that were not similar in the way that he

looked to law enforcement?

A Yes.

Q Okay. Do you recall telling them that this doesn't look like him?

A Yes, definitely. But that is the best that they could come up with, you know, when they drew from, from the description that I gave them of him. It was not, you know, I didn't get a perfect look at him at all because he kept, you know, he was either behind me with a gun on me or holding his hands on his face or turning away, you know.

Q And so what was life like after the rape? Were you out of school for a while?

A Yes, I was. Probably a week or two. I couldn't go out. I didn't want to go out at nighttime. I didn't want to go near a window or in a room that was lit if it was dark outside. I didn't want to drive anywhere. And just in general, you know, just didn't want to -- just was afraid to go anywhere because I was afraid that he was going to be right there somewhere.

And we got a Doberman Pinscher that -- it was attack trained and they taught me how to, you know, to be with the dog or if someone tried to get me to tell him to attack, you know, whatnot.

Q And did you rely on your big sister for support as well?

A Yes. Everybody at the school and everywhere was so supportive. And then, you know, as far as sending me -- my teachers sent me flowers, cards, asking me, you know, welcoming me back whenever I was ready to come back to school. And then the night after we got home from the hospital I took -- about two or three in the morning, and I took a very long hot shower because I felt disgusting. And then I slept with my sister that night and, you know, because I was scared. I mean, everyday, you know, everyday of your life, you know, you think that he's going to come get you.

Q And so when did you learn that this case was being reopened?

A In 1999 Detective Bromage came to me and said that Sheriff Tanner was opening -- had a team that was especially for all of the cold cases in the county, at that time. So, he said you know, they are reopening them up looking at them all over again and hopefully, you know, we can go somewhere with it and I was like you know, thanking God for that you know.

Q So, over the next 20 years, almost, you

continued to work with Captain Bromage on this investigation?

A Uh-huh. (Indicating affirmatively.)

Q And cooperated with law enforcement?

A Yes, yes.

MS. SWANSON: Thank you, Susan. I have nothing further at this time.

MS. CAMPBELL: May we approach?

THE COURT: Sure.

(Off-the-record discussion held.)

THE COURT: Ladies and gentlemen, it is time for lunch. Let's be back at 2:00. I will remind you, don't let anyone talk to you about the case. You don't talk to anyone about the case. See you back at 2:00, ladies and gentlemen.

(Lunch recess.)

(The jury enters the courtroom at 2:03 p.m.)

THE COURT: Welcome back, ladies and gentlemen. We are ready to begin with the cross examination of the witness. Counselor.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Good afternoon. So, Susan, I'm just going to start out a little bit here working with you to

try to figure out a good idea of who was living in your home on that -- at that period of time. Okay.

A Uh-huh. (Indicating affirmatively.)

Q So, your father, who was that?

A Johnny Weed.

Q All right. And your mother?

A Marie Weed.

Q And of course you were there?

A Uh-huh. (Indicating affirmatively.) Yes. And my sister Deborah.

Q And D-E-B-R-A?

A D-E-B-O-R-A-H.

Q Okay. And in 1980, you said that you were 15; and how old was Deborah?

A She was 19.

Q Okay. Now -- at 19, was Deborah married?

A No, huh-uh.

Q Okay. Did Deborah eventually marry?

A Yes.

Q What is her married name?

A Deborah Larson.

Q Okay. And who is her husband?

A Mike Larson.

Q Okay. And when did they marry?

A In September of that year, 1980.

September 20th, 1980.

Q Okay. And David --

A Uh-huh. (Indicating affirmatively.)

Q -- the David, do you remember his mom's name.

A I just remember Ms. McKenzie. No, I don't remember her first name.

Q McKenzie would be her first name?

A No, I only refer to her as Ms. McKenzie.

Q McKenzie was her last name?

A Yes, last name.

Q So, was there a stepfather then?

A I believe so, yes.

Q Okay. And so you said that your family lived at Salem Point, right?

A Uh-huh. (Indicating affirmatively.)

Q And they lived?

A At the end of the Sam's Point Road on Lady's Island, Coosaw island.

Q Now, Deborah Larson, your sister and her husband Mike, was he ever involved in your father's business, Carolina Moving and Storage?

A He started working there probably when he was 16 or 17, so he was -- they were both working there at the time in 1980.

Q Okay. You in 1980 were a high school student, right?

A Yes.

Q And you went went to Beaufort Academy?

A Uh-huh. (Indicating affirmatively.)

Q That was a private school, correct?

A Yes.

Q In 1980 the private school, Beaufort Academy, it had a tuition?

A Uh-huh. (Indicating affirmatively.)

Q So, in other words you had to pay money to go there?

A Yes.

Q Right. And you weren't on any sort of financial aid, scholarship, or anything like that?

A No, huh-uh.

MS. SWANSON: Your Honor, I'm going to object to this line of questioning as far as relevance goes. I'm not sure what tuition or what the Weed family had to pay for Susan to go to school has anything to do with the man who raped her or her rendition of that rape.

MS. CAMPBELL: I'm sorry, the solicitor asked her where she went to school. I was just getting some more information about that.

I'll be happy to move on. Thank you.

THE COURT: All right.

BY MS. CAMPBELL:

Q So, your home in Salem Point, that was a brick home; correct?

A Yep.

Q And it was on the water, correct?

A Yes, ma'am.

Q Okay. And at the time did you have the dock then, in 1980?

A We never had a dock.

Q You don't have a dock?

A Huh-uh.

Q Okay. And so in January of 1980 when you were out with David, you went to the bowling alley?

A Uh-huh -- sorry, yes.

Q So you went to the bowling alley?

A Yes.

Q You went to a party on Lady's Island, right?

A Yes.

Q And that would have been -- now, was that a house or a trailer?

A It was a trailer I believe.

Q Yes, a trailer on Lady's Island?

A Uh-huh. (Indicating affirmatively.)

Q And in the trailer was Bernadette Jagy and was it Mike Jagy?

A No, Mark and Bernadette were brother and sister and that is the only people -- I only knew the Mark fellow. I think that he was at the bowling alley and I think we followed him out there. She was there and then some other person, I do not even know who it was that lived there. I didn't know anybody but the Mark fellow and we followed him out there from the bowling alley.

Q Now, there were folks at the trailer that were drinking alcohol, right?

A They were.

Q Okay.

A They had beer and --

Q There were folks at the trailer who were smoking marijuana, correct?

A I do not remember that.

Q Okay. And when you left the trailer on Lady's Island with David in the van, you went to Burger King; is that right?

A Yes.

Q Okay. And in some of the statements that you have given you said that when you went to Burger

King David had to sort of count his pennies to pay for what y'all ate at Burger King?

A No, I don't -- I didn't -- I don't remember that.

Q All right. David had dropped out of high school, correct?

A Correct.

Q And I think that you testified that he worked with the HVAC company?

A Uh-huh. (Indicating affirmatively.) Yes.

Q But he also worked as a shrimper, correct?

A I think that's part-time or with his buddies or whatnot but not -- he mainly worked with the Rutland family. The person who owned Rutland Heating and Air Conditioning was his best friend, Paul Rutland, and they were buddies and he went to work with him.

Q And you testified that you brought him to meet your family.

A Correct, David.

Q Yes, and you were sitting in the front passenger sear of David's van on January 5th, 1980, on a dirt road in Beaufort County South Carolina around 11:50 p.m.?

A Yes, correct.

Q And that dirt road, which is evidenced by the map, if you can see it, is the dirt road close to the water and close to your home, correct?

A Yes.

Q Okay. And when you were in the van, David was sitting in the driver's seat next to you, right?

A Right.

Q Ask he cut off the van?

A Yes.

Q And at that point did he leave the keys in the ignition?

A As far as I can remember, yes.

Q Now, there's no lights on in the car at that point, correct?

A Yes, there are lights on.

Q Tell me about that. What light is on?

A The light right in the center middle front between he and I.

Q So it's a light in the front?

A Right.

Q But not in the back, correct?

A It would be dark in the back, yes.

Q And the other radio was on or off?

A I don't remember.

Q And no street lights?

A No. Correct.
Q No flashlights?
A No.
Q Pretty much no lights in the woods at all?
A Right.
Q Yeah. All right. So, for a few minutes prior to when the two of you were sitting in the front of the van, you had been in the back of the van; correct?
A We started in the front, went to the back, and ended in the front.
Q Correct. Started in the front, went to the back, came back to the front?
A Right.
Q In the back of David's van there was a couch, correct?
A Yes.
Q And you testified in the back of the van that you were talking with David, correct?
A Yes, because he had puked twice that night in the last hour, and so we were discussing what was wrong with him. And I was urging him to go to the doctor.
Q Do you ever recall telling law enforcement that you may have been kissing with David in the

back of the van?

A I may have told them that we were talking and snuggling, yes.

Q You know, David and your relationship had involved sexual intercourse, correct?

A We had.

Q Okay. And so, at some point, maybe around 11:55 you have testified that someone shot through the passenger side window of the van, right?

A Yes.

Q And that the -- the window glass completely shattered?

A Yes, all on to me. I felt the pressure and the glass falling on me and I smelled the gunpowder.

Q And the window glass in the driver's side window completely shattered?

A I did not notice that, but that's what the police report said, because obviously when David was over there the bullets must have went straight through his window as well. But I touched -- never went out that door, obviously, or touched it or wasn't --

Q When you say that is what the police report said, I'm assuming that you have read the

police reports in this case?

A I guess not the police reports, but I guess the newspaper reports or what have you. And also his van was parked in the Sheriff's lot afterwards, after they had, you know, gone and brought it back. So, you could see that both of the windows were shot out.

Q Completely out?

A As far as I can remember.

Q Okay. And you had testified that you had had $50 on you?

A Uh-huh. (Indicating affirmatively.) Yes.

Q And that was from a shopping trip to Savannah?

A Right.

Q And that you turned that money over to your assailant, correct?

A Yes.

Q Okay. As you had a gun to your head, correct?

A Yes.

Q And that the gun was in the right hand of your assailant, correct?

A Yes.

Q And you said that he counted out the money

in front of you; is that right?

A When I handed it to him he looked at it and yes.

Q In his left hand?

A I'm guessing so, yes, he had the gun in the right hand.

Q And I'm just trying to make sure that I understand. So the dome light was on when you were in the front seat when the window shatters?

A Right.

Q Okay. You are taken out of the van, correct?

A He told me to open the door and then he told me to get on my knees, so I did what he said. When you have a gun to your head you pretty much do what someone tells you to do.

Q And you are sexually assaulted?

A Yes.

Q And taken back to the van?

A Right.

Q And your reported assaulter then tells you, Give me the keys to the van?

A Yes.

Q And you retrieve the keys from where?

A I am guessing out of the ignition because

we weren't planning on going anywhere when we sat there and parked so we just left the keys in there, so I'm sure that I grabbed them and gave them to him.

Q Then this person left with the keys to the van?

A He left with the keys and he said that he would throw them in the dirt, just to wait until he was out of sight and gone before I left or I came out.

Q Okay. So, on this dirt road that is off of, essentially, another dirt road; correct?

A Yes, about 5 feet off of the main dirt road.

Q To go down to the hard surface road?

A Yes.

Q To then get to your house?

A Right.

Q The man said that he would drop the keys in the road for you; is that what he said?

A I -- yes, that is what he said. He said that he would drop the keys in the road.

Q So I guess forgetting that you didn't have the keys you, at that point, went to try to move David and start the van up, right?

A I was going to -- that was my thought process at that time. It's kind of hard to think and absorb what is happening to you. So, yes, I went to try to pull him out quickly thinking that I needed to get home as quick as possible to call for help. So, I tried to pull him out. And then -- but, obviously I could not pull him out, like I said, so I just decided just to run. And I saw the keys on the ground right behind the van and I just picked them up and ran with them also.

Q Right. So, let me back up just a little bit. So, in trying to move him in your statement out of the driver's seat so that you could drive the van, you became in contact and had a great deal of his blood on you, correct?

A I tried to pull him out. But I don't remember a lot of blood like you would imagine, but there was blood there.

Q I am sorry. Just so I'm clear, I'm hearing you testify that you found the keys to the van on the ground at the back of the van?

A On the ground right -- behind the van on the main dirt road that we were pulled into. The road was perpendicular and we pulled right in and he threw the keys right there on the ground right

behind the van. And I just happened to see them when I was running and --

Q Okay. And so you take off out of the van because you have realized that you don't have the keys?

A No, I realized that I couldn't pull him out of the car to drive or whatnot so then I decided to just make -- to run, to get home as quick as possible.

Q I think that we are saying the same thing.

A Okay.

Q Which is that you gave the keys to this person?

A Uh-huh.

Q You tried to move David?

A Uh-huh. (Indicating affirmatively.)

Q You realized that you didn't have the keys and he was heavy, so you made the decision to run home for help?

A Right.

Q Okay. And while you are running home for help you happen to find the keys to the van in the road?

A Right, behind the van.

Q On your way home?

A Yes.

Q Now, you had or had not parked with David at the Lover's Lane before this night?

A I feel like we had, but I can't recall any particular time. That is 38 years ago and I -- you know.

Q In finding your way home that night from the cut in the road, can you help me understand the way that you went to get to your road down here?

A This is where we were parked, and I ran straight this way. It turns into a paved road right there. And I went straight. That is Salem Drive West.

Q Okay.

A Took a left on Plantation and to my house down on the right.

Q And the ditch that you jumped into, where was that?

A Rgiht -- as soon as I got out and started running, about right here. But this -- right, yeah, the road curves and dirt, yeah.

Q Okay. And you don't recall if you had ever parked there before this night?

A Not -- no, I don't -- I cannot remember. I don't remember.

Q That is fine. I think that we -- you testified that your father was Johnny Weed?

A Yes.

Q And that he was the owner of Carolina Moving and Storage Company --

A Yes.

Q -- in town. And the scenario when you are telling us that you went back to the house, I think that you testified that your mother was awake?

A Yes.

Q And that your father was asleep in bed, or just in bed?

A Yes, I think that he was sleep.

Q And help me again now, who -- did your father go down there by himself?

A At first, yes, he did. He tore out of the house because I was screaming and carrying on that David had been shot and that I was raped. And then mom stayed there to help me calm down and he tore off out of the house and then mother and I went shortly thereafter.

Q So, did your father drive there or run there?

A Yes, I am sure that he did.

Q What was your father driving?

A I could not tell you.

Q What kind of car did your father have in January 1980?

A He had a pick-up truck.

Q A truck?

A He always drove a truck. I couldn't tell you what make, model, brand, or anything it was.

Q So, when the police officer showed up that night, your father's truck should have been there by the van; correct?

A Yes.

Q Okay. And this blue car that was there, who -- how did you and your mother get down there?

A We drove a car.

Q What color was that car?

A I could not tell you. I don't know.

Q So you rode down there with your mother?

A Yes.

Q Okay.

A Yes.

Q And your father left the house in his truck. Did you see him armed at that time?

A I don't recall if he was or not.

Q And do you remember how you called the police about all of this?

A I didn't. I guess -- I'm thinking that my mother must have because back then we didn't have cell phones.

Q This is true. So, then how long do you think then that you waited with your mother at the house before --

A Before we left?

Q -- the two women, yes, left to go back to the van?

A I would say within five minutes at the tops.

Q And I'm just curious, did and you and your mother discuss that it might not be safe for the two of you to go --

A No, you don't.

Q -- down there?

A No, we were not thinking anything of that nature. We just went out there to get -- to go there and I guess to be with dad to see what he thought. I was scared to go.

Q Okay. So, when the police got there, are you telling us that you and your mother and your father were there at the van with David?

A Yes.

Q Okay. Of course your father wound up in a

little altercation with the officer that night?

A Yes, I believe so, that is what -- right.

Q They wound up carting him off to jail that night, right?

A I believe so, yes.

Q And you -- when you went to the hospital you, I guess, didn't really know at that point what was to become of David at that point, you didn't know whether he was alive or dead?

A Right. I was upset and crying and all, correct.

Q I think that you reported to, perhaps, Officer Bromage, but do you remember talking about the friendship that your father had with Morgan McCutchin, the sheriff?

A I don't recall anything, no. I mean, I know that they were friends. I know they -- we didn't socialize with them or have parties with them or I have never been to his house. I don't know, to my knowledge, you know, mom and dad didn't socialize with them. I think that they were just buddies having been in town.

Q Do you recall being questioned by Officer Sankowski and Officer Bromage in 1999 about what happened this night?

A Yes.

Q Okay. And do you recall them asking you about the relationship between your father and Morgan McCutchin or discussing that with them?

A I don't remember the conversation.

Q Okay. At the request of the Sheriff's Department in 1980 you wrote a statement on January 7th, 1980; correct? I'll be happy to hand them to you as we go through them.

A If that's what the date is on there, that is what I wrote.

Q Okay. I'm going to approach. If you will just take a look at that and confirm that is the written statement?

A This is, yes, my statement.

Q That you made in 1980. On January 7th, just a couple of days after this was reported; right?

A Yes, uh-huh. (Indicating affirmatively.)

Q Okay. I'll take that. And you then were asked to write a statement and did write a statement on January 11th, 1980, and I'll pass that up to you. If you can just confirm that that is your signature.

A Yes.

Q Okay. And in this particular instance you

are actually writing about looking at photographs of individuals suspected of being the perpetrator?

A Yes.

Q And you select number eight as having the same profile, correct?

A That he resembles him, yes. That is what it says and that is the way that it was.

Q You were asked then on January 15th to write another statement about what happened. And I'll flip over and if you can look at your signature there.

A Yep, that is correct.

Q And then again on May 2nd, 1980, you make a statement with law enforcement. Is that your signature?

A Yes, ma'am.

Q Okay. And in that statement you are telling the officers that -- who is Diane Larson?

A That was David's sister.

Q Okay. So, David okay. So, David had a sister named Diane Larson?

A Yes.

Q Okay. And Diane was waiting for you after school that day, right? Would you like to see your statement?

A Yes, I didn't read it.
Q Perfect.
A Yes, I remember that.
Q And when she was waiting for you after school, she was wanting to provide you information on who they thought the shooter was?
A That's right.
Q Okay. And that information -- who is this Danny that says he knows who it is?
A That is his brother.
Q David's brother?
A Yes.
Q So, David's brother and David's sister have a suspected shooter in mind?
A And I was like, Great, let's tell the police. So we told the police and that is the last I heard of it.
Q Yes. And then again on September 9th you are shown 24 photos, and I'll give you a copy of that statement as well. Is that your signature?
A Yes.
Q Okay.
A Yes.
Q And you are indicating that one of them looks the most like the man that attacked you?

A Yes.

Q Okay. And you also talk about this composite sketch that law enforcement did, right?

A They asked me to describe to the best of my ability of what he looked like, which, you know, it was hard to see on a dark night, and I didn't really look at him.

Q Okay. So, if you could just help us out with the problems that you had of the composite sketch that you had given to law enforcement. So, by September what was wrong with the composite sketch?

A It resembled the guy. I wrote down his eyes were too big or except for his eyes were too big. And the nostrils at the bottom were too wide and big and the lips were too small. The mouth should be bigger. So --

Q Okay. So, most of it was incorrect, about the original composite?

A I just --

Q Eyes are too big, nostrils are too wide and big and mouth is too small.

A I don't think that it was incorrect. At the time that I gave them the description that is all that I could remember at that time. So you try

to rack your brain to remember anything that you can.

Q On January 23rd, 1981, you did pick out a black man from a six-person photo line-up?

A That resembled him, yes. But I didn't day, This is the guy. I never picked anyone out. I said, This guy looks or resembles him so I could give the police maybe a better idea of a profile to look for.

Q Do you recall picking out number four at the penitentiary as the black man who attacked you?

A No, I do not. I did not.

Q Were you ever informed why that individual was excluded as your attacker?

A Probably because I said that was not him.

Q Okay. And your father passed away in 1983, correct?

A Yes, January 16th.

Q Now, did you take over the business?

A No.

Q Who took over the business?

A My sister, who was out of high school since '78, she had been working there since 1978 when she graduated and then she -- so, he was training her to help run the business. And we also

had a manager there, her name was Laura Kiyemi, she is Hawaiian, and she was managing the business. Like when my mom and dad would go out of town and things like that, she would stay and be in control becuase Deborah and I, you know, were still in high school when she was there. And then Deborah started working there in '78 and was, you know, dad was helping her train her in the business, to run the business. And then I came along in 1982. And then dad died in '83.

Q Right. And in -- jump forward to 1999.

A Uh-huh. (Indicating affirmatively.)

Q You are informed that the new sheriff at the time is putting together sort of a special unit to go through cold cases; is that a air statement?

A Yes, that's exactly what he said pretty much.

Q And you talked with Officer Sankowski and Officer Bromage in '99?

A Yes.

Q Wasn't it Officer Bromage who really asked you the questions in that 1999 interview?

A I think so. I mean, I think so. I know that I have just spoken with him so much over the last years, since 1999, since the sold cases were

being investigated more thoroughly. And he has always been on this case and, you know, stuck with it and very passionate about finding the killer.

Q Okay. And in your conversation and interview by Officer Sankowski and Officer Bromage, you know, you tried to give them information as best you could about what you could remember about this case; is that fair?

A Of course.

Q It sounds like you respect Officer Bromage, correct?

A I do.

Q Okay. And could we say the same thing about Officer SankowskiI?

A Yes. I have no reason not to respect him.

Q Okay. And that they would -- they would accurately report what you said to them, right?

A I would hope so, yes.

Q Yes, okay. And do you have any concern that you, you know, are expressing in '99 fears to these officers by saying, Ask my mom if dad could have done this; what is that about?

A I don't -- just because there were rumors going around that dad had something to do with it, which is ridiculous, so I guess that is why I

mentioned that to him.

Q So, I could take that to mean, if you are reporting to Officer Sankowski and Officer Bromage that you had this conversation with your mother wondering if dad could have been involved with this, that you actually had that conversation with your mother?

A I guess I did. I can't -- if I wrote that. Did I write that? I don't believe that I wrote that in a statement.

Q Now, passenger side window shattered out, we have established that; correct?

A Yes.

Q While you are sitting in it is your testimony?

A Yes, and my seat is pushed back a little farther than his, remember.

Q And you walk away from this situation and you have no cuts whatsoever --

A Correct.

Q -- on your face?

A That is right.

Q At all?

A Correct.

Q And no cuts on your arms, no damage to you

in terms of any abrasions, cuts, anything from this shattering glass, correct?

A Right.

Q Okay. And I know you recall in your descriptions to law enforcement in 1980 that the person who assaulted you was shorter than you were, correct?

A If I -- whatever I said to them was to the best of my ability to give them a description, because you have to remember, when I was sitting in the van he was outside. I was on my knees after I was in the van, which is higher up than, you know, the ground obviously. And then, when I came out of the van I was on my knees and every other time that evening I was in front of him or on the ground being raped. So to the best of my ability I could judge from those instances where I was what his size, shape, and color was.

Q So you done your best?

A Uh-huh. (Indicating affirmatively.)

Q And you knew that your best, at that point, you were aware that they were taking that information as a factor in who the suspect might or may not be, that the height between 5'5" and 5'7", because you were at least 5'8", maybe 5'9", right?

A I believe so, yes.

Q Was a factor that these officers were going to rely on in weeding through the potential suspects?

A Well, I didn't have a measuring stick so I couldn't exactly measure how tall he was, but from my recollection that night, you know, when you can't really understand what is happening to you much less give them the best description that you can.

Q I understand that. I'm not saying that you had a measuring stick.

A He could have, you know, been 5'4" or 5'10", anywhere in that way.

Q I respect that it was important to you to get it right. And to the best of your ability you feel like you got it right in what you told law enforcement, right?

A I feel like that's my feeling that night what his height was. But I would not be -- I would not tell them, I know for a fact he was 6'7" or 5'6" to 5'8".

Q No, because what you said was, He was shorter than I am?

A I don't know if I said that. I never stood up beside him. I was never standing beside

him, so my opinion from how tall he was was from looking up at him on my knees or out of the van or on the ground. That is my opinion where I formed that. I never stood beside him like you would, you know, if you are standing beside someone and want to know how tall they are, you know.

Q Okay. Is that it?

A Yes, that's it.

Q You testified for the solicitor that Dr. Fontana gave you a pill to prevent pregnancy, correct?

A I believe so, yes. But I'm sure that he can tell you what his medical records show. I was not in the best state of mind at that point.

MS. CAMPBELL: One second, Your Honor, beg the Court's indulgence.

THE COURT: Okay.

(Pause.)

MS. CAMPBELL: That is all that I have.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Susan, when we were talking about what you were wearing that night; were you wearing anything over your flannel shirt?

A I had on a coat, but I don't know where it

is now. I mean, I don't -- I had a coat that I had on that night. It was a little white coat.

Q Okay. So, that white coat, did you have that on when you were moving David?

A I'm going to say I don't believe I did. The reason I say that is because when we were -- when he had made me go, when he made me go in front of the van where he raped me I didn't have my coat on then because we, remember, had been sitting in the van inside so I didn't have my coat on then. And then when we came back up to the van, you know, he told me to stay in the van until he left and the, you know, the scenario. I must have grabbed it. I know that I got my purse, so I probably did grab my jacket and head out. The point when I tried to move David I don't think that I had it on. I don't know for sure.

Q We just don't know what happened to that coat?

A I guess I left it at the house when I ran home, you know, when mom and I went to leave to go to the hospital.

Q You don't remember wearing it to the ER?

A No.

Q Did you tell your dad where David had been

shot, like the physical location of the van?

A I did. I am sure I had to. I don't remember exactly what words I said. I probably told him, Down the dirt road, down there on on the left I am sure.

Q How far is that from your house?

A Maybe half mile, or maybe a mile at the most.

Q Did your father shoot David?

A No.

MS. CAMPBELL: Objection to the question, Did your father shoot David.

MS. SWANSON: She is the only living eye witness. I'm not sure why she wouldn't be able to say that.

THE COURT: I'll overrule the objection.

BY MS. SWANSON:

Q Did your father shoot --

A No.

Q Did you ever see him out there prior to running home?

A No.

MS. SWANSON: Thank you Susan. That is it.

RE-CROSS EXAMINATION

RECROSS EXAMINATION OF SUSAN WEED BY MS. CAMPBELL

BY MS. CAMPBELL:

Q Following up to the solicitor's question about did your father shoot David, in 1999 in your mind, in your conversations with your mother, you suspected that your father had been involved because you discussed it with her, do you think dad would have been --

A I don't even remember discussing it with her. I remember -- I'm not sure if Detective Bromage asked me or I can't remember what, but I mean it's not like I -- I'm not sure what you are getting at.

Q But you do remember talking to your mom and asking your mom, Do you think dad could have been involved in this?

A If that's what I told the detectives, then that -- is that what I told the detectives? I mean, I guess I did, you know, I don't have any idea.

MS. CAMPBELL: That is all that I have. Thank you.

MS. SWANSON: Thank you. And may Ms. Weed be able to go back to the gallery.

THE COURT: Please.

MS. SWANSON: State calls Frank Trefny.

Thereupon,

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS. SWANSON

DR. FRANK TREFNY

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Good afternoon, Dr. Trefny. How are you?

A Fine.

Q Tell us what you were doing in 1980.

A In 1980 I was a pathologist at Colleton Regional Hospital in Walterboro.

Q Okay. And tell us briefly about the education and the training that led you to that profession?

A I graduated from the Medical College of Virginia in Richmond in 1964. This was followed by rotating internship at the Naval Hospital New Port Rhode Island where I was trained to be a DMO. Subsequently went into pathology with specialty training in forensic pathology later on in my time.

Q Okay. And actually did you do some forensic pathology training in New York; is that right?

A I had -- my first experience with forensic training was with the chief medical examiner in Virginia when I was in medical center. We were

required to do forensic pathology. During my pathology rotation at the Naval Hospital St. Alman's was followed by what included two months of rotation with the medical examiner's office of New York City.

I came down to Charleston, I don't know, I think that it was 1974 as director of the laboratory in pathology there. And went to the Medical University with Dr. Gordon Hinniger (phonetic) and became a fellow in forensic pathology. And subsequently became board certified in forensic pathology and also board certified in clinical anatomical pathology.

Q Opkay. Have you ever testified in the court as an expert in forensic pathologist?

A Yes, I have.

Q About how many times, if you can even remember?

A I have no idea.

Q Okay. But multiple times?

A Multiple times.

MS. SWANSON: At this time the State would offer Dr. Trefny as an expert in forensic pathology.

MS. CAMPBELL: No objection.

THE COURT: Motion will be granted.

DIRECT EXAMINATION OF DR. FRANK TREFNY BY MS. SWANSON

BY MS. SWANSON:

Q Doctor, do you have a copy of your report in front of you?

A Yes, I do.

Q Okay. Did you have an opportunity to conduct an autopsy on David Krulewicz?

A Yes, I did.

Q And when did you conduct that autopsy?

A That was conducted on January 6, 1980. First we started at I think 11:30 in the morning. It was in the morning in the autopsy room of Beaufort Memorial Hospital.

Q All right. And what kind of clothing did he have on?

A When I first saw him he had on -- and I'm going to read this.

Q Yes, sir.

A Shoes, tan shoes of suede composition. Pair of blue socks. Pair of blue jeans with a leather belt. Pair of white Jockey shorts. A yellow shirt and sweater. The yellow shirt and sweater had been cut. There were bullet holes present in the shirt and sweater.

Q Okay. Did the yellow shirt have blood on it?

A I really can't tell you and can't remember. It is not here in the report.

Q Sure. Any clothing, would that have been turned over to the Sheriff's Office?

A Representatives of the law enforcement.

Q What sort of injuries did you find on Mr. Krulewicz?

A He had three bullet holes in him. These are arbitrarily numbered starting with most superior. Gunshot wound number one was present in the head. It was present two and a half -- 2 inches from the top of the head. So, 2-inches down and 3½ inches to the right of the midline, so in this area here approximately.

The gunshot wound showed an abrasion color which is where the bullet went through the skin. There was no powder or stippling around it. The bullet went through the skull causing fracture of the skull at the point of impact. After passing through the skull the bullet separated and a fragment was left in the skull.

The larger fragments passed slightly to the right upward ricochetting off of the skull. It was found in the right front lobe. The other fragment went downward and was found in the midline

part of the brain. These produced hemorrhage, failure of the brain, multiple lacerations and significant bleeding.

Gunshot wound two was present in the right neck. Nine and a half inches from the top of the head. Five and a half inches to the right of the midline. It had small abrasions around it that were oval. This produced soft tissue damage and was found in the body against the vertebrae.

Gunshot wound number three was present in the right upper arm. This area, just about an inch below the top of the shoulder joint. It measured point 25 inches around, went into the soft tissue of the arm, passed through the arm, exited the arm and into the chest cavity. It produced exsanguination with loss of blood in the chest cavity and was found in the collpased lung cavity, essentially the base of the spine.

Q Okay, thank you. I'm going to hand you what's been marked as State's 7 and ask if these are the projectiles that you removed from David Krulewicz's body?

A It is labeled three projectiles. The autopsy number is present on here, which corresponds to the autopsy number on the protocol I just read.

The date of the autopsy on here and my initials, FT are on here and they are present on all three of the containers.

MS. SWANSON: Thank you, Doctor. At this time I move 7 into evidence.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 7 marked for identification and received in evidence.)

BY MS. SWANSON:

Q Doctor, have you examined patients with different types of gunshot wounds before?

A Yes.

Q Shotgun wounds?

A Shotgun wounds, rifle wounds, and pistol wounds.

Q And are those types of injuries different?

A Yes, they are.

Q Okay. And in your opinion what sort of gunshot wounds were these?

A These were most likely handgun. I measured them as .32, .32 caliber. A rifle, when a rifle is shot it also has a bullet that comes out but usually when that bullet goes in the body it

produces much more injury because of the velocity. A shotgun wound is different. A shotgun is a group of pellets held in a container with some stuff in there that maintain their position and usually you get different types of patterns. And you can get multiple injuries from the wound where the fragments separate. So it is a distinct type of wound.

Q All right. And what cause of death did you come up with in this case?

A Medular failure or failure in the brain plus exsanguination. Really he had enough blood in the chest to have bled out. And is he had enough damage to his head to have died from that injury too.

Q And the manner of death?

A The manner of death is homocide.

MS. SWANSON: Thank you.

THE COURT: Cross examination.

MS. CAMPBELL: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Dr. Trefny, do you still have your report?

A Yes, I do.

Q Perfect, thank you. X-rays were taken of David at the hospital, correct?

A I have a note that they were.

Q You also note that David was 72 inches?

A Seventy-two inches. We measured him, yes. And the estimated weight -- my estimate is 160, but that is just an estimate.

Q So, I'm going to make you do some math. 72 inches is how tall?

A 6 feet.

Q Thank you. You note that David had small abrasions on his face?

A He had several small abrasions on his face, that is correct.

Q And that there are three gunshot wounds?

A Three gunshot wounds.

Q So let me walk you through those wounds. But before I do that, since the solicitor brought it up with you, the gun -- so we have pistols, right?

A Handguns.

Q Yeah. And we have rifles?

A Correct.

Q And we have shotguns is usually what you are dealing with; that is what you said to her in her questions, right?

A Correct.

Q Okay. And you even described for the

jury, like, kind of how the different types of mechanisms that are used and loaded into those specific weapons. So, on a shotgun, you can load a shotgun with bird shot, right?

A Bird shot, correct.

Q Tiny pellets, right?

A Tiny pellets.

Q You can load a shotgun with buckshot, which is big pellets?

A They are bigger depending on the size of the weapon.

Q Correct.

A Whether it's 12 gauge or 20 gauge.

Q Right. Absolutely. So, we have bird shot, buckshot, big pellets, bigger pellets. And those pellets, as you said to the solicitor, would scatter and have different penetration areas, correct?

A Generally, correct.

Q So, with the buckshot, the big pellets, you could have several of those pellets hit your body?

A Correct.

Q And several of those pellets hit something next to you or around you, correct?

A If they all went -- if they did not all go in, that's correct.

Q Okay. Now, as you as you characterize it in your report, GS one, gunshot one, two inches from the top of the head, right ?

A Correct.

Q An abrasion ring is present, correct?

A Correct.

Q You sealed the fragments and gave them to the sheriffs department?

A Correct.

Q Gunshot two is in the right neck, correct? And you talk about an elliptical abrasion, collar, right? And you said that the bullet path is slightly to the left, downward, and to the rear?

A Right.

Q And that is you trying to get some sort of fix on the path that this bullet is taking and things like distance and where the shot came from, correct?

A It is the path in the body. You know, some of that depends on the position of the body when it was shot. And it also depends on the position of the shooter relative to the body when that shooter shoots the body.

Q Right. And so at -- at, again, at later points, photographs were taken of these gunshot wounds during your autopsy, correct?

A I assume so. I don't have any pictures right now, because I haven't been doing what I'm doing now for a few years.

Q I know. It would be the normal practice?

A It would be the normal practice.

Q Right. For the photographs to be taken?

A Right.

Q Because the analysis would need to be done for those very reasons, the trajectory, how far apart was the the shooter and the person who was shot, correct?

A When I look at a wound, you take and you try to decide contact, near contact or distance. In this particular case, no pattern, no stippling, no fragments. So, normally with a handgun you assume greater than 12 to 18-inches from the body at the time of discharge of the weapon.

Q Again, this is not a contact wound?

A No.

Q This is a bit of a distance, correct?

A Correct.

Q Gunshot wound three you place in the

shoulder area?

A Right.

Q So, we have got all of these shots closely together, within clearly under a foot of one other, correct?

A Relatively so.

Q Okay. And you make a notion that you do blood typing?

A I did blood typing on --

Q For David, and that he's O positive. O positive, I mean that is just like, the old school, right, you are O positive?

A B positive, A/B positive, A/B negative, correct. Today that is old school, but that was before my time, you know. So I'm dating myself too.

Q Well, okay, I understand. But I thank you for putting this in here. I mean, that is the way that you did it then. O positive, that was important and significant to your findings in this case?

A Yes.

Q Yes. And so you note as well that David, when he came to you, was still wearing his watch and he was still wearing the gold bracelet on his arm; correct?

A Correct.

Q Now, are you familiar -- the last thing, Doctor, are you familiar with what we call the H factor or H factoring in blood?

A No.

MS. CAMPBELL: That is all that I have.

THE COURT: Redirect.

MS. SWANSON: Just briefly.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Dr. Trefny, I know that you went through all of the gunshot wounds. Were they primarily on -- what side were they primarily on, right or left?

A Right.

Q Right side. Thank you.

MS. SWANSON: That is it.

THE COURT: Thank you, Doctor. You may step down and be excused.

Thereupon,

DR. JOHN FONTANA

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Good afternoon.

A Good afternoon.

Q Dr. Fontana, please state your full name for the record and spell it for the court reporter.

A John Fontana, F-O-N-T-A-N-A.

Q And what was your occupation until very recently?

A Well, my occupation is still OBG -- weel, gynecologist. I used to be obstetrician gynecologist, and now I'm a gynecologist doing some volunteer work at the Good Neighbor Clinic. And I also assist in surgery a couple of days a week.

Q Okay. And can you tell the jury briefly the eduatoin and training that led you to that profession?

A Well, the routine four years in college. Then went to Georgetown University Medical Center. Did an internship at Syracuse University. Did a residency at the University of Florida and a fellowship in genetics at Johns Hopkins.

Q Okay. And how long did you practice here in Beaufort?

A I came to Beaufort in 1975 because it had the second highest death rate of mothers and children in this state. And I retired two years

ago.

Q All right. And did you ever receive any training on how to administer a sexual assault kit?

A Yes.

Q Or a sexual assault exam?

A Yes.

Q Okay. And have you ever testified in court before?

A Yes, ma'am.

Q As an expert?

A Yes, ma'am.

Q In gynecology?

A Yes, ma'am.

Q And sexual assault exams?

A I don't recall specifically about sexual assault exams.

Q But you had a number of them when you were on rotation at Beaufort Memorial ER?

A We instituted a process where the gynecologists came in to do the exams because they were being done willy nilly and we didn't feel that it was fair to the patients. So, my two partners and I set up a program where we came in on an alternating basis to do the exams.

MS. SWANSON: Okay, thank you. At this

time I would offer Dr. Fontana as an expert in both gynecology and sexual assault exams.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

BY MS. SWANSON:

Q All right. Dr. Fontana, do you have a copy of your report in front of you?

A No, ma'am, I do not.

Q Okay. I'll hand it to you so that you may refer to it.

A Thank you.

Q Did you have an occasion to perform a sexual assault exam on Susan Weed?

A Yes, ma'am.

Q All right. And when did that happen?

A She says the 5th, but I believe that it was after midnight and it was the 6th of January, 1980.

Q Okay. Does it list a time on there?

A It says 1:00 so --

Q So, 1 a.m. on January 6?

A Yes.

Q And where did that take place?

A That took place in the emergency room at Beaufort Memorial Hospital.

Q And did Susan describe the assault to you?

A Not in the detail that she's described it here, but she went over the event, yes.

Q Okay. And you were in here for her testimony. Was it consistent with what she told you?

A Yes, ma'am.

Q All right. And did she describe who assaulted her to you?

A She described an individual.

Q Right. And that description is located in the second paragraph.

A African-American male in his mid 20s. And at that time she stated that she thought that he was a few inches shorter than she was. Didn't appear to be a Marine. Had a black sport coat on that was silky and shiny with black pants.

Q And a tight afro is what the hair is described as further?

A Yes.

Q Okay. What was her demeanor like when she was being examined?

A I think that I noted that she was amazingly in control of her emotions, although she was extremely distraught. She was a child.

Q Okay. And did you make any findings in your pelvic exam?

A We noted that there were abrasions over the posterior portion of the vagina, that it was reddened, the -- the introitus, excuse me, the introitus of the vagina was normal in appearance, the cervix was normal in appearance, and the uterus felt normal, as did the ovaries.

Q Okay. So, when we are talking about the introitus we are talking about the entry of the vagina?

A Yes, ma'am.

Q All right. And would abrasions be consistent with forced intercourse?

A It would be.

Q So, you did take specimens, right?

A Yes, ma'am.

Q Did you take -- where did you take them from?

A We took specimens from the vagina and also from the cervical os, which is the opening in the cervix.

Q Did you look at those specimens under a microscope?

A Yes, ma'am.

Q What did you find?

A We found sperm that were non-motile in both the vaginal specimen and in the cervical specimen.

Q And by non-motile, do you mean sperm that are not moving?

A That is what I mean by that. Thank you.

Q Okay. And what would be the cause of sperm being non-motile?

A In this case I think that the cause was the fact that when we put the specimen on the slide we had to go to the laboratory and get it opened and then look at the micro -- look at the specimen under the microscope. And it doesn't take long for the specimens to dry out, and I think that's why the sperm in this case are non-motile. There are other reasons for sperm being non-motile, the stage of the patient's cycle, where she is in her cycle would be a common one, the health of the ejaculant would be a common one. But I think in this one it was the drying of the specimen on the slides.

Q Okay. And for sperm to remain motile, what sort of environment do they need to remain in?

A The vagina is a hostile environment to sperm. Sperm will die quite rapidly in the vagina.

Once they get into the cervix, if the cervix is pre-ovulatory, the mucous in the cervix is very healthy for the sperm and it provides nutrition to the sperm. And they can live there for days, three, four, five days is not unusual. But they die very rapidly in the vagina.

Q Okay. So, basically if you don't have bodily fluids to live in, they dry out and become non-motile?

A That is a clearer description maybe, yes.

Q Okay. Now, let's say that you have someone who has been ejaculated in and their bodily fluids along with semen comes out onto underwear, would you expect there to be less sperm in the vagina and in the cervix?

A Yes, where the individual ejaculates would cause more sperm to be in the vagina or on the perineum, which is the outside of the vagina. Or whether the person has had an orgasm. When you have an orgasm the vagina cups down and kind of saves the sperm. But when you haven't had an orgasm, like when you are raped, the sperm would tend to come out.

Q I'm going to show you -- did you collect -- did you collect clothing from Susan that

night?

A Yes, ma'am.

Q Okay. I'm going to show you what's been marked as State's 8. I am going to show you a bag and an evidence tag. If you can -- this is contained in number eight. If you can tell us if this is the bag that you collected her clothing in and what items of clothing that it contained?

A This is a typical kind of bag that we would have had at the emergency room. And it says that I collect -- this tag that we gave, handed over to the police department, says that I collected the clothing so I'm assuming it is correct.

Q And what does it say, as far as what was contained in the bag?

A It says one bra, beige in color, one pair of light pink panties, one pair of blue corduroy pants and multi-colored pull-over shirt taken from Susan Weed by myself at 0330, so 3:30 in the morning on the 6th of '80, January 6, '80.

Q Okay. And you turned all of that clothing over to who; does it say?

A Fran Hesling.

Q Officer Hesling with Beaufort County. Thank you.

MS. SWANSON: Beg the Court's indulgence.

(Pause.)

BY MS. SWANSON:

Q Okay, I'm going to hand you State's 9. And ask if you can read what is contained in this bag, please?

A Victim's corduroy pants.

Q Okay. And then State's 10?

A Victim's panties.

Q Thank you. And those were contained in that bag based on the evidence list and tag that you just read out, correct?

A Yes, ma'am.

Q Okay, thank you. Did you talk to and remain in contact with Susan over the years?

A Yes.

Q Did you continue to see her as a patient?

A Yes, I did.

Q Through two pregnancies?

A (Nods in the affirmative).

MS. SWANSON: Thank you, Doctor. Please answer any questions that Ms. Campbell may have.

THE WITNESS: Thank you.

THE COURT: Cross examination.

MS. CAMPBELL: Thank you.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Dr. Fontana, your report that you issued in this case is accurate, right?

A I would assume it was what I dictated, yes.

Q I am sorry, what?

A I would assume that it's what I dictated.

Q Yes. So, if it's in your report, you dictated it and it's accurate. Do you want to see your report? Do you have a copy?

A I have it.

Q Okay. Because the solicitor asked you about some things that you wrote down in your report and you stand by them as being accurate, right?

A Yes.

Q Okay. Perfect. You indicated that you took a brief statement from Susan on this particular application, right?

A Yes.

Q And if you will go down to the bottom of your report, the first page there. And I would be happy to point it out to you. If you would, if you would start right here and read that line for the

jury.

A She's had two beers in the last 20, 30 hours, well developed nourished white female who is obviously distraught over the situation, although under good control of her emotions.

Q Okay. So, the first line of that that I asked you to read is that she had reported to you on that night that she had in fact been consuming alcohol, correct?

A That is what it says.

Q Thank you. And the description of this person who attacked her was a black male, correct?

A Yes, ma'am.

Q With a tight afro, correct?

A Yes, ma'am.

Q In his mid 20s, correct?

A That is what it says, yes, ma'am.

Q And she stated he was a few inches shorter than she was, correct?

A That is what I wrote down.

Q All right. Now, there was no blood in her vagina, correct?

A I didn't note any, that's correct.

Q So your report is accurate. Your report doesn't reflect a finding of any blood in the

vagina, correct?

A That's correct.

Q Okay. There were no tears of the vagina, correct?

A That's not correct.

Q Are you saying that in your report you note that her vagina was torn?

A No, I said that the introitus had abrasions.

Q I'm familiar with what it says and what you testified to, the word abrasions. What I'm talking about is a tear or a fissure that would cause bleeding. Let me be more specific. None of that correct?

A I'm not sure that we are on the same page with our understanding, because the introitus is the opening of the vagina and there were abrasions on the introitus.

Q Okay. So, anything during your exam that night or that early morning indicate to you that there was damage to the vagina that needed some medical attention, like a tear that needed to be sewn up or stitched up, or anything that would cause you to have her put in the hospital; yes or no?

A Most of the time when you have a patient

that has been raped, you don't have vaginal tears, you don't have cervical abrasions, you typically have what she had which were abrasions on the introitus, so I'm not sure where your question is coming from.

Q Well, I'll just go back to the very simple question that I asked originally, which is, there was no blood present during your examination, correct?

A That's correct. And there rarely is when you have a rape.

Q And the purpose of the sexual assault exam and the collection of that evidence is to preserve it, correct, for analysis?

A That is correct.

Q Okay. And one of the things that you do during that sexual assault exam is that you take a specialized comb and you run it through the pubic area of the person that you are examining, correct?

A Yes, ma'am.

Q And you observe what we would call the pubic hair combings, correct, for analysis?

A Yes, ma'am.

Q Okay. And in this case you did that, right?

A Yes, ma'am.

Q And you handed that over to Beaufort County Sheriff's Office representative Fay Hesling, right?

A Yes, ma'am.

Q Okay. You yourself did not perform any analysis to determine anything about the pubic hair combings, correct?

A That's correct.

Q Okay. But what you did do is you did perform an examination on two items. The first being the vaginal secretions and the second being what we would call the -- well, just the vaginal and then the cervical, correct?

A Yes, ma'am.

Q Two different areas, right?

A Yes, ma'am.

Q Okay. And you indicated that the vaginal and cervical specimens were observed by you under a microscope?

A Yes, ma'am.

Q And you had done that procedure many times before, right?

A Yes, ma'am.

Q Okay. And you indicate the vaginal

specimen had 5 to 15 non-motile sperm per high powered field, right?

A Yes, ma'am.

Q Then you say the cervical specimen which had dried revealed five to ten non-motile sperm per high powered field, correct?

A Yes, ma'am.

Q Okay. To be clear, when you provide the information about the vaginal specimen, there is no caveat that the vaginal specimen has dried, correct?

A That would not -- the reason I didn't specifically say the vaginal specimen has dried is because that is very common. It would be -- it was not common that the -- excuse me. If -- when you take a vaginal specimen, what you do is you take a Q-tip and you put it in the vagina and then you take that Q-ip and you wipe it on a slide. And then you put a cover glass, which is a little thin layer of glass, over that. The vagina doesn't have a lot of fluid in it so the specimen tends to be very dry in its very nature, so the fact that those sperm were not moving is not significant.

The fact that the cervical specimen sperm were not moving has some significance because you have some fluid in the cervix that you put on

the slide with the specimen. And so when you put that little glass cover on it there's fluid there already so the sperm tend to live longer because there's fluid.

Now, the reason her -- Susan's sperm didn't live longer were two-fold. One, there wasn't enough fluid from the cervix to keep them alive. And two, she was in a stage of her menstrual cycle where there wasn't a lot of fluid to begin with in the cervix to keep them alive. So I noted that the cervical specimen, the specimen from the cervix, those sperm had died. Which is a little unusual. We know why, but it was a little unusual. The fact that the sperm from the vaginal part were dead is not significant at all. Did that explain it to you?

Q Oh, thank you.

A You are welcome.

Q Okay. So, back to what I said, you pointed out in your report a difference between the vaginal specimen and the cervical specimen, very clearly noting that the cervical specimen had dried, correct?

A Yes, ma'am.

Q Thank you. Now, you are familiar with the woods lamp used in sexual assault exams, are you

not?

A I haven't used that in years.

Q Okay. Well that is not really what I asked you. Are you familiar with what the woods lamp is?

A No, not now.

Q You are not familiar with it at all?

A That's correct.

Q Okay. You have never used it?

A Not in a sexual assault case.

Q Okay. So, in all of your medical training, in the many years that you were educated, in all of the sexual assault exams that you have told us that you have performed, you never once had the advantage to use a woods lamp to determine whether or not semen was on a particular victim; never did that?

A It wasn't necessary.

Q Okay. Now, studies have shown typical male ejaculant, teaspoon amount, should have millions of sperm; correct?

A And they do.

Q Correct. And in the millions of sperm, it is possible, again studies have shown, for the sperm to survive many hours, sometimes even up to days for

detection in the vaginal area and in the cervical area; correct?

A No, that is not correct.

Q Okay. So, just in the cervical area, not the vaginal area?

A Yes, ma'am.

Q Okay, good. So, there is the possibility, days after having sex, okay, that there could be a few, non-motile sperm in the cervical area; correct?

A There would be a few non-motile sperm in the cervix, correct. I don't know how that relates to this.

MS. CAMPBELL: Your Honor, I would ask that the witness not comment. I did not ask a question.

THE COURT: Just respond to the question.

THE WITNESS: Thank you.

THE COURT: I am sure opposing counsel will follow up with a question.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Just briefly. Would you expect to find any sperm on vaginal or cervical swabs if intercourse had been had a day or two before with the use of a condom?

A No.

MS. SWANSON: Thank you.

THE COURT: Thank you, Doctor.

THE WITNESS: Thank you.

THE COURT: You may step down.

THE COURT: Is this a good time for an afternoon break?

MS. SWANSON: Thank you, yes, sir.

THE COURT: Take a short recess, ladies and gentlemen.

(Brief recess.)

THE COURT: I should have done this a minute ago. Let me see counsel at sidebar.

(Off-the-record discussion held.)

THE COURT: Are we ready for the jury?

MS. SWANSON: Yes, sir.

THE BAILIFF: The jury is entering the courtroom, Your Honor.

THE COURT: Welcome back, ladies and gentlemen. The State may call your next witness.

MS. SWANSON: Thank you. The State calls Patti Ruff.

Thereupon,

PATTI RUFF

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q And your name is spelled R-U-F-F?

A Yes.

Q And where are you employed?

A I work with South Carolina Law Enforcement Division, commonly known as SLED.

Q And what department did you work in?

A I worked there for approximately 35 years. For 16 years I worked in evidence processing, and for the last 8 or 9 years I was in intelligence, criminal analysis and Amber alerts.

Q Okay. And have you testified as an expert in court before?

A Yes, I have.

Q All right. As an expert in evidence processing?

A That's correct.

Q How many times?

A Approximately 60 times.

MS. SWANSON: At this time, I would offer Patti Ruff as an expert in evidence processing.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

MS. SWANSON: Thank you.

BY MS. SWANSON:

Q Now, if I can refer you to your report. Did you have an occasion to test items brought to you by Captain Bob Bromage?

A Yes, I did.

Q Can you tell us what those items were that were submitted?

A Light pink pair of panties, blue corduroy pants, and a yellow sweatshirt.

Q Okay. I will hand you 9, 10, and 13 and ask you to identify each of these items. All right. State's 9.

A I can see on the back my initials and the date they were brought to me.

Q And what are they?

A The date is May 20th, 1999, and my initials PBR.

Q I am sorry, what was the item labeled as?

A This is the victim's corduroy pants.

Q Okay, great.

A Which is my item number two.

Q Okay. So, you examined the victim's corduroy pants?

A Correct.

MS. SWANSON: The State would enter 9 at this time, the pants, not the cuttings.

MS. CAMPBELL: I think that the pants -- the chain is not established fully on that particular item yet and I would ask that the State establish the chain fully.

MS. SWANSON: Okay.

MS. CAMPBELL: Thank you.

BY MS. SWANSON:

Q State's 10, if you can identify these items, this item?

A Victim's panties, and once again, has my initials and the date on it and it is listed as my item number one.

Q Okay. And so those are the panties that you examined?

A Correct. In this package.

Q Okay. And that is State's 10.

And then State's 13?

A Again, it has the lab number and date. May 20th, 1999 and my initials, PBR. And it is listed as my item number three.

Q Okay.

A And that was a yellow dress shirt.

Q Okay. So, what did you do with those three items?

A The request for these was for me to look at the panties for any possible body fluids. I do a presumptive test of phenolphthalein, but one of the firsts things that we do is we put the item under a luma light and semen along with other things, like other body fluids, saliva, different things, will fluoresce. So, what we have to do is circle those areas and then once we circle those areas we turn the lights back on and we do a chemical test of phenolphthalein.

And what we do with that is we wet a cotton swab and rub one of the cricled areas that we have. And then we put a drop of phenolphthalein on it and if it turns -- I am sorry, not phenolphthalein, see, I am retired, I haven't done this for 10 years -- it is acid phosphinate. And if it comes up kind of a fusc -- kind of a pink color, that means that there is a possibility that it is semen.

So what I will do is if that area that I have circled does test positive for presumptive testing, I will make a cutting, I will assign it a number, and then it will be transferred

to the DNA department for further testing.

Q Okay. And did you perform any of these presumptive tests for semen on any item?

A Yes, I did the light pink panties.

Q Okay. And what was the luma light result?

A It was positive.

Q All right. And then --

A So, I made one cutting.

Q So you made one cutting. And I am going to show you -- now, that is your lab item 1.1?

A Correct.

Q I am going to show you State's Exhbiit 12 and ask you if this is the cutting that you made from the panties?

A Yes, it is. It has my initials on it. Cutting from the panties and from the crotch area.

Q You did the AP, acid phosphate, test on that cutting?

A Uh-huh. (Indicating affirmatively.)

Q And what was your result?

A I got a positive. It was a weak positive but it was positive.

Q Presumptive?

A Presumptive for semen.

Q Semen. And where did this cutting go?

A It was transferred to DNA.

Q Your item number two, the blue corduroy pants; what was the luma light result on the blue corduroy pants?

A Some things fluoresced but they didn't come up anything positive for presumptive testing for semen. There was an area that tested positive -- sorry, from the pants area, in the crotch area of the pants, that we sent to DNA for further testing.

Q Okay. So, did you do a cutting from the corduroy pants as well?

A Yes, in the same area.

Q Crotch area?

A Yes.

Q I will show you State's 11 and ask if this is the cutting that you made from the corduroy pants?

A Yes, it is. It has my initials on the back.

Q Okay. And these items that I'm handing you, the cuttings, they are sealed; right?

A That is correct.

Q Okay. Then the third item, the yellow dress shirt; what were you testing for there?

A I was asked to take a cutting of -- for control or for a standard or whatever and to look for a sample of blood, so I did the phenolphthalein test, which we were talking about earlier, testing on a section and made a cutting and sent that to DNA.

Q Okay. So, State's 14, I'm going to show you and ask if this is a cutting from the yellow dress shirt from the blood standard?

A Yes, it is. My initials are on it.

Q All right. Did you have any further involvement in the testing, or did everything just go to DNA at this point?

A All of the cuttings went to DNA.

MS. SWANSON: I don't have any further questions, thank you.

THE COURT: Cross examination.

MS. CAMPBELL: May it please the Court.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Good afternoon.

A Good afternoon.

Q I will hand you a worksheet and ask you to identify your initials on the worksheet?

A I am PBR. We worked in teams. My note

taker was LCJ.

Q So those are your notes about what you have been testifying about, correct?

A That's correct.

Q So, to make sure that I understand what you have said, there is -- you used a special light?

A Uh-huh. (Indicating affirmatively.)

Q On the panties and the corduroy pants in this case; right?

A That's correct.

Q Okay. And that special light, has it ever been called a woods light?

A This is a luma light, but I think as far as technology maybe years ago that might be what they called it.

Q Okay. So this special light can help you identify locations where you may find the substance that you are looking for, correct?

A That's correct.

Q And in this particular instance you were asked to look and see if you could locate semen on the crotch of the panties or on the corduroy pants, right?

A That's correct.

Q Okay. And you indicated that you found

some locations -- first, let's talk about the panties.

A Uh-huh. (Indicating affirmatively.)

Q Where you believed that the light was reflecting sufficiently to say, This may be something?

A Correct.

Q And I don't see in any notes, and maybe you have them or you recall, how many different locations within the crotch of the panty you thought that you might find something?

A I don't recall. I don't have it in my notes, but it's not out of the norm for us to make one big cutting with several circles on it so . . .

Q All right. So, in this case do you remember if you just made the big cutting and then sort of circled the areas with like a Sharpie marker that may be of interest?

A We try not to use too much of the actual sample, so if we put it under the luma light, then we do a circle around it. When we test it with the swab, we won't necessarily circle it. Sometimes we have maybe in the past, but we make a note in our notes if we did. But a lot of times we send it to DNA and they will do a testing after us. But

usually if I list "cutting from panties, crotch area," it is usually a fairly good size cutting.

Q Okay. And you asked --

A But I guess that I need to clarify, good sized cutting, and it may have several stains on it.

Q I think that is what I am trying to understand.

A Okay.

Q There was a large piece with several areas of interest for investigation.

A Yes, some areas won't be positive and some areas would be positive.

Q And you asked something about, get control from cutting?

A Right. So, that gives me the -- we would make a large cutting so it would be enough area around the outside that didn't fluoresce where they would be able to get a standard where it would come up negative.

Q Okay. So, you note -- again, I am not a scientist so thank you for helping me. Do you have a copy of this?

A I do.

Q Okay. Perfect then. This, P-H-E-N that you list on 1.1, what is that?

A That is the test that we use for presumptive testing for blood. It is phenolphthalein.

Q Okay. Then what is the AP?

A Acid phosphate, and that is a test that we do, presumptive testing for semen.

Q Then the LL?

A Luma light.

Q Okay. So, I'll backtrack a little bit. I have got the LL on the light pink panties where there's an indication that there may be something of note, correct?

A Uh-huh.

Q So you kind of positive that column. And then you note under AP for the cutting that you made for the pink panties, you put a positive sign but you do note, "weak"?

A That's correct.

Q Okay. And on the blue corduroy pants, the cutting from that area, you actually note under AP, positive, 2.1?

A That's correct.

Q Okay. And you -- you collect these samples and you send them over to the DNA department for analysis?

A That's correct.

Q And that, at the time, would have been David McClure?

A We had an area that we shared, a secured area. And we would put them in a certain like a drop box and the person would actually come get them from that drop box. I can look to see exactly if I handed it to him or if I put it in that area.

(Pause.)

A And I transfered it to the DNA area, I didn't transfer it to him personally.

Q You put it in the drop --

A Yes, secured area that we have access to and they have access to.

Q Okay. And in some of the reports testing for something called an H factor was done; are you familiar with that?

A No, I'm not.

Q Okay. So, that is not something that you would have done with SLED?

A That's correct.

Q Okay.

MS. CAMPBELL: I think that may be all.

THE COURT: Redirect?

MS. SWANSON: Just briefly.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Patti, when you say that you put them in a drop box, those items were sealed when you put them in the drop box; is that correct?

A That's correct.

MS. SWANSON: Okay. I have nothing further. The witness may be excused.

MS. SWANSON: Yes.

THE COURT: Thank you. You may be excused from your subpoena.

MS. SWANSON: Thank you. The State calls David McClure.

Thereupon,

DAVID MCCLURE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q All right. Good afternoon, David. Can you please spell your name for the court reporter?

A Last name is McClure, M-C-C-L-U-R-E.

Q All right. And until recently, where did you work?

A I retired from the State Law Enforcement

Division, January 1st of 2013.

Q Okay. And when did you start working for SLED; how long did you work there?

A I started March 20 of 1990, so 23 years.

Q What did you do for SLED?

A I worked in the forensic DNA analysis unit.

Q Can you tell us a little bit about your educational and training background that led you to that profession?

A Sure, I have got a bachelor of science degree in microbiology from Clemson University. I have also attended graduate level classes in mollecular biology and genetics at the University of South Carolina. I also went to the FBI DNA analysis school, which is accredited through the University of Virginia.

Q Have you ever testified in court before?

A On numerous occasions.

Q As an expert?

A That's correct.

Q In DNA analysis?

A That's correct.

Q Okay. And in conjunction with that, match statistics?

A That is correct.

Q Okay.

MS. SWANSON: At this time, I would offer Mr. McClure, agent, former agent, McClure as an expert in DNA analysis and match statistics.

MS. CAMPBELL: No objection.

THE COURT: Motion is granted.

BY MS. SWANSON:

Q All right. So, you test DNA?

A That's correct.

Q All right. And is DNA unique to each individual?

A Except for identical twins.

Q All right. With the exception of twins. So, did you test evidence for possible DNA in a 1999 submission by Captain Bob Bromage?

A Yes, I did. I received a cutting from a pair of pink panties, a cutting from a pair of blue pants, and a cutting from a yellow shirt.

Q Okay. And I'm going to hand you Items 11, 12, and 14 and ask if these are the cuttings that you examined?

A Yes, they are. They have my initials on the packages.

Q Okay. And what do you do? After you

examine them, do you seal it back up and initial them?

A Well, when we first receive the evidence in we make sure that the pouch that we receive them in is sealed. We will unseal that pouch. And when we do our analysis, we wil initial the packages. When they are ready to be returned to the agency, we will seal them back up in another pouch for return.

Q Okay. So, when you received those packages they were sealed, and when you concluded your first testing you resealed them?

A That's correct.

Q All right. What did you test for in the first testing of 1999?

A We did do an acid phosphatase test on that cutting. They were submitted to us for DNA analysis, but we wanted to get to the area where we may find sperm. So, we would do an acid phosphatase test on that portion to see if we can narrow down where the sperm may be. But we also want to make sure that we don't use up too much of that sample so there would be enough for DNA analysis.

Q Okay. And in order to conduct that test, what do you do; do you swab the cutting?

A For the acid phosphatase, we actually do

take a little swab from that area and apply acid phosphatase to that swab and it should change colors. We also do a confirmatory test for semen called a P30, which is a phosphate specific protein which is found in semen. For P30 we actually take a small cutting of that sample to do that analysis.

Q All right. And then that cutting, does it then get put into a vial?

A That small cutting that we take for that analysis is consumed in analysis.

Q The fact that it's consumed in analysis, that means that the material is no longer there?

A The material -- the material is actually there, but it's discarded in waste. What we actually do is wash the fluids out of that material so there's nothing left in the material to do analysis on, so it's discarded in waste.

Q Okay. So, in 1999 what were your results on the items that you took a look at?

A The acid phosphatase test and the P30 test for the cutting on the panties and the cutting on the blue pants was negative, so we went ahead and did an extraction for DNA on those.

Q Okay. And what type of DNA analysis were you using back in 1999?

A In 1999 we were using what is called RFLP, which is restriction fragment length polymorphism. It uses a large fragment of DNA to do the analysis.

Q All right. So, you have to have more material or more -- yeah, more DNA material in order to establish a profile; is that what you are saying?

A That would be correct. You have to have molecule weight DNA and it took a larger sample to get DNA using that technology.

Q Okay. Were the items sent back to SLED?

A Yes, they were.

Q Okay. And when were they sent back to SLED and by whom?

A That would have been in 2002.

Q All right. And at that point, were they retested?

A Yes, they were.

Q And what were your findings then?

A Again, we did the same acid phosphatase test and P30 test. Or I take that back, we did the P30 test but we didn't do a acid phosphatase test because we didn't want to consume much of the sample. So, we did another P30 test in another area of the panties, and that P30 test was positive.

Q Okay. So it was just another area where

semen was identified from the cuttings?

A That's correct.

Q Okay. And then what sort of DNA analysis were you using at the time?

A In 2002 DNA technology had advanced to the point where we were using what was called STRs, or short tandem repeats. It is a much smaller fragment of DNA that you are actually analyzing for. And the technology moved to a point with RFLP if your DNA degraded your larger fragments are going to degrade much quicker than your smaller fragments would. So, the technology went in the direction where we could look for those much smaller fragments to get DNA from.

Q And so in 2002 with the new technology were you able to establish a profile from this semen from the pink panties, the semen from the blue pants, and the cutting from the yellow dress shirt?

A We did. And the profile is not actually from the semen, the profile is from the sperm.

Q Okay.

A So, your DNA is found in the sperm heads.

Q All right. So, you are able to conclude that the DNA is actually from sperm?

A Semen was identified, so when you have a

pair of panties or a semen sample that you are trying to extract DNA from you usually have some of the contributor from the female victim, as well as some of the contributor from the male who deposited the sperm there.

We do what you call a differential analysis where when you extract it you try to wash off all of the female skin cells of that DNA first and then try to wash the sperm heads off after that.

Sperm heads have a disulfide bond on them and it is very difficult to break. So, if we treat that cutting with one set of chemicals, we can break the female skin cells up and wash that DNA off. And then we have to treat it with a special chemical to break those disulfide bonds to open up that sperm head and we can wash the DNA from the sperm heads off.

Q Okay. And so that is separating the mixture of male and female bodily fluids, right?

A That is correct. But you also need to understand that you still may get a mixture if you do that, because if there is a lot of female DNA there, not all of it will wash off when you wash it the first time. Some of it may stay behind with the sperm cells. And then if you also have sperm cells

that have already lysed, that DNA is going to wash off with the female cells as well.

Q Okay. So, when you got the 2002 results and you were able to establish a profile, did you talk to Captain Bromage about that?

A We did. We let him know that we did develop a profile from the cuttings from the panties, the cutting from the blue pants, and the cutting from the shirt. And we requested a blood -- or a standard from the female victim.

Q Okay. I'm going to hand you what's been marked as State's Exhibit 15 and ask if these are the standards -- and you can open it if you wish -- that you examined from the victim, Susan Weed?

A Yes, this is a standard that was submitted to us from the female victim. It has my initials on the envelope.

Q All right. Thank you. All right. So, once you were able to get -- were you able to get a profile of Susan Weed from this slide of swabs?

A Yes, ma'am, we do.

Q Then you already had a profile from the cuttings from the pink panties and the blue pants. Did you compare the profile established from the yellow dress shirt, victim David Krulewicz, to the

semen or the DNA that you established from the pink panties and blue pants?

A Yes, ma'am. The DNA profile developed from the semen on items 1.1 and 2.1 did not match the profile from item 3.1, which was the standard submitted for David Krulewicz.

Q Okay. And then the remaining profile, there was Susan, David, and then an unknown male; correct?

A That's correct.

Q Okay. And that was in 2003?

A That is when the report was sent out was in January 2003.

MS. SWANSON: Beg the Court's indulgence.

(Pause.)

MS. SWANSON: I think that's all that I have, thank you.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Good afternoon. How are you?

A Fine, thank you.

Q You are aware that these pink panties had been the subject of some analysis at SLED in 1980, right?

A Not at the time, no, ma'am.
Q Are you aware today?
A I'm not sure what was analyzed before. I didn't get any of the cuttings or anything until 1999.
Q Okay. So, what you received in '99 you got from Bob Bromage?
A That was submitted from the Beaufort County Sheriff's Office.
Q And what you got again in 2002 you got from Bob Bromage?
A From the Sheriff's Office, yes, ma'am.
Q All right. And in 1980 you would not have been employed with SLED; is that correct?
A That's correct.
Q Okay. In the report that you issued from 19 -- June 24th, 1999, in your expertise in handling this evidence, you reported, 1.1, no semen detected; correct?
A That's correct.
Q And in 2.1, no semen detected; correct?
A That's correct.
Q And then you get a new request from the Sheriff's Department here in Beaufort and to analyze the items again, correct?

A That's correct.

Q And then when you get the new request, that is when you find semen; correct?

A That's correct. And it would have been a cutting from a different area of that material.

Q So, the cutting from the crotch of the pink panties, and if I'm hearing you correctly, you are saying that given the area to test for semen in '99, that only one part of it was tested?

A That would be correct. We were actually looking for DNA at that point in time. We didn't want to consume much of the sample, because we wanted to leave it for the DNA analysis, so there was probably a very small cutting taken from that area.

Q Isn't it true that when put to the question about the problem with not detecting semen in '99, your answer to that previously has been, I've got no good reason for it, I just don't know?

A I don't see where there is a problem with not detecting semen in '99.

Q Okay. So, you are going to tell me then that you, in 2002, because the evidence didn't stay with you, the panties didn't stay at SLED, right, they went back to the Sheriff's Department; right?

A That's correct.

Q Okay. So, they traveled back to the Sheriff's Department in Beaufort County and then they get sent back up and you are going to test them again but from a different area on the crotch of the panties; is that what your testimony is?

A That would be correct.

Q Okay. And then you are going to locate semen at that point?

A Semen was identified in those selections.

Q Do you feel like it is a problem if you are given a piece of evidence and, you know, things hang in the balance that you don't test enough of the item to get a good clear answer; is that a problem for you?

A No, that is not a problem. Because we are actually looking for DNA at that point in time, so we didn't want to consume sample testing for semen, we wanted to consume sample testing for the DNA.

Q So, you have been qualified as an expert in this field and you have had plenty of training to testify here all about DNA, right?

A Yes, ma'am.

Q Okay. And so I'm going to talk about it a little bit more in-depth rather than just, you know,

it is a match. So, how about this: A species, like human beings, we share, all of us, 99 percent of the same DNA; right?

A Approximately 97 to 98 percent.

Q Okay. A lot, right?

A That's correct. That is what makes us human beings.

Q Right. So, we could agree then that 90, sorry, what was the bottom number that you said, 97?

A Ninety-seven.

Q So, the bottom number would be 97 percent of everything that makes us who we are as human beings is exactly the same, right?

A That's correct.

Q Okay. And the human genome, as it's called, that is 23 pairs of chromosomes, right?

A That's correct.

Q And you get one from your mama and one from your dad, right?

A That is correct.

Q What you are doing in the DNA analysis is that you are trying to unravel that information and map it, right?

A No, we are not mapping.

Q All right. But you are looking for and

you have found through this process points on the DNA chain that you look for similarities between individuals and particular items, correct?

A We are actually, when we do our DNA analysis, we are looking at the two to three percent DNA that is different among individuals. And in that two to three percent we are looking at certain locations on the chromosomes that show differences among individuals.

Q So those -- those are called loci, correct?

A That's correct.

Q And the loci that you were using in '99 and 2002, how many loci were you using at that time?

A In 1999 we tested for five. In 2002 we were testing for 13.

Q Okay. And the recommendation today would be to test for at least 20; would that not be correct?

A Not necessarily, no, ma'am.

Q Okay. Are you familiar, again, in your training with the problems that occurred in the field in the early 2000s when anomalies occurred in an Arizona lab and it was recommended that the number increase?

A I'm not familiar with what you are referring to.

Q Are you not familiar with that? Okay. Are you familiar with the FBI database, which is the source that, you know, so much of this science is based on; right?

A The statistical analysis is done from the FBI's database.

Q Right. So, that statistical database is in fact just a fraction of the population of the world, correct?

A That is.

Q Okay. And that fraction of the world, some experts have said that it's much too small to be accurate, you need a larger sampling of this population for accuracy. There is that discussion in your field?

A There is that discussion, but when you come up with statisticss of one in billions.

Q Right. So, sometimes your statisticss will be like, oh, this is a match, it is one in 394 billion possibilities, like an astronomical number that doesn't even exist in human beings on the earth, that happens; correct?

A That's correct.

Q Do you have lab protocols at SLED when you were there, that you would ethically have to report, what I would call "required self reporting" if you yourself came across such anomalies? Was that in place at SLED?

A I am not sure what anomalies you are referring to.

Q Whenever you might encounter a situation that gives you concern with the accuracy or integrity of the data you are getting?

A We don't have any concern with the integrity of the data that we are receiving.

Q Okay. Now, there's been research done as well in your field relative to the very close genetic profiles of family members. I'm not talking about identicals, but I am talking about extremely close profiles, correct?

A That's correct.

Q Particularly in male individuals, correct?

A It wouldn't matter whether it was male or female. Family members share loci in common.

Q I guess I'm confusing the higher advances with the YSTRs now, which would just be for the males; is that correct?

A That's correct.

Q Okay. But we are not dealing with the higher calculations that we are dealing with in 2018 here, we are dealing with what you used at the time, correct?

A That's correct.

Q Okay. So, very close family relations can share a very high percentage of their DNA, and that is a fact that we live with; correct?

A They can share some percentage of their DNA, or they might share very little percentage of their DNA.

Q Factoring in the relatives of an individual in a small geographic area is not what you do, right?

A There is not a need to factor in the relatives of individuals.

Q That factor is not something that is part of your equation in the computer system, correct?

A No, it is not.

Q Okay. Now, if I were to say to you, scientifically, the formula that you work with to come with this result is computer generated and that you personally would not be able to do it in your brain; you could not perform the analysis that this computer is performing?

A What analysis are you referring to?

Q When you put the information from your samples into the computer and it spits out information to you? You have no capability as a human being to do what that machine is doing, correct?

Q What information are you referring to?

A The information on the loci.

A No, the machine, when we do the analysis, it'll provide us with a profile for that sample and you can visually look at that profile and see what it is.

Q And if you were to look at full blood brothers, not twins, you may find on the loci, on their genetic profile, the same numbers at the same locations on some of the loci, correct?

A On some of them you may. As she said earlier, you do inherit your DNA from your parents, so there's a one in four chance that you are going to get the same allele from both parents. If you look at the second allele there's one in four that you get that same allele from both parents.

So, if you are looking at two alleles, that is a one in 16 chance, if you are looking at three alleles, that is a one in 32

chance. If you are looking at four alleles that is a one in 64 chance. And then you are not looking at the entire population anymore. That means to have four alleles in common from the same parents you would have to have 16 children in order to get two that had the same profile in common, statistically.

Q So what you said to the solicitor in answer to her question, you corrected her, you said that DNA is not in the semen, DNA is in the sperm; correct?

A That's correct.

Q Okay. So, the presence of semen is not going to necessarily give you what you need to extract DNA, correct?

A That's correct.

Q Okay. So, you are going to actually have to have sperm to get the DNA?

A If we are looking for the sperm from an individual who committed a sexual assault, you would have to have sperm present to get your DNA profile.

Q All right. So, the pink panties are going to have to have sperm on them for you to come up with a DNA profile in 2002?

A If we are looking for somebody who ejaculated semen on those pair of panties, yes,

ma'am.

Q Well, that is what I'm talking about, in this case. If you are looking to extract and get a DNA profile from those panties and you have already gone through Patti Ruff who is looking for semen, you can't have DNA from semen; right?

A That is correct. It is the sperm found within the semen that contain the DNA.

MS. CAMPBELL: Okay. Thank you. That is all that I have.

THE COURT: Redirect.

MS. SWANSON: Thank you. Just very briefly. We have got two more folks that we need to get through.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q 1999 submittal you got from Patti Ruff and the cuttings were sealed?

A That's correct.

Q All right. They went back to the Sheriff's Office, and when they came back in 2002 were the cuttings still sealed?

A Yes, ma'am, they were.

Q With your initials?

A Yes.

Q From the last time that you tested them?

A That's correct.

Q Okay. And in 2002 is when you had better technology?

A That is correct.

Q And you say close family relations can perhaps share a percentage of their DNA, but would they have a match on all areas of loci that you guys test?

A Statistically, no, unless you are identical twins.

Q Right. Okay.

MS. SWANSON: That is all that I have, thank you.

MS. CAMPBELL: Just one question.

RE-CROSS EXAMINATION

BY MS. CAMPBELL:

Q So you say statistically no, that is your answer, statistically no; correct?

A Is it possible, yes. Is it probable, no.

Q Possible, yes. Probably, no.

MS. CAMPBELL: Thank you.

THE COURT: All right. Thank you. You may step down and you may be excused from your subpoena. Call your next witness.

MS. SWANSON: Thank you. The State calls Selena Nelson.

Thereupon,

SELENA NELSON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Officer Nelson, were you working for the Beaufort County Sheriff's Office in August of 2016?

A Yes, ma'am.

Q All right. And did you have opportunity to take buccal swabs from Isaiah Gadson?

A Yes, ma'am, I did.

Q All right. And did you use gloves when you swabbed him?

A Yes, ma'am, I did.

Q All right. And buccal swabs, are those like Q-tips?

A Yes, ma'am.

Q And you swabbed the inside of his mouth?

A Yes.

Q All right. And I hand you State's 16 and ask if these are the swabs that you took from Mr. Gadson?

A Yes, ma'am, they are with my signature and date. 8-25-2016 at 1500 which is 3:00 p.m.

Q And you sealed those up?

A Yes, ma'am, I did.

MS. SWANSON: Thank you. That is all that I have.

THE COURT: Any cross examination?

MS. CAMPBELL: No, ma'am.

THE COURT: Thank you. May step down.

MS. SWANSON: Thank you. The State calls Laura Hash.

Thereupon,

LAURA HASH

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Ms. Hash, where do you work?

A I am employed by the South Carolina State Law Enforcement Division, commonly known as SLED.

Q All right. And since when?

A I have been employed by SLED since September 2004

Q And what do you do there?

A I am the DNA technical leader. I'm in

charge of all of the technical operations of the DNA casework and DNA database department.

Q Have you ever testified in court as an expert in DNA analysis?

A Yes, I have, multiple times.

Q And match statisticss?

A Yes, I have.

Q Okay.

MS. SWANSON: At this time I would offer agent Hash as an expert in DNA analysis and match statistics.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

MS. SWANSON: Thank you.

BY MS. SWANSON:

Q In 2016, did you have the occasion to test several items given to you or brought to you by Bob Bromage?

A Yes, I did.

Q Okay. And I'm going to kind of skim over a lot of these items. There were many that you didn't get any results on, right?

A That's correct, yes.

Q Okay. And what sort of items were those?

A They were -- the ones that did not yield a

useful profile were swabs from an interior, entire exterior of a cigarette pack, a cigarette butt in the road at the scene, several different swabs from additional items, and swabs from wrapping paper near the crime scene.

Q Okay. And when we are dealing with possible touch DNA from 1980, would you expect to get a result on anything?

A It would depend on how the evidence was handled and how it was stored in that time. If it was stored in an environment that was subjected to any type of heat or humidity I would not expect to get a DNA profile.

Q So now, DNA can degrade; right?

A Right.

Q And that is what we are talking about?

A That's correct, yes.

Q Does it ever change though?

A No, it does not.

Q Okay. So, once it's there it is there?

A That's correct. I wouldn't expect to develop a DNA profile today and then tomorrow it suddenly changes to a different DNA profile.

Q Because it was stored in a different location?

A That's correct, yes.

Q Were you ever -- were you asked to examine some buccal swabs from Isaiah Gadson?

A Yes, I was.

Q All right. I'm going to hand you what's been marked as State's 16.

(Pause.)

BY MS. SWANSON:

Q I will ask you if you examined these buccal swabs from Isaiah Gadson, State's 16?

A Yes, I recognize this because it is the SLED heat-sealed pouch. This yellow label has the case number and item number 28, which corresponds to item 28 on my report which are buccal swabs from Isaiah Gadson, Junior. In the corner you see where my initials and date are, indicating that I sealed this back after I did the analysis.

MS. SWANSON: The State would move item 16 into evidence at this time.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 16 marked for identification and received in evidence.)

BY MS. SWANSON:

Q First of all, were you able to establish a DNA profile on these swabs on Isaiah Gadson?

A Yes, I was.

Q All right. And what were you asked to compare that to?

A I was asked to compare it to the DNA profile that David McClure had developed from the panties.

Q The panties and the pants?

A And item one point -- the pink panties and the blue pants, yes.

Q Right. And what were your findings?

A The DNA profile developed from the semen on these items matches the DNA profile of Isaiah Gadson, Junior.

Q All right. And so let's take them one by one. The pink panties, the cuttings of the pink panties, item 1.1. You come up with a match statistic, right?

A Yes.

Q And what does that tell you? Does that tell you how strong of a match it is?

A It tells us the probability of randomly picking a person from the population that would match this item.

Q All right. And what was the match statistic that you came up with on the pink panties?

A On the pink panties, which was item 1.1, the probability of randomly selecting an unrelated individual having a DNA profile matching the semen on this item is approximately one in 3.7 -- I am sorry, one in 2.1 trillion.

Q One in 2.1 trillion?

A Yes.

Q Do you know how many zeros that is?

A I would have to write that out. I don't have a pen.

Q You need a pen?

A Yes.

Q Okay. 2.1 followed by -- 2.1 and then 15 zeros?

A Yes.

Q All right. And then, what was the match statistic on the blue corduroy pants?

A The probability of randomly selecting an unrelated individual having a DNA profile matching the semen on this item is approximately one in 3.7 quadrillion.

Q How many zeros is that?

A Three more zeros.

Q So eighteen zeros?

A Yes.

Q All right. And do you know about how many people are on this earth?

A About seven billion.

Q Seven .5 billion?

A Approximately.

Q How many zeros is that?

A Twelve.

Q And that is in the whole world?

A Correct.

Q Okay.

MS. SWANSON: Beg the Court's indulgence.

(Pause.)

MS. SWANSON: All right. That is all I have for you at this time, Lori, thank you.

THE COURT: Examination.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Lori, good afternoon. Do you have your report with you?

A Yes, I do.

Q Okay, perfect. So, I'm just going to read what you in your capacity as an expert in this case have reported?

A And there were two reports that I issued, so if you could just --

Q This is Page 2 of 4 that you issued.

A Okay.

Q On --

A September 23rd of 2016.

Q That is correct.

A Okay.

Q And so, under "results," the second paragraph.

A Yes.

Q The second line. The probability of randomly selecting an unrelated individual having a DNA profile matching the --

A Semen.

Q -- semen. Not sperm?

A No, we report it as semen.

Q Semen?

A Yes.

MS. CAMPBELL: That is all that I have.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q But the DNA profile was developed --

MS. CAMPBELL: Your Honor, I obejct. She's starting out by leading the witness.

MS. SWANSON: I am sorry.

BY MS. SWANSON:

Q Did you develop the DNA profile?

A No, I did not.

Q All right. And were you in here when David McClure, who did develop the DNA profile, testified?

A Yes, I was.

Q Okay. And do you recall him testifying that he developed the DNA profile from sperm?

MS. CAMPBELL: Objection.

THE COURT: Objection overruled.

A Yes, I did.

Q Okay. So, can you just explain the discrepancy between?

A Sure. One component of semen is the spermatovilla or sperm, as we call it, is what we would get the DNA from. The male sperm has the DNA in it that we do the differential extraction procedure on to identify the male profile. We did not visualize the sperm, so we say semen because we have done the chemical test to confirm the presence of semen.

MS. SWANSON: Okay, thank you.

RE-CROSS EXAMINATION

BY MS. CAMPBELL:

Q And additionally, in your report, you have cigarette butts that you analyzed, right? And you were trying to see if these smoked cigarette butts had any DNA on them, correct?

A Correct. There were two.

Q Items --

A Cigarette butt, item 20 was a cigarette butt from the edge of the road at the scene. And item 21 was a cigarette butt in the road at the scene.

Q And cigarette butts, which we put in our mouth, we get our saliva all over them, we are putting our DNA on those cigarette butts every time, correct?

A Correct. A lot of people don't deposit a lot of saliva onto the cigarette butts. We have done DNA analysis on cigarette butts and we don't get a profile from them. That is not uncommon. Especially if they were left out on a road where they were exposed to the elements we would not expect to get a profile on them.

Q You being an expert, you are familiar also with touch DNA, right?

A Yes.

Q Okay. So touch DNA doesn't even involve body fluids, it just involves my skin cells; right?

A Right and then that varies from from person to person. What touch DNA is is DNA left behind when a person touches an object. I may touch an object and leave no skin cells behind and then one of you may touch the item behind me and it is your profile that I would develop and not mine. You can have multiple people leave their DNA profile behind on a particular object and you might develop a profile consisting of all of our profiles.

Q And you, again, in your DNA analysis of cigarettes butts, you say that there is no human DNA found on them at all?

A Correct. And like I said, it is not uncommon.

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

MS. SWANSON: May she be released please? May Agent Hash be released?

THE COURT: Yes, certainly.

MS. SWANSON: Thank you.

THE COURT: All right. Ladies and gentlemen, we are going to call it a day. I'll ask you to come back at 9:30 in the morning.

5-23-2018 PROCEEDINGS

THE COURT: Anything that we need to do before the jury comes in?

MS. SWANSON: Nothing from the State.

MS. CAMPBELL: No, Your Honor.

THE COURT: Let's bring the jury in.

(The jury enters to the courtroom at 9:35 a.m.)

MS. SWANSON: The State calls Clifford Brown.

Thereupon,

CLIFFORD BROWN

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Good morning, Mr. Brown. You are a little hard of hearing, right?

A Yes.

Q So I'm going to speak a little louder than I normally do.

A You are good.

Q Could you please state your full name for the record?

A George Clifford Brown.

Q All right. Where did you grow up?
A In Burton.
Q In Burton? That is here in Beaufort?
A Yes, that is in Beaufort.
Q Okay. In northern Beaufort County?
A Yes, yeah.
Q Okay. And what do you do for a living?
A Huh?.
Q What do you do for a living?
A Right now I dig graves for Marshal.
Q How do you know Isaiah Gadson?
A That is my first cousin.
Q All right. So you guys are family?
A Right. That is my daddy's sister's son.
Q Okay. Can you point out Isaiah Gadson in the courtroom?
A That is him right there.
Q Okay. And the State subpoenaed you to testify today, right?
A Right.
Q Okay. You didn't ask to be here, did you?
A No.
Q You don't particularly want to be here, do you?
A I don't want to be here.

Q Okay. Where did you live through the '60s and '80s? Did you live in Burton?

A I lived in Burton on the corner in the '60s. In the '80s, I lived on Lady's Island.

Q Okay. Where did Isaiah Gadson live; where did he grow up?

A As far as I know, in Burton. See, I couldn't tell you the first time I met Isaiah, see. I didn't know Isaiah coming up, see. Best in the teens when me and him used to travel back and forth to Sheldon.

Q Right. And you guys went to the same high school?

A Yes, Robert Smalls.

Q And you are close in age?

A Yes, I think that I'm maybe a year or two years older than Isaiah.

Q All right. What road was it that Isaiah and his family lived on?

A Well, they call it Glaze Drive now, but I used to call it the House of Joy Road.

Q House of Joy Road. Okay, what is the story with that?

A Because it was a club on that road. I can't recall the road ever having a name.

Q All right. So, Glaze Drive. And did he live close to his parents?

A He lived right across the street.

Q All right. And where was he -- where did he work?

A I think that he was at Brown's Mobile Home.

Q All right. Brown's Manufactured Homes?

A Used to be on Boundary Street up there.

Q Right. On Highway 21?

A Right. Highway 21.

Q Okay. And how long did he work there?

A I don't know.

Q A long time?

A I would say so, assume so.

Q Okay. Do you remember what sort of cars Isaiah drove?

A Gadson had a Firebird, green and white Firebird.

Q Okay. Do you remember any other cars that he drove?

A A Chevy.

Q What kind of Chevy?

A He had a '64 Chevy, a '69 Road Runner.

Q Did you know him to have guns?

A We all had guns then. We all had guns.

Q All right. And what kind of guns did Isaiah have?

A Isaiah had a 357 and either a .38 or .32, I couldn't tell the difference.

Q All right. And do you know where he kept those guns?

A Huh?

Q Do you know where he kept those guns?

A In the Firebird, they usually be sticking in the console.

Q All right. Would he have one or two?

A He had two.

Q Okay. Did he ever keep a gun on him?

A I ain't never seen him with a gun. When I see him it be stick there. I ain't never seen him draw a gun on nobody.

Q Okay. But you did hear him talk about killing someone, right? What did he tell you?

A He never tell me he killed nobody.

Q All right. So, what was the thing that he said how he had popped someone before?

A Well, you know, you have that, but that was back in the late '60s and early '70s but I know that he couldn't pop nobody because me and him

usually be together.

Q Okay. And what exactly was it that he said?

A He said, I got one and one more won't be nothing. That is only when he get ready to fight somebody.

Q Oh, so he was a fighter. Was he a smoker?

A Yes, he smoked. I smoke too.

Q What kind of cigarettes did y'all smoke?

A I smoke Kool.

Q What did he smoke?

A I don't -- Kool, I don't know.

Q Do you remember -- you know, the woods by Old Salem Road and Salem Point?

A I know that road pretty good.

Q And did your family used to own some of that property?

A That is what my daddy was fighting for. His granddaddy had owned it back then.

Q Okay. So, did you know the place called Creek's Edge?

A Creek Edge, yeah, used to call it Lover's Lane.

Q Lover's Lane, okay. Had you ever been down there before?

A To Creek Edge?
Q Yeah.
A Yeah, many nights. Many nights.
Q All right, Clifford. Just one minute. Beg the Court's indulgence.
THE COURT: Certainly.
(Pause.)
MS. SWANSON: Thank you, Mr. Brown. That is all that I have for you.
THE COURT: Cross examination.
MS. SWANSON: That is all of my questions. Please answer any that Ms. Campbell may have.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Clifford, can you hear me?
A Yeah.
Q Do you want me to come closer, or can you hear me from here?
A Yes, I can hear.
Q Your street name -- your street name is Drama?
A I hear you but I don't understand you.
Q Okay. Well, let me come closer. Your street name as you are known on the street is Drama?
A Drama.

Q Clifford Drama Brown, right?

A No.

Q George Clifford Drama Brown?

A No, just Drama on the street.

Q Just Drama, okay. And you are first cousins with Isaiah Gadson, right?

A Do what?

Q He is your first cousin?

A He is my first cousin.

Q Is your hearing aid on that side?

A Yes, ma'am.

Q You want to turn it a little bit -- there you go. Is that okay, Your Honor?

THE COURT: Members of the Jury, if you have any trouble hearing the witness, please let us know.

BY MS. CAMPBELL:

Q Now, you got interviewed and questioned by that man right there, Bob Bromage, sitting right there?

A In the tie.

Q Yeah, in the jacket and the tie. He came to talk to you and question you about this case, right?

A Maybe. He don't look the same to me. I

thought that he was gray haired.

Q Do you remember telling this officer that the only guns you know Isaiah to ever have was a revolver?

A No, I said that he had two guns.

Q Small nickel plated revolver, two guns, both revolvers; do you remember telling this officer that?

A No, I didn't say nothing about that. I said he had a 357 or a .32 or a .38. I didn't say nothing about revolvers or none of that.

Q Uh-huh. And your family, the Gadson family, that family in this community goes back 100 years or more, right?

A Right.

Q And there's hundreds of members of the Gadson family, right?

A Right.

Q Okay. And your testimony is that you would go and had been to this Lover's Lane back in the day, right?

A Back in the days.

Q Uh-huh. (Indicating affirmatively.)

MS. CAMPBELL: Okay. That is all that I have. Thank you.

THE COURT: Any redirect, solicitor?

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Mr. Brown, you would go to Creeks Edge with a number of people, right?

A Bunch of people.

Q All right. And you had been down there with Isaiah Gadson, haven't you?

A No, I ain't never been down there with Isaiah.

Q You didn't tell Captain Bromage that you had been down there?

A No, me and him ain't never been down there, no.

MS. SWANSON: Your Honor, at this time I have a motion to offer extrinsic evidence since the witness has denied making that statement to Mr. Bromage under 613(b).

I really don't have any further questions for this witness, but I could put Captain Bromage on the stand just for that point or wait until his testimony.

THE COURT: It is your case.

MS. SWANSON: Does Ms. Campbell have any further questions?

MS. CAMPBELL: (Nods in the negative.)

THE COURT: Thank you, sir. You may step down and you may be excused from your subpoena. Any objection to the witness being excused from his subpoena?

MS. SWANSON: No, sir.

THE COURT: Okay. Thank you for coming.

MS. SWANSON: The State calls Captain Bromage.

Thereupon,

BOB BROMAGE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Captain Bromage, did you interview Clifford Brown?

A I did.

Q When did you interview him?

A Give me one second.

Q Sure.

A August 15th, 2016.

Q Okay. And did you ask him if he had ever been out to Creeks Edge with Isaiah Gadson?

A When asked about the earlier reference to

the Lover's Lane behind Lowe's, he advised Gadson Junior and others called it Creeks Edge. He stated Gadson Junior drove him out there in a blue Chevrolet Impala one night in the 1970s. He advised that it was a well known parking area for couples. Brown stated that Gadson Junior had an African-American female with him on that occasion. He advised they sat in the vehicle for a few minutes on a dirt path under a large oak tree near the edge of the creek.

Brown recalled it was so dark in the woods you couldn't see a person if they were right next to you. Brown advised that a male subject on a motorcycle pulled in behind Gadson Junior's Impala blocking him in. Do you want to me to go on, ma'am?

MS. SWANSON: I think that that covers the particular trip to Creeks Edge and what he told you about going there with Isaiah Gadson. Thank you very much, Captain.

MS. CAMPBELL: Are we going to continue with Officer Bromage or pull him down?

MS. SWANSON: No, we are not. This was just the extrinsic evidence offered under 603(b).

CROSS EXAMINATION

BY MS. CAMPBELL:

Q So, additionally, from the defendant, with Officer Bromage's report in reference to the inconsistency in testimony and what is in the report, I would ask him briefly: Isn't it true that you referenced no report from George Clifford Drama Brown that Isaiah Gadson owned a 357, correct?

A One more time, ma'am?

Q Okay. There is no reference in your report that Isaiah Gadson had a 357, correct? Only two revolvers, correct?

A 357 is a revolver.

Q Okay. What is listed specifically Officer Bromage -- let me find it and I'll have you read it for us.

A I'll be able to find it in a second if you give me.

Q Uh-huh. (Indicating affirmatively.)

A Brown advised Gadson Junior he had two revolvers in those days, one was a 357 magnum, possibly a Taurus, and the other one was a small nickel-plated revolver, either .32 or .38 caliber.

Q The small nickel plated revolver, either a .38 or a .32 revolver, correct? Is that correct?

A The other one was a smaller nickel-plated

revolver, either a .38 or a .32 caliber.

Q And the nickel-plated revolver, that would sort of -- that would be like a shiny gun, correct?

A It would.

MS. CAMPBELL: That is all that I have.

MS. SWANSON: All right. Thank you. And if I can ask Captain Bromage to step down.

Thereupon,

LORI ANN LAWLESS

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Good morning, Lori.

A Good morning.

Q Back in 1983, where were you living?

A I was living on what was known as Green Lawn Park at the time. It is now known as Green Lawn Drive.

Q If you could speak up just a little bit for me. This is a big courtroom and I just want to make sure that the jury can hear you. Now, is that location off of Boundary Street?

A Yes, ma'am, it is on the corner where the liquor store is, the road right next to where the

old KMart is.

Q So, that BiLo shopping center area?

A Yes, ma'am.

Q Just right up the road?

A Yes.

Q Okay. What were you doing back in 1983; where were you working?

A I was in the Marine Corps. I was stationed on Parris Island at women recruit training command.

Q Okay. And were you married?

A Yes, I was.

Q OKay. How long had you been married?

A I got married in '78, so approximately five years.

Q How old were you?

A I was 21, right before my 22nd birthday.

Q Were you local to Beaufort?

A No, I was not.

Q All right. Did you know or meet Susan Weed or any of her family back in the '80s?

A No, ma'am.

Q All right. And did you meet them after that?

A No, I had never met them until this court.

Q Until this week?

A Correct.

Q Okay. You remember talking on the phone to me?

A Yes, ma'am.

Q And you weren't sure that you were going to come and testify, right?

A That's correct.

Q Why is that?

A I was afraid.

Q Okay. And what were you -- tell us what made you afraid; what happened back in 1983 that made you afraid?

A In 1983 I was abducted and raped by Mr. Gadson.

Q Okay. Was this February 4th, 1983?

A Yes, ma'am.

Q Okay. How did you come in contact with Mr. Gadson?

A I was walking to meet a ride on my way to work early that morning and I was offered a ride. I was running late that morning and -- would you like me to tell the entire story?

Q Yes. First tell me, was it dark outside at the time?

A It was. It was between 5:30 and 5:45 in the morning.

Q Okay. And so, yes, tell us, tell us what happened from there.

A Okay. As I said, I was running late. Every morning I walked from my home on Green Lawn Park down Boundary Street, 21, to Highway 280 to the country store where I met my ride and they gave me a ride to Parris Island.

And that particular morning I was running late, a car had stopped and offered me a ride. I was not hitchhiking. And the first ride I turned down. And -- but as I said, I was running late so when Mr. Gadson stopped I knew that I wasn't going to meet my ride if I didn't accept a ride, so I -- he offered me a ride and I took it. And I told him where I was going and he said that he would take me there.

So, I got in the car. And when he got to where the corner store was, he turned to secondary, down secondary 73. He asked me -- I asked him where he was taking me, that the corner store was right there and he could just let me out. And he said that he was going to buy some marijuana from a friend. And he asked me if I smoked, and I

told him no. He asked me if I had ever had sex with a black man and I told him no and I explained that I was married.

And, again, I was telling him that I'm going to be late, just let me out and he refused. He went about a mile down the road, it seemed like a mile, it was dark. And he turned left on a dirt road, on a wide dirt road and went past a white trailer and then made a right-hand turn down another dirt road towards an open field and parked the car.

At that point he got out of the car. It's been a long time. But I seem to remember there was a structure that he went in, but only for a moment. I had just --

Q Did you have time to escape?

A I didn't. It entered my mind for just a moment, I should run, but he came back. And he got in the car and he locked the doors. And he started putting his weight against me and I began to struggle. And he threatened me. He said to stop struggling or he was going to blow my brains out.

Q Did you believe him to have a gun?

A Absolutely.

Q And what was he doing when he said this to

you?

A At that point he was just forcing himself on me, but then he said it again, and the second time he was reaching under the front seat of the car.

Q Which hand was he reaching with?

A His right hand. And after the second threat to blow my brains out and the reaching I stopped fighting. He told me to take my clothes off or die. And at that point he removed his trousers. And I took my pants off. And that is when he performed oral sex on me.

After that he -- that only lasted like two to three minutes and he asked me if it felt good and if I liked it, did I enjoy it. And then he climbed on top of me and he raped me.

Q Vaginally?

A Vaginally. That also lasted a couple of minutes. He ejaculated in me and then he got dressed. And I was afraid to move. I asked him if I could get dressed and he said yes. While I was getting dressed he asked if I was going to call the police or tell my husband, and I was afraid to tell the truth for fear he would kill me so I told him no. And then he apologized. He said that he didn't

know why he had done this and that he was sorry. And he offered to pay me $50. And I told him that I was not a prostitute and I didn't want his money. He --

Q So, after the sexual assault, what are you doing? Are you -- what did you observe about the car?

A Yeah, so at this point I'm thinking, if he lets me live I need to identify everything I can. So it is starting to get light. I notice that there's a red spiral notebook in the dash of the car. And, you know, I'm taking inventory of everything that I can. There's something fuzzy around the mirror of the car. There's deodorizers hanging from the mirror. There's cloth seats. Just everything that I can.

Q Did you get a good look at him?

A As best as I could, yes. I tried to get a description of him. He starts driving back towards the direction that I wanted to go, back towards 280 and dropped me off on 73, secondary 73, near a welding shop. And I truly expected to hear a gunshot. I expected him not to leave me alive, but he did.

And I got his license plate and I

just kept saying it over and over in my head as I ran to meet my ride up at the country store. When I got there I wrote the license plate in the dirt so I wouldn't forget it. And I don't recall if my ride was waiting or if they got there like within minutes, but when they got there we called the police and they waited with me. They called my command to let them know that I was going to go to the hospital.

Q Okay. So, did you give police a description of the man that raped you?

A Yes, ma'am.

Q And how did you describe him?

A I described him as a black male in his mid 20s, 25, 26 years old, approximately 5'9", 5'10", 150 pounds, short afro, moustache, sideburns, just as far as facial hair.

Q After you talked to the police, did you immediately go to the hospital?

A I asked them if they could run me by my house that was on the way to pick up my husband and get a change of clothes and they did. And we went to Beaufort Naval Hospital.

Q All right. So, when you went by your house did you change the clothes that you were in

during the rape or anything like that?

A No, I did not.

Q Then you went to Beaufort Naval Hospital?

A Yes, I did.

Q All right. And did you get a sexual assault exam?

A Yes, I did.

Q Did you turn your clothes over to police?

A Yes, they took everything that I was wearing.

Q All right. And while you were at the hospital, did police develop a suspect?

A They did. They brought me a photo line-up also while I was there.

Q Okay. And did you pick someone out of that photo line-up?

A Yes, I picked out Mr. Gadson.

Q All right. And then, was he subsequently arrested?

A He was. I believe that on the drive home they told me that they had him in custody.

Q Okay. All right.

Thank you, Lori. Please answer any questions that the defense attorney may have for you.

THE COURT: Cross examination.

MS. CAMPBELL: Your Honor, may we approach briefly?

(Off-the-record discussion held.)

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Lori, do you remember testifying previously on these matters on Monday afternoon?

A Yes, ma'am.

Q Okay. And do you remember testifying on Monday afternoon that when you arrived at the country store in the company of Mr. Gadson, that your ride was already there waiting for you?

A I remember saying that I thought that they may have already been there.

Q Okay. So, yes, on Monday you said your ride was waiting for you at the country store?

A No, ma'am. I could not recall whether they were there or not. I thought that they may have been. That was a very long time ago and I was in shock. The facts are they arrived either just as I was getting there or they may have been waiting, I'm not 100 percent sure.

Q Okay. And I understand that you are wavering today. But, again, we have a court

reporter.

A Yes, ma'am. Yes, ma'am.

Q And it is taken down.

A Yes, ma'am.

Q So, we may need to get your testimony from Monday to be clear.

A They may have been there, they may have been getting there. I'm not 100 percent sure of the timing.

Q We will make sure that we get it from the court reporter.

A Yes, ma'am.

Q Lori, you reported to law enforcement and to the physician who examined you that the previous night you had been consuming alcohol, correct?

A Yes, ma'am.

Q Okay. And you also reported that -- well, there's no statement taken from your husband by law enforcement during this investigation, correct?

A I don't know.

Q Okay. To the best of your knowledge, then, was your husband questioned or did he make a statement in an effort to determine anything about your whereabouts the night before?

A I don't know.

Q Okay. So you and your husband never communicated about whether or not he was being questioned by law enforcement?

A Why would he be?

Q Okay. Okay. Thank you. You are in the Marine Corps at this time?

A Yes, ma'am.

Q You are trained to defend yourself, correct?

A Yes, ma'am.

Q And you are trained in how to handle a weapon, correct?

A Yes, ma'am.

Q Okay. And what you told law enforcement in 1983 is that you were walking on the highway, right?

A Yes, ma'am.

Q That you were on your way to the country store, correct?

A Yes, ma'am.

Q That you were at some point to be picked up at the country store by a ride who would take you to work, right?

A Yes, ma'am.

Q Okay. And that you -- you -- do you

recall that you never talked to law enforcement about passing up a ride from another car; do you know that you have added that?

A I don't recall, but I didn't -- I wouldn't think that it would be pertinent because it didn't have anything to do with this case.

Q So, you are on the highway, this gentleman pulls over and says to you, Do you need a ride; right?

A Yes, ma'am.

Q This is what you told law enforcement. And you got in the car with him, correct?

A Yes, ma'am.

Q Okay. And you told law enforcement that he's taking you down to a house, a structure and he gets out of the car for some period of time to get some marijuana, right?

A That is what he had said.

Q And this is what you told law enforcement?

A Yes, ma'am.

Q Okay. And at that point, then you say that you are sexually assaulted; correct?

A Yes, ma'am.

Q And this man who has just threatened your life and sexually assaulted you, does you the

courtesy of carrying you to the country store, correct?

A No, ma'am, he dropped me off on secondary 73.

Q Okay. And where is that in relation to the country store?

A It is a different road. It is a little ways down. He dropped me off and I had to walk the rest of the way.

Q And do you recall testifying previously that he took you back to the country store?

A No, ma'am.

Q Okay. Now, you were taken to a physician who performed a sexual assault exam on you; right?

A Yes, ma'am.

Q And part of that sexual assault exam was the combing of your pubic hairs to try and extract any African-American pubic hairs from your vaginal area, correct?

A I guess. I don't recall.

Q Okay. And do you recall that during the sexual assault exam it is determined that you have absolutely no trauma vaginally?

A Perhaps. I didn't struggle.

Q You worked with investigators in 1983 to

prepare your case for a trial, correct?

A Yes, ma'am.

Q I believe you have testified you were actually in court and ready to go to trial, right?

A Yes, ma'am.

Q And the investigators and the State of South Carolina allowed Mr. Gadson to plead no contest to assault and battery, correct?

A Yes, ma'am.

Q Okay. And you were not in a position to have to ever testify then in 1983?

A That's correct.

Q Okay. Do you recall telling investigators at the time that Mr. Gadson was 5'10" to 6 feet tall?

A That is what I was told I said.

Q Okay. And in your original statements and interviews in this case do you recall -- and in fact, the sexual assault exam itself -- did they tell you that what they were doing was trying to get evidence off of your body? Did you understand that that was what was happening during that exam?

A I knew that they were looking for sperm.

Q Right, okay. Right.

A And semen.

Q Okay. So, they are taking from you what you have told them is sperm from Isaiah Gadson --

A Yes.

Q — in this case?

A Yes, ma'am.

Q And to the best of your knowledge then, taking that evidence preserving it and holding on to it, correct?

A Yes, ma'am.

Q Okay.

MS. CAMPBELL: Just one second, Your Honor.

(Pause.)

MS. CAMPBELL: Nothing further.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Just briefly, Lori. You told Ms. Campbell that you were not 100 percent sure that your ride was at the store when you got there, right?

A Yes.

Q Are you 100 percent sure that Isaiah Gadson raped you?

A I am 100 percent sure.

Q The place that he took you to to rape you, was that a remote area?

A Yes, I was.

Q Over in the Burton area of Beuafort?

MS. CAMPBELL: Objection, Your Honor, leading again.

BY MS. SWANSON:

Q What area of Beaufort County was it in?

A It was in Burton. As I testified, it was off of secondary 73, down a dirt road. It was dark. It was near a field. I had never been there before.

Q Right. Did you know where you were?

A I did not.

Q Were you isolated?

A Very.

Q And Ms. Campbell asked you about when Isaiah pled right before trial. And she said that he pled to assault and battery. Did he plea to assault and battery, or did he plea to assault and battery of a high and aggravated nature?

A I honestly don't remember. I was shocked that they pled the case. I had no idea why it didn't go to trial. And I was kind of all out of my ends.

MS. SWANSON: All right. Thank you, Lori.

MS. CAMPBELL: Nothing further.

THE COURT: Thank you. You may step down.

testimony to counsel via email.)

MS. SWANSON: Thank you. The State recalls Lori Lawless for the purpose of continued cross examination.

Thereupon,

LORI ANN KRUG LAWLESS

was recalled as a witness, having been first duly sworn, was examined and testified as follows:

CROSS EXAMINATION (CONTINUED)

BY MS. CAMPBELL:

Q Lori, on Monday you were sworn in tell the truth, correct?

A Yes, ma'am.

Q Placed your hand on the Bible, right?

A Yes, ma'am.

Q Important for you to be accurate in your testimony, correct?

A Yes, ma'am.

Q Now, on Monday afternoon.

"Question: And so by the time you got back to the general store, that is what it was called?

Your answer: I think country store.

Question: Country store. It was past time for your ride to pick you up?

Answer: I believe that they were waiting on me."

Do you admit or deny that that was your previously sworn testimony on Monday?

A I believe that is what I said, yes, ma'am.

Q Thank you.

MS. SWANSON: I don't have anything further.

THE COURT: Thank you, ma'am. You may step down. Call your next witness.

MS. SWANSON: The State calls Captain Bob Bromage.

Thereupon,

BOB BROMAGE

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q Good afternoon -- good morning.

A Good morning.

Q Captain Bromage, how long have you been with the Beaufort County Sheriff's Office?

A 28 years.

Q And what different positions have you held there?

A I started as a patrolman in 1990. Southern Beaufort County, which is Bluffton and Hilton Head. I was promoted to criminal detective in 1993 and worked criminal investigations until Sheriff Tanner was elected in 1998 and balance of '99. And part of his campaign was we were going to work on cold cases. Cold cases are unresolved homicide cases. And I have retained that position since 1999.

I have also been the commander of criminal investigations for Beaufort County. I was the coroner's liaison. I was the solicitor's liaison for the solicitor's office. And my present occupation is public information officer, releases things to the media and puts out proactive releases on behalf of the Sheriff's Office.

Q So, how long were you in criminal investigations?

A From 1993 or '92 I was on the job detective, so 1992 until 2014.

Q Okay. And what changed in 2014?

A Unfortunately we had an eight-year-old boy murdered on Hilton Head Island. He was caught in a crossfire between drug dealers and on that particular investigation there was in-car video that

was not reviewed in its entirety by my subordinates and I was the captain of criminal investigations and I did take responsibility for the actions of my people. And unfortunately I was transferred and given a year of probation. But, you know, things -- you roll with the punches and move on.

Q Were you a captain in 2014?

A I was.

Q You are still a captain today?

A Yes, I am.

Q About how many people were you supervising at that time involved in that investigation?

A Upwards of 35 people at that point. This particular investigation was very complex. There were three suspects. And they were all convicted of murder in court subsequently.

Q Okay. Moving on, let's talk about your involvement in the investigation into the rape of Susan Weed and the murder of David Krulewicz. How did you become familiar and assigned to this file?

A Again, when Sheriff Tanner took office in 1999 he assigned me to investigate cold cases again, unresolved homicide investigations. This was an unresolved homicide with the act of a sexual assault with a live victim. Obviously it was one of the

first cases that I looked at. I had two people working in my group at that point. Now it's just one but that is okay. We have a cold case committee.

But ultimately we went through the evidence. That is the first thing that you want to do. We went through to the case file, which you can tell is monstrous. You go through the case file a couple of times and you review the physical evidence. The physical evidence may or may not be maintained. A lot of agencies you are going to find do not maintain old cases, fortunately we did.

This particular case there was lab reports from 1980 indicating there was semen found during analysis at the South Carolina Law Enforcement Division. Of course, DNA technology emerged in the '90s. And at that point submitted the victim's clothing, which was done.

Q Okay. Well, let's go back for a second, that is okay. Did you interview Susan?

A I did.

Q Okay. Who did you interview Susan with?

A At the time it was Sergeant Sankowski, now it is Lieutenant. We interviewed her again at her business in Beaufort.

Q Okay. Was that fairly soon after you were assigned the case?

A It was. Within a few months, within a few months there was a -- there was several cold cases we were looking at at once, but that was one, yes.

Q Okay. So, you have been in the courtroom and you saw her testify?

A I did.

Q And was her story consistent when she spoke to you guys in '99 with what she testified to here today?

A Yes, very consistent.

Q And was it consistent with the 1980 case file that you reviewed?

A Yes, it was.

Q And in that 1980 case file, did she write a number of statements?

A A number of statements, yes, ma'am.

Q And back when she was 15 in 1980?

A Fifteen years old.

Q All right. You mentioned looking at the evidence from 1980.

A Yes.

Q Where was the physical evidence in this case stored?

A The physical evidence in this case was stored in Beaufort, actually at the law enforcement center, which is probably 100 yards from here. We had an evidence locker up there. The office of homicide were stored in individual boxes. We went through this box and found a large bag of clothing that said patient, patient clothing, patient belongings.

Q Patient belongings?

A Yes, ma'am.

Q Okay. I'm going to show you what's been marked as State's Exhibit 8 and ask for you to look in this bag and see -- and tell me if that's the bag that you are referring to?

A That is the bag.

Q Okay. So, there was clothing contained in that bag?

A There was pants, shirt, underwear, and a bra.

Q And was there also a tag contained in that bag with a chain of custody?

A Yes, there was.

Q All right.

A Sorry.

Q If you look farther in there.

A Yes, ma'am.

Q Okay. And the contents of that bag.

A One bra, beige in color, one pair of light pink panties, one pair of blue corduroy pants, and a multi-colored pull-over shirt taken by Susan Weed by Dr. Fontana.

MS. SWANSON: State would move 8 into evidence at this time.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 8 marked for identification and received in evidence.)

BY MS. SWANSON:

Q All right. Well get to some of the other evidence in a minute. But in your review of the physical evidence, did you come across any items that were missing?

A Yes, I did.

Q All right. And what items were those?

A Those were the specimens taken during her sexual assault examination.

Q And did you ask anyone about those items and why -- where they could possibly be and why they could be missing?

A Yes, ma'am, I did.

Q And tell us about that.

A I reached out to the South Carolina Law Enforcement Division who had returned the clothing after the initial examination in 1980. And I received an email response regarding how they dispose of evidence throughout the years, of course before DNA and everything else.

Q Tell us what the response was that you got.

A Just give me one second, please.

Q Sure.

A The response from SLED, it was Captain Bell who was in charge of the forensic sciences laboratory, which encompasses all forensic sciences. "We have looked into your question regarding the evidence of the 1980 case file. Unfortunately we have learned that the evidence that was located in the SLED case files when these files were microfilmed was subsequently destroyed during the microfilm process. It is unclear if the administration that ordered files to be archived during this time period was aware that there may be evidence located within these files. Obviously, since that time evidence handling procedures has

dramatically changed as you are aware, pre-DNA, late '80s. The significance of much of this evidence was not fully understood, nor was there an evidence preservation act in place for long-term storage of evidence in violent crimes."

Q All right. Thank you. Was there anything else that you discovered was missing from the case file?

A Photographs from the crime scene. And it was -- figured that out in 1999.

Q Okay. And so did you make inquiries to anyone about those photos?

A I spoke to Lieutenant Wagner who you saw here -- I am sorry, who testified. I reached out to the Federal Bureau of Investigation out of Virginia who controlled the profiles of these cases, and they didn't retain the photographs nor did they have any record of doing a profile.

Q Okay. Did you come across any evidence that they had been destroyed by anyone?

A No, ma'am.

Q Any reason that they went missing?

A No.

Q Okay. All right. Let's talk about some of the items that went to SLED in 1980 and then were

later stored from, when was it, 1980 to when did you take them out next?

A 1999 is when I went into evidence to sign these items out to have them analyzed at SLED.

Q Okay. So, they were in evidence, basically, after SLED --

A Returned them.

Q -- returned them until 1999?

A That's correct.

Q Okay. I'm going to hand you State's Exhibit 9 and ask if you can identify this item.

A It is a victim's corduroy pants, and it is a paper bag with a biohazard bag which is plastic.

Q All right. And is that an item that you found in evidence in 1999?

A Right. We transferred it to the paper bag and separated the clothing and put it in individual biohazard bags to make sure that nothing got in or got out.

Q Had that item been at SLED previously?

A Yes, ma'am.

Q Okay. All right. And I'm going to hand you State's 10 and ask if you can identify that item?

A The victim's panties and paper bag, and

there's a biohazard bag with it. This is how it was transferred to SLED back in 1999.

Q All right. So, that was in evidence in 1999 after it had previously been at SLED?

A Yes, ma'am.

Q Thank you. All right. Can you identify State's Exhibit 13?

A Krulewicz yellow dress shirt. Yellow shirt, I'm sorry. Which had blood on it. I actually looked at it with latex gloves to get a standard for David Krulewicz. And then a biohazard bag associated with it. And a paper bag.

Q Now, this item didn't go to SLED in 1980, did it?

A I don't believe so.

Q All right. When did you send this item to SLED?

A Give me one second.

Q Sure. And it should be in David McClure and Patti Ruff's first reports?

A Okay. It went up in 1999, initially.

MS. SWANSON: State would move 13 in evidence at this time.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 13 marked for identification and received in evidence.)

BY MS. SWANSON:

Q All right. So, in 1999, what all was sent up to SLED; do you have your submission forms?

A I do.

Q Okay.

A Biohazard bag, says bio bag containing victim Weed's panties. Bio bag containing victim Weed's corduroy pants. Bio bag containing victim Krulewicz shirt. It says big bag, but I think they meant to say bio bag containing one medical specimen slide. And brown glass bottle containing one cigarette butt. Two evidence bags, each with one cigarette butt in each. Bag containing two clear plastic containers marked number two and three. Evidence bag containing open pack of Newport cigarettes.

Q So you tried to send up, basically, any physical evidence that you could possibly get any forensics on?

A That is right.

Q All right. When you got items back in 1999, were there three additional items?

A Yes, there were.

Q And were those cuttings from clothing that were prepared by SLED?

A Cuttings that came out of evidence processing of DNA back in 1999. They came back individually. They made cuttings and sent them back in sealed envelopes.

Q Okay. So, I'll show you State's 11 and ask if this is the cutting from the pants that came back.

A Yes, ma'am, cutting from --

Q And did it come back sealed?

A It did.

Q All right. And was it turned into evidence in that same manner?

A It was.

Q All right. And then state's 12, which is what cutting?

A Cutting for panties, 1.1.

Q Okay. And was it sealed?

A It was.

Q And turned into evidence in that manner?

A That's correct.

Q Okay. And then State's 14 is the cutting from where?

A Cutting from dress shirt, item 3.1.

Q Okay. And was it sealed?

A It was.

Q And turned into evidence?

A It was.

Q Okay. And did those items remain sealed until they went back up for testing?

A Yes. When the DNA technology emerged into what is STR now, the more sensitive DNA, resubmitted in 2002, in November, after talking to David McClure, the analyst that was on the stand yesterday. 1.1, which is a cutting from the pink panties. 2.1, the cutting from the pants. And 3.1, the cutting from the dress shirt for DNA analysis.

Q Okay.

MS. SWANSON: The State would move 11, 12, and 14 in at that time.

MS. CAMPBELL: No objection.

THE COURT: Granted.

(Whereupon, State's Exhibit No(s). 11, 12, and 14 marked for identification and received in evidence.)

BY MS. SWANSON:

Q All right. And then in 2002, what did Agent McClure need from you?

A He developed a DNA profile containing both a male and female mixture and requested Susan Weed's elimination standard, which I obtained from her.

Q Okay. I am going to show you State's 15 and ask if these are the swabs that you got and obtained from Susan's mouth?

A On December 17, 2002, at 1:40 in the afternoon, right. Susan Weed. Two oral swabs, which were cotton swabs.

Q All right.

MS. SWANSON: The State moves 15 into evidence at this time.

MS. CAMPBELL: No objection.

THE COURT: Granted.

(Whereupon, State's Exhibit No(s). 15 marked for identification and received in evidence.)

BY MS. SWANSON:

Q All right. So, when did you send those swabs up to SLED? And it may say on here. I can hand this back to you if you need it.

A It was delivered to SLED, it looks like, on December 19th. A few days later.

Q Okay. And was a profile able to be established from the male --

A Yes.

Q -- semen?

A Yes, on the panties, cutting from the panties, and cutting from the corduroy pants, the crotch area.

Q All right. And when were you informed of that profile?

A January 15th of 2003, David McClure issued a report indicating that a profile was developed.

Q Okay. And around that time, was there a particular suspect that you were investigating?

A There was a person of interest from 1982. He was in the Marine Corps and had been through Beaufort. He actually was arrested in North Carolina in 1982 for murdering a woman and burning her house down. He was in and out of prison. I was able to locate him through associations with other agencies, Indiana State Police, I believe, and also the Ohio BCI, which is their Bureau of Criminal Investigation.

He was located in a prison in Ohio. I requested that they obtain some standard from him surreptitiously. They were going to interview him anyways, and oftentimes you can get it off of a styrofoam cup or cigarette butt, especially DNA, and

they packaged it and I went to Ohio and picked it up.

Q Okay. And did you turn that into SLED for them to test?

A I did. On my way back from Ohio, I believe.

Q Okay. And what happened with that profile?

A His name was Oneill Banks. He was eliminated as the suspect in this case based on DNA.

Q Okay. What year was it when you got a DNA database hit on Isaiah Gadson?

A 2016, August 3rd, I received a call from the South Carolina State Law Enforcement Division regarding that.

MS. CAMPBELL: I'm sorry, objection, Your Honor. I need to approach.

(Off-the-record discussion held.)

BY MS. SWANSON:

Q All right. So, you -- the hit comes in 2016?

A Correct.

Q And how many years was that after the profile was established?

A Thirteen years.

Q All right. At that point were you able to locate and identify Isiah Gadson?

A I was.

Q All right. And can you identify him today?

A I can.

Q All right. Where is he?

A Sitting in between Ms. Campbell and the other defense counsel.

Q All right. And that is the man that you arrested for murder, armed robbery, rape, and kidnapping?

A Yes.

Q And that is the man that Selena Nelson took buccal swabs from?

A She did.

Q Okay. And the point of those buccal swabs was to confirm his DNA profile?

A Confirm and derive their statistics for the DNA.

Q Okay. Do you know if Isiah Gadson has ever had an identical twin?

A I do.

Q Okay. And how do you know that?

A I was in contact with the South Carolina

Law Enforcement Division, who I requested that they get in touch with the Department of Vital Statistics, which is DHEC in South Carolina, to obtain his birth records and they were able to obtain it for me. Single live birth.

Q Okay. I'll show you State's Exhibits 17 and 18 and ask if these were the documents that you received from DHEC as to live birth?

A They are.

MS. SWANSON: The State moves 17 and 18 in evidence at this time.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 17-18 marked for identification and received in evidence.)

BY MS. SWANSON:

Q All right. And so you had testified earlier that you have been in investigations for a long time. And we talked about Oneill Banks, right?

A We did.

Q So, through the advent of DNA technology, what has it been used for in regard to investigation?

A Nationwide, as is here, we eliminate

people as suspects and persons of interest. We eliminate them as suspects, and we are able to match people. So, we are able to actually conclude that it is this individual.

Q Okay. So you use it as a tool to solve crimes and eliminate suspects?

A Sure.

Q And law enforcement feels comfortable relying on it for both?

A We do.

Q Did you ever use Isaiah Gadson's DNA profile to eliminate him from a case?

A Yes, we had an unidentified female murder in 1995 found on the side of the road in Yemassee. Our DNA analysis, our lab here in Beaufort County, developed a profile under her fingernails of a male. So, we submitted Isaiah Gadson's DNA to be compared with that and he was eliminated. So, he is no longer a person of interest whatsoever in that case.

Q Okay. Through your observations of the defendant, were you able to note whether or not he's left or right handed?

A He's right handed.

Q Okay. Have you seen him writing with his right hand?

A I've seen him write more than once with his right hand, yes, ma'am.

Q All right. And going back to your interactions and investigations with Susan, did you ever visit the incident location with her?

A I did.

Q All right. And through your investigation, were you able to determine where Isaiah Gadson lived?

A Yes, ma'am, I was.

Q All right. And where was that?

A Isaiah Gadson lived in Burton in 1980 on Glaze Drive, which is less than 2 miles from where this murder/rape occurred in 1980.

Q Okay. Did you also review a 1983 case that involved Isaiah Gadson?

A I did.

Q And why did you review that case?

A Doing a background investigation on Isaiah Gadson after the DNA hit to see what other activity he was involved with. I was able to locate this case from 1983 where he had pled to assault and battery of a high and aggravated nature in this courtroom, in this courthouse, I believe.

Q Okay.

A Or the old courthouse, I'm not sure. It has been a long time.

Q Okay. Did you review all of the documents in that case?

A I did.

Q All right. And was there a transcript of an interview with the defendant?

A There is, yes.

Q And was there also a signed Miranda rights warning form?

A Yes, there was.

Q All right.

A And is.

Q All right. I'm going to refer you to that transcript.

MS. CAMPBELL: Your Honor, I am going to ask to approach, if we may.

THE COURT: Would you like to stretch, ladies and gentlemen, while I talk to the attorneys at a side bar?

(Off-the-record discussion held.)

THE COURT: Ladies and gentlemen, I need to ask you to please retire to the jury room for a few minutes while I discuss a matter of law with the attorneys, and remind you that

it's too early to discuss the case.

THE BAILIFF: Please leave your notebooks.

(The jury exits the courtroom at 11:25 a.m.)

THE BAILIFF: Jury is clear, Your Honor.

MS. CAMPBELL: May it please the Court, I believe that the solicitor is attempting to extract from the officer statements that were made by Mr. Gadson during the investigation and questioning by police officers in the 1983 Krug case, and I object to that on a couple of bases. And when I initially approached I said, relative to a Jackson Denno hearing, but that's actually not what I meant.

We have a situation here where I would object to it, number one, on relevance. And I would object to it under 403. And, you know, the solicitor said at the side bar that it is an admission of a party opponent, but you know, he is not on trial for this case. We are on trial for the case involving Susan. We are not on trial for the case involving Lori Krug.

And I don't think that it falls under the admission of a party opponent. Again, as I said, I will rely on my objection on 403

creating prejudice and confusion and un -- actually, extremely unfair prejudice at this point to try to put into the record of the principal case statements that Mr. Gadson made relative to the Krug case.

And it is unduly prejudicial and not probative of any fact that the solicitor has to prove in the principal case. If she can make the connectivity of how something that is said here proves one of the elements of the four indictments -- and I don't think that she can do that.

THE COURT: Of course I assume that both of you know what we are talking about and I don't, so let's go ahead. Solicitor.

MS. SWANSON: Well, actually, it is the same sort of information that was -- it was the same information that was proffered on Monday through Captain Bromage to meet the clear and convincing standard. And I believe that I still have to show the jury through clear and convincing evidence that this prior bad act was committed by Isaiah Gadson.

And these statements, which are admissions by a party opponent and are contained within

records kept in the regular course of business by the Sheriff's Office, are certainly relevant because he admits to giving Lori a ride on February 24th. And he admits to placing his hand on her vagina, but then he denies having any intercourse with her. And so it places him at the scene of the crime, denying that he had intercourse.

And then, of course, later when the chemist John Barron, who is here to testify and who was the chemist in the 1980 and 1983 cases, found semen on her clothing. He also found semen on the Defendant's car seat.

THE COURT: All right. So, we are -- in addition to the statements that you are talking about, you are talking about introducing other evidence?

MS. SWANSON: Yes, sir, because it is --

THE COURT: Of prior?

MS. SWANSON: Right, because it's part of the subsequent bad act that has been admitted. And it -- it goes to Lori's credibility, as far as the fact that it really happened. Because, of course, the defense is asserting that didn't really happen. He pled no contest, he pled to

assault and battery, even though it was assault and battery of a high and aggravated nature.

THE COURT: Ms. Campbell.

MS. CAMPBELL: Your Honor, I stand by my argument and objection. And after you make your ruling on that I would like to place my mistrial motion on the record.

THE COURT: All right. The Court understands the 403 argument, but I believe that it is admissible. I think that it is relevant. The Court accepts the arguments of the solicitor on this case and deny the motion. And now you want to make a motion for a mistrial that you mentioned at the sidebar earlier?

MS. CAMPBELL: I did. Your Honor. I objected timely during the officer's testimony. And he was responding to the solicitor about obtaining Mr. Gadson's DNA from a law enforcement source that would be impermissible. It would violate the Rule 404. And it is the kind of character-type evidence placing Mr. Gadson in law enforcement databases, casting a shadow on him, and putting him in a situation that, you know, that we can't dig out

of that hole. We can't repair it by a curative instruction and you can't take back what Officer Bromage said to the jury.

And you know, frankly, we have been here before in trials with Mr. Bromage with exactly that type of testimony. He knows better and he did it any way. Thank you. That is all that I have.

THE COURT: Okay.

MS. SWANSON: Your Honor, my question was: When you did get a DNA database hit on Isaiah Gadson -- or I'm sorry: When did you get a DNA database hit on Isaiah Gadson. That is how we decided to refer to it. Captain Bromage began by saying, In 2016. And he said, I was contacted -- he began to say I was contacted by South Carolina Law Enforcement Division when we pretty much stopped him and approached. He did not mention any offender database, you know.

There's been a number of SLED witnesses that have testified. I don't think that the jury is going to assume an offender database. Also, it becomes much less prejudicial when Ms. Campbell in opening statements has already disclosed to the jury that the defendant pled

no contest on the eve of trial in this assault against Lori Krug. So, I mean, even if the jury thought he might be in some sort of law enforcement database, surely they would assume from the time that he plead guilty right before trial, or pled no contest right before trial.

So, I mean, criminal history has been referred to at this point in time. So, I do not believe that this rises to the level of a mistrial. I don't think that it was even that noticeable. And I don't think -- I think that probably a curative instruction would call more attention to it, because I certainly moved right on from there.

THE COURT: Anything else, Ms. Campbell?

MS. CAMPBELL: No, sir.

THE COURT: All right. I understand the grounds for the mistrial, but the Court is going to deny that motion, agreeing with the statements made and arguments made by the solicitor. I think that we have already had law enforcement involved as a condition that he entered a plea, which assumes that he was in custody. And I think from there the jury could infer that there was some DNA at some point in

time. At any rate, I'm going to deny the motion. What is next?

MS. SWANSON: Just the continuation of Captain Bromage's testimony.

THE COURT: Okay. Let's bring the jury in.

THE BAILIFF: The jury in entering the courtroom, Your Honor.

(The jury enters the courtroom at 11:35 a.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Good afternoon, ladies and gentlemen, I believe we are ready to return to direct examination of the witness. Solicitor.

MS. SWANSON: Thank you, Your Honor.

BY MS. SWANSON:

Q All right. We were talking about your review of the 1983 case. And that 1983 case contained a transcript, so I'll refer you to the transcript of the Defendant's interview. Did he tell investigators back in 1983 where he was living?

A He did.

Q All right. Where was that? It should be at the bottom of the -- towards the bottom of the

first page, continuing on to Page 2.

A I'm sorry, I have got it right here in front of me. I apologize. They asked, "What is your home address. Post office box [redacted], Burton. Where do you live? Burton. Where abouts in Burton? Behind the school bus maintenance shop."

Q All right.

A Okay. "You live directly across from your parents? Yes, sir, in a mobile home."

Q Okay. Did he tell investigators where he was working?

A He did.

Q Where was that?

A Browns Manufactured Housing.

Q Where was that business located?

A Highway 21.

Q Is that the same road as Boundary?

A It is.

Q Now, did they talk about what Isaiah had done the night before?

A They did.

Q All right. And if I can refer you to Page 4. What did he tell investigators?

A They wondered what kind of car he had, which was a Buick Limited, 1972. Went home, washed

off, changed clothes, ate. I went to a friend's house. Who is the friend? Carolyn Brown.

Q Did they go anywhere?

A Went to the Image.

Q And then --

A Identified as the night club on Highway 21 across from the Huddle House.

Q Okay. And what did they do there?

A Sat down and drank a few beers.

Q And then on the next page, what did they do after going to club Image?

A Went to the Huddle House.

Q And what time were they at the Huddle House?

A About 4, 4:00.

Q In the morning?

A Four or 5:00 in the morning.

Q All right. And then after the Huddle House, what did Isaiah do? This is on Page 6.

A Went to Carolyn's house.

Q Where was Carolyn's house located?

A Off of Boundary Street.

Q All right. And Boundary, we are still talking about Highway 21, right?

A Highway 21, I'm sorry.

Q All right. Boundary, Highway 21?

A Yes, ma'am.

Q Does he end up going back home with Carolyn?

A "Carolyn went to my house."

Q All right. And then he dropped her back off?

A "I took her back home. Talked for a few seconds. We left and I took her back home."

Q Okay. Okay. And then what does he tell investigators about a lady that he sees on the street? This is on Page 8.

A "Saw a lady on the side of the road walking. I stopped to ask her if she wanted a ride. She said yeah. I asked her where she was going and she said -- " he carries on -- "somewhere between Pizza Hut -- between Pizza Hut -- I don't know exactly where, Joy Land or Pizza Hut, somewhere in the area."

Q Okay. And he's talking about where he spotted her?

A Yes.

Q All right. And then did he describe her at all?

A "I would say she was white, slender, you

know, I didn't pay no attention to the way she looked."

Q All right. And then on Page 9 did they talk about a gun?

A They do.

Q What does he say about a gun?

A The detective asked him, "You got a gun or a knife? I keep a gun in the car, but I don't tote no weapon. What kind of gun do you keep in the car? It is an old .32."

Q Okay. Moving on to page ten. Where does he say that he takes her? Does he take her anywhere besides the country store, according to him?

A No. No, he didn't.

Q All right. Does the investigator ask Isaiah about asking her to have sex or any sort of sexual relations?

A "I asked her if she wanted to make some love, you know. I put my hand on her, you know."

Q Where did he put his hand?

A "Like between her legs."

Q All right. On Page 11, did he say that it ever went any further?

A No.

Q Does he say that anyone ever took off any

clothing?

A "I didn't pull them off and she didn't pull them off with me." So, no.

Q Did he put his hand down her pants, according to him?

A No.

Q Did he have sex with her, according to him?

A No, according to him.

Q All right. Did you reach out to Lori when Isaiah was arrested?

A I did.

Q Okay. And was Lori's testimony here today that you saw consistent with what you reviewed in 1983?

A It is.

Q And was it consistent with your conversation with her when Isaiah was arrested in 2016?

A It is.

Q All right. I am going to show you what's been marked as State's Exhibit 19 and ask you what this document is?

A It is a General Sessions indictment form.

Q Does it contain a sentencing sheet as

well? Does it contain a sentencing sheet as well?

A Yes.

Q Okay. And what is it an indictment for?

A Criminal sexual conduct first degree.

Q All right. And --

A And aggravated assault and battery.

Q And whose name is on the indictment?

A Isaiah Gadson, Junior.

Q Is that a certified copy?

A It is.

Q Okay.

MS. SWANSON: The State would move 19 into evidence at this time.

MS. CAMPBELL: No objection.

THE COURT: Motion granted.

(Whereupon, State's Exhibit No(s). 19 marked for identification and received in evidence.)

MS. SWANSON: Thank you. I have nothing further at this time.

THE COURT: Cross examination.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q Officer Bromage, you have a criminal justice college degree; do you not?

A I do.

Q Okay. And you obtained that degree from Park University, right?

A I did.

Q And in fact I was one of your professors at the University?

A You were.

Q Yeah. And so you have had many courses in proper criminal investigation techniques, correct?

A I have.

Q Okay. In the course of those times that you were educated, you took that information and you applied it to how you conducted your investigations, correct?

A That is correct.

Q Okay. You, in this case, came on to the scene in '99; correct?

A That's correct.

Q And essentially reopened the 1980 Susan Weed/David Krulewicz case?

A Essentially, yes, ma'am.

Q Working with you at the time was Chris Sankowski, another officer with the Sheriff's Department; correct?

A That's correct.

Q And Chris Sankowski never handled, personally, any of this evidence, that was all you; right?

A Yes, ma'am.

Q His name doesn't appear on any of this?

A No, ma'am, he didn't handle anything. It was inventoried and --

Q It was all you?

A Yes, ma'am.

Q When you and Chris Sankowski reopened this investigation in 1999, you interviewed Diane Larson; correct?

A Let me get a hold of that report, if you don't mind.

(Pause.)

A Yes, Diane Larson, that is correct.

Q Diane Larson being David's sister, correct?

A Yes.

Q And Diane Larson, in your interview of her, provided you with a suspect; correct? Last --

A I'm reading it.

Q Yes, last sentence.

A As a matter of fact, I was not present for that interview, it doesn't appear. That was Chris

Sankowski. But, yes, in his report it says that the sergeant was advised by witness that there was a rumor that Johnny Weed killed her son and also stated that someone overheard Weed saying that he was going to kill Krulewicz because he was a worthless being and public scum.

Q Thank you for that. And clearly we allowed the solicitor to go into many documents that were not personally yours, so we are going to do the same thing.

A That is fine.

Q It is a unique situation with a case this old.

A I agree.

Q Okay. So, you went into an interview with Susan Weed, you and Chris Sankowski, the two of you together; correct?

A Yes.

Q And during the course of that interview you had the role of interviewing her, asking her questions; correct?

A I took the primary role, that's correct.

Q Perfect. Chris Sankowski, and if you need a moment to review his notes, please take your time, but his role was the observer of Susan Weed,

correct?

A During most of the interview Sankowski observed the victim, yes. He made some observations.

Q So, the observations that he made in his role to observe her is that she was anxious; is that correct?

A That's correct.

Q Had to stop several times, correct?

A Correct.

Q Had to, as he notes, swallow her saliva as she spoke; correct?

A Correct.

Q Okay. You went on during the course of the interview, you and Chris Sankowski, and got some additional information from her or had her retell the story to you; correct?

A Yes.

Q The reason that you were asking the questions and you had Chris Sankowski there is that you had two different roles in the interview?

A Right. And I was more experienced as well. Yes.

Q So you relied on him to observe her, take notes?

A Take notes.

Q Write down what he saw when she was talking about all of this, right?

A That is correct.

Q Okay. And pretty much after you got the information, retelling of the story, you talked with her about, you know, the talk in town that had been -- that her father had shot David; right?

A That's correct.

Q Right. Okay. And you have notated through Chris' report that she had discussed with her mother whether or not her father had been involved, correct?

A Yes.

Q You in 19 -- well, around 2000, right after you opened the cold cases, you were featured on national television in a special called The Paper Route; correct?

A That's correct.

Q That was the case of Bertha Neiman, right?

A Yes, that is the first case that we worked, cold case.

Q And you were featured again in the year 2010 on a case called Lost Trust on national television, correct?

A Yes, that's correct.

Q And the 1988 murder of Bertha Neiman, subject of The Paper Route, right, special?

A That's right.

Q You had developed, in that case, a suspect by the name of Ecker and Frazier; right?

A Ecker and Frazier was the original suspect in the case I believe, yes.

Q And you went to the penitentiary where they were holding him and you participated in shaking down his cell, right?

A The guard shook down his cell and I obtained some evidence from him, that is correct.

Q And on that piece of cardboard that -- during the shake-down found in Eckert Frazier's cell was a piece of cardboard that had Bertha's Neiman's name on it; right?

A It said Bertha '88/'89, that is correct.

Q Bertha, the date and actually the location of where the murder had taken place.

A There was a string of women on there.

Q Yes, it is right there.

A To be specific, there was a string of women on there. Yeah, that is right.

Q Thank you. And you are currently working

on this case with a reporter from the Island Packet, are you not?

A That's correct. She has been following the cold case committee, which again is 12 volunteers, all volunteers. Yes, that's correct.

Q And you brought this person who is working with you when you came to look at the evidence with me and with the prosecutor, correct?

A She arranged through the Solicitor's office to shadow the prosecution in the case, that is correct.

Q Of course there was an objection and she didn't accompany us into the evidence room, correct?

A That's correct. The objection was by you. That's correct.

Q But isn't it true, then, that there's this sort of -- there's an expose or a book or something that is going to be written about the cold cases and about you; correct?

A Not just about me. It is about the cold case committee and what cases we work in Beaufort County. There's a lot of public interest in cold cases.

Q Right. And the solicitor off the bat talked about your discipline with the Sheriff's

Department. We are going to talk about it a little bit more.

A Absolutely.

Q You were placed on probation for a year, removed from your position because, let's just take it step by step; you were interviewing a murder suspect, correct?

A Aaron Young, Senior, that's correct.

Q And in the room with you was a subordinate officer, correct; Evans?

A That is correct. He was guarding him while I talked to him, that's correct.

Q And Evans made a statement to that suspect about him not facing a murder charge, correct?

A He did face a murder charge at that point, yes.

Q Right, at that point.

A Yes.

Q So he's making a statement and you failed to correct him.

A I did.

Q And that was part of your discipline for failing to correct that erroneous statement, correct?

A That's correct.

Q The videotape of that interview really was the linchpin in your probation; it was never turned over, correct?

A It was turned over. The trial had started. We discovered that it had not been reviewed from start to finish. Which I did not have access to that video system, I want to make that clear.

Q So, something to do with the video not fully reviewed, no -- the Solicitor's office didn't know about the extent of it, correct?

A None of us knew until that day, that's correct.

Q And it was your responsibility to make sure that the full extent would have been available to the prosecution and the defense in that case, correct?

A My subordinates were to review it and turn it in. That is part of my responsibility as their manager, that is correct.

Q In 1999 you personally began to handle the evidence in this case, correct?

A Yes.

Q You handled evidence in this case, and specifically the panties and the corduroy pants in

'99?

A That's correct.

Q In 2002?

A That's correct.

Q In 2003?

A That's correct.

Q In 2004?

A That's correct. Wait wait. 2003?

Q 2003.

A I don't know if I did in 2003. 2002, I brought it back up to SLED. 1999, I brought it to SLED. Signed it out of evidence and brought it to SLED myself.

Q I am sorry, in 2004 you handled the evidence when you sent it to G -- Genomics, an outside --

A Biogeographic DNA testing, which we tried on this case. Did not end up working. It was not big enough a sample.

Q So in '99, 2002, 2004, you take these items, the panties and the corduroy pants, and you handle them and you box them up in a FedEx box and you send them off to this company called DNA Genomics; correct?

A I will have to pull that report.

Q Okay. Would you like to review that?

A Sure. Sure.

(Pause.)

A That is correct.

Q And these items wind up in a lab somewhere that is not controlled by the South Carolina Law Enforcement Division, correct?

A That's correct.

Q And you placed those items there, right?

A Yes, I did put them in the envelope and sent them off.

Q Then they come back to you and then you put them back in evidence, right?

A Yes.

Q Again?

A That sounds right, yes.

Q So, multiple times you are transporting, handling and carrying the panties and the pants; correct?

A Those were actually just the cuttings that went up. Yes, I handled the pants and panties initially once when I took them to SLED in 1999.

Q Again. In review of the entire file in this case, one of the documents that you received indicated that in 1973 Isaiah Gadson stood 5 feet

11 inches tall; correct?

A That's correct.

Q And isn't it true that in the investigation of Lori Krug's case, just switching over to the other situation, they -- the investigators took Isiah's revolver?

A They did.

Q And they sent it to SLED in 1983, didn't they?

A They did.

Q And they asked SLED to compare that revolver to any projectile that SLED had from the Susan Weed/David Krulewicz case, correct?

A That's correct.

Q Okay. So, Isaiah Gadson's name appears in a document where David Krulewicz is listed as the deceased, correct?

A That's correct.

Q The findings were that that revolver did not and had not fired those projectiles, correct?

A That's correct.

Q You are telling us, we have no photos of the crime scene?

A Correct.

Q We have no photos of the van, in or out?

A That's correct.
Q From the officers?
A Right.
Q We have no photos of David's autopsy?
A That's correct.
Q We have no x-rays from Beaufort Memorial Hospital, right?
A X-rays of who?
Q David.
A No, we don't have any x-rays.
Q And isn't it -- didn't SLED in that communique with you about the missing sexual assault kit? Was there not some possibility in your notes that they could have sent those items back to the Sheriff's Department?
A I'm trying to find the report here that you are referring to.
Q Okay.
A That was in a conversation that I had with John Barron, who was the original serologist in the case that worked with SLED back then. I located no record to indicate that any microfilm items were returned to the Sheriff's Office depository. And copies of the evidence from SLED would be attached to this report.

Q But there was some sort of back and forth between you and officer, for lack of a better term, Barron, about actually whether or not they had actually come back or not?

A Correct.

Q And an inquiry was made?

A Correct.

Q You have read this file, you have seen the autopsy reports, you know that there's a report from the coroner's inquest from Detective Houston that there were spent cartridges somewhere in evidence. Do you believe that to be true or not?

A Can I have a look at that report that you are referring to, please.

Q From the autopsy?

A This report is 200 some odd pages, so when you refer to something back in 1980, if you can show me what you are talking about that would be very helpful.

Q I will be happy to. I mean, I guess my question is, do you think that there were projectiles that they lost as well?

A All indications was this was a revolver out there. I was not aware of shell casings being found at the crime scene. Shell casing meaning the

brass that is expanded from an automatic pistol or put into a revolver and emptied. I see nothing in this report to refer to that. Coroner Pinckney, I can't testify for him.

Q Well, the coroner's inquest is the detective's sworn testimony?

A Okay. Again, if I can look at that and see.

Q I will have to come back to that, I think, unless I can pull it up, Officer Bromage. Let me see. Here it is. If you could start with the detective's testimony here and just conclude there.

A "I did recover two spent cartridges and two spent projectiles in the side of the van." Okay.

Q Okay. So, a cartridge is not the same thing as a projectile, right?

A That's correct.

Q Okay. Cartridges --

A Now, whose testimony was that, ma'am, I'm sorry? I was just reading partial.

Q That is from Detective Houston at the coroner's inquest about David's death. It is on -- it is actually on Page 508 of the discovery.

A Okay.

Q Now, again, through your education and training, spent cartridges are particularly important in a criminal investigation?

A We call them shell casings, yes, or spent cartridges, the brass that accompanies the projectile, yes.

Q Because if you were to have a weapon you could compare that weapon, the marks that it makes on the casing, right?

A It is extremely helpful. I don't see where there were cartridges or shell casings or whatever you are referring to them as in the Sheriff's Office report. That was the coroner's inquest that you handed to me.

Q Yes, it is in the -- it is in the materials that you reviewed and provided to the defense?

A Right, right, right.

Q Okay. So --

A I don't see where they are collected from the crime scene though.

Q Okay. Well, here we go. You have testified for the solicitor about the SLED reports from the Krug case on direct examination, correct?

A Yes.

Q The SLED report back in 1980 from Susan Weed, if you will just share with the jury, Item No. 10 is what?

A "Plastic bag containing comb and pubic hairs from Susan Weed."

Q And the combing, the results, number ten is?

A "One Caucasian pubic hair found consistent with the pubic hair sample submitted by Susan Weed."

Q And there's no African-American pubic hair found on the sample, correct?

MS. SWANSON: Your Honor, I'm going to object to the testifying of test results when I have the chemist testifying next. And Ms. Campbell can certainly go into the person that actually generated that report. I think he would be the proper witness to do that.

MS. CAMPBELL: I'll be happy to do that. I just couldn't be sure that he would be called, and he's testified to so much hearsay anyway. I'll be happy to put this aside and have that individual if the State affirms that they are calling them. Thank you.

MS. SWANSON: He is in the courtroom right now.

BY MS. CAMPBELL:

Q You -- there's a report in the Krug case that you reviewed, which is on Page 920 of the discovery in your case that you provided to the defense that indicates that the findings in that case were that there was no evidence of trauma when she was examined by a physician, correct?

A Right, that is correct.

Q Additionally -- I may have to take a moment, Your Honor. There was a pillowcase that was placed in evidence in the 1980 case with Susan and David, correct?

A I'm familiar with it, yes.

Q You are familiar with the pillowcase?

A Yes, I am.

Q And you are familiar with the report that indicates the possibility of blood being on the report, correct? I mean on the pillowcase, correct?

A Was it described in an incident report? I believe that it was a few days later they found a pillowcase on the side of the road; is that what you are talking about?

Q It was found and it was turned into the Sheriff's Department with suspected blood stains on it. And it is listed that way on the evidence log,

Officer Bromage.

A Yes, ma'am.

Q Okay. That pillowcase was never submitted to SLED by any officer in this case, correct?

A I don't see where it's relevant to this case.

Q Oh?

A I would be glad to send that up, but I just don't see where there is a pillowcase involved in this case.

Q I understand that you think that it's not relevant, but it is a piece of evidence in this case that law enforcement has chosen since 1980 to just not even touch, correct?

A That's correct.

Q Okay. And listed in your reports, the original officer taking it in, evidence log, suspected blood, correct, near the crime scene; correct?

A Which report are you referring to? Because I would rather reference a report than go off memory.

Q Okay. On January 9th, just a few days after this was reported, the pillowcase with suspected blood on it was turned into the Sheriff's

Department, correct? And here is your report.

A The complainant reported he had been walking his dog in front of his house --

Q I'm not asking you to read it, Mr. Bromage.

A -- and a white pillowcase.

MS. CAMPBELL: I object. I didn't ask him to read it.

THE COURT: Hold on. She's trying to ask you a question.

THE WITNESS: Sorry, sir.

BY MS. CAMPBELL:

Q You were asking for a case. Here it is. A pillowcase was turned in with suspected blood on it, correct?

A It is listed in evidence there that the complainant thought that it might be dried blood on there, yes.

Q Yes, that's what I said. Pillowcase with suspected blood on it, correct?

A Correct.

Q Thank you.

MS. CAMPBELL: Your Honor, I need to locate and maybe the solicitor can help, evidence piece 85599. It may be in the box

over here.

MS. SWANSON: Can you tell me what it is?

MS. CAMPBELL: Yes, and maybe --

MS. SWANSON: Ms. Campbell, there's not an 85599. If you can give me the BCSO number. That is a property number. The evidence number is different.

Q State's Exhibit 10, Officer Bromage, is listed as the victim's panties; correct?

A That's correct.

Q And this bag is open, correct?

A That's correct.

Q It's not sealed by SLED?

A That's correct.

Q No sealing of any kind for evidence, correct?

A No, not that I --

Q And I can open this bag and get into it. It is not sealed, correct?

A That's correct.

Q And this is the bag that contains, as listed, the victim's panties; correct?

A That's correct.

Q From which cuttings were taken, correct?

A That's correct.

Q And this has never been, to the looks of it, sealed in any way with evidence tape; correct?

A By its appearance, by its appearance.

Q In fact, the front of the bag appears to have a hole in it, correct?

A It does now.

Q Yes?

A Yes, it has a hole in it. Yes, it does.

Q Okay. Are you suggesting that I pushed my finger through this just now?

A No, not at all, not at all. No.

Q "It does now." Now, are you going to tell this jury that there's no possible way for you to look at cases surrounding 1980, as you are investigating this in '99, and make a determination as to whether or not you can link up any similar cases like criminal sexual conduct cases from around the time of this case; is that what you are going to tell us?

A One more time with that, ma'am?

Q Are you going to tell this jury that there's no way for you to look back, 1980 case, look around that case, see if there's any other cases in those years that you might look into. No way for you to do that?

A There is a way for me to do that. One, to speak to the old detectives which worked here, which I did. Two, to look through microfilm, every page of microfilm, which is located, I believe, off site now where they hold these records from the 1980s. I am unaware of any similar crimes from that era other than the 1983 case. That is in talking to the detectives who are out -- who are deceased now, by the way.

Q Okay.

A Who actually worked on this case, yes.

Q Okay. So, the only similar crime that you can locate is the 1983 case, correct?

A That's correct.

Q And the items in that case, the evidence items in that case, they would be stored, just like the items in the 1980 case, in what we call the "forever shelf" in the evidence custodian's room; correct?

A They would not be stored there. This case was adjudicated in 1983, so that evidence would be destroyed as the normal course of business.

Q And do you know that that is, in fact, what occurred?

A I don't have any record of where that

evidence went from 1983, that's correct.

Q Okay. And the records from that would be where?

A Records in our evidence repository.

Q Okay. And who would handle that?

A Now would be Jackie Lagree, Lieutenant Lagree. Prior to that is would be John Dill, who retired from the Sheriff's Office. And prior to that, I'm not quite sure.

Q In all of your training and investigations over the years with the Sheriff's Department, one of the things that you might look at in this case is the shattered windows in the van. You might want to know a little bit more about that, right?

A If I had the van, I would love to know more about it.

Q You might want to know which side, inside or out, how the glass fell; correct?

A I would yes, oh, yeah, sure.

Q Because, in your training and what you have learned, that is going to give you some information about the direction of the shot coming from the inside of the van or the outside of the van; right?

A It would for sure. If the window on the

right-hand side of the van in this case was not shattered, sure, sure it would.

Q Right. And tempered glass, safety glass, in automobiles, the purpose of that is to keep us from getting killed with shards of glass if something should happen and we should have a crash, correct?

A Yes, that's correct.

Q Right. So, when you are looking at glass, and again you have learned that if you shoot through the tempered glass it is going to leave a hole, correct? And a hole is going to spider vein out. It is not meant to shatter; isn't that true?

A You are talking about five shots to the right-hand side of the van, I think that the window is going to shatter. I don't know, I wasn't there to analyze that.

MS. SWANSON: Your Honor, I don't think that there's any basis for Captain Bromage to give that opinion.

MS. CAMPBELL: There is a basis. He is 28 years law enforcement. He's got a college degree in criminal justice. He's taken classes on criminalistics. He has been trained and studied in this very thing, crime scene

analysis. I'm not qualifying him as an expert, but I do think that I can ask him about the windows and how the glass should or shouldn't react to being shot through, and what he would expect to find.

THE COURT: I think that you are going to need to lay a better basis before you ask that question.

BY MS. CAMPBELL:

Q Have you ever had training and courses in criminalistics?

A Yes, forensic science, sure I have, of course.

Q And part of that training was firearms, ballistics training; correct?

A Briefly enough to know my way around it, right.

Q Right. Part of that training in criminalistics and forensics dealt with the -- how glass reacts to being shot; correct?

A I haven't received any formal training in that, other than what we are talking about a burglary, for example, which side the glass broke in on, I can kind of tell you a little bit about that. But I can't get into how a glass is going to react

when a projectile hits it or not.

Q So, therefore, if you are not trained in that area, this is something that you would need an expert to analyze; correct?

A I would rely on an expert, yes. I would, certainly.

Q And in this case, because there are no photographs from the crime scene, there is no way that an expert can be obtained to provide an opinion on what happened to those windows; correct?

A That's correct.

Q Now, you have the plea sheet from the 1983 case, correct?

A That's correct.

Q You identified it.

A I identified it.

Q The solicitor put it in evidence.

A That's correct.

Q Originally Isaiah had been charged with criminal sexual conduct, correct?

A That's correct.

Q And, you know, that is going to prison, right, 30 years going to prison; right?

A That's right.

Q And this man decided to plead no contest

to assault and battery high and aggravated, correct?

A That's correct.

Q All right. He received a three-year sentence and probation, right?

A I didn't --

Q He didn't spend the rest of his life in prison, correct?

A I don't know what went on at the plea or anything, so . . .

Q According to the documents that you entered --

A Clearly.

Q David Kessler (phonetic), you remember David?

A He died in his office, as a matter of fact, unfortunately. He was a chief deputy when I first got there.

Q He was a cop's cop, right?

A He was a jovial guy, yeah.

Q And he was the one that actually did the interview of Isaiah that you and the solicitor were, you know, cherry-picking through; right?

A Right.

Q He did that?

A Right.

Q He is colorful in his language, right?

A I would say so, yes.

Q Yes. And so, so Kessler and the solicitor at the time, Randolph Murdaugh, they made the decision to not go to trial on Lori Krug's story and he pled to that indictment, to ABHAN; correct?

A I wouldn't be involved in making a decision as a police officer. I can't say that. It seems like Buster Murdaugh, the solicitor, the former solicitor in the '80s, agreed to this deal, that is correct. I can't tell you why.

MS. CAMPBELL: That may be all I have, Your Honor. Let me check with cocounsel and I will let you know.

THE COURT: All right.

(Pause.)

MS. CAMPBELL: One more thing, Your Honor.

BY MS. CAMPBELL:

Q I'll ask you to hold that bag for me and -- State's Exhibit 9, which is the corduroy pants; correct?

A It says, Corduroy pants. I don't see an exhibit number on it, I am sorry. Is it on the bag right there?

Q Yes.

A Yes.

Q I'll ask you to take the corduroy pants out of the bag since it is not sealed.

A Gloves, please.

(Pause.)

BY MS. CAMPBELL:

Q Take those out and lay it across the desk here. The only cuttings taken from the corduroy pants are from the crotch area, correct?

A Stains are identified, but those are the only cuttings, that is correct.

Q No other cuttings? Is that it?

A Correct.

Q Okay.

MS. CAMPBELL: Thank. That is all that I have.

MS. SWANSON: Thank you, just briefly.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Were you ever comfortable in eliminating Johnny Weed as a suspect?

A I was.

Q And when was that?

A When we got the DNA results back in 2003 and it was concluded that David Krulewicz's DNA

didn't match the semen found in Susan Weed's underwear and corduroy pants, it was concluded that that theory -- he was not a suspect at that point. And we moved on. I informed the victim of it and we moved on to -- that was a rumor for many years, so I just had to put that to rest.

Q In 2004 when you sent the cuttings to Print Genomics, you were trying to -- you were trying to figure out where the person may have come from, like, whether or not they were --

A Basically it is Ancestry.com. I was trying to figure out ethnicity, whether the person was Sub-Saharan African. We have done it in other cases before, in these cold cases because you want to put a face to the suspect, what he looks like. Yes, that's correct, and we were not able to do that in this case.

Q Okay. So, when you sent these cuttings in 2004, was that post all forensic testing that we have heard about today?

A Yes, it was.

Q Okay. So it was after all of the State testing had been done?

A That's correct.

Q Okay. Those samples weren't in the mail

prior to any of the testing or DNA?

A They went from our evidence right to SLED. The cuttings came back, they were sent to DNAPrint Genomics in Florida. I spoke with the technical leader there and he said I will give it a try and see if I can help. He was able to develop a DNA profile, but he was not able to give me a composite of the suspect, in other words, or what he might look like.

Q Okay. Ms. Campbell asked you about the .32 caliber that was recovered in Isaiah Gadson's car in 1983?

A That's correct.

Q So, that gun was sent up to SLED?

A Yes.

Q And compared with the projectiles from this case, five of them; right?

A That's correct.

Q Were other guns sent up to SLED to be compared with those projectiles?

A In speaking with the examiner at SLED, David Caldwell who I have known for almost 20 years, he was a profiler as well, but he was a firearms examiner back in 1983. That was item number 22, or pistol number 22, that had been sent to SLED from

Beaufort County to be compared to these projectiles. So, any gun that was recovered that was a .32 caliber was sent to SLED and none matched, so there was not an identification of any firearm.

Q All right. And was that routine in unsolved murder cases?

A It still is. It still is, yes, ma'am.

Q Okay. And was a murder weapon ever recovered in this case?

A No, ma'am.

Q Is that uncommon?

A No, not at all.

Q Any evidence of any statements regarding a pillow case in the 1980 case file, besides the person that found one on the side of the road walking their dog?

A That is all that there is.

MS. SWANSON: That is all that I have.

MS. CAMPBELL: Briefly.

RE-CROSS EXAMINATION

BY MS. CAMPBELL:

Q Just to be clear, the solicitor asked you when was Johnny Weed eliminated as a suspect, correct?

A That's correct.

Q That's correct. So, naturally at some point he was a suspect; correct? If he had to be eliminated, he was a suspect; correct?

A His name came up several times in the investigation through the years. We felt the need to eliminate him. Put that rumor to bed and move on with the investigation, that's correct.

Q Thank you, that is correct. Also, this Genomics this Ancestry.com where you sent all of this stuff to in 2004, you said that you needed to put a face on the suspect?

A No, we wanted to figure out exactly what they could glean from this DNA. We were doing our job and trying to get all of the information that we could, yes, absolutely.

Q Didn't you already have a face of the suspect from Susan Weed, in the sketch, the composite sketch?

A We have a face now.

Q To answer my question.

A She stated that he was an African-American male subject. Yes, we did have a description of the subject.

Q Not only did you have a description of the subject, which was 5'5" to 5'7", you had a composite

sketch in the file that was worked off of for many years; correct?

A For the first couple of years, that's correct.

Q So, there was a face on the suspect; right?

A There was, yes, ma'am.

Q Thank you. Heritage, Genomics, Ancestry.com, putting a face on the suspect?

A DNAPrint Genomics to see what they can glean from the DNA to assist in the investigation.

Q Right. And that is to determine whether or not someone is of Asian, or African-American, or Caucasian descendants; correct?

A That's correct.

Q Okay.

MS. CAMPBELL: That is all that I have.

THE COURT: Thank you, sir, you may step down.

MS. SWANSON: May we approach?

THE COURT: Sure.

(Off-the-record discussion held.)

THE COURT: Ladies and gentlemen, we are going to take a lunch break. Try to be back at 10 until 2:00 and we will begin taking

JOHN BARRON

was called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. SWANSON:

Q If you can just state your name for the record please.

A John Barron. B-A-R-R-O-N.

Q Okay. Thank you. And, Mr. Barron, where do you work? I'm gonna move this back so---

A Presently at Richland County Sheriff's Department.

Q Okay. And in what department or what division of Richland County Sheriff's Department?

A In the Forensic Science Lab. Particularly in the DNA Serology Section.

Q All right. And where did you work prior to Richland County Sheriff's Department?

A South Carolina Law Enforcement Division otherwise known as SLED.

Q All right. How long did you work for SLED?

A Are you gonna make me do that math?

Q Okay.

A Since 1975.

Q Okay. So, in 1970---

A Until 2004.

Q Okay. Perfect. That's fine. Can you tell us what sort of education and training you have in your field?

A I, I have a Bachelor of Science Degree in Microbiology from Clemson University. I was hired as -- by SLED as a chemist. Although, most everybody there were chemistry majors, I was more focused in the biological field, which is the reason why I went into the serology evidence type of analysis versus, say, analyzing chemical substances for drugs, et cetera.

Q Okay. And so what is the study of serology? Does that involve bodily fluids?

A Yes, as far as forensics is concerned, as far as law enforcement is concerned, it's involved the -- with the identifying of the body fluid, and, if possible, associate it, as far as possible, with an individual.

Q And do you conduct any DNA analysis?

A I do now.

Q Okay. Did you for SLED?

A Yes.

Q Okay. And then how long have you been

analyzing DNA?

A Since the year 2000.

Q All right. And when did you go over to the Sheriff's Department?

A 2004.

Q And you've been doing DNA analysis for them since then?

A I have.

Q All right. And have you ever testified in court as an expert in serology?

A Yes.

Q About how many times?

A Several hundred.

Q Okay. And what about DNA analysis?

A About 65 times.

Q Okay. At this time, the State would offer John Barron as an expert in both serology and DNA analysis.

MS. CAMPBELL: No objection.

THE COURT: That motion's granted.

BY MS. SWANSON

Q All right. So, were you working for SLED in the 1980s?

A I was.

Q Okay. Can you talk a little bit about the

practice of receiving, storing, and returning items at that time?

A Yes, ma'am.

Q Okay.

A We had a, a very small laboratory that had a office area where secretaries were -- greeted the officers that came in with evidence. They would receive the forms, make sure the forms were filled out correctly, assign the case a lab number, and then they would call the person involved to the front to directly receive the evidence from the officer. And then, either that scientist would either begin his analysis or store it in a personal locker for which he had -- only he had the key to, which was stored in a locker room, which only the chemists or the analysts working at SLED at the time had access to. So, there was very strict control of the evidence.

Q Okay.

A And then, returning it, they -- the officer from -- an officer, usually somebody involved with evidence custodian at a law enforcement agency, would show up with new evidence, and then they would take back with them any old evidence that had been analyzed, and was ready to be

returned. And they would sign for that evidence.

Q Okay. And did you guys keep track of, of everyone who touched the evidence or was -- at this time, was it just the person that was analyzing it because of your lockers?

A Right. We each had a, a locker in which we stored our evidence. And so each analyst then would have his own personal locker, and if, in some case, you know, more than one type of analysis was involved, it would be transferred from one chemist to the other. But, but they would store it in their own personal locker.

Q Okay. And what sort of technology was available at the time in the 1980s? Was DNA available?

A It was not. It was a vision.

Q Okay. And so what were the sorts of tests that you would primarily do on evidence, as far as serology goes?

A Well, I began training in serology by attending the Federal Bureau of Investigation for a two week training case in basic serology. And there I was taught how to identify blood, human blood, how to identify -- do presumptive tests for semen in sexual assault cases. And I was also taught to do

testing on saliva, and I was taught to do ABO blood grouping. In other words, determine from a stain what your ABO blood group was, and that was pretty much the extent of my initial training in serology.

Later I was able to study under some professors at the University of California doing research on further methods of -- better methods of identifying body fluids, and further means of classifying body fluids to narrow down the source. But it wasn't until the late 1990s that DNA came along and gave me the opportunity to actually identify body fluids to an individual.

Q So, would you guys do blood type tests in the '80s?

A Yes.

Q Does anyone do blood type tests now?

A No. What we do now is we do screen for the body fluid. So, we want to know if there's blood there. We want to know if there's semen there. And, a lot of times, things may look like blood or semen, but they may not really be. So, first of all, we want to make sure that that's what it is, and then we go directly to DNA analysis.

Q And why is that?

A Because DNA is so specific and, and so

completely identifiable. There's no sense in doing any intermediator type of identification.

Q Okay. So, it's a better way to identify someone?

A It's very much exact science, yes.

Q Okay. It's unique to an individual? Is it --?

A It is. If you, if you have enough of the DNA present, then the statistical analysis pretty much confirms with the extreme rarity to the point where it's within reasonable certainty that it, it is belonging to an individual.

Q Okay. And, in 1980, did you have the opportunity to conduct some testing on items from a case involving the victims of David Krulewicz and Susan Weed?

A Yes, I did.

Q All right. And do you have your report?

A Yes, ma'am.

Q Okay. And that's Laboratory Number -- File Number L80-0214?

A Correct.

Q Okay.

A That is the laboratory number that it was given when, when it came through the door.

Q All right. Can you tell us about the findings on what is labeled as 11B and 11C, panties and blue pants?

A Well, the panties and the blue pants were examined. They are spread out on an exam table, and I visually looked for stains that, in a sexual assault case, may be determined to be seminal fluid. And, if I find any, then I do some biochemical tests to see whether or not seminal fluid is indicated on that stain.

And I, basically, reported it to -- those findings. And I would attempt to identify an ABO blood type from seminal fluid because you could do that on about 80 percent of the population. And then I would have to have known either blood samples or saliva samples from individuals to make that comparison as to whether or not the ABO blood typing was consistent or not or the same.

And, for your information, there are four types of ABO blood groups. Type A, Type B, Type O, and Type AB. Most of you may be familiar with that. It becomes very important when you donate your blood.

Q Okay. What did you find on -- well, actually let me do this. Let me ask you if you

examined these two items, State's 9 and 10, and I'm gonna hand you some gloves. If you can tell me -- these are -- these are two of the items that you examined, what they are, and how you know that you examined those items.

A Do you mind if I stand?

Q No.

A Okay. All right. These are the blue corduroy pants that have been mentioned earlier. I know that I tested these pants because my initials were on the inside of, of the, the pants, which is my practice in the laboratory for later identification.

Q Okay. I'll put that up.

MS. SWANSON: At this time, Your Honor, State would move 9 into evidence.

MS. CAMPBELL: No objection.

THE COURT: Motion's granted.

(Whereupon, State's Exhibit No(s). 9 marked for identification and received in evidence.)

A And, again, this is a pair of pink ladies underwear or panties. I can tell that I handled these items previously, and made some cuttings, again, because my initials are present inside the

underwear.

Q Okay. At this time, the State would move Exhibit 10 into evidence.

THE COURT: Without objection, motion granted.

(Whereupon, State's Exhibit No(s). 10 marked for identification and received in evidence.)

BY MS. SWANSON:

Q What did you find on those pants and the panties?

A Well, there were -- as far as clothing were concerned, they were five chemical tests in the 1980s that were done. The main one was called acid phosphatase. It is an enzyme that is found in human tissue throughout the body, but, in seminal fluid, there's a very, very high concentration of it. And because of the high concentration of it, then it indicates, indicates, excuse me, seminal fluid as opposed to some other body fluid like blood has acid phosphatases in it. But it's a very, very small amount compared to the semen.

Q And so did you find characteristics of semen on those items --

A Right.

Q --In 1980?

A Yes. Because of the high level of acid phosphatase, my report stated that there were chemical substances characteristic of semen present.

Q All right. And did you also, in your report, did you also note that you had examined some swabs taken from Susan Weed?

A Yes. Some vaginal swabs you're talking about?

Q Correct.

A Yes. Again, they contained high levels of acid phosphatase, which is characteristic of seminal fluid.

Q Okay. And what was the Blood Factor H that you note in your report?

A Okay. Blood Factor H is a biochemical precursor to all blood groups, Blood Group A, Blood Group B, Blood Group AB. And Blood Group O is called O because it in -- does not have A or B. And what it does have is this chemical precursor called Substance H. And why scientist chose to call it that, I don't know, but that's what it is. So, in the absence of A and B, all you have is H, then you're Blood Group O if that makes sense.

All right. So, by finding only Blood

Factor H, then what that tells me is that the individual that donated the semen, along with probably the vaginal fluid that may be mixed in from the panties of these garments, was probably also a Blood Group O individual.

Q Okay. And do you recall having a conversation with Captain Bromage about evidence that may have been destroyed in the microfilming at SLED?

A I had several conversations --

Q Okay.

A --About the cold cases --

Q Okay.

A --About what happens to evidence. Generally speaking, the large piece of evidence was returned to the agency. The cutting, that was removed. Initially, if it wasn't all consumed, it was put into like a letter, a letter envelope and labeled, and put back into a case file. And that case file, my understanding, was, instead of returning those envelopes back to the law enforcement agency, that, sometimes, whoever was involved in microfilming, which was beyond my time, discarded those envelopes.

I do have pictures of them. They did

take pictures of them before they discarded them, but the cuttings that were in them probably were destroyed. And then the, the picture of the envelope itself, as well as the rest of the paperwork in the case file, was microfilmed for later recovery.

Q So, a missing rape kit that remained at SLED would not be unique to this cold case?

A Well, you'd have to define a rape kit.

Q Vile, pubic hair, the swabs taken from Susan Weed. Evidence that SLED told Captain Bromage had not been preserved in the microfilming.

A Right. So, if these -- what was left of these swabs was still -- would have been put in those envelopes I mentioned. The pubic hair would of been put into those envelopes. In 1980, there was no nice red and white box that you see today that, that we use in law enforcement for sexual assault kits. There was no sexual assault kit per se in 1980. There was evidence from sexual assault cases that were collected at the hospital, and put in whatever devices they could to store them, and then transport them to law enforcement.

Q All right. And, at the time, was it unknown how useful this information could be?

A What information?

Q That you could get from these sexual assault exams.

A Well, we knew at the time what we could get, at present technology. But, like I said, I was aware of future technology that was coming in the future as far as being able to do more than ABO blood grouping. Although, DNA analysis, in 1980, was a theory, it was a long way from being developed, and put into practice.

Q Okay. Did you also have the opportunity to test items, in 1983, involving a case against Isaiah Gadson and the victim, Lori Ann Krug?

A Yes.

Q All right. And did you find any semen on clothing belonging to her?

A Yes, I did. Again, the acid phosphatase biochemical test was strongly positive on some pantihose, and, and the vaginal swab, and I believe a cutting from a car seat. And, in that -- in this case, I also received a -- what is called a vaginal smear, and what the nurse does at the hospital, during the examination, is take a swab, a vaginal swab, and smear it onto a slide. And there I could stain the slide, and digitally examine it, and was

able to find the sperm cell itself to confirm that it was semen.

Q Okay. So, that was a confirmatory test rather than just a presumptive test?

A Right, the identification of the sperm cell itself is confirmatory.

Q Okay. And did you find anything between those two cases that was consistent?

A You talking about the 2000 —

Q I'm sorry. Between the 1980 findings and the 1983, was there anything consistent in, in blood typing or blood factor?

A The, the, the attempt to do blood typing on the '83 case was inconclusive as far as my notes.

Q Okay.

A In doing blood grouping on body fluids, it was known that sometimes there could be substances, unknown to us but we knew they existed, that were not part of the stain itself that could cause a false positive reaction, or either the stain itself had some sort of deterioration to it that caused the results to be inconclusive. So, if we were not certain, we just reported it as we attempted to type the blood, but it was inconclusive.

Q Okay. And since doing these chemical

tests back in the '80s at SLED, you've worked on a lot of DNA cases, right?

A That's correct.

Q And come up with some match statistics?

A Yes.

Q And can you just explain what a match statistic is?

A It's a probability. You know, we know that an independent action has a certain probability. Like if you were to roll a dice and just one through six, they'll be a one in six chance of getting a one.

All right. So, in DNA, we know that certain genotypes or types of DNA from individuals at certain locations have a certain probability of being there based upon population studies. And so, since these probabilities are independent of each other, they're not dependent on each other, they can statistically -- the probabilities can be multiplied together. So, if one genotype is 10 percent of the population, and then you go to another location on the DNA molecule, and it's 20 percent of the population, then you have 20 percent of 10 percent, which is a much smaller percentage.

And since we do so many different

independent loci, all those percentages can be multiplied together, and that gives you a probability of a, a very large number, a one in -- one -- or one quadrillion, which is like ten to the 15th power. And, on the planet, we have about, going on 8 billion people, which is a lot less -- a lot smaller number. So, statistically speaking then, the probability of this D -- DNA sequence of genotypes occurring again are so remote that it would be unreasonable to think that it could happen again. So, therefore, that's unique to that individual.

Q Okay. So, if I, if I was to give you a couple of match statistics, would you be able to tell me if they are strong matches?

A Sure.

Q Okay. One in 2.1 trillion?

A Yes. Again, 2.1 trillion is, is a much larger number then 8 billion.

Q All right. And you mentioned quadrillion, but one in 3.7 quadrillion?

A Yes. So, when you get into trillions and quadrillions and higher, it becomes a unique situation. It's a statistical uniqueness that would tell me that it would not occur again, and,

therefore, that DNA belongs to that person.

Q Okay. And even if somebody was like that person's brother, correct?

A Right. Even brothers are gonna be different because their parents have differences that they are contributing together, and it would be statistically impossible for brothers to have identical DNA unless they came from the identical egg and sperm, which would be identical twins.

Q Okay. Thank you. I have nothing further.

THE COURT: Cross-examination.

CROSS EXAMINATION

BY MS. CAMPBELL:

Q The -- good afternoon.

A Good afternoon.

Q The questions -- the series of questions that the solicitor just went over with you, you've gone over those questions with her before today, haven't you?

A Actually no.

Q Okay. You, you're -- you were not---

A Those are common questions I get from prosecutors every time.

Q Your -- you've had no conversations with the solicitor about your testimony today?

A I've had some conversations, but we did not go step-by-step over ever single one---

Q That---

A ---of those questions.

Q The general gist of your testimony, you've discussed with the solicitor?

A Yes, I had to explain to her about ABO blood grouping because she's young enough not to remember those days.

Q That's right. So, right. So, when I saw it, I said, huh, H Factor. And, and so if I've heard you correctly, the H Factor tells you that the source of that fluid is, is not a person who has A type blood, correct?

A Right. The, the H Factor, in absence of, of the A and the B, lets you know it's an O. And the O simply means, simply means the absence of A and B. There is no blood factor O. It's just the absence of A and B, which is revealed in the blood substance H.

Q So, part of what you do, and part of what you were helping the solicitor with, is you make conclusions as an expert, correct? So---

A Yeah, based upon my scientific testing, I can make some conclusions as to what the answer that

is being asked.

Q And if I hear what you're saying correctly, you could conclude that, if you found, in 1980, that the Factor H was present --

A Yeah.

Q -- that the fluid could not come from a person with type A blood, correct?

A No, my conclusion would be that that stain was contributed by a person who's type O.

Q Okay. Well, that's kind of like the second part of my questions. So, it's just O. It can't be A. It can't be B.

A Correct.

Q Okay. Not a trick question. Is -- so, it's a two-part question. It's definitely not someone with A blood type, and definitely not someone with B blood type?

A Or AB blood type.

Q I was getting ready to say, or a third option, or AB, right?

A Right.

Q Perfect. Because those are our categories, A?

A Four categories.

Q B?

A Right.
Q AB and O?
A Yes.
Q Okay.
A And O just means the absence of A and B, and this substance called H---
Q Uh-huh. (Affirmative).
A ---is what's left.
Q Got it. Thank you. You have both your reports in front of you?
A Yes.
Q Yeah. Okay. When you provided your report in this case, in the 1980 case, you, you have a worksheet --
A Right.
Q -- called, called SLED serology, serology worksheet semen analysis. Is that fair to---
A Yes.
Q ---call it that?
A I have a copy of it.
Q Perfect. And you have several columns. You list the article that you're examining?
A Yes.
Q Then you name it, you give it a number, and then you name it, correct?

A I describe it, yes.

Q Yeah. And you have a description of any stain that you visually see, correct?

A Yes, I -- what I do is I note the fact that there's a stain present, and maybe the location of it. In this case, it would of been the criteria of the corduroy pants and the panties.

Q All right. And then the next column is called -- it, it, it actually says Florence.

A Yeah.

Q What does that mean?

A That's in the -- when I trained at the FBI Academy, they taught us three methods -- biochemical methods of assuming the presence of semen, and this Florence microcrystalline test was one of them. And so we could choose to use that test if we wanted to, and use it as a presumptive test for semen. But, over time the -- and the acid phosphatase test was also taught.

So, we just found, in the laboratory, that the acid phosphatase test was easier, it was just as informative, and the Florence microcrystalline test, which involves some, some microscope slides, and causing a reaction underneath the slide, and looking at it through a microscope

was a much more tedious and difficult test. It didn't give us any, any more information then the acid phosphatase test. So, we had a tendency to not do that or it's kind of a duplicative thing. But you were given the option. So, it was on the form.

Q And so, in this case, your testimony is that you chose to do the acid phosphatase instead of the Florence?

A Correct.

Q Correct?

A That's correct.

Q Great. And the next line, of course, is the acid phosphatase---

A Right.

Q ---column?

A That's correct.

Q And you have a further column after that, and that column is sperm?

A Sperm.

Q Okay.

A Yes.

Q And, in the 1980 case, L80-0214---

A Right.

Q ---there -- you have not listed anything in that column?

A No.

Q Correct?

A That column is reserved in -- was reserved for the vaginal smear, because we did look for sperm under the microscope when we had a vaginal smear on a slide that was provided by the hospital. In this particular case, no vaginal smear was submitted. But the other, 1983 case, it was submitted. So, therefore, you used the sperm column.

Q And if the doctor who performed the extraction of the evidence created a slide with a vaginal smear --

A Uh-huh. (Affirmative).

Q -- and you did not receive that slide, you can't analyze what you don't have, correct?

A Well, that would be obvious, yes.

Q Yes. Thank you. And then, again, coming to, to the report, not your worksheet.

A Yes, ma'am.

Q On this report, at number ten -- well, let's start with number nine. Number nine was the plastic bag containing the glass vial with eight swabs taken from Susan Weed, correct?

A Right. Evidently they put nine vaginal swabs in there. A little overkill. But two would

of been sufficient.

Q And, and none of those are around today? That -- that's what's been lost, correct?

A I guess it has.

Q Or destroyed?

A I would assume.

Q All the conversations you had with Detective Bromage, the -- we don't have number nine?

A Okay. I don't know what happened to number nine.

Q You don't know.

A But I didn't throw it away.

Q I -- no, I'm not saying you did.

A Okay.

Q Okay. I'm not saying you did. Number ten is the plastic bag containing the comb, and any pubic hairs removed from Susan Weed from the combing, correct?

A Correct. Now, it is the practice, in a sexual assault exam, to comb the pubic area for foreign hair present. Occasionally -- I, I have also done microscopic hair comparisons since the '80s as well, and I've examined a lot of, of sexual assault cases where there are pubic combings

collected. And I would guess, roughly about 5 percent of the time, there would be an interchange of pubic hair where the assailant's pubic hair may have been left among the pubic hair of the victim. So, it would be combed out, and any hair that fell out would be collected for examination. And, most of the time, that hair fell out was simply some of the victim's own pubic hair.

But -- so, I would look at the known hair of the victim, and then I would look at any loose hair from the combings, and determine whether or not it was different from the victim. If it was different from the victim, then I would want to see a known sample from any potential suspects in the case. Sometimes it was very obviously different as say she was a blond and it was dark brown hair, that would be obviously different. Or if it's from a White person versus an African-American person, it would be obviously different. And so, then, I would, in any case, regardless, I would look at the known hair, and compare it to the hair that was loose in the pubic hair combing envelope.

Q So, you've testified many times in court, correct? Hundreds of times?

A Yes, ma'am.

Q Yes. And you work for the State of South Carolina, right?

A Right. I even testified in Beaufort before this courthouse was built.

Q Right. Yes, and I practiced law in that old courthouse. So, I know what you're talking about.

A Exactly.

Q So, you, you work for the government, right?

A I do.

Q Yes. And this 5 percent that you're talking about---

A Estimate. That's an estimate.

Q Tell, tell us what, what studies you've conducted, scientific studies, in order for you to get a broad swab of cases, and analyze them to -- what's the name of that study? How did you conduct it to come up with your 5 percent?

A I said that's an approximation based on my experience.

Q Okay. So, no studies, no formal scientific studies to get the 5 percent quote, correct?

A Yes, that's a---

Q Okay.

A That is a pure estimate. I did not tally them as I went along through the years.

Q All right. Now --.

A I'm just trying to say that it wasn't -- it didn't happen very often that we found foreign hair.

Q Okay. I'm gonna take you to the 1983 case that you analyzed.

A Yes.

Q 7C. Spermatozoa found, correct?

A Yes, that's the---

Q And that's on the slide --

A That's---

Q -- or not?

A ---a fancy work for sperm.

Q Right.

A Right.

Q Is that on the slide?

A Yes.

Q Seven -- are you saying that 7C is a slide?

A 7C is -- seven was U.S. Naval Hospital bag containing nine specimens of which I listed on my worksheet.

Q Uh-huh. (Indicating affirmatively.)

A And 7C is a vaginal smear or a slide. In other words, it's smeared---

Q Right.

A ---onto a slide.

Q Correct. Thank you.

A All right.

Q 7F. You report, in 1983, two Negroid pubic hairs found, and that is from the combing, the pubic combing, for the 1983 case, correct?

A That's correct.

Q And you further say that you find, with your science skills in 1983, that the pubic hairs that you're examining are African-American, excuse me, Negroid pubic hairs, and they are consistent with Isaiah Gadson, Junior, right?

A That's correct.

Q Right. Okay. So, science. Would you be able to testify in court today about the consistency of, of Negroid pubic hairs being consistent with a person of, of African-American descent? Would you be able to do that scientifically?

A Yes.

Q Okay. And the science that allows you to do that, what, what makes that person so, so

distinct for you so that you could say, oh, that's, that's, that's consistent with Isaiah Gadson, that's consistent with this particular black man?

A Okay. That was a -- what we call a microscopic hair comparison. So, I would have to have had, and in this case I had submitted later, a sample of Isaiah Gadson, Junior, or Senior, Junior known pubic hair. In other words, they were actually pulled from his pubic region, and I took those hair and put them on a slide, put a representative sample on it, and I took these two hairs, which are obviously different then the victim, and compared them, microscopically, using a comparison microscope.

Looking at the areas of the hair, which consisted of the outer layer, which is the cuticle, and then the cortex, which is the major portion of a hair that contains the pubic granules, and then the medulla or the center portion of the hair, which is kind of like a graphite pencil, you know, the cuticle being the yellow paint, and the cortex being the wood, and then the medulla being the graphite center.

All right. Now, each of those areas have different characteristics in different people.

Although they're not unique, they are something that can be used to say whether or not it's consistent with. So, like I can describe a car, it, you know, and somebody can say, well, that's consistent with a Nissan Versa or something like that. Okay, so, it's not identifying it individually, but it is saying it's consistent with, and, therefore, could have come from that person.

In 1980 -- in the 1980s, with this type of comparison scientifically, it was a -- kind of like a class identification. In other words, I'm eliminating the large class of people, and I'm including a class of people in which Isaiah Gadson, Junior fit. So, his hair did not -- was not extremely or did not contain enough characteristics to exclude it. So, therefore, it's a possibility that it belonged to him.

All right. I'm not applying any probability to it, not giving you any quadrillions, or millions, or any type of number because there's no, no way you could do that. All I could do was, based upon my scientific training and my examination, say that they were consistent. And so, since they were consistent, then I couldn't eliminate him as a possible source of this hair.

That's not to say that, if I were to take a sample from a hundred other African-American individuals, that they may fit similar characteristics as well. There's no statistical value that is placed on it. It is merely an observation, a scientific observation, that would include or exclude an individual.

Does that answer your question well enough or do you want more?

Q Absolutely.

A Okay.

Q Thank you. So, this is the type of evidence that, that would, would and could be used as a factor in determining guilt or innocence, correct?

A Yes, it, it would not stand alone.

Q No, but -- I didn't say it would stand alone.

A Right.

Q I said it would be a factor---

A It would be a factor.

Q ---that---

A It would have to go along with all the other---

Q Factors.

A ---you know, evidence brought into the courtroom.

Q Exactly. And so the classes that you talked about, isn't it true that the classes that you're distinguishing between are primarily Caucasian, and, as you say here, Negroid? Caucasian and Negroid, correct?

A You have to -- all right. Well, you have to understand the terminology in the 1980s. It's not as politically correct, I guess, you might say as it is today. But, anthropologically speaking, there are three general characteristics of human beings. They're the Caucasian human beings, which are primarily of European descent, Middle Eastern descent, and then there's the Orientals. They're Oriental -- they are the people generally from China, Japan, Korea, you know, Far East.

And then there's the -- what we call the Sub-Saharan Africans. There's, there's a desert in Africa, kind of the upper middle, and below that desert is where you find your people of darker skin that, you know, are, you know, obviously, to us today, that we refer to as African-Americans.

Now, you can be from Egypt and migrate to America, and you would have Caucasian

characteristic hair, but you, but you could technically say you were African-American as well. So, so, we use the word "Negroid," which is the anthropological term used for that type -- those people from that area of the world.

Okay. There's nothing derogatory about it. It's just simply a scientific term that's derived from the Latin term which means black.

Q Thank you. So, to, to conclude with your analysis in 1980, and your analysis in 1983, in 1980, you find no African-American pubic hairs in your report on the 1980 case, correct?

A That's correct.

Q In 1983, you do find African-American pubic hairs in the 1983 case, correct?

A Yes.

Q Okay. And you don't know where a substance came from that you're analyzing? You don't know how it got on the item you're looking at, correct?

A You'd have to tell me what item, and what circumstances are involved.

Q If a pair of panties is submitted to you --

A Yes.

Q -- and there are fluids found by you on the panties --

A Right.

Q -- you were not in the street. You were not there. You don't know how that item got on those panties. Correct?

A Well, if it's seminal fluid, it's an ejaculation from a male.

Q Okay. You've done this a lot. Okay. So --.

A Yes, ma'am, and I know what semen is, and I know where it comes from.

Q Yes. Okay. So, I have an item I'm submitting to you. And if were to say to you, well, Scientist Barron, how about tell me where this blood came from on this shirt, can you tell me where that blood came from on that shirt?

A I can identify today whose blood it is.

Q Right. But you can't tell me where it came from, right?

A I would say that it came from that individual who matches that DNA.

Q Okay. That's not what I'm asking you. I'm not asking you about DNA or matches. If I ask you to tell me exactly where that blood came from,

you can't do that, can you?

A It came from---

Q You can analyze it, but you can't say the source of it. Don't talk about DNA. You can't tell me the source of it, correct?

A I can tell you that it came from a human being that was bleeding. That's a source.

Q Yeah, that is a source.

A All right.

Q Yeah.

A Okay.

Q Thank you.

A All right.

Q Uh-huh. (Indicating affirmatively.) Have a good afternoon.

A Okay.

REDIRECT EXAMINATION

BY MS. SWANSON:

Q Just briefly. Do you know when SLED discontinued doing blood factor testing?

A ABO blood grouping was dropped when DNA analysis came online.

Q Thank you. That's all.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you.

THE COURT: And you may be excused from your subpoena.

THE WITNESS: I appreciate it.

THE COURT: Solicitor, you may call your next witness.

MS. SWANSON: Thank you, Your Honor. At this time, the State rests its case.

THE COURT: The State rests.

Ladies and gentlemen, I'm gonna need you to please retire to the jury room one more time. I'm required now to discuss some matters of law with the attorneys outside of your presence, and I'll remind you it's too early to begin discussing the case.

(The jury exits the courtroom at 2:41 p.m.)

THE COURT: Any motions?

MS. CAMPBELL: Yes, Your Honor. May it please the Court. At this time, on behalf of Mr. Gadson, first of all, I would renew my motion for a mistrial on the original mistrial motion wherein, as you were reading the criminal sexual conduct indictment at the start of jury selection, Your Honor read out the name Lori Krug. While I understand that she was

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THE COURT: Did I understand we have an agreement on the verdict form?

MS. SWANSON: That's correct.

THE COURT: Have, have they -- did anybody think to print it?

MS. CAMPBELL: Your Honor, I put it on your bench for you.

THE COURT: You mean the one that says verdict form?

MS. CAMPBELL: Yes, sir.

THE COURT: Other then me making a ruling on that matter the Court took under advisement yesterday, other then that, are we, are we ready to proceed to jury?

Is the State ready?

MS. SWANSON: Yes, sir.

MS. CAMPBELL: And we're ready.

THE COURT: As to the Defendant's request to Charge Number 1, the Court denies that request finding that there is no evidence that, that evidence was destroyed in bad faith, and there is no evidence that the missing evidence possessed any exculpatory value. The -- pursuant to State versus Cheesborogh, and as

stated State v Breeze, B-R-E-E-Z-E, I find that the State does not have an absolute duty to safeguard potentially useful evidence that might vindicate a Defendant. For all of those reasons, the Court denies the motion.

And so, having said all that, let's bring the jury in.

MS. CAMPBELL: May it please the Court, Your Honor? Defendant's Request to Charge 2, which you granted --

THE COURT: Right.

MS. CAMPBELL: -- it's on the same document, but I'll just -- I've signed this, and I'll just make it a Court's Exhibit at this time.

THE COURT: I see. Court's exhibit.

MS. CAMPBELL: Thank you, Your Honor.

THE COURT: Thank you.

(Whereupon, Court's Exhibit No(s). 7 marked for identification and received in evidence.)

THE BAILIFF: The jury is entering the courtroom, Your Honor.

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Good morning, and welcome back, ladies and gentlemen. I believe we are ready now to proceed with closing arguments of the attorneys.

MS. SWANSON: Thank you, Your Honor. May it please the Court?

CLOSING BY THE STATE

MS. SWANSON: For 36 years a murderer and rapist walked the streets of Beaufort County. For 36 years, Isaiah Gadson thought he got away with it. And, for 38 years, Susan and David's family have been waiting for justice. Well, the time is now, and you hold the power to administer that justice, and I have confidence in you and confidence in this case.

On the one hand, I would like to just say "DNA" and sit down. But I want to make sure that you understand the evidence. And I do feel the need to address some of the arguments that the defense is gonna make when she talks to you last. I'm not gonna get a chance to respond. And it's gonna be hard for me to sit there because Ms. Campbell and I could, frankly, go back and forth all day long. But I do want to remind you that your decision, and

when you find the facts of this case, it has to be based on the evidence that you heard in this courtroom.

I'm not going to be asking you to take incredible leaps of logic in reaching your decision, but I don't know that Ms. Campbell won't. I don't know whether she's going to try and tell you that we didn't land on the moon. I don't know if she's gonna try and make you wonder if Johnny Weed had something to do with this. Whatever it is, it's her trying to do her job when the deck is stacked against her client. And when that happens and when the evidence is strong, defense attorneys get creative. I'm gonna ask you to be logical in your approach, and use your common sense.

I do want to address what Ms. Campbell's likely gonna bring up some sort of conspiracy. There is simply no evidence of any sort of conspiracy here. There is no police conspiracy, and to believe that there has been some sort of police conspiracy, it would of had to have spanned the course of about 40 years. Different sheriffs. You know, it just doesn't make any sense. It would also have to involve

obtaining Isaiah Gadson's sperm, and who's gonna sign up for that job?

Nobody planted evidence. There's simply no evidence of that. There's nothing in the record to support such an argument. Nobody covered anything up, and, in fact, most people thought this case would go unsolved, and it could have sat in a closet. That could of happened.

Everyone involved in this case, with the exception of Gerry Wagner, who you heard from on the stand, he's the chief deputy at the time, is now dead, and recreating a case from 1980, like I told you before in opening, has not been without its challenges.

Do we all wish that crime scene photos still existed, that those vials that were taken by Dr. Fontana from Susan's rape exam still existed?

Of course we do. Captain Bromage and I would love to have that evidence, and he tried to obtain it. He was diligent in trying to obtain an answer from SLED as to where those items may be. He was diligent in trying to obtain pictures from different sources that he

knew had access to the crime scene pictures at one time. But evidence retention in the 1980s was different, and it was without the safeguards that we have now. And it's a shame that we don't have these items, but it certainly wasn't any sort of coverup.

Isaiah Gadson was not framed. His DNA was established through the head of his sperm. You heard that from the experts. It didn't just appear in 15-year old Susan's underwear at some point in time. Susan told you how it got there. The point is is that, if a false arrest was gonna be made or, you know, some sort of conspiracy theory was going to happen, it would have happened back in the '80s, back when the community was completely freaked out that there was a murderer and rapist on the loose, raping 15-year old girls, and murdering 18-year old boys.

There was a lot of pressure on the Sheriff's Office at that time. You heard Gerry Wagner say I had everyone involved working on this case. They presented Susan with hundreds of pictures. They wanted the guy. There just simply wasn't enough, and, to their credit,

they did not rush to judgment.

So, let's talk about what really happened in those woods that night in 1980. In graphic detail, Susan told you about the rape that dark night 38 years ago when a man shot through the window of her boyfriend's car, hitting him in the head, in the neck, and in the upper arm.

Sonny Bessinger, a neighbor from down the road, doesn't really know Susan, familiar with the Weeds because they kind of live in the same area, but, you know, he and Susan are ten years apart, he notices that there is a van when he's coming home at midnight because everything's shutting down then. He knew what time it was, and he also sees another car, a larger car than what he's driving. He's driving a compact car, a Toyota. A larger car than he's driving, older model he said, located not far from where the van was backed in a cut.

Now, I'm not gonna tell you that anyone can identify that car, but it certainly is consistent with the type of car that Isaiah Gadson's own cousin told you that he was driving, and it corroborates Susan's own testimony. Remember, Clifford said Isaiah was

driving a late 1960s Chevy Impala. You know, larger kind of sedan.

Okay. He also told you that he and Isaiah smoked Kools, which is something that Susan remembered, and something that was located at the scene of the crime. Again, corroboration of Susan's testimony.

She told you how he ordered her out of the car at gunpoint, took the $50 that she had, told her to get on her knees. She was forced to perform oral sex. That's aggravated rape. That's at gunpoint. He then led her further into the woods making her walk in front of him as he held the gun to her back. That's kidnapping. He told her to lay down and, again, forced oral sex on her, performed oral sex on her before continuing to rape her. More aggravated rape.

She was 15-years old at the time. You can see her and David, in 1980, about Christmastime, shortly before this happened. Just a couple weeks. Not even a couple weeks. A week and a half. And, as a child at the time, she was traumatized, and probably embarrassed to go have a sexual exam done, but

she did. She reported everything right away and, that night, she submitted to a sexual exam, and committed to cooperating with law enforcement in this investigation, and she has stuck with it, and stuck it through for 38 years.

She tried to give law enforcement every detail she could remember and she remained consistent. She participated in line-ups. A lot of line-ups. She pointed out, you know, certain features of certain people. Maybe he looks most like the assailant, but she never definitively picked anybody out. And you know why?

Because he was never in those line-ups. Isaiah Gadson was not a suspect until 2016 when there was a hit from a DNA database, and then his profile was confirmed. Susan was compelling, appropriately emotional, and did not dodge questions no matter how pointed they were from Ms. Campbell.

Why would she subject herself to this process after 38 years if she was lying? It just doesn't make any sense. And you get to consider those factors in judging credibility.

Now, let's talk about the forensics because the forensics are the biggie, and they also corroborate Susan's testimony. We talked a little bit about the trajectory of the bullets. She said they came in through the passenger side window. That makes sense because she also says David was seated in the front seat of the car.

She said that the assailant had a small pistol. Well, when Dr. Trefny, the pathologist, pulled three bullets out of David, the victim, he determined that those were from a handgun. He measured .32 caliber.

When asked about, oh, well, have you ever examined gunshot wounds from a shotgun or a rifle?

He was able to tell you the difference, okay, the different sorts of wounds, and he was also able to say that the wounds on David did not have any soot or stippling, and why that's important is it corresponds to the distance between the shooter and the victim. This was not a close contact or close range shot. It didn't come from the passenger's seat of the van. It makes sense that it came from outside

of the van just as Susan told you.

Dr. Fontana testified too and told you that he saw sperm as well as abrasions at the entrance of Susan's vagina. All consistent with rape. Motile sperm, nonmotile sperm, it doesn't matter because those sperm were exposed to air. Most of the sperm ended up located in the crotch area of Susan's underwear and her pants. Of course, those were -- and, and that sperm and semen was there back in 1980, you heard, and it was still there when it was further tested in 1999 and 2002 at the request of Captain Bromage who was convinced, with the new technology that had arrived on scene, that we could finally identify the killer, and the rapist. And his hunch was right when that profile was established in 2003, but it still took 13 years to get a match.

We're talking about DNA, and the defense can try and muddy the waters on DNA, all right, but what you need to know about DNA is that it identifies individuals, and it identified Isaiah Gadson. Ms. Campbell may bring up blood typing. You heard from John Barron though that that's an antiquated test. SLED doesn't even

do it any more, and you know why?

Because it's not unique. It does not identify individuals. It's simply not relevant with the technology that we have today. The blood type factor H, O, it means they're an O, O type blood, and, and I know Ms. Campbell made sure she got out of the pathologist that David had O type blood.

Well, guess what?

With the better technology, David's DNA profile was eliminated from the sperm that was found on Susan's clothing. It doesn't matter. DNA can degrade, but the makeup never changes. Isaiah Gadson's DNA profile was established from his sperm. That is definitive. But it's there in 1980, and it was still there when David McClure tested it and came up with the profile.

And, of course, let's not forget, the way he was able to come up with the profile is that he had to separate Susan's from the male DNA. It was a mixture. It wasn't just Isaiah's DNA. It was a mixture because he had raped her. It had her bodily fluid in there as well as his sperm.

This is no random coincidence. That is impossible. You heard the statistics. Gadson had no identical twin. That was confirmed. We have records of that. You heard John Barron say it can't be a brother. That's impossible. People have unique DNA profiles. Three different DNA experts worked on this case through the years. They are not all wrong.

I'll tell you another thing about scientists. What do they care what profile they come up with? They care about the science. They're not investigators. They're not trying to solve cases. And you heard David McClure, who is the same person to come up with the profile on Isaiah Gadson with the same technology, say that he was able to eliminate O'Neal Banks in 19, 19 -- no, I'm sorry, 2003, when they were able to establish the profile. The guy that Captain Bromage thought, you know, had a damn good chance of being the guy, well, he wasn't. He was eliminated because we rely on this technology.

The murder weapon was never found. All right. It's not unusual. That happens.

Would it be unusual for Isaiah Gadson to

toss a gun that he had killed an 18-year old boy with in any of the water that was nearby?

No. Plenty of water in Beaufort County to pitch it in. Plenty of water in Creek's Edge that used to be his family's land.

There's no dispute that David was shot, and it just so happens that Isaiah Gadson tends to like .32 caliber handguns, which is what David was shot with. It's not the same weapon, but would it surprise you if somebody maybe gets used to a particular type of weapon and keeps going back to it? He even told his cousin that he had popped one, and he'd pop another if he had to. He was not scared to use a gun, and, in fact, he had more than one gun.

Creek's Edge, very close to where Susan was raped, and David was killed. That was just a little bit further down the way. Less then 2 miles from where Isaiah Gadson grew up in Burton. He was intimately familiar with this location. Used to be owned by his family. He told his cousin, who didn't want to admit that this was the case, but we cleared that up with Captain Bromage, you know, he and his cousin had gone down there. A lot of people went down

there. But he and his cousin had gone down there with girls, all right, and he knew how dark it was. He knew how isolated it was, and he knew that that was a place that he could prey on people.

While Susan's physical description of Isaiah Gadson was not terribly unique, you know, bear in mind she's in the dark on her knees, and on her back being raped. The composite sketch that was released to the press, there were a number of differences that Susan actually pointed out to police. This is the one that generated all those phone calls. But while people may look like other people, their DNA certainly doesn't.

So, how lucky are we now to have this technology so that people don't get wrongly convicted of heinous crimes? It's relied on by law enforcement. It's relied on by prosecutors, and it's relied on by the Courts that overturn wrongful convictions as this technology has improved through the years. And I am relying on it, in conjunction with all of the other evidence, to say we got the right guy.

Let's not forget about the sexual assault of Lori Krug, now Lori Lawless. It happened back in '83. Isaiah indicted for criminal sexual conduct in the first degree, pled guilty -- I mean pled no contest, I'm sorry, on the day of trial, to assault and battery of a high and aggravated nature. We don't know why. We don't know what went into that decision making.

Maybe there was a problem with the chain of custody on the forensics. Maybe there was a problem with a witness being there. You know, the nurse that did the sexual exam kit. Maybe even John Barron, the chemist. We simply don't know. Maybe it was just to move the docket, but it certainly wasn't justice, and I'm not asking that you convict this man based on that. I'm asking you to convict him on the evidence.

And the M.O., motive or common scheme or plan, is the same in these sexual assaults, and that goes to identity. We are talking about the same rapist, the same perpetrator. Let's look at the similarities in these two cases.

In both instant -- instances, Isaiah isolated these women. Lori was already

isolated. He preyed on her after a night of drinking. He came across her on Highway 21, took her to a remote isolated location. He isolated Susan by shooting David, and he told her that. He said that was the only way I could get to you. He preyed on women who were strangers, slim, white women. The rapes occurred within a few years of each other in the same location, Burton, rural area, dark dirt road, in the hours of darkness.

He was familiar with both those areas. We showed that in the testimony. He worked right off Highway 21, and he was up and down Highway 21 that day that he raped Lori. He threatened both women with a gun. Susan told you how he held it to her head. Lori told you he threatened to blow her brains out, and then began reaching under the seat when she wasn't taking her clothes off immediately. Now, he never brandished it, but, lo' and behold, there in his car was the .32 caliber.

The physical description that the women gave, while not identical, is consistent. The way he sexually assaulted them is consistent with each other. He began with oral sex.

Moved on to vaginal rape. No condom was used. Ejaculated quickly. Asked if they liked it, and then apologized.

Lori's testimony was just as compelling and consistent, and consistent as Susan all these years later. You heard her emotion as well as Isaiah's denial when Captain Bromage was reviewing his interview from 1983, and that didn't make any sense. He says he came across her, offered her a ride, and then just asked if she wanted to make some love. When he -- when questioned more and when pressed, he admitted to placing his hand on her crotch area over her clothing. But then you heard from John Barron, the chemist in 1983, that there was semen all over the place. So, that certainly wasn't the case. All right. He's a liar.

There was a rapist on the loose in the 1980s, and he sits in this courtroom today under indictment. These victims, Susan and Lori, had to do a lot of soul searching to dredge this up, to take that monster out of the box, to subject themselves to this, and they did. I don't have to tell you how important this case is to everyone, but that's not why

I'm asking you to convict the man that sits in this courtroom. I'm asking you to convict him based on the solid evidence that we have presented to you. It should not leave any reasonable, reasonable doubts in your mind.

As I told you in my opening, justice may have been a long time coming, but it's now, and it's here, and I'm asking you to find Isaiah Gadson guilty on all counts.

CLOSING ARGUMENT BY THE DEFENSE

MS. CAMPBELL: May it please the Court?

THE COURT: Counsel.

MS. CAMPBELL: Good morning.

You know, there's no creativity, there's no creative defense as an attorney. As the solicitor wants to say, I'm gonna be creative. If I'm holding up the pillars of this courthouse, keeping it steady for every person that walks through that door by requiring the State, the government, to prove guilt beyond a reasonable doubt, that's not creativity. That's actually following the law and it's my duty. It's my ethical duty to participate and be a part of the foundation of this courthouse, and of our entire justice system.

You know, there's a quote about families and secrets, and it's something like this. You could ask all you wanted, you can dig as deep as you can to try and uncover some family secrets, but it's like pulling a thread on a sweater. And pull and pull and pull, and what you wind up with is a tangled, mangled web of yarn on the floor. The presentation of evidence by the State of South Carolina is a tangled, mangled mess.

There is, in early January, no doubt in the evidence, that the last people, other then Susan, to see David alive were the people at the party at the trailer out on Lady's Island, the Jagys.

Where are they?

Why are they not here?

And even if they're not here, why does the State of South Carolina not bring to you what they said then about what happened at the trailer?

Ask yourselves that question.

The State of South Carolina is clearly asking you to find that Isaiah Gadson murdered David and sexually assaulted Susan, and they

want you to make those findings based on the evidence that they have presented you. And here's what doesn't make sense. The Solicitor talks about that. I'm gonna talk about that too.

Number one. It makes absolutely no sense, if you have been sexually assaulted, if you've just -- if, if you're telling us you've seen your, your boyfriend shot to death, tell the police a black man did this to you and your boyfriend, then what possible frame of mind, what possible state of mind or scenario would you then report to law enforcement yet again, giving your rendition of what occurred, when you're questioned by the officers in 1999, why would you say that you had questioned your mother about whether or not she thought your father had been involved in killing David?

It, it absolutely makes no sense to go there. I'm not sure the sequence of questions that Officer Bromage and Officer Sankowski were putting to her at that point, but that testimony is in the record. And you are allowed to consider that, that slip or that insight. That question, alone, is reasonable

doubt. Absolutely. And armed with only that, you can return a verdict of not guilty on every indictment firmly convinced that the State of South Carolina failed to meet their burden of proof.

So, if you will allow me, I will string together just a few highlights from the testimony that you may wish, as jurors, to discuss with your fellow jurors when you begin your deliberations on matters that affect a man's life and liberty. This area where the van is found is remote in 1980, but you have testimony that it's frequented quite regularly by folks. It's called Lover's Lane. Folks are pulling in there. They're parking. They're finding a place to be intimate. I mean, we can all acknowledge that. This is what goes on there, and cars are coming, and cars are going.

It's not a desolate place. This is a place that's well known in the community to go when you want to be intimate. And, if you are going to plot and carry out a murder and, and a, and a, and a sexual assault, you're not going to do it in a place where people are always coming and going. But, if something

happens, if something's discovered or something, in a, in a heat of passion moment, that can happen in a highly frequented traffic area.

Now, you've received testimony in this case from Susan that she cannot recall ever being in the area before that night. It's half a mile from her home. She has testified to you that she ran home, reported this to her mother and to her father, and then her father jumped in his truck with his shotgun, drove back to the area. Some minutes later, she and her mother, the two women, got in the mother's car, and they drove back to this area, which is extremely dark. Can't see your hand in front of your face kind of location. Again, it's where intimacy, and people go for privacy.

And, and, and who, I, I keep saying to myself, who -- what mother takes their daughter back to the woods where she's just been told there is an armed black man running around, killing people, and assaulting them?

That, in and of itself, also makes no sense. That, that is -- who would do that?

Did that happen, you may ask yourselves,

and there's no testimony, you heard from the old fellow, Wagner, from back in the day, that there was no truck at the scene. There -- yeah, there was a blue car at the scene, but there's no daddy's truck up there when law enforcement gets on the scene.

And another thing about the pitch dark road that makes no sense. This, this tale about the key that you're going to run for your life down this extremely dark, again, can't see hand in front of your face situation, and happen to find a set of keys in that half mile run from the van to, to the, to the house.

You've heard testimony that Susan gave to the police. You have it in the jury room, a, a -- what I would characterize as probably the most generic description of a black man that's possible, but then a year or so later, it's changing significantly to the eyes are too big, the nostrils too small, the nostrils need to be larger. I don't remember exactly what it was, but, but here's the thing.

What's never changed is that the person that she says has done this was shorter than she was. And through the testimony, you have

evidence, and the, and the photograph, you'll have that in evidence as well. It's clear she is several inches shorter then David, who's been established to be standing 6-feet tall. In order to be shorter than her, you know, that's gonna be 5'5" to 5'7" at the maximum. And you heard testimony that, in 1973, Isaiah Gadson was standing 5'11", nearly topping the scales at 6-feet tall. Considerably taller than 5'5" to 5'7".

Now, what about the bizarre conversation that actually occurs back in 1990 when Susan says she's getting out of school at Beaufort Academy, and David's sister is there, and she says, look, we all know who did this. And so, you know, okay, so Susan writes a statement about that. You saw her look at that statement. And where, where is the follow-up on that?

Who is this mystery person that's being reported as generally known to have committed this crime?

Nothing.

You heard Officer Bromage testify, on questioning from the solicitor, well, Johnny

Weed was a suspect. Yeah, I had to clear him. But not a single record, if he was a suspect as testified to, of any questioning in 1980. You know, when your folks are in trouble, the wagons will circle.

There is no statement either taken from Susan's mother that night at all. And why are you going to lie and say repeatedly, on questioning both cross and direct examination. That you weren't drinking that night? You weren't doing -- smoking marijuana with David.

Did you not remember that you told the doctor that you had been drinking?

You know, the truth stays the same every time no matter how many times you tell it. The manner in which Dr. Fontana testified clearly indicated, should indicate to you his bias in favor of Susan, her family. Clearly indicated he considered her, and she was a lifelong patient of his, and it felt like a friend. But, finally, when pressed on matters that were critical to his evaluation, you know, his, his prejudice and, and bias became even increasingly evident, but ultimately he did have to admit that his findings were consistent

not with recent sexual intercourse, but with sexual intercourse a day or two beforehand.

The autopsy examiner, Dr. Trefny, his testimony provided the information for you, again, about David's height. I'll come back to him in a minute, but let's talk a little bit about Bob Bromage reopening the case in '99.

As I said before, there was every indication through Bob Bromage's testimony that that decision rested at, at the feet of the family. The manner in which Chris Sankowski and Bob Bromage, those officers conducted that interview, was clear that they had sort of a, a tag team thing going on. I'm gonna ask the questions. You're gonna record her behaviors and her responses. And so that's what they did, and the behaviors were reported, the anxiousness, and the other indications to them that they needed to try to figure out whether or not they were getting the truth.

Now, come flash forward to 2016 through one of these databases, all of a sudden you've got this scenario where you now, as the solicitor said clearly, you're being asked to find that Isaiah Gadson is a murderer and a

rapist on -- and here's the thing, on scientific evidence only, that, as you could see clearly through my questioning of the individuals in this field, has the possibility of not being correct. David McClure said statistically, yeah, well, it is, it is possible that, that this is not right. Probable, no. But yes, it's possible this could be wrong.

Now, I'm sure you don't want anything in my life or the lives of my children or my loved ones to depend on well, it's not probable, but it is possible you -- you're wrong. You can't allow that to happen on your watch over the foundations of this courtroom. It won't be there, if you need it, if you dilute the standard. It will degrade. Based on the principles that a man is presumed innocent, and shall not be removed from life and liberty unless the State, the government, proves guilt beyond a reasonable doubt. And so you'll say to yourself, well, what is reasonable doubt?

His Honor will tell you reasonable doubt is the kind of doubt that will cause you to have that hesitation to act. So, I liken it to

an individual, you know, and, again, judging the credibility of the witnesses, and the credibility of the evidence, if that individual or that person or that entity built you a, a wooden bridge between two mountaintops, and you stepped out on to that, and you felt confident walking across that bridge, and you never once hesitated to put your foot on it, if you're hesitating to put your foot on it, that's reasonable doubt. And, again, like I said, for our loved ones, would you put your child on that bridge they built? If there's a hesitation, it's reasonable doubt.

And, interestingly, if the State of South Carolina brought you an eye witness who's gonna sit, sit on the witness stand and testify, well, it's possible that I'm wrong, that's reasonable doubt. The State of South Carolina puts DNA Expert David McClure on the witness stand, and he's testified it's possible, possible the science can be wrong. It's interesting that the two SLED agents who've retired were willing to, upon questioning, admit that the data and the research in this field is changing, and may not be exactly

solid. But, when, when you have the testimony of the last witness, Barron, who is frankly -- I mean he's still under the thumb of the government, and even putting this most straightforward simple questions to him, he's giving lengthy, well rehearsed, stamped of approval answers that the government would like him to give.

And I will come back again and again to my original statement, reasonable doubt. Remember this. The pieces of evidence have traveled many miles. The pieces of evidence are bizarre in that, in 1999, David McClure says I'm analyzing these items. I can't find any semen anywhere on them. I'm using good tests, and nothing's there. And, all of a sudden, in 2002, I'm finding something. That's a problem. He said he really didn't have a good answer for how that might happen.

Now, I didn't go through all the possibilities of how the evidence can change or be altered. You are certainly able to do that should you choose to do that. The fact that, from 1980 to 1999, but primarily to 1983, critical pieces of evidence in this case,

through, I don't know, through negligence or through purposeful conduct, I, I can't, I can't answer that for you, they went missing so that you and I don't have them. You heard testimony from Dr. Trefny, coming back to him, the autopsy examiner, but the photographs from the autopsy are missing, and that they would be very important in determining many factors about the ballistics in this case, about exactly what kind of weapon was used, about exactly how it was shot, about exactly the angle with which David had been hit by the shots.

And we went through the, the revolver testimony, and we went through the shotgun testimony, and we went through the buckshot testimony. And, and he confirmed that the buckshot would scatter and have the larger pellets hitting in a, in a confined area.

It's the duty of our law enforcement, I don't care if it's 1980 or 2018, the duty is still the same. Do your job. Preserve the evidence. Failure to preserve the evidence is a factor that you can say is reasonable doubt alone because, let me remind you of this, the

testimony you heard was that the shot came through the passenger window, shattering it completely, shattering the driver's window completely, and Susan's testimony was, was sitting in the passenger's seat right next to the shattering glass, and you heard the testimony, suffered not a single scratch, abrasion, anything on her face.

The testimony from Dr. Trefny, David, several feet away, he's got abrasions and scratches on his feet. It's an impossibility to be sitting closer to the, to the shattering glass, and have nothing hit you.

I'd like to have an, an expert to examine those photos, but I can't. We don't have them. I'd like to know more about the shattering of those windows and how it happened. We don't have that. I'd like to know about where that van was all night, but we don't have that. We don't have a timeline.

If there's one aspect of this case that causes you to hesitate, that causes you concern, then every other single part of the case should cause you concern. Those suspicions that you have, those hesitations,

that's reasonable doubt.

Bob Bromage, this is an officer who you heard testimony from, has been disciplined before for the mismanagement and the mishandling of a murder investigation and the evidence in that case. You heard testimony, you know, I'm, I'm having to keep the Island Packet reporter who's following him around out of the evidence room. Wants to bring her in there with us. That's not proper.

This is an officer who was featured on national television, television with the tales of success and the paper route story -- Exposé. Ecker and Frazier being the suspect in that case. Bob Bromage is participating with the corrections officers in searching that cell, and, according to him, he wasn't involved in it, but there's a piece of cardboard paper under the, the suspect's bed that has the name of the victim, the date that it happened, and the location that it happened. Well, that's, that's extremely convenient and extremely bizarre and unrealistic.

Now, it seemed impossible, the testimony, about having no way to go back in, in the

records and look up cases, but that's what he told you.

Now, then you have the State of South Carolina trying to shore up what they realize is a problem with their 1980 case by dragging Lori Krug in here from the 1983 case and, and having her testify. And I would say to you, there's no timeline on that case either.

There's no statements from that ride that was at the country store waiting for her when she got back there. There's no statements from her husband about whether she even made it home that night. We know there's testimony that she'd been out drinking the night before, and that she was hitchhiking, she says, to work, and that something about passing up another car before she chose Mr. Gadson to get in the car with. And there was some testimony about going to get some marijuana.

But, in any event, she testified inconsistently. You saw that I had to get the testimony from Monday, you know, go through that with her to get her back on track. You know, you were sworn to tell the truth on Monday. What's going on now saying you don't

remember? You can't recall.

Well, you remembered on Monday, very clearly, that, when you got back to the general store with Mr. Gadson, your ride was there. And I would say it's clear. You can say, by the fact that Mr. Gadson pled no contest to an assault and battery aggravated case, instead of spending 30 years in prison, he says okay, it's 1983. I'm being accused of raping this woman. I think I'll take this plea and go on with my life. I'll take my probation, and I won't be, you know, in prison for the next 30 some years, which he didn't, his family, and his children, and his grandchildren.

And, remember this, the rape kit analysis from Lori Krug says African-American pubic hairs found. The rape kit from Susan Weed said no African-American pubic hairs found.

What does that tell you?

Lori Krug had sex with an African-American man in 1983. Susan Weed did not have sex with an African-American man in 1980.

You know, a few years before John Adams became our second president in the early years of our democracy, we had a little bit of an

incident in Boston, and the British soldiers were accused of a massacre of the Bostonians at the time. And I'm gonna tell you there was demand for blood in the street of those soldiers. And a knock came at the door of John Adams. He was just a -- he was a lawyer, was a father, a husband. We need you to take up the case of these British soldiers and he did. And the jury, in that case, set the soldiers free. They made the right decision despite the pleas from the community.

I have taken up the case of Isaiah Gadson, and you have taken up the case of his jury. And I'm confident that it was not easy to be the lawyer for those British lawyers. I'm confident it was not easy to be the jury for those British soldiers. But our law knows no anger, knows no passion, or bias, and seeks only that each man perform his duty, fairly, and without concern for the popularity of their decision.

There's a true and old axiom in our law, in our lives, and it states better ten guilty men are set free then one innocent man be imprisoned.

Now, and the last piece of evidence that I will speak with you about is the logic of the shot. Susan has testified that there was this exchange about, oh, I had to get, get rid of him to get to you. If that is your logic, if that is your objective, then you are going to shoot through which window?

You are going to shoot through the driver's window. Burden of proof in a criminal case never rests on the Defendant. This is not the way that our criminal justice system is founded. Not in the late 1700s, and not in 2018.

Now, His Honor is going to tell you, in just a minute, about the law, and what you have to apply to what you deem to be the facts in this case. And he will explain to you that a criminal defendant, no matter who he is or she is, never has to testify or make any statements or provide any evidence. And the reasons for that are longstanding. And he will tell you that the fact that Mr. Gadson chose not to testify or to make any statements cannot enter your mind. Not only can it not enter your mind, it cannot be discussed in your jury

deliberations at all. And if you were to do that, he would tell you that would be violating your oath as jurors.

I thank you for your attention, and your close concern with the testimony in this case. Each individual one of you was selected for a reason. You bring something to this case that only you can bring. That individuality is important.

During your deliberations, remember, as an individual, what your strongly held convictions are. Remember when I say to you that, at the time your foreman says to take a vote, and you tear off your piece of paper on your notepad, and you write down your decisions, and you fold that piece of paper up, and you hand that to your foreman, I'm confident each one of those individual pieces of paper will say the State has failed to meet its burden of proof, and that Isaiah Gadson then is not guilty.

Thank you.

THE COURT: Thank you, Ms. Campbell.

MS. CAMPBELL: Thank you, Judge.

JURY CHARGE

THE COURT: Anybody need to stand up and

stretch for just a minute?

If you do, let's, let's stretch.

This will take me -- this will probably take 15 to 20 minutes for me to tell you about the law that applies.

Ladies and gentlemen, I'll remind you that the fact that the Defendant in this case was arrested, was charged, and was indicted is not evidence, and cannot be considered by you as evidence in this case. Nor does it create any presumption or inference of guilt.

As I told you earlier, these indictments are simply the formal, written instruments that bring the case into the courtroom. The Defendant has pled not guilty to these indictments, and the plea puts the burden upon the State to prove the Defendant guilty.

I'll tell you that a person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. And I charge you that, as an important rule of law, that the Defendant, in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent for the crime for which an indictment was

issued unless guilt has been proven by evidence that satisfies you of that guilt beyond a reasonable doubt.

The presumption of innocence does not end when you begin your deliberation, but it accompanies the Defendant throughout the trial until you reach a, reach a verdict of guilt based on evidence that satisfies you of that guilt beyond a reasonable doubt.

The, the presumption of innocence is like a robe of righteousness placed about the shoulders of a Defendant, which remains with the Defendant until it has been stripped from the Defendant by evidence that satisfies you of the Defendant's guilt beyond a reasonable doubt. The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant's entitled unless, you, the jury, are satisfied, from the evidence, of the Defendant's guilt beyond a reasonable doubt.

A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Some of you may have served on juries in civil cases where you were told it

was only necessary to prove that a fact is more likely true than not such as by the greater weight or the preponderance of the evidence. But, in criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of a Defendant's guilt. There are very few things in this world that we know of with absolute certainty, and, in criminal cases, the law does not require proof that, that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of a crime charged, you must find the Defendant guilty. If, on the other hand, you think there's a real possibility that the Defendant is not guilty, you must give the benefit of the doubt to the Defendant and find the Defendant not guilty.

As I told you earlier, during this trial, you and I have had different responsibilities and obligations. It's been my responsibility to preside over the trial, and to rule on the

admissibility of evidence. But I also have the additional duty to charge you about the law that applies in this case.

As the presiding judge, I am the sole judge of the law in this case, and it's your duty, as jurors, to accept the law as I now state it to you. And if you have any idea that the law is different than I tell you or should be different, you must put that out of your mind because, under your oath, you must accept the law and apply the law exactly as I state it to you.

As I told you earlier, in every case tried before a jury, the jury becomes the sole and exclusive judges of the facts in this case, and a trial judge, such as myself, cannot intimate, state, comment on, or make any statement to a trial jury about the facts of the case. Since you, the jury, are the sole judges of the facts of this case, you're not to infer, from what I have said during the progress of this trial, in ruling on the admissibility of evidence, or otherwise, or anything that I say now during the course of these instructions, that I have an opinion about the facts of a case. The law

does not permit me to have an opinion about the facts in this case. This is a matter solely for you to determine. As jurors, it is your duty to determine the effect, the weight, and the value, or the truth of the evidence presented during this trial.

During the presentation of evidence during a trial, there are typically two types of evidence submitted. Either direct or circumstantial evidence. And direct evidence, of course, is testimony of a person who claims to have actual knowledge of a fact such as an eye witness. It's evidence which immediately establishes the main fact to be proven.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference, and not on personal knowledge or, or observation, but the law makes no distinction between the weight or the value to be given to either direct or circumstantial evidence nor is a greater degree of proof required for

circumstantial evidence than of direct evidence. You should weigh all of the evidence in this case.

Necessarily, ladies and gentlemen, you must determine the credibility of the witness who has -- witnesses who have testified, and this simply means the believability. It becomes your duty, as jurors, to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified, you may believe one witness over several or several witnesses over one. You may believe a part of the testimony of a witness and reject the remaining testimony, testimony of the very same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety, and you may consider, of course, whether the witness has exhibited to you any interest, any bias, prejudice, or motive in the case. And you may also consider the appearance and the manner of a witness while on the witness stand.

The State has presented evidence of acts

of the Defendant that occurred outside of and separate from the time and the circumstances of the Defendant's acts that the State alleges in this case. You are not to consider this evidence to conclude that the Defendant has a propensity to behave in a particular way or commit certain acts. In other words, you may not consider the separate acts as proof of his character to conclude that he must have acted similarly in this case. The State had offered this evidence of other acts as proof of identity. Accordingly, you may consider the similarities or the differences between the separate acts and the acts alleged in this case as either identifying the Defendant or distinguishing him from the person who committed the acts alleged in this case.

During this trial, some of you have taken notes. I tell that you notes are only to be used to aid the memory of individual jurors, and are not to be considered superior to the independent, independent recollection of other jurors.

There's also been evidence presented that a -- that one or more witnesses may have made

prior statements which were not consistent with the witnesses present testimony. You may be used -- use this evidence to decide whether to believe this witness. You may also use this evidence of early contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe an earlier statement or the testimony given in a trial.

If the witness is shown to have knowingly testified untruthfully concerning any material matter, you may consider this in determining whether to trust, to trust the witnesses' testimony as to other matters. You may reject all testimony of that witness or give it all or part of that testimony the weight, weight you think it deserves.

The Rules of Evidence normally do not permit witnesses to testify to opinions or conclusions. An exception to that exists for witnesses that are called expert witnesses. A witness who by some education, experience, has become an expert in an art, science, profession, or some calling may state an opinion as to the relevant and material matter

in which the witness claims to be an expert, and may give you the reasons for that opinion.

You could -- you should consider the expert opinion received in this evidence -- as evidence in this case, and, like other evidence, you give it the weight that you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education and experience or conclude, conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

An expert witness' testimony is to be given no greater weight then any other witness simply because the witness is an expert. Further, you are not required to accept an expert's opinion even though it may not be contradicted. I instruct you and emphasize that the fact that the Defendant did not testify in this case is not a factor to be considered by you in any way in your deliberation, and your consideration on the question of the guilt or innocence of the Defendant. It must not be considered by you in

any manner whatsoever.

A Defendant has a constitutional right to remain silent, and the assertion of this right must not be considered by you in your deliberations. I repeat, under your oath, you're to draw no conclusion whatsoever from the fact that the Defendant in this case did not testify. The fact that the Defendant did not testify should not even be discussed in the jury room. The burden of proof, as I have already told you, is upon the State. The Defendant is not required to prove his innocence. The burden of proof remains upon the State to prove guilt beyond a reasonable doubt.

The Defendant is charged with murder. The State must prove, beyond a reasonable doubt, that the Defendant killed another person with malice aforethought. Malice is hatred, ill will, or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse, and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed, but malice must act -- exists in the act of the Defendant just before and at the time that the act is committed. Therefore, there must be a combination of the evil intent and the act.

Malice aforethought may be expressed or inferred. These terms do not mean different kinds, but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proven. Express malice is shown when a person speaks words which express hatred or ill will towards another or when that person prepared beforehand to do an act which was later accomplished.

Malice may be inferred from conduct showing a total disregard for human life. The law says that one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts are proven beyond a reasonable doubt are sufficient to raise an inference of malice to your satisfaction simply -- this inference would simply be an

evidentiary fact to be taken into consideration by you, along with other evidence in this case, and you give it the weight that you determine it should receive.

The Defendant is also charged with criminal sexual conduct in the first degree. The first element the State must prove, beyond a reasonable doubt, is the Defendant engaged in a sexual battery with the victim.

Sexual battery is sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion of, however slight, of any part of a person's body, or of any object in the genital or anal openings of another person's body except when this intrusion is accompanied, accompanied for medical purposes -- accomplished for medical purposes or treatment or diagnostic purposes.

If you find that the State has not shown, beyond a reasonable doubt, that sexual battery occurred, you can stop your deliberating because your verdict would have to be not guilty. If you find that a sexual battery did occur, then you must decide whether the State has proven, beyond a reasonable doubt, that the

Defendant used aggravating force to accomplish the sexual battery.

Aggravated force means the use of physical force, physical violence of a high and aggravated nature to overcome the victim, and this includes the threat of using a deadly weapon.

The Defendant is also charged with kidnapping. The State must prove, beyond a reasonable doubt, the Defendant knowingly and unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted, or carried away another person without authority of law. To do a thing unlawfully is to do it willfully against the law, and knowingly means with knowledge, conscientiously, but not accidentally. Seize means to take hold of suddenly or forcefully. And confine means to limit, restrict, or enclose, shut in, or keep in. Kidnap is to remove a person against his will by unlawful force or by fraud. And abduct means to carry off, secretly or by force, for an illegal purpose. Carry away means to remove.

The State does not have to prove that the

Defendant did all of these things. Instead, if you find, beyond a reasonable doubt, that the Defendant did any of these things, you may find the Defendant guilty of kidnapping. The kidnapping does not have to be for any personal or monetary gain or for, for any illegal purposes, but it can be for any reason whatsoever.

The Defendant is also charged with armed robbery. To prove this offense, the first must -- the State must first prove, beyond a reasonable doubt, that the Defendant took personal property from the person or presence of another person. The State must also prove, beyond a reasonable doubt, that the Defendant carried the property away intended to -- intending to permanently deprive the owner of the property, and keep the property for the Defendant's own use. The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence. The State must prove, also prove, beyond a reasonable doubt, that the Defendant was armed with a deadly weapon during the robbery. I tell you a deadly

weapon is any article, instrument, or substance likely to cause death or great bodily harm.

There -- as you heard, there are several indictments in this case, ladies and gentlemen. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law that applies to it uninfluenced by your decision as to any other indictment. The Defendant may be convicted or acquitted on any or all of the offenses charged. You will be required, of course, to write a separate verdict of guilty or not guilty for each indictment.

For there to be a verdict, ladies and gentlemen, the verdict must be unanimous meaning all of you must agree.

Now, I'm going to ask our foreperson, on behalf of the jury, that, once the jury reaches a verdict, to complete the verdict form, and indicate, as you'll see, the verdict form addresses each of these indictments, and you will then decide guilty or not guilty as to each indictment. Once the, once the jury reaches a unanimous verdict, you either knock on the door, let the bailiff know, and we will

receive you back in the courtroom.

Ladies and gentlemen, I'm gonna now ask you, if you would, the twelve of you, along with our two alternates, retire to the jury room, but don't yet begin deliberations until I send to the jury room the verdict form, and the exhibits. And I, I believe I failed to mention that I would ask our foreperson to sign the verdict form on behalf of the, the entire jury.

So, if you'll please retire to the jury room, ladies and gentlemen. I hope, hope to be in touch with you shortly.

THE BAILIFF: May they take their notebooks now, Your Honor?

THE COURT: Yes.

THE BAILIFF: You can bring your notebook.

THE BAILIFF: The jury's clear, Your Honor.

THE COURT: All right. Exceptions from the State?

MS. SWANSON: None from the State.

THE COURT: Defense.

MS. CAMPBELL: None from the Defendant.

THE COURT: Other than already noted --

MR. CAMPBELL: Well---

THE COURT: -- for the -- already noted.

Okay. Do you want to look at the exhibits to make sure we have them all?

MS. SWANSON: Yes, sir.

(Evidence goes back at 11:08 a.m.)

THE COURT: And would you please ask the alternate jurors to come back in the courtroom if they would?

THE BAILIFF: Yes, sir.

THE COURT: All right. We'll be in recess for ten minutes and at ease waiting on word from the jury.

(Alternate jurors dismissed by the Judge.)

(Whereupon, Court's Exhibit No(s). 8-9 marked for identification and received in evidence.)

THE COURT: All right. A note from the jury. I'll be glad to let you look at it. But it says, Can we have the map of the area with the van and car parked.

MS. SWANSON: It was a Court's exhibit for demonstrative purposes, never entered into evidence so I don't think that it can go back.

THE COURT: I can't let them have it until both of you --

MS. CAMPBELL: Do you intend to write your response on that?

THE COURT: I was going to ask you, what is your preference solicitor?

MS. SWANSON: Writing it is fine. I mean, if you just want to say it is not in evidence.

THE COURT: All right. What I have written on here: I cannot grant this request. The map was not introduced into evidence. Suit the State? Suit the defense?

MS. SWANSON: Yes, sir.

MS. CAMPBELL: Yes, sir.

THE COURT: Give this back and don't let them destroy it.

THE BAILIFF: Yes, sir.

MS. CAMPBELL: We will mark that as a Court's exhibit?

THE COURT: Yes, it has already been marked.

MS. CAMPBELL: Thank you.

THE COURT: Another question. The jury would like -- well, let me tell you what it says. We would like to hear Susan's testimony again, please.

Any objection from the State?

MS. SWANSON: No objection.

MS. CAMPBELL: No objection.

(The jury enters the courtroom at 12:00 p.m.)

THE BAILIFF: The jury is seated, Your Honor.

THE COURT: Welcome back, ladies and gentlemen. I have two notes from the jury. One requesting a map that was used for demonstrative purposes by the attorneys. I regret that I cannot grant that request. The map was technically not introduced into evidence, and therefore it is not evidence.

The second one indicates that the jury would like to hear Susan's testimony again. And the court reporter has arranged for that to be done.

(Audio of witness' testimony played to the jury.)

THE COURT: As best I can tell, that concludes the testimony of the witness. I would ask you to retire to your jury room and resume your deliberations, if you would.

(The jury exits the courtroom at 1:22 p.m.)

THE COURT: All right. We will be at ease and in recess.

(Jury deliberations continue.)

(Whereupon, Court's Exhibit No(s). 10 marked for identification and received in evidence.)

THE COURT: We have another note from the jury. Okay. Question from the jury: The jury would like to know what technically defines armed robbery.

MS. SWANSON: It sounds like they would like to be recharged on armed robbery. And the State would have no objection to that.

MS. CAMPBELL: That is what they are asking to have done is the law. I would ask that Your Honor recharge reasonable doubt as well.

THE COURT: I agree. And presumption of innocence. I think that I need both of those.

MS. CAMPBELL: Yes, sir.

THE COURT: All right. Let's bring the jury in.

(The jury enters the courtroom at 2:05.)

THE COURT: It is my understanding the jury would like to know the law on armed

robbery. And to do that I have to repeat a few things that I told you earlier. As you recall, the defendant pled not guilty to the armed robbery indictment and other indictments, and that puts the burden on the State to prove the defendant guilty.

I'll tell you that a person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. And I charge you that, as an important rule of law, that the Defendant, in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be innocent for the crime for which an indictment was issued unless guilt has been proven by evidence that satisfies you of that guilt beyond a reasonable doubt.

As I told you earlier, the presumption of innocence doesn't end when you begin your deliberation, but it accompanies the Defendant throughout the trial until you reach a, reach a verdict of guilt based on evidence that satisfies you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a

robe of righteousness placed about the shoulders of a Defendant, which remains with the Defendant until it has been stripped from the Defendant by evidence that satisfies you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you the jury are satisfied, from the evidence, of the Defendant's guilt beyond a reasonable doubt.

A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. Some of you may have served on juries in civil cases where you were told it was only necessary to prove that a fact is more likely true than not, such as by the greater weight or the preponderance of the evidence. But, in criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of a Defendant's guilt. There are very few things

in this world that we know of with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt.

If, based on your consideration of the evidence, you are firmly convinced that the Defendant is guilty of a crime charged, you must find the Defendant guilty. If, on the other hand, you think there's a real possibility that the Defendant is not guilty, you must give the benefit of the doubt to the Defendant and find the Defendant not guilty.

As to armed robbery. In order to prove this offense, the State must first prove beyond a reasonable doubt that the Defendant took personal property from the person or presence of another person. The State must also prove, beyond a reasonable doubt, that the Defendant carried the property away intending to permanently deprive the owner of the property and keep the property for the Defendant's own use. The taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence.

The State must prove, also prove, beyond a reasonable doubt, that the Defendant was armed with a deadly weapon during the robbery. I tell you a deadly weapon is any article, instrument, or substance likely to cause death or great bodily harm.

Ladies and gentlemen, I hope that that satisfies your request. If it does not, send another note and we will see what we can do.

(The jury exits the courtroom at 2:08 p.m.)

THE COURT: We are once again at ease.

(Jury deliberations continue.)

THE COURT: The bailiff indicates that the jury has reached a verdict in this case. Is the State ready?

MS. SWANSON: Yes, sir.

MS. CAMPBELL: Yes, sir.

THE COURT: Let me make a brief statement to the spectators in the courtroom, and that is that I have no idea what this verdict is going be, but I assume that someone is going to be upset about the verdict of the jury. I tell you that you have to control your emotions, even if you are very upset with the outcome of

the jury's verdict. If you don't we will have to clear -- you will have to be removed from the courtroom. So, everybody control your emotions and let's bring the jury in.

(The jury enters the courtroom at 2:33 p.m.)

THE BAILIFF: The jury is entering the courtroom, Your Honor.

THE COURT: Welcome back, ladies and gentlemen. Mr. Brasington, let me ask you a question as the foreman of the jury. The bailiff indicates that you have reached a verdict in this case; is that true?

THE FOREMAN: Yes, Your Honor.

THE COURT: Unanimous verdict?

THE FOREMAN: Yes.

THE COURT: Did you complete it on each and every one of the charges?

THE FOREMAN: Yes.

THE COURT: Did you complete the verdict form on behalf of the jury?

THE FOREMAN: Yes.

THE COURT: Would you pass it forward?

THE COURT: And madam clerk, would you please publish the verdict?

THE CLERK: State of South Carolina, County of Beaufort versus Isaiah Gadson, Junior, as for indictment criminal sexual conduct, 16GS0701548, we the jury unanimously find the defendant, Isaiah Gadson, Junior guilty.

As to indictment for murder, 2016GS0701549, we the jury unanimously find the defendant, Isaiah Gadson, Junior, guilty.

As to the indictment for kidnapping, 2016GS070150, we the jury unanimously find the defendant, Isaiah Gadson, Junior guilty.

As to indictment for armed robbery, 2016GS0701551, we the jury unanimously find the defendant, Isaiah Gadson, Junior, guilty. Signed by the foreperson, May 24th, 2018.

THE COURT: Thank you, madam clerk. Before the jury is discharged, anything from the State?

MS. SWANSON: Nothing.

THE COURT: From the defense?

MS. SWANSON: Defense would ask that the jury be polled.

THE COURT: Madam clerk, would you poll. If you are going to do an individual poll,

Mr. Gadson has signed them as well. And that would be the extent of our motion for a new trial.

THE COURT: I understand the grounds as you said previously, having said we previously argued those, all of those motions, I understand them and deny those motions.

MS. CAMPBELL: Thank you, Your Honor.

THE COURT: Anything else in mitigation then?

MS. CAMPBELL: No, Your Honor. With your permission I'll have Mr. Gadson remain seated.

THE COURT: That is fine.

MS. CAMPBELL: Thank you.

THE COURT: Ms. Campbell, I'm not sure that I remember exactly, your client is how old?

MS. CAMPBELL: Sixty-five. Sixty-six now.

THE COURT: All right. Mr. Gadson, on the charge of criminal sexual conduct first degree, I sentence you to the Department of Corrections for a period of 30 years, concurrent, credit for time served.

On the charge of armed robbery, I sentence you to 30 years, concurrent, credit for time

served.

On the charge of kidnapping, sentence you to 30 years, concurrent with the others, credit for time served.

On the charge of murder, I sentence you to the Department of Corrections for a period of 50 years, concurrent, with credit for time served.

The Court will be in recess for ten minutes.

MS. CAMPBELL: Thank you, Your Honor.

MS. SWANSON: Thank you, Your Honor.

(Trial concluded.)

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	IN THE COURT OF GENERAL SESSIONS 2016-GS-07-01548, 01549, 01550, 01551
State of South Carolina	)	
vs.	)	**DEFENDANT'S MOTION TO DISMISS**
Isaiah Gadson, Jr.,	)	
Defendant.	)	

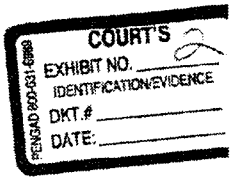
Pursuant to Rule 4(a), SCRCrimP, and based on the following, Defendant moves for this Court to dismiss the charges against him under Indictments 2016-GS-07-01548, 01549, 01550, and 01551.

BACKGROUND

"Betty, we all know who did it. You need to just let it go," Jim Palmer told Betty Whisnant when she asked about the status of the investigation into the murder of her son, David Krulewicz. Exh. A, pp. 37-38. Jim Palmer worked with the Beaufort County Sheriff's Office, and he was friends with the Weed family. *Id.* On the night of January 5, 1980, David, who was eighteen years old, was shot a killed while seated next to his fifteen year old girlfriend, Susan Weed; the two were in his van parked on a secluded, dirt road a short distance from her house where her father, Johnny Weed, had been expecting her home by her midnight curfew. Exh. A, pp. 1-4, 27, 29, 31. When the Beaufort County Sheriff's Office first arrived on scene to find David dying of his gunshot wounds, Johnny Weed was there, waving a shotgun, cursing, and raving incoherently. Exh. A, p. 3.

* * *

During the days after David's shooting, Susan spoke to investigators with the Beaufort County Sheriff's Office multiple times about happened that night, frequently giving statements



that were inconsistent with or contradicted her other statements or information from other sources. For example, she stated that earlier in the night, she and David went to a house party with friends, but they "didn't smoke any pot or anything. David might had one beer and [she] took several sips from his." Exh. A, p. 6. However, others at the party reported that the two smoked weed more than once and drank beers. Exh. A, pp. 11. She said that David vomited during and after leaving the party, Exh. A, pp. 14-15, but she also said they then parked on the dirt road so they could neck in the back of the van, Exh. A, p. 16.

Susan was consistent in claiming that an unknown black man with an average build and appearance surprised her and David by shooting through the passenger side window, but the details of what happened next changed over time. First she said she was carrying around sixty dollars in cash, which she offered the man, but later she wrote that she gave him exactly fifty dollars in two twenties and one ten. Exh. A, pp. 1, 17. She told one investigator that the man took her one hundred feet into the woods before raping her, but she later told another that he walked her down the road and raped her. Exh. A, pp. 1, 7. She never mentioned oral sex in an account to one investigator, but later told others that the man made her perform oral sex on him. Exh. A, pp. 1, 7, 17. Similarly, in one statement she said she only smoked a cigarette with the man after the rape, but in two others she said she smoked a cigarette with him before the rape. Exh. A, pp. 8, 18, 29.

Officers responding to Susan's call to the Sheriff's Office found David slumped over in the driver's seat with bullet entrance wounds on the right side of his head, neck, and right arm. Exh. A, p. 69. They also found two projectiles lodged in the inside area of the driver's side door frame, but they only found two casings around the van. Exh. A, p. 5. Moreover, Susan said

officers that a lone assailant fired a small pistol three times, and the van was never moved. Exh. A, p. 1.

Susan underwent a sexual assault evaluation. The doctor reported that she had only had "three sexual exposures," including one twenty-four hours prior with David, yet she had previously told investigators she had had sex with David four times. Exh. A, pp. 9, 29. The doctor took smears and swabbed Susan's vagina and cervix, placed the swabs in a sterile container, and filled another sterile container with fluid specifically to be sent to SLED for sperm antibody typing. Exh. A, p. 30. Performing his own analysis in his lab, the doctor found five to fifty non-motile sperm per field in the vaginal sample and five to ten non-motile sperm per field in the cervical sample. Exh. A, p. 30. A pathologist similarly investigated David's body after that night and noted that he was wearing a gold bracelet and watch despite Susan's statement that the assailant was looking for a CB radio and money on David to steal after shooting him. Exh. A, pp. 26A, 32.

Perhaps most curious about Susan's story was that the assailant, who did not hesitate to kill David and who fully revealed his identity to Susan, did not kill her. Investigators assigned to the case were skeptical. They had Susan undergo a polygraph examination and asked whether she lied about the black man forcing her to have sex, whether she knew who shot David, and whether she lied about any of the events that night. Exh. A, p. 27. When investigators sent samples of clothes and bodily fluids from Susan and David to SLED for forensic examination, they gave specific instructions only to compare the samples to each other for consistency rather than to find evidence of the interaction of a third party. Exh. A, p. 42. Indeed, the investigators' overriding theory was "that [dad] had come upon Krulewicz and Weed having sexual intercourse and had murdered Krulewicz." Exh. A, p. 39.

* * *

Johnny Weed was so close to Beaufort County Sheriff McCutcheon that Susan once said if he were ever arrested, he would be out in thirty minutes. Exh. A, p. 38. After David was shot, the first call from the Weed's house was not to 911 to seek help for David but to the Sheriff's Office. Exh. A, p. 1. In fact, neither Susan nor Johnny had called 911 even by the time the first officer from the Sheriff's Office arrived on scene. Exh. A, p. 3.

The case proceeded unsolved for weeks with the Beaufort County's Sheriff's Office's investigation limited at first to interviews and background checks of local men reported by citizens of the county as matching Susan's familiar description: black, average height, close-cut afro, smokes Kool cigarettes; after a few months, investigators began taking overnight road trips with Susan Weed to view lineups of suspects in other towns. Exh. A, pp. 26A-26Z. Johnny Weed was never so much as questioned, and David's mom was never "given very much information about her son's death." Exh. A, p. 37. Her knowledge of David's shooter never developed beyond the rumor that Johnny Weed was responsible because David was "worthless being polish and a shrimper." *Id.* That theory came to be accepted in the community and in the Sheriff's office to the extent that no new suspects were investigated after June of 1982, and the investigation was effectively closed by 1983, the same year that Johnny Weed died. Exh. A, pp. 36U, 36Z-38.

Susan herself implicitly acknowledged the legitimacy of the theory about her father in 1999 when the case was reopened by a Sheriff's Office investigator assigned to cold cases. Exh. A, p. 36Z. In an interview she told the cold-case investigator that she had questioned her mother about the extent of her dad's involvement in the shooting. Exh. A, p. 38. Fortunately for the reputation of the Weed family, by 1999, the Sheriff's Office's abandonment of the case for

nearly twenty years had resulted in the loss or destruction of numerous pieces of evidence in the case. Gone from the "forever shelf" at the evidence facility were all photos of the crime scene, photos of Susan allegedly covered in blood at the hospital, autopsy photos of David's body with a "white-tan material" in nose and mouth, needle puncture marks in his forearm, and projectile entry holes 0.125 to 0.25 inches in width. Exh. A, pp. 5, 6, 32-33, 62. Also missing were the swabs and smears from Susan's medical examinations, projectiles taken from the van and David's body and sent to SLED, and a pillowcase stained with what appeared to be blood that was found a few days after the shooting at the edge of the woods. Exh. A, pp. 26B, 64-69. Oddly, evidence more burdensome to store was kept, including a large bag full of Susan's and David's clothing. Exh. A, pp. 62-63. Also odd was the Sheriff's Office's explanation for how the evidence could have been lost: sometime in the 1980's SLED ran out of storage space, and somehow SLED decided that some evidence should be photographed for microfilm, some evidence should be destroyed, and some evidence should be returned to Beaufort. Exh. A, pp. 42-58. Thus, the Sheriff's Office was still in possession of cigarette butts, pubic hairs, and items of clothing that had been sent to and returned from SLED. Exh. A, pp. 42-58, 62-63. Curiously, the Sheriff's Office also had possession of numerous empty envelopes and bags from SLED that once contained items for forensic analysis such as cigarette packs even though the items themselves were gone. *Id.*

* * *

Defendant Isaiah Gadson was arrested, jailed, and indicted even though he is significantly taller than the five-foot, five-to-seven-inch tall description that Susan Weed gave police, Exh. A, pp. 13, 29, and his DNA has never been found on the cigarettes, wrapping paper, bra, shirt, pubic hair, match sticks, gum wrapper, or projectiles that the Beaufort County Sheriff's Office has

subjected to testing. Exh. A, pp. 64-69. Johnny Weed was never so much as interrogated or subjected to gunshot residue testing. Although he was momentarily arrested and jailed on the night of David Krulewicz's shooting, the responding officer explained in his report, "at the time this was happening I did not know who the white male was." Exh. A, p. 4.

ARGUMENTS

I. THE BEAUFORT COUNTY SHERIFF'S OFFICE CONCLUDED THAT JOHNNY WEED KILLED DAVID KRULEWICZ, ABANDONED THE INVESTIGATION OF THE CASE, AND LOST AND DESTROYED CRITICAL EVIDENCE IN BAD FAITH, THEREBY PRECLUDING THE POSSIBILTY OF FAIR TRIAL FOR ISAIAH GADSON.

The Beaufort County Sheriff's Office concluded that Johnny Weed killed David Krulewicz, abandoned the investigation of the case, and lost and destroyed critical evidence in bad faith, thereby precluding the possibilty of fair trial for Isaiah Gadson under the Fifth Amendment. The Fifth Amendment to the United States Constitution states that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law . . . ." U.S. Const. amend. V. "Due process requires that a criminal defendant be afforded a meaningful opportunity to present a complete defense." *State v. Mabe*, 306 S.C. 355, 412 S.E.2d 386 (1991) (citing *California v. Trombetta*, 467 U.S. 479 (1984)). In a decision with one concurrence and three dissents, the United States Supreme Court has held that a defendant claiming denial of due process based on law enforcement's failure to preserve potentially useful evidence must show bad faith. *Arizona v. Youngblood*, 488 U.S. 51 (1988). The facts of the case involved a defendant charged for kidnapping and sexually assaulting a young boy. *Id.* The only evidence incriminating the defendant was the boy's photo-lineup identification. *Id.* Law enforcement had taken into evidence the semen and blood stained clothes that the boy was wearing when the

assault occurred. *Id.* Because investigators failed to timely examine and preserve the clothes, they could not run tests to produce identifying biological information that might have exonerated the defendant. *Id.* The Court specified that the showing of bad faith could be met through an inference based on law enforcement's behavior itself in failing to preserve the evidence: "[R]equiring a defendant to show bad faith on the part of the police [confines police's obligation to preserve evidence to] those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant." *Id.* The remedy for a violation of this type is dismissal. *State v. Jackson*, 302 S.C. 313, 396 S.E.2d 101 (1990).

In this case, the Beaufort County Sheriff's Office's loss and destruction of evidence in the 1980's resulted from its bad faith abandonment of the investigation of the case. Susan Weed's accounts were riddled with inconsistencies and contradictions and seemed like post hoc explanations. Johnny Weed, at the scene out of control with anger and waving a shotgun, had the motive, opportunity, and means befitting an obvious primary suspect. However, the Sheriff was close to Johnny Weed, and officers understood his outrage over the relationship between his fifteen year old daughter and eighteen year old Krulewicz. Irresponsibly and wrongfully deferring to the principles of small-town street justice, investigators made minimal efforts to follow up on leads fed to them by members of the community. No record exists showing anyone so much as questioned Johnny Weed. When Johnny Weed died in 1983, investigators felt comfortable ending all efforts and closing the case because, as Jim Palmer coolly told David's mom, everyone knew Johnny Weed did it, and no further justice need be imparted on a dead man.

As a direct result of abandoning the investigation of the case, evidence was lost that should have been preserved indefinitely on the Sheriff's Office's own "forever shelf." No

explanation whatsoever exists for the disappearance of the photos of the crime scene, Susan, and David. Items sent to SLED were either left in Columbia without any apparent interest in having them returned or tossed out when they were sent back to Beaufort requiring efforts to re-shelve. In both cases, the Sheriff's Office's disinterest in keeping the evidence was so great that no one can say with any certainty when, where, or how the evidence was lost. Such a gross abandonment of one of the Office's primary duties cannot be described as anything but conscious, deliberate, and in bad faith.

II. THE EXTENSIVE LOSS AND DESTRUCTION OF CRITICAL TO UNDERSTANDING THE CONDITIONS OF THE CRIME SCENE AND VICTIMS AND DETERMINING THE LIKELIHOOD OF THE PRESENCE OF SOMEONE OTHER THAN DAVID, SUSAN, AND JOHNNY WEED HAS MADE IMPOSSIBLE A RELIABLE UNDERSTANDING OF THE UNDERLYING FACTS, AND UNDER SOUTH CAROLINA LAW ISAIAH GADSON CANNOT RECEIVE A FAIR TRIAL.

The extensive loss and destruction of critical to understanding the conditions of the crime scene and victims and determining the likelihood of the presence of someone other than David, Susan, and Johnny Weed has made impossible a reliable understanding of the underlying facts, and under South Carolina law Isaiah Gadson cannot receive a fair trial. The South Carolina Constitution states, " . . . nor shall any person be deprived of life, liberty, or property without due process of law . . . ." S.C. Const. art. 1 § 3. In *State v. Reaves*, the South Carolina Supreme Court noted that other state courts have determined a strict reading of the majority rule in *Youngblood* is insufficient to protect a defendant's due process rights:

> A number of state courts have declined to follow the bad faith standard established in *Youngblood* based on state law grounds. See, e.g., *State v. Ferguson*, 2 S.W.3d 912, 917 (Tenn. 1999) ("Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the

> *Youngblood* analysis in its pure form."); *State v. Osakalumi*, 194 W.Va. 758, 461 S.E.2d 504, 512 (1995) ("As a matter of state constitutional law, we find that fundamental fairness requires this Court to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record."); *Commonwealth v. Henderson*, 411 Mass. 309, 582 N.E.2d 496, 497 (1991) ("The rule under the due process provisions of the Massachusetts Constitution is stricter than that stated in the Youngblood opinion."). However, Reaves does not ask this Court to do so here; his argument rests solely on the Fourteenth Amendment to the United States Constitution.

414 S.C. 118, 777 S.E.2d 213 (2015). *See generally Pena v. State*, 226 S.W.3d 634 (Ct. App. Tex. 2007), *reversed on other grounds*, *Pena v. State*, 285 S.W.3d 459 (Ct. Crim. App. Tex. 2009).

Indeed, Justice Stevens in his concurrence in *Youngblood* warned that a strict reading of the majority rule could not suffice in certain foreseeable cases: "[T]here may well be cases in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair." *Youngblood*, 488 U.S. 51 (1988) (Stevens, J., concurring). In reaching this conclusion, Justice Stevens deemed critical to protecting due process an analysis of the materiality of the missing evidence to the prosecution and defense and the availability of remedies alternative to dismissal. *Id.* In South Carolina, well-settled is the ability of a person claiming a denial of the due process right to a fair trial to show prejudice through considerations of the pervasiveness and materiality, for example, of the shortcomings at issue. See, e.g., *Frett v. State*, 298 S.C. 54, 378 S.E.2d 249 (1988) ("While a defendant must ordinarily show that counsel's ineffective assistance resulted in actual prejudice, such a showing may be exempted where counsel's ineffectiveness is so pervasive as to render a particularized prejudice inquiry unnecessary."); *State v. Freeman*, 319 S.C. 110, 459 S.E.2d 867 (Ct. App. 1995) ("[Defendant]

argues the interruptions, opinions, and comments of the trial judge . . . were so prejudicial to him as to deprive him of a fair and impartial trial. . . . [W]e find the combined effect of the numerous unsolicited comments and the limitation of cross-examination unduly prejudiced [Defendant]."); *McKnight v. State*, 320 S.C. 356, 465 S.E.2d 352 (1995) ("[W]hen counsel is denied at a critical stage of a defendant's trail, prejudice will be presumed and harmless error analysis is precluded.").

In this case, the Beaufort County Sheriff's Office lost many pieces of evidence necessary for a reliable understanding of both the conditions of the crime scene and the victims and the likelihood of the involvement of someone other than David, Susan, or Johnny Weed. The inconsistencies in the details of Susan's accounts undermine her credibility for her general claim of an opportunistic rape and collateral murder. No accounts from David, Johnny Weed, or any other witness exist. And the number of plausible explanations for a spontaneous shooting grows by considering certain unusual, suspicious, and watershed pieces of evidence: Susan was fifteen, and the boy she was sexually active and involved in drugs with was eighteen; Susan was carrying a large amount of cash; the spray-pattern of small projectiles suggests buckshot; and the crime scene was dark, isolated, and littered with trash from unconnected third parties.

Photographs of the locations of blood in and around the van, other items in the van, the position and doors of the van, the location of shattered glass, tire tracks, foot prints, the location and type of projectile shells and other discarded materials in the area, and the projectile wounds on David's body would provide information either corroborating or contradicting most if not all parts of Susan Weed's story. DNA and trace-evidence analysis of the fluid samples taken from Susan Weed would resolve the uncertainties about who and when she had sexual encounters with that were left by the results of her initial medical exam and the inconsistent statements about her

sexual history. Forensic analysis of the extracted projectiles would show whether Susan's claim about David being shot by a small caliber pistol was truthful.

The ultimate result of the Sheriff's Office's complete inattention to the evidence during the 1980s is a collection of odds and ends having relatively little importance to the case, if any, when compared with the criticality of the missing evidence in supporting reasonable inferences about who was present in the moments around David's death and exactly where and how they interacted with David and Susan. In essence, a prior generation at the Beaufort County Sheriff's Office deliberately discarded David's case leaving the evidence to rot, and for a new generation to now reverse course and prosecute Isaiah Gadson based on the few remaining breadcrumbs can in no way be considered providing an opportunity for a fair trial in accordance with due process.

CONCLUSION

For the foregoing reasons, Defendant Isaiah Gadson respectfully moves for this Court to dismiss the charges against him.

Respectfully,

Trasi Campbell
Bar #15149
Benjamin John Tripp
Bar # 79789
Assistant Public Defenders for Beaufort County
P.O. Box 525
Beaufort, SC 29901
tcampbell@bcgov.net
btripp@bcgov.net
(843) 255-5805
Attorneys for Defendant

Beaufort, South Carolina
May 21, 2018

EXHIBIT A

1

BEAUFORT COUNTY SHERIFFS DEPARTMENT
P.O. BOX 868
BEAUFORT, SOUTH CAROLINA 29902

SUPPLEMENTARY REPORT

AGENCY I.D. SC0070000 | Classification | Case No. 80-0110

Name of Complainant	Address	Phone No.
WEED JOHNNY	[redacted] PLANTATION DR. BEAUFORT, S.C.	524-[redacted]

Offense: MURDER/CRIMINAL SEXUAL ASSAULT/ROBBERY/GRAND LARCENY

DETAILS OF OFFENSE, PROGRESS OF INVESTIGATION, ETC.:
(Investigating Officer must sign)

Page No. 2 Date 01-06- 80

VICTIM #1 STATES THAT SHE AND VICTIM #2 WAS PARKED IN #2 VAN, LIC#NNZ 419 SC80, ON THE DIRT ROAD DOWN FROM SALEM PT. (SEE DIAGRAM) AND HAD THE INSIDE LIGHT ON INSIDE THE VAN AND VICTIM #1 STATES SHE HAD BE HOME BY MIDNIGHT AND SHE LOOKED AT HER WATCH AND IT WAS 2345 AND A FEW MINUTES LATER A GUN BLAST CAME THROUGH THE PASSENGER SIDE WINDOW WHERE SHE WAS SITTING AND A BULLET HIT HER BOYFRIEND VICTIM #2. #1 STATED A COUPLE OF MORE SHOTS WAS FIRED AND SHE GOT AND TRIED TO HIDE BESIDE THE PASSENGER SEAT. SHE STATED SUSPECT A B/M WITH A SMALL TYPE PISTOL, BLACK IN COLOR, WAS RIGHT AT THE DOOR AND TOLD HER TO COME ON OUT OF THE VAN. VICTIM #1 STATES SHE CAME OUT OF THE VAN AND TRIED TO TALK TO THE SUSPECT. SHE STATED THAT THE SUSPECT TOLD HER HIS NAME WAS _____ BROWN. SHE STATED THAT SHE COULD NOT REMEMBER THE FIRST NAME. VICTIM #1 TRIED TO TALK WITH THE SUSPECT AND TOLD HIM TO TAKE HER MONEY BUT NOT HARM HER. SUSPECT TOOK ABOUT $60.00 DOLLARS FROM VICTIM #1. VICTIM #1 ALSO STATES THAT THE SUSPECT MADE HER GO ABOUT 100 YARDS INTO THE WOODS FROM THE VAN AND MADE HER HAVE ORAL SEX WITH HIM AND THEN SUSPECT RAPED HER. VICTIM #1 STATED SHE ASKED SUSPECT FOR A CIGARETTE AND ASKED HIM WHAT KIND HE SMOKED AND SHE STATED SUSPECT TOLD HER KOOLS. VICTIM #1 STATES SUSPECT WAS VERY COOL AND CALM AND WAS NOT VULGAR IN TALK, DID NOT YELL OR TALK LOUD AND ACTED VERY CALM. SUSPECT TOLD VICTIM#1 THAT HE LIVED AROUND IN THIS AREA. SUSPECT TOLD VICTIM#1 TO GET BACK INTO THE VAN AND AFTER SHE DID THIS SHE STATES SUSPECT RAN OFF. SHE STABS AT NO TIME DID SHE SEE OR HEAR A VEHICLE. SHE GOT OUT OF THE VAN AND WENT HOME AND CALLED THE SHERIFFS DEPARTMENT. VICTIM #1 WAS TAKEN TO BEAUFORT MEMORIAL HOSPITAL AND EXAMINED BY DR. FONTANA AND ALL EDIVENCE WAS RELEASED TO D/S HESLIN AT THE HOSPITAL BY THE DOCTOR PERTAINING TO THE SEXUAL ASSAULT. DET. SGT HUSTON NOTIFIED AND ALL OTHER DUTY SUPERVISORS. THE CORONER WAS NOTIFIED AND ASKED THIS UNIT TO NOTIFY THE FAMILY OF THE DECREASED IN WHICH I DID. THE PARENTS ARE MR. & MRS. STANLEY AND ELIZABETH McKENZIE. THE PARENTS NOTIFIED AT 0225.

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INVESTIGATING OFFICER(S): REPORT MADE BY D. P. COURTNEY DATE 01-06-80

ADM. CASE STATUS [X] ACTIVE [ ] CLEARED BY ARREST [ ] EX CLEARED [ ] OVER 18 [ ] UNDER 18 [ ] UNFOUNDED [ ] INACTIVE REPORT DATE 01 06 80

REPORTING OFFICER D. P. COURTNEY NUMBER 106 APPROVING OFFICER NUMBER

2

BEAUFORT COUNTY SHERIFFS DEPARTMENT
P.O. BOX 868
BEAUFORT, SOUTH CAROLINA 29902

SUPPLEMENTARY REPORT

AGENCY I.D. SC0070000 | Classification | Case No. 80-0110

Name of Complainant: WEED JOHNNY | Address: [redacted] PLANTATION DR. BEAUFORT, S.C. | Phone No. 524-[redacted]

Offense: MURDER, CRIMINAL SEXUAL ASSAULT, ROBBERY, GRAND LARCENY

DETAILS OF OFFENSE, PROGRESS OF INVESTIGATION, ETC.:
(Investigating Officer must sign)

Page No. 3 | Date 01-06- 19 80

(DIRECTIONS TO CRIME SCENE)

DIRT ROAD DEADEND

PARKED VAN 3 TENTHS OF A MILE FROM HARD SURFACE ROAD

1ST DIRT ROAD TO LEFT

DIRT ROAD AT THE END OF SALEM PT. ROAD COMING FROM HWY 170 BY CREDIT UNION AND GOING TOWARDS OLD JERICO ROAD

SALEM PT. ROAD
HARD SURFACE

COMING FROM HWY 170 PASSING TRIMMIER CHEVY 157

INVESTIGATING OFFICER(S) | REPORT MADE BY D.P. COURTNEY | DATE 01-06-80

CASE STATUS: ☒ ACTIVE ☐ CLEARED BY ARREST ☐ EX CLEARED ☐ OVER 18 ☐ UNDER 18 ☐ UNFOUNDED ☐ INACTIVE

REPORT DATE 01 06 80

REPORTING OFFICER: D.P. COURTNEY | NUMBER 106 | APPROVING OFFICER | NUMBER

OFFICE